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## Keynote Address

Stuart Eizenstat\*

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# Keynote Address

Stuart Eizenstat

## **Abstract**

Keynote address given by the Clinton Administration's leader on Holocaust-era issues as Special Representative of the President and Secretary of State. The address covered the details of major agreements with the Swiss, Germans, Austrians, and French concerning monetary restitution. The address provides an overview of the development of a push in the U.S. to take on the Swiss banks on behalf of Holocaust survivors and their heirs.

## KEYNOTE ADDRESS

NOVEMBER 1, 2001

SPEAKER: Stuart Eizenstat, Esq., *Partner, Covington  
& Burling\**

PROFESSOR ROSENBAUM: Fordham Law School and the Stein Center are extremely proud and honored to have Stuart Eizenstat here as our keynote featured speaker for this afternoon, and I can say that all of us who were involved in this program owe him an enormous debt of gratitude. Mr. Eizenstat arrived this morning from Israel at 5:30 and, rather than going back home to Washington, he came here to be a part of our Symposium.

You may know Stuart Eizenstat from various different and important roles he has played in public life. He had once been the Domestic Affairs Advisor in the Carter Administration. President Bill Clinton appointed Stuart Eizenstat, when he was then the Under Secretary for International Trade, and later became the Deputy Treasury Secretary, to spearhead the government's efforts in connection with the matter of resolving the recent issues on the Holocaust restitution front that arose out of the *Swiss Banks* cases and other discoveries.

He is a giant in public affairs, and particularly for people who are interested and feel deeply about human rights and international law and the fate of those who suffer under atrocity and genocide, he has been an enormous hero to those of us who have witnessed his efforts on behalf of survivors and Jewish institutions.

With nothing further to be said, let me introduce to you Stuart Eizenstat.

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\* Stuart Eizenstat served as Deputy Treasury Secretary during the Clinton Administration and also served as Under Secretary of State for Economic, Business and Agricultural Affairs, as Under Secretary of Commerce for International Trade and as the United States Ambassador to the European Union. He was President Jimmy Carter's Chief Domestic Policy Adviser and Executive Director of the White House Domestic Policy Staff. Mr. Eizenstat served as the Clinton Administration's leader on Holocaust-era issues as Special Representative of the President and Secretary of State, and successfully helped negotiate major agreements with the Swiss, Germans, Austrians, and French.

MR. EIZENSTAT: I want to recognize a few people besides Thane for the work he has done.

I have a cousin in the audience, Deborah Renert, who is here. Alice Fischer—Alice is a real heroine. She was one of the first people to speak up on the Swiss bank issue, testified in the U.S. Congress, I think has yet to get all the things that she deserves, but that is coming. She told me, Count Lambsdorff, she has gotten her first check now from Germany, which is very positive. Alice, you are really an inspiration to all of us, and we appreciate what you have done.

Very little of what we have accomplished could have been done without some of the people who are here.

Neal Sher, who has worked with Secretary Eagleburger on International Commission on Holocaust Era Insurance Claims (“ICHEIC”), is here.

Gideon Taylor and Saul Kagan, with the Claims Conference, were very much in the midst of all of our negotiations in respect to Germany and Austria, and Saul is sort of the repository of historical memory about the whole claims process, going back to the Luxembourg Agreements in September of 1952.

Michael Geier was a very critical person on the German side, a very valued intermediary, an interlocutor, and someone who always sought solutions to difficult problems.

But I think the person who deserves the most credit, and certainly much more than me, for the German settlement of DM 10 billion is Count Otto Lambsdorff, whom you’ve heard from in this morning’s session. But many of you who were not there might not know about the Count. We first got to know each other when I was President Carter’s Domestic Advisor and he was the Economic Minister in the Schmidt government. We have remained friends ever since, kept in very close contact, and that really served well, because when he supplanted Bodo Hombach as the chief negotiator on the German side, we have a longstanding friendship and trust that served us well during some very trying and difficult times. He is a person who has really dedicated his life to promoting American-German relations and to justice for Holocaust victims. Count, we owe you an enormous debt of gratitude that I hope we will always permanently remember. So thank you very much and we appreciate it.

