CLAIMS RESOLUTION TRIBUNAL FOR DORMANT ACCOUNTS IN SWITZERLAND

SCHIEDSGERICHT FÜR NACHRICHTENLOSE KONTEN IN DER SCHWEIZ
TRIBUNAL ARBITRAL POUR LES COMPTES EN DESHERENCE EN SUISSE
TRIBUNALE ARBITRALE PER CONTI IN GIACENZA IN SWIZZERA
TRIBUNAL ARBITRAL PARA CUENTAS INACTIVAS EN SUIZA

Mr. Paul A. Volcker
Chairman of the Independent Claims Resolution Foundation
610 Fifth Avenue, Suite 420
New York, N.Y. 10027

Dr. Israel Singer
Secretary General of the World Jewish Congress
501 Madison Avenue, 17th floor
New York, N.Y. 10022

Zurich, 5 October 2001

FINAL REPORT ON THE WORK OF THE CLAIMS RESOLUTION TRIBUNAL FOR DORMANT ACCOUNTS IN SWITZERLAND (CRT-I)

1. INTRODUCTION AND SUMMARY[1]

In September 2001, the Claims Resolution Tribunal for Dormant Accounts in Switzerland ("CRT") resolved its last case. This concludes a project, which started on 15 October 1997, by the appointment of Professor Hans Michael Riemer and an initial five of the Tribunal's seventeen Arbitrators. In February 1998, the Tribunal's Secretariat was established, which became fully operational in spring of 1998. Since that date, 125 dedicated lawyers, paralegals, administrative secretaries, translators, IT experts and accountants from more than 25 different countries have served on the Secretariat's staff. In a period of three and a half years, the Tribunal rendered decisions in 9,918 cases and awarded 65 million Swiss Francs to Claimants from more than 70 countries.

In July and October 1997, the Swiss Bankers Association ("SBA") published 5,570 dormant accounts owned by non-Swiss residents or nationals. Of those 5,570 accounts, 2,308 (41%) were claimed. Most of these 2,308 accounts were claimed by more than one person.[2] As an average, there were four different Claimants filing a claim to the same account.

Out of the 2,308 claimed accounts, the question whether or not the Account Holder was a Victim of Nazi persecution[3] was reviewed in 987 accounts. With respect to the other 1,321 claimed accounts, this determination was irrelevant and not made, as all claims to these accounts were dismissed. Out of the 987 accounts for which the Tribunal had to determine whether or not the Account Holder was a Victim of Nazi persecution, 207 accounts (21%) were

[1] The Chairman thanks the following persons for their contributions to this Final Report: Judge Thomas Buergenthal, Mr. Roberts B. Owen, Dr. Georg von Segesser, Mr. Alexander Jolles, Ms. Naomi Wolfensohn, Ms. Heike Niebergall, Mr. Jason Palmer, Ms. Chantal Iffland, Ms. Kira Spreng, Mr. Martin Molina, Mr. Nicholas Williams, Dr. Charles Ehrlich, Ms. Clare Ducksbury, Ms. Kirsten Young, Mr. Yoel Levy, Mr. Alain Sandoz, Ms. Lilly Senn.

[2] 1,515 accounts were claimed by more than one person, which represents 65% of claimed accounts.

[3] The term "Victim of Nazi persecution" was defined by the Rules on Interest and Fees 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*". This definition is consistent with the definition set-forth in the Global Settlement Agreement.

determined to be Victim accounts, while the remaining 79% were owned by Account Holders who were determined not to be Victims.

32% of all claims were approved by the Tribunal and 69% dismissed. The Tribunal awarded an aggregate amount of 65,251,159.99 Swiss Francs.[4] This amount includes 16,186,198.08 Francs which were awarded to Claimants of Victim accounts.

The process of adjudication was considerably more complex than anticipated, and the Tribunal received significantly more claims than expected. This resulted in a longer duration of the claims resolution process than the one-year-period expected by the Board of Trustees. Given the fact that all of the dormant accounts under the Tribunal's jurisdiction were opened more than 50 years ago – some even in the 19th century – records and documentation provided by Claimants and Banks were sparse. Under these circumstances, establishment of the relevant facts was difficult, and sometimes impossible.

The Tribunal's overall costs amounted to 32 million Swiss Francs[5], which is less than the 35 million Swiss Francs expected by the SBA. These costs were entirely borne by the participating Banks and the SBA.

