

# Report on Dormant Accounts of Victims of Nazi Persecution in Swiss Banks

## Introduction

1. This Report on Dormant Accounts of Victims of Nazi Persecution in Swiss Banks by the Independent Committee of Eminent Persons (“ICEP” or the “Committee”) represents the culmination of a three-year investigation.<sup>1</sup> The guiding principle of this endeavor has been to find as much of the truth about the fate of these victims’ accounts, dating from before or during World War II, and their treatment by Swiss banks, as is feasible, given the passage of half a century. We are now confident that the Committee’s investigation has produced a record of the past on this problem that is, in fact, as complete as is now possible.

2. Part I of this report reviews the background, the *modus operandi*, and the factual results of the investigation in accordance with the mandate to the Committee. Part II sets out certain recommendations flowing directly from the investigation described in Part I. These recommendations are directed to the Swiss Federal Banking Commission (“SFBC”) and other authorities of the Swiss Government, and to the established Claims Resolution Tribunal. They concern the appropriate handling of the individual account records identified by the Committee, the publication of account names, the means of resolving claims by victims of Nazi persecution or their heirs to accounts in Swiss banks, the use of the established Claims Resolution Tribunal, the further

search for accounts of intermediaries responsible for the accounts of these victims and looted assets, and the appropriate treatment of dormant accounts in the future. Annexes and appendices provide the supporting details.<sup>2</sup>

## Part I – Findings

### Significance of the Investigation

3. The Committee was established by an agreement between the Swiss Bankers Association (“SBA”) and the World Jewish Restitution Organization and the World Jewish Congress representing the Jewish Agency and Allied Organizations recorded in a Memorandum of Understanding of May 2, 1996.<sup>3</sup> Under this mandate by these founding organizations, the Committee’s investigation had two major objectives: (a) to identify accounts in Swiss banks of victims of Nazi persecution that have lain dormant since World War II or have otherwise not

<sup>1</sup> “Dormant accounts” is defined broadly for the purposes of the ICEP investigation to mean those accounts with respect to which there has been no withdrawals or additions by, and no correspondence or other contacts with the account holders or their representatives or with the beneficiaries since at least the end of 1945 as well as accounts that should have been dormant as described above but for the fact that the funds in the account are unavailable for reasons other than their return to the original depositors or their legal representatives. A list of abbreviations and a glossary are in Appendices V and W.

<sup>2</sup> Annexes 1-9 contain various specific analyses of important aspects of the investigation, and Appendices A-W contain the texts of relevant documents.

<sup>3</sup> Appendix A contains the text of the Memorandum of Understanding; see also Appendices B and C for statements by the late Prime Minister Rabin of Israel and by the Swiss Federal Council.

been made available to those victims or their heirs; and (b) to assess the treatment of the accounts of victims of Nazi persecution by Swiss banks.

4. The Committee’s investigation focused on a specific banking issue: the fate of funds entrusted to Swiss banks by victims of Nazi persecution. Most directly, the objective was to provide for simple justice for those victims (and their heirs) with unsatisfied claims on accounts in Swiss banks. It is also a matter of great importance for those banks themselves and their reputation. But it has significance beyond the people and institutions directly involved.

5. The investigation is only one part of a larger effort, as the Twentieth Century rapidly fades into a new millennium, to explain to ourselves and to our posterity how a century marked by so much material progress could also have made genocide a tragically familiar word and spawned two terrible great wars. This search for the truth has been made possible by a unique confluence of events. The end of the Cold War has encouraged a renewed debate on subjects that were previously submerged. Archives of old documentation were opened giving new perspectives on past events. Leadership has focused renewed attention on matters of great moral importance.

6. All of this has had special significance for Switzerland. As a country and as a community of people, it plainly cannot be held responsible in any way for the genocidal policies of Nazi Germany or for World War II. But Switzerland is unique in the sense that, during that War, it was surrounded on every side by Axis powers. It was struggling to survive as best it could in very trying circumstances, in almost total isolation in the heart of the continent. This truly difficult situation has been reflected in a typical Swiss view of Switzerland as an innocent bystander maintaining its firm policies of democracy, neutrality, and banking probity, among other values. That uncritical view came up against a growing intensity of calls from outside Switzerland, and from within, for a review of the past, in-

cluding the role of Swiss banks, in the light of new information. The Committee’s work is an outgrowth of a willingness in Switzerland to undertake this review with fresh eyes, and with the expectation that the review would be both objective and fair.

7. In Switzerland, this self assessment and re-evaluation of history extends beyond banking to the role of Switzerland more generally during the period of Nazi dominance in Germany and World War II. A December 1996 Federal Decree established the Independent Commission of Experts: Switzerland—Second World War under the chairmanship of Professor Jean François Bergier (the “Bergier Commission”) to conduct historical and legal research into topics relating to Swiss commercial and political activity during the War.<sup>4</sup> ICEP in relying on this Commission<sup>5</sup> to follow up on the work that has been done in certain areas; in particular, the Committee’s investigation of intermediaries and the identification of possibly looted assets has developed leads for further analysis.

## Background

8. The anticipation of war and economic distress, as well as the persecution of Jews and other minorities by the Nazis prior to and during World War II caused many people, including the victims of this persecution, to move their assets to countries deemed to provide safe havens (importantly including the United States and the United Kingdom) despite increasingly tight currency exchange restrictions. In view of neutral Switzerland’s borders with Axis and Axis-occupied countries, Swiss banks and other Swiss financial intermediaries were also recipients of a portion of the assets in search of safety.<sup>6</sup>

<sup>4</sup> The text of the Federal Decree is in Appendix F.

<sup>5</sup> See Statement of Coordination and Cooperation with the Bergier Commission, Appendix K, and Annex 6: Intermediaries and Looted Assets.

<sup>6</sup> Some of the assets that moved to Switzerland in the first half of the 1930s left Switzerland in the later years of that decade with total on-balance-sheet foreign liabilities falling by about a third from SFr. 1.5 billion in 1937 to a low of SFr. 1.0 billion in 1941, after which time they began to rise again. The threat of German invasion of Switzerland and its neighbors was undoubtedly a factor in this outflow of funds from Switzerland. See Appendix R: Swiss National Statistics on Foreign Liabilities.

Subsequently, extermination of much of the Jewish population of Europe as a result of Nazi actions resulted in concern that the victims or their heirs were unable to claim assets legitimately entrusted to others for their safekeeping. Strong claims were pressed that their assets were, deliberately or not, kept unavailable in dormant accounts in the Swiss institutions in which they were placed for safety or that they may have otherwise disappeared as a result of neglect or deliberate fraud.

9. Soon after the War, there was a vigorous debate in Switzerland and elsewhere on what to do about the assets of the many account holders who would never come back. Typically, their heirs could not document a claim or might not even be aware of the existence of the accounts. In the years that followed the War, the most direct approach toward a solution, the collection and publication of the names of the missing account holders, was not accepted. Several early surveys by the banks themselves, under the auspices of the SBA, identified only a small number of accounts of customers known or suspected to be victims with a total value well under SFr. 1.0 million. Recognizing the inadequacy of these findings, the Swiss Government in 1962 required all Swiss financial intermediaries to report assets of foreign or stateless persons known or presumed to have been subject to racial, religious, or political persecution, and then invited claims. This process resulted in the identification of only 739 additional accounts in the banks with a value of SFr. 6.2 million. Responding to criticism that the “heirless assets” problem had still not been solved, the SBA, 33 years later, in 1995, initiated another survey of foreign accounts (not only victim accounts), and 775 such accounts, with a value of SFr. 38.7 million, were identified. Not only did some consider this survey to be inadequate, following upon repeated earlier failed efforts to obtain a fair accounting, but there was also dissatisfaction with the lack of results in locating dormant accounts by the Swiss Banking Ombudsman, an office established by the SBA, one of whose functions was to assist victim claimants in their search for such accounts.

10. Based on the belief that there were many more accounts, and much greater values, than had previously been identified, and that justice to these depositors had yet to be done, the World Jewish Congress, under the leadership of its President, Edgar Bronfman, became the principal proponent of an independent investigation that could give a credible answer to these longstanding questions about the size and fate of Holocaust victim accounts in Swiss banks. In Switzerland as well, there was a growing recognition that previous investigations had been neither conclusive nor done full justice to the claims of many victims of the Holocaust or their heirs. The Swiss banking community concluded that the time had come to undertake an independent and broadly ranging examination of what many in Switzerland itself had come to consider serious insensitivity and even negligence, veiled by an overly protective and a broadly interpreted policy of banking secrecy.