I want to try to answer some questions: Why now, fifty years

later, did this issue arise? What was accomplished and how was it done? What are the long-term impacts? What were the costs, because this was not cost-free. And, how do we answer some difficult questions involving morality and the use of power? And the questions I am going to ask myself may, frankly, be more difficult than those you write out.

Let's start with asking: Why now, fifty years later, have reparations and restitution for Holocaust victims, their heirs, or other victims of national atrocities come back onto the world scene, after five decades of being not even on the back burner, or simply completely off the radar screen?

There was really a unique convergence of historical events. The fiftieth anniversary of the end of World War II in the spring of 1995 caused a retrospective look at many of the unfinished issues, which had not been adequately dealt with.

The end of the Cold War, which occurred a few years earlier, freed up energies, opened up archives in the former Iron Curtain countries, permitted people behind the Iron Curtain, which was then lifted, to travel to the West, to look for bank accounts; new democracies were brought into power interested in helping what I call the "double victims of World War II," those who were both victims of Nazism and Communism, and who were largely uncompensated by German payments in the past.

The creation in 1992 of the World Jewish Restitution Organization, at the initiative of the World Jewish Congress, Edgar Bronfman, and Israel Singer, to work on restitution issues after the fall of the wall brought the substantial political clout of Edgar Bronfman and his colleagues.

The end of the natural life cycle of Holocaust victims, many of whom had been quiet for fifty years, and had taken in some respects to put their shattered lives together, now, as they were ending their natural life cycle, wanted to tell their stories and look back and have some sense of completeness and justice and closure.

And I believe that there was also another historical factor, which I call the "Millennium complex," because our negotiations were occurring as we were ending the twentieth century, and I think there was a sense of trying to account for the worst events of the twentieth century before they entered the missives of history and we turned a chapter on a new century.

On the other hand, I also believe that people make history. I do not believe in historical determinism. I think that is one of the things we defeated in the Cold War.

And there were unsung heroes, like the *Wall Street Journal* reporter Peter Gumbel who first, in the course of doing a series of retrospectives on the fiftieth anniversary of World War II, got into the whole Swiss issue and first elevated the names of people like Greta Beer and Alice to the front pages of the newspapers and gave human faces to the stories of dormant Swiss bank accounts. That was like bursting a dam, as information became public and decades of silence were broken.

Bronfman and Singer and their colleagues at the World Jewish Congress, in effect, then took the ball and added their political clout and got politicians like Senator D'Amato, Congressman Leach, and others, including the President of the United States Bill Clinton, involved in the issue.

It was like peeling back the layers of an onion, as one issue led to another. Swiss banks led to German cases, to Swiss cases, to French cases, to art, to insurance, and one issue after another began to emerge.

One has to say there was another factor as well, because I think with all of these, were it not for the filing of class action suits, there is little question that we would not be where we are today. It was those class action suits—and I will talk about that more in the later part of my speech—that got the attention of private companies and their governments. They were the vehicle for providing the compensation in return for legal closure.

And there is one other factor I would like to mention as well, and that is a paradox that my very dear friend, Dr. Michael Birenbaum, one of the preeminent Holocaust scholars, has mentioned, and that is the unusual paradox that the Holocaust is one of those few issues that the more distant we are from it, the larger it looms. Each decade since the end of the war has seen greater, not lesser, attention, and that is an oddity. There are very few issues, which grow in magnitude as they are further away from the event. This is one of them. Perhaps because it is the ultimate evil, because it takes so much time to absorb its lessons, and that those lessons have become universalized in Cambodia, in Rwanda, in ethnic cleansing in the Balkans, the Holocaust has taken on an even greater sense of urgency.

This was the context in which, therefore, our work occurred. Had that context not occurred, I am convinced that these issues would never have had the saliency that they did. It took all of them together—the class actions, the historical context, the fiftieth anniversary of World War II, the end of the life cycle of survivors, the millennium coming to an end—all coming together with individuals making a difference, like D’Amato, Bronfman, Singer, Leach, and others, and Mr. McCall as well, who is here, and played a major role.