During the time the Tribunal was adjudicating its cases, a class action lawsuit against the two largest Swiss banks was pending in New York (Holocaust Victims' Assets Class Action Litigation, Case No. CV 96-4849). In 1999, this lawsuit was settled by an agreement referred to as the Global Settlement Agreement ("Global Settlement Agreement"), which on 26 July/4 August 2000 was approved by Chief Judge Korman of the U.S. District Court for the Eastern District of New York. The Global Settlement Agreement had a direct impact on the CRT's claims resolution process. It released the Banks from payment of awards to Claimants of Victim accounts.[6] At the same time, the Global Settlement Agreement provided for the CRT to be involved in the

[4] This amount includes interest payments where applicable, and special adjustments in Victim cases.
[5] approximately 20 million U. S. Dollars (at an exchange rate of USD 1 = 1.6 Franc).
[6] According to the terms of the Global Settlement Agreement, the Banks would receive a credit from the USD 1.25 billion Settlement Fund for the payments made to Claimants of Victim accounts (see below, page 56).

distribution of USD 800 million out of the USD 1,25 billion Settlement Fund by reviewing claims of Deposited Asset class members. This new project is being referred to as "CRT-II" and will be discussed in this Report only to the extent that it directly affected the Tribunal's initial assignment, referred to as "CRT-I".

2. BACKGROUND

The establishment of the CRT resulted from the international controversy regarding the destiny of dormant assets deposited with Swiss banks prior to or during World War II. In this connection, an Independent Committee of Eminent Persons ("ICEP"), chaired by Mr. Paul A. Volcker, was established by means of a Memorandum of Understanding of 2 May 1996 between the World Jewish Restitution Organization and the World Jewish Congress on the one side, and the SBA on the other side. The Committee was to identify accounts in Swiss banks of victims of Nazi persecution that had lain dormant since World War II and to assess the treatment of these accounts by Swiss banks.

At its meeting of 30/31 January 1997, ICEP discussed the establishment of a mechanism to determine the entitlement of specific individuals to particular dormant accounts. In June 1997, ICEP, the SBA and the Swiss Federal Banking Commission ("SFBC") agreed on a comprehensive claims resolution process for accounts in Swiss banks which were dormant since 1945. On 23 July and 20 October 1997, the SBA published a list of 5,570 dormant accounts held by non-Swiss nationals and residents (foreign accounts), as well as a list of 10,758 accounts owned by Swiss account holders and persons of unknown domicile (Swiss accounts). At the same time, Contact Offices for the filing of claims were opened and run by ATAG Ernst & Young in five cities around the world (Basle, Budapest, New York, Sydney and Tel Aviv).

3. FOUNDATION AND BOARD OF TRUSTEES

In order to sponsor the claims resolution process, ICEP endorsed at its September 1997 meeting the establishment of an Independent Claims Resolution Foundation ("Foundation" or "ICRF"), governed by a Board of Trustees consisting of Chairman Paul A. Volcker, Mr. Israel Singer and Professor René Rhinow. The purpose of the

Foundation, whose seat was in Zurich, was to set up and supervise a Tribunal that would provide persons, organizations, entities, or their successors in interest, an easily accessible, expedited and equitable procedure to resolve their claims to Swiss bank accounts that (i) had been dormant since the end of the Second World War and (ii) were opened by persons of non-Swiss nationality or residence. The ICRF's Board of Trustees was responsible for promulgating rules of procedure for the Tribunal and for appointing a chairperson and foreign and Swiss Arbitrators with experience in international arbitration. Pursuant to the Foundation's charter, the Arbitrators were judicially independent.

In supervising the Tribunal's administration, the Board was assisted by its U.S. Counsel, Mr. Michael Bradfield, and by the Foundation's Swiss Secretary, Dr. Peter Honegger.

On 3 May 2001, Professor Rhinow informed the Tribunal of his resignation from the Board of Trustees. The Tribunal also learned that after ICEP was disbanded in early 2000, certain additional persons were to be associated with the Board of Trustees, including former ICEP members Peider Mengiardi and Zvi Barak, and Special Master Judah Gribetz. As the Tribunal is unclear about the current composition of the Board, it addresses this Final Report to the remaining members of the ICRF's Board of Trustees, and provides copies to all persons who were recipients of the CRT's Monthly Reports during some or the entire period of CRT-I.

4. ESTABLISHMENT OF THE CRT

(a) Appointment of Arbitrators

The Board of Trustees held its first meeting on 15 October 1997, at which it appointed Professor Hans Michael Riemer as Chairman of the Tribunal and selected an initial five of the sixteen international lawyers, judges, financial advisors, economists and diplomats who were to make up the CRT's panel of Arbitrators. Six months later, the Foundation announced the appointment of additional ten Arbitrators. For reasons of language and nationality requirements, the Tribunal subsequently requested the Board to appoint an additional non-Swiss Arbitrator who could work in German, French and

English. Therefore, in summer 1999, the Board appointed an additional Arbitrator meeting these requirements.

