

**SYMPOSIUM ARTICLES:
SOVEREIGNTY, HUMANITY, AND LAW**

KEYNOTE ADDRESS: THE IMPORTANCE OF NOVEL
LEGAL SOLUTIONS TO PROVIDE BELATED JUSTICE FOR
THE VICTIMS OF THE HOLOCAUST

Ambassador Stuart E. Eizenstat

ISSN 0041-9915 (print) 1942-8405 (online) • DOI 10.5195/lawreview.2021.849
<http://lawreview.law.pitt.edu>



This work is licensed under a Creative Commons Attribution-Noncommercial-No Derivative Works 3.0 United States License.



This site is published by the University Library System of the University of Pittsburgh as part of its D-Scribe Digital Publishing Program and is cosponsored by the University of Pittsburgh Press.

SYMPOSIUM ARTICLES: SOVEREIGNTY, HUMANITY, AND LAW

KEYNOTE ADDRESS: THE IMPORTANCE OF NOVEL LEGAL SOLUTIONS TO PROVIDE BELATED JUSTICE FOR THE VICTIMS OF THE HOLOCAUST¹

Ambassador Stuart E. Eizenstat*

Recent decisions by the United States Supreme Court reinforce my view that the best means to achieve belated justice for Holocaust survivors or their heirs are with the voluntary agreements negotiated between the United States Government and other foreign governments or corporations. These voluntary agreements emphasize the moral issues involved and the reputational damage to the nation or company of not rectifying the results of their violations of human rights.

There was nothing inevitable about the killing of six million Jews, including one and a half million children and millions of other innocent people in the Holocaust between 1933 and 1945. Nor was there anything inevitable about the genocides in Cambodia when the Khmer Rouge killed one and a half to two million people between 1975 and 1979. The Rwandan genocide, which killed over five hundred thousand minority Tutsi in a hundred days; the “ethnic cleansing” by Serbian troops

¹ Keynote Address delivered at the Sovereignty, Humanity, and Law Symposium: University of Pittsburgh School of Law (Apr. 2021).

* Former official in four U.S. Administrations, including Chief White House Domestic Policy Adviser to President Jimmy Carter; United States Ambassador to the European Union, Under Secretary of Commerce, Under Secretary of State, Deputy Secretary of the Treasury and Special Representative of the President and Secretary of State on Holocaust-Era Issues in the Clinton Administration; and Special Adviser on Holocaust-Era Issues to Secretaries of State Hillary Clinton and John Kerry in the Obama Administration; he served as Expert Adviser to the State Department on Holocaust-Era Issues in the Trump and Biden Administrations.

and Serbian militias against Bosnian Muslims and Kosovo Albanians in the 1990s; and the ongoing mass human rights violations against the minority Rohingya in Myanmar; the Kurds in Syria; and the Uighurs in China, all have one thing in common: they were perpetrated against vulnerable minority groups while the world ignored their plight.

The Shoah is the most tragic example of what happens when people and governments are indifferent and inactive in the face of evil—when neighbor turns on neighbor because of their religion or ethnicity—and when the Western world refuses to act because of prevailing antisemitism. Jews were expendable then, just as other religious minorities are in twenty-first century genocides today. However, none of the modern genocides match the magnitude of the Holocaust, in which two-thirds of European Jewry and a third of world Jewry lost their lives. In addition to the killings, the Holocaust destroyed a great body of rich culture—art, scholarship, religious learning—and the Jewish communal infrastructure that supported it, which was then the heart of world Jewry. During this time, Nazis also confiscated billions of dollars of businesses, homes, art, and personal property—only a small fraction of which have been returned or compensated.

Hitler's initial goal was to make Germany *judenrein*, free of Jews. Hitler proceeded carefully, waiting for judgment and reaction from the German public and the world. Seeing none, he took one step after another: first passing racial laws isolating Jews; barring them from professions; destroying synagogues and businesses in *Kristallnacht*; expropriating their property and possessions; then deporting them to concentration camps; and finally murdering six million Jews, including one and a half million children. At the outbreak of the War in 1939, the global Jewish population peaked at approximately 17 million² in a world of about two billion people; today, there are only about 15 million Jews³ in a world of almost 8 billion people. The Jewish world has never regained its pre-Holocaust population even more than seventy-five years after the end of World War II.

The German people acquiesced and even supported their neighbors being dispossessed and deported. And the world failed to act, including the United States. Hitler took the world's inaction as a clear signal to move forward with his plans. He even said publicly that the world did not care about protecting the Jews—that he had

² Adam Taylor, *Has the Global Jewish Population Finally Rebounded from the Holocaust? Not Exactly.*, WASH. POST (July 2, 2015, 3:30 AM), <https://www.washingtonpost.com/news/worldviews/wp/2015/07/02/has-the-global-jewish-population-finally-rebounded-from-the-holocaust-not-exactly/> [<https://perma.cc/R382-3NB3>].

³ *Number of Jews in the World 2022*, WORLD POPULATION REV., <https://worldpopulationreview.com/country-rankings/number-of-jews-in-the-world> [<https://perma.cc/C2TF-R6HB>].

a free hand to commit the worst genocide in history. For example, to deal with the plight of German Jewish refugees, President Roosevelt initiated the Evian conference, in which delegates from thirty-two countries met in July 1938. Rather than sending the U.S. Secretary of State, the President sent a low-level U.S. representative to the conference. The United States failed to take the lead in lifting rigid immigration quotas as an example to the rest of the world. And the State Department did all it could to restrict immigration. Additional examples of the United States' failure to assist Jews during and after the Holocaust include:

- In May 1939, the S.S. St. Louis, a German ocean liner carrying over nine hundred German Jewish refugees, sat for days outside Miami and Halifax, Canada, and was not allowed to dock.
- No sanctions were imposed on Germany before the United States finally entered the War. Following the bombing by Japan of Pearl Harbor on December 7, 1941, Hitler immediately declared war against the United States.
- President Roosevelt had substantial evidence about the growing dimensions of the Holocaust but failed to act. Evidence included smuggled reports by the Jewish resistance and a personal visit by the courageous Polish diplomat Jan Karski, who gave FDR and Justice Frankfurter his personal accounts of the brutality of the Warsaw ghetto, which he visited twice. Because of the high levels of antisemitism in America at the time, President Roosevelt did not want to make World War II seem like a war for the Jews.
- Arthur Hays Sulzberger, a publisher of the New York Times from 1935–1961, gave his editors instructions to bury stories of the Holocaust, concerned his paper would be viewed as a Jewish newspaper.
- American Jewish leadership did not do all they could have to pressure President Roosevelt to act more urgently on behalf of Europe's beleaguered Jews. However, this is likely due to a fear of raising anti-Semitic sentiments.

