Crimes de l’histoire et réparations : les réponses du droit et de la justice

Sous la direction de Laurence BOISSON de CHAZOURNES, Jean-François QUÉGUINER et Santiago VILLALPANDO

EXTRAIT

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CRT-II: THE SECOND PHASE
OF THE SWISS BANKS CLAIMS PROCESS

BY

VEIJO HEISKANEN

OF COUNSEL, LALIVE & PARTNERS, GENEVA;
FORMERLY SECRETARY GENERAL & SENIOR CLAIMS JUDGE,
CLAIMS RESOLUTION TRIBUNAL FOR DORMANT ACCOUNTS IN SWITZERLAND

1. — INTRODUCTION

The Claims Resolution Tribunal for Dormant Accounts in Switzerland (hereinafter, the «CRT» or the «Tribunal») is an international claims tribunal based in Zurich (1). Initially created in 1997 to process claims to Swiss bank accounts that had lain dormant since the Second World War, the Tribunal’s present mandate is to process claims to assets held by Holocaust victims in Swiss bank accounts that were open or opened between 1 January 1933 and 31 December 1945, regardless of the present disposition of such accounts. This process is known as the «CRT-II» process.

The Tribunal’s present mandate is based on a Settlement Agreement reached in class action lawsuits brought in 1996-97 against major Swiss banks in United States courts. These lawsuits were subsequently consolidated in the United States District Court for the Eastern District of New York (Korman, C.J., presiding) and became known as the Holocaust Victim Assets Litigation (Swiss Banks) (2). The plaintiffs in the litigation alleged that the banks had failed to identify and return assets deposited in the banks by victims of Nazi persecution and that the banks had accepted and

(1) While the Tribunal’s territorial mandate is international (or rather, global), in the sense that it processes claims made by individuals living anywhere in the world, it is organized under Swiss law as an association, a not-for-profit legal entity.
(2) In Re: Holocaust Victim Assets Litigation, Case no CV 96-4849 (ERK)(MDG).
laundered assets looted by the Nazis and profits generated by the Nazi use of slave labor.

The class action lawsuits were settled in January 1999, when the banks agreed to create a US$ 1.25 billion Settlement Fund (3). The Settlement Agreement also foresaw that the plaintiffs would seek the certification by the District Court of five different claimant classes whose members would be eligible to make claims to the Settlement Fund. These five classes are: (1) the Deposited Assets Class (covering individuals who intended to assert a deposited assets claim); (2) the Looted Assets Class (claims to assets expropriated, «Aryanized» or otherwise wrongfully taken by the Nazi Regime); (3) Slave Labor Class I (slave laborers for German companies); (4) Slave Labor Class II (slave laborers for Swiss companies or their foreign subsidiaries); and (5) the Refugee Class (victims of Nazi persecution who sought entry into Switzerland to avoid Nazi persecution, but who were not admitted into Switzerland or, after having been admitted, were deported, detained or otherwise mistreated) (4).

The Settlement Agreement stipulated that, with the exception of Slave Labor Class II, a claimant (or the individual who suffered the loss, if not the claimant) ought to be a «Victim or Target of Nazi Persecution» in order to be eligible to participate in the settlement. A «Victim or Target of Nazi Persecution» is defined in the Settlement Agreement as «any individual, corporation, partnership, sole proprietorship, unincorporated association, community, congregation, group, organization or other entity persecuted or targeted for persecution by the Nazi Regime because they were or were believed to be Jewish, Romani, Jehovah’s Witness, homosexual, or physically or mentally disabled or handicapped» (5).

A worldwide notification program was implemented under the supervision of the District Court to inform class members of the Settlement Agreement and their eligibility to participate in the settlement. A New York lawyer, Mr. Judah Gribetz, was appointed by the District Court to develop a comprehensive plan for the allo-

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(3) The Settlement Agreement was approved by the Court by Memorandum and Order of 26 July 2000, as corrected on 2 August 2000. A final order and judgment was entered on 9 August 2000.

(4) Settlement Agreement, Section 8.

(5) Settlement Agreement, Section 1.
cation and distribution of the settlement proceeds. Pursuant to the plan proposed by Special Master Gribetz, which was approved by the Court on 22 November 2000, the CRT was designated as the organization responsible for processing claims to deposited assets (6).

