

Agreement
between
the Government of the Federal Republic of Germany
and
the Government of the United States of America
concerning
the Foundation
"Remembrance, Responsibility and the Future"

The Government of the Federal Republic of Germany
and
the Government of the United States of America -

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

Recognizing that the Federal Republic of Germany has, building on Allied legislation and in close consultation with victims' associations and interested Governments, provided, in an unprecedented manner, comprehensive and extensive restitution and compensation to victims of National Socialist persecution,

Noting the historic announcement on February 16, 1999, made by the Federal Chancellor and German companies, in which the companies stated their intention to establish a foundation to compensate forced laborers and others who suffered at the hands of German companies during the National Socialist era and World War II,

Noting that, by means of the Foundation Initiative, its member companies wish to respond to the moral responsibility of German business arising from the use of forced laborers and from damage to property caused by persecution, and from all other wrongs suffered during the National Socialist era and World War II,

Recognizing as legitimate the interest German companies have in all-embracing and enduring legal peace in this matter, and further recognizing that such interest was fundamental to the establishment of the Foundation Initiative,

Noting that the two Governments announced that they welcomed and support the Foundation Initiative,

Noting that the Federal Republic of Germany and German companies have since agreed on the creation of a single Foundation, "Remembrance, Responsibility and the Future" (the "Foundation"), formed under German federal law as an instrumentality of the Federal Republic of Germany and funded by contributions from the Federal Republic of Germany and the German companies,

Recognizing that German business, having contributed substantially to the Foundation, should not be asked or expected to contribute again, in court or elsewhere, for the use of forced laborers or for any wrongs asserted against German companies arising from the National Socialist era and World War II,

Recognizing that it is in the interest of both parties to have a resolution of these issues that is non-adversarial and non-confrontational, outside of litigation,

Recognizing that both parties desire all-embracing and enduring legal peace to advance their foreign policy interests,

Noting in this regard the June 16, 2000, letter of the Assistant to the President of the United States for National Security Affairs and the Counsel to the President of the United States and the July 5, 2000, letter of the Foreign Policy and Security Advisor of the Chancellor of the Federal Republic of Germany, copies of which have been made public,

Having worked as partners, in consultation with other interested parties and governments, to assist German companies to achieve wide support for the total amount of funds and the eligibility criteria of the Foundation and for the establishment of all-embracing and enduring legal peace,

Noting that the Foundation will assure broad coverage of victims and broad participation by companies which would not be possible through judicial proceedings,

Believing that the Foundation will provide as expeditious as possible a mechanism for making fair and speedy payments to now elderly victims,
Having in mind that the Foundation covers, and that it would be in the interests of both parties for the Foundation to be the exclusive remedy and forum for addressing, all claims that have been or may be asserted against German companies arising from the National Socialist era and World War II,

Recalling that for the last 55 years the parties have sought to work to address the consequences of the National Socialist era and World War II through political and governmental acts between the United States and the Federal Republic of Germany,

Noting that this Agreement and the establishment of the Foundation represent a fulfillment of these efforts,

Recognizing that the German Government has tabled a Bill before the German Federal Parliament ("Bundestag") to establish the Foundation -

Have agreed as follows:

Article 1

(1) The parties agree that the Foundation "Remembrance, Responsibility and the Future" covers, and that it would be in their interests for the Foundation to be the exclusive remedy and forum for the resolution of, all claims that have been or may be asserted against German companies arising from the National Socialist era and World War II.

(2) The Federal Republic of Germany agrees to ensure that the Foundation shall provide appropriately extensive publicity concerning its existence, its objectives and the availability of funds.

(3) Annex A sets forth the principles that shall govern the operation of the Foundation. The Federal Republic of Germany assures that the Foundation will be subject to legal supervision by a German governmental authority; any person may request that the German governmental authority take measures to ensure compliance with the legal requirements of the Foundation.

(4) The Federal Republic of Germany agrees that insurance claims that come within the scope of the current claims handling procedures adopted by the International Commission of Holocaust Era Insurance Claims (“ICHEIC”) and are made against German insurance companies shall be processed by the companies and the German Insurance Association on the basis of such procedures and on the basis of additional claims handling procedures that may be agreed among the Foundation, ICHEIC, and the German Insurance Association.

Article 2

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

(2) The United States, recognizing the importance of the objectives of this agreement, including all-embracing and enduring legal peace, shall, in a timely manner, use its best

efforts, in a manner it considers appropriate, to achieve these objectives with state and local governments.

Article 3

(1) This agreement is intended to complement the creation of the Foundation and to foster all-embracing and enduring legal peace for German companies with respect to the National Socialist era and World War II.

(2) This agreement shall not affect unilateral decisions or bilateral or multilateral agreements that dealt with the consequences of the National Socialist era and World War II.