In the immediate post-war days, upon the liberation of death camps, Nazi atrocities were revealed and filmed at the insistence of Supreme Allied Commander Dwight Eisenhower. While Americans were shocked by newsreels of the death camps, the staggering dimensions of the Shoah were not understood. The Holocaust quickly took a back seat, as the focus of the United States and the Western world was the Cold War against the Soviet Union. As a result:

- There was little demand for justice for senior Nazi officials beyond the Nuremberg trials which only involved a tiny fraction of the Nazi perpetrators.

- Jewish survivors were often poorly treated:
 - Jews trying to reclaim their confiscated homes in Poland and Lithuania were killed, and post-war property restitution laws in countries like France, Austria and the Netherlands were unsatisfactory.
 - They lived in squalid displaced-persons camps after the War. General George Patton, whose forces liberated concentration camps, ordered guards to monitor survivors as if they were prison inmates.
 - President Truman's representative on refugees, Earl Harrison, wrote a scathing report to the President after visiting the displaced-persons camps:

As matters now stand, we appear to be treating the Jews as the Nazis treated them except we do not exterminate them. They are in concentration camps in large numbers under our military guard instead of S.S. troops. One is led to wonder whether the German people, seeing this, are not supposing that we are following or at least condoning Nazi policy.⁴

- Great Britain kept 52,000 survivors trying to reach Palestine in squalid camps in Cyprus, some up to five years.
- Survivors rarely told their stories because they wanted to shield their children from the horrors they had gone through and because they needed to focus on building a new life in the United States, Israel, or Europe.
- Authors like Elie Wiesel, who wrote the classic memoir *Night* on his experiences during the Holocaust, had difficulty finding publishers.
- In 1962, Rabbi Irving Greenberg was denied the opportunity to teach a course on the Holocaust at Yeshiva University in New York because it was not considered a proper topic for academic study.

⁴ Letter from Harry S. Truman, 33rd President of the United States, Concerning Conditions Facing Displaced Persons in Germany, to General Dwight D. Eisenhower (Aug. 31, 1945) (quoting Earl Harrison's report to the President, U.S. Dep't of State Bulletin, vol. 13, p.456), <https://www.presidency.ucsb.edu/documents/letter-general-eisenhower-concerning-conditions-facing-displaced-persons-germany> [<https://perma.cc/8M22-JSJA>].

The monstrous dimensions of the Holocaust, however, could not be hidden forever, although action to deal with its origins and consequences was slow and painful.

The 1961 trial and conviction of Adolf Eichmann in the District Court of Jerusalem—one of the central perpetrators of the Holocaust—for fifteen separate counts on crimes, including crimes against the Jewish people and crimes against humanity, was broadcast on television around the world. This trial gave a human face to the brutality of the Nazis. It helped present the vast dimensions of the massive killing and looting of Jewish property that were missing from the Nuremberg trials.

The Eichmann trial also helped lay the groundwork for later criminal trials—decades later against other perpetrators of mass violations of human rights, although none on the scale of the Holocaust. There were fifteen criminal counts against Eichmann. Counts one through four were crimes against the Jewish people by systematic deportation to concentration camps; placing Jews in living conditions meant to bring about their systematic death; severe brutality; and forced abortions at Theresienstadt concentration camp. Counts five through seven focused on crimes against humanity and against Jews, including forced deportations; persecution on racial, religious, or political grounds; and the systematic plunder of Jewish property organized by an office Eichmann headed. Count eight was for war crimes through systematic persecution. Counts nine through twelve were for offenses against non-Jews and were important for underscoring Eichmann's guilt and that of his Nazi henchman, for the mass deportation of Polish civilians, the mass deportation of Slovene civilians, and the genocide of the Romani people. And the final three counts were for Eichmann's membership in the hostile Nazi intelligence organizations: Sicherheitsdienst des Reichsführers-SS, SD, and the Gestapo.

In 1968, Arthur Morse published a book titled *While Six Million Died* to shockingly describe what President Roosevelt knew about the genocide of the Jews and how he failed to act. Morse was a colleague of mine on the Hubert Humphrey presidential campaign against Richard Nixon, and his revelations changed my life and committed me to a course of pursuing justice for Holocaust survivors and honoring the memory of those who perished. I was determined to lift the cloud over the United States, whose soldiers and wartime leaders did so much to win the War, but failed to save many of Europe's Jews when they could have done so.

A whole genre of books followed—books written by eminent historians, and thus wider audiences were introduced to the Holocaust. Films followed, like the 1978 NBC's widely watched mini-series "Holocaust"; Meryl Streep's film, "Sophie's Choice" based on a novel by William Styron; Claude Lanzmann's 1985 nine-hour documentary "Shoah"; and Stephen Spielberg's academy award winning 1993 film "Schindler's List." While the Holocaust seemed at last to be firmly embedded in the public consciousness, over the past decades it has been slipping.

I. THE LEGAL PROCESS

Beyond books and movies, the Holocaust created for the first time in the history of warfare a unique legal process by which a country that had abused and murdered civilians, both its own citizens and those of the countries it occupied, agreed to compensate survivors regardless of where they lived. This legal process did not nor could not rely upon traditional court cases. The slaughter of Jews was too vast; there were no established legal principles to follow; there was an absence of courts—meaning there was no way to handle the individual cases; and there were jurisdictional hurdles. All of these challenges to justice for Holocaust survivors called for a novel approach, and it came. In February 1952, the first post-war German Chancellor Konrad Adenauer accepted responsibility in his words for the “unspeakable crimes that have been committed in the name of the German people.”⁵

One month after Adenauer’s speech, Dr. Nahum Goldmann, President of the World Jewish Congress, convened a meeting in New York City of twenty-three major Jewish organizations, and speaking for the collective Jewish world, created a unique institution, the Conference on Jewish Material Claims against Germany—the Claims Conference. Beginning in The Hague in March 1952, negotiations commenced between Germany, led by Chancellor Adenauer, and the young State of Israel, led by Prime Minister David Ben-Gurion, and parallel negotiations between the German government and the Claims Conference.

In a historic agreement in Luxembourg on September 10, 1952, the Claims Conference and the West German federal government signed two protocols. One called for German laws that would compensate Nazi victims directly. This was one of the first post-war international agreements by the new German state with Israel and a Jewish NGO and became embedded in domestic German law. The second protocol provided the Claims Conference with 450 million Deutsche Marks (D.M.) for the relief, rehabilitation and resettlement of Jewish victims of the Holocaust.