2. – BACKGROUND

The CRT-II process is a result of a gradual merger of three parallel processes that all started approximately at the same time, in 1996. These three processes were:

1) A comprehensive extraordinary audit of Swiss banks, known as the «Volcker Audit»;

2) Class action litigation against major Swiss banks in United States courts; and

3) A previous claims program handled by the CRT, known as the «CRT-I».

These three processes are discussed in more detail below.

A. – The Volcker Audit

On 2 May 1996, the Swiss Bankers Association (SBA) and two leading Jewish organizations, the World Jewish Restitution Organization and the World Jewish Congress, signed a Memorandum of Understanding establishing the Independent Committee of Eminent Persons (hereinafter the «ICEP», the «Committee» or the «Volcker Committees») to conduct a comprehensive forensic audit of Swiss

(6) Special Master’s Proposed Plan of Allocation and Distribution of Settlement Proceeds, In Re: Holocaust Victim Assets Litigation, Case no CV 96-4849 (ERK)(MDG) [hereinafter the «Distribution Plan»]. The Conference on Jewish Material Claims Against Germany (informally known as the Jewish Claims Conference, or «JCC») was put in charge of processing Slave Labor Class I claims and refugee claims submitted by Jewish claimants. The International Organization for Migration (IOM), a Geneva-based international organization, was tasked with processing Slave Labor Class I claims and Refugee Class claims submitted by non-Jewish Victims of Nazi persecution, as well as all Slave Labor Class II claims. These two organizations were also given the task of administering the humanitarian programs that were set up as a cy pres remedy in lieu of a claims program for the Looted Assets Class.

The Settlement Agreement was subsequently amended to cover claims against two Swiss insurance carriers, Swiss Re and Swiss Life. Pursuant to these amendments, the CRT was also designated to process claims to insurance policies issued by the participating insurance carriers. The Settlement Fund and the insurance carriers were each responsible for up to US$ 50 million to cover the amounts to be awarded on the policy claims.
banks (7). Paul A. Volcker, former Chairman of the Board of Governors of the United States Federal Reserve System, was selected by the party-appointed members as the Committee's Chairman.

The purpose of the ICEP investigation was twofold: (1) to identify accounts in Swiss banks of Victims of Nazi persecution that had lain dormant since the Second World War or had otherwise not been made available to the Victims or their heirs; and (2) to assess the Swiss banks' treatment of the accounts of Victims of Nazi persecution (8). The ICEP investigation sought to put an end, for once and for all, to the political controversy over the fate of the funds entrusted by Victims of Nazi persecution to Swiss banks, which had lasted for over forty years (9).

The ICEP investigation, which was declared an «official special audit» by the Swiss Federal Banking Commission (SFBC) to ensure its effectiveness (10), has been called the largest audit in history. The investigation utilized, at its peak, some 650 forensic accountants from four of the five major accounting firms. The investigation covered a period of more than sixty years and the auditors examined all available records related to the period 1933-1945 of some 254 banks that existed in 1945. These banks represented 82 percent of the Swiss banking system at the time. The direct expenses of the audit amounted to some SFr 300 million; these do not include the indirect costs of the banks resulting from diversion of staff and other resources from regular banking operations to assist the ICEP auditors in the investigation (11).

The investigation came to an end in December 1999, when the Committee published its final report (12). The Committee identified


(9) A separate investigation was carried out by an independent committee of experts established by a Swiss Federal Decree to investigate Switzerland's role generally in the Second World War. The committee operated under the chairmanship of a Swiss historian, Professor Jean-François Bergier, and is accordingly known as the «Bergier Commission» (id., p. 2). The Committee submitted its final report in the spring of 2002: see Final Report of the Independent Commission of Experts Switzerland - Second World War, 2002.

(10) Appendix G to the ICEP Final Report.

(11) ICEP Final Report, pp. 4-5.

(12) See supra note 7.
some 54,000 accounts that had a "probable or possible" relationship with Victims of Nazi persecution; this number was subsequently adjusted downwards to approximately 36,000. The Committee concluded that there was no evidence of systematic destruction of records of Victim accounts, organized discrimination against the accounts of victims of Nazi persecution, or concerted efforts to divert the funds of victims of Nazi persecution to improper purposes" (13). However, the Committee found that there was confirmed evidence of questionable and deceitful actions by some individual banks in the handling of accounts of victims, including withholding of information from Holocaust victims or their heirs about the accounts, inappropriate closing of accounts, failure to keep adequate records, many cases of insensitivity to the efforts of victims or heirs of victims to claim dormant or closed accounts, and a general lack of diligence – even active resistance – in response to earlier private and official inquiries about dormant accounts (14).

