

# **Truth, Reconciliation, and Healing: Toward a Unified Future**



**JULY 18, 2019**

**Briefing of the  
Commission on Security and Cooperation in Europe**

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**Washington: 2021**

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## ABOUT THE ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE

The Helsinki process, formally titled the Conference on Security and Cooperation in Europe, traces its origin to the signing of the Helsinki Final Act in Finland on August 1, 1975, by the leaders of 33 European countries, the United States and Canada. As of January 1, 1995, the Helsinki process was renamed the Organization for Security and Cooperation in Europe (OSCE). The membership of the OSCE has expanded to 57 participating States, reflecting the breakup of the Soviet Union, Czechoslovakia, and Yugoslavia.

The OSCE Secretariat is in Vienna, Austria, where weekly meetings of the participating States' permanent representatives are held. In addition, specialized seminars and meetings are convened in various locations. Periodic consultations are held among Senior Officials, Ministers and Heads of State or Government.

Although the OSCE continues to engage in standard setting in the fields of military security, economic and environmental cooperation, and human rights and humanitarian concerns, the Organization is primarily focused on initiatives designed to prevent, manage and resolve conflict within and among the participating States. The Organization deploys numerous missions and field activities located in Southeastern and Eastern Europe, the Caucasus, and Central Asia. The website of the OSCE is: <[www.osce.org](http://www.osce.org)>.

## ABOUT THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE

The Commission on Security and Cooperation in Europe, also known as the Helsinki Commission, is an independent U.S. Government commission created in 1976 to monitor and encourage compliance by the participating States with their OSCE commitments, with a particular emphasis on human rights.

The Commission consists of nine members from the United States Senate, nine members from the House of Representatives, and one member each from the Departments of State, Defense and Commerce. The positions of Chair and Co-Chair rotate between the Senate and House every two years, when a new Congress convenes. A professional staff assists the Commissioners in their work.

In fulfilling its mandate, the Commission gathers and disseminates relevant information to the U.S. Congress and the public by convening hearings, issuing reports that reflect the views of Members of the Commission and/or its staff, and providing details about the activities of the Helsinki process and developments in OSCE participating States.

The Commission also contributes to the formulation and execution of U.S. policy regarding the OSCE, including through Member and staff participation on U.S. Delegations to OSCE meetings. Members of the Commission have regular contact with parliamentarians, government officials, representatives of non-governmental organizations, and private individuals from participating States. The website of the Commission is: <[www.csce.gov](http://www.csce.gov)>.

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# **Truth, Reconciliation, and Healing: Toward a Unified Future**

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**July 18, 2019**

## **Commission on Security and Cooperation in Europe Washington, DC**

The briefing was held at 10:04 a.m. in Room 2167, Rayburn House Office Building, Washington, DC, Dr. Mischa E. Thompson, Director of Global Partnerships, Policy, and Innovation, Commission on Security and Cooperation in Europe, presiding.

*Panelists present:* Erika B. Schlager, Counsel for International Law, Commission on Security and Cooperation in Europe; Dr. Gail C. Christopher, Founder, Ntianu Center; Chair, Board of the Trust for America's Health; Dr. Mischa E. Thompson, Director of Global Partnerships, Policy, and Innovation, Commission on Security and Cooperation in Europe; Ambassador Stuart Eizenstat, Senior Counsel, Covington & Burling LLP; Hon. Gwen Moore, Commissioner, Commission on Security and Cooperation in Europe; The Hon. Tracy Tansia Bibo, former City Councilor, Liedekerke, Belgium; Councilor Don Ceder, Municipal Councilor, City of Amsterdam, the Netherlands; Hon. Benjamin L. Cardin, Ranking Member, Commission on Security and Cooperation in Europe; and Dr. Diane Orentlicher, Professor of International Law, American University.

Ms. SCHLAGER. Good morning, ladies and gentlemen. Welcome. My name is Erika Schlager, and I'm pleased to open "Truth, Reconciliation, and Healing: Toward a United Future," a briefing hosted by the U.S. Commission on Security and Cooperation in Europe, also known as the Helsinki Commission.

For those who may not know us, the Helsinki Commission is an independent U.S. Government agency focused on human rights, economic cooperation, and military security in and among the 57 North American, European, and Asian countries that make up the Organization on Security and Cooperation in Europe—the OSCE. Priorities of the commission include fostering safe, equitable, and inclusive societies, and advancing human rights at home. To that end, the commission has worked closely with the OSCE and the OSCE Parliamentary Assembly to secure a democratic future for diverse and vulnerable groups across Europe and North America, including Romani and Jewish populations, national minorities, and migrants.

The bicameral and bipartisan commission is currently chaired by Congressman Alcee Hastings. We hope to be joined today by Senator Ben Cardin and Sheila Jackson Lee, 2 of our 18 congressional commissioners. As you may have seen coming into the room, there is a lot going on on the Hill today, so we are hopeful that they will be able to join us. Senator Ben Cardin serves as the OSCE's Special Representative on Anti-Semitism, Racism, and Intolerance. Representative Sheila Jackson Lee serves on the OSCE Parliamentary Assembly Ad Hoc Migration Committee.

The Helsinki Commission also supports OSCE institutions, such as the OSCE High Commissioner on National Minorities, the Office for Democratic Institutions and Human Rights, and the Representative on Freedom of the Media. Next week the Helsinki Commission will welcome the OSCE Representative on Freedom of the Media Harlem Désir for a public hearing. And this week, the High Commissioner on National Minorities Lamberto Zannier is in the United States and, among other things, will be discussing with world leaders some of the issues that we will be focusing on today.

In March, at an event focused on the abuse and use of historical legacies for political purposes and the tensions this can produce, the OSCE High Commissioner said, "History and memory have always been sensitive issues, but it is increasingly apparent that there are very real security implications. Memory politics are part of identity politics, and we are witnessing firsthand how they can drive wedges between communities in countries across the world and be exploited by outside forces. Myths and memories are an integral part of ethnic and national identities that determine not only who we are, but where we are going." Today we will attempt to discern what paths many of our societies are on by examining some recent efforts to address past atrocities and injustices, and what we can learn from those efforts.

So I want to thank all of you for being here. We are incredibly privileged to have a panel of people to speak to this issue that have enormous expertise grappling with this issue from so many different perspectives. All of their biographies are in the pamphlets that you received coming in the door. They will be posted to our website as well.

I will turn to my colleague, Dr. Mischa Thompson, the Director of Global Partnerships, Policy, and Innovation, to chair the briefing. But I will take the privilege and honor of introducing our very first speaker, a luminary whose life's work has been to empower people and to see beyond the mythology of race and to heal societal wounds.

Thank you, Dr. Gail Christopher.

Dr. CHRISTOPHER. Thank you very much. I am honored to be here and I'm so pleased that this important briefing is happening in this moment in time. I am going to digress a bit from my written comments, but you have them. I was asked to share lessons learned. And I will start with the most fundamental lesson that we learned in launching an adaptation of the truth and reconciliation concept here in this country, in America. And the most fundamental lesson that we learned is that for America, reconciliation is probably not the right frame.

Our frame is transformation and healing. And I say that because to reconcile suggests that we are coming back together. And America was never together, in the sense that we were founded, and this country was built over two and a half centuries, with the deeply embedded fallacy of a hierarchy of human value, that some human beings just simply don't have value. And so if we are realistic about unifying and bringing our

country together, we have to address that fundamental belief system. It still lives today. It is being reignited today.

There is a book out now called “White Fragility,” and it talks about the emotional defensive guilt and almost hysterical responses that some people have in the face of working on issues of racism. I would retitile it often white ignorance, and ignorance of many of us who don’t understand that our legacy of believing in a system of hierarchy and privilege was very deliberately manipulated and maintained for centuries. And many of us don’t even know that we’ve internalized that belief. So healing and transformation are critical frames for our work. And I believe that applies not just here, but perhaps in many other places around the world.

I actually have found that racism, anti-Semitism, religious bias, extremism, xenophobia—they all have their root in this fundamental fallacy of a hierarchy of human value. And if you’re going to change behaviors over the long haul it’s by changing consciousness and changing beliefs. So the other lesson I would share is, well, how do you do that? And one of the ways we learned to do that effectively is by bringing people together. And research really supports that it is through direct interaction with the perceived “other” that our biases and our deeply held misconceptions can be challenged.

And so we’re working with many people around the country to equip them with the skills and the capacities to bring diverse people together and deliberately, in face-to-face interactions, to help them develop the skills and the capacities to see themselves in the face of the other. Albert Einstein is known for many things. One of the things is that he was a strong advocate for justice and civil rights. And he said we as a people must learn to see ourselves in the face of the other. When we have developed that capacity for compassion and empathy and relatedness, we will behave differently, and we won’t allow violations of our fundamental humanity.

Twenty-first century science has proven that the antiquated notion of separate races and a separate hierarchy of identity—that it just has no basis in science whatsoever. And yet, it’s being reignited in this 21st century. We have to say no to that. We have to begin to understand that we are, indeed, one extended human family. And from that perception, we have to create policies and practices that honor that truth. So when we say truth, racial healing and transformation, it is the truth of our interrelated connection as a human family.

One of the best ways to change hearts and minds is through narrative. This fallacy of a hierarchy of human value was created by narrative. It actually launched the entertainment industry, the Hollywood industry, this false narrative of a hierarchy of human value. I highly recommend a new book by Professor [Henry Louis] Gates, which is called “Stony the Road.” And it documents and relays in the most comprehensive way the story of how the narrative of human hierarchy was deeply established after the Civil War and was used to turn back the legislative victories of Reconstruction. And we live with that narrative today.

Most recently, five organizations have come together. They are primarily health organizations. And that’s the other lesson I want to leave you with too, is that the cost of racism, xenophobia, anti-Semitism—the cost of extremism, these costs are health costs. And they affect us physically, psychologically, emotionally. They trigger our stress responses, whether we’re on the giving or the receiving end. And it leads to vulnerability to disease. And so our approach is being described as Rx, or prescription racial healing.

And we have five major national organizations that reach millions of people who are working very hard to accelerate a national mobilization campaign to end racism.

And this is the time. We must do this now. Our security as a nation, I believe our security as a global family is at risk if we don't put an end to the notion of a hierarchy of human value, because it fuels extremism. And extremism suggests that your existence is a threat to my existence. And it opens the door for violence and cruelty that are almost—actually, that are unspeakable.

And so I welcome your questions as the panel proceeds, but I want to say that our work is to create a new human story to correct the fallacy, and to bring us together as a human family and say No to the absurdity that's happening in our country today, that is deliberately dividing us and pushing us into factions, and sometimes even unconsciously knowing that we're building on a legacy of a belief in a hierarchy or human value.

Thank you.

Dr. THOMPSON. Thank you, Dr. Christopher. I would now introduce Ambassador Stuart Eizenstat, a partner at Covington & Burling, who heads the firm's international practice. But for many people, he's actually known for his over a decade and a half of public service over three U.S. administrations, with key positions including chief White House domestic policy advisor for President Jimmy Carter, U.S. Ambassador to the European Union, and Undersecretary for Commerce and the State Department, as well as the Deputy Secretary of the Treasury. However, for many, he is really known for working to provide belated justice for victims of the Holocaust and other victims of Nazi tyranny during World War II, which was primarily done through his leadership as a Special Representative of the President and Secretary of State on Holocaust-era issues.

Ambassador Eizenstat.

Amb. EIZENSTAT. Thank you, Dr. Thompson. It's an honor to be here. And I have testified many times before the Helsinki Commission, which is inspired by the Helsinki Accords of 1975. And that, in turn, inspired President Carter's human rights policy, in making that a centerpiece of his foreign policy, which I describe in my new book, "President Carter: The White House Years." But I was asked today to testify about our Holocaust work, and how that dealt with reconciliation.

In dealing with the Holocaust, the greatest genocide in history, we combined direct payments to victims together with a historical examination of its dimensions and lessons. I've negotiated \$17 billion in recoveries for Holocaust survivors who suffered under the Nazis. Eight billion as a U.S. Government representative under Clinton and Obama administrations and 9 billion [dollars] as the chief negotiator for the Jewish Claims Conference in our annual negotiations with Germany. These cover everything from forced enslaved labor by German and Austrian companies, unpaid insurance policies by major European insurers who refused to pay beneficiaries on the ground that the owners didn't pay their premiums when they were in Auschwitz, Swiss franc bank accounts hidden from their owners after the war, deportations by the French railway, communal property—churches, synagogues, schools, community centers, and even cemeteries—which were confiscated by the Nazis and then nationalized by the postwar communist governments in the east bloc, and return of private property, particularly in Austria.

It's important to understand that on the payment side, those are made to direct victims. And heirs are paid only if there were clearly identifiable assets—like bank accounts, insurance policies, artwork, books, cultural objects, and real property that can be directly



traced to their relatives. We also created institutions of remembrance. For example, in my recommendation to President Carter, also described in my book, in 1978, I recommended creating a Presidential Commission on the Holocaust headed by Eli Wiesel. And they, in turn, recommended what is now the U.S. Holocaust Memorial Museum, 50,000 visitors—50 million visitors—excuse me—have come since it was opened in 1993. Three-quarters of them non-Jews. And it is a way of telling a story of remembering and learning lessons.

In our German Slave Labor Agreement, which was a 10 billion deutschmark, \$5 billion agreement, several hundred million dollars were set aside for a new German foundation called Remembrance Responsibility in the Future to support, as they have done to this day, projects devoted to tolerance and justice. As part of the Swiss bank negotiations, I chaired a U.S. Government interagency task force which prepared a report on the role of Switzerland and the Swiss National Bank as so-called neutrals during the war, exposing the fact that they, in fact, were not so neutral at all. This led Switzerland for the first time to create its own historical commission, under Professor Jean-François Bergier, that examined in an honest and candid way Swiss dealings with Jewish refugees, often blocking them from coming in, and the value of assets that they took into their national bank, and converted them into Swiss francs, which helped the Germans continue their war effort.

We did a second report on the role of a dozen other neutral countries, several of whom created their own historical commission. There were several unique features to the direct payments that have been made to survivors. The first is that most came from class action suits in U.S. courts against private corporations. It's the first and only time in history that private corporations paid for their actions in wartime—not governments, but private corporations. Private banks, slave labor companies, and banks that took Holocaust assets and never disclosed them. Second, it demonstrated the role of the U.S. as a force for good. We acted as a mediator to settle Swiss, German, Austrian, and French lawsuits. We had to earn the trust of the plaintiff's attorneys, Jewish organizations, and Holocaust groups, and foreign corporations. And the Swiss bank account, U.S. District Court Judge Edward Korman finalized the negotiations I began.

Third, we had to employ novel principles since we were dealing, in this case, with fifty years after the war, the difficulty of finding proof that you were a slave in forced labor. And we employed a concept called rough justice for ease of administration. So for example, for slave laborers, most but not all Jews were being worked to death. We looked at Red Cross and German concentration camp lists. And anyone who was in a concentration camp, even for a day, was assumed to be a slave laborer and got a payment of \$7,500 per person, regardless of the length of time they were there. For forced laborers, most non-Jews from Poland and other occupied countries, who were considered an asset by the German State for production while men up to the age of 40 were fighting the war, they were paid \$2,500 per person, again, regardless of the time they worked.

Fourth, Jews were not the sole beneficiaries, indeed, in the German slave- and forced-labor cases. Almost 80 percent of the payments went to non-Jewish forced laborers who had never been part of any compensation program before. Fifth, in a Swiss bank case that was settled for \$1 1/4 billion, it was begun by Edgar Bronfman, chairman of the World Jewish Congress, and myself while I was U.S. Ambassador to the EU, but also Special Representative to the President and Secretary of State on Holocaust Issues. And here's how it happened—if you're interested in a career in journalism—there was a Wall Street Journal front page story in 1994 about so-called dormant Swiss bank accounts—accounts

that had been created by Jews trying to hide money from the onrushing Nazi armies. And then after the war, if they survived—or if they didn't, their heirs—went to those banks and they said: We have no record of such accounts. In fact, they drew down for 50 years by monthly charges into their profit statement.

And I brought that Wall Street Journal article to the Basel Switzerland Swiss Bank Association. I said, is it true? Did you banks do this? Yes, unfortunately, a few did. We found 732 accounts. We're going to pay \$32 million in plussed up interest. We didn't trust them. Paul Volcker was appointed, the former head of the Fed. For 5 years he examined these records. There weren't 732. There were 54,000 accounts possible, and 21,000 certain accounts. And Judge Korman helped me settle these cases for, again, \$1 1/4 billion, not \$32 million. Two-thirds of that went to actual owners of the accounts, and the balance to slave labor cases, to others who had transacted business through Switzerland.

Nazi-looted art is a particularly fascinating and ongoing issue. Look at the art section of The New York Times any day of the week and you'll find an article about this. The Nazis stole a staggering 600,000 artworks, and the allies were aware of the theft, although not the dimensions. In the London conference of—declaration of 1943, they warned neutral countries not to trade in this art. At the last stages of the war, the U.S. Army, as they were moving east to Berlin, embedded art experts and historians—so-called Monuments Men. And their job was to collect as many of these looted arts as they could. They collected hundreds of thousands, to put them in collection facilities in post-war Germany, and then return them from the countries from whom they were stolen, because no one in the chaos of the war could identify the individual owners, under the assumption that those countries would create their own claims processes.

Most did not and incorporated them. You go to the Louvre, Jue de Paume, all the great museums, a lot of the art there is looted. How did this then come to the fore during our Clinton administration? Again, this came because of the work of scholars and journalists, who uncovered these stories. It came to our attention, and so in 1998, at the State Department in Washington, I negotiated with 44 countries the Washington Principles on Nazi-Looted Art, in which these countries agreed to open their archives, research the provenance of their art, resolve any claims in a just and fair way without litigation. And that was enhanced by the 2009 Terezin Declaration, which I also negotiated.

And here's a very important point: Neither the Washington Principles nor the Terezin Declaration were legally binding. They were aspirational. But they have profoundly changed the way in which the art world does business. Now people look at the provenance of their art when they're buying it. Were there any gaps during the Nazi era? Thousands of artworks have been returned. Five countries have set up dispute resolution processes to resolve claims. Christie's and Sotheby's, the major art auction houses, now have full-time staffs and won't sell or auction art that has suspicious origins. Christie's has resolved 100 cases in this respect. It's really a story of what you can do with nonbinding moral principles.

Congress has also played a role in assisting our efforts at Holocaust justice. Senator Al D'Amato held Senate Banking Committee hearings to shine a harsh light on Swiss bank deceptions. Congressman Jim Leach in this very building—then the chair of the House Banking Committee—held hearings and gave visibility to looted artworks and other assets. Congress also passed, in 2016, the so-called Holocaust Expropriated Art Recovery Act to prevent American museums from using—as they were doing, totally contrary to the spirit of the Washington Principles—technical defenses, like the statute of limitations, to

bar claims. Well, how could you file a claim when you didn't even know if the art existed? And Congress helped remedy that in 2016.

And more recently, literally last year 2018, Congress passed the Justice for Uncompensated Holocaust Survivors Act, or the JUST Act, which will require by this November 2019 that the State Department will send a report on the extent to which the countries who signed the Terezin Declaration, all 46 of them, actually have held it. And I hope, Dr. Thompson, that Congress will hold hearings on that report so nations which signed the Terezin Declaration will be held to account. Last, we did not begin this restitution effort, although we gave it acceleration in the modern era. It actually began in 1952 with the Luxembourg Agreement between then-West Germany and Israel, with direct payments to survivors.

I'll close by saying, and I hope that panel will discuss it, there are other precedents. The South African Truth and Reconciliation Commission established by Nelson Mandela was not a compensation program. It was a program in which 20,000 victims of Apartheid were asked to come forward, and the perpetrators on an amnesty provision, to try to heal, Dr. Christopher, that divided nation. And last, something much less well known, is after the reuniting of Germany after the cold war there were 140,000 prisoners who had been political opponents of the communist East German regime. And after the war, when Germany was reunited, the new reunited Germany paid those 140,000, 300 euros per month for each month in which they were in prison.

So all of these are ways of dealing with historic injustices. But one of the lessons is, they go to direct victims and only heirs where there are direct heirs who can trace assets to the relatives who were killed.

Thank you very much.

Dr. THOMPSON. Ambassador Eizenstat, thank you very much for that. We are very pleased to have with us now one of our Helsinki commissioners, Congresswoman Gwen Moore.

Ms. MOORE. Thank you so much, Dr. Thompson. And thank you to our esteemed panel for appearing here today. It is certainly my loss that I was unable to get here in time to hear from Dr. Christopher, because while we talk about the need for truth and reconciliation in the OSCE countries over in Europe, we very much need to tend—to clean our own backyard. And here on this continent, I am very pleased that Canada has established a truth and reconciliation process as part of the overall holistic and comprehensive response to the Indian residential school legacy, which has a very painful and damaging residual impact on our Native community here in the United States.

And certainly we see that in this very active campaign for president on the Democratic side that the contestants are talking about reparations. And I think that before you really talk about reparations, Dr. Christopher, you have to talk about truth and reconciliation. I mean, you cannot correct what you cannot confront. And there are so many people here in the United States, for example, that think that African Americans are doing so much better. We've had our first black President of the United States. They see black people serving in Congress. And that is assuming that the legacy of slavery has been healed.

Dr. Eizenstat, I did get here in time to hear many of your comments, and I'm looking forward to reading your book. And I'm so looking forward to hearing from Tracy Bibo, Don Ceder, and Dr. Orentlicher. And thank you all for showing up for this extremely impor-

tant briefing—all of you all in the audience. You're not just in the audience, you're participants in the healing process. And it's encouraging to see young people here, because when we talk about truth and reconciliation and healing toward a unified future, you can't have a future without young people.

So thank you so much, Dr. Thompson, and I will yield back to you at this time.

Dr. THOMPSON. Thank you. At this time we will actually introduce the former City Councilor of Liedekerke, Belgium, Tracy Tansia Bibo, who will appear by video. And she is also listening by phone.

Ms. BIBO. My name is Tracy Tansia Bibo. Today I'm going to talk about reparations and the steps that already have been taken in Belgium toward having reparations for what happened during the colonial past in Congo. If you want to know more details about the colonial past and the colonization of Belgium in Congo, you can read my full statement.