Second, what has been accomplished? Very briefly, since I was asked in 1995, when I was still Ambassador to the European Union, to become involved in what we thought was a very short-term project dealing with property restitution in Central and Eastern Europe—namely, the return of churches, synagogues, cemeteries, community centers, schools—to the re-emerging religious communities who had been buried under Communism, and in the case of the Jewish community, virtually wiped out as well by Hitler, providing the physical infrastructure to begin renewing those communities.

We focused significantly on the Jewish community—not out of favoritism, but because they were having the most difficulty getting their communal property back—but what we did applied to all communities and to what, again, I call the “double victims.”

Our progress in property restitution, even as I speak today, has, frankly, been slow and it has been painful. There are many successes: we have a Hungarian and a Czech fund that have been set up; the Austrians have set a separate fund up outside of our litigation; property is being returned—one example of hundreds and hundreds is the synagogue in Kiev, which had been converted during the Communist era into a puppet theater, has now been reconverted into a synagogue.

And yet, there are many problems that remain and much work to still be done in the property restitution area. These barriers are a lack of rule of law in new democracies, inefficient legal and administrative structures in countries that had been under Communist domination for five decades, lingering public anti-Semitism, and, one has to unfortunately say—particularly in Poland but elsewhere too, but Poland the most radical example—internecine warfare between the World Jewish Restitution Organization and local Jewish communities over who should

control the properties restituted. Frankly, that dispute in Poland has taken all but one of the five years of the claims period that the Poles provided.

The second thing that has been accomplished is some U.S.\$8 billion in settlements of class action suits against Swiss banks; German industrial employers of slave labor; German banks and insurance companies; Austrian industrial companies, banks, and insurance companies; and our last negotiation, finished less than forty-eight hours before the end of the Clinton Administration, involving Swiss banks.

It is important to note that if one takes that U.S.\$8 billion, the majority of that money will actually go to non-Jewish victims. Forced laborers from Central Europe, for example, make up some one million or more of the total labor population that will be paid. Of the some 240,000 slave laborers, about fifty-five percent are Jewish, but forty-five percent are not.

I was very pleased to see one of the leaders of the Jehovah's Witness organization, who is here today, and he says that they are identifying about 10,000 Jehovah's Witnesses who will also qualify for those funds. Money in each of these settlements is now flowing.

A third area of accomplishment was in the area of art restitution. Philippe de Montebello, the Director of the Metropolitan Museum, said that "the world of art will never be the same" and that "the genie is out of the bottle." What he referred to was the Washington Principles, which we negotiated in December of 1998, in which forty-four countries agreed to open their files, to research the provenance of their art, to have flexible and low standards of proof, to provide alternative dispute resolution for claims, and to return looted pieces of art.

The eight largest U.S. museums have identified some two thousand paintings, which may not all have been looted but are of doubtful provenance, meaning that there were gaps during the wartime or they went through suspicious Nazi-oriented dealers. The French have posted a Web site with one thousand paintings, which they admit were in fact looted. The Dutch, the Swiss, the Austrians, and the Germans are now going through a similar process. Significant amounts of art have been returned—in the case of Austria, over U.S.\$250 million worth.

There is a recent breakthrough in Russia. In October of



2000, I announced a major contribution by Ron Lauder and Edgar Bronfman to fund an initiative with the Russians to open up their art archives. The Russians, without question, have the largest treasure trove of looted art, which they got from the Germans, which, in turn, got it from both German state museums and from Jews. The Duma has passed a law permitting an eighteen-month claim period from the publication of the database. A 501(c)(3) organization has been created and will begin providing assistance for the creation of that database in Russia.

My favorite story about art involves the North Carolina Museum of Art in Raleigh. It's a painting, "Madonna and Child," and a landscape by a famous German medieval painter, which the Count may know of—not because he lived in the medieval period, but because he is an art expert—and that is Lucas Cranach, "the Elder." The story is that this was one of the prized paintings of this small museum in Raleigh. And, lo and behold, about three months after our Washington Principles were enunciated in December 1998, a claim was made by two sisters who were the grandnieces of a Viennese industrialist who was killed during the Holocaust and who claimed it as their family's art piece.