These negotiations were so controversial that they took place under the cloak of secrecy. Menachem Begin and his Herut Party led violent demonstrations outside the Knesset with a banner that read: “Our honor shall not be sold for money . . . our blood shall not be atoned by goods. We shall wipe out the disgrace!”⁶ After three

⁵ Chancellor Konrad Adenauer, Chancellor of West Germany from 1949 to 1963, Speech to the Bundestag on the case for the European Defence Community (Feb. 7, 1952).

⁶ Ari Ben Goldberg, *After Six Decades, 80,000 Former Nazi Victims to Get Compensation*, THE TIMES OF ISRAEL (July 11, 2012), <https://www.timesofisrael.com/germany-agrees-to-historic-restitution-payments-to-80000-holocaust-victims-living-in-the-former-soviet-union/> [https://perma.cc/MD2L-T4JU].

days of emotional debate, the results of the vote were very close: only 61 of the 120 members voted in favor. Letter bombs were sent to the delegations.

Nor was it easy on the German side. The major reason the agreement passed was the unswerving resolve of Chancellor Adenauer. His own finance minister, Fritz Schäffer, was opposed and some of his party members voted against it in the Bundestag, while others abstained. It passed because every member of the Social Democrats supported it.

The first major German Holocaust compensation program under the German Federal Indemnification Laws, the *Bundesentschädigungsgesetz* (“BEG”), provided life-time pensions to a subset of survivors.

Today, in 2022, there remain approximately 330,000 Holocaust survivors around the world, at least 50% of whom are poor or near poor. At least 90% of the 44,000 survivors in the former Soviet Union in Central and Eastern Europe are poor; between 35% and 40% of the 150,000 survivors in Israel are poor; as are around 30% of the 55,000 survivors in the United States.

Germany has paid over \$80 billion since the 1950s. Almost all of the major programs the Claims Conference has negotiated with Germany only support survivors in economic need. Over the years a total of around 700,000 survivors have received some form of payment from the German government (one-time payments or pensions) and during 2021 about 250,000 survivors will either receive payments or pension.

The mission of Claims Conference negotiations with Germany over the decades has been to expand the number of survivors eligible for payment, as we tracked Germany’s post-war history—a history of which post-war Germany can be proud. None of this would have been possible through traditional judicial procedures. Nor were these state-to-state negotiations.

In 1980, the original role of the Claims Conference expanded, with the creation of the Hardship Fund to provide direct one-time payments to Nazi victims who had received no prior compensation. This primarily benefited persons who had emigrated from the Soviet Union in the 1970s. Over the past forty years, approximately 525,000 Jewish Nazi victims benefited from such Hardship Fund payments, many from the former Soviet Union who had suffered both under Nazism and Communism and thus, according to a term which I coined, were “double victims.”

Beginning in 2009, I became the Chief Negotiator for the Claims Conference along with Holocaust survivor Roman Kent, and a negotiating team of survivors from the United Kingdom, Poland, Israel and the United States—brilliantly managed by Greg Schneider, Executive Vice President, Counsel Karen Heilig, and Rudy Mahlo in the Berlin office. I do not represent a State, but rather a unique non-governmental organization recognized by Israel and Germany as having the exclusive authority to

negotiate on behalf of Holocaust survivors worldwide. I am negotiating with German officials from the German Ministry of Finance (“BMF”)—initially with State Secretary Werner Gatzer, for the last several years with Rolf Bössinger, and in 2022, Luise Hölscher, (SEE: PLEASE NOTE I ADDED HER NAME) each of whom, along with their even younger assistants, were born decades after the end of World War II. Yet Germany continues to feel an undiminished moral responsibility for the fate of Jewish Holocaust survivors to this day. Since I began in 2009, we have obtained over \$9 billion of additional benefits, specifically allocated for home care and increased pensions and one-time payments to additional Holocaust survivors. In our September 2020 negotiations we secured over 650 million euros for a supplemental Hardship Fund payment to the poorest survivors.

Following the collapse of the Berlin wall and the reunification of West and East Germany in 1990, for the first time Jews living behind the Iron Curtain became eligible for hardship payments and pensions. This was incorporated into Article 2 of the Implementation Agreement to the German Reunification Treaty of 1990, in which the German government was prepared to enter into agreements with the Claims Conference to provide payments to survivors who had thus far received no or only minimal compensation. After sixteen months of difficult negotiations the Article 2 Fund was established in 1992, providing a lifetime pension to those living in Western countries, under certain income limits and who had been in camps, ghettos, or hiding for a prescribed period of time. Since 2009, we have negotiated liberalized criteria for pensions by reducing the length of time Jews spent living in ghettos, or in hiding to make more survivors eligible and by ensuring they include “open ghettos” in several countries. We also changed the income requirements to allow more survivors to receive the pension. These changes resulted in the inclusion of another 18,000 survivors who had not yet benefited.

In 1998 a similar pension program, the Central and Eastern European Fund (“CEEF”), was established in the former communist east bloc countries. In total, 135,000 survivors have been approved for pensions under the Article 2 and CEEF programs, and in 2020 over 50,000 survivors were still receiving Article 2 and CEEF pensions.

The Claims Conference is constantly seeking to enlarge the compensation programs. In 2014 the Child Survivor Fund was created and has paid over 80,000 child survivors a one-time payment of 2,500 euros. In 2018, children who fled Germany and Austria on the *Kindertransport* were also entitled to a payment from this fund. We have expanded the number of additional groups to benefit from the Hardship Fund.

The reunification of Germany in 1990 led to another novel application of international law, outside the traditional legal framework. The Claims Conference obtained agreement from the newly united Germany that through German law former

owners and heirs of property that was located in the former East Germany and which had been lost during the Nazi era were finally given the an opportunity for compensation and restitution.

This same legislation addressed the issue of unclaimed or heirless Jewish property belonging to whole families which had been wiped out. Using the principles established under U.S. Military Law in the immediate post-war period in the U.S. Military Zone of Germany, the 1990 German Property Law declared that the Claims Conference would be designated as the “successor organization” for unclaimed Jewish property located in the former East Germany that had been lost or stolen during the Nazi era. Rather than the property reverting to the German government, the Claims Conference became entitled to file a claim for unclaimed property in the former East Germany and thus become the legal successor to the property. This resulted in the recovery and sale of \$2 billion for the Claims Conference, the vast majority of which has been used since 1995 for welfare programs to assist needy survivors worldwide.