Of these 17 Arbitrators, five were from Switzerland, four from the United States, four from Israel, and one each from Belgium, Canada, Cyprus and the United Kingdom. A list of Arbitrators is attached to this Report (Annex 1).

(b) Establishment of CRT Secretariat

Pursuant to Article 30 of the CRT Rules of Procedure, the Board of Trustees was to appoint a law firm to act as Secretariat of the Tribunal. The law firm had to have its seat in Zurich, needed experience in international arbitration and banking law, had to be free of conflict of interests with the major Swiss banks, and needed to be sufficiently large to absorb the work to be expected under the project. The Trustees selected Schellenberg & Haissly (now Schellenberg Wittmer), a Swiss law firm based in Zurich and Geneva, for this assignment.

Since the number of claims to be expected was unknown and the CRT Rules of Procedure untested, it was anticipated that the law firm could perform its function as Secretariat of the Tribunal with its own staff complemented by a small number of additional foreign lawyers to be seconded from foreign law firms for a period of six months. The first three foreign lawyers[7] arrived in February 1998 and assisted the law firm's staff in establishing internal rules of procedure, computer programs, and the organizational structure necessary for the treatment of claims.

On 13 January 1998, the Tribunal received a first batch of claims sent by ATAG Ernst & Young's Contact Office. Within a few weeks it became evident that the number of claims would exceed all expectations. Also, the procedure was proving to be more complex than anticipated by its drafters. The Secretariat's staff needed to be increased and reached at peak time a level of approximately 55 employees, most of them on the payroll of the CRT. After exhaustion of available office space in Zurich, a team of lawyers was set up in the law firm's Geneva offices.

[7] Naomi Wolfensohn, Jonathan Faust, Nina Hall

The six-month secondment of foreign lawyers to the Tribunal's Secretariat lead to a large turnover of personnel. Therefore, as soon as it became evident that the

Tribunal's assignment would exceed the one-year period anticipated by the Trustees, the Secretariat started to extend its recruitment of personnel to international organizations, law schools and other sources, and required a commitment for a minimum period of one year. During the term of CRT-I, 125 persons have worked as staff members of the Secretariat, representing over 25 nationalities. A list of staff members and nationalities is attached to this Report (Annex 2).

5. ORGANIZATION OF CRT

(a) Chairman and Vice-Chairman

Professor Hans Michael Riemer, the Chairman of the Tribunal, and the person ultimately responsible for its operations, supervised the work of the Tribunal by regular visits to its offices in Zurich. The Chairman, whose CRT-functions were to be performed on a part-time basis, visited the CRT on an average of one day per week. During this time, the Chairman was briefed about the activities of the Secretariat and pending policy matters, and devoted a significant portion of his time to the resolution of cases.

The growth of the Secretariat, the intensified contact with Arbitrators, and the increasing politically motivated public pressure, prompted the Tribunal to request the Board to appoint a Vice-Chairman in accordance with Article 25(1)(b) of the Rules, who would devote his full time to the work and management of the Tribunal. On 27 May 1999, the Trustees appointed Professor Thomas Buergenthal to this position. In March 2000, when initial preparations for CRT-II began, Professor Buergenthal was elected by the General Assembly and the Security Council of the United Nations to serve as Judge of the International Court of Justice in The Hague. This appointment required his resignation as Vice-Chairman of the CRT, a post in which he was succeeded on 1 February 2001 by Mr. Roberts B. Owen, on of the CRT's Arbitrators.

(b) Arbitrator Visits, Arbitrator Committees and Arbitrator Plenary Meetings

Pursuant to the CRT Rules of Procedure, cases were to be resolved by Sole Arbitrators and panels of three Arbitrators. Moreover, Initial Screening decisions could be appealed to a three Arbitrator resubmission panel. For reasons of impartiality, Sole Arbitrators whose decisions were appealed to a Resubmission Panel could not be members of the same panel. This, and the fact that (i) the CRT Rules of Procedure provided for each panel to include one Swiss member and two international members[8], (ii) the case load was to be distributed fairly and equitably amongst the members of the Tribunal[9], (iii) the numerous non-CRT related professional commitments of the seventeen Arbitrators, and (iv) the Arbitrators' different language abilities made the case allocation and the co-ordination of Arbitrator visits to the CRT a challenging task.

