The Holocaust—Recovery of Assets from World War II: A Chronology (May 7, 1995 to October 27, 1999) and Resource Guide

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ABSTRACT

This report presents a chronology of recent investigations (May 7, 1995 to October 27, 1999) into the identification and recovery of assets (dormant bank accounts, works of art, looted gold, unpaid insurance claims, etc.) that were lost or stolen during World War II and the Holocaust. This report features a broad overview of the recent activities by private individuals, organizations, and governments such as Germany, Switzerland, the United States, and other nations, as well as providing a comprehensive bibliography of print and electronic sources. A list of private and governmental organizations that are assisting with the claims of victims of the Holocaust and their heirs are also included. This report will be updated as events warrant.

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Summary

This report is a compilation of recent investigations (May 7, 1995-October 27, 1999) into the role of Swiss banks and other institutions dealing with the recovery of hidden or stolen assets of victims of the Holocaust from World War II (1939-1945). Included is an overview of the worldwide inquiry by Switzerland, the United States Congress, and the governments of other nations in the following areas: dormant bank accounts, looted art, and cultural objects; Nazi gold transfers; policy claims against European insurance companies by Holocaust survivors and their heirs; and recent lawsuits by former slave laborers in Nazi-run factories in Germany and other Nazi-occupied territories. A selected list of printed and electronic resources is included along with the addresses and telephone numbers of organizations currently assisting victims of the Holocaust and their heirs from the World War II era with claims and reparations.

For related reports on this topic see CRS Report 98-903, Holocaust-Related Legislation of the 105th Congress; CRS Report 98-699, Holocaust Survivor and Heir Lawsuits to Recover Swiss Bank Deposits; and CRS Report 98-329, Nazi War Crimes Records Disclosure: Public Law No. 105-246.
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This chronology begins on May 7, 1995, with the official apology by then Swiss President Kaspar Villinger for his country’s role in denying asylum to countless Jewish refugees during World War II, and continues through to the activity of the ensuing Congresses including the first hearings held by the U.S. Senate Banking Committee during the 104th Congress, second session (1996) on Swiss banks and Holocaust victims; legislation introduced and passed during the 105th Congress (1997-1998); and legislation recently introduced in the 106th Congress (1999-2000). The information presented is compiled from press reports and news articles from commercial databases such as NEXIS/LEXIS, WESTLAW, the Foreign Broadcast Information Service (FBIS), and “news tracker” via the Excite search engine on the Internet. This report also provides comprehensive lists of print and electronic resources, as well as useful addresses and telephone numbers of organizations assisting with Holocaust-era claims and reparations.

Chronology

1995

05/07/95 An official apology was issued by then President of Switzerland, Kaspar Villinger, for his country’s role in denying asylum to countless Jewish refugees during the war; he stated that Switzerland “bears a considerable burden of guilt for the treatment of the Jews.” His remarks were made in a speech to a special session of Parliament marking the 50th anniversary of V-E Day, the Allied victory in Europe.

09/01/95 The Swiss Banking Association (SBA) announced the discovery of $34 million in dormant bank accounts that may have belonged to Holocaust victims. The SBA also agreed to relax strict secrecy laws only for dormant accounts to help locate missing Jewish and non-Jewish assets from the war era.

1996

01/01/96 The SBA established a research center under the direction of Hanspeter Haeni, the bankers’ ombudsman, to act as an intermediary between persons seeking funds from orphaned or dormant accounts and the Swiss banking community.

02/07/96 The SBA announced that $32 million were found in 775 additional dormant accounts opened prior to 1945, including those of non-European origin.
The U.S. Senate Banking Committee headed by Senator Alfonse D’Amato held the first hearing on the status of assets deposited in Swiss banks by European Jews and other victims of the Holocaust. The methodology of the accounting records used by Swiss financial institutions came under sharp criticism as well as their treatment of Holocaust survivors/heirs, who had previously requested information on lost accounts but were rebuffed by Swiss bank officials. Printed as Senate Hearing 104-582.

The World Jewish Congress (WJC), the World Jewish Restitution Organization, the Jewish Agency in Jerusalem, and the SBA signed an agreement that would relax Swiss banking secrecy laws to allow a joint independent commission to reexamine dormant Swiss accounts. An Independent Committee of Eminent Persons led by Paul Volcker, former chairman of the U.S. Federal Reserve System, was chosen to audit an earlier study by the Swiss bankers’ ombudsman. The other six panel members are Professor Curt Gasteyger, a Swiss historian; Alain Hirsh, an expert on security and accounting; Klaus Jakobi, a former Swiss ambassador to the United States; Avraham Burg, chairman of the Jewish Agency in Israel; Rueben Beraja, chairman of the Latin American Jewish Congress; and Ronald Lauder, an American representing Jewish interests.

The British Foreign and Commonwealth Office released its document, Nazi Gold: Information from the British Archives, which alleged the Allies knew of the large amounts of Nazi gold exported to Switzerland, but were afraid of losing Swiss support in the postwar economic recovery plan. The report also alleged that the Swiss could be holding more than $550 million worth of gold looted by Nazi Germany, valued today at $7 billion.

Besieged by international criticism, the Swiss Parliament agreed to a full investigation into assets stolen by the Nazis. An independent commission of historians and banking and legal experts were recommended to investigate Switzerland’s role as a financial center for looted assets.

Gizella Weisshaus, a Holocaust survivor living in Brooklyn, filed the first class action suit in a U.S. federal court in New York against various Swiss banks for allegedly refusing to return assets deposited before and during the war. The banks named in the suit included the Swiss Bank Corporation (also known as the Swiss National Bank), the Union Bank of Switzerland (UBS), and other banking institutions. More than 4,000 plaintiffs, Jews and non-Jews worldwide, were named in the lawsuit.

The U.S. Department of State announced that William Slany, chief historian of the Department of State, would lead investigations in the National Archives regarding Nazi gold in Swiss banks. The focus would be on the diplomatic efforts by the United States after the war and diplomatic contacts with the Swiss government.

A second class action complaint was filed in the U.S. District Court for the Eastern District of New York on behalf of three classes of plaintiffs against the UBS for withholding assets deposited during the war years. The three classes of plaintiffs were defined as: 1) rightful owners of looted assets (those who had their assets looted
prior to or during internment in the concentration camps; 2) slave laborers and their heirs; and 3) certain Swiss bank depositors and their heirs (those who made deposit prior to and during the war years and have been unable to reclaim them).

10/24/96 In response to increasing world scrutiny, Flavio Cotti, the Swiss foreign minister, created a special task force whose mission is to coordinate Swiss diplomatic response to international criticism of Switzerland and its financial institutions. This special task force is directed by Special Ambassador Thomas Borer.

10/30/96 President Clinton wrote a letter to World Jewish Congress (WJC) president Edgar Bronfman and asked him to expand the probe into Nazi assets, stating that his Administration “would make it a priority to classify and make available to the public all the relevant documents.” President Clinton named Stuart Eizenstat, then Undersecretary of Commerce, to coordinate efforts by the U.S. government.

11/13/96 The Swiss bankers’ ombudsman, Hanspeter Haeni, announced that only 11,000 Swiss francs ($8,750) from 1.6 million francs ($1.26 million) in unclaimed dormant accounts were linked directly to Holocaust victims. These initial findings were sharply criticized by the WJC as “unilateral and unacceptable.”

11/19/96 Paul Volcker, head of the special auditing committee established in May 1996, announced that three American accounting firms (Arthur Andersen, KPMG Peat Marwick, and Price Waterhouse) were hired to investigate dormant Swiss accounts during the World War II era in response to criticism of the findings by the Swiss bankers’ ombudsman.

11/26/96 The Argentine Central Bank in Buenos Aires released five volumes of documents to the Simon Wiesenthal Center in Los Angeles. These transactions contained information on funds including gold transferred from banks in Switzerland, Spain, and Portugal to Argentina between 1939 and 1949.

11/27/96 The upper house of the Swiss Parliament voted 37-0 to examine Switzerland’s financial dealings with Nazi Germany and the fate of Jewish assets in Swiss accounts.

12/02/96 The WJC announced that it had uncovered documents from April 1945 in the National Archives pertaining to the ongoing inquiry. Letters from the United States embassy in Buenos Aires to acting Secretary of State Joseph Grew detailed the extent of Nazi investment in Argentina during the war. They were dubbed the “Morgenthau Letters” for including a letter from U.S. Secretary of the Treasury Henry Morgenthau, Jr. dated February 1945. These documents reported that the Nazis had invested $500 million in commercial firms, $500 million in farms and ranches, $105 million in banks, and $40 million in insurance companies in Argentina between 1939 and 1944.

12/09/96 Both houses of the Swiss Parliament passed final legislation that waived the 3-month waiting period for laws to take force, thus allowing an independent panel to begin studying how much wealth was deposited into Swiss banks prior to and during World War II, and whether the Swiss had done enough to identify lost assets.
12/11/96  The U.S. House Banking Committee held a hearing on Swiss banks and Jewish assets during World War II. Among the witnesses before the committee were Special Ambassador Thomas Borer, chief of the Swiss Foreign Ministry Task Force on the Swiss bank question; Edgar Bronfman, president of the WJC; Paul Volcker, chairman of the Committee of Eminent Persons; Senator D’Amato, chairman of the U.S. Senate Banking Committee; and various Holocaust survivors/heirs.

12/19/96  Peter Hug and Marc Perrenoud, two independent historians commissioned by the Swiss government, released their report on Swiss postwar deals with Nazi gold. Authorized in October 1996, this report investigated claims that assets from victims of the Holocaust were used by the Swiss to compensate its citizens whose property was seized by countries in Eastern Europe. The report rejected the charge that such funds were paid directly to Swiss citizens, but said instead they were used to pay Poland and Hungary under postwar compensation agreements.

12/20/96  Swiss historian Jean-François Bergier was chosen to head a nine-member Independent Commission of Experts (ICE) directed by the Swiss government to reexamine its wartime activities. The other members are Swiss historians Jacques Picard and Jakob Tanner; Joseph Voyame, a lawyer and former official in the Swiss justice ministry; Harold James from Princeton University; Władysław Bartoszewski, a Jewish historian from Warsaw; Saul Friedlaender, an Israeli historian; and Sybil Milton, with the U.S. Holocaust Memorial Museum.

12/24/96  During an interview in Switzerland, outgoing Swiss President Jean-Pascal Delamuraz rejected the creation of a $250 million compensation fund as “blackmail” and said that “such a fund would be considered an admission of guilt.” This fund was proposed earlier in the month to Special Ambassador Borer by representatives of the WJC and Senator D’Amato as a good-faith gesture to help elderly and destitute Jews pending the outcome of the investigations.

1997

01/05/97  Jewish leaders condemned Switzerland for not repudiating the remarks by Delamuraz. Israel Singer, secretary-general of the WJC, stated that the WJC and the Jewish Agency would support measures, including a boycott, unless Delamuraz’s remarks were “rejected by Switzerland and its bankers clearly and decisively.”

01/07/97  The Swiss cabinet offered to create a compensation fund with the $32 million found by the Swiss bankers’ ombudsman in November 1996. Their offer was firmly rejected by the WJC.

01/12/97  A memorandum dated January 12, 1946, to the head of the Office of Strategic Services (OSS), the forerunner of the CIA, was found in the National Archives. It detailed how the Swiss National Bank sent truckloads of gold looted by the Nazis to Spain and Portugal in vehicles bearing the Swiss emblem.
01/21/97 Documents uncovered in the archives of the Riksbank, Sweden's Central Bank, revealed that it may have received gold stolen by Nazi Germany. The Riksbank documents indicated that between 1939 and 1944, the bank bought 76,040 pounds of gold from Nazi Germany.

01/23/97 The Swiss government endorsed a plan for a memorial fund of $70 million to compensate victims/heirs who claimed dormant assets in Swiss banks.

01/25/97 French Minister Alan Juppé announced the creation of a task force to investigate the whereabouts of funds or property confiscated from Jewish owners by the Nazis or the Vichy regime during World War II.

01/27/97 Switzerland's ambassador to the United States, Carlo Jagmetti, resigned following the disclosure of a confidential strategy paper he wrote in December 1996, urging Switzerland to "wage war" against international criticism that Swiss banks failed to account for missing assets of Holocaust victims and "not to trust most of the adversaries."

01/29/97 Alfred de Fago, Switzerland's general consul in New York, was named Switzerland's ambassador to the United States.

02/02/97 The Dutch Foreign Ministry announced that a commission of historians and financial experts would investigate the whereabouts of 75 tons of gold reserves. According to Dutch and German records, these gold reserves were looted by the Nazis and may still be hidden in Swiss bank accounts or may have been transferred to another neutral nation during the war.

02/06/97 The three major Swiss banks—Crédit Suisse, Swiss Bank Corporation, and the Union Bank of Switzerland (UBS)—announced the creation of a special Swiss humanitarian fund for Holocaust victims of 100 million Swiss francs (U.S. $70 million) to benefit victims of the Holocaust.

02/26/97 The Swiss government gave final approval to a Holocaust Memorial Fund (a.k.a. Swiss Humanitarian Fund) planned by the three major Swiss banks for Jewish and non-Jewish victims of the Holocaust.

02/28/97 Christoph Blocher, chairman of the Swiss chemical company EMS Chemie and a member of Parliament, stated that contributing to a fund for Holocaust survivors "was an admission of guilt" and that "Switzerland had no reason to apologize for doing business with Nazi Germany in order to survive as a neutral country."

03/04/97 President Carlos Menem of Argentina offered Jewish groups full access to its Central Bank archives to investigate whether gold looted by the Nazis was transferred to Argentina via neutral European nations such as Switzerland, Spain, and Portugal. This offer was in response to a written request by the Simon Wiesenthal Center in Los Angeles, which also sent letters to Brazil, Chile, Paraguay, and Uruguay.
03/05/97 Swiss President Arnold Koller proposed, in a special address to Parliament, the creation of the Swiss Foundation for Solidarity, a humanitarian fund of 7 billion Swiss francs (U.S. $4.7 billion). The Foundation would donate up to SFr 300 million a year to needy recipients in Switzerland and abroad from profits from revaluing SFr 5 million in gold reserves from the Swiss Central Bank. According to President Koller, the beneficiaries would include “victims of poverty and catastrophes, of genocide, and other serious human rights abuses, and for victims of the Holocaust.”

03/06/97 The Swiss Central Bank offered to contribute SFr 70 million to the Holocaust Memorial Fund but it awaits approval from the Swiss Parliament. A federation of Swiss companies also pledged to contribute SFr 46 million to the special humanitarian fund.

03/07/97 Swiss historian Jean François Bergier, the chairman of the Independent Commission of Experts (ICE), announced that the ICE needed more time before issuing its first report to the Swiss government, which was expected by mid-1997.

03/11/97 Elan Steinberg, the executive director of the WJC, announced that the Swedish government had launched an investigation into its wartime dealings with Nazi Germany. The WJC stated that 900 dormant accounts believed to be those of Holocaust victims had been discovered in Swedish banks.

03/12/97 Swiss Foreign Minister Flavio Cotti arrived for a 3-day visit to New York and Washington aimed at improving Switzerland's image after months of criticism. He met with U.S. Secretary of State Madeleine Albright and then Undersecretary of Commerce Stuart Eizenstat.

03/15/97 The French newspaper, Le Monde, reported that several French banks kept funds deposited by Jewish owners during the war that are today reportedly worth $135 million. Le Monde's investigation concluded that government bureaucracy and confusion after the war were to blame rather than any intentional policy.

03/18/97 The Simon Wiesenthal Center called for the Swiss government to open its files on François Genoud, a Swiss Nazi who managed funds for the Third Reich and later provided funds for international terrorists. He was believed to have been a German and Swiss agent and was identified by Nazi-hunters for being instrumental in transferring gold from Swiss banks to Latin America via Spain.

03/20/97 The Swiss National Bank confirmed allegations that it had aided other European neutrals (Portugal, Spain, Sweden, and Turkey) to buy millions of dollars worth of gold looted by Nazi Germany. According to the study, the National Bank bought 1.7 billion Swiss francs (U.S. $425 million) of gold between 1940 and 1945.

03/31/97 A $7 billion class-action suit was filed in the U.S. District Court in Manhattan by attorney Edward Fagan on behalf of a dozen American plaintiffs against seven of Europe's largest insurers. The suit accused the insurers of failing to honor policies bought before the war, and in some cases, giving the money to the Nazis. The seven companies named in the lawsuit are: Assicurazioni Generali S.p.A. of Trieste, Italy; Wiener Alliance Versicherungs Aktiengesellschaft of Vienna; A.G.F. Assurances Générale de France Vie of Paris; Reunione Adriatica Di Sicurta S.p.A.
Consolidated of Milan; Der AnkepAllegemeine Versicherungs AG of Vienna; Bavarian Reinsurance Co. (a.k.a. Bayerisiche Allegemeine Versicherungs) of Munich; and Allianz Group of Munich.

04/16/97 The Swiss cabinet appointed the president and three members of a board that will run the Humanitarian Fund for Holocaust victims. Rolf Bloch, head of the Swiss Federation of Hebrew Congregations, was named to lead the seven-member board. The other three Swiss appointees are all former local and federal government officials: Rene Bacher, Josi Meier, and Bernard Ziegler.

04/16/97 Portugal’s Central Bank published a statistical breakdown of its wartime gold movements but stressed that it had found no evidence that it was actively involved in laundering gold looted by the Nazis.

05/01/97 The Swiss government appointed Elie Wiesel honorary chairman of the Swiss Humanitarian Fund. He later declined the position in a letter dated May 6 to Swiss Foreign Minister Flavio Cotti. The other two international members are Israeli statesman Yosef Burg and Israeli Knesset member Avraham Hirschson. Edgar Bronfman, head of the WJC, was later named as a replacement for Wiesel.

05/06/97 The U.S. Senate Banking Committee held a hearing on the shredding of Holocaust-era documents. This hearing was printed as Senate Hearing 105-152.

05/06/97 The British Foreign and Commonwealth Office published Nazi Gold: Information from the British Archives, Part II on the fate of gold recovered by the Allies. This was a follow-up to its report of September 1996.

05/07/97 The Historian’s Office of the U.S. Department of State released its report, U.S. and Allied Efforts to Recover and Restore Gold and Other Assets Stolen or Hidden by Germany During World War II: Preliminary Study, also known as the “Eizenstat Report.” Presented by William Siany, the chief historian at the State Department, and then Undersecretary of Commerce Stuart Eizenstat, this report criticized the Swiss for having been bankers to the Nazis and, thus, accountable for prolonging the war. Greg Bradsher of the National Archives also prepared an appendix Finding Aid to accompany this report.

05/15/97 The U.S. Senate Banking Committee chaired by Senator D’Amato held a hearing on the Eizenstat Report that was broadcast live in Switzerland. This hearing was printed as Senate Hearing 105-176.

05/19/97 Senator D’Amato introduced private legislation (S 768) for the relief of Christoph Meili, his wife, and two children. Meili, a former Swiss security guard at the Union Bank of Switzerland (UBS), discovered documents relating to pre-World War II dormant accounts that were to be shredded. Meili took the documents and turned them over to Jewish groups. He was fired by the UBS and faced prosecution for violating Swiss banking secrecy laws before fleeing abroad.

05/28/97 Swiss historian Mario Cerruti uncovered a document from 1946 in Swiss diplomatic archives that detailed how Switzerland exported arms and war material to Nazi Germany worth $640 million between 1940 and September 1944.
06/25/97  U.S. House Banking and Financial Services Committee, chaired by Representative James Leach, held a hearing on gold taken from Holocaust victims by Nazi Germany. Among those testifying were Senator D’Amato, Undersecretary of Commerce Stuart Eizenstat, and others.

07/07/97  Rolf Bloch, chairman of the Swiss Humanitarian Fund, announced that the Fund would dispense the first payments to needy Holocaust victims in Eastern Europe by October 1997.

07/23/97  The Swiss Banking Association (SBA) printed the names of over 1,870 pre-1945 dormant accounts in major newspapers worldwide and on the Internet.

07/29/97  President Clinton signed S.768, granting legal residency to Christoph Meili and his family. It became Private Law 105-1.

08/01/97  A bipartisan letter signed by 82 U.S. Senators was sent to German Chancellor Helmut Kohl, urging his government to pay pensions to Holocaust survivors in the former Soviet Eastern Bloc. Germany had already paid more than $54 billion to Holocaust survivors in Western Europe, but very little to survivors in Eastern Europe.

08/06/97  British Foreign Secretary Robin Cook announced that an International Conference on Nazi Gold would take place in London, December 2-4, 1997.

08/22/97  Insurance claims by Holocaust survivors and heirs were the focus of a meeting by the National Association of Insurance Commissioners (NAIC) at its fall national meeting in Washington, D.C. A Holocaust Insurance Issues Working Group, headed by Deborah Senn, Washington State Commissioner of Insurance, discussed the class-action lawsuit filed by Holocaust survivors in March 1997 against 16 European insurance companies for unpaid insurance and property/casualty policies.

10/02/97  A study conducted for the WJC concluded that Nazi Germany looted $8.5 billion in gold from 1933-1945 from nations conquered by Germany. One-third of that amount came from individuals and private businesses, while two-thirds came from central banks. According to this study, an estimated $2 million to $3 million from privately owned gold ended up in Swiss banks.

10/29/97  The second list of dormant bank accounts was released by the Swiss Bankers Association (SBA). Included on this list were dormant accounts of non-Swiss citizens opened prior to May 9, 1945, bank accounts by Swiss nationals that had been dormant since the end of World War II, and additional non-Swiss dormant accounts that had been identified since the first list was published in July 1997.

11/05/97  Senator Mike DeWine introduced legislation (S.1379), the Nazi War Crimes Disclosure Act, to amend the National Security Act of 1947 to require disclosure under the Freedom of Information Act regarding Nazi war criminal records and to create a special interagency group to identify, declassify, and make available to the public all Nazi war records held by the U.S. government.
11/13/97 Senator Alfonse D’Amato introduced legislation (S.1564), the Holocaust Victims Redress Act, to provide redress for inadequate restitution of assets seized by the U.S. government during World War II which belonged to victims of the Holocaust. This legislation called for $25 million over the next three years and an additional $5 million for archival research. S.1564 was passed by voice vote in the Senate.

11/13/97 A resolution (S.Con.Res.39) sponsored by Senator Daniel Patrick Moynihan was passed in the Senate. This concurrent resolution expressed “a sense of Congress that the German government should expand and simplify its reparation’s system, provide reparations to Holocaust survivors in Eastern and Central Europe, and set up a fund to help cover the medical expenses of Holocaust survivors.”

12/02/97 The British Foreign Office hosted the Nazi Gold Conference in London, December 2-4, 1997. Forty-one nations were represented including the U.S. delegation headed by Stuart Eizenstat, Under Secretary of State for Economic, Business and Agricultural Affairs. At the Conference, British Foreign Secretary Robin Cook announced the establishment of a Fund for Victims of Nazi Persecution at the Federal Reserve Bank in New York that would go to survivors of the Holocaust. On behalf of the United States, Eizenstat pledged $4 million and an additional $25 million over the next three years with congressional approval. Argentina, Luxembourg, and others indicated that they would contribute to the fund, while France vowed to establish a separate fund. Criticism at the Nazi Gold Conference was aimed at the Vatican, whose representatives came only as observers. The Vatican is still unwilling to open its wartime archives to international scrutiny. A follow-up conference on the issues of looted art objects and insurance claims was planned for November 30-December 3, 1998, at the U.S. Department of State and the U.S. Holocaust Memorial Museum in Washington, D.C.

12/17/97 A class-action suit was filed in federal court in Brooklyn, New York, on behalf of Fernande Bodner and Anna Zajdenberg, two French Jews living in New York, against nine international banks that operated in Vichy France. The banks named in the suit were Crédit Lyonnais, Société Générale, Banque Paribas, Banque National de Paris, Crédit Commercial de France, Crédit Agricole, Banque Française du Commerce Extérieur, Banque Worms Capital Corp., and Barclays Bank of the United Kingdom. The lawsuit alleged that the banks blocked access to Jewish accounts under the Vichy regime, and then after the war failed to account for them.

1998

01/07/98 Manhattan District Attorney Robert Morgenthau served a subpoena on the Museum of Modern Art (MOMA), ordering it to hold two paintings by 19th century Austrian Expressionist painter Egon Schiele. The two paintings, “Portrait of Wally” and “Dead City,” were part of a traveling exhibition, “Egon Schiele: The Leopold Collection,” from the Leopold Museum in Vienna, Austria. These paintings were claimed by the heirs of Lea Bondi Jaray and Fritz Grünbaum as family property lost during World War II.
01/12/98 The German government announced that it would create a $110 million reparations fund for Jewish survivors of the Holocaust living in countries of the former Eastern Bloc. The first payments were expected to begin in July 1998 and would assist between 18,000-20,000 Jewish survivors.

01/13/98 A report, *The Unwanted Guests: Swiss Forced Labor Camps, 1940-1944,* by American historian Alan M. Schom, was released by the Simon Wiesenthal Center in Los Angeles. According to the report, 62 Swiss slave-labor camps held between 17,000 to 22,000 Jewish men, women, and children, who were required to perform mandatory labor with little or no compensation. Schom’s report stated that 70% of Jewish refugees were held in these camps. Rabbi Marvin Hier, director of the Wiesenthal Center, called for Switzerland to apologize for its treatment of Jewish refugees.

01/14/98 Swiss officials objected to Schom’s report on Swiss labor camps as “insulting and dishonest” and asserted that Jews were treated no differently from other refugees. Ambassador Thomas Borer, head of the Swiss Task Force investigating Switzerland’s role during World War II, decried the allegations as “outrageous” and stated that Jews and gentiles were held equally in “no-frills” labor camps and that they received wages and meals similar to that of Swiss soldiers.

01/27/98 The Holocaust Victims Redress Act, S.1564, passed by voice vote in the House.

01/28/98 Representative Eliot Engel introduced H.R.3121, known as the Holocaust Victims Insurance Act. This legislation would require insurance companies to disclose how many policies they wrote for Holocaust victims and to pay the beneficiaries. Companies failing to report this information would face fines of $1,000 a day. It would also direct the U.S. Holocaust Memorial Museum to produce a registry of Holocaust victims so that names could be checked against policies.

01/31/98 First Lady Hillary Rodham Clinton praised Switzerland’s efforts to “uncover the truth about its role in World War II” and its efforts to raise money for Holocaust victims in a speech given in Zurich during a 3-day visit.

02/03/98 Representative Mark Foley introduced H.R.3143, the Comprehensive Holocaust Accountability in Insurance Measure, which would prohibit insurance companies from doing business in the United States unless they disclose any financial dealings they had with Holocaust victims. It would also prohibit insured depository institutions from transacting business with or on behalf of such foreign insurance companies.

02/05/98 Senator D’Amato urged the Federal Reserve to reject the merger of U.S. operations of the Swiss Bank Corp. and the Union Bank of Switzerland. In a letter to Alan Greenspan, chairman of the Federal Reserve Board, D’Amato stated that the two banks “have yet to provide answers to questions regarding their conduct in the disposition of assets of Holocaust victims and their record of collaboration with the Nazis during the war.”
02/12/98 The U.S. House Banking and Financial Services Committee, chaired by Representative James Leach, held a hearing on the legal status of art objects seized by the Nazis and on World War II-era insurance claims by Holocaust survivors and their heirs. Among those testifying were Washington Insurance Commissioner Deborah Senn, Chair of the NAIC Working Group on Holocaust and Insurance Issues; Philippe de Montebello, director of the Metropolitan Museum of Art in New York; Chuck Quackenbush, California Insurance Commissioner; and Ronald S. Lauder, chairman of the WJC's art recovery project.

02/13/98 President Clinton signed S.1564, the Holocaust Victims Redress Act, into law as Public Law 105-158.

02/16/98 Two Swiss insurance companies, Winterthur and Baloise Life/Basler Leben, refused to open their archives to the National Association of Insurance Commissioners (NAIC), the American organization that is investigating insurance policies belonging to Holocaust victims. Both claimed that they are private Swiss companies operating under Swiss laws, and therefore not answerable to foreign entities. Elan Steinberg, director of the WJC, responded to their position as "obscene."

03/01/98 In Cleveland, The Plain Dealer reported that museums in Poland and Ukraine dispute the ownership of 24 drawings by German Renaissance painter Albrecht Durer. They claimed that these works were stolen in 1941 and were later sold on the international art market after World War II. The drawings are currently located at the Cleveland Museum of Art and other museums worldwide, including the Art Institute of Chicago; the Boston Museum of Fine Arts, and the Courtauld Institute Galleries in London. In 1952, the Cleveland Museum of Art bought two of the drawings for its collection, "The Dead Christ" and "The Ascension." Museum officials from the Lubomirski Museum in Lvov, Ukraine, and the Ossolinski Library in Wroclaw, Poland, want the drawings returned.

03/03/98 The U.S. Senate Foreign Relations Committee voted to send a resolution to the full Senate to approve the ratification of NATO expansion to include Poland, Hungary, and the Czech Republic. Senators Arlen Specter and Robert Torricelli vowed to introduce a resolution that would postpone the vote on NATO enlargement until life insurance claims of Holocaust victims were paid by the successor governments of the three former Communist nations. Edward J. Moskal, president of the Polish American Congress, reacted to this proposed resolution by stating, "The payment of life insurance claims is something that should be investigated and settled, but should not be used, in a malicious way, as a reason for stopping these nations from joining NATO, which is a matter of their security and ours."

03/04/98 Crédit Suisse Group, a Swiss bank, reached an undisclosed settlement with Estelle Sapir of Queens, New York, in return for her withdrawal from a class action suit filed in October 1996. According to a Swiss television report, the settlement was estimated at $500,000. Ms. Sapir was one of the original litigants in a class action suit that now has more than 10,000 complainants.

03/04/98 A class-action lawsuit was filed in federal court in Newark, New Jersey, against Ford Werke, a German subsidiary of Ford Motor Company. The lawsuit
alleged that Ford Werke, based in Cologne, Germany, made trucks for the German army during World War II and profited from forced civilian laborers from Belgium, Russia, Italy, and Ukraine. The lawsuit named one plaintiff, Elsa Iwanowa of Antwerp, Belgium, who claimed that she was taken from her home in Rostov, Russia, and forced to work in the Cologne factory with 2,000 other children from 1943-1945.

03/05/98 The Nazi War Crimes Disclosure Act, S.1379, cleared the Senate Judiciary Committee. This bill would allow two classes of U.S. archival material to be released to investigators: war crimes information on Nazi persecutions and information on transactions involving stolen assets from Holocaust victims.

06/02/98 The U.S. Department of State released its second historical report, entitled *U.S. and Allied Wartime and Postwar Relations and Negotiations with Argentina, Portugal, Spain, Sweden, and Turkey on Looted Gold and German External Assets and U.S. Concerns About the Fate of the Wartime Ustasha Treasury*. This report examined Nazi Germany’s trade with neutral countries, which helped fuel the Nazi war machine by providing commercial means of exchanging gold for critical war materials. It also looked at war profiteering by these neutral nations, including the United States, during the first 27 months of the war when it was also a neutral nation.

06/04/98 The U.S. House Banking Committee held a hearing on H.R. 3662, the Holocaust Assets Commission Act of 1998. This hearing was a continuation of an earlier hearing on the traffic of Nazi gold looted during World War II, the theft of Holocaust victims’ assets, and belated postwar restitution efforts.

06/19/98 Crédit Suisse, Swiss Bank Corp., and Union Bank of Switzerland offered $600 million to settle unclaimed dormant account claims. Their offer was rejected by the WJC and other Jewish groups.


06/29/98 Holocaust survivors sue the Swiss National Bank for allegedly laundering proceeds from looted Nazi gold.

07/15/98 British Foreign Secretary Robin Cook announced the beneficiaries of the United Kingdom’s £1 million contribution to the “International Fund for Needy Victims of Nazi Persecution.” One-third would go to the Board of Deputies of British Jews for needy survivors in the United Kingdom; and two-thirds would go to the American Joint Distribution Committee through the World Jewish Restitution Organization for projects providing food and medical care to needy survivors in Belarus, Moldova, Russia, and Ukraine.

07/22/98 The U.S. Senate Banking Committee chaired by Senator D’Amato held a hearing on the assets of Holocaust victims. Among those testifying were Under Secretary of State for Economic, Business, and Agricultural Affairs Stuart Eizenstat; Jean Ziegler, a member of the Swiss Parliament and author of *The Swiss, the Gold, and the Dead*; Carl McCall, Comptroller of the State of New York; Israel Singer, Secretary General of the WJC; and others.
08/07/98 Lithuanian President Valdas Adamkus formed an international commission to evaluate the crimes committed by the Nazi and Soviet occupation regimes in Lithuania. The 14-member Commission includes historians, human rights specialists, representatives of international Jewish organizations, and lawyers from Lithuania, Russia, the United States, and Germany.

08/12/98 The largest commercial Swiss banks (Crédit Suisse and the Union Bank of Switzerland), Holocaust survivors, and Jewish groups reached a $1.25 billion settlement of wartime assets. This action halted an economic boycott against Swiss banks, institutions, and companies. The $20 billion class action lawsuit in federal district court in Brooklyn brought against these two commercial banks was dropped, as well as a suit in the Northern District in California. (See CRS Report 98-699, Holocaust Survivor and Heir Lawsuits to Recover Swiss Bank Deposits for further details.) This settlement, however, did not resolve a separate lawsuit filed in the Southern District of New York in October 1996 against three major Swiss insurance companies (Crédit Suisse, the Union Bank of Switzerland, and Swiss Bank Corp., also known as the Swiss National Bank).

8/13/98 A “Memorandum of Intent” was signed by five large European insurance companies (Allianz, Generali, Zurich Group, AXA-UAP, and Nordstern), two survivor organizations (the World Jewish Congress and the World Jewish Restitution Organization), and 39 states to establish a process to investigate insurance policies of victims of the Holocaust and to consult with European governments and the insurance industry.

8/14/98 An agreement was reached between Chicago art collector Daniel Searle and the descendants of Dutch victims of the Holocaust, Friedrich and Louise Gutmann, concerning a pastel “Landscape with Smokestacks” by Edgar Degas. Searle will relinquish a half-interest in the painting to the Gutmann heirs and donate his half-interest to the Art Institute of Chicago. The Art Institute will have the work appraised, then buy the other half-interest from the Gutmann heirs. The agreement settled a lawsuit by the Gutmann heirs that was scheduled to go to trial in September 1998.

8/19/98 Assicurazioni Generali, Italy’s largest insurance company, agreed to pay $100 million to Holocaust survivors and heirs of Holocaust victims for life insurance policies and annuity policies that it refused to honor after the war. The agreement was presented to Judge Michael Mukasey in U.S. District Court in Manhattan.

08/30/98 A 31-page class action lawsuit was filed in Brooklyn, New York, against 12 German companies including Audi, Daimler-Benz, BMW, Krupp, Leica cameras, Siemens, and Volkswagen by the same lawyers who handled the Swiss banking and insurance cases, Edward Fagan in New York and Michael Witti in Munich. They also filed lawsuits against Deutsche Bank and Dresdner Bank, as well as the chemical company, Degussa, for using slave laborers and from profiting from the war.

08/31/98 A separate lawsuit was filed in Newark, New Jersey, against Volkswagen only by former slave laborers in their Nazi-run factories.
09/09/98 The Tripartite Gold Commission (TGC) disbanded after 52 years. The TGC was created by the victorious Allied forces of the United States, the United Kingdom, and France to return gold seized by Nazi Germany from the central banks of occupied countries. An estimated $60 million to $70 million has been promised by the TGC to the fund, known as the “Fund for Needy Victims of Nazi Persecution,” created during the London Nazi Gold Conference in December 1997. Of the original 370 tons of foreign monetary reserves that the Allies recovered in 1945, only $300,000 belonging to the former Yugoslavia remains on deposit in the Bank of England until Yugoslavia’s successor states agree on its distribution. The United States pledged $25 million, Britain $1.7 million, and France $3.45 million to this fund.

09/11/98 Volkswagen announced a $12 million private relief fund to compensate World War II slave laborers. It was the first time a German company acknowledged its “moral and legal responsibility” to compensate Nazi-era slave laborers. The fund will be supervised by a prominent international board, including former Israeli Prime Minister Shimon Peres and former Austrian Chancellor Franz Vranitzky, and will decide how the money will be disbursed.

09/23/98 Following Volkswagen’s lead, Siemens, a German electronics firm, announced a $12 million fund to compensate former slave laborers that were forced to work for the firm by the Nazis during World War II. Siemens estimated that between 10,000 to 20,000 slave laborers worked in its wartime factories.

10/15/98 The Austrian government announced the establishment of a commission of historians to study all aspects of the country’s restitution efforts to victims of the Holocaust. The commission will be funded by Parliament and consisting of six members under the leadership of Clemens Jabloner, President of Austria’s High Administrative Court.

10/15/98 Two Austrian companies (auto engineering firm Steyr-Daimler-Puch AG and steelmaker Voest) and three German firms (construction companies Phillip Holzmann AG, Dyckerhoff AG, and Leonhard-Moll AG) were named in two separate class-action lawsuits in New York. These companies are accused of using and profiteering from slave laborers at their factories during World War II. The lawsuit against the two Austrian firms is the first of its kind targeting Austria’s wartime industry.

10/21/98 The first meeting of the International Commission on Holocaust Era Insurance Claims (ICHEIC) was held in New York. Former U.S. Secretary of State Lawrence Eagleburger was appointed chairman of the ICHEIC, and five working groups were established.

11/30-12/3/98 The Washington Conference on Holocaust-Era Assets was hosted by the U.S. Department of State and the U.S. Holocaust Memorial Museum to discuss the various issues relating to Holocaust-era assets. Attending were representatives of 44 nations and 13 non-governmental organizations (NGOs), who discussed restitution practices and policies relating to insurance claims, looted works of art, and communal property. Guidelines for the restitution of works of art looted by the Nazis were established and known as the “Washington Principles on Nazi-Confiscated Art.” Some of the recommendations included: the opening of all records and archives where
information may be found; the identification of looted works of art; creation of a
central registry for such information; and a “just and fair” process by which claimants
may come forward seeking lost works of art and cultural objects.

12/04/98 A “Symposium on Records and Research Relating to Holocaust-Era
Assets” was held at the U.S. National Archives (Archives II) in College Park,
Maryland. This symposium was in conjunction with the Washington Conference on
Holocaust-Era Assets, and Stuart Eizenstat, Under Secretary of State for Economic,
Business, and Agricultural Affairs at the Department of State, gave the opening
address. The Symposium examined how the documents located in the National
Archives were being used by the U.S. government and private researchers to locate
documents pertaining to wartime assets.

For complete detail of all Holocaust-era legislation introduced and passed during the
of the 105th Congress.

1999

01/06/99 U.S. Representative Eliot Engels introduced H.R. 126, the Holocaust
Victims Insurance Act, a bill to provide for the recovery of insurance issued for
victims of the Holocaust. This bill was then referred to the House Committee on
Commerce. This was the first bill introduced relating to Holocaust-era assets in the
106th Congress.

01/06/99 U.S. Representative Louise Slaughter introduced H.R.271, Justice for
Holocaust Survivors Act. This bill would allow Holocaust survivors who are
currently U.S. citizens, but who were not U.S. citizens during the Holocaust and who
have been denied reparations by the German government in the past, to sue the
German government in the United States to claim restitution for their incarceration
in Nazi concentration camps during World War II. This bill was referred to the
House Committee on the Judiciary.

01/11/99 President Clinton announced the creation of a presidential working group
to locate, inventory, and quickly make public all classified records held by the United
States relating to Nazi war criminals. The Nazi War Criminal Records Interagency
Working Group will recommend documents for declassification at the National
Archives, according to Executive Order 13110 and Public Law 105-246.

01/19/99 U.S. Representative David McIntosh introduced H.R. 390, a bill to amend
the Internal Revenue Code of 1986 to exclude from gross income amounts received
for settlement of certain claims of Holocaust survivors. This bill was then referred to
the House Committee on Ways and Means.

01/19/99 H.R. 126, Holocaust Victims Insurance Act, was referred to the House
Committee on Commerce, Subcommittee on Finance and Hazardous Materials.

01/26/99 The Contact Bureau on Looted Art opened officially in Bern, Switzerland.
Its scope of activity includes processing inquiries which affect the Swiss federal
collections as well as offering information and support on general questions concerning looted art in Switzerland and research on looted art.