To give effect to its findings, the Committee made a number of recommendations relating to: (1) the creation of, and access to, a database of Victim accounts identified during the audit; (2) notice to potential claimants; (3) procedures for a claims resolution process; and (4) rules for valuing the accounts. The Committee specifically recommended that the CRT be put in charge of processing all claims by Victims of Nazi persecution or their heirs to the accounts identified during the investigation.

B. - Class Action Litigation

Against Swiss Banks

As the Volcker Audit was being launched in Switzerland, a parallel legal process relating to Holocaust victim accounts began in the United States. First lawsuits in U.S. courts against major Swiss banks, including the Union Bank of Switzerland (UBS), Crédit Suisse and the Swiss Bank Corporation (SBC) (15), were brought in October 1996 (16). As noted above, these lawsuits were subsequently consolidated in the United States District Court for the Eastern District of New York; the consolidated class action lawsuit

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(13) ICRP Final Report, p. 13 (footnote omitted).
(14) Ibid. (footnote omitted).
(15) SBC subsequently merged with UBS under the name "UBS".
(16) See Weisshaus v. Union Bank of Switzerland, no 96 CV 4849 (EDNY, filed on 3 October 1996).
became known as the Holocaust Victim Assets Litigation (Swiss Banks) (17).

The U.S. litigation came to an end in January 1999, when the plaintiffs and the banks signed a Settlement Agreement in which the banks agreed to pay US$ 1.25 billion in settlement of the lawsuits. In March 1999 the District Court appointed Mr. Judah Gribetz, a New York lawyer, as Special Master for the purpose of developing a proposed Distribution Plan for the settlement proceeds. Further action was taken by the District Court in June 1999, when it implemented a worldwide notice plan to inform potential claimants of the Settlement Agreement and the settlement classes. Over 560,000 individuals from some 109 countries returned the Initial Questionnaire made available during the notification program indicating that they wished to participate in the process and to make a claim under the Settlement Agreement. More than 80,000 of the 560,000 individuals indicated that they intended to make a claim to deposited assets.

On 2 August 2000, the District Court granted final approval to the Settlement Agreement (18), and on 22 November 2000 the Court approved the Distribution Plan proposed by Special Master Gribetz (19). Under the Distribution Plan, US$ 800 million out of the US$ 1.25 billion Settlement Fund was allocated to the Deposited Assets Class (20). The District Court also approved Special Master Gribetz’s recommendation that, as foreseen in the Settlement Agreement, the CRT be assigned the task of processing the deposited asset claims.

C. – CRT-I

In response to a growing concern that there were unclaimed foreign assets that had been deposited with Swiss banks dating

(17) See supra note 2.
(19) See supra note 6.
(20) The remaining 450 million were allocated to the other three claimant classes (Slave Labor Class I, Slave Labor Class II, and the Refugee Class) and the humanitarian programs set up in lieu of a claims program under the Looted Assets Class. However, apart from the humanitarian programs there is no overall cap for awards that can be made under the other claimant classes, and the administrative costs of the implementation of the Settlement Agreement are also covered from the remaining US$ 450 million (as well as the interest accrued on the Settlement Fund).
from the Second World War era, and as part of the investigative audit, ICEP, SBA and SFBC on 25 June 1997 agreed to establish a comprehensive claims resolution process to adjudicate claims to dormant accounts that had been identified by Swiss banks or that would be identified in the course of the ICEP investigation. On 23 July 1997, SBA published the names of 1,872 holders of accounts that were opened by foreign nationals prior to the end of the Second World War and had lain dormant since then. Additional names were published in October 1997; in total, the names of 5,570 owners of foreign dormant accounts were published (21). Individuals who believed that they were the rightful owners of published dormant accounts were invited to file their claims within six months of the date of publication (22).

In September 1997 the founding organizations established the Independent Claims Resolution Foundation (hereinafter «ICRF») to administer the claims resolution process. The ICRF was directed by a Board of Trustees, which was composed of Mr. Paul A. Volcker (Chairman) and representatives of SBA and the Jewish organizations; the ICRF thus was essentially an alter ego of the Volcker Committee. On 15 October 1997 the ICRF’s Board of Trustees appointed a number of lawyers and bankers to serve as arbitrators for the newly established Tribunal, named the «Claims Resolution Tribunal for Dormant Accounts in Switzerland», and to adjudicate the claims brought before it. Prof. Hans-Michael Riemer of Switzerland was appointed as the Tribunal’s Chairman (23).

