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United States Department of State  
Statement before the  
House Financial Services Committee  
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**“The Holocaust Insurance Accountability Act of 2007 (H.R. 1746):  
Holocaust Era Insurance Restitution After ICHEIC, the International  
Commission on Holocaust Era Insurance Claims”**

Chairman Frank, Ranking Member Bachus, thank you for holding this important hearing.

The principal focus of the Office of Holocaust Issues in the State Department is to serve our main constituency: Holocaust survivors. We can all agree that those who spent the Nazi era in concentration camps and ghettos, or in hiding, deserve not only our sympathy and moral support, but also a measure of justice in their lifetimes for the suffering they have endured and for the property that was stolen from them. Our Office therefore supports a continuing effort to obtain compensation for their suffering and restitution or compensation for their material losses.

The Office of Holocaust Issues also supports restitution to heirs of property that was stolen during the Nazi era. If restitution is not possible, then the heirs deserve compensation for their families' losses.

Over the past decade, numerous lawsuits and disputes have arisen concerning the Holocaust-era claims, and we have played an active role in resolving these disputes through dialogue, negotiation, and cooperation. We believe that such dialogue and negotiation lead to faster and better results for survivors than litigation. Indeed, litigation is often counterproductive because it so often results in acrimony and delay.

Since 1996, State Department negotiators have facilitated the resolution of class action lawsuits and helped parties reach agreements on payments of \$8

billion in new money to the victims of Nazi Germany. The bulk of that money benefited Jewish victims, but a significant portion also went to non-Jewish victims, particularly former forced laborers who were exploited by Nazi Germany. These post-1996 lawsuit settlements and agreements made it possible for compensation to be paid for forced labor, personal injury, insurance and other property losses. The most comprehensive agreements were with Germany and Austria, but companies from France, Switzerland, and other countries contributed substantially as well.

Later in my testimony, I will say more about the creation of the International Commission on Holocaust Era Insurance Claims, or ICHEIC. I will simply note at this point that ICHEIC included not only the five largest European insurance companies, but it also brought into the ICHEIC process through additional agreements most of the insurance companies that issued life insurance policies to Nazi victims.

### **German Payment Programs Following the Second World War**

Some may still ask this question: How can we as a government and nation be satisfied with merely \$8 billion in payments to Holocaust victims and heirs that resulted from the post-1996 agreements? It is not a question of being “satisfied,” of course. Rather, it is important to view these recent payments in the context of numerous other programs introduced by Germany since the Second World War. German governments have established several programs and paid out some 63 billion Euros (over \$100 billion in today’s dollars) in compensation and restitution to victims of Nazi crimes. Nonetheless, while recognizing what Germany has done, we must always acknowledge that no amount of money could ever compensate for the atrocities of the Holocaust.

### **Recent Expansion of German Pension Programs**

Some German Government pension programs for survivors continue even today and have been expanded in the last few months through negotiations between the German Government and the Conference on Jewish Material Claims, or the Claims Conference. I am referring in this regard to new pensions for an estimated 6,000 survivors worldwide, including many in the United States. I want to stress that the German Government entered into discussions with the Claims Conference voluntarily and without the threat of any lawsuits.

In support of Claims Conference negotiations with the German Government, I met in Berlin with German officials on three occasions to press for an expansion of the pensions programs. We have achieved a substantial improvement. The total payout over the next ten years in new pensions is estimated to be \$250 million. This is a major expansion, perhaps the largest single expansion ever, of the pension program for survivors. Negotiations and dialogue led to this expansion, not litigation. In addition, following discussions with the Claims Conference, Chancellor Merkel established a new program to make one-time payments of 2,000 Euros (\$2,900) to an estimated 50,000 survivors worldwide who had worked in ghettos, another significant expansion of the program to provide payments to such workers. Supporting this effort, I met separately with the Ministry of Finance and the responsible officials in Chancellor Merkel's office.

The United States will continue to seek resolution of restitution and compensation issues through multiple channels. The United States is now consulting with a number of European Governments to organize a follow-up to the 1998 Washington Conference that laid a foundation for Holocaust-era compensation and restitution principles. We have a continuing dialogue with governments in the new democracies of Eastern Europe that, until the collapse of communism, were unable to address these issues. We urge these countries to adopt and implement legislation providing for compensation and restitution to Holocaust survivors.