02/16/99 German Chancellor Gerhard Schroeder announced the creation of a fund, projected to amount to $3.5 billion to $4.6 billion and financed by 12 German companies, to compensate victims of the Nazis during World War II. The creation of the "Remembrance, Responsibility, and the Future" fund, according to remarks by Chancellor Schroeder, was "to counter lawsuits, particularly class action suits, and to remove the basis of the campaign being led against German industry and our country." Payments are expected to start by September 1, 1999. The 12 companies contributing to this fund are: Allianz insurance, BASF, Bayer, BMW, Daimler-Chrysler (formerly Daimler-Benz), Degussa, Deutsche Bank, Dresdner Bank, Hoechst, Krupp, Siemens, and Volkswagen. This initial list of 12 companies includes automakers, banks, chemical production, insurance, and other German industrial sectors accused of profiting from forced/slave labor during World War II.

02/25/99 H.R. 271, Justice for Holocaust Survivors Act, was referred to the House Committee on the Judiciary, Subcommittee on Immigration and Claims.

03/05/99 Five Holocaust survivors forced to help build a factory for German airplanes during World War II filed a lawsuit in Los Angeles Superior Court. It is the first lawsuit filed in California seeking compensation for victims of Nazi slave labor. The lawsuit was filed against Philip Holtzman AG, a multibillion-dollar German construction company that does considerable business in the United States.

03/25/99 U.S. Representative Jerry Weller introduced H.R. 1292, a bill to provide that no federal income tax shall be imposed on amounts received by Holocaust victims or their heirs.

03/25/99 Former slave laborers under the Nazis, wearing yellow Stars of David and their old concentration camp numbers, protested outside an IG Farben shareholders' meeting in Frankfurt, Germany. They were protesting a plan by the German government to establish an industry wide-fund for all those forced to work for the Third Reich. Instead, the plaintiffs in the U.S.-based lawsuits demanded direct payments from the German companies for which they worked during the war and an apology. The German government fund is designed to dismiss the growing number of class action lawsuits against German companies that profited by using slave labor during the war years.

03/27/99 The accounting firm of Coopers & Lybrand requested that the Church of Jesus Christ of Latter-day Saints (the Mormons) provide them with genealogical records that could help identify over 300,000 Jewish victims of the Holocaust who may have established bank accounts in Switzerland. Coopers & Lybrand asked for the records to further their work with the Volcker Commission, which is still auditing Swiss bank accounts for unclaimed accounts held by Holocaust victims and heirs.

03/30/99 The U.S. Department of State announced plans to give $4 million to an international relief fund that will assist needy survivors of Nazi persecution with food, medicine, and clothing in Eastern Europe and the former Soviet Union. Many of these Holocaust survivors were "double victims" of Nazi Germany and the Soviet
Union. This international relief fund, known as the Fund for Needy Victims of Nazi Persecution, was created during the London Nazi Gold Conference in December 1997. Overall, the United States has pledged $25 million over three years (P.L. 105-158, sec. 103), and 17 other nations have pledged more than $61 million.

03/30/99 The French Banking Association (AFB) announced that the French Foreign Ministry requested that the U.S. District Court for Eastern New York dismiss two lawsuits by Holocaust survivors against French banks in the United States on the grounds that these lawsuits disrupt and interfere with current efforts by the French government to compensate victims of the Holocaust in France. The French banks being pursued by victims in the United States are: Société Général; Banque Paribas; the French subsidiary of Barclay’s Bank; Caisse Nationale de Crédit Agricole; the CNCA unit, Crédit Agricole Indosuez; Crédit Lyonnais; Banque National de Paris; Crédit Commercial de France; Banque Française du Commerce Extérieur, and Banque Worms Capital Corp.

03/31/99 A spokesman at the U.S. Department of State said that they would not intervene in U.S. courts on behalf of the French government and would not intervene in any private litigation.

03/31/99 A class action complaint was filed in San Francisco Superior Court by the Simon Wiesenthal Center, California Governor Gray Davis, and representatives of Holocaust survivors who reside in California against German and American companies that used slave labor and “Aryanized” Jewish assets during the Holocaust. The companies named in the lawsuit are Deutsche Bank, Dresdner Bank, Commerzbank AG, Deutsche Lufthansa, VIAG, Ford Motor Company, and General Motors Corp.

03/31/99 The Swiss Finance Ministry set up a timetable for potential sales of excess Swiss gold reserves. If approved by public referendum in March 2000, a portion of the sale of the surplus gold reserves will be used for the Swiss Solidarity Fund.

03/31/99 The Swiss Foreign Ministry announced that it would disband the Special Task Force on Holocaust Issues created in October 1996 and headed by Special Ambassador Thomas Borer. Ambassador Borer led Swiss efforts to deal with international criticism that Switzerland served as a wartime financial center with close commercial ties to Nazi Germany.

04/13/99 U.S. Senator Spencer Abraham introduced S. 779, a bill to provide that no federal income tax shall be imposed on amounts received by Holocaust victims of their heirs.

04/23/99 The Swiss Supreme Court called for an investigation into allegations by Joseph Spring, a Jewish refugee during World War II, whom Swiss border guards handed over to the Nazis in 1943. Mr. Spring currently resides in Australia and is requesting $67,000 in compensation from the Swiss government for being twice turned away at the French-Swiss border, and, on his second attempt, being turned over to the Germans and sent to Auschwitz, where he survived the war. In its decision, the high court ruled against the government, which had said that Spring’s claim had no legal basis.
04/29/99  The French government returned an oil painting by Claude Monet, "Nympheas, 1904" (Water Lilies, 1904) to the heirs of its French-Jewish owner, Paul Rosenberg. Rosenberg was an art dealer and collector, and in 1940 the Germans confiscated his art collection and sent it to Germany. Although the painting was returned to France in 1949, it was not identified as part of the Rosenberg collection until it appeared in a show, "Monet in the 20th Century," at the Museum of Fine Arts in Boston in the fall of 1998. French Culture Minister Catherine Trautmann presided over the ceremony and handed the painting back to Rosenberg's daughter-in-law, Elaine, and granddaughter, Elizabeth Clark.

04/30/99  At a conference held at the Simon Wiesenthal Center in Los Angeles, California's top officials and legislators led by Governor Gray Davis and Insurance Commissioner Chuck Quackenbush announced the formation of the "California Holocaust Insurance Alliance" consisting of 25 organizations and individuals calling for the suspension of 64 insurance companies practicing in California that have failed to honor Holocaust-era claims.

05/05/99  Anne Gazeau-Secret, the French Foreign Ministry spokeswoman, announced that the French government acknowledged it had yet to fulfill its pledge of June 1998 to contribute $3.23 million to needy victims of the Holocaust, since it needed additional time to consult with Jewish groups in France on how the funds should be distributed.

05/06/99  The Washington Post reported on a government commission in Buenos Aires, the Argentine Committee of Inquiry into Nazi Activities, uncovering evidence in three letters written in the 1950s during the dictatorship of Juan Peron that indicated that the Argentine Central Bank served as a temporary repository for Nazi gold after the fall of the Third Reich.

05/12/99  The U.S. Department of State hosted an international conference of government, business, and private groups on reparations for victims of forced or slave labor by the Nazi regime during World War II. Stuart Eizenstat, Under Secretary of State for Economic, Business, and Agricultural Affairs, and Bodo Hombach, chief of staff for German Chancellor Gerhard Schroeder, presided at the gathering. Foreign delegations from Germany, Belarus, Ukraine, the Czech Republic, Israel, Poland, and Russia attended. Also in attendance were officials and lawyers for the 16 German companies that have pledged to set up a fund for these forced/slave laborers by September 1, 1999, the 60th anniversary of the start of World War II. Under Secretary Eizenstat announced the creation of two working groups, one to set eligibility rules for payments from the fund and the other to deal with ways to ensure legal closure for the 16 major German companies involved.

05/13/99  U.S. Representative Bob Franks introduced H.R.1788, the Nazi Benefits Termination Act of 1999, a bill to deny federal public benefits to individuals who participated in Nazi persecution.

05/15/99  A $3 billion lawsuit was filed in Frankfurt, Germany, on behalf of 22,000 Poles who were forced into Nazi slave labor. The lawsuit was filed against the Dresdner Bank for its wartime role in financing Nazi war production.
The Jewish Claims Conference and the World Jewish Congress oppose a $40 million settlement of a lawsuit against two Austrian banks, Bank Austria and its subsidiary, Creditanstalt. At issue is a proposed agreement by the banks to make restitution of funds lost by Jewish depositors beginning in 1938, when Austria came under the control of Nazi Germany.

The Volcker Commission announced its completion of a 3-year probe of Holocaust-era assets in Swiss banks. A final report from the commission is expected sometime in the Fall 1999.

The industry representatives of 16 German companies announced their participation in the creation of a compensation fund in an effort to settle slave labor lawsuits against the following companies that profited from Nazi-era slave labor: Allianz, BASF, Bayer, BMW, Commerzbank, Daimler Chrysler (settling on behalf of Daimler-Benz), Deutsche Bank, Degussa-Huels, Deutz, Dresdner Bank, Thyssen-Krupp, Hoechst, RAG, Siemens, Volkswagen, and Veba. Called the “Remembrance, Responsibility, and the Future” fund, it will be administered with the help of the German government and estimated at $1.7 billion. Lump-sum payments would be based on need and on 6 months or longer of slave labor service. Attorneys representing victims in the class action lawsuits against these companies charge that the total fund is inadequate and that 6 months or longer of forced/slave labor was the exception rather than the rule, since many laborers lasted barely 3 months under such brutal conditions. The aim of these German companies in setting up this fund is to protect them from any future claims.

The Seattle Museum of Art announced that it is returning a $2-million painting, “Odalisque” (1928) by Henri Matisse, to the heirs of Paul Rosenberg, a prominent Jewish art dealer in Paris, whose collection was confiscated by the Nazis during World War II. This decision was the first by an American art museum to return a work of stolen art after an investigation by the Holocaust Art Restitution Project (HARP), which discovered that the painting had been stolen from Rosenberg’s vault in 1941 and had never been recovered by its original owner.

A group of Polish Holocaust survivors filed a class action lawsuit against Poland in the U.S. District Court in Brooklyn, New York. The lawsuit seeks to recover property and assets that were illegally seized by the Nazis during World War II and later by the Polish government after the war.

U.S. Senator Robert Torricelli introduced S.1249, the Nazi Benefits Termination Act of 1999, a bill to deny federal public benefits to individuals who participated in Nazi persecution. S.1249 was then read twice and referred to the Senate Judiciary Committee.

The U.S. State Department confirmed that the German government wired $18 million to the U.S. Treasury Department for distribution to more than 200 Americans who survived Nazi-run concentration camps during World War II. These recipients were American citizens who, at the time of their incarceration, worked in slave labor camps, or were American soldiers who were prisoners of war and held in recognized concentration camps. The exact number of claimants was not disclosed by the State Department nor the exact amount each claimant would receive.
06/22/99 Melvyn Weiss, a U.S. attorney representing victims of Nazi-era slave labor in one of three class-action lawsuits, expressed doubt that an agreement would be reached by September 1, 1999, on a compensation fund set up by 16 German companies charged with profiting from slave labor during World War II. Weiss met with lawyers representing the 16 companies, German Chancellery Minister Bodo Hombach, and U.S. Undersecretary of State for Economic, Business, and Agricultural Affairs Stuart Eizenstat in Bonn, Germany.

06/23/99 Representatives from five European insurance companies (Assicurazioni Generali of Italy, Allianz of Germany, AXA of France, and Winterthur and Zurich of Switzerland) met in Jerusalem to negotiate a settlement for Holocaust-era claims. These companies are members of the International Commission on Holocaust-Era Insurance Claims (ICHEIC) that is trying to establish procedures on how to identify and pay claims on insurance policies issued to Jewish victims of the Holocaust.

06/30/99 U.S. Representative Rick Lazio introduced H.R.2401, a bill to amend the U.S. Holocaust Assets Commission Act of 1998 to extend the period by which the final report is due and to authorize additional funding.

07/04/99 The Portuguese newspaper Público reported that the investigative committee appointed by the Portuguese government in June 1998, headed by former President Mario Soares, had determined that Portugal did not launder gold looted by the Nazi regime, and therefore is not obligated to pay any compensation. The committee was formed after the release of the second historical report by the U.S. Department of State, which stated that the fascist regime of Antonio Salazar had received gold estimated between $500 million and $1 billion from Nazi Germany.

07/07/99 The Dutch Welfare Ministry announced that it will pay $10.45 million to 122 victims of Germany’s occupation of the Netherlands during World War II as part of its pledge to return gold and other assets looted by the Nazis to victims of the Holocaust. Over 300 individuals and organizations submitted applications between September 1998 and March 1999. Most of the money is being spread among various Jewish groups to settle individual claims except for 5% of the money, which will be set aside for other victims of Nazi persecution in the Netherlands, including homosexuals, Romani (Gypsies), and Jehovah’s Witnesses.

07/07/99 Italian insurance company Generali and German insurance giant Allianz approved an initial payment to seven heirs of insured Holocaust victims. These insurance policies were issued by Generali and by Riunione Adriatica, the Italian subsidiary of Germany’s Allianz, prior to the outbreak of World War II. The amount of the payment was not disclosed pending further examination.

07/16/99 The first Annual General Meeting (AGM) of the International Fund for Needy Victims of Nazi Persecution was held in the British Foreign and Commonwealth Office in London. This first AGM was held one year after the first payment from the Fund. Its purpose was to review progress with the Fund and to share the experiences of those using it.

07/29/99 U.S. Senator William Roth for Senator Spencer Abraham introduced S. Amendment 1411, an amendment to S.1429, to provide that no federal income tax
shall be imposed on amounts received, and lands recovered, by Holocaust victims or their heirs. The amendment was agreed to in Senate by unanimous consent.

08/05/99 U.S. Senator Gordon Smith introduced S. 1520, the U.S. Holocaust Assets Commission Extension Act of 1999, a bill to amend the U.S. Holocaust Assets Commission Act of 1998 to extend the period by which the final report is due and to authorize additional funding.

09/14/99 H.R. 1788, the Nazi Benefits Termination Act of 1999, was reported to the House from the Committee on the Judiciary, H. Rept. 106-321 (Part I).

09/14/99 U.S. House Banking Committee held a hearing on issues related to forced labor during World War II; the fate war-era assets of Holocaust victims in French, British, and Austrian banks; and the settlement of insurance claims of Holocaust victims and their heirs. Among those testifying at the hearing were Stuart Eizenstat, Deputy Treasury Secretary; a panel of surviving slave laborers; Dr. Israel Miller, president of the Claims Conference; and others.

10/04/99 The House passed H.R. 2401, the U.S. Holocaust Assets Commission Extension Act of 1999, to extend the period by which the final report is due and to authorize additional funding. The bill was then referred to the Senate Banking, Housing, and Urban Affairs Committee on October 5, 1999.

10/06/99 H.R. 1788, the Nazi Benefits Termination Act of 1999, was reported to the House from the Committee on Government Reform with amendment, H.Rept. 106-321 (Part II).

10/6-7/99 Negotiations continued for two days in Washington, D.C., between representatives for the surviving slave and forced laborers, representatives of German industries, and the German government. The U.S. and German governments continued to mediate the discussion. Some agreement was reached regarding the categories for slave and forced laborers. However, there is still a major disagreement over the amount of the German Remembrance Fund and legal closure for the German companies from future lawsuits. The German industries offered $3.3 billion, but the survivors were asking for a figure closer to $20 billion for the compensation fund. The German government agreed to pay one-third of the Remembrance Fund, with the German industries funding two-thirds. Talks are scheduled to resume November 16 and 17 in Bonn, Germany.

10/14/99 The Presidential Advisory Commission on Holocaust Assets in the United States released its progress report on the mystery of the Hungarian “Gold Train.” This report examines the fate of more than $200 million (at 1945 prices) of gold, silver, jewelry, furniture, and other valuables stolen by the Nazis from Hungarian Jews and loaded onto a railroad train. This “Gold Train” was intercepted in Austria by American soldiers during the last days of the war. These valuable were then pilfered by the U.S. soldiers after the loot was declared “unidentifiable” by senior U.S. army officers. The remaining valuables were then shipped to New York and auctioned for the benefit of U.N. refugee relief.
The Polish American Congress (PAC) announced at a press conference in Washington that the PAC and the Polish American Defense Committee have served legal papers on October 22, 1999, on behalf of Polish victims of the Holocaust who were excluded from the $1.25 billion settlement agreement between Swiss banks and victims of the Holocaust. These legal papers are seeking “to enter the class action lawsuits against the Swiss banks and objecting to the terms of the settlement agreement in which the Swiss banks have agreed to pay victims of Nazi Germany.”

### Selected Print Sources

**Articles (selected newspapers, magazines, and journals)**


  [While fighting for return of stolen assets; lawyers for Holocaust victims spar over leadership and fees.]


  [The Nazis looted an Albrecht Durer masterpiece which ended up at the National Gallery of Art, but where it really belongs is now in dispute.]


——. A Nazi-Era Bill Finally Comes Due. *Newsweek*, February 1999: 40. [Survivors of World War II-era slave labor camps file lawsuits against companies that profited from their work.] LRS99-14621


Books


[This work was later republished in London in 1996 under a new title, *Stolen Treasure: The Hunt for the World’s Lost Masterpieces*.]


[First published in the United Kingdom as *Blood Money* in 1996.]


[First published in France as *Le Musée Disparu* in 1995.]


**CRS Reports**


**Government Documents (including selected foreign documents)**


Independent Reports and Studies


*Historic report of the German Reichsbank by the German Federal Archives in Berlin. This report details the infamous “Meler Gold”—gold and jewelry stolen from victims in Auschwitz and other death camps. It discusses 26 secret files recently uncovered chronicling receipt of gold stolen from Jews in concentration camps. In German only.

[Abbreviated English version of the May 1998 Interim Report, 270 p.]


Selected Internet Sources

Art Loss Register at: [http://www.artloss.com/intro.htm]. The Art Loss register is “the largest private database of stolen and missing works of art, antiques, and valuables worldwide” with offices in London, New York, and Dusseldorf and has Web links to auction houses such as Sotheby and Christie’s. Their objective is to assist law enforcement agencies in the process of identifying and recovering stolen works of art. Click on “Holocaust Losses” to find information on how Holocaust victims may locate missing or stolen property.

Art Newspaper at: [http://www.theartnewspaper.com/]. Click on “For the Record” at the contents page for “The Art Trade under the Nazis: the not so secret list” from January 1999 issue of The Art Newspaper. It has the complete list of names in the 1946 Office of Strategic Services (OSS) report on the art trade under the Nazis. The World Jewish Congress “revealed” its existence in November 1998, although art historians and scholars had known about the list for years. The art dealers are listed
by the following countries: Belgium, France, Germany, Italy, Netherlands, Portugal, Spain, Sweden, Switzerland, and Luxembourg.

British Foreign and Commonwealth Office (FCO) at: [http://www.fco.gov.uk/]. This Web site has information on the London Nazi Gold Conference (December 2-4, 1997); click on “Search” and then type in “Nazi Gold” or go directly to the News Archives at: [http://www.fco.gov.uk/news/archive.asp]. Electronic versions of History Notes No. 11, Nazi Gold: Information from the British Archives, and No. 12, Nazi Gold: Information from the British Archives: Part II, Monetary Gold, Non-Monetary Gold and the Tripartite Gold Commission, are available in full text from this Web site.

Britain in the USA at: [http://www.britain-info.org/bis/fordom/nazigold/events.stm]. This Web page on Nazi Gold has links to the FCO, news conferences, transcript of the final report of the Nazi Gold Conference, information on the International Fund for Needy Victims of Nazi Persecution, and a link to the Enemy Property Web site.

Cohen, Milstein, Hausfeld & Toll, P.L.L.C. at: [http://www.cmht.com/]. This is the Web site of the Washington, D.C.-based law firm that successfully sued the two largest Swiss banks and reached a $1.25 billion settlement in August 1998. The site provides access to information on pending litigation regarding slave laborers in Nazi-run factories and concentration camps, and a combined questionnaire for the Swiss banks’ settlement, and pending German, Austrian, and French banks’ litigation.

Commission for Art Recovery at: [http://www.wjc-artrecovery.org/]. This is the Web site for the Commission for Art Recovery of the World Jewish Congress (WJC) and affiliated with the World Jewish Restitution Organizations (WJRO). This Web site has information on their efforts to locate and identify looted works of art and their cooperation with other organizations such as the Art Loss Register and HARP. Information about members of the commission and how to file a claim is provided.

Holocaust Art Restitution Project (HARP) at: [http://www.lostart.org/index.htm]. This Web site is maintained by HARP and the Washington, D.C.-based National Jewish Museum as a clearinghouse for research and documentation of “Jewish cultural losses suffered between 1933 and 1945.” Included is information on their research database, projects, publications, recent news articles/press, and highlights from their conference on September 4, 1997.

Holocaust Victims Asset Litigation at: [http://www.swissbankclaims.com/]. This Web page is the official site for Holocaust Victim Assets Litigation against Swiss Banks and other Swiss entities. Included is information on the proposed $1.25 billion settlement of a class action lawsuit against Swiss banks for their conduct during World War II. The deadline for filing comments, objections, or suggestions to the settlement is October 22, 1999. A fairness hearing will be held on November 29, 1999, on whether the proposed settlement should be approved. Note: No claims process or plan of allocation has yet been established.

Independent committee of Eminent Persons (“The Volcker Commission”) at: [http://www.icep-iaep.org/]. This is the official Web site of the Volcker Commission mandated to conduct an investigative audit to determine if there are any dormant accounts belonging to victims of the Holocaust in Swiss banks. The Commission’s
highly anticipated report of their three-year investigation is due sometime in the Fall 1999. The Committee consists of six member and four alternates, half appointed by the Swiss Bankers Association and half appointed by Jewish organizations. Paul A. Volcker, former Chairman of the Federal Reserve System, serves as the Chairman.

International Commission on Holocaust-Era Insurance Claims (ICHEIC) at: [http://www.ICHEIC.org/]. This Web site is the Home Page of the ICHEIC headed by Lawrence S. Eagleburger and includes information on processing a claim, text of meetings, list of participating insurance commissioners, legislation, text of the Memorandum of Understanding, and frequently asked questions (FAQs).

National Archives Records and Administration (NARA) at: [http://www.nara.gov/research/assets/]. Holocaust-Era Assets Records and Research at the NARA Web site lists findings aids to primary documents at the Archives, declassified documents, text of research and symposium papers, and a current bibliography. This Web site also provides information on events such as the NARA symposium, "Records and Research Relating to Holocaust-Era Assets" held on December 4, 1998, in conjunction with the Washington Conference on Holocaust-Era Assets, November 30-December 3, 1998. Full texts of papers presented at the symposium and Web links to scholarly work on researching looted art and insurance claims is provided.

National Association Insurance Commission (NAIC) Working Group on Holocaust and Insurance Issues at: [http://www.naic.org/]. Click on "news releases" and search "Holocaust and claims" at this Web site. The NAIC Web site lists the meetings and related activities by the NAIC on World War II-era life insurance policies of Holocaust victims and their heirs.

Presidential Advisory Commission on Holocaust Assets in the United States (PCHA) at: [http://www.pcha.gov/]. This is the official Web site of the PCHA that was established by Public Law 105-186 and tasked with conducting original research into the fate of assets taken from Holocaust victims which later came into the possession of the U.S. government. The Commission’s main goal is to provide a historical account of those valuables (art and cultural objects, gold, and other financial property) and to advise the President on future restitution policies. The Commission consists of 21 members. The full text of the Progress Report on: The Mystery of the Hungarian "Gold Train" is available at this Web site.

Simon Wiesenthal Center, Los Angeles at: [http://www.wiesenthal.com/]. At this Web site, click on "International Section" under "More Information" then click on "Holocaust Assets" for information on British, French, and Swiss banks, and insurance accounts as well as the Center’s response to the recovery of looted Nazi gold, or access in directly at: [http://www.wiesenthal.com/swiss/index.html].

Swiss Dormant Accounts at: [http://www.dormantaccounts.ch/]. This Web site is maintained by the Swiss Bankers Association (SBA) and contains the lists of names of dormant account holders from July 23, 1997, and October 29, 1997, and directions on how to file a claim and locate contact information in the United States and abroad.
Swiss Embassy at: [http://www.swissemb.org/press/html/topic_ww_ii.html]. This Web page, Topic Switzerland & World War II, is maintained by the Embassy of Switzerland in Washington, D.C., and provides official links to Swiss government sources like the Swiss Federal Archives, Swiss Federal Assembly, Unclaimed Assets—Registration Office 1962-1999, and additional links to other international sources.


Swiss Solidarity Foundation (a.k.a. Swiss Foundation for Solidarity) at: [http://www.admin.ch/solidarity/index.htm]. In March 1997, Swiss President Arnold Koller advanced the idea of creating a long-term Solidarity Foundation for humanitarian aid at home and abroad. This undertaking, endorsed by the President of the Swiss National Bank (SNB), would be aimed at offering a dignified future to real or potential victims of poverty, hardship, and violence, and would include aid to victims of the Holocaust. The Foundation would support long-term projects, finance emergency aid, and award a Solidarity Prize. Its work would be financed from the proceeds of currently uninvested gold reserves of the National Bank. This financing aspect of the Foundation is scheduled for public referendum in March 2000. This Web site also provides information on its goals and objectives and current news articles on the Foundation.


Switzerland & Holocaust Assets at [http://www.giussani.com/holocaust-assets/]. Maintained by a Swiss journalist, Bruno Giussani, this Web site is a “one-stop independent resource monitoring the controversy.” It has a running chronology of current events, selected electronic publications, and Web links to Swiss, American, British, and other sources worldwide on Switzerland and Holocaust-era assets.

and Allied Efforts to Recover and Restore Gold and Other Assets Stolen or Hidden by Germany During World War II (Includes Finding Aids to Records at the National Archives), May 1997; and U.S. and Allied Wartime and Postwar Relations and Negotiations with Argentina, Portugal, Spain, Sweden, and Turkey on Looted Gold and German External Assets and U.S. Concerns About the Fate of the Wartime Ustasha Treasury, June 1998. It also includes Internet links to the Holocaust Memorial Museum and the National Archives and an electronic version of the Proceedings of the Washington Conference on Holocaust-Era Assets, November 30-December 3, 1998, released on May 30, 1999.

U.S. Holocaust Memorial Museum (Holocaust Victims' Assets) at: [http://www.ushmm.org/assets/index.html]. This Web site contains an International List of Current Activities Regarding Holocaust-era Assets and is a project of the U.S. Holocaust Memorial Museum in conjunction with the Washington Conference on Holocaust-Era Assets (November 30-December 3, 1998). It allows searching by types of assets (dormant bank accounts, insurance, gold, art, etc.) and by country, government, and private attempts to trace Holocaust assets. A list of archival resources is provided along with a list of U.S. activities regarding Holocaust-era assets. Information for Holocaust survivors and others seeking reparations is included along with information on the Task Force for International Cooperation on Holocaust Education, Remembrance, and Research. The Proceedings from the Washington Conference on Holocaust-Era Assets is available full text and links to the National Archives, the U.S. Department of State, and other Web sources are also provided.


U.S. House International Relations Committee (HIRC) at: [http://www.house.gov/international_relations/]. Click on "press releases" for the 105th Congress for a listing of the HIRC activities regarding Holocaust-era assets. Also under "Meetings and Hearings," click on "105th Congress, second session" for a transcript of the full committee hearing, "Heirless Property Issues of the Holocaust" on August 6, 1998.

U.S. Senate Banking, Housing, and Urban Affairs Committee at: [http://www.senate.gov/~banking] for committee hearings and press releases.

World Jewish Congress (WJC) at [http://www.virtual.co.il/orgs/orgs/wjc/]. At the Home Page, click on "Policy Dispatches" for brief and timely analyzes of immediate concern. Full text of the following are available:

- Dispatch No. 16, "New Perspectives on Swiss 'Neutrality' and Banking Secrecy," September 1996.
Click on “Policy Forum” for in-depth examination of current topics by noted authorities and researchers:


Click on “Policy Studies” index for a comprehensive examination of topics in Jewish affairs. Full text of the following are available:

- Sweden and the Shoah: The Untold Chapters by Sven Fredrik Hedin and Goran Elgemyr.
- Movements of Nazi Gold: Uncovering the Trail by Sidney Zabludoff.
- Unmasking National Myths: Europeans Challenge Their History by Avi Beker.
- The Fate of Stolen Jewish Properties: The Cases of Austria and the Netherlands by Itamar Levine.

Useful Addresses and Telephone Numbers

Listed below are the addresses, fax, and telephone numbers (including e-mail and Internet sites when available) of private and governmental organizations that are currently assisting with claims, compensation, and restitution of Holocaust-era assets (works of art, dormant bank accounts, unpaid insurance claims, property, etc.).

**Allianz Insurance Group**—There is no address listed but they do provide a 24-hour, multi-lingual help line for claimants seeking recovery of payments from property, casualty, and life insurance policies from this German company at 1-800-411-0118.

**American Jewish Committee Research Department** (regarding restitution of Jewish property in Central and Eastern Europe):

American Jewish Committee Research Department
165 East 56th Street
New York, NY 10022-2746

Tel: 212-751-4000

**American Jewish Joint Distribution Committee (AJJDC)** for restitution for needy Holocaust victims in the United States who resided in the former Eastern Bloc during and after World War II from the “International Fund for Needy Victims of Nazi Persecution.” This fund was created by the United Kingdom, the United States, France, and other nations during the London Nazi Gold Conference, December 1997. For claims in the United States contact:

American Jewish Joint Distribution Committee
711 3rd Avenue
New York, NY 10017-4014

Tel: (212) 687-6200
Fax: (212) 682-7262
E-mail: info@jdcny.org
Argentina — Commission of Enquiry into the Activities of Nazism in Argentina (CEANA) [in Spanish, Comisión para el Esclarecimiento de las Actividades del Nazismo en la República Argentina (CEANA)]. An international panel of 17 members and 10 research units was created by President Carlos Menem on May 6, 1997, to investigate Argentina’s role in aiding escaped Nazi criminals, the transfer of looted Nazi treasures, and other wartime dealings with the Third Reich. All final reports from the 10 research units are expected by the end of June 1999. Contact them at:

Comisión para el Esclarecimiento de las Actividades del Nazismo en la República Argentina (CEANA)
Reconquista 1088
1023 Capital Federal
ATTN: Guido Di Tella, President (Foreign Minister of Argentina)

Art Loss Register (regarding stolen or missing works of art) contact:
The Art Loss Register
666 Fifth Avenue, 21st Floor
New York, NY 10103
Tel: (212) 262-4831
Fax: (212) 262-4838
E-mail: alrnewyork@aol.com

Assicurazioni Generali S.p.A. (Italy’s largest insurance company) for application forms to file insurance claims or to request an archival research contact them at:

Assicurazioni Generali S.p.A.
Policy Information Center
45 Rockefeller Plaza, Suite 200
New York, NY 10111-0100
Tel: 1-800-456-8174

Austrian Bank Claims for dormant account claims in Austrian banks contact:
Austrian Bank Holocaust Litigation
c/o Plaintiffs Class Counsel
P.O. Box 1650
Philadelphia, PA 19105-1650 USA
E-mail: questions@austrianbankclaims.com
Internet at: [http://www.austrianbankclaims.com]

Austrian National Fund for the Victims of National Socialism
Thus far, 23,296 persons in 65 countries have received assistance through the fund. Application for compensation may be made through the Austrian Embassy in Washington, D.C. by contacting:

Mrs. Ingrid Richardson
Consular Attache for Legal and Social Security Affairs
Embassy of Austria
3524 International Court, NW
Washington, D.C. 20008-3035
Tel: (202) 895-6719
Fax: (202) 895-6772
E-mail: austroinfo@austria.org
Internet at: [http://www.austria.org/]

(British Government) Enemy Property Payment Scheme
During World War II, the British government confiscated property in the United Kingdom belonging to residents of countries that were at war with Britain and her allies. Unfortunately, some of the property confiscated belonged to victims of the Holocaust and was not returned to the rightful owners after the war. Information on filing a claim can be obtained from the Panel Secretariat at:
The Enemy Property Claims Assessment Panel
Bay 116-118
10 Victoria Street
London SW1H 0NN
United Kingdom

Tel: +44 171 215 3485
Fax: +44 171 215 3487
E-mail address: property.enemy@frmd.dti.gov.uk
Internet at: [http://www.enemyproperty.gov.uk]

California Holocaust Insurance Settlement Alliance contact:
California Department of Insurance
ATTN: Leslie Tick or Risa Salat-Kolm
California Department of Insurance
45 Fremont Street, 23rd Floor
San Francisco, CA 94105

Tel: 1-888-234-4636
Internet at: [www.insurance.ca.gov]

Claims for Jewish Slave-Labour Compensation
This association represents Jewish ghetto and concentration camp survivors who, during the Holocaust, were forcibly used by the Third Reich and German firms as slave labor in Germany and other nations occupied by the Nazis during World War II. Contact information in the United States is currently unavailable.

Claims for Jewish Slave-Labour Compensation
Tel: 01483 751541
6 Poole Road
Woking, Surrey
GU21 1DY, United Kingdom

Cohen, Milstein, Hausfeld & Toll—two law offices in Washington, D.C., and Seattle, Washington. For information on the $1.25 million lawsuit against Swiss banks on dormant war-era bank accounts and pending litigation on World War II-era slave laborers contact:

Cohen, Milstein, Hausfeld & Toll, P.L.L.C.
1100 New York Avenue, N.W.
Suite 500, West Tower
Washington, D.C. 20005
Tel: (202) 408-4600
Fax: (202) 408-4699
E-mail at lawinfo@cmht.com
Internet at: [http://www.cmht.com/]

Cohen, Milstein, Hausfeld & Toll, P.L.L.C.
999 Third Avenue, Suite 3600
Seattle, Washington 98104
Tel: (206) 521-0080
Fax: (206) 521-0166

Commission for Art Recovery for a copy of a claim form and instructions contact:
Commission for Art Recovery
767 Fifth Avenue, Suite 4600
New York, NY 10153
Tel: (212) 521-0102
Fax: (212) 319-8681
E-mail: claims@rslmgmt.com
Internet at: [http://www.wjc-artrecovery.org/]

Commonwealth of Pennsylvania Treasury Department
Anyone from the state of Pennsylvania with reason to believe that assets deposited in Swiss banks between January 1, 1933, and May 9, 1945, belonging to them or a relative to which they are an heir are urged to contact this office. Also, persons with claims on insurance policies issued by a European insurance company prior to and
during World War II should contact this office as well. Unfortunately, no address is currently available.

Tel: 1-800-379-3999

Internet at: [http://www.treasury.state.pa.us/DefaultASearch.html]

Conference on Jewish Material Claims Against Germany, Inc. (a.k.a “Claims Conference”) in the United States:

Mr. Gideon Taylor, Executive Director
Conference on Jewish Material Claims Against Germany, Inc.
5 East 26th Street, Suite 906
New York, NY 10010

Tel: (212) 696-4944
Fax: (212) 679-2126
E-mail: claimscon@aol.com

Dormant Swiss Bank Accounts—for information on claims contact:
Ernst & Young, LLP
“Dormant Accounts”
P.O. Box 1880 Radio City Station
New York, NY 10101-1880

Tel: 1-800-662-7708

Embassy of Switzerland
2900 Cathedral Avenue, N.W.
Washington, D.C. 20008

Tel: (202) 745-7900
Fax: (202) 387-2564

Internet at: [http://www.swissemb.org/].

(German) Article 2 Fund
This fund was created to compensate Jewish victims in the former East Germany after the reunification of Germany. This decision was formalized in Article 2 of the “Agreement on the Enactment and Interpretation of the Unification Treaty” of September 18, 1990, that unified Germany. Applications for compensation under the Article 2 Fund are still being accepted. Jewish victims of Nazi persecution are eligible if they: 1) were 6 months or longer in a concentration camp or 18 months or longer in a ghetto or 18 months or longer in hiding; and 2) received no more than DM 10,000 in previous compensation; and 3) currently live under difficult financial circumstances. If eligible, compensation is a lifetime pension in the amount of DM 500 per month. Interested parties should request an application from:

Article 2 Fund
Claims Conference
15 East 26th Street, Room 906
New York, NY 10010

(German) Hardship Fund
Applications for compensation under the Hardship Fund are still being accepted. Compensation is available to Jewish victims of Nazi persecution who have received no previous compensation and currently live under difficult financial conditions. Compensation under the Hardship Fund consists of a one-time payment of DM 5000. Contact the following:
Hardship Fund
Claims Conference
15 East 26th Street, Room 906
New York, NY 10010

Holocaust Art Restitution Project (HARP) at:
National Jewish Museum/HARP
1640 Rhode Island Avenue, N.W.
Washington, D.C. 20036-3278
Tel: (202) 857-6583

Holocaust Claims Processing Office, New York State Banking Department at:
New York State Banking Department
Holocaust Claims Processing Office
2 Rector Street
New York, NY 10006
Tel: 1-800-695-3318 (in the U.S.)
Fax: (212) 618-6908
E-mail address: claimsques@banking.state.ny.us
Internet at: [http://claims.state.ny.us].

Independent Committee of Eminent Persons (ICEP) a.k.a. Volcker Commission:
The Independent Committee of Eminent Persons
20 rue de Candolle (3rd Floor)
1205 Geneva, Switzerland
E-mail address: info@icep-iaep.org
Internet at: [www.icep-iaep.org]

International Commission on Holocaust Insurance Claims (ICHEIC). For World
War II-era insurance claims, contact the address and telephone number listed below.
Please note: Residents of California, Florida, New York, North Dakota, and
Pennsylvania should contact their state insurance commissioners for further updates.

International Commission on Holocaust Insurance Claims
1300 L Street, N.W., Suite 1150
Washington, D.C. 20005
Tel: (202) 289-4100
Fax: (202) 289-4101
Internet at: [http://www.ICHEIC.org]

National Association of Insurance Commissioners (NAIC) contact:
National Association of Insurance Commissioners
444 North Capitol Street, Suite 701
Washington, D.C. 20001-1512
Tel: (202) 624-7790
Fax: (202) 624-8579
E-mail address: mhennosy@naic.org
Internet at: [http://www.naic.org].

Norwegian Compensation Fund established by the Norwegian Ministry of Justice
for persons who suffered anti-Jewish measures in Norway during World War II.
Deadline for applications is November 1, 1999. Application forms are available from:

Civil Department of the Ministry of Justice
P.O. Box 8005 Dep 0030
Olso, Norway
Tel: +47 22 24 54 51
Fax: +47 22 24 27 22
Internet at: [http://odin.dep.no/repub/97-98/stprp/82/engelsk/]

Presidential Advisory Commission on Holocaust Assets in the United States
A non-partisan commission of 21 members established by Public Law 105-186, "to
conduct a thorough study and develop a historical record of any assets obtained from
Holocaust victims that came in possession or control of the United States
government." The commission will submit reports and recommendations to the
President of the United States for further administrative or legislative action. They can be contacted at:

Presidential Advisory Commission on Holocaust Assets in the United States
Coordinator: Stu Loeser  
Tel: (202) 435-8126  
Fax: (202) 371-5678  
901 15th Street N.W., Suite 350  
Washington, D.C. 20005  
Internet at [http://www.pcha.gov/]

Swiss Bankers Association (SBA)
Box 4182  
4002 Basle, Switzerland  
Tel: +41 (0) 61 295-9393  
Fax: +41 (0) 272-5382  
Internet at: [http://www.dormantaccounts.ch]

Swiss Bureau on Looted Art contact:
Dr. Andrea F.G. Rascher, J.D.  
Tel: +41 31 322 03 25  
Fax: +41 31 322 92 73  
Contact Bureau on Looted Art  
Federal Office of Culture  
E-mail: andrea.rascher@bak.admin.ch  
Hallwylstr. 15, CH-3003 Berne, Switzerland

Swiss Holocaust Task Force (officially disbanded on March 31, 1999)
EDA  
Tel: +41 (0) 31 323-0486  
Fax: +41 (0) 31 323-0839  
3003 Berne, Switzerland  
Internet at [http://www.switzerland.taskforce.ch/]

Swiss Special Fund for Needy Victims of the Holocaust/Shoah
This fund was created in February 1997 by the Swiss Federal Council to assist needy victims in the United States, Eastern Europe, and the former Soviet Union. Note: new applications are no longer being accepted. On February 26, 1999, checks of $502 each were mailed to accepted applicants. The notification letters to those applicants who did not meet the eligibility criteria were also mailed on that date. Final judgement on disputed claims was made in August 1999.