So Belgium has changed the way it looks at colonization. And this happens in the past 10 years. First of all, the generation of people of Congolese decent, so people from the Congolese diaspora, the second generation that I am part of, are more critical of the past. We talk more about it and we are more vocal about it, also because in education there has been a lack of teaching this colonial past. And because of that, Belgians with Congolese roots ask themselves why their history—the shared history of Belgium is not represented in classes—in history classes, to be more specific.

The second thing is that there have been a lot of documentaries and books that talk about colonization. One of the last documentaries that I also took part in as a witness is "Children of the Colony." And there, there is the first time that the Belgian TV—the Flemish Belgian TV talks about colonization and also lets people of African descent, Congolese people, talk about their own experience.

The third thing is that racism for Belgians of African descent, for black people in general is getting worse every year. And every year we have—every 2 or 3 years, we have more studies that prove it. And all these are the links that this racism—the causes of this racism on black people, on Congolese people in Belgium, is due to colonization.

And the last topic—and then the last point is also the question of métis. During colonization, métis children, mixed children, have been separated from their black mom and brought to Belgium—so, the children of a white Belgian dad and a black mom. And they have been brought to Belgium. Because of that, there has been a resolution for the métis children. And it was also the first resolution I worked on as a parliamentary assistant and a political advisor. The first resolution that asked an apology for the wrongdoings to this group. And also, talks about reparation for this group.

So these four points are important. And this is why change has been made when we talk about colonization. This is colonization and reparation, because a lot of politicians now believe that reparation is not about only giving money, but it's about fighting inequalities. It's about readjusting inequalities that we have between black people and white Belgian people in our country. So it's not about just writing a check to the black community or the Congolese community in Belgium. This is one of the steps that—the resolution of the métis is one of the most important steps that has been taken. However, individual politicians are already asking an apology for colonization. And also, there is a lot of initiative that has been taken to have hearings, here in the Belgian Parliament, to talk about colonization and also to talk about reparations. These hearings will be taking place after

the government in Belgium is formed, because we had elections and now we don't have a government.

So as a Belgian of Congolese descent, I have been working the past years on colonization, on reparations. And for me, the message I want to send to the members of the Helsinki Commission is that dialogue and knowledge about colonization is important.

Recognition and reparation are the key elements to address the historic wrongs, heal the wounds, breach divisions, and build a shared future. I believe this is the key to the future where fighting inequality—where we fight inequality by understanding and addressing the past.

Okay, I think I passed my minutes, but I want, again, to thank the Helsinki Commission for inviting me. And also, if you have any questions you can always email me or read my full statement for a better understanding of what I've just said.

Thank you very much.

Dr. THOMPSON. And former Councilor Bibo's statement is actually included in the folders that you have.

The Honorable Soraya Post, the former Member of the European Parliament, is unfortunately unable to join us today.

So I would now actually like to introduce Councilor Don Ceder. He's a lawyer, Chairman of the Christian Union of Amsterdam, and currently a Municipal Councilor for the city of Amsterdam. And we are just very honored that he's able to join us all the way from the Netherlands today.

Councilor Ceder.

Mr. CEDER. Thank you so much, Chairman Hastings, Co-Chairman Wicker, the honorable members of the commission, Senator.

I've heard so much, and I'll just try to build upon that and focus it from an Amsterdam perspective. And I'm going to focus on the group on which we introduced the bill, which were the descendants of the transatlantic slave trade, of which a lot of them are still living in Amsterdam because the Netherlands had a lot of colonies in, for example, Suriname, the Dutch Antilles. So I'm going to focus on that part when it comes to communities and when it comes to reconciliation.

Thank you for having me here to discuss the issue that's both in many ways uncomfortable but also crucial for those that are serious about bridging societies and gaps in places that are forged historically by also communities that have been wronged in sometimes a systematic way. There's a saying in Dutch, and some say that it derives from the former colony of Suriname, and it goes as follows: The rocks that you leave lying on your path will eventually make your children stumble.

And I think it has a lot of truth to it, especially with the hearing today, and where we're talking about truth, reconciliation, and healing toward a unified future, because an inclusive society means that we make every effort to remove the obstacles between different groups within that society and community. And achieving truth, reconciliation and healing toward a unified future will only come by truly addressing certain toxic legacies on which our cities and nations across the world were forged, and truly discussing them, how to address that in a just, proportionate, unifying, and a healthy way.

I'm here, as I said, because I would like to address what we've been able to do in Amsterdam by proposing a formal apology bill by the city of Amsterdam, because we see that a formal apology for the shared past is a mature step to a consolidated shared future

in Amsterdam. I'll just talk about the background of how we came together and how we managed to have a majority that was able to propose the bill. And at the end I'll also give some—a few takeaways, and hopefully inspire you and politicians locally, but also nationally, to vanguard reconciliation in societies that they are active in.

A few weeks ago a majority of parties in Amsterdam from the city council proposed a bill that states that Amsterdam should apologize as a city for her part in the history of the transatlantic slave trade. What makes this special is that this is not just the work of one party. We have a multiparty system in the Netherlands, and this initiative came eventually from seven political parties—GroenLinks, the Greenlefts, one of the labor parties, the socialist party, the Democrat 66, and the Christian Union, of which I am the party leader.

Besides an apology, this bill also proposes scientific research that should be conducted to examine the role Amsterdam played in the history of the transatlantic slave trade. We feel that in order to make an apology that matters, we need to know what we're apologizing for. And this investigation should be done within 1 year, as we're set to make a formal apology on the symbolic date on the 1st of July 2020, which is the Dutch day of remembering the abolition of slavery. It's called *Keti Koti*, which is a Suriname term that means "the chains are broken."

There's a lot that we don't know. And that's why we're proposing scientific research. But there's also a lot that we do know. And although officially slavery was not present in the European part of the Netherlands, it was of crucial importance for her colonies. It is estimated that in the Netherlands almost 600,000 Africans were enslaved and used in the colonies. And for a period in the 17th century, the Netherlands was even the greatest, largest trader of slavery between West Africa and South America.

And Amsterdam had a key role in this, because Amsterdam as a city bought an interest in the colony of Suriname in 1683. So Amsterdam as a city became a member of what was called the Suriname Society, and with it one-third owner of the colony of Suriname. And as a co-owner of Suriname, the municipality of Amsterdam benefited greatly from a profitable colony, using slaves. In addition, Amsterdam has also profited—benefited from slavery in the Antilles, and even in the then-Dutch East Indies.

In fact, many of the great buildings that we see today in Amsterdam have associations with slavery, including the royal palace the dam, where the plantation owners of Suriname met regularly. It was during this golden age that the Amsterdam stock exchange was established to provide merchants with a safe and regulated place where they could buy and sell shares. It is still the oldest functioning stock exchange in the world. And even though slavery has been abolished since 1863 in the Netherlands, the traces remain visible everywhere around the city today. And it is ironic that the beautiful city of Amsterdam has a lot of dark side, and a dark narrative to it.

The majority of the city council therefore acknowledges that the history of Amsterdam cannot be viewed separately from the continuing effects current in this day on the position of descendants of slaves in Amsterdam or elsewhere. And why is this apology so important? Because Amsterdam hasn't been the first city or entity that has formally apologized for their role in the transatlantic slave trade. We've had Liverpool apologizing. We've had recently Charleston in the United States apologizing. And even whole countries, like Benin and Ghana. And in March, even the European Parliament addressed and stated that member States should work toward creating a formal apology.

So why is it so important that Amsterdam did this? It's important because of its vanguard role in the Netherlands. The country in itself, the Netherlands, has not yet made a formal apology. And chances are that that will not be happening soon. And although the Netherlands doesn't, for some reason, seem ready for a formal apology, it was local politicians that had a vanguard role, and made sure—and took it upon themselves that they felt that the formal apology is a right way, a proportionate way, and a healthy way to create a stepping-stone toward a unified future and reconciliation. It's a symbol, but it's a symbol that actually has an effect in creating why we are here today.

Thorough healing and reconciliation starts with acknowledging pain of others. It cannot fully blossom where there's a strong need to curate which wrong—which wrongs needs addressing and which not, and which pain in the community is viable and which is not. We cannot curate these wrongdoings. And therefore, true healing can also start when there is a formal apology. Information and education concerning this can help because the need to curate who needs—who has been done wrong or not stops a lot of the time because of a lack of information on these systematic wrongdoings in the past.

I'm going to come to a few practical takeaways, which I've learned from the practical case in Amsterdam, which I think that also here in the United States can be of good use. And that's, first of all, the first step is make sure—realize that the acknowledgements of wrongs in itself isn't just a start to begin healing and reconciliation, but often it is an essential part of the healing itself, especially in communities that feel that they have been deprived of that acknowledgement for many, many generations. And I'm talking now specifically of the descendants of those who were enslaved. But you have several communities that feel that they have been deprived of a formal apology or wrongdoing. And this—and acknowledging the wrongs can be—can be a part of reconciliation in itself. And that in order to sustain healing, in order to create reconciliation, we need to learn, as politicians, as people of influence, the art of acknowledging.

Second point, we need to realize that acknowledging the pains of minority communities will not—will not start by itself. It takes people who can articulate, research, and persist in addressing why acknowledgement or apology is so important. If truly seeking for reconciliation, we need to find these communities, we need to interact, and we need to share, and understand, and listen to why acknowledgement is important, whether it is in Amsterdam, in the United States, or wherever in the world.

Third, we have to reconsider that reconciliation might in some way mean redefining the identity of a city, maybe even a state or a country, because place in history in a proper perspective might mean that the narratives might need to shift. That isn't, per se, a bad thing, but holding on to a narrative that withholds truth from what happened to some communities will not work, and even form an obstacle in the process of creating a unifying future. So it's also important to realize that we might need a new narrative and embrace that.

Fourth—this is my last point—we need to be able to forge politically—political alliances. The bill was proposed because we had a majority, but it took a year of preparation and convincing seven parties. But not just that—for over 10 years, people from the community have been stating that a formal apology should be done and is a necessary and proportionate way to create a unifying future. So it took more than 10 years. And as a party, as a political system, it took us 1 year to form a majority. Being right doesn't mean you have a majority, per se. So it's also the art of forming political alliances, to making sure that we truly have a unified future. And the patience that comes with this

might, ironically, be some type of forbearing of the unifying future that we're hoping to see.

In closing, I encourage every lawmaker and politician that is serious about reconciliation and unifying to help and remove the stones that have been laying on our path for too long, so that we ourselves and our children can walk that path, secured and unified, from a shared history to a shared future.

Thank you.

Dr. THOMPSON. Hello. We are very pleased to be joined now by Senator Cardin.

Mr. CARDIN. Well, first, to Dr. Misha Thompson, we're so proud of the work that she does on behalf of the Helsinki Commission. She has been an incredible resource we have in dealing with this agenda.

I just really wanted to come by briefly. I apologize I'm not going to be able to stay for the entire briefing. The Senate starts votes at 11 this morning. But I wanted to underscore how important I believe this briefing is. And I want to thank all the panelists that are here, for all of your work. I know Stuart Eizenstat the best. So I just want to mention the fact that I am involved in politics every day as a member of the U.S. Senate, but it was nothing like the politics that Stuart had to endure in dealing with restitution issues. And I applaud his willingness to take on this incredibly important assignment, and to use his best skills for an equitable solution. I just really wanted to acknowledge that.

Truth, reconciliation, and healing. The work that's done here at the Helsinki Commission is so critically important, but I never thought it would be as important as it is today. Gwen Moore and I were in Europe just recently. We had a chance to visit Hungary, a country that is not dealing with truth. The monument that was put in their main square is a disgrace to the victims of World War II, where Hungary—which was involved in the murdering of Jews and others through 1944—refuses to acknowledge its role. They're putting—put a museum to the Holocaust that, likewise, does not tell the truth. You can't get to reconciliation until you tell the truth. And we see laws in Poland that make that more challenging.

So we have challenges. And I mentioned Hungary and Poland. They're not the worst countries, but they're NATO allies. And in the NATO charter, they committed to democratic institutions and principles. And they're not following that today. We had a meeting in Luxembourg during the Parliamentary Assembly that dealt with the rise of hate and lessons learned from the past, and what we can do for the future. Well, if you look at the circumstances that existed in the 1930s with the rise of hate in Europe, you see many of those circumstances today around the OSCE region, including in the United States of America.

That should concern everyone. And that's why these briefings are so important today.

Do I think it will lead to what happened in World War II? No, I don't believe that will happen. But I believe people are getting hurt, and more communities are at risk, if we don't deal with these circumstances. And the way to deal with it is by building coalitions. We can't do it one minority group alone. We're all at risk. And we need to build those coalitions. We have to invest in education. We've got to protect communities. We've got to share best practices. We've got to be willing to take action. And we've got to be willing to speak out. Each of us are leaders. We have to lead. But we need the information in order to do that.



So we at the commission have been holding hearings. I thank Chairman Hastings for the hearings that he's held in the commission. We just had one in which Commissioner Gwen Moore chaired the hearing, dealing with this issue—briefing today. We need to be prepared. We need to be educated. And we need to be organized. And we need to have a game plan. And I hope that this briefing will help lead to that. And I can assure you that Dr. Thompson, who's my principal staff person on this issue, she will continue to help plan on behalf of the Helsinki Commission a strategy that will work in the OSCE countries, including the United States of America.

So thank you very much for participating in this and thank you for being here. We appreciate it. And I apologize, again. Maybe if the Democrats take control of the Senate, I can plan the schedule a little better in the Senate. [Laughter.] But right now there is that challenge.

Thank you all very much.

Dr. THOMPSON. Thank you, Senator Cardin.

We will now turn to Dr. Orentlicher, one of the world's leading authorities on human rights law and war crimes tribunals from American University. Her career includes positions such as Deputy for War Crimes Issues in the U.S. Department of State, United Nations Independent Expert on Combating Impunity, and a Special Advisor to the High Commissioner on National Minorities with the OSCE. Her new book, "Some Kind of Justice: The ICTY's Impact in Bosnia and Serbia," is not only a timely account of international criminal tribunals and how they actually impact communities, I think, but also will help to form the foundation of her remarks and possibly offer us a path for the way forward, and some lessons learned.

Thank you.

Dr. ORENTLICHER. Thank you, Dr. Thompson and Honorable Member Moore. It's a pleasure to be here, and an honor to be at a briefing of this commission, which has provided leadership for so long on some of the hardest and most intractable but important issues of our time, including the one that's the subject of this hearing. As other panelists have already acknowledged, and as I think everybody here knows, the question of what can be done to heal divisions that are born of historic wrongs is both urgently important in many countries, and yet has proved agonizingly difficult in so many.

And parenthetically, when I refer to historic wrongs, I'm really referring to the same thing that Ambassador Eizenstat referred to as historic injustices, periods in a country's history of grave and systemic wrongs of a really epic proportion. And here, we're talking about that kind of wrong, committed against members of a group based on ethnic, national, religious, or other membership in a group.

As my predecessor Councilman Ceder indicated, one of the clear lessons from experience in many countries that have gone through this kind of chapter is that unless they're adequately addressed—however difficult it is to do so—historic wrongs leave deep wounds which afflict not only the victims, direct and indirect of the wrongs, but also afflict a society as a whole. And I think that's the premise of this hearing.

One of the lessons of the field that I've been working in for 30 years, transitional justice, is that every country has to confront these chapters in their past in their own way, in light of their own unique experience, but also that we can benefit from mining the experience of other countries that have dealt with similar challenges. And I think it's in that spirit that I was asked to talk about the experience in Bosnia, which I think every-

body here knows experienced savage, exceptionally brutal ethnic violence, accompanying the breakup of Yugoslavia in the 1990s.

The efforts to provide redress for those injustices and to foster reconciliation among citizens of Bosnia who were engaged in vicious conflict with each other have been a pre-occupation, previously more than today, of the international community. And the centerpiece of efforts to reckon with that period of violence was the work of the International War Crimes Tribunal that Dr. Thompson mentioned. Its work, as well as the work of domestic war crimes prosecutions in the region, have been vitally important to survivors of ethnic violence. And their judgments have been, indeed, very precious to those victims. And I could talk about that at length, but that's not the focus of this briefing.

What is important to note is that as important as that effort was, it did not foster reconciliation in the region. And we never should have expected the work of a criminal court to foster reconciliation. And indeed, ethnic tensions are very much at alarming levels and continuously rising in Bosnia and elsewhere. One of the most striking manifestations of that rising ethnic tension, and a factor that very much exacerbates it, has been what I would call, in shorthand, "denialism" about the nature and extent, responsibility for inter-ethnic violence during the 1990s war.

And I just want to tick off a few forms of denialism, because it takes many forms. The forms that I'm going to mention are peculiar to the Bosnia context, but some of them have analogues in many other countries. And some of them, I think, will resonate with you based on experiences even in this country. Again, I don't mean to imply any comparison between that context and ours, but there are some resonances that are worth paying attention to.

So five dominant forms of denialism including the following: First, outright denial. Denial, unfortunately by very prominent public figures in the region, that members of their own ethnic group even committed atrocities against victims belonging to other groups.

A second, perhaps more common form, is radical minimization of the nature and extent of violations committed typically by members of one's own ethnic group against others.

Third is actually justifying the wrongs, however grievous they were, by, for example, characterizing what has been legally established to be a genocide in Srebrenica—justifying that as an act of self-defense.

Fourth, actually celebrating war criminals as national heroes. And the fifth form of denialism—and this is not an uncommon one in many places in the world—is actually silence. And that's practicing silence about wrongs that are so grave and calamitous that they really warrant recognition and redress. And certainly, as a number of people have talked about, acknowledgement is critically important.

In my book I talk about the fact that these forms of denial, including silence, have been a tormenting source of pain—ongoing pain for survivors of ethnic violence from the 1990s. The kind of practice of silence, for example, that I'm talking about includes a routine refusal of local leaders to even allow survivors to place a modest plaque at the site of a detention camp where they were held in brutal conditions, and where many of their family members were killed and tortured brutally. So there's that kind of practice of silence, as well as the other forms of verbal denial that I talked about.

There have, from time to time, been moments of acknowledgement, despite what I—the patterns I’ve described. And those moments of acknowledgement by regional leaders provide a glimpse of the healing power of acknowledgment. During periods when there were those more significant moments than we’ve seen recently, the acknowledgment, the apologies that were forthcoming, were healing for victims, and were quite a powerful form of beginning to repair the social fabric that had been so violently rent in the region. But as I talk about at greater length in my written remarks, in more recent years the promise of those earlier apologies has been really quite radically betrayed in recent years.

On a more positive note, I want to acknowledge that some Bosnians have at a grass-roots level decided that despite—or perhaps all the more importantly, because of—the failure of leadership in acknowledgment, they will do what they can where they can to start to reach across the ethnic chasm and come together to acknowledge, and deal with, and reckon with the violence of the 1990s.

In closing, I also want to note a few takeaways, somewhat informed by the Bosnian experience but also drawing on experience in other countries, which I think have some relevance and perhaps can be instructive for our context, as well as others. The first one is the one that I’ve already noted, and I believe Councilman Ceder made a similar point. And that is that social divisions that have their root in historic wrongs that have not yet been addressed really can’t mend unless there is an honest reckoning, including robust acknowledgment and a full-throated, forthright condemnation of the wrong that happened, as well as a determination to build on that acknowledgement and to address the toxic legacy of the past wrong that hasn’t yet been adequately dealt with.

Second, it’s important for us to acknowledge—and I think everybody here knows this, it’s been mentioned by others—efforts to deal with that kind of past can be painful and very difficult, as Councilor Ceder said, uncomfortable. And sometimes they can be polarizing even. And so it’s important to approach the task of that reckoning, obviously, with great care, as well as courage and perseverance.

Third—and this really maybe builds on that point about approaching these tasks with care—we now have a wealth of social science research, some of which Dr. Christopher alluded to, that can help us undertake the necessary work of reckoning in a very smart and strategic way. We know a lot more than we used to about the psychology of denialism. We know a lot more about the social psychology of why people resist so much acknowledging historic wrongs, and what it takes, importantly, to open minds, to change the way people perceive a challenge.

Fourth, and related to that, experience and research suggests that—and here, I’m very much echoing Dr. Christopher—it’s important to create opportunities to bring people together—literally, to bring people together to look for solutions to these challenges. And as I indicated, some local initiatives in Bosnia have done just that.

Closer to home, I want to just mention as one inspiring example the National Memorial for Peace and Justice in Montgomery, Alabama, which among other things—I think many of you know the memorial physically has pillars for each county in the United States that was the site of lynchings. And each pillar is inscribed with the names of known victims. One of the things that is really impressive and innovative, and I think very smart and wise, is that a duplicate was made for each pillar, and is made available to the county that that pillar represents. And each county has been invited to claim its pillar. And that very process of reaching out, inviting counties to claim their pillar, pro-

vides an opportunity for meaningful and constructive engagement, coming together by local communities to deal with their own local chapter of this difficult path.

Finally, I would note, again, in the sort of broad category of smart things we can do to learn from experience, one of the things that has proven true in many contexts, including to some extent in the Balkans, is that effective media can often dramatically alter public perceptions. And I think of a recent example, the streaming of the series “When They See Us,” Ava DuVernay’s series, had a really immediate and dramatic impact on public perception.

And some people asked, Why now? Why is the American public reacting so strongly now? We knew about this. We knew the basic facts long ago. But the point is that her series helped somehow make people see things anew—in a new way, which they hadn’t always, and to react to that.

I’m sorry, I said finally there but this is really my final point, and it really builds on what I said earlier. We always have to be strategic as well as creative, seizing the full potential of emergent opportunities without overburdening them—but seizing them when they arise, and also making them happen, as others have said. And often there is just a moment that can be very fleeting, when key sectors can take a step that was previously inconceivable, as we’ve seen in recent years here taking down Civil War monuments. And a sector of the public can take a step that for so long seemed absolutely unimaginable.

And those steps, when we take them, can pave the way for the next step that can be taken. And so we have to keep on being imaginative and seizing those moments, and then using them to advance further to the next thing that may be possible. The process is a long one, and it’s often arduous, but we do have to keep at it and keep building on the achievement they have. And one of the negative lessons from the Bosnia experience is that if you don’t build on the advances, you can—you can retrogress.

Finally, in closing, and really in sum, effective measures of healing social rifts that are rooted in historic—in great wrongs are demanding, and they are necessary. There aren’t easy fixes, but there are wise ones.

Thank you.