11. These converging views brought the Swiss banks, acting through the SBA, under the leadership of Georg Kraymer, Chairman of the Association, into discussions with the World Jewish Restitution Organization and World Jewish Congress, representing also the Jewish Agency and allied organizations. The result of these talks was the Memorandum of Understanding of May 2, 1996 (referred to above) that established an independent committee to conduct an investigation of the conduct of Swiss banks and of dormant accounts in these banks (including deposits and other assets and financial instruments) originating before, during, and immediately after the Second World War. It also provided that independent forensic accountants would be mandated to carry out this task under the instructions of the Committee.

12. Partly in response to the commencement of the ICEP investigation in August 1996 and with ICEP’s encouragement, the SFBC ordered Swiss banks to report foreign and Swiss accounts, as well as those of unknown or uncertain domicile, that had been opened prior to May 9, 1945 and dormant since

that time. In July and October 1997, Swiss banks published in the world press (and on the internet) names of 5,570 foreign accounts. In addition, 10,758 accounts of Swiss and of unknown domicile were also made available to the public in Switzerland.<sup>7</sup> The banks also reported an additional 63,738 domestic or unknown domicile accounts of SFr. 100 or less that were not published.<sup>8</sup>

## Nature and Scope of the Investigation

13. The Independent Committee of Eminent Persons created by the Memorandum of Understanding is composed of three members and two alternates appointed by each of the founding organizations, and a chairman representing neither of the appointing parties.<sup>9</sup> Drawing on a membership with experience in finance, international affairs, accounting, and government, the Committee turned its attention first to formulating its investigative program and to selecting the audit firms to carry out the investigation. The Committee then directed and monitored the investigation, meeting approximately quarterly—a total of 15 times—to carry out these functions.<sup>10</sup>

14. The Memorandum of Understanding provided that the detailed investigation would be conducted by an independent accounting firm with an international reputation and licensed to audit banks in Switzerland so as to obtain unfettered access to bank books and records relevant to the investigation. In fact, five such firms were eventually retained.<sup>11</sup> From the beginning, the Committee recognized the job was much too big for any one firm, and it only expanded in scope as it went forward. The use of multiple firms was also necessary because of considerations of conflicts of interest and the desirability of encouraging a culture of competition in excellence among the firms.

15. As could be expected, given the different perspectives of the founding organizations, there were lively discussions in the Committee about the

scope of the investigation, the most effective means of implementing it, and about how to interpret its results. Despite widely different initial perspectives, the Committee has achieved a broad consensus concerning the factual conclusions reported here.

16. Declared as an “official special audit” by the SFBC,<sup>12</sup> ICEP’s investigation covered a period of more than 60 years. All available records related to the Relevant Period (1933-1945) of some 254 Swiss banks existing in 1945 were examined. These banks represent 82 percent of the Swiss banking system in 1945 and nearly all deposits of foreign account holders, and include all banks most likely to have attracted significant deposits from Holocaust victims.<sup>13</sup> The investigation has been intensive and probing, employing the forensic experience and skills of five major international accounting firms. Inevitably, it has been intrusive in its search for documents and records. Nevertheless, cooperation was maintained by all but a few banks.

17. The external cost of such a comprehensive investigation—in the range of SFr. 300 million and utilizing some 650 forensic accountants at the time of their peak efforts—was substantial. To these direct costs, borne by the Swiss banks, must be added the banks’ own large internal costs related to staff-

7 See Annex 5, paragraphs 50 to 57, on the 1997 Survey and Annex 8 on the claims resolution process conducted by the Independent Claims Resolution Tribunal for the 5,570 foreign account holders.

8 The 74,496 accounts that were not published internationally in 1997 were reviewed independently in the ICEP investigation.

9 These members and their affiliations are listed in Annex 1.

10 See ICEP Press Releases in Appendix D. The Committee also created an operating entity to contract with parties carrying out the investigation and to monitor progress. This entity, the Independent Association of Eminent Person (“IAEP”), is a Swiss association with the characteristics of a corporate entity.

11 The audit firms retained by ICEP are: Arthur Andersen, Coopers & Lybrand, Deloitte & Touche, KPMG, and Price Waterhouse. During the investigation, in July 1998, Coopers & Lybrand and Price Waterhouse merged. The separate teams from each of the two firms that worked on the ICEP investigation maintained their separate identities during the full course of the investigation. The firms and their affiliates which participated in the investigation are listed in Appendix U.

12 The SFBC declaration is in Appendix G. See also Letter from SFBC Chairman Kurt Hauri and ICEP Chairman Paul A. Volcker to Banks Being Investigated, Appendix L.

13 See Annex 2 for a description of the Swiss banking system in the 1933-1945 period and the banks selected for the investigation. See also Appendix R containing Swiss National Bank statistics on foreign liabilities of certain banks.

ing, document collection, processing, and analysis.<sup>14</sup> Those costs were an object of concern and criticism by some who felt they were disproportionate to the potential size of the dormant accounts of Holocaust victims. Moreover, a number of banks questioned what they felt was an unneeded intrusion into their affairs by foreign accountants who they believed were unfamiliar with the procedures, languages, and methods of Swiss banking.

18. The Committee's perspective on these concerns was that its investigation was not simply a matter of balancing costs against account values, but part of a larger effort to develop, for once and for all, the truth of a matter that had long been a subject of concern to the Jewish community, increasingly to the Swiss banks and the Swiss Government, and to the world community. This position has been broadly supported by the Swiss banking community and by the Swiss Government. At the end of the day, almost all banks have provided at least the necessary level of unfettered access that the auditors needed to complete their work.<sup>15</sup> Many banks, especially the largest, recognizing the validity and importance of the investigation and its methodology, fully cooperated, devoting very substantial staff resources working under the supervision of the Committee's auditors to the accomplishment of its goals.

19. In this connection, this Committee wishes particularly to recognize the cooperation the Committee has received from Chairman Kurt Hauri and his associates at the SFBC. From the beginning, they recognized the significance of the Committee's effort and the importance to Switzerland of clarifying the role of Swiss banks in dealing with the contentious and emotional issues involved in the investigation. Without that cooperation, and particularly the decision to make the Committee's investigation official audits under the auspices of the SFBC, its work would have been enormously complicated, if possible at all.

## Investigative Methodology

20. After a preparatory phase of historical research and pilot audits, the Committee developed a general strategy for the on-site phase of the investigation.<sup>16</sup> A major part of this strategy involved the establishment of a documentary record of accounts that were open or opened in Swiss banks in the Relevant Period. That record would, in turn, provide the raw materials for identifying accounts probably or possibly owned by Holocaust victims and other victims of Nazi persecution. This effort, which took one and a half years, involved a very large commitment of resources of the auditors and the banks. In the end, just over 4.1 million accounts were reviewed and placed in computer databases. No records remained for some 2.8 million additional accounts estimated to have been open in the Relevant Period.

21. Two main methods were used to test the accounts databases to identify accounts of victims of Nazi persecution.<sup>17</sup> The first method was a computerized comparison of accounts, name by name, with lists of victims of Nazi persecution.<sup>18</sup> These victim

14 A substantial portion of these costs could well have been incurred in any event as a consequence of litigation or the need to improve record keeping. The financing of this investigation is described in Annex 3, Part C. An accounting review of these expenditures is in Appendix T.

15 One bank, Banque Cantonale de Genève, did not allow any audit work beyond the pilot investigation and a preliminary Second Phase review to develop a budget. Two banks, Zuger Kantonalbank and Dreyfus Söhne & Cie, limited the scope of matching and analysis of matches. Six cantonal banks, Aargauische, Basler, Graubündner, Schaffhauser, Thurgauer, and Zürcher, limited or refused access to certain information necessary to analyze accounts identified through matching, including analysis of unique name matches (see paragraph 33). By the conclusion of the investigation, however, only the refusal by Banque Cantonale de Genève to permit the investigation to go forward at this bank posed a significant impediment to the accomplishment of the goals of the ICEP investigation.

16 This strategy is detailed in the mandates to the auditors found in Appendices E and J, as well as in Appendices N, P, and Q, which contain guidelines and instructions to the auditors. An overview of the ICEP investigation is in Annex 3.

17 The audit firms also used other forensic accounting techniques. The results of the investigation with respect to other forensic accounting techniques is in Annex 3. See also Annex 7 on Records and Record Keeping.

18 This process, known as matching, led to the identification of "matched accounts" for which the name of a victim matched to the name of an account holder on an exact or nearly exact basis. A "matched account" may result from an identity of common names; thus, while matching is a highly useful tool, in fact the only tool now practically available for a system wide search to identify accounts that have a probable or possible relationship to victims of Nazi persecution, a match, in itself, does not confirm that the account holder and the victim are, in fact, the same person. The matching process is described in paragraphs 29 to 33 of Annex 3 ("The First and Second Phases of the Investigation") and paragraphs 7 to 12 of Annex 4 ("Identification of Accounts Related to Victims of Nazi Persecution").

lists, provided mainly by Yad Vashem, the Israeli Holocaust Memorial, and by the Holocaust Museum in Washington, D.C., contain over 5.5 million names, thus providing extraordinarily large coverage of the total population devastated by Nazi persecution. The second method involved a non-automated, more time intensive, process of a selective account-by-account forensic analysis of the available account documentation to determine if specific facts and circumstances suggested a relationship to victims of Nazi persecution.