Swiss Special Fund for Needy Victims of the Holocaust/Shoah
Waaghausgasse 18  
Tel: ++41 (0) 31 325-1239  
3003 Berne, Switzerland  
Fax: ++41 (0) 31 323-2300

United Restitution Organization provides legal assistance for individuals in claims against Germany, for a nominal fee. Contact them at:

United Restitution Organization  
570 7th Avenue  
Suite 1106  
New York, NY 10018  
Tel: (212) 921-3860  
Fax: (212) 575-1918

United States Holocaust Memorial Museum  
100 Raoul Wallenberg Place, S.W.  
Washington, D.C. 20024  
Internet at [http://www.ushmm.org/index.html]
The World Jewish Congress (WJC), American Section
Tel (212) 755-5770
501 Madison Avenue, 17th Floor Fax: (212) 755-5883
New York, NY 10022-5602 Internet at: [http://www.virtual.co.il/orgs/orgs/wjc/]

The World Jewish Restitution Organization (WJRO) is headquartered in Israel:
Mr. Eliyahu Spanic, Director General Tel: (972-2) 561-2497/8
World Jewish Restitution Organization Fax: (972-2) 561-2496
Radak 7, Jerusalem 92301, Israel
Internet at: [http://ja-wzo.org.il/wjro/whoweare.html]
TRIAL
OF
THE MAJOR WAR CRIMINALS
BEFORE
THE INTERNATIONAL
MILITARY TRIBUNAL
NUREMBERG
24 NOVEMBER 1945 — 1 OCTOBER 1946
PUBLISHED AT NUREMBERG, GERMANY
1947
This volume is published in accordance with the direction of the International Military Tribunal by the Secretariat of the Tribunal, under the publication of the Allied Control Authority for Germany.

VOLUME I

OFFICIAL TEXT
IN THE
ENGLISH LANGUAGE

OFFICIAL DOCUMENTS
The lack for the economic treatment of the various administrative regions is difficult, depending on whether the country is involved which will be incorporated politically into the German Reich, or whether we still deal with the Government-General, which in all probability will not be made a part of Germany. In the first mentioned territories the ... safeguarding of all their productive facilities and supplies must be aimed at, as well as a complete incorporation into the Greater German economic system, at the earliest possible time. On the other hand, there must be removed from the territories of the Government-General all raw materials, scrap materials, machine tools, etc., which are of use for the German war economy. Enterprises which are not absolutely necessary for the maintenance of the naked existence of the population must be transferred to Germany, unless such transfer would require an unusually long period of time, and would make it more practicable to exploit these enterprises by giving them German orders to be executed at their present location.

As a consequence of this order, agricultural produce, raw materials needed by German factories, machine tools, transportation equipment, other finished products, and even foreign securities and holdings at foreign banks were all requisitioned and sent to Germany. These requisitions were requisitioned in a manner out of all proportion to the economic resources of those countries, and resulted in famine, inflation, and an active black market. At first the German occupation authorities attempted to suppress the black market, because it was a channel of distribution keeping local products out of German hands. When attempts at supervision failed, a German purchasing agency was organized to make purchases for Germany on the black market, thus clearing out the same. Everything was made by the Defendant Göring that it was "necessary that all should know that there is to be limited anywhere, it shall be no case to be in Germany."

In many of the occupied countries of the East and the West, the authorities maintained the pretense of paying for all the property which they requisitioned. This elaborate pretense of payment many disguised the fact that the goods sent to Germany from these occupied countries were paid for by the occupied countries themselves, either by the device of exchequer coupons or by forced labor in return for a credit balance on a "compensating account" which was in theory money in name.

In most of the occupied countries of the East even this pretense of legality was not maintained; economic exploitation became a deliberate planner. This policy was first put into effect in the administrative district of the Government General in Poland. The main exploitation of the raw materials in the East was centered on the German Government General in Germany. The evidence of the widespread starvation among the Polish the sources with which the policy of exploitation was carried out...

The occupation of the territories of the C.I.S. was characterized by wanton and systematic looting. Before the attack on the most efficient exploitation of Soviet territories. The German millions of people will be favorable to this."

Similarly, a declaration by the Defendant Rosenberg on 26 June 1941 had advocated the use of the produce from southern Russia and in the Northern Caucasus to feed the German People, saying:

"We are absolutely no strained for any obligation on our part surplus territory. We know that this be a harsh necessity."

When the Soviet territory was occupied, this policy was put into effect. There was a large scale confiscation of agricultural supplies, with complete disregard of the needs of the inhabitants of the occupied territories.

In addition to the seizure of raw materials and manufactured articles, a wholesale enemy of art treasures, monuments. The Defendant Rosenberg was designated by Hitler on 20 January 1942 as Head of the Center for National Socialist Ideological Research, and thereafter, the organization known as the "Sonderstab Rosenberg" conducted an intense campaign on the German people to establish a research library. On 1 March 1943, Hitler issued a further decree, authorizing Rosenberg to establish a large cultural establishments as well as cultural foundations, which could be built in the occupied territories. The government of the Western High Command, and in the East in his capacity as Reichsminister. Therefore, Rosenberg's activities were extended to the occupied countries.
I was able to gain some knowledge on the public and private collections, as well as clerical property, in Cracow and Warsaw. It is true that we cannot hope too much to avoid damage from the acquisition of great art works of paintings and sculpture, with the conversion of the Ven-Stud altar in Cracow ... and several other works from the National Museum in Warsaw.”

Slave Labor Policy

Article 6 (b) of the Charter provides that the “collection or deportation to slave labor or to any other purpose of civilians living on (or in occupied territory) shall be a War Crime. The

The policy of the German occupation authorities was to disregard the terms of this convention. Some idea of this policy may be gathered from the statement made by Hitler in a speech on 1 November 1941:

“The territorial which now exists for us contains more than 300,000,000 persons, but the territory which works industrially and includes now more than 300,000,000,000. In the measure in which it concerns German territory, the domain in which we have taken under our administration, it is not sufficient that we shall succeed in harnessing the very last man to this work.”

The actual results achieved were not so complete as this, but the German occupation authorities were forced in fear of the inhabitants of the occupied territories to work for the German war effort and to depopulate as much as possible. The German authorities were in the position of the conqueror and, in the occupied territories, the confiscation of art works was promptly instituted. Inhabitants of the occupied countries were occupied and compelled to work on German fortifications and military installations. As local supply of raw materials and local
Crime Against Peace

As head of the APA, Rosenberg was in charge of an organization whose agents were active in Nazi intrigue in all parts of the world. He played an important role in the preparation and planning of the attack on Norway.

Rosenberg, together with Hitler, was one of the original planners of the plan for attacking Norway. Rosenberg became interested in the plan for attacking Norway in 1940, when he met with Hitler in Norway in 1941 and discussed the importance of the Norwegian coast. Rosenberg had planned for the attack on Norway, and in the event of a conflict between Germany and Great Britain, to obtain Norwegian oil fields and to control the North Sea. As a result of these conferences, Rosenberg arranged for Quisling to collaborate closely with the Nasara and for Quisling to receive political guidance from the Nazis.

With the war broken out Quisling began to express fear of British intervention in Norway. Rosenberg supported Quisling's plan to use Quisling for a coup in Norway, and transmitted to Hitler the idea that Quisling could serve as a useful agent for the purpose of justifying the attack on Norway. Rosenberg was instrumental in arranging the conference in December 1942 between Hitler and Quisling which led to the propagation of the idea of the establishment of a German-speaking state in Norway, and in which Hitler promised Quisling that he would support the establishment of the state. After these conferences Hitler assigned Rosenberg to the position of the "Reichsleiter Rosenberg".

Rosenberg was given the task of drafting a new constitution for Norway, which he did in conjunction with Quisling. The new constitution contained provisions for the establishment of a "Third Reich" in Norway, with Quisling as its leader. Rosenberg was instrumental in organizing the "Reichsleiter Rosenberg" network, which was responsible for the administration of the occupied Eastern Territories.

In 1944, Rosenberg was appointed "Reichsleiter Rosenberg" and was responsible for the administration of the occupied Eastern Territories. He was responsible for the establishment of the "Reichsleiter Rosenberg" network, which was responsible for the administration of the occupied Eastern Territories.

May 1941, he prepared several drafts of instructions concerning the handling of the administration in the Occupied Eastern Territories. On 26 June 1941, two days before the attack on the U.S.S.R., he made a speech to his soldiers about the problems and policies of occupation. Rosenberg attended Hitler's conference of 18 July 1941, in which policies of administration and occupation were discussed. On 17 July 1941, Hitler appointed Rosenberg "Reichsleiter Rosenberg" for the Occupied Eastern Territories, and publicly charged him with responsibility for the administration.

War Crimes and Crimes against Humanity

Rosenberg was responsible for the system of organized plunder of both public and private property throughout the occupied territories of Europe. Acting under Hitler's orders of January 1940 to set up the "Reichsleiter Rosenberg," he organized and directed the "Reichsleiter Rosenberg," which plundered museums and libraries, confiscated art treasures and collections, and pillaged private homes. He even went so far as to extend the plundering policy to the occupied territories of Europe. As of 14 July 1941, more than 20,000 art objects, including famous paintings and museum pieces, had been seized by the German occupation forces.

With his appointment as Reichsleiter Rosenberg for the Occupied Eastern Territories on 17 July 1941, Rosenberg became the supreme authority for these areas. He helped to formulate the policies of Germanization, exploitation, forced labor, extermination of Jews and opponents of Nazi rule, and he set up the administration which carried them out. He took part in the conference of 15 July 1941, in which Hitler stated that they were faced with the task of "putting up a good show in accordance with our needs, in order to be able, first, to dominate; second, to subdue; third, to exploit," and indicated that nothing less than devastation was envisaged. Rosenberg accepted his appointment on the following day.

Rosenberg had knowledge of the brutal treatment and torture in which the Soviets had suffered, and he directed that the "Reichsleiter Rosenberg" network was not established in the occupied Eastern Territories. He passed knowledge of this to the German authorities, and it was set up in the occupied Eastern Territories. Rosenberg was responsible for the administration of the occupied Eastern Territories.

May 1941, he prepared several drafts of instructions concerning the handling of the administration in the Occupied Eastern Territories. On 26 June 1941, two days before the attack on the U.S.S.R., he made a speech to his soldiers about the problems and policies of occupation. Rosenberg attended Hitler's conference of 18 July 1941, in which policies of administration and occupation were discussed. On 17 July 1941, Hitler appointed Rosenberg "Reichsleiter Rosenberg" for the Occupied Eastern Territories, and publicly charged him with responsibility for the administration.

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VOLUME IV

OFFICIAL TEXT
IN THE
ENGLISH LANGUAGE

PROCEEDINGS
17 December 1945 – 5 January 1946
Thus, early in 1940, 11 months after the initiation of the program for establishment of the library for ideological research, the original purpose had been expanded so as to include the seizure of art works not only for the benefit of research but for the decoration of the Führer and Gliedung and the enhancement of the collections of German museums.

Impeccably they wrote by the perfidious drum of subjugating a continent, the Nazi exemplars could not maintain themselves merely with the exploitation of the cultural riches of France and rapidly expanded their activities to the other occupied countries. I now offer an evidence Document Number 197-PS at Exhibit USA-379. That is a copy of an order signed by the Defendant Keitel, dated 6th of July 1940, and I should like to read that brief order in full:

"To: The Chief of Army High Command, Chief of the Armed Forces in the Netherlands."

"Reinhardt Rosenberg has submitted to the Führer that:"n
"1. The state libraries and archives be searched for documents valuable in Germany."

"2. The Chancellery of the high Church authorities and the judges be searched for spiritual monuments directed against us and that the material is in question be seized.

"The Führer has ordered that this suggestion be followed and that the Gestapo, supported by the archives of Rosenberg, be put in charge of the search. The Chief of Security Police, SS-Großgruppenführer Heydrich, has been informed. We will communicate with the competent military commanders in order to execute this order.

"These measures will be executed in all regions of the Netherlands, Belgium, Luxembourg, and France occupied by us.

"It is requested that substitute services be informed.

"Chief of High Command of the Armed Forces,"—signed—"Mittel."

"From the Netherlands, Belgium, Luxembourg, and France the Rosenberg's activities ultimately were expanded still further to Norway and Denmark. I now offer in evidence Document 186-PS, Exhibit USA-380, which is the copy of an order signed by Ulbrich, Chief of the Rosenberg, dated the 6th of June 1942, from which it is seen that a special mission of the Rosenberg was sent to Norway and Denmark.

"As the German Army penetrated to the East, the fingers of the Rosenberg reached out to seize the cultural riches that made available to them; and their activities were extended to the
The President: Perhaps this would be a good time to break off for 10 minutes.

Col. Storey: Activities were initiated in Hungary as indicated by Document Number 156-PS, Exhibit USA-292, which I am about to introduce in evidence. This was a copy of a message dated by Rosenberg's Chief of Staff. The first paragraph of the document states:

"The Einnatshaltung Rosenberg for the Occupied Territories has dispatched a substantiation to the direction of Einnatshaltung Rosenberg, Dr. Zeis, who is identified by the authorities of this Service Book Number 137, for the accomplishment of the mission of the Einnatshaltung in Hungary outlined under the direction of the appropriate Department of the Reich Commissioner Rosenberg for the Occupied Territories."

The President: Perhaps this would be a good time to break off for 10 minutes.

Col. Storey: I now offer into evidence Document Number 156-PS, Exhibit USA-293, which is an undated report on the "Substantiation of the Jewish Question: The most significant book collections today belonging to the 3rd Reich Library for Research on the Jewish Question are the following..."

The third item of the list which follows refers to "Book collections from Jewish Communities in Greece (about 12,000 volumes)."

It was only natural that an operation conducted on so vast a scale, extending as it did to France, Belgium, the Netherlands, Luxembourg, Norway, Denmark, the Occupied Eastern Territories, the Baltic States, the Ukraine, Hungary, and Greece, should call upon a multitude of other agencies for assistance, and among the other agencies co-operating in the plunder program were several of the same which stand indicted here as criminal organizations. The war as it was conducted served as a pretext for the plundering of these countries. The plunder was not only to satisfy the demands of the German people, but also to the extent of supplying the needs of the Armed Forces...

Col. Storey: Yes, Sir. May I explain why that was? Sir? I was trying to fit in this presentation with the Leadership Corps. It was quoted in two places and I didn't notice it until after the...
which you wish to read are read at one time, rather than to read one sentence, then come back to another sentence, and then possibly come back to a document for a third sentence. I don't know whether that will be possible for you to do.

COL. STOREY: We will try to work it that way, Sir.

THE PRESIDENT: Thank you.

COL. STORREY: Co-operation of the SS and the SD is indicated in a letter from Rosenberg to Himmler dated 31st of April 1941, in a letter from Rosenberg to Himmler dated 31st of April 1941, in Document Number USA-571, which I now offer in evidence. Document Number USA-571, which I now offer in evidence as Exhibit USA-571, which I now offer in evidence as Exhibit USA-571. The last paragraph of this letter states as follows: "...on the other hand I also support personally the work of your Einsatzgruppen wherever I can do so, and a great part of the stolen cultural objects can be accounted for by the fact that I was able to assist the Einsatzgruppen with my organizations."

If I have failed the patience of the Tribunal with numerous details as to the origin, the growth, and the operation of the anti-Jewish organization, it is because I feel that it will be impossible for me to convey to you a full concept as to the enormity of the plunder without conveying to you first, information as to the vast organizational work that was necessary in order to enable the defendants to collect in Germany cultural treasures of staggering proportions.

Nothing of value was left from the grab of the Einsatzgruppen. In view of the great importance of the Einsatzgruppen in the complex business of the organized plunder of a continent, its activities were well suited to the looting of material other than cultural objects. Then, when Rosenberg required equipment for the furnishing of the offices of the administration in the East, his Einsatzgruppen was pressed into service to confiscate Jewish homes in the West. Document Number USA-580, which is Exhibit USA-580 and which I now offer in evidence, is a copy of a report submitted by the director of Rosenberg's Office West, operating under the Ministry for the Occupied Eastern Territories, I wish to quote at some length from this document and I call the Tribunal's attention to the third paragraph on Page 2 of the translation:

"The Einsatzgruppen Reichsführer Rosenberg was charged with the carrying out of this task—that is, the seizure of art property—in the course of its treasure. At the suggestion of the Director West of the Special Section of the Einsatzgruppen, it was proposed to the Reichsführer that the furniture and other contents of the looted Jewish homes should also be secured and dispatched to the Minister for the Occupied Eastern Territories for use in the Eastern Territories."
This volume is published in accordance with the direction of the International Military Tribunal by the Secretary of the Tribunal, under the jurisdiction of the Allied Control Authority for Germany.

VOLUME V

OFFICIAL TEXT
IN THE
ENGLISH LANGUAGE

PROCEEDINGS
9 January 1946 — 21 January 1946
transcripts will be regularly distributed to the Defense Counsel within a period of 48 hours after the session.

MR. MUELLER: If your Honor please, when the Court rose I had just read a quotation of Rosenberg, in which he expressed his views on Christianity.

In the place of traditional Christianity, Rosenberg sought to implant the pagan myth of the blood. At Page 114 in the Myth of the Twentieth Century he stated as follows:

"Today, a new faith is awakening, the myth of the blood, the belief that the divine being of mankind generally is to be defended with the blood. The faith embodied by the fullest realization that the Nordic blood constitutes that mystery which has supplanted and overthrown the old sacraments."

Rosenberg's attitude on religion were accepted as the only philosophy compatible with National Socialism. In 1940 the Defendant Himmler wrote in Rosenberg in Document 996-P, which has been previously introduced as Exhibit Number USA-350, and I quote:

"The nation cannot be conquered by a compromise between traditional Christianity and Christian teachings but only through a new ideology, whose coming you, yourself, have announced in your writings."

Rosenberg actively participated in the program for elimination of church influence. The Defendant Himmler frequently wrote Rosenberg in this regard, furnishing him information as to proposed action to be instituted against the church and, when necessary, requesting that action be taken by Rosenberg's department. I refer to documents introduced in connection with the case against the Leadership Corps, such documents as 375-P, Exhibit Number USA-368, which deals with violation of religious services in the schools: Document 772-P, Exhibit Number USA-397, dealing with violation of religious property, Document 866-P, Exhibit Number USA-259, which deals with the inadequacy of pietistic material being circulated in the schools: Document 865-P, and Exhibit Number USA-397, dealing with violation of religious services in the schools: Document 772-P, Exhibit Number USA-397, dealing with violation of religious property, Document 866-P, Exhibit Number USA-259, which deals with the inadequacy of pietistic material being circulated in the schools: Document 865-P, and Exhibit Number USA-397, dealing with the closing of theological faculties.

Rosenberg was particularly noted in his pursuit of what he called the "Jewish question." On the 20th of March 1941, on the occasion of the opening of the Institute for the Exploration of the Jewish question, he set the keynote for its activities and indicated the direction which the organization was to take. I would like to quote from Document 995-P, which I offer as Exhibit Number USA-595.

The transcription has been cut off and the text is not fully visible.
"The force of all our educational work from now on is in the service for this ideology, and it depends on the results of our ideological training, Rosenberg's position for the spiritual and ideological training, Rosenberg's position for the Adolf Hitler schools. These schools, as the first step of the principle of selecting a special branch in the educational system of the National Socialist training of future leaders...

"The curriculum has been laid down by Reichsführer Rosenberg, together with the Reich Organization Leader and the Reich Youth Leader."

Rosenberg exercised further influence in the education of Party activists of the Party. Document 2558-PS is a translation of Page 197 of the 1934 edition of Die Union Roman, which I refer to as Exhibit Number USA-598. It reads as follows:

"We support the request of the Führer's delegate for the supervision of the entire spiritual and ideological education, to organize community schools for all members of the 1934 edition of Die Union Roman, which I refer to as Exhibit Number USA-598. It reads as follows:

"We support the request of the Führer's delegate for the supervision of the entire spiritual and ideological education, to organize community schools for all members of the National Socialist training of future leaders...

This program was endorsed by the Defendant Schirach as well as by Himmler, Ley, and others.

THE PRESIDENT: Aren't you dealing with this rather in a cumulative way? Isn't it possible to summarize this evidence against...

MR. BERING: I will try to, Your Honor. However, although the...
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VOLUME VII

OFFICIAL TEXT IN THE ENGLISH LANGUAGE

PROCEEDINGS
5 February 1946 — 10 February 1946
from the month of June, there was an Embassy service directed by Dr. Von Kutscher and Dr. Dirksen similar to a specialized service of the military Governor directed by Count Wolf Metternich. This order of action, in defense of the Hague Convention, applied to public as well as to private property. The Defendant Keitel, on 20 June 1940, issued an order to the Governor of Paris, General Von Rudolf. I submit a copy of this order as Document Number RF-1311. Here it is:

"The Führer, on receiving the report of the Reich Minister for Foreign Affairs, has issued an order in order to safeguard for the time being, in addition to objects of art belonging to the French State, also such works of art and antiquities which constitute private property. Especially Jewish private property is to be taken in custody by the occupational power against removal or entrenchment, after having been labeled with the names of their present French owners. There is no intention of expropriation but certainly of a transfer into our custody to serve as a guarantee in the power negotiations."

Identical measures were soon taken in Holland, Belgium, and Luxembourg. Exhibit Number RF-1312, which is a document discovered by the Army of the United States and which was registered under Document Number 1317-F5, a copy of which I submit, was drawn up by Defendant Keitel on 5 July 1940.

"Reichsleiter Rosenberg has suggested the following to the Führer:

1. State libraries and archives to be searched for documents of value to Germany.

2. The chancelleries and high authorities of the Church, as well as the Masonic lodges, to be searched for proofs of political activity directed against us and the proofs in question to be seized.

The Führer has ordered that this suggestion be carried out and that the Gestapo, assisted by the archivists of Reichsleiter Rosenberg, be placed in charge of the search. The Chief of the Security Police, SS Gruppenführer Heydrich, has been informed. He is to contact the military countermeasures competent to deal with the execution of these orders.

These measures to be executed in all regions of the Netherlands, Belgium, Luxembourg, and France which are occupied by us.

It is requested that subordinate offices be informed.

"The Chief of the High Command of the Armed Forces, (Signatura) Keitel."

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52
...I submit under Exhibit Number AP-1253 a copy of Document Number 1374-P, as an analogus order for Belgium.

At the same time, by a decree of 12 July 1940 in execution of the preceding order, a decree for the protection of works of art was enacted in the occupied territories. This decree appeared in the German Official Bulletin VOBIP Number 3, Page 46 and following.

I submit a copy of this decree under Document Number AP-1253.

1. In Section 1, the following paragraph is quoted:

"Moveable works of art will not be taken from the place where they are or in transit in any way whatsoever without the written authorization of a commander of the military administration."...

2. In Section 2, paragraph 4 is quoted:

"Moveable works of art whose value exceeds 100,000 francs must be declared by their owners or custodians in writing to the competent field command or some other authority indicated by the latter."...

3. In Section 3, paragraph 2 is quoted:

"If the Tribunal will kindly recall the explanation which I had the honor of presenting 2 weeks ago, it will remember that the German had, at the same time, issued similar decrees for sealing or immobilizing private property, currency, and other wealth.

In this decree, intended to be known by the population of the occupied territories, the question of search and confiscation of the movable property of private individuals had not yet arisen; the decree merely dealt with immobilization and destruction or intimidation measures; those, to foresee speculation, and an indication of bad faith to be remembered.

Beginning with the period of Sieglin's occupation of the most famous French art collections were carried out; structures made under these conditions that they provided numerous potential which were subsequently occupied territories, the question of search and confiscation of the movable property of private individuals had not yet arisen; the decree merely dealt with immobilization and destruction or intimidation measures; those, to foresee speculation, and an indication of bad faith to be remembered.

As a matter of fact, the field of activity of Staff Rosenberg was not confined to the pillage of Jewish or Masonic property. It rapidly absorbed all that could of the artistic heritage of the occupied peoples, a heritage which Staff Rosenberg appropriated by terrorizing and extorting without distinguishing between private property and public property.

This action at Staff Rosenberg was inspired by the orders of the Defendant Göring himself. It is thus that I submit as Exhibit Number AP-1253, a document, discovered by the Army of the United States and filed under Document Number 141-PQ, which reports of..."
001-PS, a copy of which I include in the document book under Exhibit Number RF-111.

"Everywhere in the East the administration found terrible housing conditions, and the possibilities of getting supplies are so limited that it is practically impossible to obtain anything. That is why I request the Führer to consolidate that the furniture belonging to Jews who have died, or those who are leaving parts or any of the occupied territories of the West, be confiscated in order to supplement, as far as possible, the furniture for the establishments of the Eastern administration."

I have reached the bottom of Page 16. Moreover, the Germans concealed their intentions. This is evident from the letter, dated 25 February 1941, addressed to the German Armistice Commission by the German Military Commission in France, of which I offer a photograph as Document Number RF-1315. Page 16. Here are a few extracts from this letter:

"Taking into consideration the special mission entrusted to Staff Rosenberg for seizing all objects of Jewish ownership, presents by the French Government against the activities of Staff Rosenberg have always been forwarded to the OKH while the reply was sent to the French Government that the present has been forwarded to the office in charge in Berlin for investigation and decision."

Further on, in the same letter, we read:

"The mission of Staff Rosenberg must, as in the past, be kept secret from the French authorities."

A letter addressed to the Section Chief of the Military Administration in France of 7 April 1941, which I offer in evidence as Document Number RF-1315, contains the same directives. Here is the sentence:

"Furniture belonging to Jews of English or American nationality will not be confiscated for the time being but only the furniture of Jews who are nationals of the Reich or of a country partially or totally occupied by the Reich or of Jews who are nationals. The other objects remain the property of the Reich. No receipt will be given. The right of third parties, especially those of lessees or owners of said houses, is to be considered as suspended."

Further on, in the same instructions, Page 17 of the brief:

"The operations must be carried out as discreetly as possible. As to general questions, inquiries by the local French authorities concerning the operations must be answered verbally to the effect that these are positive measures ordered..."
the NSDAP. With regard to material for research work, the
Führer has already decided that these objects, now in the
possession of the Einsatzstab, shall become the property of the
Hofer School. It would be only just and fair that the great
art treasures now in custody should one day become the
property of the NSDAP. Nothing so easy, the division of the
question rests with the Führer. However, since the NSDAP
has ordered a way of 50 years standing against Jewry, such
a solution would appear permissible.

And we are justified in saying that these confiscations are no
longer measures of preservation or acquisition, but a species of
booty which performe must fall into the hands of a German people
entitled to extinguish the Jewish race whom they have outlived.

In a report justifying their action, submitted by the Army Com-
mander and drawn up on the order of the Defendant Rosenberg
by the Chief of the Einsatzstab, Ulm, in November 1941, the latter
went so far as to state: I submit this report as Document No. 3718,
Exhibit 1556, and Exhibit 1557; and I quote a brief passage from the attached
supplement Number 1232: Page 31:

"The German measures of reprisal against the Jews are likewise justified by international law. It is a recognized principle of international law that, in war, reprisals may be taken by reason of the same procedures and the same conduct as primarily used by the enemy. Since time immemorial the Jews have, in their Jewish law codified in the Talmud and the Shulkan Aruch, applied the principle that all non-Jews are to be considered as so much cattle, as outlaws and the property of one-Jews should be dealt with as a thing which has been abandoned, that is to say, as derelict property."

Thus, Gentlemen, the confiscations of the Einsatzstab were
sheltered by this strange interpretation of law. It seems unusual to
debate the value of this document before the Tribunal. The Belgian,
Dutch, and French authorities made frequent protests based on this
most elementary principles of international law, but always met with
rebuffs.

It would at any rate be suitable to define the extent of these
corruptions. It is difficult to give a total estimate, although Rosenberg
himself, in several occasions made an estimate of his booty, especi-
ally in a letter to the Treasurer of the Party, September 18 November
1941, a document discovered by the Army of the United States and
bearing the Document Number 1175-PS, a copy of which I refer to
evidence as Exhibit Number 1232. At that date Rosenberg
already considered that the booty amounted to 500,000,000 Reichsmarks.

The documents of the Einsatzstab are sufficiently numerous and
precise to allow us to establish certain qualitative data. First, the
arrests by the General Staff for Art Treasures. The fundamental
document is a report of 17, Schools, dated 14 July 1941, which we
have just mentioned. This is Document Number 1016-PS, which was
presented in part to the Court by Colonel Story and which I refer to
in evidence as Exhibit Number 1232. From this report we shall
assess only some very brief indications concerning the quantities
of art objects carried off.

According to this report, 21,000 objects taken from 213 private
collections, were removed, starting from the Rothenburg, Nürnberg
Kohn, David Weiss, Lévy de Benzon, and the Bollmann brothers
estates. According to the same report there were "all told, 177
transport, 225 trunks, and 4,774 cases."

I shall not quote any further from this report, because I think
that my colleague, also enthralled with making the charges, will
shudder to it.

THE PRESIDENT: Would that be a convenient time to break off?

(A recess was taken.)

M. C. R. U. F. R. Staff Rosenberg was not only interested in
paintings and objects of art, but in books as well. Thus it appears,
in a document discovered by the United States Army and regis-
tered under Document Number 1159-P, of which I submit a copy
as Exhibit Number 1557, that 50,000 volumes were sent to France.

Rothenburg also provided a heavy contribution in books. Literature
rich in early prints, books, and manuscripts were pilfered. It
appears from Document Number 114-P, discovered by the United
States Army, a copy of which I submit as Exhibit Number 1232,
that the value of the books amounted to about thirty or forty million
Reichsmarks.

It must also be noted, as proved by Documents No. 114-P and
115-P, which I submit as Exhibit Number 1558, that archives
of the Rothenburg Bank were taken away in the month of Feb-
uary 1941.

Staff Rosenberg likewise pilfered treasures. This is quite evident
from a note associated by the Defendant Rosenberg in the Führer,
dated 3 October 1941, submitted under Document Number 1232.
I read the following passage:

"For carrying out action 174, the Einsatzstab Rosenberg was
created in Paris with special branch (Einsatzstab) in
Belgium, France, and the Netherlands. This service has to
Holocaust Assets Progress Toward Restitution

Background: After years of work led by the Administration, the World Jewish Congress, and others, there are several important recent developments in the pursuit of justice for Holocaust victims and their families.

Issue: Austria

The entry of the far-right Freedom Party into a coalition government with one of Austria's mainstream parties, the conservative People's Party, has caused great concern both here and in Europe.

The fact that statements of leaders of the Freedom Party have in the past failed to condemn intolerance and extremism, and attempted to explain away the Holocaust, understandably creates great concern.

In addition to Joerg Haider's well-know statements about Nazi ideology and the SS, it was reported on Thursday, February 10 that he owns a 3,700-acre estate acquired by his family from a Jewish timber merchant in a forced sale under Nazi law in 1941.

However, there are several positive developments regarding Austria and Holocaust Assets:

- Austrian Chancellor Schuessel announced on February 9 that, in light of an interim report of the Austrian Historians Commission, he plans to seek prompt compensation for former forced laborers. In addition, he announced the appointment of the former head of the Austrian central bank, Maria Schaumayer, as the head of a new office that will address forced and slave labor compensation.

- Recent US discussions with Austrian officials on proposals to address Holocaust issues were positive, resulting in the following commitments by Austria:
  - The Austrian Government will support open access to archives in federal agencies and advocate a similar policy among non-governmental entities.
  - Austria's Historians Commission will continue to submit interim reports on all aspects of Holocaust related issues. In this regard, the Government has taken note of the interest of survivor organizations for the adoption of interim measures, which would benefit aging victims, particularly those who live in difficult financial circumstances.
  - The Austrian Government will encourage Austrian insurance companies to participate in the work of the International Commission on Holocaust Era Insurance Claims, chaired by former Secretary of State Lawrence Eagleburger. In this regard, the Austrian Government looks forward to the results of the research effort that Austrian insurance companies are conducting into complex historical and legal questions.
• The Austrian authorities will seek to improve the practical application of the 1998 Art Restitution Law, and encourage similar restitution steps among local and regional governmental bodies.

• The position paper refers to the Chancellor's commitment regarding forced labor compensation and the appointment of a special representative to lead the Austrian team in the talks and negotiations with the other parties.

**Issue: The Presidential Advisory Commission on Holocaust Assets in the United States**

The 21-member Presidential Advisory Commission on Holocaust Assets in the United States has been working for over a year to determine the fate of Holocaust victims' art, gold, and financial assets such as bank accounts and securities that came into the possession or control of the US government.

Because of the unexpectedly large volume of material the Presidential Commission has discovered (approximately 45 million pages), Congress unanimously extended the date by which the Commission's final report to the President is due to the end of 2000.

Upon signing the legislation to extend the Commission on December 9, President Clinton declared:

"The Commission's research demonstrates irrefutably that we in the United States are willing to hold ourselves to the same high standard of truth about Holocaust assets to which we have held other nations... the extension of the Presidential Advisory Commission sends a strong message, both at home and abroad, that we are committed to examining difficult aspects of our history and determining how to build a better world for our children in the next millennium."

Because of the extension of the Commission, whomever is elected President in November will be responsible for implementing its recommendations for achieving justice.

**Issue: Slave and Forced Labor:**

The United States and Germany announced a historic agreement on December 17 so that everyone who worked as forced and slave laborers or suffered at the hands of German companies during the Nazi era can receive dignified payments.

This Foundation for Remembrance, Responsibility and the Future is composed of donations from German private industry and the German government of 10 billion Deutsch Marks or approximately $5.1 billion.

A key feature of this agreement is under it all victims of slave and forced labor in Nazi Germany and Nazi-occupied countries—Jews and Gentiles, the majority are Gentiles—can receive justice.
Earlier proposals to sue in US courts could only have applied to victims who worked for companies that (a) still exist today, and (b) have operations in the US – potentially not much more than 1,000 people.

The process that led to this agreement has been long and complicated, but it has been agreed to by the major Jewish groups in the Conference on Jewish Material Claims Against Germany, lawyers for Holocaust victims, and the Governments of Israel, Belarus, the Czech Republic, Poland, Russia, and Ukraine.

Advocates for Holocaust victims agree that Holocaust Assets negotiations are not about receiving money but about achieving justice. Many Holocaust survivors don't want payments but rather acknowledgement and an apology. For this reason, the statement of German President Rau when announcing the agreement December 17 is important:

"I know that for many it is not really money that matters. What they want is for their suffering to be recognized as suffering, and for the injustices done to them to be named injustices. I pay tribute to all who were subjected to slave labor and forced labor under German rule and, in the name of the German people, beg forgiveness."

**Issue: Unpaid Insurance Policies**

Testifying before the House Banking Committee on Thursday, February 10, former Secretary of State Lawrence S. Eagleburger, Chairman of the International Commission on Holocaust Era Insurance Claims, announced that his commission will begin on February 15, 2000 a full-scale claims and outreach program for Holocaust victims whose life insurance policies that were not honored.

The US strongly encourages all insurers that issued policies during the Holocaust era -- including those in Germany, Austria, and the Netherlands, -- to join this Commission and participate in fully its claims, outreach, and humanitarian programs.

The Eagleburger Commission is the best and most expeditious vehicle for resolving insurance claims from this period, and membership in it provides the only real way of both ensuring that valid claims are paid and resolving international moral and humanitarian responsibilities, i.e., for heirless and nationalized claims or companies no longer in existence.

**Issue: Swiss Banks**

In January 1999, the Vice President received from then-Swiss President Ruth Dreifuss her government's support for completion of work by various commissions on Holocaust-related issues.

In early December 1999, the international commission headed by former Fed Chairman Paul Volcker released its final report that was critical of Swiss bank behavior for hindering access by heirs to dormant accounts of Nazi victims after the War which:

- Revealed more accounts of Holocaust victims than indicated by earlier surveys.
- Recommended the Swiss Federal Banking Commission authorize publication of the names of 25,000 account owners that have a strong probability of being related to victims of Nazi persecution.
- Recommended 59 Swiss banks consolidate their databases, which are now separate and contain 4.1 million names, to facilitate the process of matching the names of account owners to those who died in the Holocaust.

Also in December 1999, the Swiss Bergier Historical Committee released a report that is highly critical of Swiss government actions during World War II, noting that many refugees were returned to Nazi-occupied countries and sometimes the Swiss authorities confiscated the assets of refugees.

The Swiss Government welcomed the release of both reports and their forthright conclusions. The Government also apologized for the suffering, deportation, and death caused by Switzerland's World War II policies.
Handling of victim loot

Inherent uncertainties in calculating victims' assets:

1. No standards of measurement: (pounds, kilos, ounces, carats, units, truckloads)

2. Varying appraisals: Due to overwhelming bulk of collected assets, early valuations tended to be based on the quantity of suitcases, boxes, bags, or overall weight of assets rather than their contents. No accurate itemized inventory possible due to personnel shortages. Numbers climbed higher as larger containers were finally opened and their contents revealed.

3. Scattered deposits and records: Pieces often sent to different collection points based on asset type. (e.g. pieces of Rothschild Collection found in multiple depots throughout Europe.) [Gold/jewels stored in FED in Frankfurt, paintings in Munich, books in Offenbach].

4. Known victims' art and cultural property segregated from other collections pending eventual quadripartite agreement on restitution policy. Gold and financial assets, more difficult to trace ownership, were generally divided and stored in the FED vaults by asset group once a shipment's origin and details surrounding its capture were known. Currencies known to have come from victims were segregated from general currency pools to be returned to country of issue. Items such as the 1,300 envelopes from Dachau, clearly marked as victims' assets including addresses and country, were returned to the country of origin for further distribution.

Instances where the collection of obvious loot received special handling

Art and Cultural Property

MFA&A activities in early 1945 reveal several cases in which extra care was afforded items obviously looted from Holocaust victims. While many of the 1500 repositories uncovered in the Allied advance remained unguarded, repositories bearing Jewish documents or property were immediately guarded and better storage facilities sought. For example, in the Hessian town of Hungen, troops found a large ERR depot for Jewish archives, books, and ritual objects already showing signs of having been looted by German troops. A Military Government civilian guard was placed there immediately and marked the premises off-limits. A special request was also made for military guard and a MG Property Control officer was notified to assume custody of this readily identifiable enemy loot. This pattern was repeated at repositories scattered throughout the countryside. Upon receiving notification that confiscated Jewish properties had reportedly been found in a castle in Schwalbach, a MG detachment was called in to investigate and take necessary steps for preservation.

1 Nastatten = 150 boxes of Jewish documents in a barn. Guard placed and better storage facilities sought.
In larger caches, like those found in mines near Merkers, Germany and Alt Aussee, Austria, considerable stashes of readily identifiable victims' loot. The Merkers treasure contained 400 tons of fine art, the origin of which required investigation. The Alt Aussee stash = the greatest deposit of Nazi loot in Austria = contained over 7000 paintings and drawings, and 3000 boxes of art treasures. Of the 8 caves, Cave #1 contained 700 Rothschild paintings and 500 belonging to other Jewish families. Cave #2 held furniture looted from Jewish families. Cave #6 contained property of several prominent Jewish families including the Rothschild, Bondi, Pollak, and Gutmann.

**FED Shipments** of precious metals and other valuables:

16  **MERKERS**: 207 containers containing 78 SS loot deliveries of jewelry, securities, gold teeth, household utensils, bank pass books, and Melmer currencies [35 unprocessed, 43 processed]

17  **BUCHENWALD**: 313 boxes containing currency, jewelry, coins, alarm clocks, toys, razors, scrap leather, teeth fillings, etc. removed from KZ victims. Part of stash, 6 boxes, removed as evidence of war crimes.

52  **DACHAU**: 1 bag of assorted wealth, 4 suitcases and 2 cartons of marked envelopes containing jewelry and effects of persons from the concentration camp. Recovered after SS left forced march in Tyrol.

24  **ALT-AUSSEE** – 1 bag of gold coins from NDSAP

86  12 pounds, 1½ ounces of gold teeth and fillings from Dachau KZ rec’d from War Crimes Group in July 1947.