The museum was very cooperative, but hoped against hope that the painting the sisters said was their family's had been a copy or simply from the workshop of Lucas Cranach and was not the same one they had.

Remarkably, with some very good work by some lawyers and by someone named Willi Korte, who is an expert in this, they found that in 1943, Hitler, who fancied himself a great art connoisseur and who wanted to have a museum in his name in Linz, Austria, his birthplace, would review films of the art stolen that the SS would send to him so that he would have only the best for this museum. And, lo and behold, this very picture was in that art archive. It was matched exactly to the one in North Carolina.

The museum realized that they had to return it, they were very gracious about it, but hoped against hope that some way could be found to keep it. They had only U.S.\$600,000 in their whole procurement budget, because it is a state-run museum. They ended up negotiating an agreement with the two sisters that they would be willing to return the art, but they would pay

them U.S.\$600,000, even though it was only a third of the value of the painting, and the sisters were so taken by the cooperation that they took the U.S.\$600,000, allowed the painting to stay in North Carolina, with an appropriate designation of its history and its provenance.

The issue of insurance is also an area where new paths were laid. Through the work of Larry Eagleburger, Neal Sher, and ICHEIC, there are policies being paid at ten times the face value—though one has to say there remain significant problems with the German insurers, who have neither joined ICHEIC and are now trying to pass along very large amounts of their expenses from the German Foundation to pay their ICHEIC administrative expenses, and this is a major bone of contention that needs to be resolved, and I hope that it will be.

The third issue is how this was done, how did all of this happen—not the historical parts, but as a practical matter, how did this remarkable series of events occur in only a few short years?

Well, let's start with why the U.S. Government got involved to begin with. We were actually involved in private litigation—not litigation against the Swiss or German or Austrian or French governments, but against private companies brought by private litigants, that is, victims or their heirs of the Holocaust, or from Central Europe.

It is highly unusual for the U.S. Government—almost unprecedented—to take the kind of time, effort, attention, and intervention that we gave to try to mediate and serve as a catalyst for the settlement of these suits. Why did we do it?

First of all, in the property restitution area in Central and Eastern Europe, we did it because we felt that it would further the rule of law and the modernization and transparency of the former Communist governments, and that it would also remove Jewish Central and Eastern European tensions.

With respect, however, to the class actions, our feeling was the following. First, that many of the victims who were suing were in fact aging U.S. citizens who would be unlikely to recover in U.S. courts, both due to the time that it would take to litigate them and the uncertainty of their legal claims after fifty-five years. In addition, we never insinuated ourselves into cases where we were not asked. The German, Austrian, and French governments specifically asked us to intervene, and in the case of

the Swiss banks the lawyers on both sides, with the approval of the Swiss Government, got us involved as well. Those governments were particularly anxious to have us involved because it would remove a cloud over their doing business in the United States and reduce diplomatic tensions if we could solve them.

What was unique about this? Well, the fact that the U.S. Government was involved in the way it was, was itself unique, but I think it is broader than that. I do not know if Mel will agree with me on this, or the Count, or Michael Geier, or others who were involved, but, in a way, one could look at this whole exercise as a massive alternative dispute resolution procedure via mediation by government conveners with an inclusive process by private interests.

This was done, notwithstanding the fact that Count Lambdorff was my counterpart in the German negotiations, that I had in the French negotiations, or that I had two counterparts in the Austrian negotiations, one for labor and one for property. Yes, they were government representatives or appointed by the government, but we did not negotiate directly with them. We had all the parties together under one tent, all the stakeholders.

In the case, for example, of the German and Austrian cases, particularly the German case, we had governments from Central and Eastern Europe, we had the Claims Conference, the World Jewish Restitution Organization, the State of Israel, the plaintiffs' attorneys, the defendants' attorneys, as well as the two governments. In fact, when we met it was often like a mini-United Nations. But the point is we had all the stakeholders involved, and the mediation occurred because of that.