Dr. THOMPSON. Thank you very much. And while I have a number of questions, in the interest of time I’m actually going to now turn things over to the audience for your questions and comments. And I will note that we have an in-house audience here, as well as an online audience. And for those who are interested in either submitting comments or questions, we have Facebook, that is possible online, as well as through our Twitter handle, @HelsinkiComm. So Helsinki C-O-M-M. I would ask for persons who are interested in asking questions to come to the microphone on the edge here, and please just state your name and speak loudly into the microphone.

So, sir. So, yes.

Tracy Bibo is actually listening from Belgium in this microphone here, so——

QUESTIONER. Hi. I’m Keenan Keller, House Judiciary Committee.

Question around this whole issue of denialism, and it’s sort of generally stated to the panel. What accounts for the resistance of governmental entities to confronting the issues of the past, as have been defined by several members of the panel? And what’s the responsibility between private entities and governmental entities with respect to spurring that action? For example, Representative Moore talked about the activism around H.R. 40 and reparations in the United States.

Mr. Eizenstat very specifically in his testimony distinguished the issue of Holocaust compensation to direct injury to individuals and to proof of descendants. And that's one of the key issues that's at the core of the debate around H.R. 40 at this point. Connect that back, if you can, to the whole notion of people like, for example, Majority Leader McConnell opposing the whole notion of a commission to begin a review. And the, you know, challenges that we face when we start looking at this, both not only in the United States but in other countries and localities?

Dr. CHRISTOPHER. Thank you for the question. I honestly believe that this issue of denial can be unpacked even further from a psychological perspective. And I believe that we have a collective amnesia in this country around the reality of our formation as a nation that believed in and adhered to a hierarchy of human value. And that actually informed Nazi Germany. And of course, informed colonialism.

I think that we deny the fact of that 250–300 years of atrocity. We deny the consequences of that. I think denial has to be unpacked emotionally. We deny the fact. We deny the consequences. If we face the consequences, then we have to face the implications of those consequences. And those are quite far reaching. But ultimately, underneath that, are the feelings. And emotions either move us or they paralyze us. And because we haven't brought the wisdom of psychology and social science to this work, the movement for the civil rights, the diversity, equity and inclusion movement, all of those movements have not really been informed by what we know about emotional intelligence and what we know about bringing people together in ways that shore up our sense of self. And so the absence of the really hard work, one on one, the absence of the really focused work on helping people to overcome their biases, it leads to a paralysis and an adherence to denial.

So I think we will have compensatory and we will have reparations. But only after we've moved beyond this mountain of denial and refusal to face the realities. Now, if you start to unpack the literature that's beginning to surface now about our 250 years of forced enslavement of people and genocide, it's really hard to take. I can't go visit that museum that you spoke of because personally, as an African American woman, I cannot take that pain. But we have to be realistic and understand that underneath all of this are deeply embedded, unaddressed emotions.

Some political leaders know that, and they manipulate those emotions for their own political gain. And that is happening in this country right now. So I think the private sector—the lessons we learn from the truth, racial healing, and transformation effort, which has involved many cities and counties around the country, colleges and universities, libraries—they're all working to do this hard work of finding this place of emotional resonance as human beings. We forget that in a democracy it is the people that will ultimately decide the future of this country. And so this work of generating people who are willing and able to face the tough emotions—now, I would also suggest that people will face and will move past denial. I learned it in my clinical practice over the years. They'll move past denial when they believe they have the resources to cope.

So we have got to—and that's what our racial healing as a movement is about. It's about giving people the resources, the human resources, the connections, the relationships to feel that they can face these very hard, unfathomable realities that actually are part of the history of the United States, that we have chosen to be in a collective state of amnesia about.

And the last thing I should say is that currently the people committed to this work are the Association of American Colleges and Universities, the American Public Health Association, Community Action Partnership, which is a legacy of the war on poverty. And they reach almost all the counties in America. The National Collective for Health Equity, which is focused on community-based coalitions. And then the center that I created in the memory of my first one that died in infancy, the Ntianu Center for Human Engagement. So these are five organizations that are committed to doing this hard work of the racial healing, bringing people together and helping them to come to grips with the challenges of the past, the atrocities of the past, but most importantly the promise of the future.

Democracy depends on us being unified as a people. And we're still a very young democracy. But this critical work is at the core, I believe, in our ability to thrive and to flourish as a democracy.

Amb. EIZENSTAT. I think your question is really crucial and it was proposed, I think, in a very sensitive way. Let me start personally. I grew up in the segregated South. I accepted it as a matter of fact. When I was 12 years old I got on a bus in Atlanta. There was only one seat left. It was the last row in the white section of the bus. And another lady, an African American woman, came on later with shopping bags. And I didn't get up to give her the seat because I said to myself: If I do, both of us will get arrested. As late as 1962, when I was a sophomore at the University of North Carolina, I went into a Howard Johnson's Restaurant. It was the beginning of a sit in. And I saw African American students from North Carolina Central blocking the egress. And I said to my colleague, who was from New York, why are they doing this? He said, what universe do you live in? It's because they can't get served. It was like somebody lifting a veil.

So I grew up in a system in which segregation was simply accepted. And the question is, how do you deal with slavery and the persistence of discrimination? I worked for the Johnson White House. You know what LBJ did on housing, on public accommodations, on the Voting Rights Act. And I think that reparations is not the way to deal with problems. I think it's impractical. It would cost trillions of dollars. And it would be divisive. But there are many ways to do so.

First of all, aligning it with what we did in the Holocaust, the U.S. Holocaust Memorial Museum is an enormous educational device. There are 4,000 people a day who come into that museum. Kids from all over the world, police officers, military—from military academies. It's an enormous educational device, as is the African American Museum on the other side, that teaches the story of slavery to people who otherwise wouldn't—

Second, in January 2000, I created in the Clinton Administration, with the prime minister of Sweden, what was called the Holocaust Education Taskforce. Of course, then there were only six countries. Now there are 31. And they have mandatory Holocaust education in their school systems. And I'm embarrassed to say that in the United States of America, which initiated this, that only 10 states have any form of Holocaust education. And none of any form of education on slavery. It may be taught incidentally. We have a very decentralized school system, but if we could help catalyze an education movement similar to what we've tried doing with the Holocaust, that would be good.

Third, during the Carter Administration the president—who was president from the deepest part of the deep South; this is statistically accurate, there was an article this week in Slate Magazine—President Carter appointed more African Americans to judgeships and senior positions than all 38 presidents all put together. This is really important. And in addition, we supported in the famous Bakke case in the Supreme Court—affirma-

tive action. That's hanging by a thread now. We enacted minority set-asides for contractors of the government.

In addition, as a way of reconciliation, if we can support programs that support not only the African American but low-income whites as well—like Title I elementary and secondary education, like Pell Grants, like Head Start programs—then we unite instead of dividing people along racial lines. But disproportionately we will be benefiting people of color who fall in diverse categories. But it's not exclusive.

So I think trying to find ways that unite people yet do target the lingering impacts of slavery and discrimination is the way to go, rather than trying to come up with a specific reparations program, which would be impractical and doesn't direct to victims themselves, trace who was a descendant. How do you—how you acknowledge—[inaudible]. These other ways, I think, are much more uniting and, essentially, if there's a relative immediate example and precedent, it's really what Nelson Mandela did with Apartheid. He did not enact a compensation program. He had a Truth and Reconciliation Commission which took testimony from 22,000 victims. And that was a—[inaudible]—expression itself. I mean how we talk about the power of apologies and testimony, and this did that. And he had the perpetrators testify under an amnesty.

It was a healing mission. And those of—it was not a compensation plan. Those are the kinds of things, I think, that are most effective in dealing with this.

Dr. THOMPSON. And I would just say, if people are interested in asking questions, if you can line up at the mic.

Dr. ORENTLICHER. I just wanted to briefly address this wonderful question as well. There are so many reasons for resistance, but the most important one I think politically is precisely an assumption that what we're talking about is the sort of classic litigation model of monetary compensation. And as soon as you say reparations now, that's the connection that many people make, both in the public and politically. And you know all the arguments on that. One of the things that I think is important about continuing to educate people about the historical facts and to get people to see them for the first time is that it gives you an opportunity to start a conversation about what appropriate reparations look like. And under the developed practice and law, as well, of reparations, monetary compensation is one form of quite a few.

All of the initiatives that Ambassador Eizenstat mentioned as appropriate responses to the legacy of slavery are—have been conceived as parts of historic reparations packages. But they were conceived as parts of reparations practices after study, after consultation with affected constituencies, after extensive deliberation, to try to determine what is the most appropriate package. So I do want to kind of reinforce that part of the blockage, because I think people make assumptions and they're parted for a long time. Part of what we need to do is open up the conversation again.

Mr. CEDER. I'll keep it short—[inaudible]. There was one part of the question about private reparations or investing. I think back a couple of weeks ago we had the national trade railway system in Holland offering a couple of millions in compensations to those victimized by the Holocaust. So that was a private company acknowledging their share in that horror. The difficulty you have with other questions, including the transatlantic slavery, is the time. It's because it's generations before. So that's where I think that there is a challenge. But I do believe that private companies, [they] have a lot of private income. I could name some—where you could see that the wealth—the wealth that they have

gathered in these last centuries has moved and can be traced to—in this case, to the slave trade. So I do I think that private—that reparations from private institutions should actually work. There is the question of if it should be compulsory or voluntary? I think it should be voluntary, thereby—[inaudible].

Dr. THOMPSON. Thank you. Can you please state your name and your question, or comment?

QUESTIONER. Yes. My name is Gabe Hasley [ph]. I'm working for Representative Ted Lieu.

So one thread I've been hearing throughout this briefing is the word "narrative." And I'm just curious if you guys could clearly define the word and say how you would use it to mend separated communities?

Dr. THOMPSON. Thank you. We'll actually take two more questions. Yes, sir.

QUESTIONER. Hi, my name is Joe Hafner [sp] here. I work for Representative Jared Huffman.

My question is: How do you balance finding truth and reconciliation with accountability? Mr. Ambassador, you mentioned it in South African and the amnesty laws there, how that allowed everyone to be able to speak and bring up the truth. But in countries like El Salvador, where the truth commission didn't recommend charges because they didn't think their system could handle it, and that led to tons of—of complete, like, failure to reconcile the civil war. And now we see, 30–40 years later, they're finally started to prosecute some of the criminals that were named in the commission work. But it's so far later. So how do you balance creating an environment where people can tell the truth the society can reconcile, while also holding people accountable for their actions?

QUESTIONER. Hello. My name is Lilly, and I work for Senator Durbin.

And so my question is, using this knowledge of past wrongdoings, what are your organizations or yourself doing to—either in Congress or anywhere—to help resolve current injustices, such as the refugee and asylum seekers fleeing violence, and also avoiding future wrongdoings?

Dr. THOMPSON. Thank you. Thank you. So we have a question on narrative change that we can start with first.

Dr. CHRISTOPHER. I thank you all for the very insightful questions. I would say that the current—there's a framework for our work. And at the top of that framework is the importance of narrative. Ultimately, the human brain is wired to retain stories. I can give you all the facts in the world, but what you'll leave here with is the story. And so one of the things that we are calling for in this work is that leaders in philanthropy, public and private sectors, they should leverage today's media and unprecedented technology to disseminate a new narrative about human-oriented connectedness that is informed by 21st century development science, with a clear intent to repudiate the false 15th- through 17th-century ideology and belief in separate and unequal human races. I think this public historical correction should include definitely authentic narratives and experiences of diverse people.

If you read my full statement, I talk about the refugee crisis as a further example—picturing today's refugee crisis, certainly the one in this country right now that we're dealing with in a less than humane way, is a continuation of this adherence—consciously and in many cases unconsciously—to this idea that some people don't matter. I think it was a judge who said—when they said they had no bathrooms in these holding cells and



they can't—he said, well, they don't need bathrooms. I mean, that is clearly a manifestation of this deeply held belief that some people are not of value.

We have the capacity to change public consciousness. You mentioned the film, “When They See Us,” has had a profound effect on the way people are thinking. But we need a coordinated, collaborative effort to correct, if you will, the collective ethos of adhering to this idea. It is so embedded in our legal systems, in our housing, in our economic systems, in our criminal justice system, that we have to commit to a correction and a forward path. I believe focusing on history is absolutely important. But if you don't give people a container for that, then they—it only can create, I think, further division. And that's why the approach provides a container, provides resources of connecting to one another deeply as human beings.

And I believe, from that, the accountability and, indeed, the repair—the willingness to repair—ultimately, the system of enslavement and segregation and exploitation was an economic system. And our inability to come to grips with the economic costs—racism costs this country \$2 trillion annually, at least. I would refer you to the Business Case for Racial Equity.<sup>1</sup> So we cannot really do the work of healing without taking into account the economic impact and addressing that in very creative and very, I think, fundamental ways. So I would leave my thoughts at that.

Amb. EIZENSTAT. If I may mention one, the express U.S. example which has not been discussed, and I would like to address it. And that is the internment of Japanese Americans during World War II. The irony is I have worked during the Carter Administration with Senator Dan Inouye, who was a great senator from Hawaii. Lost one arm fighting with American troops in Italy. And his parents were interned in camps. It was only in 1988 that Congress passed, and President Reagan signed a bill that there were two features. The first was to pay \$20,000 per person for those who survived. If you died between the end of the war and that time you got nothing. But at least there was that.

But second there was a formal apology attached to that legislation apologizing for the internment of American citizens of Japanese origin. So here we get a combination of payments to a direct victim, combined with a more broad apology. And that had a dramatic effect in the Japanese American community. There were—Congressman Matsui, Congressman Inouye, there were Japanese Americans in Congress who helped to lead that legislation. But they waited till decades later. Somebody had just pushed it aside.

Dr. THOMPSON. So we actually have Tracy Bibo on the phone. We are going to try our high-tech arrangement for her to address the narrative question.

Ms. BIBO. Okay. Hi. Thanks very much for letting me speak. I would like to answer the question about the narrative and how we make changes.

So narrative, what do we do with narrative and how we make changes. When I look at the history of Belgium and colonization, the history that has been taught in school and on TV is that that colonization was a good thing for the Congolese people, it was to bring civilization, and it was to help them get out of slavery because in a lot of parts of Congo, there were slave traders there. But going back, I mentioned in my statement—[inaudible]—when the second generation of people of Congolese descent where at school and they feel it is because the colonization was very bad for the people of Congo.

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<sup>1</sup> <https://www.wkkf.org/resource-directory/resource/2018/07/business-case-for-racial-equity>

So changing the narrative means that we have to talk about the Belgians and what they did, but you also have to talk about the suffering of the Congolese people and the impact it had on the Congolese people, during the colonization but also the aftermath now when you talk about today about the racism that black people face today. And I'm thinking of also all the research in psychology—[inaudible]—and all the books written about colonization were written by Belgians, so white Belgians. And it also loved to romanticize colonization.

Actually last year, in 2018, first time the book was brought up, entitled “Congo: The Epic History,” when we talk what do we think when we talk about colonization? That book was one of the first ones to be written by Congolese people, and so the narrative is totally different.

So changing the narrative for me is not only talking about what Belgium did or what the Congolese were doing. Those two together to have that kind of situation to just bring those together to have a view of what happened during colonization. And its also not forgetting the suffering of Congolese people and the African people.

So I think I have answered this question about the narrative, yes, and also the question of education. The issue is very important—I think last year—or last year was to see the change in the cultural situation, because it's quite insulting if you're Congolese to hear about there was supposedly no civilization before the Belgium people should be more of a—[inaudible]. So this is also part of changing the narrative. So to me, changing the narrative is about talking about what is the basis of colonization, talking about what happens and what impact is the of colonization, and how do colonizers look at colonization.

And then there is a question about how do we then find truth and reconciliation—within the country and among the community. I couldn't hear very well what the other people said, but what happened in Congo, is a lot of people from the Congolese diaspora tried to talk also to colonizers. That is directly important because a lot of times we ourselves are so—[inaudible]—colonizer and—it's like we against them. But it's our shared story, so it's important to talk about it. And it's important to explain that when you talk about a system of colonization, we don't—we don't want to reduce all the—[inaudible]—all those people, because most of the people—[inaudible]—it's the system that was bad. So it's important to have a dialog and talk about these things, to understand or to share it, basically.

So I hope I answered—[inaudible]—questions. It's difficult for me to hear what other people say. So if you have another a question you can always send it to me.

Thank you.

Dr. THOMPSON. Thank you, Tracy.

So were there other panelists who wanted to talk about the balance? So truth, reconciliation, transformation or answer the question on accountability?

Dr. ORENTLICHER. It's a great question. So there's no general answer that's right for every country. It's a really important issue that many countries have struggled with. And I think one of the things—one of the lessons from experience in many countries is it's really valuable to invest more time up front when designing policies to deal with the past, to consult stakeholders widely before a policy is designed, in part because the policies that are developed can then be more responsive to what survivors really need and want. But also they can be part of crafting a policy that does strike a balance. And if there are trade-

offs, it's not somebody else making the tradeoffs for them, but survivors can help participate in identifying that.

The other thing I would say is that sometimes—and here, I'm really focusing on donor states that underwrite transitional justice initiatives for other countries that can't afford it—it is important to be aware of that issue. And one of the subtexts of what I said earlier, but now I'm going to say it more explicitly, is that the international community invested an enormous amount in the Yugoslavia War Crimes Tribunal, which I think it was very much worth supporting, and also invested a lot in domestic war crimes prosecutions, also very worth supporting. But I think there's a risk that you can think, Okay, we've done it. We've dealt with the past. We had prosecutions.

When in fact, prosecutions can do certain things that are very important, but not others. And so I think the lesson learned in many countries is that you have to address the past on numerous fronts, including truth telling processes suitable to the situation, reparations processes, again, suitable to the situation, as well as accountability. And often we tend to prioritize one or the other, and problems very often develop later because there wasn't a more complete approach.

Amb. EIZENSTAT. I think the issue—you certainly addressed it as well—the question of accountability versus reconciliation. It's a very, very tough tradeoff. So for example, with the East German Communist situation, so-called GDR, called the democratic communist regime. After the reuniting of Germany, there was a payment, as I mentioned, of 300 euros per month for each month of prison. But one of the criticisms of the program is that there was not an active effort to prosecute the so-called Stasi intelligence people who were responsible for the development of a lot of the prosecution. There was some, but the decision was made for two reasons not to go much further.

One was many were simply necessary to run the operation of the reuniting of Germany. The second was the fear that you would lead to a bloodbath, with many public trials that would drag on for years. And of course, the War Crimes Tribunal, some of these cases went for years and years. And so they made a tough tradeoff, for which they were criticized, not to go after all the—[inaudible].

Mandela, again, to come back to that example, made a very conscious decision which he said—he said to a reporter of his mission, headed by Archbishop Tutu, that he knew that this was going to be a very painful tradeoff. And he made a decision, essentially, that having given amnesty to some to come forward, that he simply was not going to start a broad-based prosecution of those who were embedded in the system—including, by the way, the president of the republic, who was the one that oversaw this.

These are very, very tough issues. You certainly can't let the worst perpetrators go. Eichmann, for example, got a trial. The Nuremberg Trials were terribly important. But the Nuremberg Trials didn't get near a systemic accountability in people. And we have a unit in the Justice Department to this very day which still finds Nazis who are now in their nineties. One was recently deported to Germany for trial. So it's a very tough tradeoff, but when you can establish a very good reconciliation between a perpetrator and a victim, and victimization, it is still probably useful to go after that person and say there has to be accountability—even 70 years later.

Dr. CHRISTOPHER. We are having some trials in the South here in America that are holding people accountable for atrocities committed during the civil rights era. And it had such corruption and such embedded racial hierarchy that evidence that could have pointed

to perpetrators of violent crime was literally held or ignored if it was Federal evidence. So there is movement toward greater accountability, but I would argue that our real work about—in addition, I agree with what you said, Ambassador. But our challenge is to create societal accountability. Our challenge is to transform our culture, our ethos, into one that no longer allows for these kinds of atrocities. And that's a mega work.

That's a different level of work. It's a work that our country has got to find the courage to do. And one of the tenets that I have failed to mention, and Senator Cardin referred to it, it really is a collaboration. It's a collective work. In the work we do with our racial healing, building on the Truth, Racial Healing and Transformation [TRHT]. It's Native American, it's African American, it's immigrant, Asian American, Pacific Island, it's Appalachian white, it's every person in our society. Because the focus, while it acknowledges the horror that is perpetrated by this—and fomented by this belief system, the focus is on our collective humanity and our interconnected humanity. And that's the new consciousness that we have to create if, in fact, this experiment called America is actually going to survive.

And our current tension that we have in this society is just opposing that truth with the revisiting of the policy of a hierarchy of human value that's embodied and embedded in white nationalism and other forms of extremism. So I wanted to drive that home, because as Senator Cardin said, we have to come together to do this work and find a way forward, and relinquish these absurd notions that have no place in the 21st century.

Dr. THOMPSON. We did have one final question.

QUESTIONER. Hi. I'm Jim Hardin [sp] with Congressman Steny Hoyer's office, and I'm a student at Rice University.

My question kind of pertains to the point you made by the Honorable Tracy Bibo in our education system. For so long, we kind of prolonged all these conversations on identity, discrimination until we feel those students are comfortable with having these conversations. And oftentimes, this actually may solidify all their perspectives on these issues. So how do we make this equitable approach to the gender—I mean—agenda item that would bring it to the table at a younger age in our public education system?

Dr. THOMPSON. So I'll just say—Tracy just mentioned it was difficult for her to hear, so she's not going to respond to this. But there is an actual whole section in her written testimony in the folder that addresses the issue of education as well.

Mr. CEDER. Thanks. So that's a good question. I truly believe that education at the smallest age can really help in redefining how we view society. What we did in Holland as the debate went on, on specifically that, is we have an education—let's call it education canon. And we actually decide what are the basic foundations any child needs to learn before going to high school. So we're, like, redefining and prioritizing the subjects and topics, but also narrative and science. And there's a debate going on saying that the Holocaust, that's something that we do feel that a lot of kids growing up do not actually know what took place, to that extent. But also when it comes to the transatlantic slave trade, we also have a lot of kids that grew up—also grow up now—actually don't realize to what extent that history has resulted in—[inaudible]—to today.