22. The Committee proceeded on the shared understanding that account databases, tested as described above, would provide the most objective and thorough way—indeed the only way that could be at all comprehensive—of identifying victim accounts after more than half a century, given that most of the individuals who participated in the events in question can no longer be identified, and that recollections are cloudy, potentially biased, and certainly fragmented. The methodology based on the accounts databases was also thought to be most resistant to any manipulation of the record that might have occurred in the past. While most transactional records are no longer available, systematic destruction of account opening or closing records of accounts of victims of Nazi persecution without detection would be difficult, if not impossible. In fact, no evidence of systematic destruction of account records for the purpose of concealing past behavior has been found.

## Identification of Accounts

NOTE: This report contains a wide variety of statistical data, including importantly the number of accounts in Swiss banks from the Relevant Period probably or possibly related to victims of Nazi persecution, and estimates of the value of these accounts. The exact numbers used in the text to report auditors' findings may give an appearance of numerical precision that is not feasible after half a century. There can be no assurance that all possible accounts have been identified or that some have not been misidentified as those of victims. In particular, the numbers of victims accounts reported in this document are those available at the last meeting of the Committee on November 23, 1999. More accounts may be identified or some identified accounts may be disqualified as a result of further review by the auditors of data developed during the investigation.

23. Capturing information on all accounts opened during the Relevant Period was simply not feasible. Swiss law does not require business records, including banking records, to be kept more than 10 years, although the practice among banks has been to maintain more basic account information, especially account opening and closing records, for 10 years or more after the date when an account is closed. Moreover, there have been more than 100 mergers among banks that existed in 1945. Old records were condensed or destroyed as banks were merged or acquired or records were computerized. Nonetheless, a very substantial degree of coverage was achieved. The auditors estimate that a total of 6.8 million accounts of all kinds were open or opened in the period from 1933 to 1945 in the investigated Swiss banks. As a result of the investigation, account databases have been able to capture the names of account holders of over 4.1 million accounts, or approximately 60 percent of the 6.8 million accounts that are estimated to have existed in the prewar and wartime period at these banks.<sup>19</sup>

24. The extent of coverage differs substantially among the three main types of banks—large commercial, cantonal, and private—and within these three categories as well. The highest coverage, at 83 percent, was achieved among private banks, which tend to have fewer and larger sized accounts. The three large commercial banks (Credit Suisse Group, the former Swiss Bank Corporation, and the former Union Bank of Switzerland)<sup>20</sup> follow with an average of 72 percent. The cantonal banks, which typically have large numbers of small, domestic accounts, had an average coverage of 48 percent. Of the accounts probably or possibly related to Holocaust victims that were identified in the investi-

<sup>19</sup> These data are detailed in Annex 4. Of the estimated total 6,858,100 accounts in the Relevant Period, 4,100,100 were identified from still existing records and incorporated into various accounts databases. The difference between the total estimated number of Relevant Period accounts (6,858,100), and the accounts in the databases, is 2,758,000 accounts for which no records now exist in these Swiss banks. While the very large amount of information available made a thorough investigation feasible, it is appropriate to note that records for account opening and closing information and transactional information for 2.8 million accounts is no longer available for analysis. The significance of this missing data is discussed in paragraph 38. See also Annex 7: Records and Record Keeping regarding Swiss law on retention of records.

gation, the cantonal banks had the least relative to their total Relevant Period accounts, and the three large commercial banks the most. Private banks were in the middle, but still far below the three largest banks.<sup>21</sup>

25. Given that remarkable coverage of old accounts, the challenge for the Committee and its auditors was to establish which accounts could be identified as probably or possibly being those of victims of Nazi persecution or connected with such victims. Very obviously, the great bulk of the 4.1

million accounts in the database reflected ordinary banking relationships with Swiss and foreign businesses and individuals. Filtering the database to identify the relevant accounts from the universe of the accounts that were open or opened in the Relevant Period was a complex, multi-step process. The accounts identified by the ICEP investigation are categorized<sup>22</sup> on a sliding scale from a high degree of probability to a possibility of having a relationship to victims of Nazi persecution (“probable or possible relationship accounts”). Table A on the previous page and Table B summarizes the filtering pro-

**Table A**  
**Analysis of Accounts Open in 1933-1945**  
**in the Swiss Banks Investigated**

<b>Account Characteristics</b>	<b>Number of Accounts</b>
Estimated Total Number of Accounts Open in the Relevant Period	6,858,100
Less Estimated Number of Accounts for which No Records Remain	(2,758,000)
Total Accounts in Accounts Databases	4,100,100 <sup>23</sup>
Less Non-Relevant (Domestic and Savings) Accounts	(1,850,400) <sup>24</sup>
Accounts for Matching	2,249,700
Less Unmatched Accounts	(1,972,795)
Accounts Matched	276,905
Plus Other Accounts Selected for Research	76,491 <sup>25</sup>
Total Matched and Other Accounts Selected for Research	353,396
Less Accounts Determined Non-Relevant After Research (See Table B)	(299,510)
Total Accounts with Probable or Possible Relationships to Victims	53,886

20 In 1998, the former Swiss Bank Corporation and the former Union Bank of Switzerland merged to form UBS AG. The two banks making up UBS AG were investigated separately by separate audit firms both before and after the merger and are referred to in this Report as separate banks.

21 Table 15 in Annex 4 contains a listing of accounts identified by type of bank — large commercial, cantonal, and private. The 59 banks currently in existence that are recorded in this table represent, through mergers and acquisitions, 254 banks that existed during the Relevant Period. Through this process, the two largest commercial banks account for 141 of these 254 banks that existed in 1933 to 1945.

22 See Annex 4, Exhibit C for the definitions of the four categories of accounts.

23 Includes the foreign, domestic and unknown domicile accounts reported in the 1997 Survey. See paragraph 12 and Annex 5: Treatment of Dormant Accounts of Victims of Nazi Persecution, paragraphs 50 to 57. Domestic accounts were removed by ICEP in the process of filtering of accounts to identify those probably or possibly related to victims. See Tables A and B.

24 This number includes 1,065,600 domestic accounts and 784,800 savings accounts that were readily identified as being not being relevant to the ICEP investigation.

25 The 76,491 accounts specially selected from the 1,972,795 accounts that did not match were chosen by the auditors for further research because in the auditors judgement the facts and circumstances surrounding the opening and closing of these accounts indicated that there was a probable or possible relationship with victims of Nazi persecution even though no name match resulted from the matching process.

cess. Paragraphs 26-34 explain the details of this process.

26. In the first step in this filtering process, accounts of Swiss residents were excluded based on records of permanent Swiss addresses. Such residents were unlikely to have been Holocaust victims.<sup>26</sup> Savings accounts under SFr. 250 were also excluded where testing of these accounts for foreign account holders demonstrated that they were overwhelmingly accounts of persons with Swiss addresses, typically small, and little used by victims. These exclusions amounted to 1.9 million of the 4.1 million identified accounts, leaving 2.2 million accounts with foreign or unknown addresses.

27. The second step in the filtering process concentrated on identifying, among those 2.2 million accounts, the accounts for which there is an exact (or near exact) name match<sup>27</sup> between the names of account holders and the names of victims of Nazi persecution. Accounts with a residence in Axis and Axis-occupied countries were also identified, whether or not there was a name match to a name on a list of victims. Name matches were determined for 276,905 accounts and 76,491 other accounts (not matched by name) were identified for additional research.<sup>28</sup>

28. The third step in the filtering process involved research and analysis of these 353,396 accounts to determine (a) whether the accounts were open during the Relevant Period, (b) whether the accounts were active after 1945 (implying activity by the account holder) or inactive after 1945, (c) whether the account holder was Swiss or foreign, and (d) whether the accounts were open, closed, or suspended.

29. The aim of this research and analysis was to identify individual accounts with probable or possible relationships between account holders and victims of Nazi persecution. Of these 353,396 accounts researched by the audit firms, 299,510 were found not to be the accounts of victims or to have an identifiable relationship to a victim of Nazi persecution (See Table B). These accounts are mainly accounts that were determined to be domestic, had no reasonable evidence of being open in the Relevant Period, or for which the ultimate disposition is unknown and were not matched or lacked evidence of residence in an Axis or Axis-occupied country. Each of the reasons for concluding that there was no probable or possible relationship to victims of Nazi persecution are listed in Table B and discussed in detail in Annex 4.

26 In a related effort, described in paragraphs 53 to 56, and in Annex 6, the auditors extracted from the database, accounts related to possible Swiss agents or intermediaries of funds of victims of Nazi persecution.