There is no question that by having everybody together it complicated the negotiations, it made them more difficult, more bases to touch, more prolonged, more complex, more emotional, but, hopefully, more lasting, because everyone felt that they had a claim, an equity to the process, and that they were not outside looking in.

There was also a unique statement of interest filed by the U.S. Government to encourage a dismissal of future suits in Austria, Germany, and France, to try to provide what those companies, in particular the German companies, insisted upon, which was legal peace or legal closure. It does not provide—and, in the end, I think they recognized this—an absolute legal guarantee, but they did have a right to know that they would not have

to pay twice and they could get more companies involved in the process that had not been sued if we could provide that legal peace. I think we have shown that by filing these statements of interest they are listened to by courts and they are effective in dealing with current and future suits.

At the same time, I think that this exercise shows the limits of what courts can do to resolve what are essentially political actions. It took three years after the settlement of the Swiss cases, done by a traditional class action settlement, before there was any payout at all.

I also want to deal with one other issue when one looks at how this was accomplished—besides the filing of the class actions, without which, as I indicated earlier, none of this would certainly have been possible—and that is the role of the threat of sanctions. They were key in the Swiss case through the Executive Monitoring Group, which Alan Hevesi and Carl McCall and others put together of some several thousand chief financial officers from around the country, who threatened to withhold their pension fund investments or to withhold providing deals to Swiss banks unless there was a settlement.

Now, I want to be very frank about this because nothing put me in a more difficult position, given my government role. We had taken the position on a whole host of sanctions issues: Helms-Burton involving Cuba; the Iran-Libya Sanctions Act (“ILSA”) involved investments by third countries, like the European nations, in Iran; the Massachusetts *Burma* case, in which Massachusetts tried to make it more difficult for companies to do business with the State of Massachusetts if they did business with Burma.

Our Administration—and I dare say this current Administration—have taken the position that those sanctions are inappropriate. Particularly at the state and local level they are inappropriate, because it means that they become activists in making foreign policy when that is something the President of the United States, under our Constitution, is supposed to do, and in the case of Helms-Burton and ILSA because they had extraterritorial features.

But it has to be gainsay that the threat of those sanctions—and this involved everything from holding up the UBS/SBC merger in the Swiss bank case, and the potential, although it did not occur in either of the Deutsche Bank/Bankers Trust merger

in the German case. But, in fact, we got very close to the September 1, 1998, deadline set by Alan Hevesi and Mr. McCall in their effort to actually have, for the first time, sanctions invoked. There is no question, as much as I may have disliked it, that they in fact pushed the settlement along and that the settlement may have either not come at all or been longer in coming or at a lower figure without those.

Now, this also shows to some extent the degree to which the globalization of the economy played a major role in what we were doing. It was the presence of the massive American marketplace which Swiss banks wanted to access, which German companies and Austrian companies needed to expand in. It was not coincidental that these suits were filed just about the time that Daimler acquired Chrysler—they may have had second thoughts about that, by the way now, not because of the suits, but for other reasons, but that is another story.

The fact is that all of these German companies, all of the major ones, had major activities and wanted to expand them in the world's biggest marketplace.

And so, there was a mixture of both moral and pragmatic reasons to settle: pragmatic because having that cloud over their head would be a very difficult environment in which they could expand their activity, and that obviously was a major factor.

But one would also be incorrect to suggest it was done only for pragmatic reasons. For example, in the German case the original dozen or so—I think ultimately sixteen—companies who were sued in U.S. court agreed to something quite extraordinary, and that is one of the reasons the U.S. Government was involved, and, if I may say so, I think it is one of the reasons people like Mel Weiss decided that a settlement in this fashion was worth it. That is, remember that the only people who could have, if they had been successful—and there were major barriers to success—recovered in U.S. court were those victims who were employed by the German or Austrian or French—but let's stick on Germany, just for purposes of narrowing the argument—who were employed by those sixteen companies.