So what we do in the Netherlands is that the secretary of education stipulates the canon. And that's actually being integrated in all elementary schools. I don't know how it works here, but I do feel like that is something one needs to do from the top down because that's—you're creating the boundaries, you're creating the—you're actually cre-

ating the argument and the debate. And every school needs to partake in that. So I do feel that—as a Dutch perspective—I do feel that that would work in making sure that any school, in any state, anywhere has a similar narrative on how the United States came to pass, and what are several narratives from populations in that.

Amb. EIZENSTAT. So permit me to add on the Netherlands. Seventy-five percent of French Jews survived the war, with Nazi occupation. Fifty percent of Belgian Jews survived the war. Five percent of Dutch Jews survived—5 percent. And just as the Swiss, because of our own work at the State Department and the interagency process which has led to their home, looking at their position. Very important, I think—and I really appreciate what you said—for the Dutch to ask: What was there about the Dutch? I mean, if you ask even an educated person to give three countries people would say, well, Anne Frank was betrayed, you know? Oh, she was betrayed, okay.

So what was there about the Dutch situation that led to 95 percent of its Dutch Jews being killed? Having that kind of education process would be a very important issue, in addition to, as you mentioned, an apology for the transatlantic slave trade, also for that—I think betrayal of the Dutch Jewish community.

Dr. CHRISTOPHER. If I could just add, my work in this space began around 30 years ago, with developing a curriculum for K–12 education that is called Americans All. And it revisited the history of the United States from multiple racial and ethnic perspectives and was endorsed by every education organization that we have in the country. I was amazed, as I watched teachers receive these materials and this information that they didn't have, and how it affected the way they were actually relating it to their students in their classroom. And the evaluation showed that the esteem, if you will, of some of the white teachers actually came in at a lower level than it had started. And I said, that's not a bad outcome because in some ways they were coming to grips with some of the ugliness of the past, but with tools and resources.

And so I wanted to emphasize that education is critical. One of our lead partners in this is the Association of American Colleges and Universities. And they are establishing Truth, Racial Healing and Transformation centers on campuses all over this country, campuses that are training the educators. I mean, this work is comprehensive in its intention and vision. People are actually envisioning a future America without the belief in hierarchy in value. And the first step is to create the vision, and then you can create that which you have envisioned. And that's our goal.

Dr. ORENTLICHER. I just wanted to say that in addition to the points others have made, education of young people is a critical part of changing the narrative. And this links up with the earlier point. Just really quickly, when we speak about some of the psychological barriers to dealing with the past, some of the most basic ones which operate in our daily lives in all kinds of spheres are, first of all, it's very hard to change people's minds once they have a set view. There's tons and tons of research that supports how difficult it is to get people to change their minds. So if they're exposed to new information and they have an entrenched position on something, they interpret that new information through the lens of what they already believe to be true.

And second, another psychological dynamic that often feeds into denialism or resistance to facing the past in a constructive way is that people subconsciously like to preserve their self-esteem, including their subjective self-esteem. And so for many white Americans it's difficult to confront the fact that their ancestors were engaged in something that is inconceivably evil. And so there's this resistance, right?

When you expose young people who don't yet have set views about the past to even information—I think the question was also about just how do you have constructive conversation? And that's, you know, an important area of really invaluable training right now as well. But just having the information itself, when people don't yet have a set view, and haven't inherited the social perspective, it's incredibly important. And even at the level where I teach, which is law school, when I work into my assignments things like Ta-Nehisi Coates' piece on the case for reparations, it's an eye opener for many of them. It's—I don't have to change their mind. I just have to provide information to them, and they react in a way and see how important it is to deal with slavery not as a historical phenomenon from long ago, but as something that has transmuted into other forms of harm over generations. It's eye opening.

And so just a long way of saying education is so important in this country, and many others. Getting to people before their views have hardened is crucial.

Dr. THOMPSON. Well, thank you. Are there are any other closing remarks from the speakers before we end? Okay. So with that, I would just like to thank everyone for being here with us today, including Mr. Ceder, who traveled all the way from Europe to join us. I would note that a former member of the European Parliament, Soraya Post, has actually called for, in her position, a truth and reconciliation process for Europe's 10–15 million Roma, so one of Europe's largest minority populations. And that's an ongoing process as well for Europe. Now, I also just wanted to note that Chairman Hastings was actually one of the judges that Carter appointed. So to your point about increasing appointments, I think, also diversity in positions of leadership are just one of the many solutions that can assist societies in moving forward.

Processes by which our nations can heal for a brighter future are issues the commission will continue to focus on. There have just been a few, I would say, takeaways from this conversation. I think the main one is that while there are promising practices taking place in the transatlantic space there are also many challenges, as we heard from today. Silence, denial, the need for a real process to heal, including accurate historical education are but just some of those challenges that we've heard about. And there are also a number of pieces of existing legislation and policies that are already on the books that require not only followup but oversight. There are also roles not only for government but also civil society and the private sector in these conversations. And it really is a holistic process for our societies.

I'm also just proud to say that several of today's speakers are actually alumni of the Transatlantic Inclusion Leaders Network, or TILN, a program founded by our Helsinki Commission, the State Department, administered by the German Marshall Fund and other stakeholders to support young leaders committing to advancing inclusive societies for the long-term prosperity of our democracies on both sides of the Atlantic. And so just so pleased that both Tracy Bibo and Don Ceder could be joining us today, as alumni of that program, which is now 200 strong, on both sides of the Atlantic. And I would say, with lessons learned from the past and continued leadership from all of you for the future, the hope is that our societies cannot only address the past but heal from it and use it as the foundation for transformation and a shared future.

Thank you. [Applause.]

[Whereupon, at 11:56 a.m., the briefing ended.]

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## PREPARED STATEMENT OF GAIL C. CHRISTOPHER

Chairman Hastings, Chairman Wicker, Commission members and our audience, thank you for holding this important briefing. I am honored to speak on methodologies that can unify and heal societies across the globe that have been divided by war, genocide and other traumas reflecting a belief in a hierarchy of human value. My name is Gail C. Christopher. I am the founder of the Ntianu Center for Healing and Nature, the Chairperson of the Trust for America's Health, and the architect and implementor of more than \$1 billion in efforts spanning four decades to facilitate racial healing and jettison racism from American society.

Research reveals that the inequities caused by racism cost our nation almost \$2 trillion annually in lost purchasing power, reduced job opportunities, and diminished productivity. Research also documents the extent that the conscious and unconscious belief in a racial hierarchy fuels the reluctance of political leaders and policymakers to acknowledge the inequities and devote adequate resources to addressing them. Our democracy, like others around the world, is based upon full human engagement and action on shared interests of the population. In order to move forward, this nation must heal the wounds of our past and learn to work together with civility, and indeed, with love. We must build the individual and collective capacity to "see ourselves in the face of the other."

Our country has a history of enslaving people, committing genocide among Indigenous people, and embracing centuries of institutionalized racism. Yet, unlike other countries that have endured war, sectarian or racial strife, the United States has never undertaken a comprehensive Truth and Reconciliation Commission (TRC) effort to heal divisions and bring equal opportunities to all communities. Thus, America experiences a significant wealth gap between white families and families of color, the persistence of government-incentivized residential segregation, unequal access to quality health care and affordable housing, achievement gaps in education, and discrimination in hiring practices.

Throughout the world, extreme nationalism, racism, anti-Semitism and other forms of ethnic and religious bias are often sustained by an antiquated notion that the human family can be divided and ranked based on physical characteristics and ascribed traits. These ill-conceived beliefs ossify, becoming hardened barriers among populations. This belief is alive today, as is the racism it has perpetuated and ingrained in America and other nations.

The planet has more refugees today than at any time on record, and the impacts of human conflict related to weakening multi-lateral institutions and rapid climate change will only increase the number. Across the globe, societies struggling with growing inequality and demographic changes are being offered scapegoats instead of solutions. It

has proven far too easy for citizens to turn against families seeking a safer home, because anti-immigrant demagoguery taps into a well of beliefs that cast racialized Others and people in poverty as inferior and criminal. These are false beliefs. The truth is that, managed well, immigration makes societies stronger—and we never know when any of us will need welcome from a stranger.

When we uproot the false belief in a hierarchy of human value, we will be on firmer ground to face the challenges ahead. Together with other healing thought leaders, we have plotted a new course, one that can transform our nation as well as serve as a blueprint for other nations facing legacies of racism and discrimination. The Rx Racial Healing National Mobilization Campaign is a movement that aims to generate a critical mass of people committed to working together and healing the wounds of the past as we seek to end racism and the inequities it has created. Remember architect and systems thinker Buckminster Fuller once said:

*“You never change things by fighting the existing model. You must create a new model that makes the existing model obsolete.”*

By redefining racism as the embedded and entrenched belief system it is, Rx Racial Healing provides a needed on-ramp for launching a new model of relatedness that is grounded in the knowledge of our interconnected and equal worth as human beings. With this foundational idea in place, we can create new ways of living, policing, and governing, as well as ways of distributing resources more equitably because we see our collective common interests.

This campaign is empowering organizations reaching millions of people in every sector of nearly every community in our country to transform our society by going beyond just treating the symptoms of racism. Using a Rx Racial Healing methodology to create empathetic and compassionate support, our objective is to facilitate local action coalitions to jettison racial hierarchy and implement long-term policies and practices that address the impact of racial equity on health, education, housing and economic opportunity.

The Rx Racial Healing vision identifies five imperatives for transforming communities:

- Leaders in the philanthropic, public and private sectors should leverage media and technology to disseminate the new narrative about human origins and connectedness, informed by 21st century genomic science, to repudiate the false 17th century belief in separate and unequal human races. This public historical correction should include authentic narratives and experiences of diverse people who will provide previously untold historical and contemporary perspectives, fuel new understanding, and enhance capacity for self-compassion and empathy.
- We are already training a critical mass of facilitators in all disciplines, geographic areas, and organizations. They will provide Rx Racial Healing experiences for diverse groups to enhance skills and capacities for empathy, self-compassion, resilience and perspective-taking.

My final three recommendations are for policymakers.

- Congress and States should aim to overcome institutionalized racial separation patterns by implementing new approaches to land use, zoning, housing and transportation policies, mortgage finance and resource development.



- Congress should review its public policies and administrative practices to ensure that they are honoring the humanity of all; and particularly redress past and current inequities in civil and criminal justice systems.
- Economic policymakers at every level of government should implement investment strategies that result in a more equitable economy that closes racial and ethnic income and wealth divides.

Rx Racial Healing is a 21st century approach to collective healing. It is the work of positively influencing the consciousness of a people to help create a world without the effects of racism and religious bias. While we are applying it to the inequities in the United States, it can be applied globally to address the various manifestations of the belief in human hierarchy in any society. *E pluribus unum!* Out of many, one. If America is to survive and to thrive as a democracy, we must begin to truly believe that we are one people, one human family. We must muster the courage to unlearn human hierarchy and act to redress the consequences of adhering to that false belief for centuries. We must learn to love one another, to show compassion and grace. The prescription for what ails us is racial healing.

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### **Rx Racial Healing Begins with A Change in Consciousness**

By consciousness, I mean our beliefs and our states of awareness, both conscious and unconscious; particularly awareness and appreciation about the human family, our origin, and our sense of belonging and inter-relatedness. The idea of an interconnected human family is thwarted by the persistent belief in a hierarchical taxonomy of humanity; and the systemic vestiges of that antiquated belief that still mold our societal infrastructure and systems of democracy. Consciousness is not just thoughts. Consciousness encompasses emotions and feelings, as well as perceptions and attitudes that shape our beliefs and behaviors.

The Rx Racial Healing campaign is based on interrelated strategies: building a national organizational network and activating local action to promote racial healing and racial equity. At the national level, national partner organizations are using their leadership positions to engage others in their sectors to become champions for racial healing and equity. Organizations throughout the education, health, housing, economic development, philanthropic, faith, and non-profit communities make up a second sphere of collaborating entities.

The goal is to help a critical mass of people work together to eradicate the false ideology of a hierarchy of human value and its harmful consequences. This is the change we are creating. We want to reach a critical mass, the minimal number of people needed to sustain a consciousness shift in our society away from permitted hatred, indifference, and lovelessness, toward unity and systemic human compassion for all. As such, the goal is education or re-education.

Rx Racial Healing enables people to conceptualize and experience a new model for relating as an extended human family, one that is capable of perspective-taking and seeing ourselves in the face of the perceived “other,” feeling empathy, and demonstrating compassion with one another.

This outcome is achieved by engaging people in communities and organizations throughout the nation. Rx Racial Healing is a conceptual framework for action in communities and organizations which includes a specific racial healing circle methodology, which

guides people from diverse backgrounds and perspectives through a story-telling process that leads them to recognize and embrace each other's humanity.

It is past time for calling out and eradicating the 17th century, obsolete construct and belief in a hierarchy of human worth and value. It is now time to replace that old mental model with an accurate awareness and understanding of our common human ancestry and our equal inter-connected humanity. This is the missing link needed for generating and sustaining an equitable social infrastructure in America and for realizing our aspirational vision for the promise of democracy.

When implemented on a large and comprehensive scale throughout the nation, Rx Racial Healing will help move us beyond needless divides toward the wholeness upon which a viable democracy depends. Why is this change so badly needed?

Our inability as individuals and as a society to value all human beings equally, or as Albert Einstein once said to "see ourselves in the face of the other," is making us sick, literally.

Even more broadly speaking, the incapacity to value all human beings equally keeps us from experiencing optimal well-being and happiness. Our hearts and brains are designed to resonate with harmonious relationships. The opposite—fear and anxiety, separation, alienation and hate—induces stress and distress. Distress causes a cascade of illness related changes within our very cells in our physical bodies and within our body politic.

This inability is not unlike the design flaw in the Boeing 737 Max Jet airliner that is believed to have contributed to two plane crashes causing the needless tragic deaths of hundreds of passengers. Researchers estimate that 265 people die every day from racial health disparities in the United States. This is the equivalent of a 747 Jet crashing on a daily basis.

But it is not just people of color that suffer and die prematurely. The U.S. population, as a whole, lives shorter lives and has poorer health than our peer nations. Our residual belief in a false taxonomy and hierarchy of humanity—of human value or worth—is a major contributing factor to our poor health outcomes. Distress responses related directly and indirectly to racial fear, anxiety and to its attendant social conditions contribute to hypertension and cardiovascular disease, glucose intolerance, and insulin resistance, and diabetes and its precursor metabolic syndrome. Dr. Jonathan Mezl's 2019 book *Dying of Whiteness* calculates the impact of public policies increasingly supported by white Americans and viewed through a white identity lens—such as the refusal to expand Medicaid in Tennessee or the loosening of gun laws in Missouri in the wake of Ferguson protests—on the population-level health of white Americans. Dr. Mezl finds that these two policies resulted in 10,506 lost years of productive white male life in Missouri and every single white resident in Tennessee 14.1 days of life.<sup>1</sup>

Researchers at Stanford University surveyed voters in the 2016 Presidential election. Results showed that the majority of white Republican voters indicated fear of diversity was the primary reason for their vote. The undergirding belief system—racism—that devalues people based on perceived differences in physical characteristics like skin color, hair texture, and facial features, is a foundational idea in America.

Our nation has so much to overcome.

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<sup>1</sup> Mezl, Jonathan M., *Dying of Whiteness: How the Politics of Racial Resentment is Killing America's Heartland* at Loc. 286 of 6380.

The institution of slavery lasted throughout the formative centuries of the United States, 1619–1865 and officially ended because of the Civil War and the 13th Amendment to the U.S. constitution. However, former slave owners, state and local governments and corporations created new ways to maintain the system of racial hierarchy. Journalist and author, Douglas Blackmon, wrote a Pulitzer Prize winning book on this in 2008, *Slavery by Another Name: The Re-Enslavement of African Americans from the Civil War to World War II*. Blackmon explores the brutal systems of convict leasing, share cropping and peonage. These were all oppressive economic strategies to exploit and control emancipated African Americans.

The undergirding belief in a hierarchy of human value continued to define the culture of America well into the Twentieth Century. Other systemic manifestations included Jim Crow laws used to humiliate and deny social contact, residential and school segregation, overt discrimination across all public and private opportunity avenues; lynching and terror through racial violence perpetrated by hate filled individuals and organizations such as the Ku Klux Klan and White Citizen's Councils. Beliefs die hard. Cultural norms die even harder, especially when they are embedded within all perceived authority, educational, protection and survival mechanisms.

Such is the case for the fallacy of human hierarchy. This antiquated way of seeing and being with one another is a fossil formed during the 14th Century and crystallized in the 18th Century by Carl Linnaeus, Swedish Botanist, known as the Father of Taxonomy. But unlike other fossils, the belief in a hierarchy of human value still lives deeply in the hearts and mind of far too many people today. This idea must end and take its place in the museums like other historic relics.

The idea of a human value hierarchy must die now, before it kills us all!

Linnaeus first codified the scientific frame of human hierarchy and listed human "races" based on physical appearances and on continents of origin. He placed people like himself, Europeans, at the top of this hierarchy and other so called "races" in descending order of humanness—placing Africans at the very bottom of his hierarchical system.

Blackmon's book illustrates the lasting impact of the hierarchy created by Linnaeus in the 1700s. Blackmon creates a new narrative by filling in decades of missing history about just how the belief in racial hierarchy was enforced well into the Twentieth Century. It provides previously hidden information about an important, albeit painful and tragic period in our nation's history. Yet, when he tells the stories in public forums, he leads with affirmation and context. He shows photos and reminds audiences that it was largely the unpaid labor of black men and women that cleared the dense forests to make way for railroads, highways, and metropolitan areas.

The protracted history of enslavement of African Americans and its aftermath often leads people to view racial hierarchy as only a black-white issue. To do so is a mistake. Linnaeus' taxonomy reduced all people perceived as different from Europeans to the status of "less than" and the "other."

Pigmentation or the lack there of are levers for social rejection or acceptance throughout the world. A dear colleague from India once told me that the first question families ask about the intended bride or groom is "How dark is the skin?" Skin lightening products are a multi-billion-dollar global industry. Racial hierarchy beliefs have spawned colorism, prejudice, and discrimination against individuals with dark skin the world over. Often colorism manifests within racial and ethnic communities.

Twenty-first century science has ushered in a fresh awareness and understanding about human origins and genetic commonality. We all are 99.9 percent the same, having originally descended from a common human ancestry. This science should be the final nail in the coffin of belief in white superiority and its racialized hierarchy of human value. Instead, there is a resurgence in assertions of racist ideas under cover of legitimacy as nationalism and populism.

According to the Children’s Defense Fund’s 2016 report, “The State of America’s Children,” most of the children in our nation under age five are now children of color. In spite of this demographic reality, according to a 2019 Pew Research Center poll, 68 percent of Americans think race relations are getting worse in the United States. Hate crimes based on race, xenophobia and religious intolerance are rising. Civility is declining at a time when our diversity is increasing.

The Rx Racial Healing Mobilization Campaign builds upon the Truth, Racial Healing, and Transformation (TRHT) process that I designed and launched with the W.K. Kellogg Foundation in 2017. The Rx Racial Healing campaign takes the next step—coupling the TRHT process and principles with a new overreaching framework that enables the population to conceptualize and experience a new model for relating as an extended human family. The Rx Racial Healing framework is an adaptation of international TRCs that have been instrumental in resolving deeply rooted conflicts around the world, and underscoring the transformational power in healing the wounds of the past before progress can be made.

The TRC process is varied, but typically involves public and private activities designed to uncover and deepen the understanding of tragedies and/or human rights violations. Prior TRC efforts have been initiated by litigation, by government mandate and by calls from activists. The TRC methodology is an international, 20th Century development involving public and private experiences for uncovering and deepening understanding of recent tragedies and human rights violations. The approach has been used previously to address historic wrongs in Australia, Canada and a few communities in the United States.

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### **Personal Reflections on Racial Healing**

I remember as a 15-year-old first beginning to understand the power of racism, and the need for healing.

Fate, luck, and talent took me from my all African-American community in Cleveland and plopped me down into an all-white enclave, a summer arts encampment in Chautauqua, New York. Away from home for 6 weeks, I would have a roommate of a different race and be the only one-of-two people of color in the entire town.

Everyone seemed very nice and treated me well, but I didn’t even have a word for the sense of separation and alienation that I felt. I woke up very early every morning and walked, alone, to the wooded area in the small town. It was there that I discovered my love of nature and learned to appreciate the simple beauty of trees. I would sit on the picnic table listening to the sound of water flowing in a nearby brook, staring up at the oddly pale sky between the treetops for what seemed like hours.

Decades later, I would understand the science about the healing effects of nature; and how being within forested areas can actually help the body reduce levels of the stress hormone cortisol. I would become a champion for the global movement for engaging children

with nature and open the Ntianu Center for Healing and Nature on a three-acre forested location in southern Maryland fed by an artesian spring.

Heavily scheduled days and evenings filled with concerts and shows made the weeks pass very quickly. Soon the once-in-a-lifetime summer arts experience drew to its end. On one of the camp's last days, as I walked past all the quaint Victorian houses on our little street, an ambulance appeared in front of our yellow house. Hurrying to see what was going on, I reached the front stairs in time to see my roommate being carried out on a stretcher. She was unconscious. I asked our house parents what had happened, and they told me that she had taken pills in an attempted suicide.

I ran up to our room, which suddenly seemed unbearably small. There I found a note she had written: *"I don't want to go home. My father has taught me to hate black people. I now know that is a lie. I don't want to live like that anymore."* She had tried to take her own life.

The summer ended and I was never to learn her fate, but assumed they saved her life that day. I never forgot how it felt to have lived a brief moment within an innocent and authentic friendship which, unbeknownst to me, had pierced the veneer of racial hatred.

Having come of age during the Civil Rights Movement era and having lived with both forced and de facto segregation, I, like so many of my peers, succeeded, in spite of the odds.

That summer long ago when, as a young girl, I came face to face with my roommate's deep pain, the child within me wanted to know why people believed in, taught, and acted upon hate. The adult and eventually the healer in me learned the answer to that question. I came to see, believe in, and know the power of love as a healing force.

I've spent the last 40 years translating that understanding into programs and social interventions to help make our lives, communities, and nation whole. I had experienced both the consequences of racial hatred and the courage to stand up for freedom that summer in Chautauqua.