### **H.R. 1746 Undermines Voluntary Cooperation on Holocaust Assets**

As I stated earlier in my testimony, we have found that dialogue and negotiation with companies and governments lead to faster and better results for survivors than litigation. We oppose H.R. 1746 because it would undermine the current voluntary cooperation established by ICHEIC and our bilateral agreements. Indeed, the voluntary processing of claims, despite the recent closedown of ICHEIC, has continued. However, passage of this legislation would foment an adversarial relationship between claimants and insurance companies and could easily end such voluntary cooperation. In the end, the survivors and heirs would suffer because they would be left with only one recourse for resolving their claims – the filing of a lawsuit with all the risks and costs that would entail.

### **Other Problems with H.R. 1746**

I will return to issue of voluntary cooperation later in my testimony. Let me first summarize our other objections to H.R. 1746:

- The bill would, in our view, raise false hopes among survivors and heirs that H.R. 1746 would open up new avenues for pursuing their claims. We do not believe any legislation could eliminate all obstacles to recovery through litigation.
- The bill is unnecessary because ICHEIC has been a survivor-friendly process that has already substantially accomplished the goals underlying H.R. 1746 without a resort to litigation, and at no cost to survivors.
- Passage of the bill would erode our ability to negotiate new compensation agreements which would further benefit survivors.
- H.R. 1746 would run counter to the policy of the United States for the past decade, which has been to promote the establishment of organizations, such as ICHEIC and the German Foundation, to be the exclusive forum and remedy for Holocaust-era claims. This approach has proven to be the best way of providing compensation to elderly survivors who cannot afford costly and time-consuming litigation.

Let me now go into further detail regarding these points.

Voluntary Cooperation Threatened. In dealing with Holocaust-era claims, given the advanced age of survivors, we have always believed that negotiations and cooperation rather than litigation lead to a more rapid resolution of claims. Experience supports this. The policy of negotiation has led to ICHEIC payments of \$300 million on Holocaust-era insurance claims in this decade (with nearly an additional \$200 million in humanitarian assistance going mainly to needy survivors). The companies participating in or cooperating with ICHEIC have agreed that they will continue to review Holocaust-era claims voluntarily, despite the closure of ICHEIC in March 2007. That is, even today, survivors and heirs can submit insurance claims directly to the companies. German insurers and many others involved in the ICHEIC process are committed to continuing to pay claims based on relaxed standards of proof. However, passage of this legislation would foment an

adversarial relationship between claimants and insurers and could easily end such voluntary cooperation.

H.R 1746 Cannot Eliminate the Costs and Risks of Litigation for Claimants. The bill would promote litigation for claimants seeking payment on Holocaust-era life insurance policies, but it cannot eliminate the costs and risks that litigation entails. The jurisdictional issues that the bill would seek to address are only part of the equation. Claimants would still have to prove their cases on the merits – for example, finding a company that remains in business today, showing that the company they are suing is the legitimate successor to the company that issued the policy, and proving the existence and non-payment of a policy. ICHEIC dealt with these issues by adopting relaxed standards of proof and doing the claimants’ research for them, but no such relaxed standards will be available in court. Litigation is also, of course, time-consuming and costly, and this legislation would not ensure that any claims are resolved within the lifetimes of the survivors.

Undermining ICHEIC’s Extended Reach. Passage of H.R. 1746 would create tensions that would threaten the existing voluntary cooperation with European insurers that lack U.S. operations. The state insurance regulators who created ICHEIC supported a voluntary approach, but one that contained the implied threat of greater regulatory scrutiny of the insurers’ U.S. operations in the absence of cooperation. Nevertheless, many European insurance companies that had no operations in the United States – companies both beyond our regulatory reach and outside the jurisdiction of our courts – also cooperated voluntarily with ICHEIC. These include 70 German insurers and insurers in the Netherlands, Belgium, France and Austria. Insurance company associations or compensation commissions in these countries had detailed agreements with ICHEIC on claims processing. It is difficult to imagine that such voluntary cooperation would continue if H.R. 1746 becomes law.

ICHEIC has been a Survivor-Friendly Process. In the end, we believe ICHEIC was a success in paying claims for the following reasons:

- ICHEIC was established and run by state insurance regulators who were strong survivor advocates, and its board included leading survivor organizations and Israeli officials.