(3) The United States will not raise any reparations claims against the Federal Republic of Germany.

(4) The United States shall take appropriate steps to oppose any challenge to the sovereign immunity of the Federal Republic of Germany with respect to any claim that may be asserted against the Federal Republic of Germany concerning the consequences of the National Socialist era and World War II.

Article 4

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

Article 5

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

DONE at Berlin on the 17th day of July, 2000, in duplicate in the German and English languages, both texts being equally authentic.

For the Government of the
Federal Republic of Germany

For the Government of the
United States of America

Annex A
of the
Agreement
between
the Government of the Federal Republic of Germany
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Principles Governing the Operation of the Foundation

Article 1(3) of the Agreement provides that the principles governing the operation of the Foundation will be set forth in Annex A. This Annex reflects key elements of the Foundation that form a basis for the Parties' mutual commitments in the Agreement.

1. The Foundation legislation will state that the purpose of the Foundation is to make payments through partner organizations to those who suffered as private and public sector forced or slave laborers and those who suffered at the hands of German companies during the National Socialist era and to establish a "Remembrance and Future Fund" within the Foundation. It will state that the permanent task of the "Remembrance and Future Fund" is to support projects that (a) serve to promote understanding between nations, and serve social justice and international cooperation in the humanitarian sector; (b) support youth exchange programs and keep alive the memory of the Holocaust and the threat posed by totalitarian, unlawful regimes and tyranny; and (c) also benefit the heirs of those who have not survived.

2. The Foundation legislation will provide for a Board of Trustees that consists of an equal number of members appointed by the German Government and German companies and by other governments and victims' representatives, except that the Chairman shall be a person of international stature appointed by the Chancellor of the Federal Republic of Germany. The Board may be reduced in size after four years, but the balance of the membership will continue, to the extent appropriate. The Board will adopt by-laws by a two-thirds majority vote. All Foundation operations will be transparent and by-laws and similar procedures will be made public.
3. The Foundation legislation will provide that the Foundation will be audited by the Federal Accounting Office and that all partner organizations will also be audited.
4. The Foundation legislation will provide that persons who were held in concentration camps as defined under the Federal Compensation Law ("BEG") or in another place of confinement or ghetto under comparable conditions and were subject to forced labor ("slave laborers") will be eligible to receive up to DM 15,000 each. The Foundation legislation will also provide that persons who were deported from their homelands into the territory of the 1937 borders of the German Reich or to a German-occupied area, and were held in prison-like or extremely harsh living conditions ("forced laborers") not covered by the above definition will be eligible to receive up to DM 5,000 each. In addition, from the allocated funds to make payments to forced laborers, partner organizations will be authorized to make payments to others who were forced to work during the National Socialist era. These other forced laborers will receive up to DM 5,000 each. The eligibility of all laborers covered by the Foundation will be limited to survivors and heirs, as defined under paragraph 8, of those who died after February 15, 1999. In addition, victims of "other non-labor personal injury wrongs," including, but not limited to, medical experimentation and *Kinderheim* cases, will be eligible to receive payments, within the limits of the amount allocated for that purpose. Victims of medical experimentation and *Kinderheim* cases are given priority over other non-labor

personal injury wrongs. The eligibility of a victim to receive benefits for all "other non-labor personal injury wrongs" will not be affected by whether or not he or she also receives benefits for forced labor. The funds allocated for "other non-labor personal injury wrongs" will constitute a separate allocation. The partner organizations will receive, review, and process applications for payments from the amount allocated for "other personal injury." At the request of a partner organization, the property committee referred to in paragraph 11 will appoint an independent arbitrator to review and process applications to the particular partner organization. The amount allocated will be distributed to each partner organization so that each approved applicant is provided a pro-rata amount of the total amount for all approved "other personal injury" applicants. The decisions of the partner organizations and any arbitrator that may be appointed will be based on uniform standards approved by the Board of Trustees. The Foundation legislation will provide that any costs associated with reviewing and processing applications, including those associated with an arbitrator (if selected), will be drawn from the allocations for each partner organization. Excess amounts in the labor category allocated to any partner organization under the distribution plan annexed to the Joint Statement will be reallocated to labor, with the aim of reaching equal levels of payments to former slave and forced laborers wherever they reside. The Board of Trustees will be entitled to authorize payments above per capita ceilings should circumstances warrant.