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### **Racism Flows Like a River**

Whether describing the Nile, Amazon or Yangtze River, historians know that large rivers became the centers around which civilizations and nation states have flourished. This is true for the Mississippi river; named by the indigenous dwellers of the Algonquin native tribes as the Father of Waters, the Mississippi River is one of the world's longest rivers. It touches 32 states in America. It is not an exaggeration to say that it is the river that became the center around which the United States flourished. Still today in the 21st-century the Mississippi river and its many tributaries drive up to 75 percent of the U.S. economy.

This mighty river provides a good metaphor for the power of a single phenomenon to shape our life and lives—the belief in a hierarchy of humanity value that flows through the American psyche and society like the Father of Waters, the Mississippi. It drove the slavery economy and became the center around which 18th, 19th, 20th, and even today's 21st century America flourishes.

Every river has a delta, a landform created from the earth and rocks along the banks that it touched while moving rapidly to the ocean beckoning its waters. The river carries

this sediment and debris to an end place where movement slows to stagnation in the delta.

The human body has become the delta for the metaphorical river of racism. Sediment and debris from exposures have become socially embodied. Landforms—*islands of separation*, including residential segregation characterized by political and economic disinvestment—create adverse and toxic experiences for some, and fear of perceived “others”. These deltas help generate chronic stress and traumatic body responses which cause excess vulnerability to disease, and premature death.

But unlike rivers, whose existence and flow are vital for sustaining geographic and human life, racism is manmade. This antiquated belief system and way of seeing/being can be undone. Racism flows like a river, but it is not a river. Racism can and must be eliminated and its harmful consequences healed.

When implemented on a large and comprehensive scale throughout the nation, Rx Racial Healing will help move us beyond needless divides toward the wholeness upon which a viable democracy depends.

## PREPARED STATEMENT OF AMBASSADOR STUART E. EIZENSTAT

Thank you for inviting me to speak at this important hearing on ways to rectify past injustices and lessons to be learned for the future. I greatly appreciate the leadership of Congressman and Chairman Alcee Hastings and Senator and Co-Chairman Roger Wicker. You asked me to focus on ways we have sought imperfect justice for Holocaust survivors and families of victims from the Holocaust during World War II, that took the lives of six million Jews, including a million and a half Jewish children, and millions of others.

I was only vaguely aware of the Shoah growing up in Atlanta, and never met a Holocaust survivor. I became directly involved in what has been decades of work in this area as a result of a meeting in Washington in 1968 with Arthur Morse, a co-worker in the 1968 presidential campaign of Vice President Hubert Humphrey against Richard Nixon. He had just written a book "While Six Million Died: A Chronicle of American Apathy," which shockingly portrayed how much President Roosevelt and his administration knew about the genocide of the Jews and failed to act. FDR had been an icon in our home in Atlanta. I personally vowed that I would try to play some role if I was ever in the U.S. Government, in rectifying this cloud over the otherwise courageous role of our soldiers and military and civilian leaders in winning the war against Nazi Germany and Japan.

That time came first in April 1978, when as President Carter's chief White House domestic policy adviser I wrote the president a memorandum at the suggestion of Ellen Goldstein of my domestic policy staff, along with White House counsel Robert Lipshutz, recommending the creation of a Presidential Commission on the Holocaust, chaired by Eli Wiesel, to determine an appropriate memorial in Washington to honor Holocaust victims, but also to provide a history of the Holocaust, and lessons for the future: how anti-Semitism, hate and intolerance based upon race, religion or ethnic origin, can lead to genocide. The commission recommended and President Carter agreed to the creation of the U.S. Holocaust Memorial Museum and obtained congressional funding for a site. In 1993, I was present when President Clinton and Eli Wiesel officially opened the museum. Now over 25 years later, over 50 million visitors have visited the museum, three-quarters non-Jews, including school children, police, military from the U.S. and around the world.

A museum like the Holocaust Museum can be an important part of dealing with past injustices, by educating the public on the horrors of the past and the need to avoid repeating history. So too the National Museum on African American History and Culture, opened in 2016 as a Federal Smithsonian museum, is an important way to educate Americans and people around the world on the history of slavery and its aftermath in the U.S., as well as the positive contributions African Americans have made to the United States. It is one of the most visited museums in Washington for people of all races and backgrounds.

The next opportunity to fulfill my personal pledge occurred in the Clinton administration, when Assistant Secretary of State Richard Holbrooke, at the request of President Clinton after his meeting with Edgar Bronfman, president of the World Jewish Congress, asked me when I was U.S. Ambassador to the European Union in Brussels to undertake a dual role: special representative of the president and secretary of state on Holocaust-era issues, initially focusing on the return of Jewish and Christian synagogues, churches, community centers, schools, even cemeteries, by the newly freed states in central and eastern Europe (the former Soviet bloc states) so the re-emerging religious communities after the fall of communism, could openly practice their religion again after decades of

post-World War II Communist suppression. My entire staff at the U.S. Mission to the European Union urged me to reject the offer, since I already had a full-time job as U.S. Ambassador to the EU, but after discussing it with my wonderful wife and adviser Fran, I felt I had a unique opportunity to begin to rectify the wrongs of the past.

In this capacity, remarkable research uncovered the fact that a little-known Tripartite Gold Commission, created by the Western allies, to collect and redistribute back Nazi-looted gold to the countries from which it was stolen, still had some six tons of gold in its possession forty years later. The dusty office of the commission was only a few blocks from my office at the U.S. Mission to the European Union in Brussels. I convened a dozen countries with claims to the gold, and was able to get them to agree (with the lead of Austria's Hans Winkler) to convert the proceeds and provide it for their Holocaust survivors. We signed the agreement in Paris and held the London Gold Conference to seal it.

As I was going from country to country urging restitution or compensation for communal property, I read a front page article in 1994 in the Wall Street Journal Europe, as journalists and historians were focusing the 50th anniversary of key events in World War II, about dormant Swiss bank accounts, created by Jews to keep their funds from confiscation by the Nazis as they overran Europe, by depositing them in the safest banking system in wartime Europe in neutral Switzerland, only to have Holocaust survivors or families of victims informed there was no evidence of such accounts.

After getting the consent of Richard Holbrook to broaden my mission, I went to Basel, Switzerland (as did Edgar Bronfman, separately), to meet with the Swiss bank association. I handed them a copy of the Wall Street Journal article and asked if the story was true. Yes, up to a point, they admitted. They had appointed their own ombudsman and had reviewed every bank account created between 1933 and 1945, even for banks no longer in existence, and they found 732 accounts which plussed up for interest over the years was \$32 million and they would pay the lawful owners promptly. Not trusting them, Paul Volcker was appointed and after several years of investigation along with four major U.S.-based accounting firms, which cost the Swiss banks \$200 million in audit fees, Volcker concluded that there were 54,000 possible and 21,000 probable Jewish accounts.

Senate Banking Committee hearings, chaired by Senator Al D'Amato, at which I testified as did Greta Beer, who had been highlighted in the Wall Street Journal for her persistent but fruitless efforts to locate her father's Swiss bank accounts, helped to elevate the injustice. Congressman Jim Leach, the chair of the House Banking Committee, also held a series of hearings on a variety of Holocaust-related issues at which I testified, gave considerable impetus to our efforts.

At this point, class action lawsuits were filed against the Swiss banks and as under secretary of state for economic, business and agricultural affairs, I mediated between the class action lawyers and the Swiss bank representatives. Volcker found that the Swiss banks had run down the accounts by charging monthly fees. With the crucial help of U.S. District Court judge Edward Korman, the cases were settled for \$1.25 billion, divided between account owners who survived or their direct heirs recovered, through a court-administered claims process, and to other needy Holocaust survivors.

I chaired an interagency committee which prepared a report in 1997 under the direction of State Department historian William Slany, entitled "U.S. and Allied Efforts to Rescue and Return Gold and Other Assets Stolen or Hidden by Germany During World War II" ( often called the "Eizenstat Report") that again shows the utility of historical



reviews in dealing with past injustices. Our committee after 7 months of exhaustive work found among other things that the Swiss National Bank knowingly took Nazi-looted gold from the countries they occupied and from Holocaust victims, and exchanged it for the hard currency, Swiss francs, Nazi-Germany desperately needed to finance their war effort, since their own currency was subject to Allied sanctions.

In 1998, we prepared a similar report on some dozen or “neutral countries” during World War II, to provide a view on how they dealt with Jewish and other refugees and their property, and what assistance they provided to the Nazis and/or the Allies during the war. The Swiss class action suits, led to others, like peeling back the layers of an onion. First were those against German companies that employed slave and forced labor during World War II, as well as German and other European insurance companies, in which I mediated a settlement for \$5 billion dollars (10 billion deutch marks). It is important to recognize that I insisted to the Germans that this settlement had to include compensation not only for Jewish (and some non-Jewish) slave laborers who were being worked to death, but also to non-Jewish forced laborers who were viewed as an asset of the German Reich, to produce products for Germany when their workers were fighting the war. Of the 10 billion dm, 80 percent went for slave and forced labor, and of that 20 percent went to around 200,000 surviving largely Jewish slave laborers and 80 percent went to non-Jewish forced laborers, mostly Poles, Czechoslovaks and others from Central and Eastern Europe. Around \$300 million went to ICHEIC [International Commission on Holocaust Era Insurance Claims] for unpaid insurance policies, when European insurers denied coverage after the war for non-payment of premiums by those in concentration camps. In the end, over 7000 German companies contributed to the overall fund, many of whom had not been involved in slave or forced labor, as did the German government. At my request, President Clinton called Chancellor Schroeder to add another \$ 1 billion.

It is crucial to understand that only living survivors recovered for slave and forced laborers, not their heirs. For insurance payments, the beneficiaries recovered.

But again, the remedy of past injustices, there was a non-compensation feature to the German settlement. The German companies insisted on setting aside several hundred million euros for a “foundation for remembrance, responsibility and future”, that would support future projects devoted to tolerance and justice, and I was able to get the class action lawyers and the Jewish groups involved in the German negotiations to agree. The foundation has supported numerous projects not related to the Holocaust, such as LGBT rights.

At the same time as the German slave labor cases were filed, class actions were also filed against Austrian slave and forced labor companies. Unlike the German cases, the settlement with Austria of around \$800 million involved only private companies, not the government, and also covered personal property, with a \$210 million cap and a ceiling of \$2 million for any one claim by a Holocaust survivor or direct heir of a victim. This agreement was signed just in January, 2001, just a few days before the end of the Clinton administration. The Austrian national fund created an excellent claims process, which considered around 19,000 property claims. Although the amounts awarded in many cases were far less than the value of the property confiscated by the Nazis, all reports were that most claimants were satisfied that at last there was some measure of justice for what they lost. The Austrian government also uniquely provided a monthly pension for all Austrian Holocaust survivors wherever they lived in the world equivalent to what they provided to their own pensioners. More recently, Poland, to its credit, instituted a similar pension

program for Polish Holocaust survivors, which is functioning more efficiently after intervention by the world Jewish restitution organization (WJRO).

I also mediated a smaller \$20 million agreement to settle a class action suit against French banks, with similar claims to those made against the French banks.

One unique feature of our Holocaust justice work involved the recovery of or compensation for Nazi-looted art. It provides an interesting example of how experts can elevate a forgotten issue; how the U.S. Government can use its leadership to provide belated justice; and how an international agreement based upon morality and without binding legal effect can make a profound contribution to remedying historical injustices.

The Holocaust was not only the most ghastly genocide in human history, it was also the greatest theft, both to provide funds for the Third Reich and to wipe out all vestiges of Jewish culture, by stealing Jewish-owned artworks, cultural objects, books, chinaware, coins, decorative art objects, photographs, and musical instruments. Experts estimate that 600,000 paintings were stolen, of which more than 100,000 are still unaccounted for. They were by no means all masterpieces, but had intrinsic value to families as symbols of lost relatives and lost lives. When the other objects are included the numbers swell into the millions. The Allies were not oblivious to the widespread theft, and in the January 5, 1943 London Declaration called on neutral nations not to trade in looted goods by the Nazis. U.S. Army commanders facing the German army willingly agreed toward the end of the war to include art curators and experts in their forces as “monuments, fine arts, and archives” officers, who risked their lives to preserve Europe’s cultural heritage and that of the Jews. These “Monuments Men” found an enormous number of looted art and cultural objects that they dispatched to collection points in Germany as the war ended, to be catalogued and eventually returned to their owners. President Truman ordered the looted art objects to be repatriated as soon as possible, but identifying the individual owners in the chaos of the war’s end was impossible. So under U.S. Military Order 59, following established international legal precedent, the U.S. and British commands returned the art objects to the countries from which they were stolen and relied upon each government to trace the owners and return the objects. While there was some fleeting efforts at restitution, this reliance was often misplaced. Many were incorporated into their public collections.

In the 1990’s, based upon declassified Allied war documents and the opening of some Central and Eastern European archives after the end of the cold war, art historians like Lynn Nicholas (“The Rape of Europa”), Jonathan Petropoulos, Konstantin Akinsha, and Hector Feliciano wrote about their findings of the dimensions of the theft and the paucity of restitution. In January, 1995, professor Elizabeth Simpson held an international conference at the Bard College Graduate Center for studies in the decorative arts to further bring the issue of Nazi-confiscated art from the shadows into the sunlight.

Public attention was further piqued by a U.S. House Banking Committee hearing in February 1998 chaired by Congressman Jim Leach on assets stolen during World War II at which a star witness was Phillippe de Montebello, the longtime director of the Metropolitan Museum in New York. Pressed by Chairman Leach, he promised that the Association of Art Museum Directors (AAMD), to which over 2000 American art museums belonged, would produce guidelines to address looted art.

It was now that with the support of President Clinton and Secretary of State Madeline Albright, I organized a conference at the State Department, ably assisted by J.D. Bindenagel, with 57 delegations, 44 countries, and 13 NGOs. In December, 1998, we

agreed on the Washington Principles which J.D. and I drafted, using many of the AAMD principles. In order to get them approved, we had to make them non-legally binding. The 44 countries agreed in these Washington Principles to open their archives, fund research into the provenance of long-closed collections, notify potential claimants, resolve claims on their merits; and provide processes for a “just and fair solution” for the recovery or compensation of Nazi-confiscated art.

Relying upon the good will and moral force of the principles the Washington Principles have changed the way the art world does business. Provenance research has proliferated and websites are increasingly enabling potential Holocaust survivors or their heirs to locate art looted from them or their families. Privately funded groups like the Commission for Art Recovery, have facilitated the process. Five European nations have created panels to resolve claims in non-litigation forums. Tens of thousands of artworks and cultural objects have been restituted or compensation has been paid. The two major art auction houses, Christie’s and Sotheby’s have full-time staff which screen any art that passed through European hands between 1933–1945 to determine if any have suspicious provenance and might have been looted by the Nazis, and will not auction or sell them until these issues are resolved. Christie’s has resolved 100 or more claims to art with suspicious World-War II provenance.

Congress has been an important partner in providing Holocaust-related justice. American museums after a strong start, began to assert affirmative legal defenses like laches and the statute of limitations and even to preempt claims by seeking declaratory judgments, even before claims are filed, violating the spirit of the Washington Principles and the Terezin Declaration. In 2016, significantly due to the leadership of Ambassador Ronald Lauder Congress passed the Holocaust Expropriated Art Recovery Act (HEAR Act), which allows claimants to present a claim in court for 6 years after the object has been located and identified, and resets the clock for cases when the object’s location was known, but the claims was barred by previously existing statute of limitations. The AAMD supported its passage. In the 2018 Justice for Uncompensated Survivors Today Act (JUST Act) the State Department is required to report by November 2019 on the degree to which countries, including the United States, are complying with the Terezin Declaration. It would be important for Congress to hold hearings after receiving the State Department’s JUST report, to urge countries which have lagged in implementing the commitments they have made to do more.

One area of particular frustration has been the lack of progress on Polish private property, an area of great political sensitivity in Poland. Almost all of Poland’s 3.5 million Jews were killed by the Nazis in the Holocaust, along with 3 million non-Jewish Poles. Only a few thousand Jews live in Poland today. Jews owned a substantial percentage of the homes and businesses in major cities like Warsaw and Krakow, which were confiscated by the Nazis and then nationalized after the war by the Polish Communist government. No effort has been made by the post-Communist Democratic governments to rectify this injustice. It is in Poland’s interest to do so, since there is a cloud over much of the property in cities like Warsaw that depresses its value. Going back to the Clinton administration I have worked on encouraging Poland to develop a process for dealing with this injustice, as well as that perpetrated on its non-Jewish citizens. There is great fear that Polish Holocaust survivors or the heirs of the millions killed will seek to get their physical property back. This is not the case. The Polish representative participated with me and my State Department team in the Obama administration on an executive com-

mittee to present a draft to the full 2010 Prague conference on the restitution and/or compensation of real (immovable) property confiscated by the Nazis and/or their collaborators, and were among the over 40 countries that endorsed the agreement. But shortly thereafter, I received a letter from the Polish government stating they had signed in error and withdrawing their approval.

Then President Kwasniewski proposed an excellent bill to provide a small percentage of the current fair market value of the property, similar to the Austrian model, to Jews and non-Jews alike whose property was confiscated and never returned. But the Polish Parliament added a poison pill by limiting the program to current Jewish residents, and he vetoed the bill. The WJRO has worked with the State Department on this issue. To his credit, Secretary of State Mike Pompeo raised the issue directly with his Polish counterpart, but to no avail.

In the art area there remain shortcomings at home and abroad. Several U.S. Courts do not give serious enough attention to the Washington Principles in deciding on claims, and claimants are often disappointed. The AAM should update its software to facilitate claims on its portal, and American museums should devote more resources to provenance research and stop efforts to use technical defenses to block claims.

Abroad the problems are worse. Several key countries which agreed to the Washington Principles, including Russia, have largely ignored them. Insufficient provenance research has been done and inadequate resources are devoted to it, but this is central to art recovery. Several of the European art advisory panels have significant flaws. European art houses and art dealers have ignored the Washington Principles countries.

The European Union has generally not been involved in Holocaust justice issues which they consider under the sovereignty of their member States. But they could and should do more to at least urge them to be forthcoming. In October 2018, the European Parliament's legal affairs committee (2017/2023 INI) prepared a draft report for the full parliament which explicitly endorses the Washington Principles on Nazi-confiscated art and asks the executive arm, the European Commission, to develop common principles in this area.

An important conference was organized by the German government on November 26, 2018—20 Years Washington Principles: Roadmap for the Future. It helped highlight the deficiencies in compliance with the Washington Principles and Terezin Declaration and gave a new impetus to their implementation. For example, a joint declaration signed by German State Minister Monika Grutters, Tom Yazdgedi, special envoy on Holocaust issues for the State Department, and me as expert adviser on Holocaust-era issues to the State Department, required German public museums to participate in Germany's Limbach Commission that hears Holocaust art claims, but was severely hampered by the refusal of museums to participate. In addition, their public museums were urged to do additional provenance research. This led recently to one museum alone finding over 40,000 looted artworks, books, and cultural objects.

The French representative to the Berlin conference admitted France had not done enough. Now their NMR [National Museums Recovery] collection of art stolen by the Nazis from France and returned to France after the war will be subject to a thorough review, and their public museums are being urged to also do more provenance research. A special unit has been created in the French prime minister's office to oversee the process, and the CIVS [Commission for the Compensation of Victims of Spoliation], the

agency which has administered compensation payments to French Holocaust victims has been charged with deciding art recovery claims.

I have attached a copy of my keynote speech of November 26, 2018 to the Berlin conference, which includes specific recommendations for future action.

From 2009 to 2017, I served as special advisor to Secretary of State Hillary Clinton and then Secretary of State John Kerry on Holocaust-era issues. In that capacity, in 2011, I negotiated along with U.S. Ambassador to Lithuania Anne Derse an \$11 million agreement with Lithuania for their survivors (in lieu of property restitution).

I led an interagency negotiation with the government of France, which included a team from the State Department legal advisor's office (Lisa Grosh was the lead attorney) and Justice Department, which produced a \$60 million agreement in December, 2014, for those survivors who were deported by the French railway, SNCF, outside of France to concentration camps, spouses of survivors, and direct heirs of those survivors who had died after the war, and who were not now French citizens and had never benefited from the French program for French deportees. That program has recently made its final payments. In addition, and of their own volition, SNCF has paid \$4 million for Holocaust education programs and institutions in the United States, including the U.S. Holocaust Memorial Museum.

Also in 2009, I led the U.S. effort that produced the Terezin Declaration, with 46 countries, that urged countries to do more to assist their aging Holocaust survivors, to return looted assets, and strengthened the Washington Principles, for example, by stressing that they cover private museums as well as public museums. The American Alliance of Museums (AAM) has almost 30,000 artworks listed on a Nazi-era provenance information portal (NEPIP), to ease the process for claimants to identify looted art and file claims (although by their own admission the software is old and not functioning well.)

The 2010 best practices and guidelines for the restitution and/or compensation of real (immovable) property confiscated by the Nazis and their collaborators between 1933–1945, which I also negotiated under the auspices of the Czech government with over 40 countries, provided the first roadmap for the recovery of private property. But we have had much greater success with the return of or compensation for communal property (synagogues, schools, community centers, cemeteries) than with private property recovery. The government of Poland has returned several thousand synagogues to the tiny Polish Jewish community, but they are in such a state of disrepair as to be of little use. By contrast, the Czech government has restored to their former beauty what they call the “ten stars”, ten synagogues partially destroyed by the Nazis, and which are used for cultural and occasional religious events.

Holocaust justice began long before I became involved in the process. In 1952, the historic Luxembourg Agreement was reached between the prime minister of the new State of Israel, David Ben-Gurion, and West German Chancellor Konrad Adenauer in which the post-war German government recognized its responsibility for the horrors of the Nazi-era. The German government created the BEG program of direct payments to Holocaust survivors, which continues to this day. Germany has paid over \$60 billion in compensation. The agreement also led to the creation of the Jewish Material Claims Commission Against Germany, Inc. (The Jewish Claims Conference), a unique nongovernmental body headquartered in New York and Israel to officially represent Holocaust survivors in obtaining compensation from Germany. It negotiated programs like the Hardship Fund for Survivors who had spent a prescribed time in concentration camps, ghettos or in

hiding; Article Two pensions for survivors in Western Europe, the United States, Israel and around the world, and a similar one after the end of the cold war for survivors in the former Soviet Union and east bloc, who had never received compensation, which are income based. Only survivors (with a few minor exceptions for widows and widowers) are entitled to payment, not their heirs, for they were the ones who suffered.