27 The details of the matching process are explained in Annex 4, paragraphs 7 to 12.

28 See footnote 25, and Annex 4, for a description of specially selected accounts.

**Table B**  
**Accounts Researched and Analyzed with No Identifiable  
Relationship to Victims**

	<b>Number of Accounts</b>
<b>Total Accounts with No Identifiable Relationship to Victims</b>	299,510
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Accounts Determined Domestic Through Research	117,898
Accounts With No Reasonable Evidence of Being Open in Relevant Period	60,090
Accounts Closed to an Authorized Party	16,036
Accounts with Account Holder Activity After 1945	26,283
Accounts Closed Before Axis Occupation of Residence of Account Holder <sup>29</sup>	12,640
Ultimate Disposition Unknown Accounts <sup>30</sup>	56,823
Unmatched Accounts with Allied/Neutral Residence, Accounts Paid to the Swiss Government, and Accounts Paid to the Hungarian/Poland Fund	3,017
Accounts Published Internationally as a Result of the 1997 Survey <sup>31</sup> and Other Surveys	6,723 <sup>32</sup>

<sup>29</sup> This line also includes 2,997 other matched accounts closed before 1946 for which the residence of the account holder is outside of an Axis or Axis-occupied country.

<sup>30</sup> These accounts were not matched or they did not have a residence in an Axis or Axis-occupied country. Ultimate Disposition Unknown Accounts having either of these characteristics are contained in Categories 1, 2 and 3. See Annex 4.

<sup>31</sup> As previously noted, 5,570 foreign accounts were published in July and October 1997. See paragraph 12 and Annex 5: Treatment of Dormant Accounts of Victims of Nazi Persecution, paragraphs 50 to 57.

<sup>32</sup> Some proportion (about 20 percent) of the 5,570 foreign accounts that were already published and are now under adjudication by the Claims Resolution Tribunal are accounts related to victims of Nazi persecution. See paragraph 12 and Annex 8: The Claims Resolution Tribunal for Dormant Accounts in Switzerland.

**Table C****Total Accounts with a Probable or Possible Relationship to Victims of Nazi Persecution Disposition by Account Categories<sup>33</sup>**

<b>TOTAL ALL TYPES</b>	53,886
<b>Total Open and Dormant<sup>34</sup></b>	2,726
<b>Total Suspended<sup>35</sup></b>	12,180
<b>Total Closed</b>	38,980
Closed without Explanation in Surviving Records <sup>36</sup>	36,258
Closed by Bank to Profits and by Fees	2,305
Paid to Nazi Authorities <sup>37</sup>	417

30. An identification of known victim accounts or accounts with a probable or possible relationship of bank accounts to victims was established for 53,886 accounts. **As emphasized again later in this Report, identification of accounts as having a probable or possible relationship to victims of Nazi persecution means only that a sufficient question has been raised by the facts and circumstances surrounding the accounts to warrant a claims resolution process with respect to these accounts in order to determine more definitively whether the account holder was, in fact, a victim of Nazi persecution. The inclusion of an account in this group is not necessarily conclusive evidence that any one account is in fact that of a victim of Nazi persecution or that such accounts have been withheld, deliberately or otherwise, from Holocaust victims.**

31. The current status of these 53,886 accounts identified as having a probable or possible relationship with victims of Nazi persecution is set out in Table C. These accounts also have been analyzed in four categories<sup>38</sup> reflecting different characteristics bearing upon the strength of their relationship to victims.

32. Category 1 is composed of 3,191 Relevant Period accounts that remain open and dormant, were placed in suspense accounts, or closed after some period of dormancy, and matched exactly or almost

33 Table C summarizes the numbers of relevant accounts findings of the ICEP investigation. In contrast, as noted in paragraph 12, the 1997 search for dormant accounts ordered by the SFBC that covered both open dormant and suspended accounts identified 5,570 accounts of foreigners (not just Holocaust victims). The ICEP search has identified an additional 14,880 such accounts that probably or possibly relate to victims of Nazi persecution. The 1997 search did not cover closed accounts, while the ICEP investigation identified 38,980 mostly matched closed accounts with probable or possible relationships to victims. Comparisons between the two searches are not exactly comparable because of the different search criteria and because the 1997 search covered more than 74,000 domestic and unknown domicile accounts that were not part of the claims resolution process for the 5,570 foreign accounts that is described in paragraphs 50-52 and Annex 8: The Claims Resolution Tribunal for Dormant Accounts in Switzerland.

34 Open and dormant accounts are accounts that are currently carried on the books of account of a bank as a liability of the bank but are dormant in the sense there has been no contact between the account holders or their heirs and the bank for an extended period of time.

35 A suspense account is an omnibus account that is a current liability of the bank into which individual dormant accounts are consolidated for collective management, usually for the purpose of reducing administrative costs. In Swiss banks during and after the Relevant Period, suspense accounts were generally not assessed fees or other charges and did not earn interest (although interest may have been paid if the account holders or their heirs subsequently returned to claim a deposit).

36 These accounts are referred in this Report and its Annexes as accounts "closed unknown by whom."

37 Accounts transferred on instructions that were coerced from the transferor by Nazi authorities.

38 See Annex 4, Table 15 for a breakdown of the number of identified accounts by category.

exactly with names of known Holocaust victims or claimants. Category 2 is made up of 7,280 accounts that do not meet the exact or near-exact name matching test,<sup>39</sup> but nonetheless have other characteristics that suggest that there may be a probable or possible relationship between the account holders and victims of Nazi persecution—Relevant Period accounts of people who were resident in an Axis or Axis-occupied country during that Period,<sup>40</sup> that were either inactive for at least 10 years after 1945 or, in some cases, identified by the bank as the account of a victim, or otherwise met certain criteria.<sup>41</sup>

33. Accounts in Category 3 are composed of a much larger number of closed accounts—30,692—open in the Relevant Period by residents of Axis or Axis-occupied countries, matched exactly or almost exactly to names of victims, and were closed (except for Germany) during or subsequent to the year of Axis occupation of the country of residence of the account holder or after the war. These characteristics are indicators of a probable or possible relationship of these accounts to victims. However, these accounts have no direct evidence of an extended period of dormancy, or of unauthorized closure, important elements of the presumption that there was a relationship to a victim. Nevertheless, 14,716 of these accounts have unique name matches or have confirming factors. Of these accounts, 5,776 matched uniquely to only one name of a victim of Nazi persecution, and 4,283 names matched to two names on the victims list. An additional 4,657 accounts matched to more than two names but had confirming factors, including the families that matched to the same or different victims lists (1,755), and common cities (1,026), and countries (1,851). These 15,980 unique or almost unique matches indicate a significantly higher probability that the relationship of these accounts to victims is not simply a coincidence of common names but are genuine matches between account holders and victims of Nazi persecution.<sup>42</sup>

34. Category 4 consists of another 12,723 nominally foreign accounts<sup>43</sup> opened in the Relevant Pe-

riod that could not be matched to victim names and lacked evidence of a residence by an account holder in an Axis or Axis-occupied country during the Relevant Period. Some 8,400 suspended, unknown and savings type accounts in this Category come from Swiss Volksbank (now a part of Credit Suisse Group) and Banque Cantonale Neuchâteloise. Although these banks had a predominantly domestic retail business during the Relevant Period, they also had many contacts with foreigners. All of the accounts in this Category were considered as having a sufficiently possible relationship to Holocaust victims to warrant their inclusion in Category 4.

35. On the basis of information now available, no valid estimate can be made of the aggregate value of the accounts due victims of Nazi persecution or their heirs until a claims resolution process has determined which claimants are properly entitled to such accounts. There are two main obstacles to such an attempt:

- As indicated earlier, identification of an account as “probably or possibly” related to a victim does not in itself indicate the validity of such a relationship. The identified accounts vary widely in the degree of probability attached to them, and there is now no way of determining the number of accounts that will be claimed or that will be recog-

39 See footnote 18 and Annex 4 for a description of the matching process and its significance.

40 For a discussion of the probability or possibility that dormant accounts of persons resident in an Axis or Axis-occupied country could be those of victims of Nazi persecution, see Annex 4, paragraph 37. This section of Annex 4 compares the impact of the larger number of combined military and civilian casualties in continental European countries with the significantly lower number of casualties in the Jewish populations of these countries. It also notes, however, that Jewish deaths relative to the total Jewish population were between 6 to 149 times higher than for the death rate in the non-Jewish populations in these countries.

41 See Annex 4, paragraph 24 for a description of the additional selection criteria.

42 See Annex 4, paragraphs 32 to 37 for a detailed analysis of unique name matching and confirming factors. The same type of confirming factors noted for the matches to more than 3 names were also present for some of the unique name matches and the matches to only two names on the victims lists, thus further strengthening the probability or possibility that the matched accounts are related to victims of Nazi persecution. Some of these probable or possible relationship accounts with unique, almost unique, and confirming factors matches were closed after Axis occupation of the country of residence of the account holder but before the end of the war making it unlikely that these victims received the benefit of their accounts since they were imprisoned and executed prior to the end of the War.