In addition to these shipments, there was a considerable amount of materials including securities and currency were assumed to have been looted, though the exact origins of the materials could not be ascertained in the early inventory phases.

In several cases, investigators clearly on the lookout for victims' assets as reports stated:

23  CIC discovery of property from Schwerin Gestapo. “No evidence of removal from racial or political victims.” Nevertheless, in this case, the FED categorized it as “S.S. Loot”, making it subject to restitution to victims.

27  SS currency uncovered by 7th U.S. Army in barn and on mountainside. “No indications of ownership. No evidence of removal from racial or political victims in any of the parts.”
Dec 3, 1938 - Law for compulsory Aryanization of all Jewish businesses.

Dec 8, 1941 - In occupied Poland, near Lodz, Chelmno [ch-chelmno.htm] extermination camp becomes operational. Jews taken there are placed in mobile gas vans and driven to a burial place while carbon monoxide from the engine exhaust is fed into the sealed rear compartment, killing them. The first gassing victims include 5,000 Gypsies who had been deported from the Reich to Lodz.

Dec 10, 1942 - The first transport of Jews from Germany arrives at Auschwitz.

Dec 2, 1943 - The first transport of Jews from Vienna arrives at Auschwitz.

Dec 9, 1946 - 23 former SS doctors and scientists go on trial before a U.S. Military Tribunal at Nuremberg. Sixteen are found guilty, with 7 being hanged.

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December 5-6 German authorities seize Jewish property (Poland)

December 8 -- Jewish leaders meet with President Roosevelt and hand him a 20-page summary of the Holocaust. 1942

December 17 -- The Allies issue a statement condemning "in the strongest possible terms this bestial policy of cold-blooded extermination."

December 19 -- The United Nations Information Office in New York releases a report that authenticates the accounts of the Holocaust.
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WASHINGTON, DISTRICT OF COLUMBIA 20005-2327
ELSA IWANOWA, on her own behalf, and on behalf of all others similarly situated; namely persons compelled to perform forced labor for Ford Werke A.G., between 1941 and 1945, Plaintiffs, v. FORD MOTOR COMPANY and FORD WERKE A.G., Defendants.

Civ. No. 98-959 (JAG)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

1999 U.S. Dist. LEXIS 14307

September 13, 1999, Decided

September 13, 1999, Original Filed

NOTICE: [*1] NOT FOR PUBLICATION

DISPOSITION:
Defendants' motion to dismiss, pursuant to Fed. R. Civ. P. 12(b)(1), the claims under international law for lack of subject matter jurisdiction DENIED; Defendants' motion to dismiss, pursuant to Fed. R. Civ. P. 12(b)(6), the claims under international law GRANTED; Defendants' motion, pursuant to Fed. R. Civ. P. 12(b)(6), to dismiss the claims under German law and U.S. common law DENIED; Defendants' motion to dismiss, pursuant to Fed. R. Civ. P. 12(b)(6), on the grounds of nonjusticiability and international comity GRANTED.

COUNSEL:
Allyn Z. Lite, Esq., Joseph J. DePalma, Esq., LITE, DEPALMA, GREENBERG & RIVAS, LLC, Newark, New Jersey, for Plaintiffs.


JUDGES:
JOSEPH A. GREENAWAY, JR., U.S.D.J.

OPINIONBY:
JOSEPH A. GREENAWAY, JR.

OPINION:

INTRODUCTION

This matter comes before the Court on the motion of defendants Ford Motor Company ("Ford") and its German subsidiary, Ford Werke A.G. ("Ford Werke") (collectively "Defendants"), seeking to dismiss plaintiff Elsa Iwanowa's ("Iwanowa" or "Plaintiff") Complaint, pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6). Before this Court ruled on the above-mentioned motion, Defendants filed a second motion to dismiss on the grounds of nonjusticiability and international comity. This Court shall consider each of Defendants' motions.

This action arises out of Iwanowa's allegations that Ford Werke coerced her, and thousands of other persons, to perform forced labor under inhuman conditions during World War II without compensation. n1 The Complaint asserts causes of action against Defendants (1) under Michigan and Delaware law [*3] for restitution/unjust enrichment and quantum meruit/quasi-contract; (2) under German law for restitution/unjust
Defendants' motion to dismiss the claims under international law for lack of subject matter jurisdiction, pursuant to Rule 12(b)(6), is granted. Accordingly, the Complaint is dismissed in its entirety with prejudice. n3

n1 Pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, Iwanowa brings the instant action on her own behalf, and on behalf of a class of all persons similarly situated; namely persons who performed forced labor for Ford Werke in Germany between 1941-1945. Consideration of these various motions to dismiss precedes any consideration of the applicability of Rule 23.

n2 Ford is incorporated in Delaware and its principal place of business is in Michigan.

For the reasons set forth below, Defendants' motion to dismiss the claims under international law for lack of subject matter jurisdiction, pursuant to Rule 12(b)(1), is denied. Defendants' motion to dismiss all of the claims, pursuant to Rule 12(b)(6), is granted. Defendants' motion to dismiss on the grounds of nonjusticiability and international comity is also granted. Accordingly, the Complaint is dismissed in its entirety, with prejudice. n3

n3 This Court is cognizant that because plaintiffs should generally be allowed to cure their defective pleadings and refile their claims, the Third Circuit frowns on dismissals with prejudice. In the instant case, however, this Court is dismissing the Complaint not because it is defective or fails to state a claim, but because the claims are barred by the applicable statute of limitations and, in addition, are nonjusticiable. Thus, an amended complaint would be dismissed on the same grounds. "Obviously, the effect of a dismissal without prejudice, where the statute of limitations has run is the same as dismissal with prejudice: it bars a subsequent action." Green v. Humphrey Elev. & Truck Co., 816 F.2d 877, 879 n.4 (3d Cir. 1987).

n4 Federal Rule of Civil Procedure 12(b)(6) requires this Court to accept the allegations in the Complaint as true. See Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996); see also infra Part II.B.1.

NAZI GERMANY

Ford established its German subsidiary, Ford Werke, in 1925. (Compl. P 6.) In 1931, Ford Werke moved its headquarters and manufacturing plant to Cologne, Germany. (Id.) Ford Werke's Cologne plant produced passenger vehicles until 1938, when it began manufacturing tracked vehicles for the German government to be used to transport troops and military equipment during World War II. (Compl. P 11.) By 1941, Ford Werke had ceased producing passenger vehicles and had begun to devote its entire production capacity to the manufacture of military trucks. (Id.) The Complaint alleges that Ford Werke produced approximately sixty percent (60%) of the three-ton tracked vehicles the German army used during World War II. (Id.)

By December, 1941, the German [*6] National Socialist Party (the "Nazis") n5 had achieved domination over territories, in Europe and elsewhere, with an aggregate population of 350,000,000 people. (Compl. P 8.) The Nazi juggernaut required more labor than the voluntary labor the German people could provide. (Id.) In order to support its war effort, the Nazi regime turned to unpaid, forced labor. (Id.) Specifically, the Nazis used forced labor from the captive population, inmates of concentration camps and prisoners of war. (Id.)

n5 The National Socialist Party was the fascist party which controlled Germany from 1933-1945 under Adolf Hitler.

On March 21, 1942, the Nazi Party appointed Fritz Sauckel ("Sauckel") as Nazi Plenipotentiary General for the Allocation of Labor, with explicit authority over all available manpower, including workers recruited from abroad and prisoners of war. (Compl. P 9.) After Sauckel's appointment, the Nazi regime obtained forced laborers by conducting manhunts in the streets, movie houses and churches. ( [*7] Id.) The Nazi regime forcibly deported over 7,500,000 persons from occupied territories to Germany to support its war effort. (Id.)

Sauckel encouraged German industries to bid for forced laborers in order to meet production quotas and to increase their profits. (Id. P 10.) The Complaint alleges that Ford Werke began utilizing French prisoners of war as forced laborers in 1941 and continued utilizing thousands of forced laborers throughout World War II. (Id.) The Complaint further alleges that by 1942, unpaid, forced laborers comprised twenty-five percent (25%) of...
Ford Werke's work force. (Id.) By 1943, that percentage had risen to fifty percent (50%), where it remained until the end of the war. (Id.) The forced laborers at Ford Werke's Cologne plant included French prisoners of war; Russian, Ukrainian, Italian and Belgian civilians; and concentration camp inmates from Buchenwald. (Id.)

The Complaint alleges that Ford Werke profited from the use of forced laborers because, although it paid the Nazi government for its use of the prisoners, it did not compensate the laborers for their work. (Compl. P 12.) Consequently, Ford Werke's annual profits doubled between [8] 1939 and 1943. (Id.) The Complaint further alleges that Ford Werke placed its wartime profits in a growing reserve account or reinvested them in the company through the building of additional production capacity. (Id.) As a result of its economic reserves and production capacity, in the years succeeding the war, Ford Werke continued producing trucks at a substantial profit even though most of Europe, and specifically the German economy, was devastated. (Id. P 15.) Although the Nazi party nationalized or confiscated many American companies in Germany, the Nazis did not confiscate Ford Werke as enemy property; instead, the Nazis allowed Ford to continue its controlling ownership of Ford Werke. (Id. PP 16-17.) Indeed, the Nazis named [*9] Robert H. Schmidt ("Schmidt"), Ford Werke's CEO and a member of the Nazi Party, Wehrwirtschaftsfuehrer, meaning Military Economic Leader. (Id. P 17.) In addition to his duties as Military Economic Leader, Schmidt managed Ford Werke on Ford's behalf until the end of the War. (Id.) n6

n6 Although not pertinent to the issues before this Court, it is interesting to note that the favorable treatment that the Nazis accorded to Ford, as Ford Werke's parent company, may have been attributable, in part, to the personal friendship between Henry Ford and Adolf Hitler. (Compl. P 23.)

IWANOWA

Plaintiff Iwanowa was born in 1925, in Rostov, Russia. Starting in November, 1941, the Nazi army occupied Rostov. (Compl. P 24.) In June, 1942, the Nazi army began abducting adolescents as young as fourteen (14) years of age for transportation to Germany as forced laborers. (Id.) On October 6, 1942, Nazi troops abducted Iwanowa and transported her to Germany with approximately 2,000 other adolescents. (Id. [*10] P 25.) When Iwanowa arrived in Wuppertal, Germany, a representative of Ford Werke purchased her, along with thirty-eight (38) other adolescents from Rostov. (Id.) Ford Werke's representative had Iwanowa, and the other adolescents, transported to Ford Werke's plant in Cologne. (Id.) Once in Cologne, Ford Werke placed Iwanowa with approximately sixty-five Ukrainian deportees in a wooden hut, without heat, running water or sewage facilities. (Id.) They slept in three-tiered bunks without bedding and were locked in at night. (Id.)

From 1942-1945, Ford Werke required Iwanowa to perform heavy labor at its Cologne plant. (Id. P 26.) Iwanowa's assignment consisted of drilling holes into the motor blocks of engines for military trucks. (Id.) Ford Werke security officials supervised the forced laborers, at times using rubber truncheons to beat those who failed to meet production quotas. (Id.)

Iwanowa performed forced labor for Ford Werke until the victorious Allied Powers n7 liberated her, and thousands of other slave laborers, in 1945. After the War, she became a citizen of Belgium, where she presently resides. Ford Werke's forced laborers, including Iwanowa, [*11] have never received compensation for their years of forced labor. (Id. P 27.)

n7 Although many nations were part of the Allied forces, the "Allied Powers" refers to the United States ("U.S."), the United Kingdom of Great Britain and Northern Ireland ("U.K."), France and the Union of Soviet Socialist Republics ("U.S.S.R.").

On March 8, 1998, Iwanowa filed the instant suit on her own behalf and on behalf of a class of thousands of persons who were compelled to perform forced labor for Ford Werke between 1941-1945. Iwanowa seeks compensation for the reasonable value of her services, restitution of unjust enrichment flowing to Defendants, as a consequence of her labor, and damages for the pain and suffering that Defendants' imposition of inhuman working conditions caused her.

Defendants moved to dismiss on the grounds that (1) this Court lacks subject matter jurisdiction over the claims under the law of nations; (2) all of the claims are barred by the applicable statute of limitations; (3) the Complaint fails [*12] to state a cognizable cause of action; (4) the claims are nonjusticiable; and (5) consideration of the instant claims would violate
principles of international comity. This Court heard oral argument on Defendants' motions on March 8, 1999 and August 5, 1999.

DISCUSSION

I. OVERVIEW OF GERMAN JUDICIAL SYSTEM

In their submissions, the parties refer this Court to German cases and statutes; thus, a brief overview of the current German judicial system is essential. "Foreign law questions are considered questions of law in the federal courts, and may be resolved by reference to any relevant information." Fed. R. Civ. P. 44.1; see also Sidali v. Immigration and Naturalization Serv., 107 F.3d 191, 197 (3d Cir. 1997) (stating that "the determination of foreign law in the federal courts is a question of law.").

The German court system creates a dichotomy between ordinary courts and special courts. See 1 Business Transactions in Germany § 4.04[2] (Campbell et al. eds., 1998) ["1 Business Transactions"]). Ordinary courts handle all civil and criminal cases not otherwise assigned by law to one of the six special courts: labor courts, administrative [*13] courts, social welfare courts, tax courts, constitutional courts and the Federal Patent Court. n8 Id.

n8 All ordinary courts have separate civil and criminal sections. 1 Business Transactions, supra § 4.04[2][a].

Since the unification of Germany in 1991, Germany now consists of sixteen states, eleven from the former Federal Republic of Germany ("F.R.G." or "West Germany"), and five from the former German Democratic Republic ("G.D.R." or "East Germany"). See Germany: Law Digest of the Federal Republic of Germany, in Martindale-Hubbell International Law Digest GER-1, GER-1 ["Germany: Law Digest"]. There are ordinary courts and special courts at both the federal and state level. There is no state law in Germany. German law is federal law and thus, is identical in each of the States. See 1 Business Transactions, supra § 4.04[2][a]; Benjamin Kaplan et al., Phases of German Civil Procedure, 71 Harv. L. Rev. 1193, 1195-96 (1958). Further, although [*14] state court judges are appointed and paid by the state where the court sits, the state courts' jurisdiction and procedure is established by federal law. See Kaplan, supra, at 1195. Consequently, although the first level of review is always before a state court, unlike the United States, there are no parallel federal and state courts in Germany. n9 See id.; see also Germany: Law Digest, supra, at GER-10.

n9 There is one exception. Patent and trademark disputes are not heard by state courts; the Federal Patent Court has original jurisdiction over such disputes. 1 Business Transactions, supra § 4.04[2][c][ii].

As in most civil law jurisdictions, Germany does not follow the rule of stare decisis. See Randi Seltzer, The Erroneous Interpretation of the Foreign Compulsion Defense in the ADEA: Mahoney v. RFEIRL, Inc., 23 Brook. J. Int'l L. 655, 682 (1997) (stating that German courts do no more than apply the law when they make a decision, thus, "the decision [*15] itself can have no force as law beyond the very case in which it is rendered.") (citing Donald P. Kommers, The Constitutional Jurisprudence of the Federal Republic of Germany 48 (1989)); (see also I Tr. at 17:22-25.) n10 (stating that "German courts don't abide by stare decisis. There's no principle of stare decisis under German law. They [German courts], respectfully, look at past cases, but each case is supposed to do on its own from the civil code.").

n10 "I Tr." refers to the transcript of the March 8, 1999 oral argument.

In practice, however, German courts strive to adhere to precedent and generally follow the holdings of the Supreme Court, the highest court for civil and criminal matters. See Eberle, supra, at 970 n.22; [*16] see also David S. Clark, The Selection and Accountability of Judges in West Germany: Implementation of a Rechtstaat, 61 S. Cal. L. Rev. 1795, 1847 (1988) (stating that "judge made law in Germany occupies large areas in the corpus of legal rules. In some ways German judges are just as bold and innovative as their common law colleagues."); Interpreting Statutes: A Comparative Study 90; 97 (D. Neil MacCormick & Robert S. Summers eds., 1991) (stating that although precedents are not a formal source of German law, they play an important role in justifying judicial decisions, and the party wishing to depart from precedent carries the burden of argument). Moreover, decisions of the Federal Constitutional Court represent binding interpretations of the German constitution, the Grundgesetz. See Eberle, supra, at 970 n.22.

A. ORDINARY COURTS

The lowest ordinary courts are the Amtsgerichte, the
Municipal Courts (also known as Local Courts). See Germany: Law Digest, supra, at GER-10. Municipal Courts have jurisdiction over cases where the amount in controversy does not exceed 10,000 deutschmark ("DM"), approximately $5,412.00 American dollars. [*17] n11 Id. They also have exclusive jurisdiction over landlord-tenant disputes, family law, divorces, bankruptcy and nonlitigation proceedings such as probate and guardianship. See I Business Transactions, supra § 4.04[2][a][ii]. There is one Municipal Court per city or county and cases are heard by a single judge. See Germany: Law Digest, supra, at GER-10. Parties litigating in a Municipal Court may proceed pro se. See Astrid Stadler, The Law of Civil Procedure, in Introduction to German Law 357, 358 (Werner F. Ebke & Matthew W. Finkin, eds., 1996).


Parties may appeal decisions of the Municipal Courts to the Landgerichte ("LG"), the state District Courts (also known as Regional Courts). See Germany: Law Digest, supra, at GER-10. The District Courts' venue covers several Municipal Courts. See id. District Courts possess both appellate and original [*18] jurisdiction. See id.; I Business Transactions, supra § 4.04[2][a][ii]. In addition to reviewing the judgments of the Municipal Courts for findings of fact and conclusions of law, the District Courts are also courts of first resort in matters where the amount in controversy exceeds DM 10,000, or in cases not specifically assigned to the Municipal Courts or special courts. See Germany: Law Digest, supra, at GER-10; I Business Transactions, supra § 4.04[2][a][ii]. Specific District Court panels n12 hear appeals from the Municipal Courts, while other panels handle cases in which the District Courts have original jurisdiction. See I Business Transactions, supra § 4.04[2][a][ii]. Decisions of the District Courts rendered as appellate decisions reviewing the Municipal Courts' judgments are final; no further appeal to another court exists. See id.; Germany: Law Digest, supra, at GER-11; Stadler, supra, at 371. Although District Court panels are comprised of three judges, a single judge hears each case, unless the case is unusually complex, or is of fundamental importance. See Germany: Law Digest, supra, [*19] at GER-10; I Business Transactions, supra § 4.04[2][a][ii]. Parties appearing before the District Court must be represented by counsel. See Germany: Law Digest, supra, at GER-11; Stadler, supra, at 358.

n12 District Court panels, known as Chambers, are comprised of three judges. See Germany: Law Digest, supra, at GER-10; I Business Transactions, supra § 4.04[2][a][ii].

Insofar as a District Court was acting as a court of first resort, appeals for reasons of fact and/or law are heard by the Oberlandesgerichte ("OLG"), the Courts of Appeals (also known as Higher Regional Courts). See Germany: Law Digest, supra, at GER-11; I Business Transactions, supra § 4.04[2][a][iii]; Stadler, supra, at 371. Like the Municipal and District Courts, the Courts of Appeals are also state courts. Three judge panels called Senates hear civil appeals and five judge panels hear criminal appeals. See I Business Transactions, supra [*20] § 4.04[2][a][iii]. There are up to three Courts of Appeals in each state. See id.

The highest ordinary court is the Bundesgerichtshof ("BGH"), the Supreme Court (also known as the Federal Court of Justice). This is the highest court for criminal and civil cases. The Supreme Court reviews the decisions of the Courts of Appeals on points of law only. See Germany: Law Digest, supra, at GER-11. The Supreme Court's function, inter alia, is to ensure the uniform interpretation of the law. The Supreme Court hears cases only where (1) the sum involved exceeds DM 60,000 (approximately $32,471.00 U.S. dollars) n13; (2) a Court of Appeals has granted leave to appeal because the case is of fundamental legal importance; or (3) a Court of Appeals wishes to depart from an existing ruling of the Supreme Court. See Stadler, supra, at 372. The Senators of the civil section of the Supreme Court are comprised of five judges. See I Business Transactions, supra § 4.04[2][a][iv]. In order to assure uniformity of judicial decisions, however, the civil section and the criminal section each have nine judge panels known as Great Chambers which rule on cases [*21] in which one Senate intends to depart from the rulings of another Senate. See id.


B. SPECIAL COURTS

As stated supra, there are six special courts in Germany: (1) labor courts; (2) administrative courts; (3) social welfare courts; (4) tax courts; (5) constitutional courts; and (6) the Federal Patent Court. See I Business Transactions, supra § 4.04[2]. Labor courts have jurisdiction over disputes between employers and employees, collective bargaining agreements and the
regulation of trade unions. See Germany: Law Digest, supra, at GER-11; 1 Business Transactions, supra § 4.04[2][c][I]. Administrative courts have jurisdiction over matters involving zoning, immigration, state licenses, health, sanitation, transportation, regulation of the professions and the civil service. See Germany: Law Digest, supra at GER-11; 1 Business Transactions, supra § 4.04[2][b]. Further, administrative courts preside over claims against public authorities (federal, state or local) for violations of individual rights. See 1 Business Transactions, supra § 4.04[2][b]. Social welfare courts hear cases involving social security, public mandatory health insurance and aid for the unemployed or disabled. See Germany: Law Digest, supra, at GER-11; 1 Business Transactions, supra § 4.04[2][c][iii]. The structure of the labor, administrative and social welfare courts contains three levels of review. The respective special District Courts and Courts of Appeals represent the first two levels of review. The respective Federal Court (e.g., the Federal Labor Court, the Federal Administrative Court or the Federal Social Welfare Court) entertains the final appeal. See 1 Business Transactions, supra § 4.04[2][b][c].

Tax courts have jurisdiction over tax matters, including custom duties and taxes on international and foreign trade. See Germany: Law Digest, supra, at GER-11. Constitutional courts preside over all constitutional matters. The tax courts and constitutional courts have only two levels of review. Only one tax court and one constitutional court exist in each state. The next and final level of review is at the federal level by the Federal Tax Court or the Federal Constitutional Court. See Germany: Law Digest, supra, at GER-11. The Federal Constitutional Court (the "Bundesverfassungsgericht" or "BVerfG") reviews the law and decisions of other courts, including other Federal Courts, when challenged on constitutional grounds. See 1 Business Transactions, supra § 4.04[3][d]; Germany: Law Digest, supra, at GER-11.

As stated in supra note 9, state courts lack jurisdiction over patent or trademark matters. Instead, parties may appeal decisions of the Federal Patent Office directly to the Federal Patent Court. Appeals from decisions of the Federal Patent Court are heard by the Supreme Court on points of law only. See 1 Business Transactions, supra § 4.04[2][c][ii].

II. CLAIMS UNDER THE LAW OF NATIONS

Iwanowa asserts that "by knowingly utilizing unpaid, forced labor under inhuman conditions, [Defendants] violated the law of nations, including the Hague Convention and the Geneva Convention." (Compl. ¶ 40.) Defendants have moved to dismiss Iwanowa's claims under the law of nations based on (1) lack of subject matter jurisdiction; (2) failure to state a claim; and (3) expiration of the applicable limitations period.

A. MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

1. Standard for Dismissal

Pursuant to Federal Rule of Civil Procedure 12(b)(3), "whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction over the subject matter, the court shall dismiss the action." Thus, a motion to dismiss for lack of subject matter jurisdiction may be made at any time. See id.; Mortensen v. First Fed. Sav. & Loan Ass'n, 549 F.2d 884, 891 (3d Cir. 1977).

A defendant may attack a district court's subject matter jurisdiction in one of two ways. See Mortensen, 549 F.2d at 891. First, a defendant may challenge subject matter jurisdiction by asserting that the complaint, on its face, does not allege sufficient grounds to establish subject matter jurisdiction. See id.; see also Cardio-Medical Assocs. Ltd. v. Crozer-Chester Med. Ctr., 721 F.2d 68, 75 (3d Cir. 1983). In assessing a Rule 12(b)(1) motion based on the pleadings, the court "must assume that the allegations contained in the complaint are true." Cardio-Medical, 721 F.2d at 75; Mortensen, 549 F.2d at 891; see also Sitkoff v. BMW of North Am., Inc., 846 F. Supp. 380, 383 (E.D. Pa. 1994), aff'd, 92 F.3d 1172 (3d Cir. 1996). Under those circumstances, the court may dismiss the complaint only if it appears to a certainty that the plaintiff will not be able to assert a colorable claim of subject matter jurisdiction. See Kronmuller v. West End Fire Co. No.3 Fire Dep't of Borough of Phoenixville, 123 F.R.D. 170, 172 (E.D. Pa. 1988); Mortensen, 549 F.2d at 891.

A defendant may also challenge a federal court's jurisdiction by factually attacking the plaintiff's jurisdictional allegations as set forth in the complaint. See Mortensen, 549 F.2d at 891. In such circumstances, the "court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." Id. Thus, "no presumptive truthfulness attaches to plaintiffs' allegations, and the existence of disputed material facts [*26] will not preclude the trial court from evaluating for itself the merits of jurisdictional claims." Id. The court may consider affidavits, depositions and testimony to resolve factual issues bearing on jurisdiction. See Gotha v. United States, 36 V.I. 392, 115 F.3d 176, 179 (3d Cir. 1997). The plaintiff bears the burden of proving that the court has jurisdiction to adjudicate the claims in the complaint. See Mortensen, 549 F.2d at 891.

Although Defendants have not stated whether they consider their Rule 12(b)(1) motion to be a facial or factual attack, they have attached the Declaration of Professor Gerhard Laule to their reply brief. Furthermore, Iwanowa submitted the Declaration of Dr.
Ekkehard Schumann with her opposition brief. Therefore, this Court will evaluate the 12(b)(1) motion as a factual attack and consider the declarations that the parties have submitted.

Upon consideration of the Complaint, the relevant case and statutory law and the declarations the parties have submitted to the Court, this Court finds that Defendants' motion to dismiss the claims under the law of nations for lack of subject matter jurisdiction is without merit. [*27] As shown below, this Court has jurisdiction over the instant claims, pursuant to the Alien Tort Claims Act, 28 U.S.C. § 1350.

2. Alien Tort Claims Act

Iwanowa claims that the Alien Tort Claims Act ("ATCA"), 28 U.S.C. § 1350, grants this Court subject matter jurisdiction over her claims under customary international law. n14 Originally promulgated as part of the Judiciary Act of 1789, the ATCA provides that

the district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.


n14 The terms "law of nations" and "customary international law" are interchangeable. See Siderman de Blake v. The Republic of Argentina, 965 F.2d 699, 715 (9th Cir. 1992) (stating that customary international law is the direct descendant of the law of nations); Sanchez-Espinoza v. Reagan, 248 U.S. App. D.C. 146, 770 F.2d 202, 206 (D.C. Cir. 1985) ("As for the law of nations -- more so called 'customary international law':") JAMA v. Immigration and Naturalization Serv., 22 F. Supp. 2d 353, 362 (D.D.C. 1998) (noting that plaintiffs submitted treaties in support of their "claim under the law of nations or international law"); Doe I v. Islamic Salvation Front, 993 F. Supp. 3, 7 (D.D.C. 1998) ("The law of nations is currently known as international customary law.").

n15 There are various treaties known as the Hague Convention or the Geneva Convention. At oral argument, Iwanowa's attorneys stated that the Complaint references the Hague Convention No. IV Respecting the Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2277, T.S. 539 and the Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516. (See I Tr. at 18:22-19:1.)

n16 Had Iwanowa attempted to assert a claim under the Hague or Geneva Conventions, it would have been dismissed for lack of jurisdiction because only self-executing treaties, i.e., those that do not require legislation to make them operative, confer rights enforceable by private parties. See JAMA, 22 F. Supp. 2d at 362; Handel v. Arnukovic, 601 F. Supp. 1421, 1425 (C.D. Cal. 1985); Restatement (Third) of Foreign Relations Law § 111(4)(a) (1987). Courts have unanimously held that neither the Hague nor Geneva Conventions are self-executing. See Handel, 601 F. Supp. at 1425; Princz v. Federal Republic of Germany, 307 U.S. App. D.C. 102, 26 F.3d 1166, 1175 (D.C. Cir. 1994); Goldstar (Panama) S.A. v. United States, 967 F.2d 965, 968-69 (4th Cir. 1992); Tel-Oren v. Libyan Arab Republic, 233 U.S. App. D.C. 384, 726 F.2d 774, 808 (D.C. Cir. 1984) (per curiam) (Bork, J., concurring); Huynh Thi Anh v. Levi, 586 F.2d 625, 629 (6th Cir. 1978). Since neither the Hague nor Geneva Conventions provide a private right of action, they cannot provide a basis for suit under the ATCA. As discussed infra, however, although Iwanowa may not rely upon these treaties as independent sources of international law, she may use them as "evidence of an emerging norm of customary international law." See Kadic v. Karadzic, 70 F.3d 232, 238 n.1 (2d Cir. 1995).

[*28] The Complaint alleges that Defendants' use of forced labor violated both the Hague Convention and the Geneva Convention. n15 (Compl. P 40.) At oral argument, however, Iwanowa's attorneys clarified that Iwanowa is not asserting a claim under either of those treaties. (1 Tr. at 19:8-12.) Rather, she is asserting a claim under the law of nations and is merely relying on

[*29] As stated above, Iwanowa contends that Defendants' use of forced labor during World War II violates the law of nations. (Compl. P 40.) The ATCA confers federal subject matter jurisdiction when: "(1) an alien sues (2) for a tort (3) committed in violation of the law of nations (i.e., international law)." Kadic v. Karadzic, 70 F.3d 232, 238 (2d Cir. 1995). The ATCA grants district courts
subject matter jurisdiction to entertain "suits alleging

As a citizen and resident of Belgium, Iwanowa is an alien. She alleges that Defendants committed a tort by forcing her to perform unpaid, forced labor under inhuman conditions. Thus, she has satisfied the first and second requirements for jurisdiction under the ATCA. This Court must now determine whether Defendants' use of forced labor constitutes a violation of the law of nations.

a. Unpaid, Forced Labor Violates Law of Nations

"Customary international law results from a general and consistent practice of states followed by them from a sense of legal obligation." Restatement (Third) of Foreign Relations Law § 102(2) (1987). In other words, customary international law is comprised of such widely held fundamental principles of civilized society that they constitute binding norms on the community of nations.

The law of nations "may be ascertained by consulting the works of jurists, writing professedly on public law; or by the general usage and practice of nations; or by judicial decisions recognizing and enforcing that law." United States v. Smith, 18 U.S. 153, 160-61, 5 L. Ed. 57 (1820); Kadic, 70 F.3d at 238; JAMA, 22 F. Supp. 2d at 362. Further, courts may rely upon treaties (such as the Hague and Geneva Conventions) as evidence of an emerging norm of customary international law. See Kadic, 70 F.3d at 238 & n.1; JAMA, 22 F. Supp. 2d at 362. If this inquiry reveals that forced labor violates "well-established, universally recognized norms of international law, as opposed to idiosyncratic legal rules, then federal jurisdiction exists under the [ATCA]." Kadic, 70 F.3d at 239.

The use of unpaid, forced labor during World War II violated clearly established norms of customary international law. The Complaint alleges that Iwanowa "was literally purchased, along with 38 other children from Rostock [sic] n 17, by a representative of [Ford Werke]." (Compl. P 25.) Such assertions suffice to support an allegation that Defendants participated in slave trading. See Doe v. Unocal Corp., 963 F. Supp. 880, 892 (C.D. Cal. 1997); National Coalition Gov't of the Union of Burma v. Unocal, Inc., 176 F.R.D. 329, 349 (C.D. Cal. 1997) (allegations that defendants "knowingly accepted the benefit of and approved the use of forced labor' may be sufficient to state a claim for participation in slave trading). As shown below, all of the sources of international law expressly provide that the enslavement of civilians during war time violates the law of nations.

First, the Nuremberg Tribunals held that the enslavement and deportation of civilian populations during [*32] World War II constitutes a crime against humanity in violation of customary international law. See R. Jackson, The Nuremberg Case xiv-xx (1971). The Nuremberg trials "for the first time made explicit and unambiguous what was theretofore, as the tribunal has declared, implicit in International Law, namely, that ... to exterminate, enslave or deport civilian populations, is an international crime." Id. (citing The Final Report to the President by Justice Robert H. Jackson on the Nuremberg Trials (Oct. 6, 1946)). Further, Nuremberg Principle IV(b) provides that the "deportation to slave labor ... of civilian populations of or in occupied territory" constitutes both a "war crime" and a "crime against humanity". Nuremberg Charter, annexed to the London Agreement on War Criminals, Aug. 8, 1945, art. 6, 59 Stat. 1544, 82 U.N.T.S. 279; see also Rome Statute of the International Criminal Court, Adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on July 17, 1998, art. 7 P I(c), (d).

Second, courts have repeatedly held that "deportation to slave labor" violates the law of nations. [*33] See Handel, 601 F. Supp. at 1426 n.2; Kadic, 70 F.3d at 239 (holding that conduct related to slave trade violates the law of nations); Prinz, 26 F.3d at 1180 (acknowledging that forced labor of civilians during World War II violated international law); n18 Siderman de Blake, 965 F.2d at 715 (finding that "the universal and fundamental rights of human beings identified by Nuremberg -- rights against genocide, enslavement, and other inhuman acts ... are the direct ancestors of the universal and fundamental norms recognized as jus cogens."); Tel-Oren, 726 F.2d at 781 (Edwards, J., concurring) (reiterating that genocide and slavery are "heinous actions -- each of which violates definable, universal and obligatory norms"); LG [District Court] Bremen, 1 O 2889/90, at 7 (1998) (F.R.G.) ["LG Bremen (1998)""] n19 ("Among these prevailing rules of international law is the law that prisoners of war and civilians in occupied territories may not be murdered or enslaved."); Krakauert v. Federal Republic of Germany, LG [District Court] Bonn, 1 O 134/92, at 21 (1997) (F.R.G.) ["Krakauert I, LG [334] Bonn (1997)""] (same), rev'd on other grounds, OLG [Court of Appeals] Cologne ["Krakauert II, OLG Cologne (1998)"] J 7 U 222/97 (1998) (F.R.G.). Thus, the case law and statements of the Nuremberg Tribunals unequivocally establish that forced labor violates customary international law.
n18 Although not germane to this action, Judge Wald, in a strong dissent, found that "Germany clearly violated jus cogens norms by forcibly extracting labor" from the captive population. *Prinz*, 26 F.3d at 1180 (Wald, J., dissenting). The Prinz Court held that plaintiff could not recover money damages from Germany for the forced labor he performed during World War II because Germany is immune from suit pursuant to the Federal Sovereign Immunities Act. Judge Wald dissented on the grounds that Germany waived its sovereign immunity by violating the jus cogens norms of international law condemning enslavement. Id. at 1179 (Wald, J., dissenting).

A jus cogens norm "is a norm accepted and recognized by the international community of States as a whole from which no derogation is permitted ...." Vienna Convention of the Law of Treaties, May 23, 1969, art. 53, 1155 U.N.T.S. 332; Restatement (Third) of Foreign Relations Law § 102, cmt. k (1996) (adopting Vienna Convention's definition of jus cogens). Jus cogens norms are a narrow subset of the norms recognized as customary international law. See Committee of United States Citizens Living in Nicaragua v. Reagan, 859 F.2d 929, 940 (D.C. Cir. 1988). The same tools used to ascertain customary international law are used to determine whether a norm of customary international law has attained jus cogens norm status. See *Siderman de Blake*, 965 F.2d at 715. A rule of customary international law becomes a jus cogens norm if the international community recognizes the norm as so fundamental that it is nonderogable. See *Reagan*, 859 F.2d at 940.

Judge Wald concluded that because of the universal consensus on the existence of norms against enslavement, the customary international law condemning enslavement had attained jus cogens status: "What could be more elementary than a prohibition against eviscerating a person's human dignity by thrusting him into the shackles of slavery?" *Prinz*, 26 F.3d at 1180 (Wald, J., dissenting). [*35]

n19 German opinions generally do not include the litigants' names. However, along with the translations, counsel provided this Court with the parties' names where available. In those instances, the Court shall include the parties' names when discussing or citing those cases. All pinpoint citations in German cases refer to the English translations on file with this Court. All of the German cases were translated from German to English by either TransPerfect Translations, Inc. in Washington, D.C., or by Plaintiff's counsel, Deborah Sturman, with the assistance of Gabrielle Friedman, a German speaker.

As is common in civil law jurisdictions, a substantial number of German decisions are never published in official reporters. In such cases, this Court will cite to the journal or legal periodical in which the decision appeared. All citations include the name of the court, e.g., "BGH" (Supreme Court), "LG" (District Court), "OLG" (Court of Appeals) or "OVG" (Administrative Court of Appeals) and the year the decision was issued. In addition, citations to the lower courts include the location of the court, e.g., Bonn, Bremen, Cologne or Muenster.

[**36**]

Defendants assert that even if forced labor violates the law of nations, Iwanowa has failed to establish subject matter jurisdiction under the ATCA because (1) no private right of action exists for violations of the law of actions and (2) the ATCA only applies to state actors. The Court shall address each of these arguments separately:

b. Private Right of Action for Violations of the Law of Nations

Defendants argue that the law of nations mimics treaties in that neither is self-executing and thus, neither is enforceable by private parties absent legislation. Defendants contend that the ATCA merely provides district courts with jurisdiction to address an alien's claims under the law of nations in limited instances; namely, those in which Congress has enacted specific legislation authorizing a private right of action for such violations.

The majority of courts addressing claims under the law of nations have rejected Defendants' narrow interpretation of the ATCA. Instead, those courts have concluded that the ATCA provides both subject matter jurisdiction and a cause of action for claims alleging violations of customary international law. See *JAMA*, 22 F. Supp. 2d at 362-63; [*37*] *Abebe-Jira v. Negewo*, 72 F.3d 844, 848 (11th Cir. 1996) ("we read the [ATCA] as requiring no more than an allegation of a violation of the law of nations in order to invoke section 1350."); *Kadic*, 70 F.3d at 236 (concluding that the ATCA "appears to provide a remedy for the appellants' allegations of violations related to genocide, war crimes and official torture"); *In re Estate of Ferdinand Marcos, Human Rights Litig.*, 25 F.3d 1467, 1475 (9th Cir. 1994) ("We thus join the Second Circuit in concluding that the [ATCA], 28 U.S.C. § 1350, creates a cause of action for violations of specific, universal and obligatory
international human rights standards,” and “nothing more than a violation of the law of nations is required to invoke section 1350.”); Xuncax v. Gramajo, 886 F. Supp. 162, 179 (D. Mass. 1995) (“§ 1350 yields both a jurisdictional grant and a private right to sue for tortious violations of international law ... without recourse to other law as a source of the cause of action.”); Paul v. Avril, 812 F. Supp. 207, 212 (S.D. Fla. 1993) (“The plain language of the [*38] ATCA and the use of the words ‘committed in violation’ strongly implies that a well pled tort[,] if committed in violation of the law of nations, would be sufficient [to give rise to a cause of action].”); But see Tel-Oren, 726 F.2d at 810-20 (Bork, J., concurring). n20

n20 In his concurring but highly criticized opinion in Tel-Oren, Judge Bork concluded that only those rules of international law which explicitly provide that an individual may sue to enforce them may be used to infer a cause of action in U.S. courts. See Tel-Oren, 726 F.2d at 812 (Bork, J., concurring). Judge Bork reasoned that because the ATCA refers to "the law of nations" and to "a treaty of the United States" without distinguishing between the two, they must stand in parity. See id. Judge Bork found that customary international law is similar to non-self-executing treaties which do not provide a private right of action. See id. He further explained that interpreting the ATCA as providing plaintiffs with a private right of action for violations of the law of nations means that the ATCA must also provide a private right of action for violations of a treaty, even those that are non-self-executing. See id. According to Judge Bork, inferring a private right of action under the ATCA for violations of the law of nations would mean "that all existing treaties became, and all future treaties will become in effect, self-executing, when ratified. This conclusion stands in flat opposition to almost two hundred years of our jurisprudence". Id. at 820. Thus, under Judge Bork's view, most of the rules of customary international law are similar to non-self-executing treaties; they have no impact upon individuals.