The Tribunal was established as an independent arbitral tribunal operating under Swiss law and under the supervision of the ICRF. Accordingly, the banks at which claimed accounts were held participated in the arbitration process as respondents. The process was governed by the Rules of Procedure adopted by the ICRF (24) and the Swiss law on international arbitration (25). The CRT-I Rules

(21) SBA also published the names of 10,768 Swiss account owners whose accounts had been dormant since the end of the Second World War. Claims to these accounts fell outside the CRT’s jurisdiction.

(22) This deadline was extended several times and expired on 15 June 1999.

(23) The Tribunal eventually consisted of seventeen members, including a Chairman and a Vice Chairman.


regulated matters such as the Tribunal's jurisdiction, the appointment of panels and Sole Arbitrators, the applicable law, the claims resolution procedure, the taking of evidence, the making of awards, and the organization and administration of the Tribunal (26). The CRT-I Rules provided for the use of expedited procedures in certain instances, including initial screening of claims by a Sole Arbitrator to dispose of claims that were prima facie without merit and a fast-track procedure for uncontested claims (27). The Tribunal applied a relaxed standard of proof, reflecting the lapse of time since the opening of the accounts and the destruction of the Second World War and the Holocaust (28). The costs of the claims resolution process were borne in full by the Swiss banks, and the process remained free of charge for claimants (29).

The claims resolution process, which became subsequently known as the «CRT-I process», began in February 1998, when the Tribunal's Secretariat became operative (30). A total of 9,918 claims were eventually filed with the Tribunal. Of the 5,570 published accounts, 2,308 accounts were claimed. These accounts represented a reported value of approximately SFr 69 million (31).

The CRT-I process was completed after three and half years of operation, in October 2001, when the Tribunal submitted its final report to the ICRF. During the process a total of SFr 65.2 million was awarded by the Tribunal to claimants from more than 70 countries. A total of approximately SFr 16.2 million was awarded to Victims of Nazi persecution (32).

(26) See chapters I-II and V-X of the CRT-I Rules.
(27) See chapters III and IV of the CRT-I Rules.
(28) See Art. 22 of the CRT-I Rules («The claimant must show that it is plausible in light of all the circumstances that he or she is entitled, in whole or in part, to the dormant account. The Sole Arbitrators or the Claims Panels shall assess all information submitted by the parties or otherwise available to them. They shall at all times bear in mind the difficulties of proving a claim after the destruction of the Second World War and the Holocaust and the long time that has lapsed since the opening of these dormant accounts»).
(30) A Zurich-based law firm, Schellenberg & Haisaly (presently Schellenberg & Wittmer), was designated to serve as the Tribunal's Secretariat. An audit firm (ATAG Ernst & Young) was appointed by the ICRF to serve as a contact office for claimants, to receive and register claims, and to prepare claim files for use in the claims resolution process.
(32) Ibid.
D. — The Merger of the Three Processes

The three processes outlined above — the Volcker Audit, the Swiss banks litigation in the United States, and the CRT-I process — became increasingly intertwined over time. As described above, while the Volcker Audit and the CRT-I process were still underway, a settlement was reached in the class action lawsuit brought by victims of Nazi persecution against Swiss banks in the United States. The settlement looked toward the establishment of a separate claims resolution process for the benefit of «Victims or Targets of Nazi Persecution», as defined in the Settlement Agreement (33).

In accordance with the ICEP recommendations and pursuant to Special Master Gribetz’s distribution plan, the District Court by Order of 22 November 2000 designated the CRT as the implementing organization for deposited asset claims (34). By Order of 8 December 2000, the Court appointed two leading figures of the ICEP investigation, Messrs. Paul A. Volcker and Michael Bradfield, to serve as Special Masters for the purpose of establishing, organizing and supervising the claims resolution process for deposited asset claims.

On 5 February 2001, the CRT published on the Internet and elsewhere the names of over 21,000 account owners that the ICEP investigators had identified as «probably» belonging to Holocaust Victims. Class members were invited to complete a claim form and file their claims within six months of the date of publication. The initial filing deadline was subsequently extended by Court Order until 31 August 2001.