43 See Annex 4, Exhibit B for the definition of foreign accounts that was used in the ICEP investigation.

nized for payment by the claims resolution process. In that connection, more than half the identified accounts have been closed for reasons unknown.

- Moreover, for about half the identified accounts there is no information on account values. For accounts with such values, there is little consistency in valuation dates, uncertainty as to fees and charges paid or interest credited, and the proper valuation of securities in custody accounts.

36. As explained further in Part II, The Committee has developed approaches toward approximating fair current values for individual accounts in situations where the book values are known. The Committee, with the support of the banks, believes that these approaches provide a reasonable and fair basis for making awards to identified Holocaust victims in a manner that takes account of the fact that these funds were unavailable to victims or their heirs for decades. But this approach cannot reasonably be aggregated over accounts where neither the book value nor a legitimate claimant, or both, can now be identified. Such a determination of the overall total must await the outcome of the claims resolution process.

37. Finally, while the Committee's investigations were able to reconstruct about 60 percent of the accounts in Swiss banks in 1945, full coverage, if possible, would, no doubt, have identified more accounts of victims of Nazi persecution. Conversely, experience with the existing Claims Resolution Tribunal confirms that accounts identified in the investigation may, in fact, remain unclaimed. After reviewing these and other considerations, including the known account valuations,<sup>44</sup> the Committee believes that claims of victims to identified accounts can be met within the amount specified in the agreed class action settlement now being considered in U.S. District Court, with some part of funds from that settlement available for distribution to others covered by the settlement.

## Reasonableness of the Findings

38. After more than 50 years, identification of account holders and their relationship to victims of Nazi persecution cannot be precise. Banking records are inevitably lost and destroyed, leaving substantial gaps in the records available to identify depositors of accounts opened long ago. The fact that the auditors were able to locate the names and other identifying information for 60 percent of the 6.8 million accounts from the Relevant Period is in fact extraordinary but still leaves an unfillable gap of almost 3 million accounts that can now never be known or analyzed for their relationship to Holocaust victims. No doubt, a number of victims used intermediaries in establishing accounts, and we cannot now sort out from bank records intermediaries who were acting for Swiss people and those who represented the wealth of foreigners to say nothing of Nazi victims. Moreover, the process of filtering down the 4.1 million accounts in the database to 53,886 accounts was in many respects cautious, e.g., it excluded, *inter alia*, accounts with permanent Swiss addresses even though victims may have used false Swiss addresses and by using exact or near-exact name matches despite the common errors in transcribing names. Thus, the number and value of accounts with a probable or possible relationship to victims of Nazi persecution is conservative, but, for the reasons explained below, not to the degree suggested by the shortfall in account coverage outlined above.

39. Some name matches, especially with common names, will not, in fact, reflect a family or other relationship between listed victims and accounts in the database. Some evidence in addition to a name match, even if limited, will be necessary to confirm such a relationship that could lead to an award. Similarly, a claimant must also provide some evidence of an appropriate relationship with the victim to qualify for an award of the adjusted current value of the account in issue. For this and other reasons, the number of accounts that are finally awarded to

<sup>44</sup> These valuations are set out in Annex 4.

victims and their heirs will undoubtedly be less than the 53,886 number of probable and possible relationship accounts identified in the ICEP investigation.

40. After studying this matter intensively for three years the aggregate results of the Committee's account identification process appears to be reasonably in accord with other evidence. Statistical and anecdotal evidence support a substantial inflow of funds into Switzerland by persons who were persecuted by the Nazis or who feared such persecution.<sup>45</sup> The availability of liquid funds for capital flight in the amounts identified in the investigation is clearly supported by the study of the wealth of Jewish communities in Europe that was commissioned by the Committee.<sup>46</sup> The terrible loss of life among the Jewish population and the population of other victims support the presumption, so widely acknowledged in the years immediately after the War, that many victims and their families were unable to reclaim wealth left for safekeeping in Switzerland. In the light of all this background, the evidence of probable and possible relationships captured in Categories 1-4 between account holders and Holocaust victims clearly seems persuasive enough to be considered in Part II recommendations for an independent, objective, and expeditious claims resolution procedure.

## Evaluation of Banks' Conduct

41. In setting the record straight, the Committee has come to certain conclusions about the appropriateness of the actions of Swiss banks in dealing with the accounts of victims of Nazi persecution. Assessing the record as a whole, the Committee concluded:

- (a) The auditors have reported no evidence of systematic destruction of records of victim accounts,<sup>47</sup> organized discrimination against the accounts of victims of Nazi persecution, or concerted efforts to divert the funds of victims of Nazi persecution to improper purposes; and
- (b) There is, however, confirmed evidence of questionable and deceitful actions by some

individual banks in the handling of accounts of victims, including withholding of information from Holocaust victims or their heirs about their accounts,<sup>48</sup> inappropriate closing of accounts, failure to keep adequate records, many cases of insensitivity to the efforts of victims or heirs of victims to claim dormant or closed accounts, and a general lack of diligence—even active resistance—in response to earlier private and official inquiries about dormant accounts.

42. Important among the questioned actions that are outlined in detail in Annex 4 was, at the least, a widespread lack of diligence in searching for victims' accounts.<sup>49</sup> In a few banks, deliberately misleading statements about closed accounts were made to claimants by bank officials. Earlier inquiries used excessively narrow research criteria. Many banks placed little or no emphasis on the work, and there was inadequate follow-up. In two egregious instances, the SBA itself appeared to counsel limited (and, therefore, incomplete and, consequently, misleading) responses.<sup>50</sup> The Committee's concern about these problem actions is based both on multiple specific instances identified by the auditors in a number of individual banks, and on the record of repeated failures to respond adequately to individual claims or to the various industry or official inquiries.

43. No less important were various actions resulting in the closing of accounts. Normal fees and charges, assessed on all dormant accounts, were applied even to victims where banks knew or should have known that the account holder was dead or had disappeared leading to eventual closing by exhaustion of the account values. Moreover, long dor-

45 See also footnote 6 for evidence of a counter-flow of funds in the later years of the 1930s. The Committee took the development into account in reaching its conclusions.

46 See Appendix S for the full text of this study.

47 The results of the investigation with respect to records and record keeping are in Annex 7.

48 For details, see paragraphs 5 to 11 of Annex 5.

49 Of the 59 banks investigated, only 8 banks (2 cantonal banks and 6 private banks) had no accounts identified as having a probable or possible relationship to victims of Nazi persecution.

50 For details, see paragraphs 37 to 41 of Annex 5.

mant accounts were transferred to the banks' profit accounts, most without retaining readily available documentation necessary to easily identify the accounts of returning depositors. The criticism, applicable in this case to the treatment of all dormant accounts, of such actions is even more pointed with respect to the extraordinary charges for searches for victims accounts or to close accounts. This criticism also applies to the placing of accounts in fee-free suspense accounts without payment of interest and, in many cases, without adequate documentation. In these cases, tracing of ownership was difficult or impossible, with a consequent greater impact on Holocaust victims whose accounts became involuntarily dormant. These actions, and those discussed in more detail in Annex 5, led the Committee to question whether their duty of due care in their dealings with customers was observed by a number of banks and their officers in the special situation following World War II.

44. In assessing this record, there are mitigating factors. The questionable actions clearly did not appear uniformly among all banks and, in fact, individual banks differed substantially in their treatment of dormant accounts, including Holocaust victim accounts, with most of the problems appearing in the large commercial banks. The Committee also recognizes that there is ample evidence of many cases in which banks actively sought out missing account holders or their heirs, including Holocaust victims, and paid the account balances of dormant accounts to the proper parties. The behavior criticized above, for the most part, took place years ago in a particularly difficult period with different banking standards.

45. The evaluation of bank conduct also needs to take into account that the problems with dormant accounts appear to be partly a byproduct of the absence of a Swiss escheat law dealing with unclaimed property in banks. Unlike other countries (such as the United States) where dormant assets are transferred to state governments, in Switzerland dormant assets remain indefinitely with the banks. Until re-

cently, and with the exception of the special Federal Decree of 1962 referred to above, there were no general rules enacted for these dormant accounts. Accounts that are dormant for long periods are a natural result of that legal framework.<sup>51</sup> There are also large volumes of very small accounts, in part growing out of the practices of some banks (particularly cantonal banks) to establish accounts for newborn children. These circumstances have given rise to large numbers of dormant accounts even in settled times. The period of widespread disruption of normal life that characterized the regime of Nazi terror and its aftermath only aggravated the problem.