Commentators have criticized Judge Bork's opinion in Tel-Oren because it would, in effect, render the ATCA useless since nations (as opposed to individuals) rarely bring suit in U.S. courts for violations of customary international law. See Anthony D' Amato, Judge Bork's Concept of the Law of Nations is Seriously Mistaken, 79 Am. J. Int'l L. 92, 98 (Jan. 1985); see also Virginia A. Melvin, Tel-Oren v. Libyan Arab Republic: Redefining the Alien Tort Claims Act, 70 Minn. L. Rev. 211 (1985) (criticizing Judge Bork's approach). Furthermore, Judge Bork's reasoning is flawed because it is based on the erroneous assumption that customary international law is non-self-executing. See Tel-Oren, 726 F.2d at 812 (Bork, J., concurring). However, it is well-established that international law is "self-executing" and is applied by courts in the United States without any need for it to be enacted or implemented by Congress." Louis Henkin, International Law as Law in the United States, 82 Mich. L. Rev. 1555, 1561 (1984).

[*39]

The only case in this Circuit addressing the issue, JAMA, followed this line of cases holding that the ATCA provides both subject matter jurisdiction and a cause of action for violations of the law of nations. See JAMA, 22 F. Supp. 2d at 363. The JAMA Court noted that, after the Second Circuit's decision in Filartiga v. Pena-Irala, 630 F.2d 876 (2d Cir. 1980) n21; Congress could have amended the ATCA when it enacted the Torture Victim Protection Act of 1991 ("TVPA") n22 to reflect its disagreement with the courts' interpretation of the ATCA. See JAMA, 22 F. Supp. 2d at 363. Indeed, the TVPA is codified as a statutory note to the ATCA. See supra note 22. Congress, however, did not address whether the ATCA provides a private cause of action for violations of international law although it enacted the TVPA to codify the cause of action (torture) recognized in Filartiga under the ATCA. See Kadic, 70 F.3d at 241.

n21 The Filartiga Court recognized a cause of action for official torture under the ATCA.

n22 The TVPA provides in relevant part:

(a) Liability -- An individual who, under actual or apparent authority, or color of law, of any foreign nation --

(1) subjects an individual to torture shall, in a civil action, be liable for damages to that individual; or

(2) subjects an individual to extrajudicial killing shall, in a civil action, be liable for damages to the individual's legal representative, or to any person who may be a claimant in an action for wrongful death.


[*40]

The Eleventh Circuit was also persuaded by both Congress' silent endorsement of Filartiga, and subsequent
interpretations of the ATCA, as providing a private right of action. See Abebe-Jira, 72 F.3d at 848. The Abebe-Jira Court noted that it was evident from the legislative history that Congress was aware that

the TVPA would establish an unambiguous and modern basis for a cause of action that has been successfully maintained under an existing law, section 1350 of the Judiciary Act of 1789 [the ATCA], which permits Federal district courts to hear claims by aliens for torts committed in violation of the law of nations.

Abebe-Jira, 72 F.3d at 848 (quoting H.R. Rep. No. 367, 102d Cong., 2d Sess. 3, reprinted in 1992 U.S.C.C.A.N. 84, 86). Based on this statement, the Abebe-Jira Court concluded that Congress recognized that courts were interpreting the ATCA as conferring both a forum and a private right of action to aliens alleging violations of international law. 72 F.3d at 848.

This Court concludes that if Congress had disagreed with the courts' finding of a private right of action under the ATCA, Congress [*41] could have, and likely would have, amended the ATCA to reflect its intent. Further, the "committed in violation" language of the [ATCA] suggests that Congress did not intend to require an alien plaintiff to invoke a separate enabling statute as a precondition to relief under the [ATCA]." Abebe-Jira, 72 F.3d at 847; see also Paul, 812 F. Supp. at 212. Accordingly, this Court finds that the ATCA provides both subject matter jurisdiction and a private right of action for violations of the law of nations. See JAMA, 22 F. Supp. 2d at 362-63; Abebe-Jira, 72 F.3d at 847-48; Kadic, 70 F.3d at 236.

c. Does the Law of Nations Apply to Private Actors?

Defendants contend that the Complaint does not allege violations of international law because such norms bind only states and its agents, not private corporations such as Defendants. While the Third Circuit has never addressed this issue, the Second Circuit recently held that

we do not agree that the law of nations, as understood in the modern era, confines its reach to state action. Instead, we hold that certain forms of conduct violate [*42] the law of nations whether undertaken by those acting under the auspices of a state or only as private individuals.

Kadic, 70 F.3d at 239 (emphasis added) (stating that individuals who engage in slave trading are liable for violations of the law of nations). Similarly, in his often cited concurring opinion, Judge Edwards, although refusing to apply the ATCA to cover torture by non-state actors, stated that there are a "handful of crimes to which the law of nations attributes individual responsibility", such as piracy and slave-trading. Tel-Oren, 726 F.2d at 794-95 (Edwards, J., concurring); see also Unocal Corp., 963 F. Supp. at 891-92 (same); National Coalition Gov't, 176 F.R.D. at 348 (stating that private company utilizing slave labor may be subject to liability under the ATCA); JAMA, 22 F. Supp. 2d at 362 (stating that "depending upon the nature of the offense, an ATCA claim may be brought against private individuals as well as state actors."); Doe v. Islamic Salvation Front (FIS), 993 F. Supp. 3, 8 (D.D.C. 1998) (following Kadic and holding that murder, mutilation, [*43] cruel treatment and torture, kidnaping and summary executions constitute violations of international law whether committed by state or private actors); Beanal v. Freeport-McMoRan, Inc., 969 F. Supp. 362, 371 (E.D. La. 1997) (following Kadic and holding that genocide violates the law of nations whether undertaken by state or nonstate actor).

In determining that private individuals who engage in slave trading violate the law of nations, the Kadic Court noted that "individuals may be held liable for offenses against international law, such as piracy, war crimes, and genocide." Kadic, 70 F.3d at 240. As stated supra, deportation of civilian populations to slave labor is a war crime. See supra Part II.A.2.a; Nuremberg Charter, 82 U.N.T.S. 279. The Kadic Court further noted that section 702 of the Restatement (Third) of Foreign Relations Law n23 identifies violations that are actionable when committed by a state, whereas section 404 of the Restatement n24 lists a more limited category of violations of universal concern. See Kadic, 70 F.3d at 240. The Kadic Court concluded that the inclusion of "slave trade" within [*44] both sections 702 and 404 of the Restatement demonstrates that this is an offense of "universal concern" for which non-state actors may be liable. See id.

n23 Section 702 provides that:

A state violates international law if, as a matter of state policy, it practices, encourages, or condones (a) genocide,
(b) slavery or slave trade,
(c) the murder or causing the disappearance of individuals,
(d) torture or other cruel, inhuman, or degrading treatment or punishment,
(e) prolonged arbitrary detention,
(f) systematic racial discrimination, or
(g) a consistent pattern of gross violations of internationally recognized human rights.


n24 Section 404 provides that:
A state has jurisdiction to define and prescribe punishment for certain offenses recognized by the community of nations as of universal concern, such as piracy, slave trade, attacks on or hijacking of aircraft, genocide, war crimes, and perhaps certain acts of terrorism, even where [no other basis of jurisdiction] is present.


[*45]

Several pre-Kadic decisions have stated that only state actors are liable for violations of international law. See In re Estate of Ferdinand E. Marcos Human Rights Litig., 978 F.2d 493, 501-02 (9th Cir. 1992); Sanchez-Espinoza v. Reagan, 248 U.S. App. D.C. 146, 770 F.2d 202, 206-07 (D.C. Cir. 1985). These cases are inapposite. First, both of these cases expressly relied on Judge Edwards's concurring opinion in Tel-Oren. See Sanchez-Espinoza, 770 F.2d at 206-07 (concluding that based on the reasons stated by Judge Edwards in Tel-Oren, the law of nations does not reach private, non-state conduct); In re Estate of Ferdinand E. Marcos, 978 F.2d at 502 (citing Judge Edwards's concurring opinion in Tel-Oren). As indicated supra, however, although Judge Edwards refused to "extend the definition of the 'law of nations' absent direction from the Supreme Court", to cover torture by non-state actors, he stated that there are a "handful of crimes to which the law of nations attributes individual responsibility", such as piracy and slave-trading. Tel-Oren, 726 F.2d at 792, 794-95 (Edwards, J., concurring); [*46] see also Unocal Corp., 963 F. Supp. at 891 (stating that after Tel-Oren, individual liability remained for a handful of private acts, including piracy and slave trading); Islamic Salvation Front, 993 F. Supp. at 8 (stating that "the opinions in Tel-Oren did not hold that international law requires state action").

Second, Kadic was decided after Tel-Oren, Sanchez-Espinoza and In re Estate of Ferdinand E. Marcos. Kadic's recent interpretation of international law in 1995 carries greater weight than the conflicting interpretations of the three concurring opinions in Tel-Oren, which examined international law as it stood over fifteen years ago. See Islamic Salvation Front, 993 F. Supp. at 8. Customary international law is not static; thus, courts must interpret it as "it has evolved and exists among the nations of the world today." Id. (quoting Kadic, 70 F.3d at 238); see also Tel-Oren, 726 F.2d at 777 (Edwards, J. concurring) ("The 'law of nations' is not stagnant and should be construed as it exists today among the nations of the world.").

Third, the Ninth Circuit seems [*47] to have distanced itself from its statement in In re Estate of Ferdinand E. Marcos that only state actors are liable for violations of international law. In Hamid v. Price Waterhouse, 51 F.3d 1411 (9th Cir. 1995), the Ninth Circuit ignored its earlier comment in In re Estate of Ferdinand E. Marcos and merely stated that it did "not need to reach the issue of whether the law of nations applied to private as opposed to governmental conduct." Id. at 1417. n25

n25 One court has criticized the Ninth Circuit's statement in In re Estate of Ferdinand E. Marcos as "without significant analysis". See National Coalition Gov't, 176 F.R.D. at 348 (noting that in contrast to In re Estate of Ferdinand E. Marcos, Kadic provides a reasoned analysis of the scope of a private individual's liability for violations of the law of nations).

Fourth, none of these case -- Sanchez-Espinoza, In re Estate of Ferdinand E. Marcos or Tel-Oren -- involved slave labor [*48] or slave trading. Sanchez-Espinoza involved allegations that, in violation of the law of nations, U.S. executive officials (including President Ronald Reagan), and organizations operating paramilitary training camps in the U.S., assisted and financed the Contra forces in their attempt to overthrow the Nicaraguan government. 770 F.2d at 204-07. Both In re Estate of Ferdinand E. Marcos and Tel-Oren involved allegations of torture committed by non-state actors. "Because this action involves allegations of forced labor and because slave trading is included in that 'handful of crimes' to which the law of nations attributes individual responsibility, this action raises questions not addressed" in cases holding that private actors are not liable for violations of international law. National Coalition Gov't, 176 F.R.D. at 348.

No logical reason exists for allowing private individuals and corporations to escape liability for universally condemned violations of international law merely because they were not acting under color of law. This Court is inclined to agree with Kadic, and its progeny, and find that private entities using slave labor are [*49] liable under the law of nations. However, this Court need not make that determination. As shown, infra, Iwanowa has pled sufficient facts to allege that Defendants acted as agents of the state.

d. Defendants Were De Facto State Actors

Defendants concede that the ATCA applies to de facto state actors. (Def's Reply Br. at 22) (citing Filartiga, 630 F.2d at 854). Even assuming arguendo that the ATCA only applies to state actors, the Complaint pleads sufficient facts to support a claim that from 1942-1945, Defendants were acting as de facto state actors. The Complaint alleges that the Nazi army abducted
adolescents in occupied territories, including Iwanowa, and transported them to Germany to work as slave laborers. (Compl. PP 24-25.) The Complaint asserts also that Sauckel, the Nazi Plenipotentiary General for the Allocation of Labor, encouraged German industries to bid for forced laborers in order to meet production quotas and to increase their profits. (Id. PP 9-10.) The Complaint further alleges that as a result of Sauckel's solicitation, Ford Werke purchased forced laborers, including Iwanowa, from the Nazis. (Id. PP 10, 25.) [*50]

Hence, the Complaint alleges that Defendants acted in close cooperation with Nazi officials in compelling civilians to perform forced labor. This constitutes an allegation that Defendants were de facto state actors and are therefore, liable under all possible interpretations of Nazi law when it utilized forced laborers.

n26 It is well established that where a private actor works closely with a state actor in effecting a deprivation of individual rights, each is liable. See Adickes v. S. H. Kress & Co., 398 U.S. 144, 152, 26 L. Ed. 2d 142, 90 S. Ct. 1598 (1970); Dennis v. Sparks, 449 U.S. 24, 27-28, 66 L. Ed. 2d 185, 101 S. Ct. 183 (1980); Collins v. Womancare, 878 F.2d 1145, 1154 (9th Cir. 1989).

The fact that Ford Werke pursued its own economic interests, or that its own employees (as opposed to Nazi officials), as alleged, mistreated [*51] Iwanowa, does not preclude a determination that Ford Werke acted as an agent of, or in concert with, the German Reich. See BGH [Supreme Court], NJW 1973, 1549, at 9-10 (F.R.G.) ["BGH (1973")]. n27 Indeed, German courts have held that private companies using forced labor as a result of Nazi directives, were acting as agents of the German Reich. See id.; Staecher v. I.G. Farben, BGH [Supreme Court], RzW 1963, 525, at 4-5 (F.R.G.) ["Staecher, BGH (1963)"]; LG [District Court] Frankfurt, NJW 1960, 1575, at 2-3 (F.R.G.) ["LG Frankfurt (1960)"] (stating that "because of the course taken by the war, any and all German industrial companies, whether operated as public law or private law entities, were required to put to work the foreign laborers assigned to them" by the Nazi regime); see also Krakauer I, LG Bonn (1997), at 15 (stating that concentration camp prisoners remained under the Nazi's official authority during their work deployment).

n27 When citing to the Supreme Court,

"BGH" is the name of the court, "NJW" or "RzW" refers to the legal periodical where the opinion was published, followed by the year of publication and the page where the opinion begins. For example, "BGH [Supreme Court], NJW 1999, 135" means that it is a Supreme Court decision, published in NJW in 1999, starting on page 135.

[*52]

Consequently, even if this Court were to find that no liability attaches to private actors for violations of international law, by showing that (1) she is an alien (2) suing for a tort (forced labor/slave trade) (3) committed by a de facto state actor (4) in violation of the law of nations, Iwanowa has established subject matter jurisdiction under the ATCA. Accordingly, Defendants' motion to dismiss Iwanowa's claims under international law for lack of subject matter jurisdiction is denied.

B. MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Defendants have moved, pursuant to Federal Rule of Civil Procedure 12(b)(6), to dismiss Iwanowa's claims under the law of nations on three separate grounds: (1) the Paris Reparations Treaty subsumed all individual claims arising out of World War II into each nation's reparations claims against Germany; (2) the claims are time-barred; and (3) the U.S.S.R. waived Iwanowa's claims. The Court shall address these arguments separately.

1. Standard for Dismissal for Failure to State a Claim

A motion to dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(6), may be granted only if, accepting all well-pleaded allegations in the [*53] complaint as true, and viewing them in the light most favorable to plaintiff, plaintiff is not entitled to relief. See Nami v. Fauser, 82 F.3d 63, 65 (3d Cir. 1996); Holder v. City of Allentown, 987 F.2d 188, 194 (3d Cir. 1993); Bartholomew v. Fischl, 782 F.2d 1148, 1152 (3d Cir. 1986). The Court may not dismiss the complaint unless plaintiff can prove no set of facts which would entitle him to relief. See Conley v. Gibson, 355 U.S. 41, 45-46, 2 L. Ed. 2d 80, 78 S. Ct. 99 (1957); Graves v. Lowery, 117 F.3d 723, 726 (3d Cir. 1997); Unger v. National Residents Matching Program, 928 F.2d 1392, 1395 (3d Cir. 1991); Angelastro v. Prudential-Bache Sec., Inc., 764 F.2d 939, 944 (3d Cir. 1985). "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." Scheuer v. Rhodes, 416 U.S. 232, 236, 40 L. Ed. 2d 90, 94 S. Ct. 1683 (1974). In setting forth a valid claim, a party is required only to plead "a short plain statement of the claim showing that the pleader is entitled to relief. [*54]
"Fed. R. Civ. P. 8(a). To withstand a motion to dismiss, "a plaintiff is not required to provide evidence of or prove the truthfulness of his complaint." Quinones v. Szorc, 771 F.2d 289, 291 n.3 (7th Cir. 1985). The court, however, is not required to accept conclusory allegations. See Papasan v. Allain, 478 U.S. 265, 286, 92 L. Ed. 2d 209, 106 S. Ct. 2932 (1986). Thus, the "complaint nonetheless must set forth sufficient information to suggest that there is some recognized legal theory upon which relief may be granted." District of Columbia v. Air Florida, Inc., 243 U.S. App. D.C. 1, 750 F.2d 1077, 1078 (D.C. Cir. 1984).


2. Post-War Germany

On May 8, 1945, the Nazi army surrendered unconditionally. See Germany: Law Digest, supra, at GER-1. The Allied Powers' immediate objective was to completely demilitarize, disarm, and dismember Germany to the extent deemed necessary for future peace and security in Europe. See Protocol of Proceeding of the Crimea (Yalta) Conference, Sec. III. Feb. 11, 1945, 3 Bevans 1013 ("Yalta Conference"). To implement this plan, the Allied Powers divided Germany into four occupation zones, American, British, French and Soviet, and assumed government control in their respective [*56] occupation zones. See Werner Maser, Nuremberg: A Nation on Trial 33 (1979); Germany: Law Digest, supra at GER-1. The most senior military commanders for each of the Allied Powers, Eisenhower (U.S.), Zhukov (U.S.S.R.), Montgomery (U.K.) and DeLaatigue de Tassigny (France), formed the Inter-Allied Control Council with legislative authority over Germany. See Maser, supra, at 33. Although Berlin was situated in the Soviet zone, all four Allied Powers occupied and governed Berlin by inter-allied authority. See Germany: Law Digest, supra, at GER-1.

The occupying powers could not agree on Germany's political and economic future. The U.S., France and the U.K. ("Western Powers") intended to create a democratic German state. In furtherance of this end, they (1) gave the Germans substantial administrative responsibility beginning in 1946, (2) set up state (Lander) governments with state parliaments in their zones of occupation (the "Western Zones") and (3) helped the Germans draft a constitution, the Basic Law, in 1948. See Germany: Law Digest, supra, at GER-1. The Soviets objected to the Western Powers' goals regarding the future political status of Germany, specifically, [*57] their efforts to create a fully sovereign Germany. See Marian Nash Leich, Contemporary Practice of the United States Relating to International Law, 85 Am. J. Int'l L. 155, 164 (1991). As shown infra, the U.S.S.R. and the Western Powers also disagreed on the issue of reparations. Consequently, in March, 1948, the U.S.S.R. left the Inter-Allied Control Council, thus initiating the division of Germany. See Germany: Law Digest, supra, at GER-1.

On May 23, 1949, the Western Powers established the F.R.G. in the Western Zones. In response to the creation of the F.R.G., that same year, the Soviets formed the G.D.R. in the Soviet Zone. See Germany: Law Digest, supra, at GER-1. In 1954, the Western Powers ended the occupation regime in the F.R.G. See Protocol on Termination of the Occupation Regime in the Federal Republic of Germany, Oct. 23, 1954, 6 U.S.T. 4117, 331 U.N.T.S. 219. However, the Western Powers explicitly reserved their rights with respect to Berlin and Germany as a whole, and to participate in the conclusion of a final peace treaty. See id.

a. Yalta and Potsdam

In February, 1945, prior to Germany's surrender, Roosevelt, Churchill [*58] and Stalin, the heads of the U.S., the U.K. and the U.S.S.R., respectively, met in Yalta to decide upon post-war policies. See Seymour J. Rubin, The Washington Accord Fifty Years Later: Neutrality, Morality, and International Law, 14 Am. U. Int'l L. Rev. 61, 62 (1998). They agreed that "Germany must pay in kind for the losses caused by her to the Allied nations in the course of the war." Yalta Conference, Sec. V.1. The U.S. the U.K. and the U.S.S.R. agreed that the Allied nations which bore the main burden of the war, suffered the greatest losses and organized the victory over Germany, would receive reparations from Germany. Id.

Shortly after the war, the U.S., the U.K. and the U.S.S.R. met again, this time in Potsdam, and reiterated their Yalta understanding – to make Germany pay reparations. See Protocol of Proceedings Approved at Berlin (Potsdam), Sec. III. Aug. 2, 1945, 3 Bevans 1207 ("Potsdam Conference"). They decided to extract reparations from Germany in the form of machines, other
industrial equipment and German external assets, rather
than in monetary payments. See Henry A. Turner, Jr.,
The Two Germanies Since 1945, at 12 (1987). They
[*59] further agreed that the U.S.S.R. would take
reparations in the form of (1) industrial equipment from
the Soviet Zone and (2) German external assets in
Finland, Bulgaria, Hungary, Romania and Eastern
Austria. See Inter-Allied Reparation Agency, First
Report of the Secretary General for 1946 ("IARA 1946
Report"), at 8. In addition, since most of Germany's
production industry was located in the Western Zones,
the U.S. and the U.K. agreed to give the U.S.S.R.
twenty-five percent of the industrial equipment extracted
from the Western Zones. See id. Since the Soviet Zone
was mostly agricultural, the U.S.S.R. agreed to ship food
and raw materials to the Western Zones as payment for
fifteen percent of the industrial equipment it would
receive from the Western Zones. See id. Further, the
U.S.S.R. agreed to satisfy Poland's claims from its share
of reparations. See id. In turn, the U.S. and the U.K.
would satisfy the reparations claims of the rest of the
Allies from the removal of industrial equipment in the
Western Zones and from German external assets in
countries other than those set aside for the U.S.S.R. See
id.

b. Paris Reparations Treaty

In January, [*60] 1946, the U.K. and the U.S.,
along with the governments of sixteen other nations
n28 met in Paris to decide upon the method of distributing
reparations between those nations as to whom no
decision had been reached at the Potsdam Conference.

n29 The Paris conference culminated in the enactment of
the Paris Reparations Treaty, which provided that each
signatory nation would receive a percentage of the total
reparations the Western Powers collected based on their
war related damages and contribution to the Allied war
effort. See IARA 1946 Report, at 8; see also Paris
Reparations Treaty, Part I, Art. 1. The signatory nations
agreed that Germany would pay reparations in the form
of industrial and capital equipment, merchants ships,
German external assets and monetary gold. n30 See Paris
Reparations Treaty, Part I, Art. 1.A, Part III. Further, the
Western Powers agreed to dismantle Germany's
industrial plants located in their respective zones and
transfer them, along with any other German assets, to the
Inter-Allied Reparation Agency n31 by the end of 1947,
for redistribution as war reparations. See IARA 1946
Report, at 8.

Pursuant to the Paris Reparations Treaty, each
signatory nation’s share of reparations was supposed to
satisfy any and all claims held by a nation, or [*62] its
nationals, against the German government or German
companies. Specifically, the Paris Reparations Treaty
provided that:

The Signatory Governments agree among themselves
that their respective shares of reparation, as determined
by the present Agreement, shall be regarded by each of
them as covering all its claims and those of its nationals
against the former German Government and its
Agencies, of a governmental or private nature arising out
of the war ....

or "Art. 2.A") (emphasis added). In sum, the Paris
Reparations Treaty authorized the Western Powers to
seize Germany's assets for distribution to the signatory
nations in accordance with the Treaty, thereby satisfying
any claims the signatory nations, or their nationals, might
have against the German government or its "Agencies".

The German Supreme Court has held that the term
"Agencies" encompasses private corporations using
forced laborers, such as Defendants. See BGH (1973), at
9; Staucher, BGH (1963), at 5. Thus, the parties agree
that Article 2.A of the Paris Reparations Treaty
subsumed the claims of the signatory nations, and their
[*63] nationals, and hence precluded nationals of the
signatory nations from bringing forced labor claims
against the German government or German companies.
(See II Tr. at 5:13-18.) n32 As stated by Professor
Neuborne at oral argument, n33 it would have been illogical to allow "private litigation against corporations all of whose assets were being seized, dismantled and taken and literally distributed to the people on whose behalf the litigation would have been brought." (II Tr. at 10:3-8.)

n32 "II Tr." refers to the transcript of the August 5, 1999 oral argument.

n33 Burt Neuborne, a professor at New York University School of Law, submitted various declarations to the Court in support of Iwanowa's claims and argued on Iwanowa's behalf at oral argument.

However, the Paris Reparations Treaty did not subsume all individual claims. The War had produced a class of persons categorized as "nonrepatriable victims of German action" who had no national government to protect their interests. Consequently, the reparations [*64] scheme set forth in the Paris Reparations Treaty could not satisfy their claims. In order to assist nonrepatriable victims, the signatories inserted a provision in the Paris Reparations Treaty establishing a fund to assist nonrepatriable persons. Article 8 titled Allocation of a Reparation Share to Nonrepatriable Victims of German Action provides in relevant part:

In recognition of the fact that large numbers of persons have suffered heavily at the hands of the Nazis and now stand in dire need of aid to promote their rehabilitation but will be unable to claim the assistance of any Government receiving reparation from Germany, the Governments of the United States, France, the United Kingdom, Czechoslovakia and Yugoslavia, in consultation with the Inter-Governmental Committee on Refugees, shall as soon as possible work out in common agreement a plan on the following general lines:

A. A share of reparations consisting of all the non-monetary gold found by the Allied Armed Forces in Germany and in addition a sum not exceeding 25 million dollars shall be allocated for the rehabilitation and resettlement of nonrepatriable victims of German action.

**D. The persons eligible [*65] for aid under the plan in question shall be restricted to true victims of Nazi persecution and to their immediate families and dependents, in the following classes:

- ***(iii) Nationals of countries formerly occupied by the Germans who cannot be repatriated or are not in a position to be repatriated within a reasonable time....

Part I, Art. 8 ("Article 8" or "Art. 8"). This fund, however, would not be used to satisfy the nonrepatriable victims' individual claims. Section H provides that "the fund shall be used, not for the compensation of individual victims, but to further the rehabilitation or resettlement of persons in the eligible classes." Paris Reparations Treaty, Part I, Art. 8, § H. Furthermore, Article 8 preserved the right of nonrepatriable victims to press claims against a future German government. Specifically, section I provides that "nothing in this Article shall be considered to prejudice the claims which individual refugees may have against a future German Government, except to the amount of the benefits that such refugees may have received from the sources referred to... above." Paris Reparations Treaty, Part I, Art. 8, § I.

Although Article 8 applies [*66] only to stateless refugees asserting war related claims against the government, Iwanowa asserts that Article 8, § I is evidence that the Paris Reparations Treaty contemplated that individuals like herself could, and would, assert such claims at a later date. This Court disagrees.

As shown in Part II.B.3.a, infra, when the terms of a treaty are unambiguous, courts must interpret the treaty's terms according to their ordinary plain meaning. See Santovincenzo v. Egan, 284 U.S. 30, 40, 76 L. Ed. 151, 52 S. Ct. 81 (1931) (holding that court must construe terms of a treaty terms "in their ordinary meaning"); United States v. M.H. Pulaski Co., 243 U.S. 97, 106, 37 S. Ct. 346, 61 L. Ed. 617 (1917) (stating that there "is a strong presumption that the literal meaning [of a treaty] is the true one"); Brink's Ltd. v. South African Airways, 93 F.3d 1022, 1027 (2d Cir. 1996) (stating that interpretation of a treaty must begin "with the literal language" and where the language is "reasonably susceptible of only one interpretation, [the court's] task of interpretation ends there."); Victoria Sales Corp. v. Emery Air Freight, Inc., 917 F.2d 705, 707 (2d Cir. 1990) [*67] (stating that when the text is unambiguous, "a court shall not, through interpretation, alter or amend the treaty.").

Article 8's plain language indicates that the Paris Reparations Treaty contemplated that nonrepatriable victims of German action could bring individual claims against the German government in the future. There is no evidence, however, that the signatories to the Paris Reparations Treaty envisioned that persons other than nonrepatriable victims could press individual claims against the German government or its agencies. Since Iwanowa has never alleged that she is a nonrepatriable victim of German action, within the meaning of Article 8, this Court finds that only Article 2.A, precluding individual claims, is relevant to this action.

c. Halt of Reparations

Tensions between the Western Powers and the
U.S.S.R. developed over the issue of reparations. The Soviets felt that they were entitled to seize as much of Germany's industrial equipment as possible as compensation for the Nazis' destruction and ravaging of the U.S.S.R. Accordingly, they dismantled and shipped entire factories, motor vehicles and railroad rails from the Soviet Zone to the U.S.S.R. See id. at 13. In addition, they seized a portion of the current production of German factories in the Soviet Zone and shipped it to the U.S.S.R. See id.

These actions were unacceptable to the Western Powers. First, because the Soviets never shipped food and raw materials to the Western Zones, as agreed in Potsdam, those Zones (which did not produce enough food to feed their population) had to export industrial products to pay for the cost of importing food. Id. at 14. Second, the reduction in Germany's industrial productivity as a result of reparations to the Soviets shifted the cost of feeding the Germans to the Western Powers. Id. at 13-14. The Western Powers feared that the extraction of reparations would destroy Germany's economy and they, specifically the U.S., would have had to bear responsibility for providing relief to the Germans. See John L. Gaddis, The United States and the Origins of the Cold War 1941-1947, at 221-22 (1972).

Pursuant to the Potsdam Conference and the Paris Reparations Treaty, the Western Powers were supposed to complete the removal of industrial equipment from their respective Zones by the end of 1947 so that the Inter-Allied [*69] Reparation Agency could complete distribution of reparations by June, 1948. See Resolution by the Inter-Allied Reparation Agency, in II Foreign Relations, 734, 734 (1948). However, taxpayers in the U.S., the U.K. and France began pressuring their governments to reduce costly shipments of food to the Germans in the Western Zones. Id. Consequently, in May, 1946, the U.S. halted the dismantling of German industries in its Zone and halted reparations shipments to the Soviet Zone. See Turner, supra, at 14. Shortly thereafter, the U.K. and France did the same. See id. Further, by mid-1947, the Western Powers had suspended the allocation to the Inter-Allied Reparation Agency of all but 250 of the more than 1,600 plants they had estimated would be available for distribution to the Allies. See Inter-Allied Reparation Agency, Report of the Secretary General for the Year 1948 ("IARA 1948 Report"), at 5. Although the Western Powers later provided the Inter-Allied Reparation Agency with a list of 858 plants that would be available as reparations, by July, 1948, the Western Powers had allocated only 147 of those plants. Id. at 5-7; see generally Recommendation [*70] Concerning the Retention in Germany or Removal as Reparations of the German Industrial Plants Listed by the Humphrey Committee, Mar. 31, 1949, U.S.-Fr.-U.K., 63 Stat. 2901, T.I.A.S. 2142 (agreeing to dismantle less than ten (10) of the 167 plants reviewed on the ground that the rest of the plants would contribute more to Europe's economic recovery if they remained in the Western Zones). Furthermore, the plants that the Western Zones allocated to the Inter-Allied Reparation Agency "contained a disproportionate amount of machines and equipment of markedly inferior quality or condition." IARA 1948 Report. at 7. Consequently, the Allies never received their respective share of reparations, as negotiated in the Paris Reparations Treaty.

d. Transition Agreement

The German Reich's military and political collapse in 1945, resulted in state bankruptcy such that the amount of debt precluded complete satisfaction of all liabilities. See BVerfG [Federal Constitutional Court], NJW 1996, 2717, at 3 (F.R.G.) ["BVerfG (1996)"]). By 1952, the F.R.G. had not been able to pay its war debts, including the reparations set forth in the Paris Reparations Treaty. Furthermore, as stated [*71] above, the Western Powers feared that the payment of reparations was hindering the F.R.G.'s ability to rebuild its economy. See Gaddis, supra, at 221-22. Consequently, on May 26, 1952, the Western Powers and the F.R.G. entered into the Transition Agreement, whereby the Western Powers agreed to defer payment of their share of reparations until a later date. Specifically, the Transition Agreement provides that:

The problem of reparation shall be settled by the peace treaty between Germany and its former enemies or by earlier agreements concerning this matter. The Three Powers undertake that they will at no time assert any claim for reparation against the current production of the Federal Republic [of Germany].

Ch. 6, Art. 1. Further, in addition to deferring payment of reparations, by agreeing to never seek reparations from the F.R.G.'s current production, the Western Powers encouraged and gave the F.R.G. the freedom it needed to rebuild its industries and stabilize its economy.

e. London Debt Agreement

Many of the signatories to the Paris Reparations Treaty agreed with the Western Powers' philosophy, as evidenced by the Transition Agreement -- that [*72] allowing West Germany to rebuild its economy was more important than collecting their respective shares of reparations. See LG Bremen, at 8 (stating that the signatories to the London Debt Agreement viewed "the rebuilding and economic consolidation of the [F.R.G.] as urgent -- in comparison to compensation and reparations payments."). Thus, on February 27, 1953, Belgium, Canada, Ceylon, Denmark, France, Greece, Iran, Ireland, Italy, Liechtenstein, Luxembourg, Norway, Pakistan, Spain, Sweden, Switzerland, South Africa, the U.K., the
U.S. and Yugoslavia, on the one hand, and the F.R.G., on the other, entered into the London Debt Agreement.

The Preamble to the London Debt Agreement clearly states its intent. It provides in relevant part:

Desiring to remove obstacles to normal economic relations between the [F.R.G.] and other countries and thereby to make a contribution to the development of a prosperous community of nations;

Considering that, for about twenty years, payments on German external debts have not, in general, conformed to the contractual terms; that from 1939 to 1945 the existence of a state of war prevented any payments from being made with respect to many of such debts; that since 1945 such payments have been generally suspended; and that the [F.R.G.] desires to put an end to this situation;

Considering that [France, the U.K. and the U.S.] have, since 8th May, 1945, furnished to Germany economic assistance which has substantially contributed to the rebuilding of the German economy, with the effect of facilitating a resumption of payments on the German external debts;

**Considering that the Governments of [France, the U.K. and the U.S.] set up ... the Tripartite Commission on German Debts for the purpose of preparing and for working out, with the Government of the [F.R.G.], with other interested Governments and with representatives of creditor and debtor interests, a plan for the orderly overall settlement of German external debts;

**Considering that the Governments of [France, the U.K. and the U.S.] set up ... the Tripartite Commission on German Debts for the purpose of preparing and for working out, with the Government of the [F.R.G.], with other interested Governments and with representatives of creditor and debtor interests, a plan for the orderly overall settlement of German external debts;

Considering that [the Tripartite] Commission informed the representatives of the Government of the [F.R.G.] that the Governments of [France, the U.K. and the U.S.] were prepared to make important economic concessions with respect to the priority of their claims for post-war economic assistance over all other foreign claims against Germany and German nationals and with respect to the total amount of these claims, on condition that a satisfactory and equitable settlement of Germany's prewar externals debts was achieved;

Considering that such a settlement of German external debts could be achieved only by a single overall plan which would take into account the relative positions of the various creditor interests, the nature of various categories of claims and the general situation of the [F.R.G.].

London Debt Agreement, Preamble. As stated by the Preamble, the London Debt Agreement's main purpose was to enable the F.R.G. to establish normal economic relations with other nations and to settle its external debts. See id.; see also OVG [Administrative Court of Appeals] Muenster, NJW 1998, 2302, at 8 (F.R.G.) ["OVG Muenster (1998)"]. In order to allow the F.R.G. to settle its external debts, the London Debt Agreement established a list of the debts that the Agreement would settle, along with a schedule of payments. n34

n34 Article 4 titled Debits to be Settled, provides that the London Debt Agreement would settle the following debts:

(a) non-contractual pecuniary obligations, the amount of which was fixed and due before 8th May, 1945;
(b) pecuniary obligations arising out of loan or credit contracts entered into before 8th May, 1945;
(c) pecuniary obligations arising out of contracts other than loan or credit contracts and due before 8th May, 1945.

London Debt Agreement, Art. 4.

[*75]

The London Debt Agreement's objective, "to achieve the reestablishment of orderly and normal economic relations with foreign [nations], could only be accomplished" if the F.R.G. could avoid excessive claims for wartime and pre-war debt. See BGH n35 (1973), at 16; see also Staucher, BGH (1963), at 3. To relieve the F.R.G. from excessive claims, the signatories to the London Debt Agreement agreed to defer the collection of reparations, as defined and scheduled by the Paris Reparations Treaty, until the F.R.G. rebuilt its economy. In effect, the London Debt Agreement established the equivalent of a bankruptcy workout plan designed to defer consideration of certain private liabilities until the bankrupt entity (the F.R.G.) regained its financial health. See Krakauer I, LG Bonn (1997), at 23, 28.

n35 As shown supra, the BGH, the Supreme Court, is Germany's highest court for civil and criminal matters.

Article 5 of the London Debt Agreement sets forth the claims that would be deferred. Article 5(2) [*76] titled Claims Excluded from the Agreement is particularly relevant to Iwanowa's claims. Article 5(2) provides:

Consideration of claims arising out of the Second World War by countries which were at war with or were occupied by Germany during that war, and by nationals of such countries, against the Reich [or] agencies of the Reich ... shall be deferred until the final settlement of the
problem of reparations.

Thus, Article 5(2) defers consideration of the war related claims of the Allies, or their nationals, against the German government or its agencies. n36

n36 Article 5(1) deferred claims arising out of World War I. Article 5(3) deferred the claims of countries which were not at war with, or occupied by, Germany during World War II. Article 5(4) addressed the claims of countries that were incorporated in, or allied with, Germany during World War II. Article 5(2) is the only provision pertinent to Iwanowa's claims since she was national of the U.S.S.R. during World War II, a nation which was at war with, and had been occupied by, Germany when her cause of action arose.

[*77]

Although Article 5(2) of the London Debt Agreement only addressed claims "against the Reich or agencies of the Reich", the Supreme Court has interpreted the London Debt Agreement as covering claims against private corporations such as Defendants. See BGH (1973), at 9; Staucher, BGH (1963), at 11. Specifically, German courts have held that, pursuant to Article 5(2) of the London Debt Agreement, private corporations that utilized unpaid labor during World War II were entitled to the same deferral defense as the German government. See BGH (1973), at 9-11; Staucher, BGH (1963), at 11 (holding that Article 5(2) of the London Debt Agreement precluded Polish plaintiff's forced labor claims against a German company). n37

n37 The Supreme Court found that the legislative history surrounding the London Debt Agreement revealed that its drafters discussed forced labor claims by foreign concentration camp prisoners in the context of Article 5(2). See Staucher, BGH (1963), at 3. The Supreme Court further noted that it was apparent from the negotiations preceding execution of the London Debt Agreement, and from the text of the Agreement, that its drafters intended Article 5(2) to protect not only the German government, but also the F.R.G.'s industry and currency from forced labor claims. See id.

[*78]

f. Two-Plus-Four Treaty

The London Debt Agreement precluded adjudication of any war related claims by the Allies, and their nationals, against German defendants "until the final settlement of the problem of reparations." Art. 5(2). Although the London Debt Agreement was silent as to when this "final settlement" would occur, as stated supra, the Transition Agreement specifically dictated that "the problem of reparation shall be settled by the peace treaty between Germany and its former enemies or by earlier agreements concerning this matter." Ch. 6, Art. 1.

On September 12, 1990, the F.R.G. and the G.D.R. on one side and the U.S., the U.K., France and the U.S.S.R. on the other, entered into the Two-Plus-Four Treaty, effective March 15, 1991. The Two-Plus-Four Treaty reunified West and East Germany and terminated the occupying Allied Powers' rights and responsibilities over Germany. See Two-Plus-Four Treaty, Art. 7. n38 In accordance with the Transition Agreement, the Two-Plus-Four Treaty, a peace treaty between a unified Germany and its former adversaries, settled the problem of reparations. See Transition Agreement, Ch. 6, Art. 1; see also QVG Muenster [*79] (1998), at 12 (stating that the final settlement of the reparations issue within the context of Article 5(2) of the London Debt Agreement was necessarily linked to Germany's reunification "because only a government which represented all of Germany [could] assert or waive German counterclaims.").

n38 Article 7 of the Two-Plus-Four Treaty provides:

(1) The French Republic, the U.S.S.R., the U.K. and the U.S. hereby terminate their rights and responsibilities relating to Berlin and to Germany as a whole. As a result, the corresponding, related quadripartite agreements, decisions and practices are terminated and all related Four Power institutions are dissolved.