In 1992, the World Jewish Congress established the World Jewish Restitution Organization (“WJRO”), representing Jewish organizations and the Jewish Agency of Israel, to pursue the restitution or compensation of Jewish property in Europe outside of Germany, which had been destroyed by the Nazis or their allies in the countries they occupied and/or nationalized by the post-War Communist governments of Central and Eastern Europe. Because these countries felt themselves victims of Nazism, it has been more difficult to achieve these goals. During my negotiations in the Clinton Administration, I added the weight of the U.S. government and helped obtain some results. Hundreds of synagogues and other Jewish communal buildings were either returned or partially compensated to help sustain the remaining Jewish communities in many of the countries.

A second unique feature in international law occurred during the Clinton Administration, under my leadership, we secured pay-outs by *private companies* for the harm they had caused to civilians during World War II. This was never done before in the history of warfare, before or since. The Holocaust was not only the largest genocide in history; it was the largest theft in history, only a small fraction of which has been recovered.

After the collapse of communism, Edgar Bronfman, who at the time was the president of the World Jewish Congress and the World Jewish Restitution Organization, met with President Bill Clinton in the White House to urge that a special envoy be appointed to encourage the newly democratic countries in Central and Eastern Europe to return communal property—synagogues, schools, community centers, even cemeteries—to the shattered Jewish communities seeking to rebuild their communal life after the twin tragedies of the Holocaust and communism. I

became that special envoy, taking on a dual role while I was U.S. Ambassador to the European Union in Brussels. I traveled widely throughout the region to put the moral weight of the U.S. government behind this effort.

In the midst of this work, I read a 1995 article in the *Wall Street Journal* about dormant Swiss bank accounts which had been opened by Jews seeking to put their assets away from the grasp of the Nazis in the most secure banks in neutral Switzerland. They had never been returned to their rightful owners, and, instead, were incorporated into the profits of the banks—or, as later revealed, had been turned over to the Nazis. I received permission from the State Department to pursue this injustice. When I met in Basel, Switzerland with the Swiss Bankers Association, I showed them the *Wall Street Journal* article and asked for their response. Yes, they said: there indeed were 730 accounts found after having an ombudsman review the records of all Swiss banks from 1933 to 1945, and we were assured that they were going to pay the owners \$30 million taking into account the interest over the decades.

On May 2, 1996, a memorandum of understanding was signed between Edgar Bronfman, the Jewish Agency of Israel, a non-governmental body, and the Swiss banks with a view to create an independent committee of eminent persons, led by Paul Volcker, a former chairman of the Federal Reserve which whom I had worked during my time as President Carter's chief domestic advisor, to conduct an independent audit of the wartime Swiss bank accounts. At the suggestion of the World Jewish Congress, Volcker retained an expert, Helen Junz, to conduct a study of pre-war Jewish wealth in Europe, which she estimated at \$12.9 billion. After three years and more than \$200 million in audit fees paid by the Swiss banks, the Volcker committee issued its report, finding that some 54,000 accounts had "probable or possible" Jewish owners, and over 20,000 almost certainly did. The Swiss government remained uninvolved, putting the full burden on the private banks.

I had led a 1997 interagency study, which produced a report documenting that the Swiss government's central bank had helped finance the Nazi war effort by trading Swiss francs in return for gold they knew the Nazis had stolen from the coffers of the central banks of the countries they overran.

The public accusations by Edgar Bronfman against the Swiss banks and the Swiss government's retorts spun out of control, and tested my ability to the utmost to keep the parties talking.

Under the combined pressure of Edgar Bronfman; sensational Senate hearings chaired by Senator Al D'Amato of New York; class action lawsuits against the Swiss banks; my mediation on behalf of President Clinton, and the critical intervention of U.S. District Court judge Edward Korman, the Swiss banks agreed to a staggering settlement of \$1.25 billion. Even though this was a class action suit, it was hardly a traditional one. It is unclear if the cases could have sustained a motion to dismiss.

There was never a formal certification of a class, and the jurisdictional issues were challenging. But at a time when the Swiss banks had become international in their reach and needed unrestrained access to the U.S. financial markets, the accurate allegations that they had hidden accounts given to them by Nazi victims for safekeeping, had denied their existence when family members sought to recover them, and had taken them into their profits, charging monthly fees for decades represented a reputational risk too large for the banks to ignore. Alan Hevesi, Comptroller of New York City, controlled billions of dollars in municipal pension funds and organized hundreds of state and local officials across the U.S. to threaten sanctions against Swiss banks if they did not settle the class-action suits against them. As Under Secretary of State for Economic, Business and Agricultural Affairs, I began to mediate a settlement between the class action attorneys and the Swiss banks. While I narrowed the differences between the demands of the attorneys and what the banks were willing to pay, the talks moved in the courtroom of Judge Edward Korman, a federal judge in the Eastern District of New York, as the banks wanted the protection of a federal court if they settled. A settlement of \$1.5 billion was reached. A lengthy claims process under Special Master Judah Gribetz, a prominent New York attorney, that went on for more than ten years led to payments to account holders or their heirs. But the huge settlement amount still left significant amounts outstanding. Rather than return them to the banks, Judge Korman distributed the excess to more than 458,000 Holocaust victims and certain heirs worldwide, as a result of several distinct claims processes for unreturned bank accounts, slave labor for German as well as Swiss-owned entities, looting and refugee status.

The Swiss bank settlement led to class action suits against German and other forced labor companies that had employed Jewish and non-Jewish slave laborers, often working the Jewish inmates to death. I mediated these cases along with my German partner Count Otto Lambsdorff, appointed to be my counterpart by German Chancellor Gerhard Schröder through eighteen months of highly emotional, extraordinarily difficult negotiations in Germany and Washington. It was a multi-party negotiation: the United States and German governments, the divided class action lawyers, the Jewish organizations, the private German companies, and the Central and Eastern European nations. We reached a settlement of \$5 billion (10 billion D.M.) in July, 2000. But how to determine who was eligible for slave and forced labor payments? It would have been impossible to use any traditional method to locate all the surviving workers, let alone determine for which companies they worked and for how long. Moreover, I insisted, over the initial strong objection of the German government, the class action lawyers and the Jewish organizations, that the U.S. government wanted to cover not only Jewish slave laborers who had been worked to death by the German companies, but also non-Jewish forced laborers from occupied countries such as Poland, Czechoslovakia, and Hungary, who were considered an asset of the Reich, and lived in better but still difficult circumstances

to run the factories and farms while the German men were on the front lines fighting. What to do? We developed a concept we called “rough justice,” under which all Jewish Holocaust survivors who were in concentration camps, ghettos, or in hiding, regardless of the length of time, would be considered slave laborers and would receive a one-time payment of \$7,500, and each forced laborer would receive \$2,500. But because there were only around 200,000 living slave laborers and over one million forced laborers, they received about 80% of the funds for laborers. It was the first time Germany paid compensation to non-Jewish former forced laborers, who then, in January 2001, actually got the majority of the funds.