46. Banks explained that it was natural, in accordance with Swiss law, for them to continue to rely upon the original contract or settled practices with respect to charges in the absence of other arrangements with the customer. In this way, in a manner completely consistent with contracts, accounts could be exhausted and closed. Moreover, the passage of time combined with the absence of a clear legal requirement to maintain business records for dormant accounts (as described in paragraph 23 above) inhibit a bank's ability to recognize the validity of claims for long dormant accounts. These views gain support from the evidence that the banks, for the most part, treated foreign and domestic customers alike, including with respect to dormant accounts. The identification, by the auditors of present day, of very large amounts of dormant accounts, completely unrelated to victims, in the Swiss banks is consistent with this view.

47. Without the transparency and oversight implied by publication or state surveillance, the course of least resistance is to neglect careful accounting for funds held in a fiduciary capacity over the years. In logic, however, a time unlimited obligation to repay deposits should create a concomitant obligation to carefully and fairly account for such depos-

51 A comparison of Swiss law on the treatment of dormant accounts to the laws of other European countries and the United States is in Annex 9. This analysis indicates Switzerland is not unique among European countries in not having an escheat law.

its and to keep records that would at least contain information on the current status of accounts and their owners. The ICEP investigation indicated that a surprising amount of old records were in fact preserved. However, those records were largely inaccessible without very substantial effort and still obviously insufficient to identify fully and adequately all dormant accounts, especially those placed in suspense, and accounts closed by the bank to profits and by fees.

48. The Swiss commitment to bank secrecy and a concern about maintaining the integrity of that secrecy—ironically in part a response to foreign exchange controls in Germany and their use to persecute Jews there—were undoubtedly factors in the decision not to publish the names of the dormant account holders after World War II. Switzerland had an informed and vigorous debate extending over a number of years on this subject. Banks were also concerned that too liberal a regime for processing claims to dormant accounts would result in payments to the wrong parties and double liability for the banks. Unfortunately, the banks and their Association lobbied against legislation that would have required publication of the names of such so called “heirless assets accounts,” legislation that if enacted and implemented, would have obviated the ICEP investigation and the controversy of the last 30 years. An historic opportunity was missed.

49. Finally, the Committee also notes that a factor in the indifferent treatment of many claimants to the accounts of victims of Nazi persecution was a fear of embarrassment and litigation arising out of transfers of victims’ accounts to Nazi authorities after these victims had been coerced into signing transfer papers. At the time, ethical and business dilemmas were plainly created for the bank in this situation. However, the practice apparently adopted after the War by a few banks or bank officials of denying to claimants in such cases all knowledge of the existence of an earlier closed account relationship is impossible to justify.

## Related Committee Efforts

### Claims Resolution Tribunal

50. An important part of the effort to deal with justice for claimants to dormant accounts has been the establishment of a Claims Resolution Tribunal. While beyond its formal mandate, the Committee had an instrumental role in creating and designing the Tribunal with the agreement of Swiss banks. Several Committee members serve as Trustees of the parent foundation. The Tribunal is staffed by a corps of 17 distinguished international arbitrators from seven different countries supported by a capable secretariat in Zurich. It has received 9,776 claims to approximately half of the 5,570 accounts of foreign account holders that were published in July and October of 1997. The Tribunal, operating under substantially relaxed standards of proof, is now well along in the process of adjudicating all claims and expects to finish all but the most complex cases by the end of 1999, and the rest by mid-year 2000.

51. As of November 15, 1999, a total of 1,281 claims have been resolved with awards having a book value of more than SFr. 23 million, reflecting about one-third of the SFr. 72 million book value of the accounts published in July and October of 1997. A total of 5,415 claims have been denied as a result of decisions by the Tribunal. These claimants failed to make a case that they had a relationship to the depositors of the accounts for which they had made a claim. Approximately 80 percent of the claims, resolved or rejected, did not, upon a preliminary review, appear to involve the accounts of Holocaust victims. In a study made by the International Tracing Service, approximately 20 percent of the 5,570 names of foreign open dormant or suspended account holders matched to those of Holocaust victims. Unlike the accounts identified in the ICEP investigation, these accounts published in 1997 were accounts of foreigners generally; they were not selected for probable or possible relationships to victims of Nazi persecution. Consequently, the roughly

20 percent share traced to Holocaust victims should not be representative of ICEP's investigation.

52. From the claims made in response to the July-October 1997 publication, the awards to victims of Nazi persecution made by the Tribunal will be adjusted upward by application of the current value adjustment factor approved by the Independent Claims Resolution Foundation. That decision provides for a restoration of fees and charges and for deposit accounts a multiplication of the implied 1945 book value by a factor of 10 to reach an adjusted current value. These adjustments are designed to recognize the special circumstances of Holocaust victims whose accounts became inadvertently illiquid because of persecution. Consistent with the analysis of a special group of experts, the Swiss long-term bond rate has been taken as a measure of what account holders might have earned if they had the ability to control their accounts.<sup>52</sup>

### Intermediaries and Looted Assets

53. The audit firms were instructed to search for accounts opened by intermediaries and to report to ICEP any evidence of potentially looted assets that they found during their investigations.<sup>53</sup> Because of the passage of time and the inherent difficulty of tracing the beneficiaries of accounts opened in the name of Swiss residents or persons in other countries, this proved a most difficult area of investigation. Moreover, intermediaries, in the normal course of their business, could well be acting for persons unrelated to Nazi persecution. Bank records will normally not reveal information about intermediaries' relationships with their clients and only in very unusual circumstances will a bank be responsible for the actions of a depositor intermediary. The Committee, by its mandate, had no investigative powers outside the banks themselves.

54. In the circumstances, the approach necessarily taken was to request the audit firms to match the accounts databases to a database containing the names of possible intermediaries (including Swiss lawyers, notaries, and other intermediaries, includ-

ing those identified by the Bergier Commission). The substantial number of Relevant Period accounts that were so matched (to some now unknown extent) reflected the likely predominately normal fiduciary business of these intermediaries. The audit firms also reported other potential intermediary accounts identified as a result of other research. Thus, the investigation, without access to the books and records of intermediaries, has made maximum use of available bank records to identify areas of possible further investigation and endeavored to coordinate with the broader investigations in this area of the Bergier Commission.

55. Faced with similar problems with regard to potentially looted assets, the audit firms matched the accounts databases against the names of some 1,934 potential looters (for example, senior Nazi officials and European Nazi collaborators). The total number of Relevant Period accounts that were matched is 1,622.

56. The Bergier Commission has broad legal authority to investigate Swiss policy in relation to World War II, including concerns about looted funds as well as misuse of funds by intermediaries. To assist in its efforts, there has been a mutual exchange of information, and the Bergier Commission plans further investigation.<sup>54</sup>

### Study of Jewish Assets

57. The Committee sponsored a study—*Report on the Pre-War Wealth Position of the Jewish Population in Nazi Occupied Countries, Germany and Austria*<sup>55</sup>—by Ms. Helen Junz, a highly experienced economist and researcher. The report reviews available records about the wealth of the Jewish indi-

52 See Annex 8 covering the Claims Resolution Tribunal and the work of the Panel on Interest, Fees, and Other Charges. The final report of the Panel on Interest, Fees, and Other Charges is in Appendix M.

53 The results of the investigation with respect to intermediaries and looted assets is contained in Annex 6.

54 See Appendix K for the statement of Coordination and Cooperation between the ICEP and the Bergier Commission. See also paragraph 7 above.

55 The report was financed by the Swiss Bankers Association, the World Jewish Congress, and by ICEP member, Mr. Ronald Lauder. The full text of the report is in Appendix S.

viduals and families in Germany and five Axis-occupied countries on the eve of World War II. Substantial evidence was found in official records and otherwise bearing on the matter. Her work suggests some US\$12.1 billion (in 1933 dollars for Germany and 1938-39 dollars for all other countries) existed in pre-war Jewish wealth before expropriation started. Upwards of US\$3.0 billion (or 25% of the wealth estimate) may have been in sufficiently liquid form to be available for transfer to, or already lodged in, a safe haven destination. Although the structure of wealth differed, financial assets (equities and bonds) were the single most important savings instrument in each of the six European countries investigated. These countries represented three-quarters of the Jewish population outside of the Soviet Union, three-quarters of the persons that died as a result of the Holocaust, and probably a somewhat larger fraction of Jewish wealth. The report represents a substantial contribution to understanding the events surrounding the Holocaust, as well as providing some check as to the reasonableness of estimates of the population of Jewish wealth that may have been deposited with Swiss banks.