(2) The United Germany shall have accordingly full sovereignty over its internal and external affairs.

In Article 7 of the Two-Plus-Four Treaty, the Allied Powers relinquished the rights and responsibilities that they expressly reserved at the Potsdam Conference concerning Berlin and all of Germany. See supra note 38. Although [*80] the Two-Plus-Four Treaty does not expressly state that the phase of German reparations has ended, it is clear from Article 7 that the Allied nations can demand no further reparations payments from Germany. See Krakauer I, LG Bonn (1997), at 24-27; LG Bremen (1998), at 11. Further, the Two-Plus-Four Treaty's silence on the issue of reparations can be explained, in part, by the fact that between 1953 and
The F.R.G. resolved the issue of reparations by way of international agreements with the individual Allied nations. n39 (See Letter from German Ministerial Director Horst Teltschik to Chancellor Helmut Kohl of 3/15/90, at 2.) Indeed, the F.R.G.'s Federal Government has stated that "45 years after the war, the reparations issue is de facto finished, with, owing to the lack of concrete, contractually agreed upon obligations, owing to the renunciations of our former enemies, and owing to already completed efforts of Germany." (Id.); see also OVG Muenster (1998), at 12 (stating that the Two-Plus-Four Treaty must be viewed before the backdrop of (1) the reparations payments which Germany had made during the first post-war years and (2) the ongoing extensive payments toward [*81] the restitution of Nazi wrongs which Germany made to individual persons on the basis of international treaties or contracts with private organizations).

n39 Since the end of World War II, the F.R.G. has established several major compensation programs and entered into at least two dozen treaties or agreements with, inter alia, the U.S., the U.K., the former U.S.S.R., Poland, Belgium, France and Israel, providing for post-war reparations programs to compensate persons who suffered injuries attributable to the Nazi war effort. See, e.g., Exchange of Notes, Mar. 30, 1993, F.R.G.-Uk.-Bel.-Rus.; Transition Agreement; 1952 Federal Act on Compensation for Victims of National Socialist Persecution; 1981 Compensation for Non-Jewish Victims Fund. To date, the German government has paid more than $100 billion in compensation to Nazi victims. See Stuart E. Eizenstat, Statement by Under Secretary of State for Economic, Business and Agricultural Affairs to Executive Monitoring Committee (Apr. 15, 1999), reprinted at FinanceNet, Property Restitution in Central and Eastern Europe, at 8 (visited Sept. 13, 1999) <http://www.financenet.gov/financenet/state/nycnet/Eizenstat.htm>.

[82]

Thus, German courts have held that the signing of the Two-Plus-Four Treaty constitutes the "final settlement of the problem of [World War II] reparations" for purposes of the London Debt Agreement. See OVG Muenster (1998), at 9; LG Bremen (1998), at 12; Krakauer I, LG Bonn (1997), at 23. Since the Two-Plus-Four Treaty is the final settlement of the reparations issue, the London Debt Agreement no longer bars review of the war related claims of the Allies or their nationals against the German government or German companies. See OVG Muenster (1998), at 8-10. As stated by the Administrative Court of Appeals:

The Two Plus Four Treaty causes the lapse of the postponement agreed upon in [the London Debt Agreement] because the issue of reparations in connection with World War II will no longer arise after the conclusion of this Treaty. It is apparent from the preamble that the Treaty was concluded with the goal of agreeing upon the definite settlement with regard to Germany. This makes it clear that there will be no additional (peace) treaty settlements concerning legal questions in connection with World War II and the occupation of Germany.

Id. at 11. [*83] The Administrative Court of Appeals concluded that "it was the intent of the signatory parties that there be no future treaty settlement of the reparations issue with regard to Germany; thus, the reparations issue was 'settled." Id. at 12. In short, the Two-Plus-Four Treaty lifted the London Debt Agreement's moratorium on consideration of the Allies', or their nationals', claims against the German government or German companies. See LG Bremen (1998), at 13; Krakauer I, LG Bonn (1997), at 24.

3. London Debt Agreement Contemplates Individual Claims

Defendants argue that the Paris Reparations Treaty permenantly subsumed all private claims arising out of World War II, thereby precluding the instant claims. Iwanowa agrees that the intent of the Paris Reparations Treaty was to subsume government and individual claims arising out of the war into the Treaty and preclude private litigation. (See II Tr. at 41:23-42:5.) She asserts, however, that "the entire structure of the Paris [Reparations] Agreement was axed ... because it was self-defeating, and we moved instead to the London Debt Agreement." (II Tr. at 42:8-12.) Iwanowa argues:

If, in fact, the [Paris [*84] Reparations Treaty] subsumed [private] claims once and for all, and there were no individual claims left, why was it necessary to say [in the London Debt Agreement] that the individual claims would be postponed?

It was because the people who were drafting the London Debt Agreement knew that this was a new regime, that the old regime, in which these claims would have been subsumed, because there was no room for them, was simply over, and that there was a new regime in which these claims had to be thought about, but they wanted to postpone them to give the German corporations a chance to regain their economic health.

(II Tr. at 48:15-25.) In effect, Iwanowa argues that the London Debt Agreement superseded the Paris
Defendants assert that the London Debt Agreement could not have deferred consideration of individual claims because such claims were subsumed into the governmental claims of the signatories to the Paris Reparations Treaty. Defendants assert that the London Debt Agreement only deferred consideration of the claims of governments. (II Tr. at 51:13-20.) German courts have rejected this argument and held that the London Debt Agreement deferred [*85] consideration of private claims against the German government and its agencies, including German companies. See BGH (1973); BGH [Supreme Court], VIZR 186/71, at 3 (1964) (F.R.G.) ["BGH (1964)"]; Staucher, BGH (1963), at 3; Krakauer I, LG Bonn (1997), at 23. Specifically, German courts have held that forced labor claims "are to be viewed as claims arising from World War II within the meaning of [the London Debt Agreement], the review of which must be postponed until the final settlement of the reparations issue." Krakauer I, LG Bonn (1997), at 23-24. Until recently, German courts have denied forced labor claims as "unfounded at the time" or "invalid at the present time"; in each instance, the courts have cited Article 5(2) of the London Debt Agreement. See BGH (1973), at 16-17; BGH (1964), at 3; Staucher, BGH (1963), at 1; Krakauer I, LG Bonn (1997), at 24 ("all complaints by former forced laborers, even to the extent that they were directed against the business operations themselves, were dismissed as currently without merit.").

As shown above, the Supreme Court has repeatedly held that the London Debt Agreement deferred individual forced labor claims [*86] until the final settlement of the reparations issue. See BGH (1973), at 16-17; BGH (1964), at 3; Staucher, BGH (1963), at 1. However, the Supreme Court has never held that the claims they were deferring were cognizable. The Supreme Court refused to address the merits of forced labor claims and merely held that courts could not consider forced labor claims for the time being. Id. As such, the issue before this Court is not whether the London Debt Agreement deferred consideration of private claims -- the German Supreme Court has already answered that question in the affirmative -- but whether such claims are cognizable or are they permanently barred by the Paris Reparations Treaty. For the reasons discussed below, this Court finds that individual claims are cognizable under the London Debt Agreement; however, only the government of the country of which the forced laborer was a national at the time the forced labor claims arose can pursue such claims. In short, Iwanowa must press her individual claims through the governments of the successor states to the U.S.S.R.

a. Standards for Interpreting Treaties

A treaty is contract between or among sovereign nations. [*87] See Trans World Airlines, Inc. v. Franklin Mint Corp., 466 U.S. 243, 253, 80 L. Ed. 2d 273, 104 S. Ct. 1776 (1984); Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n, 443 U.S. 658, 675, 61 L. Ed. 2d 823, 99 S. Ct. 3055 (1979). General rules of construction apply to treaties. See Trans World Airlines, 466 U.S. at 262 (Stevens, J., dissenting) (citing Ware v. Hylton, 3 Dalh. 199, 240-41, 1 L. Ed. 568 (1796)). Treaties, like "other contracts ... are to be read in the light of the conditions and circumstances existing at the time they were entered into, with a view to effecting the objects and purposes of the [nations] thereby contracting," Trans World Airlines, 466 U.S. at 262 (Stevens, J., dissenting) (quoting Rocca v. Thompson, 223 U.S. 317, 331-32, 56 L. Ed. 453, 32 S. Ct. 207 (1912)). The parties' intentions dictate the interpretation of a treaty. See United States v. Choctaw Nation, 179 U.S. 494, 531-33, 45 L. Ed. 291, 21 S. Ct. 149 (1900). As with other contracts, there "is a strong presumption that the literal meaning [of a treaty] is the true one". [*88] United States v. M.H. Pulaski Co., 243 U.S. 97, 106 (1917). Thus, interpretation of a treaty must begin "with the text of the treaty and the context in which the written words are used." Air France v. Saks, 470 U.S. 392, 397, 84 L. Ed. 2d 289, 105 S. Ct. 1338 (1985) (citing Maximov v. United States, 373 U.S. 49, 53-54, 10 L. Ed. 2d 184, 83 S. Ct. 1054 (1963)); see also Brink's Ltd. v. South African Airways, 93 F.3d 1022, 1027 (2d Cir. 1996) (stating that interpretation of a treaty must begin "with the literal language."). A court interpreting a treaty must construe its terms "in their ordinary meaning as understood by the international community. See Santovincenzo v. Egan, 284 U.S. 30, 40, 76 L. Ed. 151, 52 S. Ct. 81 (1931); The Pizarro, 15 U.S. 227, 2 Wheat. 227, 246, 4 L. Ed. 226 (1817); see also Trans World Airlines, 466 U.S. at 262-63 (Stevens, J., dissenting). Where the language of a treaty is "reasonably susceptible of only one interpretation, [the court's] task of interpretation ends there." Brink's Ltd., 93 F.3d at 1027 (quoting Buonocore v. Trans World Airlines, 900 F.2d 8, 9-10 (2d Cir. 1990)); [*89] see also Choctaw Nation, 179 U.S. at 531. In such cases, courts must "be governed by the text -- solemnly adopted by the governments of many separate nations -- whatever conclusions might be drawn from the intricate drafting history". Chan v. Korean Air Lines, Ltd., 490 U.S. 122, 134, 104 L. Ed. 2d 113, 109 S. Ct. 1676 (1989). Courts must give effect to the treaty's terms "in the manner and to the extent which the parties have declared, and not otherwise." The Amiable Isabella, 19 U.S. 1, 72, 5 L. Ed. 191 (1821). When the text is unambiguous, "a court shall not, through interpretation, alter or amend the treaty." Victoria Sales Corp. v. Emery Air Freight, Inc., 917 F.2d 705, 707 (2d Cir. 1990) (citing Chan, 490 U.S. at 134); see also The Amiable Isabella, 19 U.S. at 71 (holding that "to alter, amend, or add to any treaty, by inserting any clause, whether small or great, important or trivial,
would be ... an usurpation of power, and not an exercise of judicial functions."). When construing a treaty, the court must give the terms their ordinary meaning in context of the treaty, and [*90] unless the terms are unclear, "it should rarely be necessary to rely on extrinsic evidence in order to construe a treaty." *Xerox Corp. v. United States*, 41 F.3d 647, 652 (Fed. Cir. 1994).

However, when the text of a treaty is unclear, courts may resort to extrinsic evidence to aid in its interpretation. See *Chan*, 490 U.S. at 134 (citing *Air France v. Saks*, 470 U.S. 392, 84 L. Ed. 2d 289, 105 S. Ct. 1338 (1985)); see also *Choctaw Nation*, 179 U.S. at 531; *Brink's Ltd.*, 93 F.3d at 1027. The courts "may look behind the written words to the history of the treaty, the negotiations, and the practical construction adopted by the parties." *Air France*, 470 U.S. at 396 (citation omitted). Treaties that are susceptible of multiple interpretations "shall be liberally construed, so as to carry out the apparent intention of the parties to secure equality and reciprocity between them." *De Geoffroy v. Riggs*, 133 U.S. 258, 271, 33 L. Ed. 642, 10 S. Ct. 295 (1890); see also *Air France*, 470 U.S. at 396.

b. Interpretation of Article 2.A of the Paris Reparations Treaty [*91]*

Article 2.A of the Paris Reparations Treaty provides that each signatory country's respective share of reparations, as calculated and set forth by the Treaty, covers "all its claims and those of its nationals against the former German Government and its Agencies, of a governmental or private nature arising out of the war". Paris Reparations Treaty, Part I, Art.2.A. Article 2.A's primary language is susceptible of only one interpretation -- that governmental and individual claims against Germany or its agencies arising out of the war were subsumed in each nation's share of reparations. Indeed, Plaintiff and Defendants agree that this is the proper interpretation of Article 2.A. n40 "When the parties to a treaty both agree as to the meaning of a treaty provision, and that interpretation follows from the clear treaty language, [the court] must, absent extraordinarily strong contrary evidence, defer to that interpretation." *Sumitomo Shoji Am., Inc. v. Avagliano*, 457 U.S. 176, 185, 72 L. Ed. 2d 765, 102 S. Ct. 2374 (1982). Thus, this Court need not go further in interpreting Article 2.A.

n40 The parties disagree, however, on whether the Paris Reparations Treaty subsumed individual claims temporarily or permanently.

 [*92]*

c. Interpretation of Article 5(2) of the London Debt Agreement

The London Debt Agreement states that "consideration of claims arising out of the Second World War by countries which were at war with or were occupied by Germany during that war, and by nationals of such countries, against the Reich or agencies of the Reich ... shall be deferred until the final settlement of the problem of reparations." London Debt Agreement, Art. 5(2) (emphasis added). It is evident from the text of the London Debt Agreement that nationals of countries which were at war with Germany may have individual claims against Germany and its agencies, separate and apart from those claims asserted by their countries. Defendants argue that Article 5(2) merely defers the claims of governments but does not revive individual claims because under the Paris Reparations Treaty, those claims were subsumed into the claims held by their respective nations.

 Defendants' interpretation of the London Debt Agreement is not plausible. First, Article 5(2)'s deferral of claims brought by Allied nationals would be meaningless unless its drafters believed that such nationals possessed individual claims arising out [*93]* of World War II. Second, Defendants' construction of Article 5(2) would render the term "and by nationals of such countries" superfluous. It is a cardinal principle of construction that courts shall interpret contracts, including treaties, so as to give meaning to each provision rather than rendering some provisions, or portions thereof, superfluous. See *Sullivan v. Kidd*, 254 U.S. 433, 439, 65 L. Ed. 344, 41 S. Ct. 158 (1921) ("all parts of a treaty are to receive a reasonable construction, with a view to giving a fair operation to the whole."); *De Geoffroy*, 133 U.S. at 270 ("It is a rule, in construing treaties as well as laws, to give a sensible meaning to all their provisions, if that be practicable."); *United States v. State of Washington*, 873 F. Supp. 1422, 1429 (W.D. Wash. 1994) (holding that "a treaty should not be interpreted so as to render one part inoperative"), rev'd in part on other grounds, 135 F.3d 618 (9th Cir. 1998); see also Restatement (Second) of Contracts § 203(a) (1981) (stating that "an interpretation which gives a reasonable, lawful and effective meaning to all the terms is preferred to [*94]* an interpretation which leaves a part unreasonable, unlawful, or of no effect.").

Third, the London Debt Agreement does not refer to the claims of nationals only once; it also refers to individual claims in Article 5(3) which provides in relevant part:

Consideration of claims, arising during the Second World War, by countries which were not at war with or occupied by Germany during that war, and by nationals of such countries, against the Reich and agencies of the Reich ... shall be deferred until the settlement of these claims can be considered in conjunction with the settlement of the claims specified in [Article 5(2)].
London Debt Agreement, Art. 5(3) (emphasis added). Thus, the only reasonable interpretation of Article 5 of the London Debt Agreement is that its drafters and signatories contemplated that nationals of the neutral countries (Article 5(3)) and of the Allied nations (Article 5(2)) retained individuals claims, separate from the claims held by the governments of their respective nations.

d. London Debt Agreement Supersedes Paris Reparations Treaty

The language of the London Debt Agreement is inconsistent with the language of [*95] the Paris Reparations Treaty. Article 2.A of the Paris Reparations Treaty subsumed the individual claims of the nationals of the Allied nations into their respective country's share of reparations. However, Article 5(2) of the London Debt Agreement contemplates that nationals of the Allied nations may have individual claims arising out of World War II, separate from the claims held by their respective nations. Iwanowa reconciles the inconsistency between Article 2.A of the Paris Reparations Treaty and Article 5(2) of the London Debt Agreement by arguing that the drafters of the London Debt Agreement recognized that the old regime providing for reparations to the Allied nations pursuant to the Paris Treaty and subsuming individual claims, "was simply over, and that there was a new regime in which [individual] claims had to be thought about". (II Tr. at 48:20-23.) This Court finds that to the extent the Paris Reparations Treaty and the London Debt Agreement conflict, the London Debt Agreement is controlling.

A later statute or treaty must be harmonized with existing treaties to the extent possible. See Menominee Tribe v. United States, 391 U.S. 404, 413, 20 L. Ed. 2d 697, 88 S. Ct. 1705 (1968); [*96] Cook v. United States, 288 U.S. 102, 119, 77 L. Ed. 641, 33 S. Ct. 305 (1913); Whitney v. Robertson, 124 U.S. 190, 193, 31 L. Ed. 386, 8 S. Ct. 456 (1888); Committee of United States Citizens Living in Nicaragua v. Reagan, 859 F.2d 929, 936 (D.C. Cir. 1988). However, it has long been the rule that when a subsequent inconsistent law cannot be reconciled with a prior treaty, the subsequent law is deemed to abrogate the treaty to the extent of the inconsistency, without specific words of abrogation. See Breaud v. Greene, 523 U.S. 371, 376, 140 L. Ed. 2d 529, 118 S. Ct. 1352 (1998) ("when a statute which is subsequent in time is inconsistent with a treaty, the statute to the extent of conflict, renders the treaty null."); Reid v. Covert, 354 U.S. 1, 18, 1 L. Ed. 2d 1148, 77 S. Ct. 1222 (1957); Whitney, 124 U.S. at 194; Bell v. Office of Personnel Mgmt., 169 F.3d 1383, 1386 (Fed. Cir. 1999). By the same token, if there is an irreconcilable conflict between a subsequent treaty and a prior treaty between the same nations, relating to the same subject matter, the new treaty [*97] is controlling and must be deemed to abrogate the prior inconsistent treaty or provision therein. See id.; see also Fotochrome, Inc. v. Copal Co., Ltd., 517 F.2d 512, 518 n.4 (2d Cir. 1975) (finding that where two countries that were parties to a treaty later become signatories to a multilateral convention covering the same subject matter, the convention is controlling).

It is assumed that when signatories to a treaty enact a subsequent treaty relating to the same subject matter covered by the prior treaty, the signatories have the earlier treaty in mind. See Farley v. Metro-North Commuter R.R., 865 F.2d 33, 36 (2d Cir. 1989) (stating that when the legislature enacts a provision... it has in mind previous statutes relating to the same subject matter.) (quoting 2A N. Singer, Sutherland's Statutes and Statutory Construction § 51.02 (Sands 4th ed. 1984)); International Union of Elec., Radio and Machine Workers, AFL-CIO-CLC v. Westinghouse Elec. Corp., 631 F.2d 1094, 1110 (3d Cir. 1980) (Van Dusen, J., dissenting) (stating that "in terms of legislative intent, it is assumed that whenever the legislature enacts a provision it [*98] has in mind previous statutes relating to the same subject matter"); Domato v. Jack Phelan Chevrolet GEO, Inc., 927 F. Supp. 283, 292 (N.D. Ill. 1996) (same). The Western Powers were actively involved in negotiating and drafting the Paris Reparations Treaty and the London Debt Agreement. Article 2.A of the Paris Reparations Treaty addressed the claims of nationals. Article 5(2) of the London Debt Agreement also addressed the claims of nationals. Hence, both treaties relate to the same subject matter. As stated above, treaties on the same subject must be construed together so that effect is given to every provision unless there is an irreconcilable conflict between the treaties, in which case the latter supersedes the earlier.

Article 2.A of the Paris Reparations Treaty bars individual claims against Germany or its agencies. Article 5(2) of the London Debt Agreement defers individual claims against Germany or its agencies. Thus, there exists an irreconcilable conflict between Article 2.A of the Paris Reparations Treaty and Article 5(2) of the London Debt Agreement. As such, the canons of statutory interpretation dictate that Article 5(2) of the London Debt Agreement, [*99] as a provision in the later treaty, supersedes Article 2.A of the Paris Reparations Treaty.

n41 The history surrounding post-war Germany supports this conclusion. The reparations agreed to in the Paris Reparations Treaty were supposed to satisfy individual and governmental claims arising out of World War II. Due to the failure of the reparations program, however, see supra Parts II.B.2.c & d, and the Allies' determination that rebuilding the F.R.G.'s
economy was more important than extracting reparations, by 1952, such claims had not been satisfied. Had the signatories to the Paris Reparations Treaty received their share of reparations, there would not have been any claims to defer in the London Debt Agreement because such claims would have already have been satisfied by the reparations. However, since the claims which should have been settled by the Paris Reparations Treaty, including individual claims, were never satisfied, it was logical for the Allies to, in effect, revive such claims, by way of the London Debt Agreement, so that they could be addressed at a later date when the F.R.G. was economically stable.

[*100]

e. Iwanowa Cannot Press Individual Claims in a Judicial Forum

As further discussed in infra Part V, the fact that the London Debt Agreement contemplates individual claims is not tantamount to a finding that such claims may be asserted in a judicial forum. Indeed, the London Debt Agreement indicates that all claims arising out of World War II, including individual claims, may only be pursued through government-to-government negotiations. n42


(1) Interpretation of Article 5(3) of the London Debt Agreement [*101]

As stated above, pursuant to Article 5(3), "consideration of claims, arising during the Second World War, by countries which were not at war with or occupied by Germany during that war, and by nationals of such countries, against the Reich and agencies of the Reich ... shall be deferred until the settlement of these claims can be considered in conjunction with the settlement of the claims specified in [Article 5(2)]", the claims of the Allies and their nationals. London Debt Agreement, Art. 5(3). However, there exists one exception; instead of waiting until their claims could be addressed in conjunction with the allies', or their nationals' claims, any neutral country and its national could settle their claims "on the basis of, or in connection with agreements which have been signed by the Governments of [France, the U.K. and the U.S.] and the Government of any such [neutral] country." Id. Art. 5(3).

As stated above, there "is a strong presumption that the literal meaning [of a treaty] is the true one". M.H. Pulaski Co., 243 U.S. at 106. Further, where the language of a treaty is "reasonably susceptible of only one interpretation", Buenocore, 900 F.2d at 9-10, [*102] courts must "be governed by the text -- solemnly adopted by the governments of many separate nations". Chan, 490 U.S. at 134.

Article 5(3)'s text is susceptible of only one interpretation. Pursuant to Article 5(3), the claims of the neutral nations, and their nationals, could only be settled in one of two ways (1) in conjunction with the settlement of the claims of the Allies and their nationals or (2) in connection with agreements between a neutral nation and the U.S., the U.K. or France. The first method requires an agreement between the German government and the governments of the Allied nations. The second method requires an agreement between the governments of the neutral nations and the governments of the U.S., the U.K. or France. Thus, government-to-government negotiations and agreements are a requisite to the settlement of the neutral countries', and their nationals', claims.

If nationals of the Allied nations could file individual actions in different courts in different nations, the claims of the neutral countries, and their nationals, could never "be considered in conjunction with the settlement of the claims" of the Allies, and their nationals, as [*103] contemplated by Article 5(3). How could the claims of the neutral countries ever "be considered in conjunction with the settlement of the claims" of the Allies if worldwide individual litigation were to take place? The London Debt Agreement contemplates a peace treaty between Germany and its World War II enemies. Once Germany and the Allies entered into such a treaty, if there were any further claims remaining by the neutral nations and their nationals, such claims would be settled in conjunction with the resolution, through the peace treaty, of the claims of the Allied nations. Article 5(3) is simply incompatible with private litigation.

4. Statute of Limitations

Defendants assert, in the alternative, that even if the Paris Reparations Treaty does not permanently bar Iwanowa's claims, the applicable statute of limitations for claims alleging violations of customary international law has run.

Pursuant to Federal Rule of Civil Procedure 8(c), an assertion that a claim is barred by the applicable statute of limitations constitutes an affirmative defense to an
action. The Third Circuit, however, has held that a Rule 12(b)(6) dismissal on statute of limitations grounds is [*104] warranted when "the time alleged in the statement of a claim shows that the cause of action has not been brought within the statute of limitations." Cito v. Bridgewater Township Police Dep't, 892 F.2d 23, 25 (3d Cir. 1989) (quoting Bethel v. Jendoco Constr. Corp., 370 F.2d 1168, 1174 (3d Cir. 1967)); see also Rycoline Prods., Inc. v. C & W Unlimited, 109 F.3d 883, 886 (3d Cir. 1997).


The Third Circuit has stated, and the Supreme Court has affirmed, that courts must "take seriously [the Supreme Court's admonition] that analogous state statutes of limitations are to be used unless they frustrate or significantly interfere with federal policies." United Steelworkers, 32 F.3d at 57 (emphasis in original) (quoting Reed, 488 U.S. at 327).

To determine [*106] whether to apply a federal or state limitations period to a claim under the ATCA, "the Court must first identify the closest analogies under both federal and state law." Forti, 672 F. Supp. at 1547. "Actionable claims under the [ATCA] involve harm to the person that is universally recognized" by the international community as violating the law of nations. See id., see also supra Part II.A.2.a. As shown supra, forced labor violates international law and is thus, an actionable tort under the ATCA. Iwanowa seeks damages for the inhuman conditions Ford Werke inflicted upon her. n43 The most closely analogous state law (under Michigan, Delaware or New Jersey law) is for the recovery of damages for personal injuries.

n43 Iwanowa also seeks disgorgement of all economic benefits which have accrued to Defendants as a result of her forced labor and compensation for the reasonable value of her services. These claims sound in quantum meruit (not tort) and seek recovery for breach of implied contract and restitution. Claims sounding in contract, however, are not actionable under the ATCA and are thus, not relevant to Iwanowa's claims under international law.

[*107] The closest analogy under federal law is the Torture Victim Protection Act of 1991 ("TVPA"). See Xuncax, 886 F. Supp. at 191 (holding that the TVPA is the most analogous statute to the ATCA). Since the enactment of the TVPA, courts addressing claims under the ATCA have applied the TVPA limitations period. See Cabiri v. Assasie-Gyimah, 921 F. Supp. 1189, 1195-96 (S.D.N.Y. 1996); Xuncax, 886 F. Supp. at 192-93. This Court finds that the TVPA, which was enacted as a statutory note to the ATCA, "clearly provides a closer analogy than the available state statutes." United Steelworkers, 32 F.3d at 57. Thus, this Court shall apply the TVPA limitations period to Iwanowa's claims under international law. n44

n44 The parties agree that the TVPA is the most analogous statute to the ATCA.

The TVPA explicitly provides a ten year limitations period. See 28 U.S.C. § 1350, note § 2(c). World War II ended in 1945. Iwanowa filed the [*108] instant action on March 8, 1998, almost fifty-three (53) years after the end of the war. Iwanowa claims that the Paris Reparations Treaty, certain edicts, the doctrine of equitable tolling and the London Debt Agreement tolled the TVPA's ten year statute of limitations until November, 1997. Defendants concede that the edicts tolled the statute of limitations until 1949. However, they assert that the statute of limitations has been running since 1949 because neither the Paris Reparations Treaty nor the London Debt Agreement toll the limitations period on private claims. n45 This Court shall address these arguments separately.

n45 As discussed supra, Defendants' main argument is that the Paris Reparations Treaty permanently subsumed private claims into governmental claims. In the alternative, Defendants argue that if this Court finds that the
Paris Reparations Treaty does not preclude Iwanowa's claims, the Court must nevertheless dismiss the claims because they are time-barred.


The Paris Reparations Treaty, along with the edicts that the Nazis and the Western Powers enacted, tolled the statute of limitations on claims against German defendants from the end of the war until the operative date of the London Debt Agreement, February 27, 1953.

On September 27, 1944, the Nazi government issued an emergency measure tolling the statutes of limitations on all civil claims until December 31, 1945. See Edict Regarding the Effect of Total War on the Civil Law § 32 (Sept. 27, 1944) ("Second Edict"). The Second Edict remained in effect after Germany's surrender in May, 1945. After the expiration of the Second Edict on December 31, 1945, the Allied Powers regulated the extension or tolling of limitations periods independently in their respective zones of occupation. The British Zone, where Ford Werke's Cologne's plant was located, issued two edicts tolling all statutes of limitations through December 31, 1948. See Regulation of the Tolling of the Statutes of Limitations and Similar Time Limits in the Civil Law and the Administration of Civil Justice § 1 (Dec. 16, 1946); Regulation Concerning the Extension of the Tolling [§110] of the Statutes of Limitations and Similar Time Limits in the Civil Law and the Administration of Civil Justice, Art. 1 (Dec. 17, 1947).

In addition to these edicts, German courts have held, and Defendants concede, that the statute of limitations for forced labor claims was tolled from the end of the war until the establishment of the F.R.G. in 1949. See LG Bremen (1998), at 12; (I Tr. at 14:14-17.) Defendants assert, however, that any tolling mechanisms ended in 1949.

Iwanowa claims that the Paris Reparations Treaty tolled the statute of limitations from 1946, the date of the Paris Reparations Treaty, until 1953, the effective date of the London Debt Agreement. As stated supra, Article 2.A of the Paris Reparations Treaty barred any individual claims against the German government and its Agencies, n46 including Defendants, because such claims were subsumed into the governmental claims of the signatories to the Treaty. As long as Article 2.A of the Paris Reparations Treaty was in effect, former forced laborers could not press individual claims arising out of World War II against the German government or German companies. As shown supra, Article 2.A. of the Paris Reparations Treaty [§111] Treaty was in effect until Article 5(2) of the London Debt Agreement superseded it in 1953. Iwanowa argues that the statute of limitations was tolled during the period when the Paris Reparations Treaty barred individual claims against Ford Werke. This Court agrees.

Pursuant to German Civil Code ("Bürgerliches Gesetzbuch" or "BGB") section 202(1), statutes of limitations are tolled during the period of time in which the law precludes a plaintiff from asserting a claim. Specifically, section 202(1) provides that:

Prescription is suspended for so long as the performance is deferred or the person bound is temporarily entitled on any other ground to refuse to make performance.

BGB § 202(1) (Simon L. Goren, transl., 1994).

Until the London Debt Agreement superseded Article 2.A [§112] of the Paris Reparations Treaty, the law precluded Iwanowa from asserting claims arising out of World War II against German companies. Consequently, under BGB section 202(1), the statute of limitations on claims against German defendants was tolled until German law permitted the assertion of war related claims against German companies. As soon as the London Debt Agreement went into effect, the Paris Reparations Treaty's bar on forced labor claims ended, thereby lifting its tolling mechanism. However, as shown infra, the London Debt Agreement's deferral of such claims tolled the statute of limitations from 1953 to 1991.


As shown in Part II.B.2.e, Article 5(2) of the London Debt Agreement postponed consideration of claims arising out of World War II against Germany and German companies until the final settlement of the problem of reparations. Indeed, the London Debt Agreement deferred consideration of forced labor claims asserted by all foreign nationals, even those whose country was not a signatory to the London Debt Agreement. See Staucher, BGH (1963), at 3; see also Krakauer I, LG Bonn (1997), at 23. Hence, [*113] pursuant to BGB section 202(1), it appears that the London Debt Agreement tolled the statute of limitations on claims arising out of World War II until the final settlement on the issue of reparations.

Defendants argue that the London Debt Agreement does not apply to individual claims and thus, cannot toll the limitations period of the instant claims. As shown
supra, this argument cannot stand in light of Article 5(2)'s plain language and German Supreme Court decisions holding that the London Debt Agreement defers consideration of individual forced labor claims. See London Debt Agreement, Art. 5(2); BGH (1973), at 9; Staucher, BGH 1963, at 11; see also supra Part II.B.2.e.

In the alternative, Defendants argue that the London Debt Agreement's moratorium only applied to claims by foreign nationals against the German government or German companies brought under German law, but did not toll claims under international law. This Court disagrees.

The purpose of the London Debt Agreement's deferral provision was to give the F.R.G., and its industries, breathing space to rebuild and to restore the F.R.G.'s financial health. Allowing any claims against Ford Werke, regardless [*114] of whether they asserted violations of German law or customary international law, would have defeated the objectives of the London Debt Agreement. It would have been absurd for the London Debt Agreement to shield German industry from claims under German law while allowing it to be sued, at the same time, for the same acts under customary international law. Hence, this Court finds that the London Debt Agreement deferred all claims by non-German nationals, arising out of World War II, against German corporations acting under color of Nazi law, regardless of whether the claims asserted violations of international law or German law. See London Debt Agreement, Art. 5(2).

As shown in supra Part II.B.2.f, the Two-Plus-Four Treaty is the final settlement contemplated by the London Debt Agreement. Thus, this Court finds that the London Debt Agreement tolled the statute of limitations on the Allies', and their nationals', war-related claims against German companies until the Two-Plus-Four Treaty's operative date, March 15, 1991.

Ford Werke is a German corporation. As stated supra, German courts have held that corporations utilizing forced laborers during World War II were agents [*115] of the German government. See BGH (1973), at 9-10; Staucher, BGH (1963), at 4-5; Krakauer I, LG Bonn (1997), at 15. Hence, the London Debt Agreement tolled the statute of limitations on the claims against Ford Werke until March 15, 1991, the effective date of the Two-Plus-Four Treaty. See Krakauer I, LG Bonn (1997), at 24 (finding that the London Debt Agreement deferred claims arising out of World War II until March 15, 1991); LG Bremen (1998), at 11 (same).


As stated in Part II.B.2.f, the Two-Plus-Four Treaty does not explicitly mention reparations. Iwanowa initially argued that the London Debt Agreement tolled the limitations period, not until the Two-Plus-Four Treaty's operative date, but rather until a German court announced that the Two-Plus-Four Treaty constituted the final resolution of the reparations issue. At oral argument, Iwanowa's counsel conceded that statutes of limitations generally begin to run on the effective date of a treaty. (See I Tr. at 37:17-21.) However, Iwanowa's counsel asserted that "based on confusion", the limitations period should be tolled between March 15, 1991 (the [*116] operative date of the Two-Plus-Four Treaty) and November 5, 1997, when the Krakauer I Court explicitly held that the Two-Plus-Four Treaty lifted the London Debt Agreement's moratorium on forced labor claims. (Id. at 37:20-21.) Iwanowa's counsel argues that Iwanowa could not have reasonably known that the London Debt Agreement no longer barred review of the instant claims until publication of the Krakauer I opinion on November 5, 1997. This argument is not persuasive.

A statute of limitations begins to run on the effective date of the relevant treaty, not on the subsequent date of judicial interpretations of the treaty. See Alliance of Descendants of Texas and Land Grants v. United States, 37 F.3d 1478, 1482-83 (Fed. Cir. 1994). Indeed, German courts have expressly held that the London Debt Agreement postponed forced labor claims until March 15, 1991, the operative date of the Two-Plus-Four Treaty. See LG Bremen (1998), at 13; Krakauer I, LG Bonn (1998), at 46; see also OVG Muenster (1998), at 11.

Furthermore, Iwanowa's argument that she did not realize that the Two-Plus-Four Treaty lifted the London Debt Agreement's moratorium on claims arising [*117] out of the War until the publication of the Krakauer I opinion is without merit. n47 The German Federal Register published notice of the ratification of the Two-Plus-Four Treaty on March 15, 1991. The Krakauer I Court noted that the media and the press discussed the Two-Plus-Four Treaty extensively. See Krakauer I, LG Bonn (1997), at 30. Indeed, the plaintiffs in Krakauer I and in LG Bremen (1998) filed their claims within twelve months and four months, respectively, of the Two-Plus-Four Treaty's operative date. Hence, it appears that those plaintiffs realized that the Two-Plus-Four Treaty lifted the London Debt Agreement's moratorium on forced labor claims before a court interpreted it as such. Consequently, Iwanowa's argument that she did not receive adequate notice that the London Debt Agreement no longer barred consideration of forced labor claims until publication of the Krakauer I opinion sounds hollow.

n47 Of course, this argument is academic since in determining when the limitations period started to run, courts look at the effective date of
a treaty, not the date that a litigant received notice. See *Alliance of Descendants*, 37 F.3d at 1482-83.

[118]

Iwanowa has not cited any case law showing that the statute of limitations should be tolled until the Krakauer I Court expressly interpreted the Two-Plus-Four Treaty as lifting the London Debt Agreement's moratorium. Thus, this Court concludes that the statute of limitations on Iwanowa's claims began to run on the effective date of the Two-Plus-Four Treaty, not when the Krakauer I Court first interpreted such Treaty.

d. Claims Against Ford Werke

Iwanowa filed the instant action on March 5, 1998. The Paris Reparations Treaty tolled the statute of limitations on war related claims against German companies, such as Ford Werke, from 1946 until 1953, when it was replaced by the London Debt Agreement. The London Debt Agreement's moratorium tolled the limitations period on such claims until March 15, 1991, the operative date of the Two-Plus-Four Treaty. As noted in supra Part II.B.4, the limitations period for claims under the ATCA is ten years. As such, the statute of limitations on Iwanowa's claims under international law would expire on March 15, 2001. Iwanowa filed the instant claims on March 5, 1998; thus, her claims under the ATCA against Ford Werke are timely. [*120] n48

n48 In addition, on December 19, 1956, the parliament of the [F.R.G.] enacted the Law Concerning the Statutes of Limitations of German Foreign Debt and Similar Debt which provided that:

The statute of limitations will not have run on those claims which were not time-barred at the effective date of the [London Debt Agreement] and which can be first asserted after the effective date of the international treaty ... foreseen by the [London Debt Agreement] until eighteen months after the effective date of the foreseen international treaty [the Two-Plus-Four Treaty] ....

Id. § 1 P 2. The Two-Plus-Four Treaty is the international treaty foreseen by the London Debt Agreement. See supra Part II.B.2.f. Consequently, Iwanowa had to file her claims within eighteen months of the effective date of the Two-Plus-Four Treaty or before the expiration of the limitations period for claims under international law, whichever period is longer.

e. Statute of Limitations [*120] is Not Tolled on Claims Against Ford

Iwanowa has asserted claims under international law against both Ford Werke and Ford. The Complaint alleges that "prior to November 5, 1997, plaintiffs' efforts to seek compensation for forced labor during the Second World War from private corporations were barred under German law." (Compl. P 37.) The London Debt Agreement deferred consideration of claims arising out of World War II against the German government and German companies. See London Debt Agreement, Art. 5(2); BGH (1973), at 9-10; Staucher, BGH (1963), at 11. Ford is not a German company, therefore, it is not covered by the London Debt Agreement. However, Iwanowa argues that the London Debt Agreement tolled her claims against Ford because Ford's liability is partially derivative of Ford Werke's liability; thus, any suit against Ford during the period when claims against Ford Werke were precluded, would have been vulnerable to dismissal for (1) failure to join a necessary party, pursuant to Federal Rule of Civil Procedure 19; or (2) interference with the London Debt Agreement's deferral scheme. Specifically, Iwanowa argues that the London Debt Agreement tolls claims against [*121] Ford because Ford would have passed the cost incurred in defending against forced labor claims and any award recovered by forced laborers, onto Ford Werke, thereby defeating the purpose of the London Debt Agreement's deferral scheme. This reasoning is not persuasive.