We also agreed that \$350 million of the settlement fund would be given the International Commission of Holocaust-Era Insurance Claims (“ICHEIC”), created by the state insurance commissioners, chaired by former U.S. Secretary of State Lawrence Eagleburger, and including most of the post-war European insurance claims, to augment their own contributions to ICHEIC for unpaid insurance policies.

The German companies insisted, over the objection of the class action lawyers, to set aside several hundred million dollars for a German foundation that would make payments for projects to remember the Holocaust and other human rights violations, which continues to function to this day.

Another novel legal concept involved how to satisfy the German companies—to ensure them that after paying this massive amount, they would not be sued again by other claimants—to provide what we called “legal peace.” The class action lawyers were finally persuaded to drop their cases, but what of future ones other lawyers might bring? I explained that only Congress could wipe our future causes of action and they would never do so. After difficult negotiations with the Solicitor General of our own Justice Department, we developed a novel answer to the puzzle. President Clinton would issue a presidential proclamation that would state it “will be the enduring and high interest of the United States to support efforts to achieve dismissal of all World War II-era cases;” that the Justice Department “will affirmatively recommend dismissal on any valid legal ground, which, under the United States system of jurisprudence is for the U.S. courts to determine” and that “the United States will take no legal position in U.S. courts on pending and future cases which would itself preclude dismissal of these cases, and will, in fact, enumerate the real, legal hurdles plaintiffs face.”⁷

⁷ Letter from Samuel R. Berger, Assistant to the President for Nat’l Sec. Affairs and Beth Nolan, Counsel to the President, to the Hon. Michael Steiner, Nat’l Sec. Assistant to Fed. Chancellor of the Fed. Republic

While this did not give the German companies the ironclad assurance they wanted, it worked. In *American Insurance Association v. Garamendi*, a closely divided U.S. Supreme Court found that a California state law that allowed Holocaust-related insurance claims to be heard in state court and extended the statute of limitations for doing so was preempted because it interfered with the President's ability to conduct foreign policy, as evidenced by the presidential proclamation we drafted.⁸ Even though there was no formal preemption clause in the settlement agreement we reached, the California law, and by extension in similar laws other states might pass to allow claims against the German companies would undermine the president's foreign policy powers as Commander-in-Chief and would erode the willingness to companies to engage in voluntary settlements in Holocaust-related matters.

Austria was a special challenge because they carried with them over all the decades since the end of World War II, the notion that they were Hitler's "first victims" rather than his willing ally. But they had begun to come to terms with their past. This was catalyzed by the Waldheim affairs, the disclosure that Kurt Waldheim, former UN Secretary General, whose Nazi past was disclosed by the World Jewish Congress during his campaign for the Austrian presidency. It was not until 1991 that Chancellor Franz Vranitzky acknowledged Austrian culpability for Nazi persecution and its moral responsibility for assistance to Jewish victims. In 1995, the National Fund for the Victims of National Socialism was created, headed by Hannah Lessing, to make payments of about \$4,500 per person to Holocaust survivors; to support Jewish institutions and service; and to develop a comprehensive list of Austrian Holocaust victims. Design and construction of a Holocaust memorial in Vienna's Judenplatz was unveiled in 2000.

In October 1998, the same class action lawyers involved in the German slave and forced labor cases, filed suits against Austrian companies in the U.S. court in Brooklyn both for labor and Austria's failure to return property confiscated by the Nazis. Recognizing the costs of litigation and damage to their reputation from the bitter negotiations with the Swiss and Germans, the Austrian companies and government officials determined to avoid lengthy negotiations. They established a historical commission to investigate the status of Austria's postwar restitution and reparations program.

In the closing days of the Clinton Administration, I negotiated a \$400 million settlement against Austrian companies for their use of slave and forced labor on the

of Ger. (June 16, 2000), https://1997-2001.state.gov/regions/eur/holocaust/000616_letter.pdf [<https://perma.cc/FV5X-DMMH>].

⁸ 539 U.S. 396 (2003).

territory of Austria, along the lines of the German settlement, but I did so directly with Maria Schaumayer, former head of the Austrian central bank, a truly remarkable woman appointed by Austrian Chancellor Wolfgang Schuessel. She was determined to go beyond the German agreement, by broadening eligibility standards to cover children who lived in labor camps and women who were forced to undergo abortions, and by improving payments on a per capita basis from the German agreement. She had already pre-negotiated the amount with the four major political parties. The Austrian fund would be capitalized by roughly equal shares from the private sector and the Austrian government. I did not negotiate with any private Austrian companies and the amounts were so generous that the class action lawyers (with one outlier who I was able to finally convince) and the Jewish organizations readily agreed. Ms. Schaumayer asked me to co-chair a conference with her in the magnificent Hofburg Palace of the Hapsburg emperors for representatives of the principal sources of conscripted Austrian workers—Belarus, Czech Republic, Hungary, Poland, Russia, and Ukraine. I accepted but only on the condition that Austria agree to promptly address Nazi-era property claims. After checking with Chancellor Schuessel, she accepted my terms. This was necessary, because the class action lawyers refused to dismiss their cases and provide the same “legal peace” we negotiated in the German agreement unless their property cases were settled.

Private property was more complicated. There had been several post-war property restitution laws, although they were limited and inadequate. Chancellor Schuessel was widely distrusted by the Jewish groups because he had entered a coalition with the far-right party of Jörg Haider, who had made anti-Semitic comments in order to gain power, leading to the state of Israel severing diplomatic relations with Austria. But I came to admire and respect him, although he was a tough negotiator. Schuessel appointed as his special envoy on property issues Ernst Sucharipa, the dean of the Austrian Diplomatic Academy, who I found to be a decent and sympathetic negotiating partner, but it was clear that Schuessel would be calling the shots. Again, this was far from a traditional legal settlement. In addition to the class action lawyers, Israel Singer, Edgar Bronfman’s top assistant at the World Jewish Congress was publicly vocal against the Austrians. In negotiations with the Jewish groups and the Austrians we agreed on a fund of \$150 million to cover survivor claims for apartment and business leases, stolen movable property such as furniture, and personal valuables such as jewelry. In all-night negotiations in the Chancellor’s office, which we called the “pizza negotiations” because the Chancellor ordered pizza for everyone, the Austrians agreed to establish another fund of \$210 million for the confiscation of Jewish private property in Austria, with a formal claims process that received over 18,000 claims.