## Results in Perspective

58. The Committee wishes to emphasize several major points implicit in the preceding discussion:

- After the passage of so many years, a precise accounting of dormant accounts (or of questionable closure of accounts) of victims of Nazi persecution is simply not possible. The absence of fully adequate records cannot, however, be attributed to systematic or widespread and deliberate alteration or destruction of bank account records for the purpose of obliterating the history of the accounts of these victims. Indeed, the amount of data available has exceeded most expectations.
- The strength of the probable or possible linkage between the groups of Relevant Period accounts described above and Holocaust victims varies widely. A name match is a highly

useful indicator of a Holocaust victim relationship but alone is not conclusive, as reflected in the fact that accounts with common names can have more than one match, although these matches can still contain among them one or more victims names. Judgments of the Committee as to the strength of this linkage rested on a number of factors and identification of an account as probably or possibly that of a Holocaust victim does not connote certainty, nor does publication of the names of account holders in itself imply that these accounts were withheld from them or their heirs.

- The 4.1 million accounts in the databases constitute an estimated 60 percent of the total accounts in the Relevant Period. Had it been possible to capture all or a greater part of the estimated 6.8 million Swiss bank accounts from the Relevant Period in the records, certainly more accounts would be available for a claims resolution process. As noted above, the coverage was more complete for the large banks and private banks which were the principal recipients of foreign accounts in general and victims' accounts in particular. Cantonal banks with a large Swiss "retail" clientele had relatively fewer records. Consequently, the total of the number and value of accounts with some presumption of involvement with victims of Nazi persecution identified by the investigation is clearly conservative, but not to the degree suggested by the total shortfall in account coverage.
- The accounts identified as a result of the ICEP investigation do not, on their face, seem unreasonably large relative to Jewish wealth, the size of Swiss banks, or the proportion of foreign accounts in these banks. Specifically, the *Report on the Pre-War Wealth Position of the Jewish Population in Nazi-Occupied Countries, Germany, and Austria* sponsored by the Committee concluded that US\$ 3 billion (in 1930s dollars)

of liquid funds were potentially available for investment in safe haven locations (although Switzerland was only one, and probably not the main, recipient of those funds).

## Drawing a Bottom Line

59. The members of the Independent Committee of Eminent Persons are unanimously agreed that its unprecedented accounting investigation, skillfully executed with an intensive and sustained effort by a large staff of forensic accountants, and with the cooperation by the Swiss banking community, has provided as full and complete accounting of the status of the accounts in Switzerland of victims of Nazi persecution as is now reasonably feasible.

60. There is crucially important unfinished business to provide justice to those with legitimate claims to identified accounts, a matter dealt with in our recommendations in this Report. Moreover, further investigatory effort is appropriate to follow leads with respect to intermediaries and looted accounts, an area that extends beyond this inquiry which has been confined to the activity of Swiss banks.

61. With those reservations, we are agreed that the treatment by Swiss banks of the funds entrusted to them by victims of Nazi persecution has now been fully investigated and analyzed. In that respect, a line can be drawn under this contentious and difficult matter.

## Part II — Recommendations

### Introduction

62. Part I of this Report reviews the factual findings of the forensic audit of Swiss banks mandated by the World Jewish Restitution Organization and the Swiss Bankers Association, and sets forth the conclusions of the Independent Committee of Eminent Persons arising out of those findings. The Committee's work and its conclusions have been shaped in substantial part with a view toward appropriate next steps in a number of areas including,

most importantly, an effective claims resolution process. This Part II of the Committee Report contains its conclusions in that respect and sets out certain recommendations that are supported by the Committee.

63. As a logical extension of its work, the Committee had an active role in recommending the publication of accounts in 1997 and in establishing the Claims Resolution Tribunal (discussed in Part I) to adjudicate claims to these published accounts. The Committee has repeatedly recognized that the success of its investigation of dormant accounts is dependent upon the policies and mechanisms necessary to efficiently, effectively, and finally resolve the claims of Holocaust victims or their heirs to the accounts identified in its investigation.

64. Common ground in any approach toward that effort is (1) the development of, and access to, a database of relevant accounts; (2) notice to potential claimants; (3) efficient procedures for an independent and objective resolution process; and (4) ground rules for resolving claims, including the amount of awards to claimants. The specific Committee recommendations concern the nature, location, and accessibility of the database; the extent and format of publication of account names; the choice and approach of a tribunal; and a "formula" for translating known or estimated account values into equitable present-day monetary awards. There is a need for follow-up in certain other areas as well.

### The Database

65. The ICEP investigation, by its nature, has resulted in the development of a database (or more accurately databases) of Swiss bank accounts from the Relevant Period, including accounts that are probably or possibly related to victims of Nazi persecution. At present, however, these databases are scattered among individual Swiss banks and are not now freely available for examination. They are, however, effectively under the control of the Swiss Federal Banking Commission, which has the authority to require consolidation and allow for access. In

practice, effective and expeditious handling of claims by the Tribunal will necessitate centralization of the databases and clear rules of access that are sensitive to the needs of claimants as well as the maintenance of appropriate confidentiality.

66. One effective use of this type of account information, responsive to the concerns outlined above, was demonstrated in the important and helpful 1997 decision of the Swiss Federal Banking Commission to authorize publication of names of accounts in Swiss banks dormant since World War II. These foreign accounts were published in leading newspapers around the world and on the internet.

67. The Committee recommends that the Swiss Federal Banking Commission promptly take steps to consolidate the existing but scattered databases into a central archive. Clear and simple rules for access to information in the databases—certainly including the name of the relevant bank—by the Claims Resolution Tribunal (or other designated body) is necessary to facilitate its efforts to reach a speedy conclusion to the claims resolution process.

## **Publication of Account Names**

68. The extent to which names of accounts that are determined to have a probable or possible relationship to a Holocaust victim should be published name-by-name has been a difficult issue. At the heart of the question lies a point that again needs emphasis.

69. The determination by the Committee that an account has a probable or possible relationship to a victim of Nazi persecution does not and cannot be automatically considered as constituting an adverse judgement on the conduct of a bank with respect to that account. Put another way, inclusion of a particular account on the list of 53,886 accounts deemed probably or possibly related to victims of Nazi persecution is not necessarily evidence that any one account is that of a victim of Nazi persecution, or that these accounts have been withheld deliberately or otherwise, from Holocaust victims. The determi-

nation of the probability or possibility of a relationship to victims of Nazi persecution has been guided by certain strong presumptions about account characteristics, including name matches. However, the precision of proof of such relationships normally applicable in judicial proceedings will rather typically depend upon evidence that is rarely still available after more than half a century. Therefore, any claims resolution process must take this reality into account.

70. At the same time, victims who have been long denied justice by circumstances beyond their control—often poor and now aged—deserve every reasonable assistance in establishing a claim. One step toward achieving that result is to provide access to names of account holders for accounts identified in the ICEP investigation. Such access will enable claimants—who today almost necessarily are, as a result of the passage of time, not the victims themselves but their heirs—to identify accounts of related family members. A direct and efficient way to provide such access is to publish that list.

71. Strongly competing considerations with respect to publication have been advanced to limit the publication of all account names regardless of the strength of the probable or possible relationship to Holocaust victims. There is concern that publication of all of the identified accounts will, in the minds of many, carry a greater implication of widespread insensitive and even unethical behavior than is warranted by the facts. Recognition of the need to turn a presumption into a valid claim, it might be feared, will be lost on the media and the public at large. In addition, the banks are concerned that public listing of individual names will compromise privacy rights protected by law and induce multiple claims without credible supporting evidence.

72. A key factor in the Committee's evaluation of publication is the experience of the Claims Resolution Tribunal process which demonstrates that publication of names attracts multiple claimants and claims by a single claimant to numerous unrelated

accounts. One danger is that a volume of frivolous claims to a very large list of published names could clog the claims resolution process, delay justice rather than serving the legitimate claimants, and introduce a substantial and undesirable element of chance into the resolution process.

73. In light of these considerations, the Committee suggests that the claims resolution process be organized in such a way as to provide for publication of the names of accounts that have a strong probability of a relationship with victims, and about which the Committee has accumulated the most information. This will permit depositors who were victims or their heirs to identify more easily the accounts to which they have a valid claim based on plausible evidence, and for the Tribunal to evaluate such claims against a significant base of useful identifying information.

74. Of the accounts identified in the ICEP investigation, the accounts with the highest probability of a relationship with victims are the accounts in Categories 1 and 2, and, with respect to Category 3, accounts for which there are unique, almost unique, or confirming factors matches between victims and account holders as described more fully in Part I. Accounts in Category 1 are foreign accounts that are an exact or near-exact name match to victims of Nazi persecution, that were open or opened in the Relevant Period, and that were inactive after 1945. The accounts in Category 2, which are unmatched, are accounts of account holders resident during the Relevant Period in an Axis or Axis-occupied country that were open or opened in the Relevant Period, and that were identified by the banks holding the accounts as accounts of victims of Nazi persecution or were inactive for at least 10 years after the war. While the accounts in Category 3 do not have evidence of activity or inactivity after 1945, the fact that many of those accounts are “unique name matches,” and others with supporting information, strongly suggests relationships to Holocaust victims. Nevertheless, publication of the closed accounts in Categories 1, 2 and 3 present a special problem for

some members because these accounts have been closed without surviving documentation to explain to whom they were paid. These members have reservations about publishing such closed accounts as a general matter, but believe an exception permitting publication is justified in the extraordinary circumstances of the Holocaust, and because the Committee is recommending certain adaptations of the claims resolution process to deal with the special characteristics of closed accounts (see paragraphs 79 and 84).<sup>56</sup> Therefore, the Committee unanimously recommends to the Swiss Federal Banking Commission that it authorize publication of the names of the account holders for the 25,187 accounts in Categories 1, 2, and part of 3.