By the end of the filing deadline the CRT received approximately 32,000 claims (35). As the number of claims turned out to be signi-

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(33) See supra note 6 and accompanying text. The definition of a «Victim or Target of Nazi persecution» was also relevant in the CRT-I process. The definition was adopted in the Tribunal’s Rules on Interest, Charges and Fees, which provided that a specific current value adjustment factor and a «fees adjustment» would apply to accounts of Victims of Nazi persecution open or opened during the period 1933-1945, but not to accounts of individuals who were not Victims. The purpose of this adjustment was to compensate Victim claimants for the involuntary dormancy of these accounts that prevented the owners from making any investment decisions.

(34) See supra note 6 and accompanying text.

significantly less than expected (36), the Court on 30 July 2001 ordered that the approximately 560,000 Initial Questionnaires returned during the litigation would be treated as timely submitted claim forms (37). The Court noted that a preliminary review of the Initial Questionnaires, particularly of those in which the potential claimants indicated that they intended to file a deposited assets claim, suggested that many class members who had returned an Initial Questionnaire had not filed a claim form, apparently because they had erroneously understood that the Initial Questionnaire was a claim form.

3. Process

The Tribunal’s procedures are defined in the Rules Governing the Claims Resolution Process (hereinafter, the "CRT-II Rules"), which were proposed by Special Masters Volcker and Bradfield and approved by the Court. The CRT-II Rules reflect the fact that, as noted above, the CRT-II program is effectively the end result of a gradual merger of three separate processes that started in 1996-97: the Volcker Audit, the U.S. litigation, which was eventually settled, and the CRT-I process. The CRT-II process is in effect an offshoot of the Volcker Audit to the extent that it relies on the data resources and other information collected during the Volcker Audit. The process also forms an integral part of the implementation of the Settlement Agreement, as the CRT was designated as the implementing organization both in the Settlement Agreement and the Distribution Plan, and the awards made by the CRT are covered from the Settlement Fund. Finally, as the CRT-I and CRT-II have essentially the same function – adjudication of claims to Second World War era Swiss bank accounts – and as the CRT-II process has also inherited the staffing, infrastructure and know-how of CRT-I, the CRT-II process is effectively a sequel of CRT-I.

(36) See, e.g., Distribution Plan, p. 91 (A total of 89,610 of the approximately 562,000 respondents who returned the Initial Questionnaires for which data has been entered thus far, have indicated that they intend to assert a claim to Deposited Assets. That estimate, however, could increase significantly following the worldwide publication of approximately 26,000 Swiss bank accounts deemed by the Volcker Committee to have a 'probable' relationship to a Holocaust victim.-- footnote omitted).

The continuity between the two processes is clearest in the institutional aspects, as the CRT-II process in practice inherited the institutional structure and personnel of CRT-I. Thus, the arbitrators who served in the CRT-I process continue to serve as Senior Claims Judges of the Tribunal under the CRT-II process. In addition, a number of senior staff of the Tribunal were appointed by the Special Masters as Resident Claims Judges, with the authority to make determinations on the admissibility of claims and to adjudicate claims to low-value accounts (38). The legal status of the CRT as an organization, which remained undefined under the CRT-I process, was subsequently clarified when the CRT was registered as an association under Swiss law.

The Tribunal also has access to the data resources collected during the ICEP investigation. These include both electronic and hard copy information about the approximately 36,000 accounts identified by the ICEP auditors as "probably or possibly" belonging to Holocaust Victims. The electronic data is consolidated into an Account History Database ("AHD"), which is maintained in the offices of the Tribunal. The CRT-II Rules also foresee that the Tribunal will be given access to data relating to the approximately 4.1 million accounts that were open or opened during the relevant period and for which records still exist in Swiss banks. Electronic data relating to these accounts, as created by the audit firms during the ICEP investigation, may be consolidated into a Total Accounts Database ("TADs") (39).