At almost the same time in January, 2001, in the waning hours of the Clinton Administration, I concluded an agreement with the French banks and French government for Jewish bank accounts. Here again, my negotiations came in the

backdrop of France coming to terms with its wartime history, as Austria and Switzerland eventually did. On July 16, 1995, French President Jacques Chirac publicly and unequivocally accepted responsibility for the pro-Nazi Vichy government's nefarious actions. This led to the appointment of Jean Matteoli, a distinguished magistrate and Resistance fighter during the War to head a commission examining the theft of Jewish property in France during the War. After two years, the Matteoli Commission detailed Vichy's crimes, including the confiscation of property and some 80,000 bank accounts that presumably belonged to Holocaust victims. This in turn led to the Draï Commission, headed by Pierre Draï, a French Jew from Algeria who had been chief judge of France's highest court of appeals, to handle individual claims for looted apartments and business, unpaid insurance policies and bank accounts and other assets blocked by French banks. Under heavy lobbying from Serge Klarsfeld, a Holocaust survivor and leader of the French Jewish community, French President Lionel Jospin created to fund to pay either a lump sum or monthly pension to French Jews orphaned during the War. It became the largest charitable organization in France's history, with an initial endowment equivalent to \$375 million contributed by French banks and insurance companies, the French central bank and the French government.

With all of these unilateral steps, the French were chagrined that these were not enough to satisfy U.S. class action lawyers, who filed suits in U.S. courts against the major French banks, charging they failed to return looted assets and bank accounts. This began a long and positive association with Professor Richard Weisberg, then a professor at Cardozo Law School and the author of a book on Vichy and the Holocaust in France. When federal judge Sterling Johnson refused to dismiss the cases and ordered discovery into the names on the bank accounts. This shocked the French banks and government. It was the first time in all the Holocaust litigations that a U.S. judge permitted a case to go forward to trial.

French President Lionel Jospin then appointed Jacques Andreani, the distinguished former French ambassador to the U.S. as ambassador-at-large for Holocaust issues to be my negotiating partner. Unlike the other negotiation, with the Swiss, Germans, and Austrians, there was a notable absence of public pressure from Jewish organizations and U.S. regulators, who agreed with the French Jewish community, that France was doing a commendable job on their own. My negotiations with the class action lawyers, several of whom made unreasonable demands, and one in particular, were unusually bitter, as she distrusted all the actions the French government had taken.

I faced three major obstacles: convince the American lawyers that they could trust the Draï process; convince the French to accept a "rough justice" fund to make small per-capita payments to claimants who had no direct proof accounts, but who would be willing to sign an affidavit that they had a good faith belief their relatives had such an account; and broker a figure for the new fund that would satisfy both

sides. After intensive negotiations, the French banks agreed to pay \$22.5 billion for the rough justice fund, capped at \$3000 per person.

The Maryland legislature considered a bill that would have banned SNCF, the French government-owned railway, from bidding on a lucrative rail project because of their role in deporting Jews from France during the War. While the legislation was never passed, it was the catalyst for the French government to approach me. In December 2014, after months of negotiation with the French government, as Special Representative of Secretary of State John Kerry on Holocaust-Era Issues, I signed a \$40 million agreement with the French government as compensation for the deportation of Jews and others in the French railway during World War II. Payments went to living survivors, the spouses of deceased survivors, and the children of deceased spouses or deceased survivors, who were now living outside of France and had not previously been compensated by the French government's own program for those survivors living in France.

This agreement was a significant factor in the Dutch government's 2020 decision to pay Dutch Holocaust survivors who had been deported from Westerbeg to concentration camps, regardless of where they live today.

Another novelty of international law during the Clinton Administration was my negotiation with forty-two countries in 1998 of the Washington Principles on Nazi-confiscated art, establishing principles for the identification, publication, claims and return of some of the 600,000 pieces of art the Nazis had stolen. The Washington principles were amplified and broadened by the forty-seven nation Terezin Declaration, which I negotiated in 2009 in the Obama-Biden Administration. Although not legally binding under international law, their moral force has had a profound impact on the art world. Five countries (Netherlands, Germany, Austria, France, and the UK) have established claims commissions to adjudicate claims against public museums that hold these looted artworks.

During the November 2018 Berlin Conference taking stock of the 20th anniversary of the Washington Principles on Nazi-Confiscated Art, while acting as the Trump Administration's Expert Adviser on Holocaust-Era Issues, both I and State Department's Special Envoy for Holocaust Issues signed a Joint Declaration with Monika Grütters, the German Federal Commissioner for Culture and the Arts. In that Joint Declaration she pledged to obtain additional funding for provenance research by German federal museums to locate Nazi-confiscated art, and agreed to remove all German subsidies to the museums if they refused to participate in the German claims commission when claims were brought.

In my keynote address at the November 2018 Berlin Conference, I specifically criticized the Dutch Art Restitution Commission's practice of employing a "balancing test," so that the interest in a Dutch museum keeping a Nazi-looted

artwork was weighed against the interests of the heirs of the original Jewish owners from whom it was taken, leading to denying the claimant's request to reconstitute their family's looted artwork. There were demarches from the State Department and a negative report on this practice. In 2018, the U.S. Congress passed the JUST Act, calling on the State Department to report on the implementation of the Terezin Declaration by its 47 state signatories, including the Netherlands. The July 2020 JUST Act report, coordinated by Cherrie Daniels, Special Holocaust Envoy, and in which I participated, criticized this practice in the Dutch section of the report.

As a result, the Dutch Minister of Education, Science and Culture appointed a special committee to review the operation of the Dutch art commission and strongly recommended abolishing the "balancing test." In 2021, the Minister accepted their recommendation and issued a stinging report critical of the process and policies employed by the Dutch Art Restitution Commission, leading to the resignation of its chairman.

Thousands of paintings have been restituted or compensated due to the Washington principles and Terezin declaration. The two major art auction houses, Christie's and Sotheby's, have created full time staff positions to ensure that they do not sell or auction Nazi-looted artwork. Christie's has resolved over one hundred claims.