Since I became the lead negotiator in 2009, with my co-chair Roman Kent and several of his fellow Holocaust survivors from the U.S., Israel, and Europe, we have negotiated over \$9 billion in additional compensation, expanding coverage to flight victims who fled to the Soviet Union to escape the onrushing German military; a new one-time payment for child survivors to recognize their special suffering; a payment to widows of Article Two recipients and just this year in 2019 a payment to widows of righteous gentiles who saved Jews during the war; liberalized conditions for eligibility of earlier programs like the Hardship Fund; and significantly higher monthly pension payments. We have placed special emphasis on home care and food, medicine and social services for elderly poor survivors around the world and in the United States. Home care workers help survivors with the basic elements of everyday living: preparation of meals, provision of medicine; access to doctors; transportation to activities with other survivors. Services are generally provided through Jewish federations in the United States; the American Jewish Joint Distribution Committee's Chesed program in the former Soviet Union and Central and Eastern Europe; and a special agency in Israel.

In 2009 the worldwide homecare budget was 34 million euros; in 2019 it is over 400 million euros. Coverage has gradually expanded so that now that some 6000 of the most needy of the survivors received 24/7 coverage and other poor survivors generally are entitled to up to 50 hours per week of home care.

As part of the Luxembourg Agreement, a claims process was created to provide compensation to Holocaust survivors or the heirs of those who were murdered and who owned real property in Germany confiscated by the Nazis. After the end of the cold war, the fall of the Berlin Wall, and the reuniting of post-war Germany, the Jewish Claims Conference and the new Federal Republic of Germany created successor organizations, administered by the Jewish claims process, which were given title to the confiscated Jewish property in the former East Germany. A claims process was created which allowed thousands of survivors to recover their property or receive compensation for it. After the close of the claims process, heirless property, for which there were no living survivors or heirs, was sold by the Jewish Claims Conference: 80 percent of the proceeds were distributed to Holocaust survivors and 20 percent has been used to support Holocaust education and remembrance programs and institutions, from the U.S. Holocaust Memorial Museum and Yad Vashem to the March of the Living, in which young students are taken to Auschwitz/Birkenau and then to Israel. The Jewish Claims Conference has been the largest supporter of Holocaust education and remembrance programs in the world. At its peak 2 years ago, they distributed \$18 million annually. But the runoff from the properties has dramatically declined to \$9 million in 2019 and will soon be out of funds.

At a time of increasing anti-Semitism and Holocaust denial, this is a drastic problem. In our recent 2019 negotiations with the German finance ministry, while we obtained an additional \$50 million in benefits for Holocaust survivors in increased pensions and homecare, we also obtained for the first time a commitment by the German government, which has done so much to provide Holocaust education within Germany, to support Holo-

caust education worldwide, in cooperation with the Jewish Claims Conference. Details are being discussed now, with the hope their support will commence next year, in 2020.

Still, with all of these programs, of the 400,000 Holocaust survivors alive today, over 80 percent in the former Soviet Union and Central and Eastern Europe; 35 percent in Israel; 40 percent of the 40,000 survivors in the New York City area live in or near the poverty line. It is unacceptable that survivors who lived such a traumatic life in their early formative years should have to live in degradation and poverty in their declining years. I hope Congress in general and this commission in particular can help call attention to this dire situation. As we lose around 6 percent of survivors each year, there is an urgency for action.

While time does not permit me to discuss other efforts at providing justice to victims of state-supported injustice, I would direct the commission to two examples, one well known and the other almost unrecognized. To heal the divisions from decades of brutal apartheid rule by the white minority government of South Africa, newly elected President Nelson Mandela signed legislation in 1995 that created the Truth and Reconciliation Commission chaired by Archbishop Desmond Tutu. This commission was not created to provide compensation to those who directly suffered under the apartheid regime. Rather the commission was to investigate apartheid-related crimes by taking testimony from 20,000 men and women who were persecuted and, under an amnesty from the perpetrators, develop a report on the dimensions and consequences of apartheid. It was specifically designed to help reconcile those who suffered and those who directly persecuted South Africa's black population or who more generally supported and economically benefited from apartheid.

On receiving the report on October 31, 1998, Mandela recognized that many would be disappointed by the "punitive justice and a peaceful transition", but "accepted the report as it is, with all its imperfections . . . to help reconcile and build our nation."

Less well known, but relevant to your important hearings, was how the newly reunited government of Germany sought to provide justice to the victims of Communist East German oppression by the German Democratic Republic. (See Julian Junk and Jonathan Miner, "Compensating Historical Injustice: More Than Just Money", *Humanity in Action*) some 140,000 East German citizens were imprisoned for political opposition to their oppression, often under brutal conditions. Unlike the slave labor agreement I negotiated in July 2000 with the Federal Republic of Germany for Holocaust-era repression, this was an internal German response to the repression of their own citizens. One law in 1992 provided political prisoners with a one-time payment of 300 euros for each month they were in jail, and their criminal records were erased. A second law in 1994 dealt with issues of professional and administrative persecution. But there was little punishment for the former perpetrators.

Thank you for the opportunity to testify on this important and timely topic.

## 20 YEARS WASHINGTON PRINCIPLES: ROADMAP FOR THE FUTURE

REMARKS BY AMBASSADOR STUART E. EIZENSTAT, EXPERT ADVISER TO THE DEPARTMENT OF STATE ON HOLOCAUST-ERA ISSUES, BERLIN, GERMANY, NOVEMBER 26, 2018

State Minister Grütters, Ambassador Lauder, Deputy Ambassador Quinville, Ambassador Descotes, Minister Nir-Feldkein, Ladies and Gentlemen, I am deeply grateful to State Minister Monika Grütters for initiating and organizing this conference: “20 Years Washington Principles: Roadmap for the Future,” and to her State Secretary Guenter Wanands for his excellent work and that of his staff. I may have negotiated with the German government over the past two decades more than any other person, and I can proudly state that your determination to keep alive and to encourage compliance with the Washington Principles on Nazi-Looted Art, for which I was the principal negotiator as Under Secretary of State and Special Representative of the President and Secretary of State on Holocaust Issues, is yet another inspiring example of Germany’s commitment to Holocaust justice and memory.

I also want to acknowledge at the outset the stirring and indispensable leadership Ambassador Ronald Lauder has provided over the years, and to recognize his critique regarding the shortcomings of implementing the Washington Principles. His remarks are all the more reason that it is crucial that we use this “Specialist Conference” as a launching pad at the highest political level to implement the Washington Principles fully by all of the 44 countries who agreed to them, particularly those who were most involved either as perpetrators during World War II in looting Jewish artworks and cultural objects or who traded in them after the War. The Holocaust was the most ghastly genocide in human history, the wanton murder of six million Jews and millions of other victims. But it was also the greatest theft in history, not simply for money for the Third Reich, but to wipe out all vestiges of Jewish culture, by stealing their artworks, cultural objects, books, photographs, and musical instruments.

Now more than 70 years after the end of World War II, and 20 years after the Washington Principles were promulgated, this may be our last opportunity to right in some imperfect way one part of the most ghastly crime in human history, before all of its 400,000 Holocaust survivors breathe their last breath. The impetus behind the Washington Principles was never simply an effort to restitute expensive masterpieces, although that is what makes the headlines, but to return artworks and cultural property that had special meaning to families, the vast majority of which had far more intrinsic value to them than their modest market value. Like the murder of six million Jews, there was nothing casual about the Nazi looting; their efficiency, brutality, and scale remain unprecedented in human history. Experts estimate that 600,000 paintings were stolen, of which more than 100,000 are still missing seven decades after the War. When furniture, china, books, coins, and items of decorative arts are included, the numbers swell into the millions.

Since the conclusion of the Washington Conference and adoption of the Washington Principles 20 years ago, reaffirmed by the Vilnius Forum Declaration in 2000 and the Terezin Declaration in 2009, we have made giant strides toward achieving the goals of identifying, publicizing, restituting, and compensating for some of the looted art, cultural objects, and books, and in so doing, providing some small measure of belated justice to



some victims of the Holocaust or their heirs. We could not have foreseen how relevant this issue would still be 20 years later.

But we must candidly confront the unfulfilled promises we solemnly made.

Even at the height of the War, the Allies were not oblivious to the widespread theft of art and cultural works. On January 5, 1943, they issued the London Declaration, calling on neutral nations not to trade in art looted by the Nazis. U.S. Army commanders facing the German army willingly agreed to include art curators and experts in their army as “Monuments, Fine Arts, and Archives” officers who risked their lives to preserve Europe’s cultural heritage and that of Jews in the closing months of the war. As they crossed the German border, these “Monuments Men” found a wealth of looted art and cultural objects that they dispatched to collection points to be catalogued and eventually returned to their owners. President Harry Truman ordered the looted art objects to be repatriated by the military as quickly as possible but locating individual owners in the chaos of the war’s end was impossible. So under Military Order 59, following international legal precedent, the U.S. and British commands returned the art objects to their countries of origin and relied on each government to trace the owners and ultimately return the stolen property. This reliance was often misplaced. Many of the works that were returned by the Allies after the War were incorporated into the collections of public museums, rather than going back to their owners.

The Washington Conference on Holocaust-Era Assets and the Washington Conference Principles on Nazi-Confiscated Art did not come out of thin air. Fifty years after the end of the War, the wall of silence on Nazi looted art was breached by four scholars I met during my work on art recovery, based upon newly declassified Allied war documents and Central and Eastern European archives open after the end of the Cold War: Jonathan Petropoulos Lynn Nicholas, Konstantin Akinsha, and Hector Feliciano and an international conference organized in January, 1995, by Professor Elizabeth Simpson of the Bard Graduate Center for the Studies in the Decorative Arts.

But the issue had not come to the attention of governments and the general public. The Clinton Administration, including President Clinton and Secretary of State Madeleine Albright, along with my team at the State Department, headed by J.D. Bindenagel, and I determined to change this.

On the road to the Washington Conference, public attention was further piqued by a U.S. House Banking Committee hearing on assets stolen during the Holocaust, including looted art and cultural property. Congressman James Leach (R-Iowa), chaired the February 1998 hearing, which included a star witness: Philippe de Montebello, the longtime director of the Metropolitan Museum of Art in New York. This was no academic matter for him: de Montebello recalled as a child “keeping one step ahead of the Gestapo and the Vichy government, with a father who was serving in the Resistance.” Pressed by Leach, he promised the Association of Art Museum Directors (AAMD), to which over 200 American art museums belong, would present guidelines to address looted art.

The AAMD created a Task Force on the Spoliation of Art During the Nazi/World War II Era (1933–1945), with de Montebello as chair and the country’s most powerful museum directors as members. He presented their principles on June 4, 1998: American art museums would immediately begin researching their collections for looted art; publish information in a centralized and publicly accessible database to assist Holocaust victims and their heirs locate their possessions; seek all possible information about the history of the ownership—its “provenance” in the art world—of any work before acquiring it;

refuse any works showing evidence of unlawful confiscation during the War years, 1933–1945; seek warranties from sellers of valid title free of potential claims; and, finally, and crucially, resolve by mediation any claims against pieces in a museum’s collection “in an equitable, appropriate, and mutually agreeable manner.”

Twenty years ago, we knew we faced challenges to get 57 delegations, 44 countries, and 13 NGOs to agree on principles they would follow to open archives, fund research into the provenance of long-closed collections, notify potential claimants, and provide processes for a “just and fair solution” for the recovery or compensation of looted artworks and cultural property, recognizing the differing legal systems of the participating nations and that they would act within the context of their own laws. The Washington Conference Principles were not a legally binding international treaty but depended upon the good will and political determination of governments for their implementation.

The Washington Principles were reaffirmed by the Vilnius Forum Declaration of October 5, 2000 urging “all governments to undertake every reasonable effort to achieve the restitution of cultural assets looted during the Holocaust era to the original owners or their heirs.” More than ten years after the Washington Principles, 47 countries adopted the Terezin Declaration in 2009 encouraging “all parties including public and private institutions to apply them as well,” and emphasizing that the Nazi confiscation, sequestration, and spoliation of art and cultural property was accomplished ““through various means including theft, coercion and confiscation, and on grounds of relinquishment as well as forced sales and sales under duress during the Holocaust era 1933-1945.”

In making a fair assessment of the success of the Washington Principles, I believe the glass is slightly more than half-full, but that is not satisfactory. It is time for one last push to correct the flaws in implementing the Washington Principles, both in my country, the United States, and in key countries which still have Nazi-looted art in their possession. With the assistance of advanced digital technology, which did not exist at the time of the Washington Conference, there can be no excuse for failing to have the widest distribution of information about Nazi-looted art and cultural property, including books. No museum, state-controlled or private; no art gallery or collector; no auction house; no private owner, should want to hold or deal in Nazi-looted artworks, stripped in the most violent way from their owners during World War II. Every nation that committed to the Washington Principles and the Terezin Declaration should redouble its efforts to identify, publish, and retribute or compensate or find other “just and fair solutions” when an owner or heir has a legitimate claim.

More broadly, good faith implementation of the Washington Principles can help in a more general way beyond Nazi-looted art, by creating a more transparent global art market, with greater assurance that buyers and sellers have the fullest information about the provenance of the art in which they are dealing.

## SUCSESSES OF THE WASHINGTON PRINCIPLES

### THE WASHINGTON PRINCIPLES HAVE CHANGED THE WAY THE ART WORLD DOES BUSINESS

The Met’s Philippe de Montebello proclaimed at the final plenary adopting the Washington Principles that “the art world would never be the same.” He was correct. Before

the Washington Principles, provenance research was limited, the issue of Nazi-looted art largely unrecognized except in the domain of a few scholars and claims and restitution virtually non-existent. As de Montebello put it to me, business as usual “has changed dramatically; the whole psychology has changed. Art dealers, galleries, museums now check the ownership of paintings from Europe to determine if there are gaps from the World War II era which might indicate the painting had been confiscated. And if so, they are posting the information on Web sites.”

PROVENANCE RESEARCH HAS PROLIFERATED, AND WEBSITES ARE INCREASINGLY ENABLING POTENTIAL HOLOCAUST SURVIVORS OR HEIRS TO LOCATE ART LOOTED FROM THEM OR THEIR FAMILIES AS MORE NATIONS AND NGOS DO MORE PROVENANCE RESEARCH AND POST RESULTS ON THE INTERNET

The crucial, initial step that must be taken to give life to the Washington Principles and hope to those whose artworks were stolen from them or their families is for museums, galleries, and auction houses both to research the provenance of the art they possess or handle, and to post the results in an accessible fashion. In today’s digital world, the Internet has become a 21st century way to shine the light on possible Nazi-looted art.

The pathbreaker was Ambassador Ronald Lauder, who established the Commission for Art Recovery in 1997, and then used it to monitor and aid in the implementation of the Washington Principles. There are now a proliferation of websites posting details on potentially confiscated Nazi-looted art, imperfect though they are in still not including all the art in the collections of museums that has suspect provenance during the War years : the Commission for Looted Art in Europe; the International Portal for Records Related to Nazi-era Cultural Property (International Research Portal) hosted by the U.S. National Archives and Records Administration (NARA) with 22 institutions across Europe, Israel, and the U.S. to help families, researchers, and historians, by cataloging and publicizing not only the possible Nazi-looted objects but the archival records that may contain information on looted objects.

I welcome the new initiative of the Commission for Art Recovery and the Jewish Claims Conference to establish the Jewish Digital Cultural Recovery Project, to develop a database that, through the use of various public archival sources, provides comprehensive and precise documentation of cultural objects forcibly displaced and plundered during the Nazi-era from the time of their spoliation to the present, and visual, narrative, and educational components to help disseminate the content of the database to academic and lay audiences. The project will also create a network of governmental and heritage institutions that collect European documents closely cooperating on developing the database, disseminating best practices, and promoting further research on Nazi-looted artworks. The American Alliance of Museums (AIM) has almost 30,000 works from 179 American museums listed on the Nazi-Era Provenance Information Portal (NEPIP), admittedly faulty though it is, and the privately-owned Art Loss Register database of art losses.

In addition, Austria, France, Germany, the Netherlands, and the United Kingdom have websites listing suspect artworks that may have been confiscated by the Nazis. France has focused most of its attention on researching the some 2000 works in their MNR collection (National Museums Recovery), which are works taken from French victims to Nazi Germany and later returned after the War to France. In 2017, for the first

time, the French listed all its MNR collection. France has also participated in opening its archives and in the Claims, Conference's ERR/Jeu de Paume database, the first integrated looted art database.

Now private German collectors are allowed to seek government assistance to check the provenance of the works in their collection, as long as they uphold the Washington Principles if a work is found to have been looted during the Nazi era. In addition, France is now cooperating with Germany on provenance research projects and recently decided to coordinate its research and claims process.

#### THE WASHINGTON PRINCIPLES SPURRED FIVE EUROPEAN NATIONS TO CREATE PANELS TO RESOLVE CLAIMS IN NON-LITIGATION FORUMS.

Germany in 1999 reaffirmed the Washington Principles in a Joint Declaration between the German Federation, the Länder (Federal States) and the National Associations of Local Authorities, and in a 2001 Joint Declaration adopted non-legally binding Guidelines (Handreichung) for their public institutions and museums. In 2003 Germany created an Advisory Commission (Limbach Commission after its first chair) to review claims to Nazi-looted art. In 15 years, it has advised on 15 cases. There have been reforms to the Advisory Commission up to 2016, when the tenure of members of the Commission was limited, representatives of Jewish institutions were appointed to the Commission, and the Commission was permitted to use outside experts to provide advice to guide its decisions (although only 5 million € were allocated). Shortly before the opening of the Berlin Conference, Monika Grütters announced another welcome, major reform: for the first time the Commission will be able to act upon a claimant's application alone, without the approval of museums funded by the Federal Government, which had previously been able to block claims; "the relevant museum will no longer be able to refuse such action."

Since Monika Grütters became Federal Government Commissioner for Culture and the Media in 2013, there has been a welcome acceleration of action. She has increased the German budget from provenance research from one to nearly seven million Euros. She helped establish the German Lost Art Foundation (DZK) in 2015 that organizes and funds provenance research. The Foundation's definitions of Nazi-confiscated property set a standard for other nations to emulate. They broadly define a cultural asset to include items of historic, artistic or other cultural or identity building significance, including articles of daily use, recognizing that their origin and fate are more significant than the art historical value of the item. The Foundation has also defined confiscation through Nazi persecution to include not only theft, but a loss of assets suffered as a "result of forced sale, expropriation, or other means." They also cover "flight assets"—artworks sold out of necessity during times of economic hardship, without physical coercion, either in Germany or abroad.

Commission Grütters also set-up a task force and a provenance research project under the DZK to review the trove of Gurlitt artworks first discovered in 2012 and appointed two experts from outside Germany to the advisory commission. She also initiated the Cultural Property Protection Act and has left the door open for it to include restitution of Nazi-looted art.

The Austrian Restitution Advisory Board reviews looted works of art held in the Austrian Federal Museums and makes recommendations to the competent federal minister. Austria has been a model of commitment to restitution. Austria has restituted the most

artworks and cultural objects, over 30,000, and while the process is not without some mistakes, their progress is significant.

The Netherlands created the Origins Unknown Committee (Ekkart Committee), which led to the Dutch Restitution Committee (the Advisory Committee on the Assessment of Restitution Applications) to review claims against the works of art located in the “Netherlands Art Property or NK-collection.” This consists of art forcibly taken by the Nazis from the Dutch, taken to Germany during the War, and returned thereafter. The Dutch government adopted a liberal and generous restitution policy based on the recommendations of the Ekkart Committee. For example, all sales of works of art by Jewish private persons in the Netherlands from May 10, 1940 onward were to be treated as forced sales, unless there was express evidence to the contrary; the rightful claimants should be given the “benefit of the doubt” whenever it is uncertain whether the seller actually enjoyed the proceeds; restitution should occur if the claimant has established title “with a high degree of probability.” The Dutch took an early lead among European countries but there seems to be some backsliding. There are some 3800 looted artworks in the NK Collection which have yet to be returned.

France to its credit, undertook a major internal review last year of its handling of cultural property looted during World War II. Following a searching report in February 2018 by David Zivie, director of the Ministry of Culture to Françoise Nyssen, French Minister of Culture, on impediments to restitution and compensation for Nazi-confiscated artworks and cultural property, the French government announced reforms on July 22, 2018, the commemoration date of the Vél d’Hiév roundup of Jews. They announced that the CIVS (Commission for the Compensation of Victims of Spoliation), which has done an admirable job of Holocaust compensation for French Holocaust victims, would be mandated to undertake what they call “the Mission” to address Nazi-looted art claims. I hope the new Minister of Culture will continue with the plan of his predecessor to centralize restitution issues in the Mission and provide sufficient financial support.

The United Kingdom has a well-functioning Spoliation Advisory Panel, but to further improve it, Sir Paul Jenkins was asked to conduct an independent review of the Panel and submitted a report in 2015 with a series of recommendations, many of which have apparently been approved. They have been a leader in digitizing almost all of their art collections in public museums, to their credit.

#### INTERNATIONAL COOPERATION HAS BEGUN TO SPROUT

Germany has funded the German/American Provenance Research Exchange Program for Museum Professionals (PREP), along with the Smithsonian Institution and other museums to advance World War II-era provenance research in museums, libraries, and research institutions in both countries. And France and Germany are beginning to discuss joint programs. Last month, on October 4, 2018, Commissioner Grutters on behalf of the German Federal government entered into a Memorandum of Understanding with the Israeli government in light of their joint cooperation in researching the Gurlitt Art Trove, the importance of acquainting the Israeli public with the history of Nazi-looted art, and the tragedy of the Shoa, to have it exhibited in Israel in 2019. This sets a standard for the exhibition of heirless art based upon a temporary loan to Israel.