The continuity between the CRT-I and CRT-II processes is more tenuous with respect to the procedures employed to process the claims. Unlike the CRT-I process, which involved arbitration between individual claimants and the banks, the CRT-II process is quasi-judicial. The banks are not parties to the claims, but may be requested by the Tribunal to provide voluntary assistance in the process (40). Also, unlike the CRT-I process, only claims to accounts owned by Victims or Targets of Nazi persecution are

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(38) These are defined as accounts with an unadjusted book value of up to SFr 5,000.
(39) See Art. 5 of the CRT-II Rules ("Total Accounts Databases").
(40) See Art. 6 of the CRT-II Rules ("Voluntary Assistance from Banks"). When necessary to obtain information to resolve claims to Accounts that is unavailable to the Tribunal under Articles 1-8 (covering the Tribunal's access to information from the data resources collected during the Volcker Audit), the Tribunal may seek the voluntary assistance of banks that may have information in their files on such an accounts.
admissible (41). Claims can be made by the account owners themselves or their heirs. Special rules of distribution are established to define the eligibility of heirs (42).

The procedures used to process the claims are similar to those employed by the ICEP auditors. Claims are matched through a computerized process against the data contained in the AHD. Computer-generated matches are then reviewed to determine whether the claimed account owner is the same as the owner of the account according to the bank records collected by the ICEP auditors. The decision as to whether there is an identity match and whether the claimant is entitled to an award from the Settlement Fund is taken by a Senior or Resident Claims Judge. Jurisdiction between these two groups of judges is allocated mainly on the basis of the value of the claimed account and the complexity of the case (43). The decisions are taken largely on the basis of documents, and the possibility of hearings is not even mentioned in the CRT-II Rules (44).

When making substantive determinations, the Tribunal applies a relaxed standard of proof. Claimants are only required to demonstrate that it is plausible, in light of all the circumstances, that he or she is entitled, in whole or in part, to the claimed account (45). As many of the claimed accounts are closed, and often unknown to whom, one of the main substantive issues faced by the CRT is the

(41) See Art. 23 of the CRT-II Rules.
(42) See Art. 29 of the CRT-II Rules. Cf. Art. 16 of the CRT-II Rules (The Sole Arbitrator and the Claims Panel shall apply the law with which the matter in dispute has the closest connection in deciding matters concerning the relationship between the published account holder or holder of power of attorney and the claimant (e.g. to inheritance matters or fiduciary agreements). At the request of all involved parties other than the Swiss bank, inheritance matters may be resolved according to Talmudic law.).
(43) See Arts. 17-18 of the CRT-II Rules.
(44) Cf. Art. 24 of the CRT-I Rules, which envisaged the possibility of hearing of parties and third persons as sworn witnesses under oath.
(45) See Art. 22 (1) (Each Claimant shall demonstrate that it is plausible in light of all the circumstances that he or she is entitled to the claimed Account.) and Art. 22 (2) of the CRT-II Rules (In making determinations on Admissibility and Awards, ... Claims Judges shall at all times bear in mind the difficulties of proving a claim after the destruction of the Second World War and the Holocaust and the long period of time that has elapsed since the opening of the Accounts.). An identical evidentiary standard was included in the CRT-I Rules; see supra note 28.
disposition of the accounts, i.e., what happened to the proceeds. If it appears that the claimed account owner or the heirs received the proceeds, the claim is denied. The Rules contain presumptions that facilitate the determination of what happened to the funds, which apply in the absence of evidence to the contrary (46).

Claims that do not match are reviewed to determine whether they meet the criteria for matching against the Total Accounts Databases. These are the databases created by the audit firms with each investigated bank. The databases contain data for the approximately 4 million accounts investigated during the Volcker Audit (47).

Awards approved by the Court are paid out of the Settlement Fund set up by the parties upon the settlement of the U.S. litigation. Payments are made by the Special Masters from a special account created for the purpose (48). Claimants whose claims are denied have the right to appeal the decision to a Senior Claims Judge (49).

4. – Status of Claims Processing

As noted above, the ICEP audit identified approximately 36,000 Swiss bank accounts as ‘probably or possibly’ belonging to Holocaust Victims. To launch the CRT-II program, on 11 February 2001 the names of the owners of the approximately 21,000 ‘probable’ Victim accounts were published on the Internet and elsewhere, pursuant to the authorization of SFBC. The deadline for filing claims was initially set to expire on 11 August 2001, but was subsequently extended until 31 August 2001 (50).

A total of approximately 32,000 claims were filed with the Tribunal by the filing deadline 31 August 2001. Prior to the expiry of the deadline, the Court decided that the approximately 560,000 Initial Questionnaires returned by potential claimants during the class

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(46) See Art. 34 of the CRT-II Rules (=Presumptions Relating to Claims to Certain Closed Accounts).
(47) As noted supra in text accompanying note 39, the CRT-II Rules foresee that these separate databases will be consolidated into one TADs.
(48) See Art. 37 (2) of the CRT-II Rules.
(49) Art. 36 of the CRT-II Rules (=Tribunal Appeals Procedure).
(50) The filing deadline for the insurance claims expired on 31 December 2001.
action notification program should also be treated as timely deposited asset claims under the CRT-II program. The Court order contemplates that the Initial Questionnaires would be analyzed to identify those that can be processed as CRT-II claim forms (51).