5. The Foundation legislation will provide that a slave or forced laborer will not be able to receive payments for the same injury or wrong from both the Foundation and the Austrian Foundation for Reconciliation, Peace and Cooperation.
6. The Foundation legislation will provide that persons who suffered loss of or damage to property during the National Socialist era as a result of racial persecution directly caused by German companies are eligible to recover under the payment system set forth in paragraph 11. The eligibility of such persons will be limited to those who could not receive any payment under the BEG or Federal Restitution Law

("BRueckG") because they did not meet the residency requirement or could not file their claims by the deadline because they lived under a government with which the Federal Republic of Germany did not have diplomatic relations, those whose claims were rejected under the BEG or BRueckG where legal proof became available only after the reunification of the Federal Republic of Germany, provided the claims were not covered by post-reunification restitution or compensation legislation, and those whose racially-motivated property claims concerning moveable property were denied or would have been denied under the BEG or BRueckG because the claimant, while able to prove a German company was responsible for seizing or confiscating property, was not able to prove that the property was transferred into then-West Germany (as required by law) or, in the case of bank accounts, that compensation was or would have been denied because the sum was no longer identifiable, where either (a) the claimant can now prove the property was transferred into then-West Germany or (b) the location of property is unknown.

7. The Foundation legislation, by making available the amount of 50 million DM, will provide a potential remedy for all non-racially motivated wrongs of German companies directly resulting in loss of or damage to property during the National Socialist era. The Foundation will refer such matters for review and processing to the committee referred to in paragraph 11. All funds allocated to payment for property matters will be distributed within those categories.
8. The Foundation legislation will provide that the heirs eligible to receive payments under paragraphs 6 and 7 consist of the spouse or children. In the absence of the victim, spouse and children, then payments under these paragraphs will be available to grandchildren, if alive; if not, to siblings, if alive; and if there are neither grandchildren nor siblings, to the individual beneficiary named in a will.
9. The Foundation legislation will provide that all eligibility decisions will be based on relaxed standards of proof.

10. The Foundation legislation will provide that legal persons will be allowed to make claims on behalf of individuals when those individuals have given powers of attorney. The Foundation legislation will also provide that where an identifiable religious community has suffered damage to or loss of community property, as distinct from individual property, resulting directly from the wrongs of a German company, a duly authorized legal successor may apply for payment to the committee referred to in paragraph 11.

11. The Foundation legislation will establish a three-member committee for property matters (paragraphs 6 and 7). The United States and the Federal Republic of Germany will each appoint one member; these two members will appoint a Chairman. A secretariat will be largely responsible for the initial review of applications. The Foundation legislation will require the Committee to establish simplified procedures, including simplified and expedited internal appeals. The Committee will not have the authority to reopen any case that has been finally decided by a German court or administrative body, or that could have been decided by application in time, except as specified in paragraph 6. All of the Committee's expenses will be funded from the amount allocated for property claims and the funds will be subject to audit.

12. The Foundation legislation will provide that the Committee referred to in paragraph 11 will distribute the funds allocated to it on a pro-rata basis.

13. The Foundation legislation will make clear that receipt of payment from Foundation funds will not affect the recipient's eligibility for social security or other public benefits. There will be offsets for prior compensation payments made by German companies for forced labor and other National Socialist era injustices, even if made through third parties, but there will be no offsets for any prior Government payments.

14. The Foundation legislation will provide that each applicant for a Foundation payment will be required to state that, upon receipt of a payment from the Foundation, he or she will waive any and all alleged National Socialist era claims against German companies and all National Socialist era labor and property damage claims against the German Government. Such a waiver will not preclude applicants from being eligible to receive payments under the Foundation legislation for other wrongs, for example other personal injuries or loss of property, or any combination thereof. Such a waiver also will not preclude an applicant from bringing an action against a specific German entity (i.e., Government agency or company) for the return of a specifically identified piece of art if the action is filed in the Federal Republic of Germany or in the country in which the art was taken, provided that the applicant is precluded from seeking any relief beyond or other than the return of the specifically identified piece of art.
15. The Foundation legislation will provide that each partner organization will create an internal appeals procedure.
16. The Foundation legislation will require that the Foundation provide appropriately extensive publicity concerning the benefits that the Foundation will offer and how to apply. The Board of Trustees, in consultation with the partner organizations, will determine the form and content of such publicity.
17. The Foundation legislation will allow applications to be made to the partner organizations for at least eight months after the enactment of the Foundation law.
18. The Foundation legislation will authorize the Foundation and its partner organizations to receive information from German Government agencies and other public bodies that is necessary for the fulfillment of their responsibilities, in so far as this is not contrary to particular statutes or regulations or the legitimate interests of the persons concerned.

19. The Foundation legislation will enter into force no later than when the funds of the Foundation are made available to it.

Annex B
of the
Agreement
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Elements of U.S. Government Statement of Interest

Pursuant to Article 2, Paragraph 1, the United States will timely file a Statement of Interest and accompanying formal foreign policy statement of the Secretary of State and Declaration of Deputy Treasury Secretary Stuart E. Eizenstat in all pending and future cases, regardless of whether the plaintiff(s) consent(s) to dismissal, in which the United States is notified that a claim has been asserted against German companies arising from the National Socialist era and World War II.