Iwanowa has not attempted to explain how claims against Ford would have been vulnerable to dismissal, pursuant to Federal Rule of Civil Procedure 19. Regardless, all lawsuits are subject to potential defenses and are thus, vulnerable to dismissal for countless reasons. A plaintiff cannot delay filing her claims in derogation of the applicable statute of limitations merely because she believes a defendant has valid defenses or her suit is subject to dismissal. See *Chakonas v. City of Chicago*, 42 F.3d 1132, 1135-36 (7th Cir. 1994) (refusing to extend statute of limitations simply because plaintiff was not certain his claims would have succeeded if he had brought them earlier). Furthermore, the Complaint does not allege that the Paris Reparations Treaty or the London Debt Agreement precluded Iwanowa from asserting claims under international law against Ford, a U.S. corporation, in a U.S. court. The Paris [*122] Reparations Treaty covers war related claims "against the former German Government and its Agencies", Paris Reparations Treaty, Part I, Art. 2.A. The London Debt Agreement defers consideration of claims "against the Reich and agencies of the Reich". London Debt Agreement, Art. 5(2). Although German courts have held that German corporations utilizing forced labor were acting as agents of the Reich, no court
has ever held, and the Complaint does not allege, that U.S. corporations (such as Ford) were agents of the German government. Thus, this Court concludes that neither the Paris Reparations Treaty nor the London Debt Agreement prevented Iwanowa from bringing forced labor claims against Ford, a U.S. corporation, under the ATCA, a U.S. statute.

Furthermore, Iwanowa's argument that Ford would have passed the cost incurred in defending against forced labor claims onto Ford Werke must also fail. Iwanowa's assertion that that as the parent company, Ford would pass its losses onto Ford Werke, thereby deflecting the purpose of the London Debt Agreement's deferral scheme, is speculative at best. There is nothing before this Court enunciating what Ford's accounting practices are or how and to what extent litigation costs or labor claims would be passed onto Ford Werke. Consequently, neither the Paris Reparations Treaty nor the London Debt Agreement tolled the limitations periods of the claims against Ford under international law. n49

n49 This is distinguishable from cases where the case law or statutes clearly indicate that a plaintiff's claims would be dismissed as in the case of forced labor claims against German corporations where the German Supreme Court had repeatedly denied such claims as "unfounded at the time" or "invalid at the present time." See BGH (1973), at 16-17; BGH (1964), at 3; Staucher, BGH (1963), at 1. A plaintiff reading those cases knew that it would be a wasted effort to bring such claims because they would definitely be dismissed. However, no court has ever held, and the London Debt Agreement does not suggest, that claims against non-German companies would be dismissed pursuant to Article 5(2) of the London Debt Agreement.

(1) Equitable Tolling

Iwanowa argues[*124] that even if the London Debt Agreement does not toll the limitations period of her claims against Ford, the statute of limitations was equitably tolled by Ford's affirmative misstatements denying that it gained any economic advantages from Ford Werke's use of unpaid, forced labor.

Equitable tolling stops the statute of limitations from running where the claim's accrual date has already passed. See Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1387 (3d Cir. 1994). Equitable tolling may be appropriate, inter alia, where the defendant has actively misled the plaintiff. See id.; see also United States v. Midgley, 142 F.3d 174, 179 (3d Cir. 1998); School Dist. of City of Allentown v. Marshall, 657 F.2d 16, 19-20 (3d Cir. 1981). To avoid dismissal, a complaint asserting equitable tolling must contain particularized allegations that the defendant "actively misled" plaintiff. See 287 Corporate Ctr. Assoc's. v. Township of Bridgewater, 101 F.3d 320, 325 (3d Cir. 1996); Oshiver, 38 F.3d at 1387. In the instant case, the Complaint is devoid of any allegations of misrepresentation and concealment. [*125]

Iwanowa makes vague claims of misrepresentation by Ford for the first time in her brief in opposition to Defendants' motions to dismiss. (Pl.'s Opp'n Br. at 41.) She alleges that in 1998, a Ford spokesperson issued a statement denying that Ford received significant economic benefits from Ford Werke's use of forced labor. (Id.) Iwanowa attempted to expand upon these allegations at oral argument and in her April 5, 1999 supplementary submissions. (1 Tr. 51:1-5; Neuborne Supp. Decl. P 23.) Iwanowa now alleges that in 1974, a Ford spokesperson publicly stated that "Ford Motor Co. had no participation in the operation or financial results of Ford [Werke] while the United States was engaged in World War II." (Neuborne Supp. Decl. P 23.)

In considering a 12(b)(6) motion, the Court is limited to the facts alleged in the Complaint; a court cannot consider facts raised for the first time in counsel's legal memorandum. See Town of Secaucus v. United States Dep't of Transp., 889 F. Supp. 779, 791 (D.N.J. 1995), aff'd, 79 F.3d 1159 (3d Cir. 1996); In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1424-25 (3d Cir. 1997). Accordingly, [*126] this Court must disregard the allegations in Iwanowa's brief and Professor Neuborne's Supplemental Declaration. Furthermore, statements made in 1974 and 1998 provide no basis for tolling limitations periods that expired decades ago. In order to provide an effective equitable tolling argument, the statements alluded to would have had to have been made within a relatively short period after the end of the War. Based on the absence of any allegations of misrepresentation and concealment in the Complaint, Iwanowa's equitable tolling theory must fail.

5. The U.S.S.R. Waiver

In 1953, the U.S.S.R. and G.D.R. entered into a bilateral treaty, whereby the U.S.S.R. waived any further reparations payments from the G.D.R. See Protocol Between the Union of Soviet Socialist Republics and the German Democratic Republic Concerning the Discontinuance of German Reparations Payments and Other Measures to Alleviate the Financial and Economic Obligations of the German Democratic Republic Arising in Consequence of the War, Aug. 22, 1953, G.D.R.-U.S.S.R., 221 U.N.T.S. 136 ("U.S.S.R. Waiver"). n50 Defendants argue that by signing the U.S.S.R. Waiver, the U.S.S.R. not only waived its right to [*127] seek further reparation payments from Germany, but also
waived the right of its citizens to file claims arising from forced labor against Germany or German companies. n51 This assertion does not pass muster.

n50 The U.S.S.R. Waiver provides that the Soviet government "shall, as from 1 January 1954, cease completely to require the payment of reparations by the German Democratic Republic, whether in the form of goods or in any other form." 221 U.N.T.S. 136, 138. Despite the U.S.S.R. Waiver, unified Germany has established a fund in the Russian Federation, where Rostov is located, to compensate victims of Nazi persecution. See supra note 42; see also Exchange of Notes, Mar. 30, 1993, F.R.G.-Uk.-Bela.-Rus.

n51 Although Iwanowa is now a Belgian citizen, she was a Soviet citizen when her forced labor claims arose. In analyzing claims, "plaintiff's citizenship is of importance not at the present time but at the moment of origin of the claim." BGH (1973), at 4. Consequently, if the U.S.S.R. Waiver extinguishes the individual claims of Soviet citizens, it would bar Iwanowa's forced claims because she was a Soviet citizen when her claims arose.

[*128] It is well-established that countries can waive the war-related claims of their citizens. See Dames & Moore v. Regan, 453 U.S. 654, 679-80, 69 L. Ed. 2d 918, 101 S. Ct. 2972 (1981) ("the United States has repeatedly exercised its sovereign authority to settle the claims of its nationals against foreign countries ... by executive agreement[s] ... under [which] the President has agreed to renounce or extinguish claims of United States nationals against foreign governments in return for lump-sum payments"); Belk v. United States, 858 F.2d 706, 709 (Fed. Cir. 1988) (same). The crucial issue is whether the U.S.S.R. intended to waive its nationals' rights to file Nazi-era forced labor claims against German companies. The German Federal Constitutional Court has held that some treaties contain waiver provisions that "only relate to the claims of states arising from harm to their citizens, but not claims of the citizens themselves." BVerfG (1996), at 23. However, treaties "expressly regulating the claims of citizens in addition to the claims of the states" can extinguish individual claims. Id. at 24-25.

At least one German court has held that [*129] the U.S.S.R. Waiver did not extinguish Soviet citizens' individual claims for compensation for forced labor. See Krakauer I, LG Bonn (1997), at 30-32. n52 The specific language of the U.S.S.R. Waiver does not mention individual claims. As stated in Part II.B.3.a, supra, general rules of construction apply to treaties. See Trans World Airlines, 466 U.S. at 262 (Stevens, J., dissenting) (citing Ware v. Hylton, 3 Dall. 199, 240-41 (1796)). Thus, when construing a treaty, the Court must give the treaty's terms their ordinary meaning. See, e.g., Air France, 470 U.S. at 397 (1985); Santovincenzo, 284 U.S. at 40; M.H. Pulaski, 243 U.S. at 106; The Pizarro, 2 Wheat. at 246; Trans World Airlines, 466 U.S. at 262-63 (Stevens, J., dissenting); Xerox Corp., 41 F.3d at 652. The U.S.S.R. Waiver's plain language does not address individual citizens' claims. Thus, in accordance with the canons of interpretation, it is only logical to find that the U.S.S.R. Waiver only precludes claims by the U.S.S.R. against the G.D.R. and does not extinguish Soviet citizens' [*130] private claims.

n52 The Administrative Court of Appeals was also presented with this issue but refused to address it. See OVG Muenster (1998), at 14-15.

The German Federal Government has taken the position that the U.S.S.R.'s Waiver of further reparations applies to the successor states of the U.S.S.R. and all citizens of those states. See German Federal Government, Comprehensive Report on Previous Restitution Payments by German Companies, at 2 (June 3, 1996). The German Federal Government's report does not cite any authority demonstrating that its position is supported by German civil law. Even if this Court were to agree with the German Federal Government's position, however, the U.S.S.R. Waiver is not applicable in the instant case. Specifically, the U.S.S.R. Waiver only waived further reparations payments from the G.D.R.; not from its agencies. n53 Hence, the U.S.S.R. Waiver clearly does not apply to claims against German companies. Accordingly, this Court finds that the U.S.S.R. Waiver did not [*131] extinguish individual claims against Defendants under the law of nations.

n53 It is also noteworthy that the U.S.S.R. Waiver is an agreement between the G.D.R. and the U.S.S.R. Consequently, even if the U.S.S.R. Waiver waived individual claims (as opposed to government claims) for reparations against the G.D.R., it has no effect on claims against a unified Germany.

Defendants have failed to show that the Paris Reparations Treaty or the U.S.S.R. Waiver permanently barred individual forced labor claims. However, Iwanowa's claims against Ford, for violations of international law, are time-barred. See supra Part II.B.4.e. Furthermore, although Iwanowa's claims against
Ford Werke, for violations of the law of nations, are timely, they must be dismissed on the ground that the London Debt Agreement contemplated that individual claims would be pursued by way of government-to-government negotiations, not private litigation. See supra Part II.B.3.e. Consequently, Defendants' motion to dismiss Iwanowa's claims for violations of the law of nations is granted.

III. CLAIMS UNDER U.S. LAW

Iwanowa asserts that "by taking and receiving economic benefits from unpaid, forced labor without making any effort to compensate the laborers, [Defendants] have been unjustly enriched and are obliged under the laws of ... Michigan n54 and Delaware n55 to disgorge to plaintiff, and the Class, all profits and other economic benefits earned or derived from the forced labor of plaintiff and the Class." (Compl. P 38.) She further attests that "by knowingly utilizing unpaid, forced labor to generate enormous profits, [Defendants] are obliged under the laws of ... Michigan and Delaware to pay to plaintiff, and the Class, the reasonable value of their services." (Id. P 39.) In sum, Iwanowa asserts claims for restitution/unjust enrichment and quantum meruit.

n54 The state of Ford's corporate headquarters.

n55 The state of Ford's incorporation.

Defendants have moved to dismiss Iwanowa's claims under U.S. law, pursuant to Federal Rule of Civil Procedure 12(b)(6), on the ground that they are time-barred.

A. SUBJECT MATTER JURISDICTION

This Court has diversity jurisdiction over Iwanowa's common law claims, pursuant to 28 U.S.C. § 1332, which provides in relevant part:

The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interests and costs, and is between: ... (2) citizens of a State and citizens or subjects of a foreign state.

28 U.S.C. § 1332(a)(2). Iwanowa is a Belgian citizen. Ford is a citizen of Delaware and Ford Werke is a citizen of Germany. Iwanowa asserts that the matter in controversy exceeds $75,000, exclusive of interests and costs. Thus, this Court has diversity jurisdiction over Iwanowa's claims under Michigan or Delaware law. Venue is proper pursuant to 28 U.S.C. § 1391(d). n56

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n56 Pursuant to 28 U.S.C. § 1391(d), "an alien may be sued in any district."

[*134]

B. SUBSTANTIVE LAW


New Jersey has adopted a governmental interest analysis when determining which jurisdiction's substantive law governs. See Veazey v. Doremus, 103 N.J. 244, 247, 510 A.2d 1187 (1986); Mell & Sarahson, 49 N.J. 226, 229-30, 229 A.2d 625 (1967). Under the governmental interest analysis, New Jersey courts must apply the substantive law of the state with the greatest interest in resolving the issue raised in the underlying litigation. See Gantes v. Kason Corp., 145 N.J. 478, 484, 679 A.2d 106 (1996); [n135] Veazey, 103 N.J. at 248. The first step in the analysis requires determining whether an actual conflict exists between the laws of the interested states, in this case, Michigan and Delaware. n57 See Gantes, 145 N.J. at 484. If no conflict exists, the Court need not make a choice of law determination. n58

n57 Iwanowa claims that Michigan or Delaware law governs this action. None of the parties assert that New Jersey substantive law should apply in this action.

n58 If an actual conflict between the law of the interested states does exist, the court then (1) identifies the governmental policies underlying each state's law and how those policies would be affected by each state's contacts to the lawsuit and the parties and (2) weighs the factual, qualitative contacts between the parties and each related jurisdiction. See Henry v. Richardson-Merrell, Inc., 508 F.2d 28, 32 (3d Cir. 1975); Veazey, 103 N.J. at 248.

1. Restitution/Unjust Enrichment [*136]

To assert a claim for restitution under Delaware law, a plaintiff must show that (1) the defendant was unjustly

Unjust enrichment is a necessary element of the doctrine of restitution. Hence, before a court may order restitution, it must find that the defendant was unjustly enriched at the [*137] plaintiff's expense. See Fleer Corp., 539 A.2d at 1062. Unjust enrichment is defined as "the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience." Id. (quoting 66 Am. Jur.2d, Restitution & Implied Contracts § 3, p.945 (1973)). To assert a claim for unjust enrichment under Delaware law, a plaintiff must show: (1) an enrichment of defendants, (2) a loss to plaintiff, (3) a lack of justification for the enrichment, (4) the absence of any other available remedy and (5) the absence of law barring the remedy. See Phoenix Canada Oil Co. Ltd. v. Texaco, Inc., 658 F. Supp. 1061, 1063 (D. Del. 1987); Cantor Fitzgerald v. Cantor, 724 A.2d 571, 585 (Del. Ch. Ct. 1988).

Similarly, to assert a claim for unjust enrichment under Michigan law, a plaintiff must show that (1) the defendant received a benefit from the plaintiff and (2) it would be inequitable for the defendant to retain such benefit. See Dumas v. Auto Club Ins. Ass'n, 437 Mich. 521, 473 N.W.2d 652, 663 (Mich. 1991); Moll v. County of Wayne, 332 Mich. 274, 50 N.W.2d 881 (Mich. 1952); [*138] B & M Die, 421 N.W.2d at 622.

2. Quantum Meruit


A plaintiff seeking to recover the reasonable value of her services on a quantum meruit theory under Delaware law must establish that (1) she performed such services with an expectation that the recipient of the benefit would pay for them and (2) absent defendant's promise to pay, the plaintiff performed the services under circumstances which should have put the recipient of the benefit on notice that she (plaintiff) expected to be paid for her services. See Bellanca Corp., 169 A.2d at 623.

Similarly, Michigan courts have held that a plaintiff may recover under a quantum meruit theory where the defendant accepts beneficial services from the plaintiff for which compensation is customarily made and naturally anticipated. See Tustin Elevator & Lumber Co. v. Ryno, 373 Mich. 322, 129 N.W.2d 409, 414 (Mich. 1964); Comber Tool and Mold Eng., Inc. v. General Motors Corp., 853 F. Supp. 238, 242 (E.D. Mich. 1993). [*140] A defendant who knowingly permits a person to perform services for defendant's benefit impliedly agrees to compensate plaintiff for performance unless there is a specific agreement that plaintiff will perform such services gratuitously. See Bellanca Corp., 169 A.2d at 623; see also Tustin Elevator, 129 N.W.2d at 414 ("the law implies an understanding or intent to pay the value of services rendered.").

n59 Although the parties have not asserted that New Jersey law applies, the elements of a quantum meruit claim are the same under New Jersey law as under Michigan and Delaware law. New Jersey courts have held that "in order to state a claim in quantum meruit, the plaintiff must assert: the performance of services in good faith; the acceptance for those services by the entity to which they were rendered; an expectation of compensation therefor; and the reasonable value of the services." Kopin v. Orange Prods., Inc., 297 N.J. Super. 353, 367-68, 688 A.2d 130 (App. Div. 1997) (quoting Lehrer McGovern Bovis, Inc. v. New York Yankees, 207 A.D.2d 256, 615 N.Y.S.2d 31, 34 (App. Div. 1994)); see also Concinni v. Kruger, 79 N.J.L. 326, 328, 75 A. 436
"It is well-settled that where one performs services for another at his request, but without any agreement or understanding as to wages or remuneration, the law implies a promise on the part of the party requesting the services to pay a just and reasonable compensation."

Since both interested jurisdictions, Michigan and Delaware, follow traditional common law approaches to restitution/unjust enrichment and quantum meruit, this Court need not engage in a choice of law analysis.

**C. STATUTE OF LIMITATIONS**

As stated above, a federal district court sitting in diversity must apply the choice of law precepts of the forum state. See *Van Dusen*, 376 U.S. at 645-46; *Klaxon*, 313 U.S. at 494. Until 1973, the 'general rule in New Jersey was that the forum state's limitations period applied regardless of which state's substantive law governed the case. See *Schum v. Bailey*, 578 F.2d 493, 495 (3d Cir. 1978); see also *Dent v. Cunningham*, 786 F.2d 173, 176 (3d Cir. 1986) ("New Jersey's general rule [is] that the forum state's litigations period applies.") (citing *O'Keeffe v. Snyder*, 83 N.J. 478, 490, 416 A.2d 862 (1980)). In 1973, however, the Supreme Court of New Jersey decided that in certain narrowly defined circumstances, its courts would borrow the limitations period of the jurisdiction creating the substantive cause of action. See *Heavner v. Uniroyal*, Inc., 63 N.J. 130, 141, 305 A.2d 412 (1973). [*142*] The Heavner Court held that New Jersey court would apply the foreign state's statute of limitations when (1) the cause of action arose in another state; (2) all of the parties were present and amenable to the jurisdiction of that state; (3) New Jersey had no substantial interest in the matter; (4) the substantive law of the foreign state governed the cause of action; and (5) the foreign state's limitations period had expired by the time the suit was filed in New Jersey. See *Heavner*, 63 N.J. at 141 (1973) n60; *Dent*, 786 F.2d at 176 (summarizing Heavner factors).

n60 In *Heavner*, a truck driver from North Carolina, sued Uniroyal, a New Jersey corporation, for injuries sustained when a tire that Uniroyal manufactured blew out while Heavner was driving on a North Carolina highway. 63 N.J. at 134. Defendant Uniroyal's only contact with New Jersey was that it was incorporated in New Jersey. Id. at 134 n.3. The Supreme Court of New Jersey concluded that New Jersey had no substantial interest in the matter and applied North Carolina's statute of limitations. Id.

n61 Section 2A:14-1 provides that "every action at law ... for recovery upon a contractual claim or liability, express or implied ... shall be commenced within 6 years next after the cause of any such action shall have accrued." N.J. Stat. Ann. § 2A:14-1 (West 1999).

n62 Iwanowa claims that the relevant
limitations period is governed by the equitable laches doctrine. The doctrine of laches bars an action where (1) plaintiff's delay in bringing the action is unreasonable and (2) the defendant was prejudiced by such delay. See *Claussen v. Mene Grande Oil Co. C.A., 275 F.2d 108, 111 (3d Cir. 1960); Sim Kar Lighting Fixture Co. v. Genlyte, Inc., 906 F. Supp. 967, 975 (D.N.J. 1995). According to Iwanowa, her delay in bringing the instant action is not unreasonable and Defendants have not been prejudiced by the delay. The doctrine of laches, however, does not apply to Iwanowa's claims for quantum meruit and restitution, as these are legal actions, and the doctrine of laches only governs equitable actions. See *Kopin, 297 N.J. Super. at 373; *Badon v. General Motors Corp., 188 Mich. App. 430, 470 N.W.2d 436, 439 (Mich. App. 1991); *Eberhard v. Harper-Grace Hospitals, 179 Mich. App. 24, 445 N.W.2d 469, 474 (Mich. App. 1989) (noting that laches is the equitable counterpart to the statute of limitations defense available at law, and that courts generally will not address laches where a statute of limitations will bar a claim). Further, although quantum meruit is based on equitable principles, quantum meruit is a legal remedy. See *Kopin, 297 N.J. Super. at 373; *Callano v. Oakwood Park Homes Corp., 91 N.J. Super. 105, 108, 219 A.2d 332 (App. Div. 1966); see also *D'Angelo v. Petroleos Mexicanos, 398 F. Supp. 72, 78 (D. Del. 1975) (finding that where plaintiff sought an accounting against defendant, the relief sought was legal in nature and the court must apply the statute of limitations rather than the equitable doctrine of laches). Therefore, in determining whether this action is time-barred, this Court must look to the applicable limitations period, not the doctrine of laches. See *Kopin, 297 N.J. Super. at 373.

Even if this court were to apply the doctrine of laches, Iwanowa's claims would nevertheless be barred because in determining laches, courts look to the analogous statute of limitations. See *Badon, 470 N.W.2d at 439.

[*146]

2. Michigan Statute of Limitations

The statute of limitations under Michigan law for claims sounding in restitution/unjust enrichment n63 or quantum meruit is either three or six years. See Mich. Comp. Laws Ann. § § 600.5805 n64, 600.5807 n65. Michigan courts have held that "although sections 600.5805 and 600.5807 are generally thought of as "tort" and 'contract' provisions respectively ... a party [could not] invoke the longer statute [section 600.5807] by the mere expedient of calling a tort an implied contract." *Fries v. Holland Hitch Co., 12 Mich. App. 178, 162 N.W.2d 672, 675 (Mich. App. 1968); see also *Britton v. Fessler & Bowman, Inc., 66 B.R. 572, 575 (Bankr. E.D. Mich. 1986) (stating that it is not necessary for the court to determine whether this is an action "in tort or 'in contract' ... the question is whether it is an action to recover damages for injuries to persons or property.

n63 Iwanowa asserts that there is no limitations period for claims for restitution/unjust enrichment. The Supreme Court of Michigan has held, however, that "the law in regard to unjust enrichment ... never has relieved people from the consequences of a statute of limitations of any kind where there has been no active fraud that lulled the claimant into inaction." *Milton v. Craig, 312 Mich. 512, 20 N.W.2d 290, 293 (Mich. 1945); see also Mich. Compl. Laws Ann. § 600.5815 (the "prescribed period of limitations shall apply to all actions whether equitable or legal relief is sought"). [*147]

n64 Section 600.5805 provides that

No person may bring or maintain any action to recover damages for injuries to persons or property ... unless, after the claim first accrued ... he commences the action within the periods of time prescribed by this section.

*** (7) The period of limitations is 3 years for all other actions to recover damages for injuries to persons and property.


n65 Section 600.5807 provides that:

No person may bring or maintain any action to recover damages or sums due for breach of contract ... unless, after the claim first accrued ... he commences the action within the periods of time prescribed by this section.

*** (8) The period of limitations is 6 years for all other actions to recover damages or sums due for breach of contract.


The Supreme Court of Michigan has held that a six year breach of contract limitations period applies to actions for damages to persons or property, as long as the suit is based on an express promise, [*148] and not a
duty implied by law. See Huhtala v. Travelers Ins. Co., 401 Mich. 118, 257 N.W.2d 640, 644 (Mich. 1977). Thus, even if a contractual relationship unites the parties, where the breach of an express promise does not serve as the claim's foundation, the three year limitations period governs the action. See id.; compare Weeks v. Slavik Builders, Inc., 384 Mich. 257, 181 N.W.2d 271 (Mich. 1970) (applying six year statute of limitations where defendant builder expressly warranted product that proved defective and caused property damage) with State Mut. Cyclone Ins. Co. v. O & A Elec. Coop., 381 Mich. 318, 161 N.W.2d 573 (Mich. 1968) (applying three year limitations period where contractual relationship existed but alleged services breach by defendant implicated general pre-existing duties to provide service safely, not an express promise or contract made to plaintiff); see also Insurance Co. of N. Am. v. Manufacturers Bank of Southfield, 127 Mich. App. 278, 338 N.W.2d 214, 216 (Mich. App. 1983) ("Where ... there is no express contract or express promise and defendant's liability, if any, is implied by law, an [*149] action for injury to persons or property is controlled by the three-year statute."). Additionally, a six year statute of limitations applies where a defendant's breach causes a plaintiff injury "in his financial expectations and economic benefits rather than his person or specified property." Fries, 162 N.W.2d at 675 (citing Abbott v. Michigan State Indus., 303 Mich. 575, 6 N.W.2d 900 (Mich. 1942)); see also Schenburn v. Lehner Assoc., Inc., 22 Mich. App. 534, 177 N.W.2d 699, 702 (Mich. App. 1970) (holding that six year statute applies to injuries to "financial expectations and economic benefit" which are not injuries to a "person or specific property.").

It appears that Iwanowa's claims for quantum meruit should be governed by a three year limitations period because her claims are not based on an express promise. It should be noted, however, that at least one Michigan court has held that an action for restitution is governed by section 600.5807(8) six year limitations period. See Britton, 66 B.R. at 577 (holding that since restitution is commonly associated with contract remedies, the six year statute of limitations [*150] for contract actions is more justified than the three year statute of limitations for torts). As shown infra, even if this Court were to apply the six year statute of limitations to claims for quantum meruit and restitution/unjust enrichment, Iwanowa's claims would still be time-barred. Consequently, this Court need not determine whether section 600.5805's three year or section 600.5807's six year limitations period applies.

3. Delaware Statute of Limitations


n66 Section 8106 provides in relevant part:

No action to recover a debt not evidenced by a record or by an instrument under seal ... no action based on a promise ... and no action to recover damages caused by injury unaccompanied with force or resulting indirectly from the act of the defendant shall be brought after the expiration of 3 years from the accruing of the cause of such action. 


n67 In Freedman, the plaintiff claimed that he was entitled to remuneration because defendants voluntarily accepted and used the idea that he sent to them with a reasonable expectation of compensation. Freedman, 406 F. Supp. at 923.

4. Tolling of the Statute of Limitations

Iwanowa filed the instant action in March, 1998, fifty-three years after the end of the war. Thus, unless the statute of limitations has been tolled, Iwanowa's claims under Michigan or Delaware common law are barred under all potentially applicable limitations periods.

Iwanowa contends that the London Debt Agreement tolled the limitations period of her claims under Michigan or Delaware law. However, the Complaint alleges that Iwanowa's claims were barred "under German law". (Compl. P 37.) The Complaint does not allege that the London Debt Agreement precluded Iwanowa from asserting claims invoking U.S. law (Michigan or Delaware law) against Ford, a U.S. corporation, in a U.S. court. Furthermore, as stated in Part II.B.4.e, supra, the London Debt Agreement, did not toll the statute of [*152] limitations on claims against Ford.

Even if this Court were to find that the London Debt Agreement's moratorium on forced labor claims precluded claims under U.S. law, Iwanowa's claims would nevertheless be time-barred. As noted in supra Part II.B.2.f, the Two-Plus Four Treaty lifted the London Debt Agreement's moratorium on forced labor claims. The Two-Plus-Four Treaty became effective on March 15, 1991. The longest applicable limitations period for quantum meruit or restitution/unjust enrichment claims under New Jersey, Michigan or Delaware law is six...
years. Because Iwanowa did not file the instant action until March, 1998, seven years after the effective date of the Two-Plus Four Treaty, her claims under U.S. law are time-barred. Defendants' motion to dismiss the claims under U.S. law is granted.

IV. CLAIMS UNDER GERMAN LAW

Iwanowa asserts that "by taking and receiving economic benefits from unpaid, forced labor without making any effort to compensate the laborers, [Defendants] have been unjustly enriched and are obliged under the laws of Germany ... to disgorge to plaintiff and the Class all profits and other economic benefits earned or derived from the [foreign] forced labor of plaintiff and the Class." (Compl. P 38.) She further alleges that "by knowingly utilizing unpaid, forced labor to generate enormous profits, [Defendants] are obliged under the laws of Germany ... to pay to plaintiff and the Class the reasonable value of their services." (Id. P 39.)

A. SUBJECT MATTER JURISDICTION

For the reasons stated in Part III.A, supra, this Court has diversity jurisdiction over Iwanowa's claims under German law, pursuant to 28 U.S.C. § 1332(a)(2).

B. STATUTE OF LIMITATIONS

As stated in Part III.C, supra, as a federal court sitting in diversity, this Court must apply New Jersey choice of law principles when determining the applicable limitations period. See Van Dusen, 376 U.S. at 645-46; Klaxon, 313 U.S. at 494. New Jersey courts apply the statute of limitations of a foreign jurisdiction where (1) the cause of action arose in another jurisdiction; (2) the parties are all present and amenable to the jurisdiction of that foreign state; (3) New Jersey has no substantial interest in the matter; (4) the foreign state's substantive law governs the cause of action; and (5) the foreign state's limitations period has expired by the time the plaintiff filed suit in New Jersey. See Heavner, 63 N.J. at 141; Dent, 786 F.2d at 176.

In interpreting Heavner, the instructed federal courts sitting in diversity in New Jersey to borrow the statute of limitations of the state whose substantive law applies. See Henry, 508 F.2d at 37 ("Absent a finding that New Jersey substantive law applies, Heavner requires borrowing of the foreign limitations period."); Schum, 578 F.2d at 495 ("We glean from Heavner that the critical determination underlying the 'borrowing' of a foreign statute of limitations is a determination as to whether a foreign substantive law is to be applied."); see also Thompson v. Yue, 426 F. Supp. 853, 855 (D.N.J. 1977) ("If a court concludes that New Jersey substantive law will not govern the action ... Heavner requires borrowing of the foreign limitations period.").

An analysis of the Heavner factors mandates application of Germany's statute of limitations. First, Iwanowa's forced labor claims arose in Germany. [*155] Second, both Ford Werke, a German corporation, and Ford, as Ford Werke's parent, are amenable to suit in Germany. Third, none of the parties is a New Jersey resident, thus, New Jersey has no interest in this suit, let alone a substantial one. See Westinghouse, 774 F. Supp. at 1450 (finding that even defendant's residency, without more, does "not implicate New Jersey's interest in deterrence."). Fourth, German substantive law, as opposed to New Jersey substantive law, governs the instant claims. n68 Fifth, as shown infra, the German statute of limitations had expired by the time Iwanowa filed the instant action. n69

n68 The parties concede that Germany's, not New Jersey's, substantive law controls. Furthermore, the governmental interest standard requires application of the substantive law of the jurisdiction with the greatest interest in resolving the particular issue raised in the litigation. See Gantes 145 N.J. at 484; Veazey, 103 N.J. at 248. Since Iwanowa's forced labor claims did not arise in New Jersey and the parties are not New Jersey residents, New Jersey does not possess an interest in having its law apply in this litigation. [*156]

n69 Although expiration of the foreign statute of limitations is a requirement under Heavner, some courts have rejected a mechanical rule where the foreign statute of limitations will only be applied if it has expired by the time the action is brought in a New Jersey court. See Westinghouse, 774 F. Supp. 1438 at 1448-49. Hence, courts have borrowed the foreign statute of limitations in cases where the foreign limitations period was longer than the New Jersey statute so long as the balancing of the other Heavner factors favors borrowing the foreign statute. See id. (holding that the longer Philippine statute of limitations, rather than New Jersey's statute of limitations, applied where the action arose in the Philippines, the plaintiff was the Republic of the Philippines and Philippine substantive law governed).

The parties concede that Germany's, not New Jersey's, statute of limitations applies to Iwanowa's claims under German law. However, the parties disagree as to the applicable German statute of limitations for forced labor claims.

C. GERMAN STATUTE OF LIMITATIONS [*157] FOR FORCED LABOR CLAIMS
Defendants contend that German Civil Code ("Bürgerliches Gesetzbuch" or "BGB") section 196(1)(9)'s two year statute of limitations applies to forced labor claims. Iwanowa concedes that BGB section 196(1)(9) governs claims for wages, but argues that unjust enrichment claims are governed by BGB section 195's thirty-year limitations period. Alternatively, Iwanowa argues that pursuant to BGB section 819(1), no limitations period exists for unjust enrichment claims arising out of particularly egregious behavior.

n70 BGB section 196(1)(9) provides:

§ 196. [Two-year period of prescription]

(1) The following claims prescribe in two years:

9. Claims of workmen--journeymen, assistants, apprentices, factory workers--day laborers and manual laborers, for the wages and other allowances agreed upon in lieu of or as part of the wages, including disbursements ....

n71 BGB section 195 provides that "the regular period of prescription is thirty years."

n72 BGB section 819(1) provides:

If the recipient knows of the absence of a legal ground at the time of the receipt, or if he subsequently learns of it, he is bound to return from the time of receipt or of acquisition of the knowledge as if an action on the claim for return were pending at the time.

[*158]

The parties agree that BGB section 852(1)'s three-year limitations period governs tort claims for cruel treatment and inhuman conditions. However, Iwanowa argues that BGB section 852(3) n74, which provides that property acquired wrongfully must be returned even after the limitations period has run, applies in this case. Specifically, Iwanowa argues that because Defendants wrongfully obtained her property (her labor), and because she is requesting the return of that property, German law imposes no limitations period.

n73 Section 852(1) of the BGB provides:

The claim for compensation for any damage arising from a delict is barred by prescription in three years from the time at which the injured party obtained knowledge of the injury and of the identity of the person liable to make compensation ....

n74 Section 852(3) of the BGB provides:

If the person liable has acquired anything by delict at the expense of the injured party, he is, even after the running of the period of prescription, bound to return it under the provisions relating to the return of unjust enrichment.

[*159]

1. Bartl v. Heinkel

In 1967, the German Supreme Court denied a German national's forced labor claims as time-barred. See Bartl v. Heinkel, BGHZ [Supreme Court] 48, 125 (1967) (F.R.G.) ["Bartl, BGH (1967)"]. Because Bartl is factually similar to the case, sub judice, a detailed discussion of its facts, procedural history and holding is appropriate.

During World War II, the Nazis shipped Dr. Edmund Bartl ("Dr. Bartl"), a German lawyer, to a concentration camp outside of Berlin. See id. at 125. A nearby aircraft factory leased the camp inmates, including Dr. Bartl, to work as forced laborers. See id. The aircraft factory paid the Nazi regime a monthly fee for the forced laborers, but did not pay the laborers for their work. See id. In 1959, fourteen (14) years after the end of the war, Dr. Bartl became aware that the aircraft factory where he worked as a forced laborer was a subsidiary of defendant Ernst Heinkel, A.G. ("Heinkel"). See id. Consequently, Dr. Bartl brought suit against Heinkel alleging that he had been forced to work under inhuman conditions with inadequate food, medical care or shelter, and that the aircraft factory's inmates subjected him to constant physical abuse. See id. He also alleged that Heinkel's directors could have altered the inhuman conditions, but instead, they encouraged the abuse of camp inmates. See id. Dr. Bartl sued for loss of wages and for the pain and suffering that he endured. See id. Heinkel argued that Dr. Bartl's claims were time-barred. See id.

n75 It appears that Dr. Bartl opposed the Nazi regime.

Although BGB section 852(1)'s three year statute of limitations governs tort claims, the District Court found that Dr. Bartl's claims were timely pursuant to section 852(3) because "the defendant through its participation in the deprivation of liberty and the exploitation of the labor of the plaintiff had committed a prohibited act and..."
was clouded by the passage of time and that the Court rejected the Court of Appeals' attempt to even if the motives which led to the creation of [section distinguished forced labor claims from ordinary claims for objective fact situations which must be complied with they fall within a fact situation' covered by section had "made a fundamental regulation through establishing, of daily life of insignificant scope." Id. at 128. The Supreme Court found that regardless of whether the legislature intended section 196(1)(9) to apply to transactions of daily life, courts do not have the discretion to require that each case involve Ita transaction because there was no risk that "actual facts [would] become clouded by the passage of time and that the debtor [would] be sued on account of amounts which [had] already been paid." Id.

The Supreme Court reversed and dismissed Dr. Bartl's claims as time-barred under BGB section 196(1)(9). [*162] n77 See id. at 127. The Supreme Court rejected the Court of Appeals' attempt to distinguish forced labor claims from ordinary claims for wages, and held that, for the purpose of determining the applicable limitations period, forced labor claims should not be treated differently than ordinary claims for wages. See id. The Supreme Court ruled that regardless of the length of time which has passed, can be recognized particularly clearly here." Id. at 129. The Court found that what is critical is not just whether or not the plaintiff received his compensation. On the contrary, it would also have to be determined how long he worked and what work he did. That could only be presented by witnesses; if they could be obtained at all, it would have to be feared that their memories would be greatly impaired after such a long time.

Id. Based on this analysis, the Supreme Court held that a two year statute of limitations governed forced labor claims brought by former concentration camp inmates.

Iwanowa asserts that although modern German [*165] courts would apply BGB section 196(1)(9)'s two year limitations period to claims for wages, the courts would apply section 195's thirty year limitations period to claims for disgorgement of unjust profits deriving from forced labor. Iwanowa attempts to distinguish Bartl

n76 BGB sections 812 et seq. address claims for unjust enrichment.

n77 The Supreme Court had previously addressed whether concentration camp laborers could assert valid claims against their employers.

See Staucher, BGH (1963) (dismissing claims of Polish national); BGH (1964) (dismissing claim of U.S. national). However, those cases involved non-German nationals. As stated in supra Part II.B.2.e, the Supreme Court has repeatedly held that forced labor claims are reparations claims, and that companies using forced laborers during World War II were acting as agents of the Reich. See Staucher, BGH (1963), at 5; BGH (1964), at 3. Thus, in each of those cases, the Court dismissed the forced labor claims as "premature" and "unjustified at this time" based on the London Debt Agreement's deferral provisions. See Staucher, BGH (1963); at 12-13; BGH (1964), at 4. However, the London Debt Agreement's deferral provisions (Article 5) only apply to claims brought by foreign nationals against the German government or its agencies. Article 5 does not apply to claims brought by German nationals. Since Dr. Bartl was a German national, the London Debt Agreement did not defer consideration of, or toll, his forced labor claims.
from the instant case, by noting that Bartl involved a claim for wages. Iwanowa argues that Dr. Bartl committed a critical pleading error by characterizing his claim as one for mathematically computed wages, thereby triggering section 196(1)(9)'s two year statute of limitations. Iwanowa contends that BGB section 195, not section 196(1)(9), applies to her claims because she seeks not merely wages, but also equitable disgorgement of all unjust profits flowing to Defendants from forced labor. Iwanowa's attempt to distinguish her claim, and those of the potential class, from those in Bartl must fail.

As stated above, the Court of Appeals applied BGB section 195's thirty year statute of limitations to Dr. Bartl's claims. See id. at 128. The Supreme Court rejected the Court of Appeals' application of section 195, and explicitly stated that section 196(1)(9)'s two year limitations period applied to all claims [*166] arising out of a working relationship, including claims for unjust enrichment. Id. at 127. A claim seeking disgorgement of unjustly obtained profits is a claim for restitution sounding in unjust enrichment. Although the Supreme Court noted that Dr. Bartl's employment was involuntary, and that Dr. Bartl was not asserting a breach of contract claim, it held that the short statute of limitations of [BGB section 196(1)(9)] ... is not conditioned upon any contractual basis. Instead it comprehends all claims for compensation which are derived from the actual rendering of work. To this extent, determinative alone are the actual relationships and nature of the interests involved, which do not change on the basis of the claim being derived from a de facto employment relationship, on voluntary agency [or] unjustified enrichment. ... This is based on the unchanged line of case law of the Supreme Court of the German Reich, the [Supreme Court of the F.R.G.] and of the Federal Labor Court. There is no cause to deviate from this.

Id. (citations omitted).