## SUBSTANTIAL RESTITUTION OR COMPENSATION OF NAZI-LOOTED ART

With all the legitimate frustrations, a very sizable number of Nazi-looted artworks have been restored to their owners, or compensation given in lieu of restitution. Austria has restituted over 30,000 cultural objects to their rightful owners. While German museums are unfortunately not mandated to report their restitutions and financial settlements, the German government in their Joint Declaration with the U.S. government of November 26, 2018, has stated that Germany has returned over 16,000 individual objects (5746 art objects and more than 11,700 books) to Holocaust survivors of their families in the 20 years since the Washington Principles. Perhaps encouraged by this Berlin Conference, the Netherlands Museum Association recently announced that, after years of research, 42 Dutch museums have discovered over 170 artworks in their collection with problematic histories during the Nazi occupation, which may have been looted or sold under duress. It is noteworthy that the Washington Principles have inspired efforts by Germany to explore their art acquired from their colonial possessions, and that in the U.S. claims from the Cuban revolution are surfacing.

The AAMD has reported that as of the time of the Berlin Conference, their member museums have returned or resolved claims to 54 Nazi-looted artworks through negotiation, and another five have been resolved through litigation.

Christie's, the art auction house, has helped resolve some 100 or more claims to art with suspicious World-War II related provenance, given to it for auction or sale since the Washington Principles were promulgated.

## SHORTCOMINGS IN IMPLEMENTING THE WASHINGTON PRINCIPLES

We must candidly address the shortcomings in implementing the Washington Principles on Nazi-Confiscated Art.

### SEVERAL KEY COUNTRIES HAVE LARGELY IGNORED THE WASHINGTON PRINCIPLES.

First, several key countries have made virtually no effort to comply with the Washington Principles, although they agreed to them. Under the recently enacted 2018 Justice for Uncompensated Survivors Today Act (JUST), the State Department is required to report by October 2019 on the degree to which countries, including the United States, are complying with the Washington Principles.

*Hungary* is in possession of major works of art that were looted on its territory during World War II, and has not restituted them, although having been repeatedly asked to address this issue. I mentioned Hungary at the 2000 Vilnius Forum as a country which refused to implement the Washington Principles, despite the fact that their wartime government sanctioned the confiscation of artworks and cultural property from their Jewish citizens. Unfortunately, I cannot report any change of attitude by the current Hungarian government. They have refused to return these artworks to their rightful owners. They have refused to take their historic responsibility for the systematic looting of art from their Jewish citizens. They have undertaken some provenance research in their museums and located some looted art that is not owned by the state, but they have never made the results of their research public. Hungary has enacted a decree on the Order of

Restitution of Cultural Assets Held in Public Collections Whose Ownership Status is Disputed, but only claimants of non-Jewish origin have received any works back.

*Poland* was overrun by the Nazis and lost some three million of their non-Jewish citizens, as well as three and half million of their Jewish citizens to the Nazis. Any artworks and cultural property that was confiscated from their Holocaust victims would have been confiscated by the Nazis. But it appears there are artworks confiscated from Jews and other victims in other countries, like the Netherlands, that are now in Poland as a result of the Nazi-looted art trade during the War. The Origins Unknown Agency of the Netherlands has a list of scores of paintings that are thought to be in Poland. It would be useful for joint Dutch-Polish cooperation in provenance research to clarify this situation, but to date the Polish government insists they will only handle Polish artworks that had been taken out of Poland. Their focus has been to repatriate what they lost from their public collections.

*Spain* also has taken no steps to implement the Washington Principles, and in one dispute involving a Nazi-looted artwork that belonged to an American family, the Spanish government took the position that the Thyssen Museum which possessed it was a private museum not covered by the Washington Principles.

*Russia* suffered greatly at the hands of the Nazis during the War. The Red Army took substantial artworks from Germany at the end of the War as partial compensation for their grievous losses, but this included some art the Nazis had taken from German Jews. At the conclusion of the Washington Conference, the Russian government representative joined my closing news conference to announce their restitution of one such work in their collection. They also passed a law that distinguished their trophy art from that which belonged to Jews and would be treated according to the Washington Principles. There has been some provenance research started at Russian cultural institutions, and some is recorded on an electronic database of all displaced cultural property and is also published in scientific publications and shown in exhibits. But there has been no restitution of any Nazi-looted art, nor any process for their identification or handling of claims.

*The Italian federal government* made some art and cultural property restitution shortly after the end of World War II. They endorsed the Washington Conference Principles and Terezin Declaration. Immediately following the Washington Conference, the Italian government created the Anselmi Commission with cultural experts, scholars and members of the Italian Jewish community, which made recommendations in 2001 on ways to comply with the Washington Principles, although the Commission focused more on Nazi-looted art than on spoliation of Jewish cultural property under Mussolini. But their recommendations have been largely ignored. Unfortunately, there has been no provenance research or listing of possible Nazi-looted art in their public museums by the Italian government, although the European-Union backed TranscultAA Project has been doing good provenance research on Italy. Italy's main interest is in what the Italian government lost. There is a particular problem with various cities and provenances, where much of Italy's art collection is maintained, which have ignored the Washington Conference Principles. Some private Italian art dealers have facilitated settlements of Nazi-looted art claims. Italy has demanded restitution of ancient cultural property looted from their territory. It is hoped they would follow-through in a similar fashion in complying with the Washington Principles.

Unfortunately, there are a long list of other countries, in Latin America and in Europe, which participated in the adoption of the Washington Principles, but have done

nothing to research the provenance of the collections in their public museums or to reconstitute even a single art work or cultural property.

#### INSUFFICIENT PROVENANCE RESEARCH AND INSUFFICIENT RESOURCES DEVOTED TO IT

Most key countries do not devote sufficient funds and human resources to expedite provenance research, and so it proceeds at a snail's pace. *It is critically important that the United States, which was the prime mover in negotiating the Washington Principles, be the exemplar for the rest of the world.* But the U.S. has not done nearly as much as we should. Provenance research of Nazi-looted art by our private museums is constrained by a lack of funds and the absence of a large cadre of trained provenance researchers, but more broadly by the low priority our museums have given to provenance research of Nazi-looted art in their collections, without which the Washington Principles cannot be properly implemented.

Indeed, it is long overdue for the AAMD to do an objective, thorough study of how its member museums have complied with the Washington Principles. We know that museum budgets are tight, but priority should be given to this important, moral task related to Nazi-looted art. There are standard setters who could be emulated, like the Boston Museum of Fine Arts, which has made provenance research a priority for their budget.

Most museums in Europe have not even started provenance research, and those that have begun are nowhere close to completing their provenance research either, with very few exceptions. In France, budgets for archival records appear to be reduced. France's other major problem is having no de-accession law to allow its public museums to remove Nazi-looted artworks from their collections, beyond the more limited MNR collection. Until such a law is enacted, claimants will not be able to be reunited with their families' looted art, and France will lag behind other Western European nations.

Moreover, France and the Netherlands face similar problems on provenance research. France has focused most of its effort on their MNR (National Museums Recovery) collection-- works taken from French victims and later returned from Germany for restitution to their rightful owners. The Netherlands focus on their Netherlands Art Property (NK collection), which consists of art forcibly taken back to Germany by the Nazis, and later returned to the Dutch after the War. But neither country gives priority to researching the provenance of art in their other public collections and major museums. The effort has been advancing at a snail's pace due to inadequate funding and legal support, and to the fact that provenance research at French museums has not been a priority.

There is a discrepancy as to how a claim is assessed depending on whether it belongs to the NK-collection or to other Dutch public collections, where the process is less transparent.

Neither Netherlands, nor France should not treat restitution of claims to Nazi-looted art in their national collections any differently from claims to artworks in their NK- or MNR- Collections of Nazi-looted art shipped to Nazi Germany and later returned after the war. If a Nazi-looted artwork is in the collection of a public museum, that museum should not keep the work without the agreement of the claimant.

When part of the Gurlitt collection was given to the museum in Bern, Switzerland, they took the positive step of having the German task force reviewing the bulk of the



collection, also review their Gurlitt art to assure it was not Nazi-looted art. However, at the time of the Swiss bank settlement in the 1990s, the banks wanted art to be covered by the overall financial settlement. This did not occur, because it would have been unfair to potential claimants of Nazi-looted art. There has been some provenance research and some restitution by Switzerland, but because during the period 1933-1945, many Jews who were fleeing sold their art in Switzerland, it has been insufficient. The biggest contribution Switzerland could make for the Washington Principles, would be to open their private museums and the archives of their art dealers for easy accessibility by provenance researches.

Many German federal museums have done significant provenance research and have data on their artworks which have been looted by the Nazis. But there is no federal German government authority that has provided an overview, by asking German federal museums to disclose how much provenance research they have done of their collections, how many are suspected to be Nazi-looted artworks, and what timetable they have to complete their research of their collections. The Länder could be asked to do the same for their museums.

#### SEVERAL EUROPEAN ART ADVISORY PANELS HAVE SIGNIFICANT FLAWS

Court systems in Europe are rarely practical ways to implement the Washington Principles because of statutes of limitations and adverse possession laws which frequently legitimize the transfer of ownership even of stolen goods. This means only mediation and advisory opinions by panels created by governments are available to give meaning to the Washington Principles. To their credit, Germany, Austria, the Netherlands, the United Kingdom, and France have created such advisory panels and committees. But several problems impede their success.

The Washington Principles call for commissions or other bodies to identify art that was confiscated by the Nazis and to assist in addressing ownership issues to have a “balanced membership.” But some European countries consider this only to mean a variety of their own professionals from different disciplines. Instead, the best practice would be that they should also include international experts and ones that are familiar with the perspectives of both claimants and museums.

France has a commission for looted art recovery, and under their new proposal, CIVS, which has handled Holocaust compensation for French survivors, has been given the responsibility, along with several art experts, to deal with Nazi-looted art claims, and appears to be doing so efficiently. But because France has no de-accession law, CIVS can only provide compensation to claimants, not restitution of the artworks themselves, unless they can determine that the accession into the national register was by a mistake. Moreover, the focus of French efforts is on their MNR collection, not their public museums.

The Netherlands panel, which was established in 2003, had an enviable record, recommending the return of hundreds of works of art. But recently, there is significant criticism of their panel, based upon new stricter Dutch policies for returning looted art, in which a decision on restitution is based upon a balance of interests between the interests of national museums against the claims by Jewish Holocaust survivors or their heirs. The panel is instructed to weigh “the significance of the work to public art collections” against the emotional attachment of the claimant, and they even look at the degree of persecution. This balance of interest test is contrary to the Washington Principles. In 2016, under the

new policy, all seven claims it considered were rejected by the Panel. I would urge the Dutch restitution panel to follow the practice of the UK Spoliation Panel, which is more consistent with the spirit of the Washington Principles: once theft is established, the emotional connection of the claimant to the artwork or the degree of Nazi persecution should not be balanced against the method of acquisition of the museum or its importance to their collection. Plain and simple, they should not hold Nazi-looted art which does not belong to them. That is the only way to do justice to the original victim of Nazi persecution.

Despite welcome amendments in 2016 and the further welcome reforms just announced by Monika Grütters to its Rules of Procedure, the German Limbach Commission must implement these reforms. In 15 years only 15 cases have been resolved, and their concept of “balanced membership” called for by the Washington Principles precluded any non-German, international participation. There is a Bundestag inquiry into the Limbach Commission’s management of Nazi-looted art claims. We recognize the federal nature of the German government and the sovereign rights of Länder (States ) on cultural issues. Just as they have so meaningfully done for decades in negotiating compensation issues for Holocaust survivors for Nazi crimes, perhaps the Federal German Government also could accept responsibility for “just and fair solutions” to Nazi-confiscated art, as called for by the Washington Principles., rather than deferring to the Länder (States) in this unique situation. They were given the looted property by the Federal Government in the first instance. Artworks touched by genocide could be subject to the Federal Government’s determination of their status. Hopefully, the states and museums could then follow the Washington Principles themselves. Of the 16 Länder who were signatories to the Joint Declaration, only a small fraction have implemented a restitution process.

The announcement by Commissioner Grütters of the 16,000 artworks and books returned is admirable. But since the Washington Principles, there has not been a comprehensive review of the amount of provenance research done by German public and private museums, and the amount of provenance research undertaken, and the number of art objects classified as potential looted art is unknown.

We take note of concerns presented to the U.S. government by private parties regarding Germany’s handling of Nazi-looted art: the need for German museums to put their art collections online, along with their respective provenance to provide transparency in their holdings and to enable potential claimants to search for confiscated works; to publicly report on their restitutions and other settlements of claims, and on their progress in using the enhanced public funds that Minister Grütters has obtained from the Federal Government for greater provenance research; the absence of a single institution or point of contact to help claimants with their claims. Moreover, despite Germany’s recognition that the Washington Principles apply to private museums and collections as well as public ones, there has been very few restitutions of Nazi-looted art in the hands of private foundations and individuals. A Holocaust Survivor or heir has no legal means to get their Nazi-looted art back if it is in private hands, and without German auction houses following procedures like Christie’s and Sotheby’s, they are being placed on the art market, denying survivors or their heirs with the opportunity to make claims.

The question of ownership of heirless art has not been addressed and unclaimed Nazi-looted art remains in German museums, which have de facto ownership until a survivor or heirs come forward. The German government might, for example, reach a mutually agreeable means of handling heirless art with Jewish organizations and the State of

Israel once provenance research is completed and we have a better understanding of the art included in this category.

The experience of the United States underscores the mixed report card in the 20 years since the Washington Conference. The United States has a unique situation. Except for the National Gallery, the major museums in the U.S. are private, not public as in Europe. There is no ministry of culture to sponsor legislation and oversee provenance research, which is the norm in most western European countries. Moreover, there is the sheer magnitude of the task: The UK has about 3000 public museums, and Germany about 6000; the U.S. is home to over 35,000 largely private museums. Fortunately, there is a culture of self-regulation in the U.S. Among the more than 18 million objects held by American museums, those institutions have identified approximately 25,000 works which, though not necessarily stolen by the Nazis, require further research into the ownership during the Nazi era, and have been published on their websites and on centralized databases to assist claimants. Based on this research, between 1998 and 2006, twenty-two works in American museum collections have been identified as having been stolen by the Nazis and not restituted, and either the works have been returned to Holocaust victims or settlements have been reached with heirs.

The Washington Principles were heavily influenced by the U.S.-based Association of Art Museum Directors guidelines. The AAMD has stated that their “commitment to these core values and the success of its members in the identification, recovery and restitution of works seized by the Nazis have ensured that America’s art museums are among the most trusted and respected public institutions in the world.” The Nazi-Era Provenance Internet Portal (NEPIP) database, created by the AAMD and hosted by the American Alliance of Museums was a great innovation, providing information on looted objects or objects with significant gaps in their provenance. There are 179 U.S. museums that have listed over 29,000 covered artworks in the United States that passed through Europe between 1933 to 1945 in a portal that was designed to permit families to examine this database for their looted art, without having to go to each museum individually. But its utility is compromised by what the AAMD itself calls outdated technology and software. It is important for AAMD to create a state-of-the-art databased that can be readily accessible and has the information necessary for families to identify potential Nazi-looted art.

But has been particularly disappointing that in the past ten years or so many American museums lost an appreciation for the Washington Principles and began to assert affirmative legal defenses, like the statute of limitations, and even to bring preemptive injunctive motions before claims were filed to defend against restitution claims, rather than have them decided on the merits. The U.S. unfortunately has no commission or panel to resolve disputes on their merits outside of court.

Significantly due to the initiative of Ambassador Ronald Lauder, Congress passed in 2016 the HEAR Act (Holocaust Expropriated Art Recovery Act), which allows claimants to present a claim in court for 6 years after the object has been located and identified and resets the clock for those cases when the object’s location was known but the claim was barred by previously existing statutes of limitation. Interestingly, the AAMD supported passage. The goal of the HEAR Act was not to jump start an endless line of litigation in U.S. courts, which is expensive and time consuming, but to remove the main obstacle American museum board members use when faced with claims to their collection. The 6-year period should enable both sides to complete comprehensive research privately and jointly and to work out settlements, which could be either restitution or compensa-

tion, if that is what the parties choose. As a result of the HEAR Act, more and more museums are settling claims, and I hope this will continue over the next several years. But that does not mean museums will agree to every claim. The amount of evidence submitted on behalf of claimants remains critical to museums, and because there is no independent panel to resolve disputes, claimants will often be forced to go through lengthy and expensive court fights. The museums take the position that the “just and fair solution” called for by the Washington Principles does not mean simply giving contested art back

## ROADMAP FOR THE FUTURE

Based upon the experience of the past 20 years by a number of countries under the Washington Principles, permit me to provide what I think are the best practices that should guide our “Roadmap for the Future.”

First, we now appreciate more clearly than 20 years ago, both that we must look beyond artworks alone, and that the looting/confiscation by the Nazis of art and cultural property must be given a wider definition than plain, outright theft. Germany’s definition sets a standard other country could emulate. Many refugees seeking to escape Nazi Germany had to pay exit taxes and find expensive ways to leave and enter another country, and were forced to sell their artworks, cultural property, books and other possessions at bargain basement prices (“forced sales”). Others who were able to take some property out of Germany often had to sell them at far below their market value to sustain a new life for themselves and their families (“flight sales”). So, Germany defines a cultural asset to include items of historic, artistic or other cultural or identity building significance. They also define “confiscation through Nazi persecution” to include not only theft or stealing, but a loss of assets suffered as a ““result of forced sale, expropriation, and other means,” and also to cover “flight assets,” where artworks and cultural property were sold out of necessity during time of economic hardship, without physical coercion, either in Germany or abroad.

Second, thorough provenance research of public and private collections to identify possible Nazi-looted art is central to implementation of the Washington Principles, but it is demanding, time-consuming, and expensive.

The Netherlands serve as a model by expanding their research to include not only art acquired by their museums before or during the war, but also donations that came later and have suspicious gaps in their provenance. Germany likewise has set a standard by allowing private collections to receive government funds to conduct provenance research, if they will follow the Washington Principles if they discover possible Nazi-looted art in their collections. This requires more trained provenance researchers and more funds for museums to undertake time-consuming and costly provenance searches. I urge European governments to create special resources for their public museums to achieve this result.

Almost all U.S. museums are private, with the exception of the National Gallery of Art in Washington, but they rely upon donations from donors and the general public. Some percentage of what they raise should be set aside for provenance research. In addition, universities in both the U.S. and Europe should provide multi-disciplinary courses to help train a large number of provenance researchers. Adequate funding for provenance research is essential. Germany to its credit has devoted additional money to help its

museums. The AAMD believes that one of its biggest challenges is the absence of qualified researchers. Universities should develop courses in art provenance research to teach the cross-section of law, art research and history, and build up a body of experts.

Austria and Germany have set positive examples of conducting research at all levels, leading to restitution of books and objects of lesser financial value, but of powerful meaning to the families from which they were confiscated. Major museums in Europe and the U.S. have lesser works that are normally kept in storage and not exhibited. Only by provenance research can they see the light of day for potential claimants.

Israel will shortly launch a nationwide program of provenance research for their museums and will provide public funding to train provenance researchers with international experts in the field.

Third, descriptions of all the collections of public museums should be published on accessible websites, with accompanying provenance results, including not only the name and picture of the painting, but the object-level details on its provenance and previous owners, so they are accessible to potential claimants and art historians. This is not being done as completely as necessary. In the 21st century digital age there is no excuse for not providing the widest publication of databases.

Fourth, certain states should begin to abide by the Washington Principles, including Hungary (where the possessions of Jewish victims were plundered during the War, with a pro-Nazi government) Poland and Spain, which agreed to the Washington Principles and Terezin Declaration, but have largely ignored them.

Fifth, nations should treat all the public collections the same in diligently researching, identifying, and, where appropriate, restituting or compensating Holocaust survivors or their heirs. Public collections in France and the Netherlands should be treated the same as the French MNR and Dutch NK collections; both types of collections should be treated with equal diligence and in compliance with the Washington Principles.

Sixth, all countries, which have Nazi-looted art in their public museums, should pass de-accession laws that will permit them to return any confiscated artworks in their possession to their rightful owners, and, to revise their laws to enable private museums to do the same.

Seventh, the Washington Principles apply to and should be honored by private collections and the private art trade just as much as to public museums, and I call upon them to abide by them. This is especially the case where private collections accept public support for exhibitions and other activities. We can all gain inspiration by the decision of the Dutch royal family which returned a painting by a Dutch master purchased by Queen Juliana from a Dutch art dealer without knowing its tainted history. When the palace's investigation into the thousands of artworks in the collection of the House of Orange found convincing evidence, the painting had been the product of a forced sale to a Nazi bank in Amsterdam, they returned it to its rightful owner.

European nations have not successfully addressed Nazi-looted art trade in private collections, which is being recycled through the European art trade. No private collector or private museum should want to keep or traffic in stolen goods, especially Nazi-looted art. Indeed, some are beginning to come forward proactively when they learn of the tainted provenance of their artwork.

Knowingly trafficking in stolen goods may itself be a criminal violation. But the private art trade should self-regulate and encourage settlements between the original owners

or their heirs and the current possessor of Nazi-looted art, even if local legislation protects the current possessor from ownership claims because of the passage of time. The positive way in which Germany handled the discovery of the Gurlitt collection is an example: establishing a special commission with international art experts from Israel and the United States to supplement their own members.

The world's two largest auction houses, Christie's and Sotheby's, have set a global standard for the private art market. They have full-time professionals and staffs to identify and refuse to sell suspect art consigned to them for sale, and to search for their rightful owners. Christie's has published Guidelines. They have had significant success in working out mutually agreeable solutions between the claimants whose families were victimized by the Nazis and the current possessors, often good faith purchasers. Christie's published Guidelines in 2009 for handling Nazi-era art restitution issues when identified in its assignments and sales. Through this approach, and a more informal but useful one by Sotheby's, a template has been created for successfully resolving Nazi-era issues between private parties. Major auction houses in continental Europe should adopt a similar policy, to cleanse the international art market of tainted goods. In addition, tax incentives could be considered to encourage private collectors to voluntarily come forward and resolve issues around Nazi-confiscated art they may have unknowingly acquired, to make up for the loss they will suffer.

The Art Dealers Association of America should encourage all of their members through their Code of Ethics to follow the Washington Principles, which would also ensure that the American private art market has the highest standards of transparency and integrity, and is not tainted by Nazi-looted art.

Switzerland has made a good start in regulating their private art market, but it does not appear to apply to Nazi-looted Art. An article of the Swiss Federal Law on International Transfers of Cultural Property bans dealers and auctioneers from entering into an art transaction if they have any doubt as to the provenance of an object; notes that the burden of proof is partially transferred to the seller; and that the possessors of the artwork cannot rely upon the principle of good faith if they are unable to prove that they paid due attention at the time of acquisition. When establishing whether a work has tainted provenance, Swiss dealers should not take into consideration the protection that the passage of time may award to current possessors in Europe, but should act under the "fair and just solutions" principle of the Washington Principles and apply this to Nazi-looted art.