But what did the German initiatives suggest? The German initiative was that they would pay every worker, every surviving worker—not just a few thousand, but ultimately we know now over a million—who were employed by any German company,

whether that Germany company is now defunct after the war, whether it was a SS company, whether it was a German public company, whether it was a company that had been in business since the war but was not subject to jurisdiction of the U.S. courts. So there certainly was an expansive and moral element as well.

Next I want to look at the longer-term impacts and then talk about costs and questions.

On the longer-term impacts, I think it is important to say that, as critical as it was to provide justice to victims, that the last word on the Holocaust should not be about money but about memory.

That is why one of the things that I feel best about is that we have encouraged twenty-four countries, from Argentina and Brazil in our hemisphere, to Switzerland and even Lithuania in Europe, and including the United States, to have historical commissions to examine their role in World War II and their relationship to confiscated assets.

That is why I feel so positively about the fact that ten nations, initiated by Sweden, have now formed a Holocaust Education Task Force which is providing teacher training, video, and other curricula, to countries all over the world—the Czechs, the Argentines—to help them with Holocaust education in the school system, not simply to look back at what happened, although that is important, but to look at the lessons of the Holocaust: What happens when the rule of law breaks down, when intolerance goes unchecked, when good countries stay on the sidelines for too long? This was all embodied in a January 2000 Stockholm Declaration at the Stockholm Conference.

One of the things, again, that I think is most important—and I think Saul Kagan was there at the time—and I think the survivors felt it was maybe the most important thing that happened in the German case, and that is in December of 1999 at the Presidential Palace President Rau offered a very moving apology, saying he “begged forgiveness” for German companies and on behalf of the German people for their mistreatment of slave and forced labor. I think all of us felt that had that statement not been made, there would have been a sense of incompleteness to the DM 10 billion settlement.

Let me also suggest, however, that there are other long-term impacts.

This adds an important chapter to the evolving body of international human rights law for civil accountability to go with the evolving criminal accountability following Nuremberg. We now have United Nations tribunals on Rwanda and the Balkans, an International Court of Justice, a recent decision that the rape of women during conflict is a crime against humanity. But these established criminal responsibility.

We took a step—and I don't want to overdo it; it was a step, and that has to be built on—that there is no statute of limitations to civil accountability for the sins of earlier generations and for companies who are involved in genocide. Indeed, that itself may be another important factor, and that is it may send an important signal to multinational companies in conflict that you risk liability and exposure if you participate directly or indirectly in a criminal regime, which is violating human rights.

I do not want to suggest in any way that the intervention of NATO, belated as it was, in the Balkans came from our negotiations, but I do believe that the fact that the Holocaust had become by the 1990s a much more salient issue than it was in the 1950s, 1960s, 1970s, or even 1980s, did indicate that we simply could not permit a second ethnic cleansing in Europe in the twentieth century.

And last, we still have not seen the full impact of what we have done. Let me give you at least two examples. Korean “comfort women” are now seeking recovery for the abuses against them by the Japanese. And African-Americans, at least some, are looking at reparations claims for slavery. Now, we could spend a whole speech on the comparisons and so forth with that, but the fact is that what has come is the fact that they have modeled their potential initiative after what we have all done.

Now let me talk about costs and questions because there are costs. Jews seeking justice were accused of fomenting anti-Semitism in Switzerland, and victims were accused of becoming victimizers by using threats of sanctions and boycotts against Swiss banks or German companies. There are some who claim there was a “Holocaust industry” of class action lawyers, and was it right to monetize the Holocaust to begin with.

Should future generations be responsible for the sins of ear-

lier ones? Well, at least the Bible that I read says the sons are not held responsible for the sins of their fathers in one place, in the other that one should remember the sins of the Malachites into the third and fourth generation. I will let you choose which one you prefer.

But these are tough questions. Let me try to address them.

First of all, I believe that while we obviously have to be sensitive to anti-Semitism, it would have been a gross miscarriage of justice if we had let the fear that Jews seeking justice—or others who were victims of Nazi aggression, like Jehovah's Witnesses or Romas—would somehow lead to an increase in anti-Semitism or anti-Jehovah Witness or anti-Roma feeling. That would have been rewarding the wrong people.