The Supreme Court further held that the District Court's application of section 852(3) to Dr. Bartl's tort claims [*167] was erroneous. Although section 852(1)'s three year limitations for tort claims had expired, the District Court held that section 852(3) n78 governed Dr. Bartl's claim because Heinkel had been unjustly enriched by its unlawful exploitation of Dr. Bartl's labor. See id. at 133. The Supreme Court disagreed with the District Court and held that "the degree to which the damage relevant to the fact situation of a prohibited act can be proved is of no consequence, for a claim derived from [BGB section 852(3)] would also be barred due to the running of the statute of limitations." Id. The Supreme Court held that section 852(3) did not apply to forced labor claims, and instead section 196(1)(9)'s limitations period was "also controlling to [that] extent for unjust enrichment." Id. In short, by applying section 196(1)(9)'s and section 852(1)'s short limitations period to Dr. Bartl's forced labor claims, the Supreme Court explicitly rejected the argument Iwanowa seeks to make -- that a thirty year or no limitations period applies to forced labor claims. n79

n78 BGB section 852(3) provides that one who wrongfully obtains another's property, must return such property to its owner even after the statute of limitations on the underlying claim has expired. See supra n.74 (quoting BGB § 852(3)). [*168]

n79 Iwanowa cites to two cases, see BGH [Supreme Court], III ZR 239/84 (1986) (F.R.G.); BGH [Supreme Court], X ZR 1976. (1978) (F.R.G.), in support of her argument that this Court should reject the Bartl Court's application of BGB section 852(1)'s three year limitations period for tort claims, and instead, apply section 852(3). Those cases are factually dissimilar from the instant case. The first case involved a claim for restitution of income tax payments, and the second involved a claim for recovery of profits unlawfully obtained in a patent infringement dispute. See id. In contrast, Bartl, BGH (1967) and LG Bremen (1998), applied section 852(1)'s three year limitations period to forced labor claims, the same claims at issue in the case, sub judice. Furthermore, the Bartl Court explicitly considered and rejected the application of section 852(3). Since Bartl is good law, and is factually similar to the instant case, this Court shall follow Bartl and its reasoning.

Iwanowa claims that more recent German Supreme Court decisions have treated the limitations [*169] period for slave labor claims as an open question. See BGH (1973). However, the Supreme Court merely stated that since Article 5(2) of the London Debt Agreement precluded the assertion of forced labor claims by non-German nationals until the final settlement of the problem of reparations, it was "therefore not necessary to determine ... whether the statute of limitations [had] run." Id. at 12-13. The Supreme Court refused to address whether forced labor claims were time-barred because it was able to dispose of the claims by reference to Article 5(2) of the London Debt Agreement. Thus, the Supreme Court's 1973 decision does not provide any guidance as to the applicable statute of limitations.

Conversely, the Supreme Court in Bartl explicitly held that section 196(1)(9)'s two year statute of limitations applied to forced labor claims for unjust enrichment, and section 852(1)'s three year limitations
period applied to tort claims for mistreatment. In addition, the decisions upon which Iwanowa relies in support of her claim, Krakauer I and LG Bremen (1998) noted that the plaintiffs filed their claims within section 852(1)'s three year limitations period. n80 See [*170] Krakauer I, LG Bonn (1997), at 46; LG Bremen (1998), at 12-13. Consequently, this Court finds that GBG sections 196(1)(9) and 852(1) apply to Iwanowa's claims for restitution/unjust enrichment and inhuman treatment, respectively. n81


n81 Iwanowa argues that Bartl has been heavily criticized and that modern German courts would not follow Bartl. In support of this argument, Iwanowa cites to a German treatise rejecting Bartl's application of a two year limitations period to forced labor claims. See 1 J. von Staudinger, Commentary to the German Civil Code with Introductory Law and Other Laws § § 164-240, § § 196(1)(8), (9). Norbert Haberman, ed., Sellier - de Gruyter, Berlin 13th ed. 1995). Treatises are oftentimes persuasive when there is no case law authoritatively speaking on a particular issue. However, as recently as 1988, the Supreme Court cited Bartl for the proposition that BGB section 196's two year limitations period applied 'not only to claims for performance but also, under certain conditions, to other contractual and non-contractual claims, such as claims based on ... unjust enrichment." BGH [Supreme Court], IX ZR 203/87 (1988) (F.R.G.). Similarly in 1975, the Supreme Court held that claims for unjust enrichment were subject to a two year limitations period based on the Bartl Court's decision that BGB section 196(1)(9) "covers all compensation claims derived from the actual performance of work." BGH [Supreme Court], VII ZR 69/74 (1975) (F.R.G.). Furthermore, Defendants have referred this Court to two commentaries on the BGB stating that section 196(1)(9)'s two year limitations period governs forced labor claims regardless of whether the claim is based on contract or unjust enrichment. See 7 Beck, Short Commentary, Civil Code § § 196(1)(8), (9) (Dr. Peter Bassenge et al., eds., Verlag C.H. Beck Munchen 1999) (citing Bartl for the proposition that section 196(1)(9)'s "short statute of limitations also applies to the remuneration claim relating to forced labor which was performed in a concentration camp."); 1 Munich Commentary to the Civil Code § § 1-240, § § 196(1)(8), (9) (Dr. Franz Jurgen Sacker, ed., C.H. Beck'sche Verlagsbuchhandlung Munchen 1999) (citing Bartl and stating that section 196(1)(9)'s two year statute of limitations "also applies to wage claims of a concentration camp prisoner against the business operation in which he was forced to work.").

[*171]

2. Section 819(1)

In the alternative, Iwanowa argues that pursuant to BGB section 819(1), there is no statute of limitations for unjust enrichment claims arising out of particularly egregious behavior.

BGB section 812(1) provides that "[a] person who, through an act performed by another, or in any other manner, acquires something at the expense of the latter without any legal ground, is bound to return it to him". Section 819(1) provides that "if the recipient knows of the absence of a legal ground at the time of receipt, or if he subsequently learns of it, he is bound to return from the time of receipt or of acquisition of the knowledge as if an action on the claim for return were pending at the time." Iwanowa asserts that Defendants knew since 1946, when the Nuremberg Tribunals prosecuted and convicted several industrialists for their abuse of slave laborers, that it was unlawful to keep the profits derived from the use of forced labor. Thus, Iwanowa argues that under section 812(1) and 819(1), Defendants are bound to disgorge the profits derived from her forced labor as if an action on the claim for disgorgement were pending since 1946. (See II Tr. at 61:2-64: [*172] 8.)

Although Dr. Bartl did not explicitly raise BGB section 819, Dr. Bartl argued that there should not be any limitations period for defendant's actions. The Supreme Court rejected the assertion that there is no limitations period for forced labor claims and held that "the circumstances under which the prohibited act was committed do not ordinarily counter the defense of the statute of limitations having run: Even the most horrible criminal is ... not prevented under applicable law from countering the victim with the three-year statute of limitations," Bartl, BGH (1967), at 133-34 (citation omitted). The Supreme Court further held that this valid right is irreconcilable with overriding principles of law cannot be recognized. The provisions concerning the statute of limitations comprise a formal regulation established in the interest of certainty of law and comprehend all cases under consideration. Changes in this direction could not be made by judge but, rather,
only by the legislative body ....

Id. at 134. This Court agrees that it is up to Germany's legislative body, not this Court, to determine whether it is appropriate to extend the statute of limitations [*173] for forced labor claims.

3. Tolling of the Statute of Limitations

As discussed in supra Part II.B.2.f, the Two-Plus-Four Treaty lifted the London Debt Agreement's moratorium on foreign nationals' forced labor claims against German companies. The Two-Plus-Four Treaty became effective on March 15, 1991. The statute of limitations on the claims under German law expired, at the latest, three years later. See supra Parts IV.C.1 & 2; Bartl, BGH (1967); BGB § § 196(1)(9), 852(1). Because Iwanowa filed her Complaint on March 5, 1998, seven years after the enactment of the Two-Plus-Four Treaty, Defendants' motion to dismiss Iwanowa's claims under German law as time-barred is granted. n82

n82 Even if Iwanowa's claims under German law were timely, they would nevertheless be dismissed for failure to state a claim. Although two District Courts (Krakauer I, LG Bonn (1997) and LG Bremen (1998) allowed forced labor claims against the F.R.G., those decisions are not persuasive because (1) Krakauer I has been reversed and (2) as discussed infra, two recent decisions from the Courts of Appeals have rejected forced labor claims. See OVG Muenster (1998); Krakauer II, OLG Cologne (1998).

Before deciding Krakauer I, the District Court of Bonn certified to the Federal Constitutional Court the question of whether international law precluded an individual from bringing forced labor claims against Germany under German law. The Federal Constitutional Court refused to address the question as procedurally impermissible because the Krakauer I Court's submission order did not expressly indicate that the outcome of the case before it depended on the Federal Constitutional Court's ruling on the question presented. See BVerfG (1996), at 12. However, in obiter dictum, the Federal Constitutional Court stated that remedies under international law are not exclusive, and as such, international law does not bar an individual plaintiff from asserting forced labor claims under German law. Id. at 22. The Federal Constitutional Court further stated that a nation that has violated international law may choose to compensate the injured parties pursuant to its own domestic law. Id.

In 1997, the Administrative Court of Appeals in Muenster concluded that German law does not provide a cause of action for Nazi era forced labor. See OVG Muenster (1998), at 8. Specifically, in dismissing forced labor claims against the German government and various private companies, the Administrative Court of Appeals, held that "plaintiffs have no right to compensation for the forced labor which their legal predecessor performed during prisoner of war captivity in the German Reich during the years 1940-1945." Id. at 8.

The Administrative Court of Appeals rejected plaintiffs' claims for unjust enrichment under German law on the grounds that plaintiffs' damages were the result of war and were thus compensable, if at all, under international law. Id. at 23. There is no claim on the part of the injured party against [Germany] under domestic [German] law. In the event of war, individual protection by the respective state legal system is replaced by international law". Id. (emphasis added). The Court further stated:

The result is no different with respect to the work which the Plaintiffs' legal predecessor performed for private companies. In such cases, a contractual relationship generally was established between the German Reich and the respective company, which paid compensation to the German Reich for the labor of "loaned" prisoners of war. However, the relationship between the German Reich and the prisoner of war remained exclusively characterized by international law relating to war.

Id. at 25 (emphasis added). In sum, the Administrative Court of Appeals rejected the claims that Iwanowa seeks to assert -- claims sounding in unjust enrichment against private corporations for the forced labor she performed during World War II.

The Administrative Court of Appeals also rejected plaintiffs' claims under BGB section 812. As stated in supra, Part IV.C.2, BGB section 812 provides that "[a] person who, through an act performed by another, or in any other manner, acquires something at the expense of the latter without any legal ground, is bound to return it to him". In dismissing plaintiffs' claims, the Administrative Court of Appeals held that:

the Plaintiffs cannot claim compensation for forced labor on the basis of a public law restitution claim by analogy to § 812 of the Civil Code. Even if their legal predecessor was used to
perform severe physical labor ... the custody state -- as explained -- must assume sole responsibility for this under the rules of international law. No direct claim on the part of the injured party against the custody state exists.


Similarly, in its opinion reversing Krakauer I, the Court of Appeals of Cologne stated that it cannot be concluded from Article 5(2) of the London Debt Agreement that compensation exists under German law for forced labor claims. See Krakauer II, OLG Cologne (1998), at 35. Specifically, the Court of Appeals of Cologne noted that the language of the London Debt Agreement that "a review of the claims arising from the Second World War is postponed" does not assume that such a claim for forced labor exists under German law. Id. The Court further stated that it was certainly not the London Debt Agreement's intent to establish such a claim. Id. As such, the Court reasoned, it was "not possible to infer from the Two-Plus-Four Treaty that the compensation claims of victims of National Socialist persecution were revived upon the conclusion of the [Two-Plus-Four] Treaty." Id.

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V. NONJUSTICIABILITY

Defendants have moved to dismiss the Complaint on the ground that Plaintiff's claims are nonjusticiable. This Court has dismissed Iwanowa's claims under U.S. law and German law as time-barred. This Court has also dismissed Iwanowa's claims under international law on the ground that the London Debt Agreement intended that Nazi era forced laborers pursue their claims by way of government-to-government negotiations, not through individual litigation in multiple fora. This Court is also compelled to dismiss Iwanowa's claims on the ground that forced labor claims arising out of World War II raise nonjusticiable political questions.

A. POLITICAL QUESTION

The political question doctrine holds that a federal court having jurisdiction over a dispute should decline to adjudicate it on the ground that the case raises questions which should be addressed by the political branches of government. See Baker v. Carr, 369 U.S. 186, 210, 7 L. Ed. 2d 663, 82 S. Ct. 691 (1962); Atlee v. Laird, 347 F. Supp. 689, 701 (E.D. Pa. 1972) (noting that "even though a dispute may constitutionally be subject to the judicial power, [*175] if a political question is present, a federal court should decline to address the merits.") aff'd sub. nom. Atlee v. Richardson, 411 U.S. 911, 36 L. Ed. 2d 304, 93 S. Ct. 1545 (1973); see also Marbury v. Madison, 5 U.S. (1 Cranch) 137, 164-66, 2 L. Ed. 60 (1803) ("Questions, in their nature political ... can never be made in this court."). The political question doctrine does not find its roots in the Constitution, but rather is based on "pragmatic considerations, based on the separation of powers concept and our system of checks and balances." Atlee, 347 F. Supp. at 701; see also Baker, 369 U.S. at 210 (holding that "the nonjusticiability of a political question is primarily a function of the separation of powers."); Powell v. McCormack, 395 U.S. 486, 516-17, 23 L. Ed. 2d 491, 89 S. Ct. 1944 (1969) (stating that a "political question" is one "which is not justiciable in federal court because of the separation of powers provided by the Constitution."). Indeed, the text of the judiciary clause, Article III of the Constitution, does not explicitly authorize federal courts to decline to resolve cases [*176] involving political questions. U.S. Const. art. III, § 2. Thus, unlike constitutional "restriction[s] on judicial power, the political question doctrine limits the exercise, not the existence, of federal judicial power." Atlee, 347 F. Supp. at 701.

The political question doctrine has its genesis not only in the concept of the separation of powers, "but also of the limitation of the judiciary as a judicial body." Occidental of Umm al Qaywayn, Inc. v. A Certain Cargo of Petroleum, 577 F.2d 1196, 1203 (5th Cir. 1978) (citing Coleman v. Miller, 307 U.S. 433, 83 L. Ed. 1385, 59 S. Ct. 972 (1939)). The Supreme Court has held that in determining whether an issue constitutes a political question, courts must consider "the appropriateness under our system of government of attributing finality to the action of the political departments and also the lack of satisfactory criteria for a judicial determination." Coleman, 307 U.S. at 454. As one court has stated, the Supreme Court does not consist of "tribal wisemen dispensing divinely or theoretically inspired judgments, but [of] a court limited to the application of predetermined [*177] law." Occidental of Umm, 577 F.2d at 1203.

The political question doctrine distinguishes between cases encompassing foreign relations and those addressing purely domestic issues. See United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 320, 81 L. Ed. 253, 57 S. Ct. 216 (1936); Oetjen v. Central Leather Co., 246 U.S. 297, 302, 62 L. Ed. 726, 38 S. Ct. 309 (1918); Atlee, 347 F. Supp. at 696. The Supreme Court has declared that

the conduct of the foreign relations of our Government is committed by the Constitution to the executive and the legislative --the political departments of the government, and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision.
Oetjen, 246 U.S. at 302. The President is "the sole organ of the federal government in the field of international relations." Curtiss-Wright, 299 U.S. at 320. Thus, the most appropriate case for applicability of the political question doctrine concerns the conduct of foreign affairs. See Baker, 369 U.S. at 211. Indeed, the Supreme [*178] Court has warned courts against intruding in matters involving foreign relations. See Chicago & S. Air Lines, Inc. v. Waterman S.S. Corp., 333 U.S. 103, 111, 92 L. Ed. 568, 68 S. Ct. 431 (1948). The Supreme Court reasoned that

the very nature of executive decisions as to foreign policy is political, not judicial. Such decisions are wholly confided by our Constitution to the political departments of the government, Executive and Legislative. They are delicate, complex, and involve large elements of prophecy. They are and should only be undertaken by those directly responsible to the people whose welfare they advance or peril. They are decisions of a kind for which the Judiciary has neither aptitude, facilities nor responsibility and which has long been held to belong in the domain of political power not subject to judicial intrusion or inquiry.

Id. In sum, courts should refrain from adjudicating questions of foreign policy for the following reasons: (1) the relevant materials in a case involving foreign policy will likely come from a multitude of sources, including U.S. and foreign sources, which might be voluminous and thus, potentially unmanageable [*179] for individual courts to handle; (2) there is a distinct possibility that the parties might not be able to compile all of the relevant information, thus making any attempt to justify a ruling on the merits of an issue that will affect the nation, difficult and imprudent; (3) courts cannot predict the international consequences flowing from a decision on the merits; (4) there might not be any standards for courts to apply in issuing a decision on the merits; and (5) courts addressing questions of foreign policy are faced with the task of reviewing initial determinations made by the political branches of government, and which are constitutionally committed to those branches. See Ailee, 347 F. Supp. at 702 (citing Chicago & S. Air Lines, 333 U.S. at 111-13; Oetjen, 246 U.S. at 304).

However, not every case involving foreign affairs or foreign relations raises a political question. See Baker, 369 U.S. at 211. In determining whether a matter raises political questions which the court must decline to address, courts must examine the following factors: (1) a demonstrable constitutional commitment of the issue to a coordinate [*180] political department; or (2) the lack of judicially discoverable and manageable standards for resolving it; or (3) the impossibility of making a decision without first making a policy determination of the type clearly outside judicial discretion; or (4) the court's inability to resolve the issue without expressing lack of respect to the coordinate branches of government; or (5) an unusual need for unquestioning adherence to a political decision already made; or (6) the potential for embarrassment from multifarious pronouncements by various departments on one question. See Baker, 369 U.S. at 217. If any one of these factors "is inextricable from the case", the Court should dismiss the case as nonjusticiable because it involves a political question. See id. For the reasons stated below, this Court finds that at least four of the Baker factors are inextricable from Iwanowa's claims and, therefore, Iwanowa's forced labor claims raise nonjusticiable political questions.

1. Constitutional Commitment of Issue to Another Branch

As stated above, the Constitution relegates issues involving foreign policy to the political departments of the government -- the [*181] executive branch and the legislative branch. See Oetjen, 246 U.S. at 302. As an issue affecting U.S. relations with the international community, war reparations fall within the domain of the political branches and are not subject to judicial review. Id.

The executive branch has always addressed claims for reparations as claims between governments. n83 Historically, at the end of a war, there has always been a declaration of victorious nations and defeated nations. As part of that process, the victorious nations invariably discuss the reparations that the defeated nations must pay to compensate the prevailing countries and their nationals for the loss that the aggressor country has caused. The nature of war is such that the governments of the victorious nations determine and negotiate the resolution of the claims of its nationals by way of agreements between the nations involved or affected by the war. This is evident from the reparations provisions in the Treaty of Versailles following World War I, and the discussion of reparations in the Yalta Conference, the Potsdam Conference and the Paris Reparations Treaty at the end of World War II. More recently, at the [*182] end of the Gulf War, the United Nations established an international claims resolution tribunal to resolve claims against Iraq. See Elyse J. Garmise, The Iraqi Claims Process and the Ghost of Versailles, 67 N.Y.U.L. Rev. 840, 841 (1992). Thus, it is evident that responsibility for resolving forced labor claims arising out of a war is constitutionally committed to the political branches of government, not the judiciary.

n83 Iwanowa argues that she is not asserting claims for reparations but rather, for restitution of unjust enrichment. However, both the German Supreme Court and the German Federal
Government have held that forced labor claims are reparations claims. See Staucher, BGH (1963), at 2; BGH (1964), at 3; U.S. Dept of State, German Compensation for National Socialist Crimes, Appendix I, § IV (visited Sept. 1, 1999) <http://www.state.gov/www/regions/eur/germany/compensation_for_victims.html> (stating that “Germany considers forced labor claims to be reparations claims”); (Letter from German Ministerial Director Horst Teltschik to Chancellor Helmut Kohl of 3/15/90, at 1) (stating that “the concept of reparations claims encompasses all international law claims for compensation related to war [including] individual claims by injured citizens of victorious powers.”). 

[*183]

2. Lack of Respect to the Coordinate Branches of Government

The executive branch has always taken the position that claims arising out of World War II must be resolved through government-to-government negotiations. Thus, allowing private litigation of war-related claims would express a lack of respect for the executive branch.

In 1953, the executive branch declared that "reparation and other governmental claims relating to World Wars I and II should more appropriately be dealt with in the context of a peace treaty or similar arrangement." See Letter from Secretary of State John Foster Dulles to President Eisenhower of April 4, 1953, 83d Cong., 1st Sess. 205 (1953) (summarizing the purpose of Article 5(2) of the London Debt Agreement). However, as shown supra, Germany was divided into two nations until 1991. Hence, "a peace treaty or similar arrangement" was not feasible at the "time in view of existing world political conditions." Id. Although Germany never entered into a formal peace treaty with the Allies, n84 it has entered into multiple bilateral treaties providing compensation for victims of Nazi persecution. n85 In fact, in 1993, Germany entered into [*184] a multilateral agreement with three of the successor states to the U.S.S.R.: Belarus, the Russian Federation and Ukraine, whereby Germany agreed to contribute DM 1 billion via foundations, for the individual compensation of Nazi victims. See Exchange of Notes, Mar. 30, 1993, F.R.G.-Uk.-Bela.-Rus.; see also Compensation for Holocaust Victims (visited Sept. 1, 1999) available at <http://www.bundesregierung.de>.

n84 There has never been a peace treaty with Germany to conclude World War II as there was with Japan because such a treaty would have had to include a unified Germany. See Legal Issues Relating to Future Status of Germany: Hearing Before the Senate Comm. on Foreign Relations, 101st Cong. 1 (1990) (statement of Sen. Jesse Helms).

n85 Before the reunification of Germany, the F.R.G. entered into treaties with the following nations, inter alia, to compensate victims of Nazi persecution: Luxembourg on July 11, 1959 for DM 18 million; Norway on August 7, 1959 for DM 60 million; Greece on March 18, 1960 for DM 115 million; the Netherlands on April 8, 1960 for DM 125 million; France on July 15, 1960 for DM 400 million; Belgium on September 28, 1960 for DM 80 million; Austria on November 27, 1961 for DM 101 million; and the U.K. on June 9, 1964 for DM 11 million. See Kräkauer II, OLG Cologne (1998), at 33 (listing treaties).

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Thus, it is evident that the executive branch, the department responsible for negotiating international agreements, considers claims arising out of World War II as falling within the ambit of government-to-government negotiations. The interpretations of the parties to a treaty, while not binding, are entitled to significant weight. See Kolovrat v. Oregon, 366 U.S. 187, 194, 6 L. Ed. 2d 218, 81 S. Ct. 922 (1961) ("While courts interpret treaties for themselves, the meaning given them by the departments of the government particularly charged with their negotiation and enforcement is given great weight."); Sullivan v. Kidd, 254 U.S. 433, 442, 65 L. Ed. 344, 41 S. Ct. 158 (1921) ("the construction placed upon [a] treaty ... and consistently adhered to by the Executive Department of the Government charged with the supervision of our foreign relations, should be given great weight."); Charlton v. Kelly, 229 U.S. 447, 468, 57 L. Ed. 1274, 33 S. Ct. 945 (1913) (construction of treaty by political department of government, while not conclusive, is nevertheless of much weight); Ahmad v. Wigen, 726 F. Supp. 389, 402 (E.D.N.Y. 1989) [*186] ("The State Department's view deserves deference, unless it represents a substantial departure from national or international norms."); aff'd, 910 F.2d 1063 (2d Cir. 1990); Demjanjuk v. Petrovsky, 776 F.2d 571, 579 (6th Cir. 1985) (stating that an executive department's "logical reading" of a treaty "is entitled to considerable deference.");, vacated on other grounds, 10 F.3d.338 (6th Cir. 1994).

In its 1996 summary of compensation programs available to Nazi victims, the U.S. Department of State stated that "Germany considers forced labor claims to be reparations claims arising from the actions of the German military forces during the Second World War."
The executive branch's commitment to resolving individual claims arising out of World War II through [*188] government-to-government negotiations is also evident in examining the negotiations leading up to the Two-Plus-Four Treaty in 1990. In his letter transmitting the Two-Plus-Four Treaty to the Senate, President George Bush noted that some United States citizens and Jewish victims of the Nazi regime had outstanding reparations claims against the G.D.R. See Letters Transmitting Treaty on the Final Settlement With Respect to Germany to the U.S. Senate, 30 I.L.M. 570, at 2 (1991). President Bush wrote that the government of the newly unified Germany had promised that "shortly after reunification, [it would] resolve through negotiations with the United States government, the claims of United States nationals that were previously under discussion with the German Democratic Republic." Id. Nothing in President Bush's message, or in the text of the Two-Plus-Four Treaty, suggested that courts would be handling forced labor claims as opposed to the government-to-government negotiations. Indeed, if civil litigation were the preferred, or even contemplated, avenue for resolution of such claims, the resulting government-to-government negotiations could have, and would have, [*189] plainly provided for such a potentially.

Courts may not pass judgment upon the political negotiations of the executive branch and the international community. Such intrusion into the realm of foreign policy would undermine the executive branch's sole discretion in the field of international relations. See Curtiss-Wright, 299 U.S. at 320.

3. Potential for Embarrassment from Multifarious Pronouncements by Various Departments

For the reasons stated in the preceding section, this Court's resolution of individual forced labor claims would inevitably embarrass and undermine our executive branch's authority in foreign affairs. In addition, although this Court is not bound by the decisions of other circuits, it is noteworthy that the only other U.S. courts to have addressed forced labor claims have dismissed them as nonjusticiable.

In 1966, the Court of Appeals for the District of Columbia held that forced labor claims arising out of World War II did not fall "within the established scope of judicial authority." Kelberine v. Societe Internationale, 124 U.S. App. D.C. 257, 363 F.2d 989, 995 (D.C. Cir. 1966). Although the Kelberine Court did [*190] not formally engage in an analysis of the Baker factors, the Court specifically noted that although the legislative/executive branches could enact a program to compensate former slave laborers, courts lacked the ability to provide such relief. See id.

More recently, in 1992, a former forced laborer, Hugo Princz, brought suit against the F.R.G. to recover money damages for the forced labor he performed during World War II. See Princz v. Federal Republic of Germany, 307 U.S. App. D.C. 102, 26 F.3d 1166 (D.C. Cir. 1994). The Court of Appeals for the District of Columbia dismissed the claim on the ground that the F.R.G. was immune from suit pursuant to the Federal Sovereign Immunities Act, 28 U.S.C. §§ 1602-1611. See id. Subsequently, Princz brought suit against the private corporations that had compelled him to perform forced labor. On September 18, 1995, the District Court for the District of Columbia approved a stipulation of dismissal which set forth as a basis for dismissal, that forced labor claims were to be resolved through government-to-government negotiations, rather than through litigation, based on the London Debt Agreement's [*191] reservation of such claims for government consideration. See Princz v. BASF Group, et al., Civ. No. 92-0644, at 3 (D.D.C. Sept. 18, 1995). n88 The stipulation of dismissal further noted that eleven countries had resolved claims
arising out of World War II by way of treaties with the F.R.G. See id. Shortly after the execution of the stipulation of dismissal, the U.S. government and the German Federal Government entered into an agreement providing that Germany would create a fund to compensate U.S. citizens who were subjected to forced labor during World War II. This agreement is known as the Princz Agreement. See Agreement Concerning Final Benefits to Certain United States Nationals Who Were Victims of National Socialist Measures of Persecution, Sept. 19, 1995, U.S.-F.R.G., 35 I.L.M. 193; see also German Compensation for National Socialist Crimes (visited Sept. 1, 1999) <http://www.state.gov/www/regions/eur/germany/compensation_for_victims.html>.

n88 Of course, this Court is cognizant that an unpublished stipulation of dismissal lacks precedential value. However, since Princz's claims were similar to Iwanowa's claims, the reasoning behind the parties' agreement to dismiss Princz's forced labor claims is persuasive.

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More importantly, this Court cannot sit as the ultimate judge of foreign policy issues falling outside the ambit of proper judicial review. As stated by the Federal Circuit in upholding President Ronald Reagan's extinguishment of any claims the Iran hostages may have had against Iran in exchange for their release:

the determination whether and upon what terms to settle the dispute with Iran over its holding of the hostages and obtain their release, necessarily was for the President to make in his foreign relations role. That determination was "of a kind clearly for nonjudicial discretion," and there are no "judicially discoverable and manageable standards" for reviewing such a Presidential decision. A judicial inquiry into whether the President could have extracted a more favorable settlement would seriously interfere with the President's ability to conduct foreign relations.

Belk v. United States, 858 F.2d 706, 710 (Fed. Cir. 1988). Thus, adjudication of Nazi era forced labor claims when the executive branch has rejected the notion that such claims are justiciable, would embarrass the executive branch in the eyes of the international community. [*193]

4. Lack of Judicially Discoverable and Manageable Standards

More than thirty (30) years ago, the Kelberine Court dismissed forced labor claims on the ground that they "posed an insoluble problem if undertaken by courts without legislative or executive guidance, authorization or support." 363 F.2d at 995. The Kelberine Court noted that the span between the doing of the damage and the application of the claimed assuagement is too vague. The time is too long. The identity of the alleged tortfeasors is too indefinite. The procedure sought -- adjudication of some two hundred thousand claims for multifarious damages inflicted twenty to thirty years ago in an European area by a government then in power -- is too complicated, too costly, to justify undertaking by a court without legislative provision of the means wherewith to proceed.

363 F.2d at 995.

Thirty-three years have passed since the Kelberine Court found that too much time had passed since defendants' infliction of injuries on slave laborers. Iwanowa is asking this Court to adjudicate the claims of thousands of persons who performed forced labor for Ford Werke between [*194] 1941 and 1945. The specter of adjudicating thousands of claims arising out of a war that took place more than fifty years ago amounts to a more daunting task for this Court to tackle than the Kelberine Court could have ever contemplated. First, the parties would have the task of identifying and notifying thousands of potential plaintiffs around the world. Second, this Court would have to analyze every treaty between the F.R.G. and/or the G.D.R., and the respective governments of each of the potential plaintiffs to determine whether those treaties subsumed individual claims or whether individual remedies had already been provided for in an intervening treaty. For example, if this Court were to certify a class which included, inter alia, Russian, Belarusian, Ukrainian, French, Greek, Dutch and Austrian plaintiffs, this Court would have to examine each and every treaty between those nations and the F.R.G., between those nations and the G.D.R. and between those nations and a unified Germany, post-1991. Third, the relevant materials come from a multitude of sources, which as evidenced by the instant motions, are voluminous and potentially unmanageable for individual courts to handle. [*195] See Atlee, 347 F. Supp. at 702. Fourth, when sources are scattered all over the world, it is unlikely that the parties will be able to gather all of the pertinent data. See id. A court cannot adjudicate claims that may potentially affect U.S. relations with other nations, without first obtaining all of the relevant materials. See id. Fifth, although not a strictly judicial consideration, the age of the class of the potential plaintiffs may raise unique challenges, particularly given their locations around the world. Thus, this Court finds the Kelberine Court's reasoning persuasive. Without guidance from the political branches of government, the
courts are unable to manage and resolve forced labor claims arising out of actions that took place over fifty years ago, in a foreign nation, during wartime.

The preceding analysis of the Baker factors reveals that Iwanowa's forced labor claims raise nonjusticiable political questions. As such, Defendants' motion to dismiss the Complaint on the ground that Nazi era forced labor claims are nonjusticiable is granted.

VI. INTERNATIONAL COMITY

International comity also counsels that this Court abstain [*196] from hearing the instant claims. The principle of international comity mandates the "proper level of respect for the acts of our fellow sovereign nations." Turner Entertainment v. Degeto Film GmbH, 25 F.3d 1512, 1518 (11th Cir. 1995).

'Comity,' in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its Territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws.

Hilton v. Guyot, 159 U.S. 113, 164-65, 40 L. Ed. 95, 16 S. Ct. 139 (1895); see U.S.A. ex rel Saroop v. Garcia, 36 V.I. 353, 109 F.3d 165, 169 (3d Cir. 1997); Philadelphia Gear Corp. v. Philadelphia Gear de Mexico, S.A., 44 F.3d 187, 191 (3d Cir. 1994). International comity "is a nation's expression of understanding which demonstrates due regard both to international duty and convenience and to the rights of persons protected by its own [*197] laws." Somportex Ltd. v. Philadelphia Chewing Gum Corp., 453 F.2d 435, 440 (3d Cir. 1971). Such deference to the executive, legislative, and judicial acts of a foreign nation "fosters international cooperation and encourages reciprocity, thereby promoting predictability and stability through satisfaction of mutual expectations." Spatola v. United States, 925 F.2d 615, 618 (2d Cir. 1991) (quoting Laker Airways, Ltd. v. Sabena, Belgian World Airlines, 235 U.S. App. D.C. 207, 731 F.2d 909, 937 (D.C. Cir. 1984)). The Third Circuit has stated that "comity should be withheld only when its acceptance would be contrary or prejudicial to the interest of the nation called upon to give it effect." Philadelphia Gear Corp., 44 F.3d at 191 (quoting Somportex, 453 F.2d at 440).

The German Federal Government has taken the position that foreign citizens may not assert direct claims for war-time forced labor against private companies. First, in a letter to Chancellor Helmut Kohl, the German Ministerial Director, Horst Telschik, wrote that "under international law, the concept of reparations claims encompasses all international [*198] law claims for compensation related to war [including] individual claims by injured citizens of victorious powers." (Letter from Telschik to Kohl of 3/15/90, at 1) Second, in its report to the German Federal Diet (the German legislative body), the German Federal Government stated:

To the extent that foreign forced laborers were obligated and employed during the Second World War, they cannot make direct claims applicable against the state waging war or its enterprises. Such claims cannot, according to generally acknowledged international law fundamentals, be made applicable by individual persons and also cannot be made applicable against individual persons of civil law legal persons but rather be made applicable [from state to state as reparations claims. Civil law agreements between the affected states are required for regulating such claims. German private enterprises are therefore not able to be laid claim to by foreign forced laborers. German laws as well do not provide for such claims.

German Federal Government, Comprehensive Report on Previous Restitution Payments by German Companies, at 1 (June 3, 1996). Thus, according to the German Federal Government, [*199] Iwanowa may not assert forced labor claims against Ford Werke; such claims must be pursued by way of agreements between nations. See id. (stating that in the post-war years, Germany paid reparations to many nations and "it was incumbent upon the recipient states to especially compensate those of their citizens who were especially damaged as a result of the events of the war.").

Although courts are not bound by a foreign government's pronouncement of which claims are cognizable, the principles of international comity dictate that a court not interfere with a foreign sovereign's pronouncement of its law. Furthermore, courts generally give great weight to a signatory nation's interpretation of a treaty. See Kolovrat, 366 U.S. at 194 (taking into account the position of the U.S. Department of State and the official view of the Ministry of Foreign Affairs of the Republic of Korea); Matter of Extradition of Rabelbauer, 638 F. Supp. 1085, 1087-88 (S.D.N.Y. 1986) (finding that opinion of the Austrian Federal Ministry of Justice that a treaty provision was intended to encompass the defendant's conduct was entitled to great weight).

International comity [*200] dictates that this Court follow the pronouncements of the German Federal Government as to individual claims. As such, in addition to the grounds stated supra, this Court must also dismiss the instant claims on the ground that consideration of these claims would violate principles of international comity.
CONCLUSION

For the reasons set forth above, Defendants' motion to dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(1), for lack of subject matter jurisdiction, is denied. Defendants' motion to dismiss the claims against Ford, for violations of international law, pursuant to Federal Rule of Civil Procedure 12(b)(6), is granted on the ground that the claims are time-barred. Defendants' motion to dismiss the claims against Ford Werke, for violations of international law, is granted based on the London Debt Agreement's contemplation that individual claims against German companies would be pursued by way of government-to-government negotiations not private litigation. Defendants' motion to dismiss the claims under German law and U.S. common law is granted on the ground that the claims are time-barred by the applicable statute of limitations. Finally, Defendants' motion to dismiss on the grounds of nonjusticiability and international comity is also granted.

An appropriate Order is attached.

JOSEPH A. GREENAWAY, JR., U.S.D.J.

Dated: September 13, 1999

ORDER

This matter having come before the Court on Defendants' motion to dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6); and it appearing that Defendants have also filed a motion to dismiss on the grounds of nonjusticiability and international comity; and this Court having reviewed the submissions of the parties; and good cause appearing,

IT IS on this 13th day of September, 1999,

ORDERED that Defendants' motion to dismiss, pursuant to Fed. R. Civ. P. 12(b)(1), the claims under international law for lack of subject matter jurisdiction is DENIED;

IT IS FURTHER ORDERED that Defendants' motion to dismiss, pursuant to Fed. R. Civ. P. 12(b)(6), the claims under international law is GRANTED;

IT IS FURTHER ORDERED that Defendants' motion to dismiss, pursuant to Fed. R. Civ. P. 12(b)(6), the claims under German law and U.S. common law is GRANTED;

IT IS FURTHER ORDERED that Defendants' motion to dismiss on the grounds of nonjusticiability and international comity is GRANTED; and

IT IS FURTHER ORDERED that a copy of this Order be served on all parties within seven (7) days of the date of this Order.

JOSEPH A. GREENAWAY, JR., U.S.D.J.
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REVIEW OF SELECTED SECONDARY MATERIALS RELEVANT TO THE COMMISSION'S SEARCH FOR PRIMARY MATERIALS

While the Bradsher Finding Aid is clearly the newest, finest, and most comprehensive work of its kind, it is not the only publication relevant to the Commission's effort. For this reason it was necessary to review certain secondary materials in order to determine if they might suggest additional areas worthy of attention or reveal series of Record Groups not yet examined.


SUMMARY
This massive book provides a systematic survey of OMGUS and its American zone offices in Bavaria, Hesse, Württemberg-Baden, Bremen, and Berlin. It outlines the organizational structure of subordinate offices, identifies important personnel, and seeks to determine the exact purpose and jurisdiction of every division and branch.

CONTENT
Each of the six chapters of the OMGUS-Handbuch contains subsections that catalog and describe Record Groups held at numerous German state (Länder) archives. Without exception these Record Group citations appear to correspond with the OMGUS materials held at the National Archives. Record Group 260 is cited the most often. All significant Record Groups are of US provenance.

CONCLUSION
Although the OMGUS-Handbuch provides no additional primary sources, it should prove invaluable when preparing a context chapter. It is exhaustive and meticulously detailed. The National Defense University library at Fort McNair holds a copy of this book. The Commission has acquired lending privileges from NDU.
II. Klaus-Dietmar Henke, Die Amerikanische Besetzung Deutschlands (Munich: R. Oldenbourg Verlag, 1995).

SUMMARY

This book, although addressing the same general topics as the OMGUS-Handbuch, is unlike it in two significant ways: it favors analysis over narration and focuses on the period from summer 1944 to summer 1945 rather than the post-war period. It also contains much more information on internal developments within the collapsing Reich as it struggled to withstand the combined Allied assault.

CONTENT

Because of its size (over 1000 pages) and lack of a subject index it was difficult to determine its exact value to the Commission without skimming it page by page. This cursory search revealed no significant information or material directly relevant to the Commission's work. The book is thoroughly documented and precise. The author consulted and cited both German and American archives.

CONCLUSION

Die amerikanische Besetzung Deutschlands will nicely complement the OMGUS-Handbuch when the Commission drafts a context chapter. The United States Holocaust Memorial Museum Library holds a copy of this book. The Commission has acquired limited lending privileges from the USHMM.


SUMMARY

Ziemke provides a very general overview of Army operations in Germany and its role in military government during wartime and the immediate post-war period. He does discuss German and American looting in depth as well as the activity of the MFA&A Branch.
The final "Note on Sources" section of this book catalogues a number of unpublished sources. Among those mentioned and hitherto unexamined by the Commission were at least thirty-eight folders in the USFET-EUCOM Occupation in Europe series. These folders contained monographs written by US Army historians posted in Germany in the mid-1940's on a wide variety of issues. "Original copies" of these monographs are available at the Center for Military History (CMH) archives. These monographs are poorly indexed and can be found under XXX-XXX-XXX.

CONCLUSION

The monographs are primary material and are worthy of examination. Although this book and John Gimbel's *The American Occupation of Germany* were published more than 20 years ago and are somewhat outdated, they remain the best treatments of this topic in English.

Draft submitted to BG
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