Notwithstanding the recalcitrance of some countries, all of these examples of non-traditional means to resolve Holocaust issues demonstrate that when there is active leadership by the U.S. government at senior levels, when issues of Holocaust justice are raised directly, repeatedly, and forcefully with governments, they can be more effective and cover vastly more victims than would be possible in a traditional civil litigation.

But the jurisdictional issues, tough evidentiary standards in trials, burden of proof, and the difficulty of certifying a class all provide huge obstacles to traditional litigation. The class action suits were certainly a catalyst to my negotiations, but it is highly doubtful any of the cases could have been won by the claimants. The "rough justice" models we adopted are far more suitable to cover a wider class of victims, and without large contingency fee payments to lawyers. In the German class action cases, for example, where I called on Ken Feinberg to precisely set the fees for the lawyers, we had already agreed they should get no more than 1% of the recoveries.

United States courts have not been sympathetic to Holocaust claims brought against museums abroad, nor frankly has the U.S. Justice Department, despite our own Washington Principles, out of concern that if the U.S. does not provide "comity" to foreign governments from suit in U.S. courts, the U.S. government would be open to suit in foreign courts. For example, Spain refused to reconstitute or compensate the Cassirer family for a valuable painting by Camille Pissarro, confiscated by the Nazis, which ended up in the Thyssen-Bornemisza Collection in Madrid, even though Spain

was a party to the Washington Principles on Nazi-Confiscated Art. The Cassirer family sued in U.S. court. In August 2020, the 9th Circuit Court of Appeals ruled against the family, finding that under Spanish law there was insufficient evidence that the painting's history as Nazi-looted art was known to the Spanish government or to Baron Hans-Heimrich Thyssen Bornemisza, who purchased the painting in 1976 from a New York dealer.⁹ Showing the limits of the Washington Principles to governments without good faith, since no one contested that in fact the painting had been looted by the Nazis, the court said, “[i]t is perhaps unfortunate that a country and a government can preen as moralistic in its declarations, yet not be bound by those declarations. But that is the state of the law.”¹⁰

Even more recently, in February 2021, the U.S. Supreme Court decided the case of *Germany v. Philipp*, ultimately agreeing with the position articulated in the U.S. Solicitor General's amicus brief.¹¹ The Court ruled against a recovery of the Guelph Treasure, a collection of medieval religious art that Hermann Goering obtained in 1935 following intense pressure against German Jewish art dealers. The pieces were later given as a gift to Hitler.¹² After the War, it was on display in a German state museum. The heirs of the dealers initially brought their claim for compensation before the German Advisory Commission established under the Washington Principles on Nazi-Confiscated Art, which decided the sale was not forced. The plaintiffs then filed a suit against the German government and the state-owned museum under the expropriation exception to the Foreign Sovereign Immunities Act (“FSIA”), which generally provides immunity from suit for foreign governments and their instrumentalities. The Solicitor General had argued that the expropriation exception to FISA did not apply in all cases involving the taking of property in violation of international law but only to claims brought by citizens of one country against a different country. Despite the fact the Jews by 1935 had virtually lost any rights as citizens, the Supreme Court ruled that here the expropriation was by Germany against its own citizens, and the exception's reference to violations of international law did not cover expropriations of property belonging to a country's own nationals; only the expropriation of alien property was wrongful under international law. Also, the Court found that human rights documents did not generally speak of property rights.

⁹ *Cassirer v. Thyssen-Bornemisza Collection Found.*, 824 F. App'x 452 (9th Cir. 2020), *cert. granted*, 142 S. Ct. 55 (2021).

¹⁰ *Id.* at 457 n.3 (explaining that both the Terezin Declaration and the Washington Principles are “non-binding”).

¹¹ *See Fed. Republic of Germany v. Philipp*, 141 S. Ct. 703 (2021).

¹² *Id.*

Monetary compensation or restitution should not be the only way to deal with the victims of the Holocaust or other acts of genocide. Truth commissions are another way. I led the drafting of a 1997 interagency report that produced a finding that undercut the myth of Swiss neutrality during World War II. It showed that the Swiss Central Bank helped fund the German war effort by exchanging gold bullion they had to know had been stolen from the countries the Nazis occupied for Swiss francs, at a time when the German currency was worthless due to western sanctions. We did a similar study in 1998 examining the role of other neutral countries like Turkey, Spain, and Portugal. This led to a remarkable study commissioned by the Swiss government, led by Professor Jean-Francois Bergier, that made similar findings to our report. At our urging, over 20 countries, including the U.S., did the same with a focus on the Holocaust.

Another effective way to address the harm done to victimized populations is the creation of truth and reconciliation commissions, such as the one in South Africa created by Nelson Mandela. Such efforts can avoid divisive retribution and lead to healing by giving victims a forum to narrate their mistreatment.

II. HOLOCAUST EDUCATION IS NOW MORE CRITICAL THAN EVER

During the initial post-war years, the Claims Conference was fundamental in providing critical funding for Yad Vashem, Yivo, Mémorial de la Shoah in Paris, and the Weiner Library in London. The Claims Conference devoted a small part of the proceeds from unclaimed East German property for Holocaust education, research, and documentation. At its peak a few years ago, the Claims Conference was the largest funder of Holocaust education, up to \$18 million per year. But as the fund has dwindled, only a small fraction is available at a time when Holocaust awareness has dramatically dropped.

In a recent major survey by the Claims Conference, 48% of American Millennials and Generation Z could not name a single one of the more than 40,000 concentration camps or ghettos established during World War II. 56% were unable to identify Auschwitz and 63% did not know that six million Jews were killed. Remarkably, 11% believed Jews caused the Holocaust. Roughly half have seen Holocaust denial or distortion posted on their social media platforms. However, the bright spot is that 64% of that group felt that Holocaust education should be compulsory in their schools and 80% believed it was important to learn about the Holocaust.

In January 2000, as Deputy Secretary of the Treasury, I worked with the Prime Minister of Sweden, Goran Persson, to establish the Holocaust Education Task Force to promote Holocaust education, then with only a handful of countries taking part.

This has now become the International Holocaust Remembrance Alliance, with over thirty member countries. In the United States only a minority of states (SEE: NOTE, I TOOK OUT 17. IT MAY BE NOW OVER 20) have mandatory Holocaust education, although many states' curriculum include Holocaust education.

However, there is progress. In 2021, the U.S. Congress passed the Never Again Education Act to provide \$10 million to promote Holocaust education through grants provided by the U.S. Holocaust Memorial Museum. In our September 2020 negotiations with the German government, the commitment was to provide the Claims Conference with funding for Shoah education totaling 9 million euros in 2020, with an increase of 3 million euros each year, so there will be 18 million euros by 2023.