But let me go further. One of my very dear friends, who is now the Chairman of the Holocaust Memorial Museum, Rabbi Irving Greenberg, has talked a great deal about the impact after World War II of Jews moving from powerlessness to power and influence. Power, in the sense that when you have a State you are not all-powerful—the United States is not all-powerful; we can see that in Afghanistan; we need multilateral coalitions; we need to make compromises, sometimes unsavory—but when you have your own State, you can exercise a certain degree of power, and Jews are doing that in Israel and were not able to do it for 2,000 years.

In the United States, it means Jews coming out of the political closet, as they did not do during World War II when the Holocaust was going on, as they did not confront FDR when they might have.

Any use of political power always has the potential; any exercise of political influence always has the potential, of creating controversy and potential abuse. Indeed, if the standard of morality is simply being a permanent victim, being permanently powerless, so that you can say "we had nothing to do with this, it was all due to our oppressor," then one could say that pure morality comes only from being a victim. That cannot be the proper standard. We cannot allow it to be said that those who try to use their political influence in ways that others use it, as I will mention in a minute, somehow became victimizers and turned the tables.

The United States has long had a very boisterous, open de-



mocracy. Let us just use some examples both of actions by individuals and pre-state activities as well as those since. The Boston Tea Party was, in effect, a boycott. The Montgomery bus boycott was a boycott for, we think, important aims. The NAACP's boycott more recently of states, which refuse to recognize the birthday of Martin Luther King as an official holiday or which flew Confederate flags is a boycott. The United States regularly uses economic sanctions against rogue nations and terrorist States like Iraq.

So why not here? Let me suggest that in the end this whole enterprise, this whole issue of the morality of the actions that were taken, has to stand on a moral basis, not simply a legal basis. I have said many times, I have said it today, I will say it permanently, that the class action suits were critical in gaining attention and providing a forum and a format for our alternative dispute resolution process.

But they always stood on shaky legal ground. Except for the dormant account portion of the *Swiss Bank* cases, already handled by the Volcker Committee, which had been created by the Swiss banks and the World Jewish Congress, Judge Korman has privately indicated that he would have probably dismissed the rest of the suits. Judge Greenaway and Judge Debevoise, whether correctly or not, granted motions to dismiss in the German slave labor cases. The Second Circuit Court of Appeals, on a *mandamus* petition against Judge Shirley Wohl Kram, ordered the cases dismissed against German banks on the grounds it was a political question. Only one judge, Judge Johnson in the *French Banks* cases, denied a motion to dismiss, and it is not clear whether that would have held up.

Again, I am not suggesting there were not legal bases. What I am suggesting is that this enterprise ought to be looked at as a moral and political issue and be judged by those terms, as other great moral and political issues, whether it was the civil rights revolution or our own independence or our own efforts to promote democracy and freedom around the world in a very harsh environment, ought to be judged.

The moral obligation of private corporations who either directly or indirectly facilitated the Holocaust and the victimization of millions of Jews and non-Jews was so compelling, the injustice to the victims so obvious, the political pressures so intense, the need for Swiss, German, Austrian, and French

companies to remove the cloud of their doing business in the world's largest marketplace so clear, that it overrode narrower legal constraints. The lawsuits were cases the foreign companies could hardly have afforded to win.

So with that as the backdrop, I'll be glad to take your questions. I think that, again, these are issues that need to be debated. I am so glad that a forum has been provided for them.

**QUESTION:** What is being done about Holocaust victims' property, for instance, first confiscated by the Nazis in 1939, then by the Communists in 1945, and not returned by the Czech Government since 1989, and similarly perhaps in other Eastern European countries?

**MR. EIZENSTAT:** Property restitution falls into two categories: communal and private. Communal property—that is, those properties owned by the corporate religious community, whether they were synagogues, community centers, day schools, churches, or cemeteries—are being restituted, not at the speed I would like, not without more difficulties than they should, but that is occurring. It is inexorable. It is continuing as we speak.