75. The evidence that the remainder of the accounts in Category 3 (without unique name matches) and the accounts in Category 4 are related to victims is significantly less strong. For these Category 3 accounts, as for the Category 3 accounts described above, there is no information about who benefited from the closing of the accounts. However, the critical elements of both evidence of inactivity and values for a substantial portion of these accounts are also unknown. For the unmatched accounts in Category 4, a different important element of the relationship determination—evidence of residence in an Axis or Axis-occupied country—is also unavailable, and these accounts were concentrated in retail-oriented banks. For these accounts, much less information is available to the Tribunal to test the plausibility of claims.

76. Consistent with this approach, the Committee believes that any person with a valid claim to a dormant account of a victim of Nazi persecution, whether or not an account name is published, should be provided facilities for submitting such a claim. Claims already submitted to ICEP, new claims submitted to the Tribunal directly, claims filed with the

<sup>56</sup> They also believe that residence of an account holder in an Axis or Axis-occupied country is not a sufficient indicator, by itself, of a relationship to a victim of Nazi persecution to warrant publication of these accounts to initiate a claims resolution process (see Annex 4, paragraph 37) but accept its use as an indicator of such a relationship in the special circumstances of the Holocaust.

Class Action Settlement, and claims from the New York State Holocaust Claims Processing Office should be matched against the available databases of accounts. If there are matches of such claimants on these lists with the full list of names of account holders, a claims resolution process should be initiated by the Claims Resolution Tribunal. In principle, the Committee believes that all victims of Nazi persecution or their heirs who submit a claim should be able to have such a claim resolved if the account holder's name is indeed found in the accounts database by the Claims Resolution Tribunal. In order that the Tribunal may test the plausibility of such claims, the claimant should be prepared to provide evidence indicating a relationship to an account holder who is a victim of Nazi persecution.

## The Tribunal for Resolution of Claims

77. The Claims Resolution Tribunal established in 1997 in Zurich is now approaching the end of its effort to arbitrate claims arising from the 1997 publication of 5,570 foreign accounts in Swiss banks. That claims process, cumbersome at first, now functions with greater speed and effectiveness. The Trustees of the sponsoring foundation are drawn from the membership of ICEP; and the Swiss Chairman and American Vice Chairman of the Tribunal have provided outstanding leadership of an experienced secretariat and a distinguished panel of 15 internationally recognized and seasoned arbitrators.

78. ICEP has consulted with the Tribunal on practical methods of speeding an effective and fair administrative claims process in a manner that is consistent with the policy objectives outlined above. Such process would continue to entail liberal standards of proof. Administrative resolution by the Tribunal secretariat of straightforward claims to accounts known to be small could also be possible, with arrangements for review where appropriate by a single arbitrator or a panel of arbitrators.<sup>57</sup>

79. Important to the management of the arbitration process would be a requirement that claimants

present some evidence of a relationship to the individual account holder who was a victim of Nazi persecution. On that basis, the resolution process would be accelerated, particularly for those cases where the bank involved concurred in the claim resolution. While banks themselves may offer to settle claims, resolutions should be under the authority of the Tribunal. Special rules would also have to be developed for administrative and adjudicative resolution of claims to accounts with unknown values and accounts for which their disposition on closure is unknown. Finally, allocating the costs of this process is a subject for further discussion by the Board of Trustees of Independent Claims Resolution Foundation.

80. On the basis of these facts and proposals, the Committee recommends that claims by victims of Nazi persecution or their heirs to the accounts arising as a result of its investigation be channeled through the Claims Resolution Tribunal. The Committee recognizes that a Federal District Court in the United States is overseeing the settlement of a class action suit against the large Swiss commercial banks. The Committee looks forward to the cooperation of the Tribunal with the Court.

## Awards to Claimants

81. Fundamental to the Committee's approach to the matter of valuing identified victim accounts is the need for a formula for translating known or estimated accounts values into equitable present day monetary awards. In approaching this problem, the Committee believes certain principles should be respected. These principles basically take as their point of departure that a Holocaust victim account holder or heir should be reasonably compensated for the *de facto* nature of the account as a long-term effectively illiquid asset since the end of World War II regardless of its formal designation or original contractual relationship.

<sup>57</sup> A possible framework for such a process is described more fully in Annex 8.

82. Specifically, the earliest known account values on the books of the bank for deposit accounts should be identified and adjusted to 1945 values by adding back estimated bank charges and deducting estimated earned interest, if any. The 1945 values should then be adjusted to present values on the basis of long-term Swiss rates of return. That adjustment implies a multiplier of 10, more than accounting for increases in the cost of living over the 54-year period.

83. These approaches are consistent with the analysis of a panel of distinguished financial economists headed by Mr. Henry Kaufman.<sup>58</sup> They have also been reviewed by the Claims Resolution Tribunal. The Committee recommends that these approaches be used by the Tribunal.

84. The valuation problem is more complicated where information about the account value is fragmentary or, in many cases, lacking entirely. Inevitably, an arbitrary solution will be required. Projection of data for known account values over a larger number of accounts as the base for calculating average values is one possible approach to resolving this problem.

## Potentially Looted Assets and Swiss Intermediaries

85. As indicated in Part I, the Committee investigation has identified certain assets that may have been looted by Nazis. It has also identified multiple accounts of Swiss intermediaries who, in some cases, may have been acting for victims. There is, at the least, a body of anecdotal evidence that such arrangements were rather common, and in some instances, the account beneficiaries may have been abused by breach of fiduciary responsibilities.

86. By the nature of the situation, these cases have been difficult to identify. The Committee has no investigatory authority beyond banks. No doubt, most private intermediaries are now aged or de-

ceased, and their records are lost and inaccessible. Looted assets placed in deposit accounts are not identifiable without other evidence as to their origins.

87. The Bergier Commission shares our concern in these areas and, in fact, has broad authority to pursue investigations in and beyond the banks. The information that the Committee auditors have developed is being made available to the Bergier Commission, and it provides leads for further investigation.

88. The Committee anticipates that this work will proceed, drawing as necessary on the expertise of the audit firms retained by the Committee in its investigation.

## Treatment of Dormant Accounts and Record Keeping

89. The Committee's conclusions in Part I are critical of the conduct of some Swiss banks in their treatment of the accounts of victims of Nazi persecution. They are necessarily a retrospective evaluation. Looking forward, it became evident in the course of the Committee's investigation that very substantial disadvantages flow from the absence in Swiss banking law of a requirement for the publication of the names of dormant accounts or escheat of individual funds. No doubt, the law and tradition of bank secrecy have contributed to that policy. In essence, relaxed official policies with respect to dormant accounts contributed to an environment in which there were accounting problems and lax record keeping in some institutions, especially with regard to suspense accounts. There was little incentive to search out owners or even to respond to inquiries.

90. There is clear evidence that today, in the light of this investigation and publicity, those attitudes

<sup>58</sup> See Annex 8 for a discussion of the Panel Report and Appendix M for the text of the Report.

have changed. To their credit, some banks have engaged in aggressive and costly efforts to find account holders and to improve record keeping. The Committee is aware of the new directive of the SBA on dormant accounts and that the Swiss Government is considering new legislation on unclaimed accounts that should help reinforce discipline appropriate to the treatment of these accounts. In the Committee's view, such legislation, together with clarification of the law about record retention, is desirable.

## **Concluding Comment**

91. The ICEP investigation has been a long, expensive, and difficult process, intensive and filled with frustration and emotion. It could be justified by only one fact: the need, at the end of the century, to bring a sense of justice and closure to one part of the horrific experience of the Holocaust.

92. Switzerland and Swiss banks were not responsible for those terrible events. Nor were they alone in being havens for victims' funds. The record is clear, certainly by today's standards, that the handling of these funds was too often grossly insensitive to the special conditions of the Holocaust and sometimes misleading in intent and unfair in result. Our inquiry is one reflection of a willingness to deal with that heritage more forcefully and openly.

93. The Committee is satisfied that its work has now developed the record of the Swiss banks with respect to the funds of victims of Nazi persecution with as much detail, objectivity, and accuracy as the passage of time allows. A framework can be established for providing a measure of justice to those whose claims have for too long been denied. In that sense, the Committee believes this one chapter in the long and sad story of the consequences of Nazi brutality can be drawn to a close.