- ICHEIC paid claims that had little or no documentation, and it did so at no cost to the claimants.
- Through extensive research that included Yad Vashem's resources, as well as files from insurers in cooperating countries, ICHEIC built a credible database of Holocaust victims who were likely to have owned insurance policies. This database of over 500,000 names was made available to all via the Internet.
- Even if claimants could not find a relative's name on the data base, or could not name the issuing insurance company, ICHEIC's research was, under ICHEIC's relaxed evidentiary standards, able to substantiate thousands of undocumented claim applications.
- ICHEIC also undertook research into European insurance markets of the 1930s to determine their size and maturity, and the propensity of Jews and non-Jews to hold insurance policies. Such ICHEIC studies show that its claims and humanitarian programs did a credible job of adjudicating and paying claims on life insurance policies in effect during the Holocaust era.
- Using contributions from its members, ICHEIC paid claims even when the issuing insurance company went out of business or had been nationalized by communist regimes.
- ICHEIC undertook extensive outreach to encourage claim applications.

I would also note that ICHEIC is only the last part of the effort to pay insurance claims. Earlier and ongoing restitution efforts in other countries have dealt with the bulk of the insurance claims; Germany's efforts began in 1953. At no cost to survivors and heirs, ICHEIC undertook to pay claims for which survivors and heirs had almost no supporting documentation -- or indeed none at all.

The Bill's Name-Publishing Requirement Considered. ICHEIC's board examined – and decided against – the publication of additional names of policyholders who had no connection to the Holocaust. Publishing an estimated 8 million names of policyholders, both Jews and non-Jews, who

held policies at anytime from 1933 to 1945 would be a very costly undertaking that would likely raise false expectations among survivors and heirs. It would also run afoul of privacy laws. Far better was the approach that ICHEIC adopted: unspent funds originally devoted to claims were allocated to social welfare projects for needy survivors.

Undermining “Legal Peace.” Passage of H.R. 1746 would erode our ability to negotiate new compensation programs. U.S. agreements with Germany and Austria commit the United States to a policy supporting “legal peace” for Holocaust-era claims against all companies from these countries. Swiss companies entered into a binding class action settlement in a U.S. court that protects them from litigation. Companies and governments in these countries were willing to put money on the table in the last decade only because they believed they would obtain “legal peace.” These agreements have put nearly \$8 billion in new money since the year 2000 into the hands of Holocaust survivors and their heirs and other Nazi victims. H.R. 1746 would open up the life insurance issue to a new round of federal litigation and collide directly with legal peace.

Jeopardizing Current and Future Negotiations. By ending any expectations of “legal peace,” the legislation would also undermine U.S. policy and positions in our ongoing negotiations with Poland, Romania, Lithuania, Croatia and Slovenia on Holocaust-related property issues. The Claims Conference also negotiates every year to expand payments under existing agreements with Germany, and it is seeking new payments programs in Eastern Europe. The bill would jeopardize both of these efforts.

### **The Post-ICHEIC Voluntary Claims Process**

Today, anyone who believes he or she is the beneficiary of a Holocaust-era life insurance policy, and can identify the issuing company, is still able to file a new claim with any of the companies that participated in or cooperated with ICHEIC, despite ICHEIC’s closure. These include the largest insurance companies operating today in Western Europe that participated in or cooperated with ICHEIC. These companies will not consider claims that have already been decided under the ICHEIC process, but they have agreed to continue to process new claims against Holocaust-era policies underwritten by a specific company, and they will do so using relaxed standards of proof.

In this regard, we welcome in particular the statement and actions of the German Insurance Association, whose members have committed to continuing to process new claims under relaxed standards. Other participating and cooperating ICHEIC companies have made similar commitments.

My office is working with other interested parties on this matter. I am now considering the establishment of a mechanism to monitor the number of new claims filed and action taken by the companies on claims filed since the closedown of ICHEIC.

### **Conclusion**

In closing, I would like to reiterate that the main objective of our office is to serve the interests of Holocaust survivors. My office remains available to assist your constituents in their efforts to file new claims.

We believe H.R. 1746 is well-intentioned, but it would make Holocaust survivors worse off, and therefore we oppose its passage.

Thank you for the opportunity to express the administration's views on this bill. I look forward to your comments and questions.