The award process began on 5 November 2001, when the Court approved an initial group of 24 awards, covering 39 claims, certified by the Tribunal. The amount awarded by these 24 awards totaled US$ 3,476,289.25. At the time of writing, 924 awards have been approved by the Court. The award amounts total approximately US$ 113 million (52).

The Special Masters initially indicated that the processing of the 32,000 claims filed with the CRT would be completed in two years, by the end of August 2003. This deadline has proven to be too ambitious.

5. — CONCLUSIONS

The CRT-II process is the end result of three different processes that have sought to address and resolve questions relating to the fate of assets of Holocaust victims in Swiss banks. These three elements — the Volcker Audit, the Holocaust Victim Assets Litigation in the United States and the CRT-I — are all represented in various ways in the CRT-II process.

Institutionally, CRT-II carries on the work of CRT-I. However, while there is a clear continuity between the two processes, CRT-II represents a shift from an essentially arbitral process towards a more quasi-judicial proceeding where the claims are made to the Settlement Fund, from which they are also satisfied, rather than against the banks in which the accounts were held. The banks have no formal role in the process, although as foreseen in the Rules, they may provide "voluntary assistance".

Other devices are also used to expedite the process, given the much higher caseload. The CRT-II process relies more heavily than

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(51) In addition to the bank claims, approximately 800 insurance policy claims were filed with the CRT pursuant to the amended Settlement Agreement. A fair number of additional insurance claims are expected to be received by way of a referral from the International Commission for Holocaust-Era Insurance Claims (ICHEIG).  
(52) For up-to-date information regarding the status of claims processing, see the CRT-II website at <http://www.crt-ii.org>.
CRT-I on computer support, both in terms of its use of the electronic account information collected by the ICEP auditors and in terms of the computerized claims adjudication system developed to support the processing of the claims. Informal communication with claimants and the adoption of a number of presumptions in the CRT-II Rules are other important tools used to expedite the process.

However, despite its quasi-judicial features, the CRT-II process is, on balance, closer to arbitration and adjudication rather than full-fledged mass claims processing. Although the banks no longer participate in the process as respondents, each claim is individually reviewed by the Secretariat staff and adjudicated by a Senior or Resident Claims Judge. As with the CRT-I process, individualized, reasoned decisions are prepared for each claim (53).

POSTSCRIPT

After the oral presentation of this paper on 23 March 2002, a number of changes have been made to the CRT-II process that have significantly modified the way in which the claims are being processed (54). The most important of these changes was the termination of the mandates of all Senior and Resident Claims Judges in May 2002 and the corresponding delegation of claims resolution functions to the Secretariat staff. These changes have effectively resulted in the conversion of the CRT-II process from a quasi-judicial process into a purely administrative proceeding. The stated purpose of the reorganization of the CRT and the CRT-II process was to simplify and expedite the claims resolution process (55).

(53) However, under Art. 43 of the Rules, claims to same or related accounts may be joined at the discretion of the Claims Tribunal and covered by one joint decision. In connection with the reorganization of the process the award format was shortened somewhat. For discussion of the reorganization see infra notes 55-57 and accompanying text.


As part of the reorganization Article 21 of the CRT-II Rules («Incapacity or Resignation of a Claim Judge») was deleted and replaced with the following new provision, entitled «Certification of Decisions by the Tribunal»:

«Notwithstanding any provision of these Rules, the CRT may certify draft claims decisions, prepared by Staff Attorneys, for approval by the Court. These decisions shall be in writing and shall contain the relevant facts and the reasons for the decision.»

The new provision effectively rendered the bulk of the CRT-II Rules, many of which deal with the organization of the Tribunal's work and the jurisdiction and function of the Senior and Resident Claims Judges, redundant. These references were eventually removed in connection with a subsequent comprehensive revision of the Rules (56).

(56) The revised Rules are available on the CRT-II website at <http://www.crt-ii.org>. In connection with the revision, the quoted Art. 21 has now become Art. 16.