III. HAS THE HOLOCAUST TAUGHT THE WORLD ANYTHING? ARE WE ANY BETTER FOR THE LESSONS IT SHOULD HAVE GIVEN US?

At one level, an argument can be made that we are repeating the mistakes of the Holocaust. After all, many acts of genocide and violations of human rights have occurred since the end of World War II in Cambodia, Rwanda, Bosnia, Kosovo, Darfur, Syria, Myanmar, China, South Sudan, and the Central African Republic. And the list goes on, without effective international intervention.

But let me suggest that the world is slowly developing a set of international instruments that have the possibility of incorporating the lessons of the Holocaust, if combined with the will of the United States and our European allies. Let us look at how far we have come. Prior to World War II, individuals had no rights under international law, and depended solely on how their nation, even Germany under Hitler, mistreated its citizens. No other state had a legal right to protest the treatment of another state's abuse of its citizens within their territory, nor did individuals have a global forum to present their cases of mistreatment.

This is not to say that nations were helpless to combat Hitler's mass murder of Jews, had they wished to do so. There is no question that the Holocaust and the brutality of World War II have been a dramatic catalyst in improving the rights of individuals, who now have internationally guaranteed rights, and tribunals to assert them against states that violate them. But we must always be cognizant that these rights are fragile and depend heavily on their enforcement on other nations, which, in turn, largely act in their own interests.

The Charter of the United Nations did not create an enforceable set of rights, given the strong opposition of the Soviet Union, and the reservations of major Western allies, including the United States. In order to get the U.S. Senate to ratify the UN Charter and avoid a repeat of the disastrous defeat of the Covenant of the League of Nations after World War I, the UN Charter only used vague language to

promote respect for “human rights and fundamental freedom for all without distinction as to race, sex, language or religion.”

The Universal Declaration of Human Rights in 1948 adopted a non-binding UN resolution which remains a landmark today. Since 1948 there have been numerous international agreements such as the Genocide Convention, the International Covenants on Human Rights, the International Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Elimination of all Forms of Discrimination against Women, the Convention on the Rights of the Child, and the Convention against Torture.

In the early 1950s, the Council of Europe adopted the European Convention of Human Rights as a direct result of the Holocaust, which established the first organization allowing individuals the ability to sue states which violate their rights: the European Court of Human Rights, which remains active to this day. Their judgments are largely honored. One expert, Thomas Buergenthal, a former judge of the International Court of Justice, has called the European Court “the most effective international system for the protection of human rights in existence today.”

The International Court of Justice in the Hague was created in 1945 to be the principal civil court of the UN and hear disputes between countries. This year, in a case brought by Gambia against Myanmar, the Court issued a provisional decision aimed at protecting the Ruyhinga from further persecution under the convention on the prevention of genocide.

Moreover, international criminal law and institutions to enforce it have evolved. This began with the Nuremberg tribunal to try Nazi war criminals. In 1993, the UN Security Council established the international criminal tribunal for the former Yugoslavia and several of the worst Serbian human rights offenders were tried and convicted, including Serb general Ratko Mladić. In 1994, the International Criminal Court for Rwanda was established following the Rwandan genocide. And in 2002, the International Criminal Court came into being, to which now over 120 nations (not including the U.S.) are parties. Radovan Karadzic, president of Republic of Serbia, was convicted by the court, and 45 leaders, including Libya’s Muammar Gaddafi have been indicted by the court.

There are other institutions today that did not exist during the Holocaust. Human rights NGOs, like Human Rights Watch, Doctors Without Borders, and Amnesty International highlight acts of genocide and war crimes. The U.S. Holocaust Memorial Museum’s Center for the Prevention of Genocide, to which I belong, thoroughly research, and work with members of the U.S. Government to highlight areas where genocide is occurring or where it is at risk of occurring. The Auschwitz Institute for the Prevention of Genocide has one of the largest education and training programs around the world to sensitize people to the dangers of genocide and mass atrocities through the lessons of the Holocaust. I chair the Defiant Requiem

Foundation, which, with the vision of Murry Sidlin, an American conductor, has performed over fifty concert-dramas in the U.S., Europe, and Israel, to dramatize the power of cultural resistance through the arts and music in giving people hope in hopeless situations such as in the Theresienstadt concentration camp. We were scheduled to perform our landmark concert “Defiant Requiem: Verdi at Terezin” in Amsterdam in May of 2020, which would have been broadcast nationwide on Dutch television. Because of COVID-19, this was moved to May 2021.

The internet, digital communications, and aggressive journalists bring war crimes and acts of genocide directly into our homes to stir our conscious, something not possible during the Holocaust.

For all its limitations the United Nations operating under a UN Security Council resolution since 1999, has numerous peacekeeping missions to protect civilians, providing some measure of protection Jews never had during the Holocaust.

The limitations of international law are all too painful. Nation states are the key drivers of the treatment of their citizens. International human rights are regularly violated by brutal autocrats around the world, with little ability of citizens to mobilize international law to protect themselves, unless it touches on the interests of western nation states. The U.S. and NATO intervened in Bosnia and then in Kosovo because the West, in the end, could not tolerate another genocide on its soil after the Holocaust. But many other massacres and genocides around the world do not capture the attention of the Western nations that could make a difference for the simple reason that these events do not engage these nations’ strategic interests.

A critical factor is the willingness of the President of the United States (along with Congress) to make human rights a key part of his foreign policy. I am proud that Jimmy Carter was the first to do so, applying it to Latin American dictators, reducing their arms shipments and using his position of authority to call for freedom and democracy in our hemisphere. Even while negotiating a nuclear arms agreement with the Soviet Union, President Carter championed the rights of Soviet Jews, leading to the doubling of Soviet Jewish emigration. Other presidents, from Nixon to Trump, gave little attention to how nations treat their citizens and focus on their external conduct.

I am confident President Biden and Secretary of State Tony Blinken will put human rights back into a central role in his foreign policy. Of course, all presidents have to carefully balance America’s interests against human rights concerns, as in dealing with China. But making human rights at least a significant part of foreign policy can help advance its cause and protect vulnerable people from genocide. The Holocaust has been a stimulant in beginning to build a world in which human rights violations and genocide gain greater opprobrium.

We should pledge ourselves and urge our governments to remember the lessons of the Holocaust and to take effective action against hate, antisemitism, human rights violations, and genocide, where it occurs and against whomever it is perpetrated.