The Statement of Interest will make the following points:

1. As indicated by his letter of December 13, 1999, the President of the United States has concluded that it would be in the foreign policy interests of the United States for the Foundation to be the exclusive forum and remedy for the resolution of all asserted claims against German companies arising from their involvement in the National Socialist era and World War II, including without limitation those relating to slave and forced labor, aryанизation, medical experimentation, children's homes/Kinderheim, other cases of personal injury, and damage to or loss of

- property, including banking assets and insurance policies.
2. Accordingly, the United States believes that all asserted claims should be pursued (or in the event Foundation funds have been exhausted, should timely have been pursued) through the Foundation instead of the courts.
 3. As the President said in his letter of December 13, 1999, dismissal of the lawsuit, which touches on the foreign policy interests of the United States, would be in the foreign policy interests of the United States. The United States will recommend dismissal on any valid legal ground (which, under the U.S. system of jurisprudence, will be for the U.S. courts to determine). The United States will explain that, in the context of the Foundation, it is in the enduring and high interest of the United States to support efforts to achieve dismissal of all National Socialist and World War II era cases against German companies. The United States will explain fully its foreign policy interests in achieving dismissal, as set forth below.
 4. The United States' interests include the interest in a fair and prompt resolution of the issues involved in these lawsuits to bring some measure of justice to the victims of the National Socialist era and World War II in their lifetimes; the interest in the furtherance of the close cooperation this country has with our important European ally and economic partner, Germany; the interest in maintaining good relations with Israel and other Western, Central, and Eastern European nations, from which many of those who suffered during the National Socialist era and World War II come; and the interest in achieving legal peace for asserted claims against German companies arising from their involvement in the National Socialist era and World War II.
 5. The Foundation is a fulfillment of a half-century effort to complete the task of bringing justice to victims of the Holocaust and victims of National Socialist persecution. It complements significant prior German compensation, restitution, and pension programs for acts arising out of the National Socialist era and World War II.

For the last 55 years, the United States has sought to work with Germany to address the consequences of the National Socialist era and World War II through political and governmental acts between the United States and Germany.

6. The participation in the Foundation not only by the German Government and German companies that existed during the National Socialist era, but also by German companies that did not exist during the National Socialist era, allows comprehensive coverage of slave and forced laborers and other victims.
7. Plaintiffs in these cases face numerous legal hurdles, including, without limitation, justiciability, international comity, statutes of limitation, jurisdictional issues, forum non conveniens, difficulties of proof, and certification of a class of heirs. The United States takes no position here on the merits of the legal claims or arguments advanced by plaintiffs or defendants. The United States does not suggest that its policy interests concerning the Foundation in themselves provide an independent legal basis for dismissal, but will reinforce the point that U.S. policy interests favor dismissal on any valid legal ground.
8. The Foundation is fair and equitable, based on: (a) the advancing age of the plaintiffs, their need for a speedy, non-bureaucratic resolution, and the desirability of expending available funds on victims rather than litigation; (b) the Foundation's level of funding, allocation of its funds, payment system, and eligibility criteria; (c) the difficult legal hurdles faced by plaintiffs and the uncertainty of their litigation prospects; and (d) in light of the particular difficulties presented by the asserted claims of heirs, the programs to benefit heirs and others in the Future Fund.
9. The structure and operation of the Foundation will assure (or has assured) swift, impartial, dignified, and enforceable payments; appropriately extensive publicity has been given concerning its existence, its objectives, and the availability of funds; and

the Foundation's operation is open and accountable.

Annex C
of the
Agreement
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Definition of "German Companies"

"German companies," as used in Article 1(1) and Article 2(1), are defined as in Sections 12 and 16 of the legislation establishing the Foundation "Remembrance, Responsibility and the Future," as follows:

1. Enterprises that had their headquarters within the 1937 borders of the German Reich or that have their headquarters in the Federal Republic of Germany, as well as their parent companies, even when the latter had or have their headquarters abroad.
2. Enterprises situated outside the 1937 borders of the German Reich in which during the period between January 30, 1933, and the entry into force of the legislation establishing the Foundation "Remembrance, Responsibility and the Future," German enterprises as described in Sentence (1) had a direct or indirect financial participation of at least 25 percent.
3. "German companies" does not include foreign parent companies with headquarters outside the 1937 borders of the German Reich in any case in which the sole alleged claim arising from National Socialist injustice or World War II has no connection

with the German affiliate and the latter's involvement in National Socialist injustice, unless there is pending a discovery request by plaintiff(s), of which the United States is provided notice by the defendant with copy to plaintiff(s), seeking discovery from or concerning World War II or National Socialist era actions of the German affiliate.