The AAMD has pursued its own guidelines for its over 240 private museum members in the U.S. Over the years since the Washington Principles, the search for "just and fair solutions" has been conducted with museums, art dealers, and auction houses. Several methods have been used: negotiated settlements; litigation in courts followed by negotiated settlements; conciliation though the use of expert facilitators; mediation; and arbitration with arbitral awards. The new HEAR Act may promote more consensual agreements out of court.

Eighth, nations with public museums should establish a point of contact for claimants to help them with their claims. The Holocaust Claims Office of the New York Department of Financial Services is one local example in the United States. If governments fund provenance research for their museums in disputed cases, they should provide funding for claimants as well.

Ninth, there should be no time limit on bringing claims if the complete identification and location of the art is not previously known. Reasonable time limits should be set once the identity and location of the object is actually known. Likewise, there should be no sunset to the operation of the advisory panels which have been established; unless extended, the UK Spoliation Panel will soon go out of existence. I have every confidence its tenure will be extended, given its positive record.

Tenth, decisions by the national panels should be posted in the internet, the reasons for their decision stated in detail, and translated into several languages, including English, so that they can serve as useful guideposts for future action.

Eleventh, more engagement by the European Union would be very useful, while recognizing that member states retain sovereignty in cultural affairs. In 2014, the European Parliament and European Council passed a Directive (2014/60/EU) on the return of cultural objects unlawfully removed from the territory of a member state. In 2017, at the initiative of the European Parliament, the European Parliamentary Research Service identified a number of weaknesses within the EU legal system, including Nazi-looted art, where there were contradictory recommendations in cases of restitution claims of Nazi-looted art, and insufficient measures to control future transactions in the private market in Nazi-looted art. They helpfully recommend, among other measures, support for provenance research at the European level, and a general prohibition of the sale and acquisition of stolen and illegally exported and imported works of art and cultural goods, all to “create a more certain EU legal system for restitution of claims of works of art and cultural goods looted in armed conflicts and wars.”

In a positive and welcome step, the Committee on Legal Affairs of the European Parliament (2017/2023 INI) in an October, 2018 Draft Report that may be taken up by the full European Parliament in December, explicitly recognizes the Washington Conference Principles on Nazi-Confiscated Art; notes the legal barrier of families recovering their art, and that no EU legislation explicitly governs restitution claims for works of art and cultural goods looted; states that insufficient attention has been paid at the EU level to the restitution of works of art and cultural goods looted in armed conflicts; calls for the establishment of a responsible and ethical European art market; asks for the creation of a comprehensive listing of all Jewish-owned cultural objects plundered by the Nazis and their allies from the time of spoliation to the present day; urges the European Commission to support a cataloguing system to gather data on looted cultural goods and the status of existing claims; favorably notes the U.S. Holocaust Expropriated Art Recovery Act as an example of dealing with statutes of limitation that creates difficulties for claimants in restitution matters. Importantly, the Commission is called upon to develop common principles on access to public or private archives containing information on property identification and location and tying together existing databases about title to disputed properties, and to identify common principles on how ownership or title are established as well as rules of standards of proof. Last, it calls on Member States of the EU to make all necessary efforts to adopt measures which favor the return of Nazi-looted property, and that the return of artworks looted in the course of crimes against humanity to the rightful claimants is a matter of general interest.

Twelfth, heirless art, where the identity of the owner of Nazi-looted art cannot be identified, most likely because the owner was killed in the Holocaust, is directly covered by the “just and fair solution” standard of the Washington Principles, but presents daunting challenges. But with improved databases, more detailed provenance research,

and more readily available genealogical information that could not be envisioned 20 years ago, additional efforts should be made to locate heirs. There are creative solutions which can be considered if no heirs are identified: using heirless art as an educational tool about the Holocaust through loans to Israel and other countries for exhibition; their designation when displayed as artworks confiscated from an unknown Jewish family during the Holocaust; and as in Austria, as a last resort, their sale, with the proceeds to go to Holocaust survivors.

In any event, the ownership of heirless Nazi-confiscated art confiscated from Jews should not be with the current possessor or incorporated into their permanent collection of museums, so that if a claim is made in the future against the artwork, there will be no question it can be restituted. A solution to this difficult issue should be the product of a dialogue between the governments, their Jewish communities, international Jewish organizations, and the State of Israel.

The Berlin Conference 20 Years Washington Principles: Roadmap for the Future gives us perhaps the last opportunity to get new energy and momentum behind fulfilling the promise of the Washington Principles. We must not turn our backs on Holocaust survivors and the memory of the six million Jews and millions of others who perished. We must not let history's verdict on us be one of disappointment that we failed to fulfill the commitments we made to the Washington Principles and Terezin Declaration. We have come so far in the right direction in the past 20 years. Now is the time to rise to the challenge by going the rest of the way. We can do it. We must do it.



## PREPARED STATEMENT OF TRACY TANSIA BIBO

First of all, I would like to thank the Helsinki Commission for inviting me to speak at this very important briefing.

Today I am speaking as a master in international politics, former political adviser, former elected official, political activist and child of Congolese migrants. My academic background, my work experience and my migration background form the basis of my work and the statement that I will make today.

In my statement I will talk about the Belgian colonial past, how it is dealt with in Belgium and what steps have already been taken in order to address historic wrongs, heal wounds, bridge divisions, and build a shared future.

First of all, I would like to point out that the Belgian political system is a complex system with several regions (Flemish, Wallonia and Brussels region), three different parliaments, and three different governments. The history of colonization and the relationship between the different regions and the former colonies is very different. This also determines the tone with which politics deals with the colonial past.

### **When we talk about colonization**

When we talk about the colonization of Belgium in Africa, we mainly talk about the Democratic Republic of Congo. From 1885 to 1907 Congo was the private property of the Belgian King Leopold II and from 1907 to 1960, a Belgian colony. But let us not forget that between 1922 and 1962, Rwanda and Burundi were areas of Belgium's mandate.<sup>1</sup>

The Belgian colonization in Congo was a system based on the superiority of the white race to the black one. A handful of Belgians had control over an area 70 times larger than Belgium. The system was also based on racial segregation mainly in cities where the black Congolese population did not have access to the same areas as the white population. Violence was a daily occurrence for the Congolese. During the period of Leopold II, people's hands were cut off in some places when they did not reach their rubber quota, villages with rebellious Congolese were burned down, women were raped, and the strong men were captured. During the Belgian colonization, disobedient Congolese or insurgents were abused (whipping) and in some cases thrown into prison.

*The main players in the colonization story were the:*

- Catholic Church: whose goal was to “win souls” and save the Congolese from their pagan religions.
- big banks/wealthy (mostly Wallonial) families and entrepreneurs: that made a profit from the raw materials/natural resources that were extracted from Congo.
- Belgian Royal family: that made their fortune with Congolese money and the inheritance of the Belgian King Leopold II

These actors are the ones who maintained the colonial system for many years and benefited most from it.

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<sup>1</sup> Historians believe that the Belgian colonial system and the strict separation between Hutus and Tutsis they facilitated was one of the causes of the Rwandese genocide in 1994. Therefore, the Belgian government should apologize for that.

## General omission

75 years of brutal repression has left enormous scars on the Congolese population. The fear of repression has caused many Congolese people in Congo and from the diaspora to remain silent for a long time about the impact of colonization on their lives and the lives of their ancestors.

Belgium, too, has for a long time remained silent about the atrocities that were committed in Congo. Not only out of shame, but also because for a long time people believed that the colonization was a civilization mission. It is not for nothing that many history books in Belgium do not mention colonization or, when they do, focus on the achievements of the Belgians (roads, health care and education). This general omission in Belgian society made people for a long time believe that colonization was not that bad after all.

*The past years there has been a change in the way we look at colonization in Belgium. There are several reasons for this:*

Generational differences: The first generation of Congolese in Belgium did not really feel Belgian and did not really care about the past (with a few exceptions). The 2d generation, like myself, has become aware of the fact that in education the shared history that Congo has with Belgium has been taught in a limited way. This generation has started to question the role of Belgium in Congolese colonization. Not only do we question the role of Belgium in colonialism but we also ask for recognition and reparation for our Congolese ancestors.

Systematic racism on black people in Belgium: The systematic racism that black people experience in Belgium has its roots in colonization and this has been proven by a number of studies. The best known study is that of the King Baudouin Foundation,<sup>2</sup> which proved, among other things, that structural racism in the labour market has to do with the stereotypes created about black people during colonization. These stereotypes live on in people's minds, either consciously or unconsciously. The recent U.N. report<sup>3</sup> (on the human rights of people of African descent in Belgium) confirms a number of issues that were addressed in that study.

A number of books and documentaries have been made in recent years. Examples: the book by David van Reybrouck "Congo: the epic history" (2010) and the documentary children of the colony in the Flemish media (2018).<sup>4</sup>

The question of the *metis children* (mixed raced children): A change in the adoption laws revealed that different metis children born during the colonization to a white father and black mother were kidnapped, sent to boarding schools in Rwanda and/or Congo and after the independence of Congo were sent to Belgium to be adopted by new families where they lost their identity. These issues led to the first resolution and apologies to this group by the Belgian prime minister in 2019.

## Reparations

When you break something that doesn't belong to you, you need to repair it or pay it back. It is no secret that colonization has broken the DNA of Congolese culture and has put a hold on the development of the population in Congo itself. Some people are

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<sup>2</sup> <https://www.kbs-frb.be/en/Newsroom/Press-releases/2017/20171122AJ>

<sup>3</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24155&LangID=E>

<sup>4</sup> <https://www.vrt.be/vrtnws/en/2018/12/11/british-paper-reports-on-vrts-congo-documentary-series/>

scared only by hearing the word reparation but if we want to heal wounds, build bridges and build a shared future repairing what was broken in the past is indispensable.

*Some steps have been made to address the historical wrongs of the Belgian colonization in Congo:*

**Education:** The first step to address a historical wrong is acknowledging and teaching it. On the Flemish side the Minister of Education stressed the importance of changing the narratives when teachers talk about colonization and include the suffering of the Congolese people. Only focusing on the accomplishments of the Belgians in Congo is no longer acceptable in 2019. She introduced some new directives for the schools in Flanders. There are, however, a number of limitations to directives. The different school networks are free to design these lessons about colonization. The teachers also have the freedom to decide how extensively they will talk about colonization. So, it is also encouraged to talk about diversity and how to deal with it in the teachers training. It is a small but important step in the recognition of the suffering of the Congolese and the impact of Colonization on the current Congolese diaspora.

**Politics:** As a political adviser, I worked on the resolution of the metis children. In that resolution the government urged reparations for the metis children. The resolution led to apologies from the prime minister and concrete actions (opening the archives, helping the metis find their families and give them financial help to go back to the former colonies to find their families). The work of the Belgian government has been on hold since the last elections. We will need to wait for the next government to see how the policy for metis families will be implemented.

While apologies for colonization have been given by individual politicians, an apology by the Belgian government for colonization hasn't been given yet. The mayor of Brussels f.e. apologized for colonization and also inaugurated the Lumumba Square as a symbolic gesture to the Congolese diaspora living in Belgium.

After the various studies and the realisation that the impact on the Congolese diaspora is large (racism in Belgium today), there was a consensus among different political parties to discuss colonization in different political hearings. These hearings should take place after the inauguration of the government, which is currently in the process of being set up following our recent elections. With the exception of two parties, all parties are convinced that talks on reparations will form an important part of these hearings.

What is also hindering this process is the fact that various parties want to avoid a constitutional crisis. In which the Flemish nationalist party uses the issue to attack the royal family in order to force a split in Belgium. That is why it has been radio silent at the side of the royal family around the issue. The King has already recognised in the past that Congolese soldiers had fought during the World Wars and those soldiers should not be forgotten in history. But he has not yet spoken a word on colonization. Also, when we talk about reparations the fear of the financial cost that it can bring is something the people that benefited the most from colonization want to avoid at all cost.

When we talk about reparations, we also have to talk about restitution of stolen art. The director of the new Africa Museum in Tervuren already mentioned that this would be the next step. However, this also depends on the conditions of the museum in Congo and the protection of some art. The stolen art work in the Museum is controversial. The

director however tries to connect old colonialists with members of the Congolese diaspora to bridge divisions and create a mutual understanding of the shared history.

## **Conclusion**

As a Belgian of Congolese origin who has worked on colonization and reparation in recent years, I have been able to learn a lot about the issue and think about how we can deal with the colonial past and build a future with respect and recognition for the victims of the colonial system.

**Dialogue:** It is important to enter into a dialogue with each other. For example, young people from the diaspora and former colonialists can enter into a dialogue with each other about the shared history. It is not our story vs their story but it's our shared history.

**Recognition:** starting with recognition is important. We must acknowledge that colonization, such as slavery, were racist systems that benefited one group and marginalized others. But the most important thing is recognizing that until today it has had an impact on marginalized groups. To say that people just have to get over it is to turn a blind eye to the racism that black people are facing today. We can only find a solution to the racism that black people are experiencing today when we look at the causes.

**Knowledge:** knowledge about colonization (and what Congo looked like before colonization) is limited. When people (elected officials or the public opinion) have no knowledge about colonization, it is difficult to get them interested in resolutions or legislation about it. As a parliamentary assistant and political adviser, it was my duty to explain to all the elected officials of my party about colonization and its impact on the Congolese population. Demonstrating that the colonial system is separate from individual stories of people during colonization is important, as not to demonize every colonizer. It is also important to explain how the racial injustice of today is based on the colonial system.

**Reparations:** It's hard to talk about reparations. Reparation is about fighting racial inequalities created by political systems that in the past were maintained by a privileged group. Hearings to determine exactly what this recovery means are therefore necessary. In Belgium, the critics of reparations are going to say that they do not want to pay out money to a corrupt country like Congo. But recovery is also about racial inequality in Belgium. What if we finance programmes that, for example, aim to provide better health care for the black population who, according to studies, are more affected by certain diseases? What if we eliminate inequality in education by means of targeted programmes? Reparations is about more than handing out cheques to the black population. It is about eliminating inequalities. That is why it is more than necessary.

**Dialogue and knowledge about colonization:** Recognition and reparations are the key elements to address historic wrongs, heal wounds, bridge divisions, and build a shared future. I believe this is the key to a future where we fight inequality by understanding and addressing the past.

Thank you  
Tracy Tansia Bibo

## PREPARED STATEMENT OF DR. DIANE ORENTLICHER

Chairman Hastings, Co-Chairman Wicker, and Honorable Members of this Commission,

Thank you for convening this session on an issue that is both agonizingly difficult and vitally important: What measures can help bridge social divisions borne of historic wrongs against members of an ethnic, racial, religious, or other group? When I speak of “historic wrongs,” I am referring to periods in a nation’s history when individuals have suffered exceptionally grave and systemic harms.

Experience in many countries has shown that, unless they are adequately addressed, historic wrongs leave deep wounds, whose toxic legacy afflicts not only victims but whole societies. This insight is central to the field of transitional justice, in which I have worked for 30 years.

Experience has shown that, while each society must address the dark chapters of its past in light of its unique experience, we can benefit enormously from studying other countries that have had to work through traumatic periods in their own past.

In that spirit, I would like to share lessons from the experience of Bosnia-Herzegovina, which saw brutal ethnic violence as Yugoslavia imploded in the 1990s.<sup>1</sup>

### *Bosnian Efforts to Address Wartime Atrocities*

So far, efforts to address “ethnic cleansing” in Bosnia have centered on the work of an international criminal tribunal based in The Hague. In addition to its own work, the Hague Tribunal helped catalyze domestic war crimes prosecutions in Bosnia, Serbia, and other former Yugoslav countries.

The justice many survivors have found in these courts has been precious beyond measure. But prosecutions did *not* foster reconciliation among Bosnia’s major ethnic groups—nor, I would add, should we expect them to. In the past decade, ethnic tensions in Bosnia have soared, and are now alarmingly high.

Those tensions are reflected in, and exacerbated by, a toxic syndrome of denial of wartime atrocities. As in other countries that have failed to reckon with their past in a forthright fashion, denialism takes many forms in Bosnia. Let me mention five:

- The first is outright factual denial by government leaders, political elites, and ordinary citizens that members of their own ethnic group committed atrocities against members of other ethnic groups.
- The second is minimization of the extent or nature of those atrocities, such as when Serb elites acknowledge that Bosnian Serbs killed a large number of Muslims in Srebrenica but insist that number has been vastly exaggerated.
- The third is *justifying* atrocities committed by one’s in-group by, for example, characterizing genocidal crimes as acts of self-defense.
- The fourth is celebrating convicted war criminals belonging to one’s own ethnic group as heroes.
- The fifth is practicing silence about atrocities so grave as to demand recognition and redress.

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<sup>1</sup> These observations are developed in greater depth in DIANE ORENTLICHER, *SOME KIND OF JUSTICE: THE ICTY’S IMPACT IN BOSNIA AND SERBIA* (Oxford University Press 2018), at <https://global.oup.com/academic/product/some-kind-of-justice-9780190882273?cc=us&lang=en#>.

A variation on this last form of denial that has pained survivors of wartime atrocities has been a pattern of local Bosnian officials denying victims the right to establish even modest memorials to their suffering, such as placing a plaque at the site of a notorious detention camp.

Bosnian survivors experience these and other instances of denial as a tormenting and continuous harm. And more to the point of this briefing, the social effect of pervasive denial has been to further inflame ethnic divisions.

### *Acknowledgment*

I do not believe Bosnia can become unified in any meaningful sense until public officials and other elites, as well as ordinary citizens, acknowledge the full extent of atrocities committed by members of their in-group and unequivocally condemn their crimes.

To be sure, there have been significant “moments” of acknowledgment since the conflict in Bosnia ended, when regional leaders publicly recognized the harm their in-group inflicted and expressed genuine remorse. These gestures were welcomed by survivors, providing at least a momentary glimpse of the healing potential of apologies that are rooted in the establishment and acceptance of historic facts and carry the promise of further measures of repair.

But their promise has been betrayed by subsequent denialism.

A dramatic example involves the Srebrenica genocide, whose 24th anniversary was observed last week. In 2004, a commission established in Bosnia’s predominantly Serb entity, Republika Srpska (RS), issued a report identifying almost 8,000 victims of Srebrenica as well as dozens of previously unknown mass graves. Soon after, the RS president, Dragan Čavić, acknowledged the extent of the massacre and condemned it unequivocally. His televised remarks concluded: “I have to say that these nine days of July of the Srebrenica tragedy represent a black page in the history of the Serb people.” Several months later, the RS government issued an apology. At that moment, the official RS narrative about Srebrenica seemed to align with what its victims knew to be true.

But this fragile achievement was soon undermined by extreme nationalist rhetoric, and ethnic narratives about the 1990s conflict have once again radically diverged. Last August, the RS parliament annulled the 1994 report and established a new commission to revisit the question of what happened in Srebrenica.

In this generally bleak setting, some Bosnians have reached across the ethnic chasm and developed local efforts to acknowledge and condemn wartime atrocities. These grass-roots efforts build from the premise that, if Bosnian leaders are not yet ready to face the past, its citizens can and must do what they can, where they can.

### *Lessons from Bosnia and Elsewhere*

In closing, I want to note several takeaways.

First, social divisions rooted in historic wrongs cannot mend without an honest reckoning, including a robust acknowledgment and condemnation of the original wrongs and a determination to address their toxic legacies.

Second, as important as it is to address historic wrongs, doing so can be painful and even polarizing. Thus it is important to approach the task with care as well as courage and persistence.

Third, a wealth of social science research can help us undertake the hard work of reckoning in a smart and effective manner. This literature can and should be mined to

help us understand the factors that animate resistance to facing past wrongs—and what it takes to change minds and dominant narratives.

Fourth, both experience and research suggest that, as we try to come to terms with our own past, it is important to create opportunities that literally bring people together. Some of the local initiatives in Bosnia have done just that, and we have an inspiring example in the approach of the National Memorial for Peace and Justice in Montgomery, Alabama. The memorial includes a pillar representing every U.S. county where lynchings took place, each of which is inscribed with the names of known victims. In an inspired move, a duplicate pillar was made for each county, and the Equal Justice Initiative (EJI), which developed the memorial, issued an invitation to each county to claim its pillar. The very process of doing so meaningfully and constructively engages local communities with their own history.<sup>2</sup>

Fifth, even when there is resistance to, or disinterest, in facing a painful chapter in a society's past, effective media can dramatically alter public perceptions. I'm reminded here of the impact of Ava DuVernay's series, *When They See Us*. In light of the powerful response, many wondered why much of the public did not react sooner to the facts it dramatized, which have been known for years. The point is, DuVernay helped so many see those facts for the first time.

Finally, we have to be strategic as well as creative, seizing the full potential of emergent opportunities without overburdening them. Sometimes, societies reach a turning point, perhaps a fleeting moment, when key sectors can take a step that was previously inconceivable, like recognizing the necessity of removing confederate monuments or at least beginning to explore the concept of reparations for slavery and its legacy, as Ta-Nehisi Coates' landmark essay stimulated many to do.<sup>3</sup> The very *doing* of what is possible in the moment—taking down hurtful monuments, for example—can pave the way to the next stage of reckoning.

Effective measures of healing social rifts rooted in grotesque violations of human dignity are demanding. There are no easy fixes. But there are wise ones.



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<sup>2</sup> The memorial's web site explains the process and its purpose this way: EJI is inviting counties across the country to claim their monuments and install them in their permanent homes in the counties they represent. Eventually, this process will change the built environment of the Deep South and beyond to more honestly reflect our history. EJI staff are already in conversation with dozens of communities seeking to claim their monuments. EJI approaches these conversations—and all of our community education work—with thought and care. EJI shares historical and educational material with community members, encourages participation from communities of color, and works with partners to find an appropriate geographic location for each monument to ensure that the process of claiming monuments helps local communities engage with this history in a constructive and meaningful way.

<sup>3</sup> Ta-Nehisi Coates, *The Case for Reparations*, THE ATLANTIC, June 2014, available at <https://www.theatlantic.com/magazine/archive/2014/06/the-case-forreparations/361631/>.

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