But private property is more difficult, in part because there was no history of private property for some fifty years during the Communist period; in part because in countries like Poland, which have made great strides in communal property, the fear of those who were Poles or their heirs but who are now living outside of Poland, claiming property that is now being used by other private individuals, is so great that they are frozen in paralysis at being able to deal with it.

In addition, I'm glad that the question involved the Czech situation, because I remember my first meeting with then-Prime Minister Klaus, who took great pride in what he had done in the Czech Republic and as an applicant state. It was often said that his ego was such that he thought the European Union should join the Czech Republic, not the Czech Republic join the European Union.

But, nevertheless, Klaus said to me, very frankly: "Look, I want to be very clear on private property. If we start giving private property back to Jews, then the next thing we'll have is the Sudeten Germans claim that their private property, which was taken after the war with at least acquiescence of the Allies, ought to be returned to them as well."

I know the Count is more than familiar with this very difficult situation. So you have that problem. You have the problem again of the fear of claims taking away people's property. We have said no, you can do it by compensation, but still hitting the budget.

There is also simply the problem of the change in boundaries. For example, eastern Poland, where two-thirds of the Jews lived before the war, is now not Poland. Some of it is in Belarusia, some of it is in Ukraine, and the question of who is responsible, who should give the property back, is a very daunting issue.

So we made a judgment—and I would say, Saul and Gideon, that this is one that the World Jewish Congress and the WJRO fully supported—that to focus on communal property first was the right one. We have not ignored private property, but it is a much more difficult and complex issue.

QUESTION: The next question is about the lawyers and this “Holocaust industry” issue.

MR. EIZENSTAT: Let me deal with this very directly. Mel Weiss did not take a nickel for the *Swiss Banks* cases, and neither did Michael Hausfeld. There is still litigation going on by some of the other lawyers who wanted legal fees.

Second, in the German, Austrian, and French cases, we negotiated with the lawyers a capped amount for legal fees. In the case of Germany, it was a range of 1 to 1.25%. We gave it to two independent arbitrators to decide between that. It came out to 1.15% or something like that. Then that was allocated, in accordance with the contributions made in billable hours and so forth, by the arbitrators. It is 1% basically of DM 10 billion. The same—I think it was 1.2% or something—in the Austrian case, and a similar percent in the French case.

So the notion that somehow lawyers came away with massive amounts out of the pockets of Holocaust victims is just utterly untrue. Those who perpetuate that are not doing justice to the lawyers or to history. I have more than enough scars from the lawyers so that I do not just stand up here to defend them, but I can tell you that this attack is completely and wholly baseless.

QUESTION: Then there is the question of claims about blackmail extortionist methods against the Swiss banks, et cetera.

MR. EIZENSTAT: Well, I have tried to answer that. Were

there threats? Yes. Were there tough threats? Yes. Did I oppose them and did the U.S. Government oppose them? Yes.

But it is part of our whole tough democracy, a bit like tough love. Our democracy is tough. I mean, we do not have sort of Athenian referendums. We make decisions by the clash of interest groups, much more so than in Europe.

There was a clash here. It caused friction, it caused difficulty—and yes, honestly, it did cause a rise in anti-Semitism in Switzerland—not, I want to say in Germany, not one bit. Four parties in Austria, including Heiter's party, supported the Austrian settlement. It was unanimously voted out of the *Bundestag*, all parties, every single party, including the former Communists, supported it, the press and the public in Germany.

So in some countries it did. But is that a reason not to have done this?

Now, again, I think some of the tactics went beyond the pale. I think there were some statements by some of the lawyers, not including Mr. Weiss—and he knows who I am talking about—who paraded around Holocaust survivors in unfashionable ways, who made gross statements that should not have been made, who complicated my life and Count Lambsdorff's and my other counterparts'. Yes, there were excesses, as there always are when you have a clash of interests. But to suggest that this somehow was blackmail and unfair is just as incorrect as well.

I think I have, frankly, just about run out of time, but I hope that that has responded to at least some of your questions.

PROFESSOR ROSENBAUM: Thank you, Stuart Eizenstat, again for those wonderful keynote remarks and for also spending some additional time with us in answering a few questions.