As the SBA requested that bank records be kept within Switzerland, the Arbitrators decided their cases at the Tribunal's offices in Zurich and Geneva. These Arbitrator visits also facilitated consultation between panel members, and between Arbitrators and the Secretariat's legal staff, and prompted consistency in the Tribunal's judicial practice. Therefore, from May 1998 until March 2001, the Arbitrators spent an aggregate of approximately 600 days[10] at the Tribunal.

In CRT-I's last phase, during which the Tribunal focused on rendering final awards regarding interest and bank fees, the exchange of information and documents between the CRT and the Arbitrators was mostly by way of correspondence and telephone conferences. In this phase, draft awards and file notes were sent to Arbitrators, while the case files, including bank records, remained at the Tribunal.

To establish a common practice and policy of the Tribunal, and to inform the Arbitrators about various procedural issues, the Tribunal held two plenary meetings with all Arbitrators on 2 September 1998 and 22 October 1998 in Zurich. Issues discussed and policies determined at these meetings included the determination of the Tribunal's scope of jurisdiction, the adoption of internal procedural rules, the determination of criteria for approval of settlement proposals, matters regarding multi-party proceedings and joinder of claims, the discussion of interest and fee guidelines,

[8] Article 6(3) of the CRT Rules of Procedure
[9] Article 28(1)(b) of the CRT Rules of Procedure
[10] i.e. 600 days represent the aggregate number of days that each Arbitrator spent at the Tribunal. This number does not include the number of days that the two Vice-Chairmen spent at the Tribunal, since they were employed on a full time basis.

conflict-of-interest matters, the organization of the CRT Secretariat, and various scheduling and insurance matters.

To expedite consultation procedures among the Arbitrators and to benefit from the multitude of their professional experience, the Secretariat established Arbitrator Committees. These Committees were consulted whenever matters of general importance arose, for which the Tribunal needed to establish a uniform policy. The Committees were:

• Committee on Rules, Policies and Templates (dealing with the interpretation of the CRT Rules of Procedure):	Professor H. M. Riemer Professor William W. Park Professor Luc Thévenoz Judge Howard M. Holtzmann
• Committee on Finances and Administration (in charge of administrative matters):	Professor H. M. Riemer Mr. Doron Shorrer Dr. Hans K. Nater
• Committee on Applicable Laws (determining conflict of laws issues):	Professor H. M. Riemer Professor Thomas Buergenthal Professor Franz Kellerhals
• Committee on Interest and Fees (dealing with the implementation of the Rules on Interest and Fees):	Professor H. M. Riemer Dr. Robert Briner L. Yves Fortier, C.C., Q.C. Mr. David Friedmann
• Information Committee (overseeing the Tribunal's website and contact to the press):	Professor H. M. Riemer Judge Hadassa Ben-Itto The Rt. Hon. The Lord Higgins Ambassador Andrew J. Jacovides
• Committee on Conflict of Interest (establishing rules and procedures to avoid conflicts of interests of the Tribunal's members):	Professor H. M. Riemer Roberts B. Owen, Esq. The Hon. Tsevi E. Tal

(c) Secretary General, Policy Committee, Case Handling Teams

Initially, for a period of one year, two partners of the law firm that was appointed to act as Secretariat of the Tribunal, Georg von Segesser and Brigitte von der Crone, were jointly responsible for the Tribunal's Secretariat. They were later joined by Lucy

Reed, a U.S. arbitration lawyer, who assisted in the Secretariat's management on a part-time basis for a period of six months. As the Secretariat kept growing to a size which required full time availability of its management, the law firm decided to establish the position of a full time Secretary General and appointed one of its partners, Alexander Jolles, to fulfill this function. Alexander Jolles had been involved in the CRT Secretariat since 1998 as an advisor on arbitration matters and held the position of Secretary General from 1 January 1999 until completion of the CRT-I project in September 2001.

The great challenges for the Secretariat were the establishment of the infrastructure necessary for operating the Tribunal, the development of computer programs, and the hiring, training and supervising of legal and administrative personnel. In addition, the Secretariat was in charge of coordinating the workflow between the Arbitrators and of adopting of measures warranting a consistent judicial practice of the Tribunal. To this end, the Secretariat established a Policy Committee as a forum to discuss and determine procedural matters of general importance to the work of the Tribunal. The Policy Committee was composed of the Vice-Chairman, the Secretariat's management and some of the senior staff members (in particular the team leaders). The Committee met at least once a week and issued minutes recording the points of discussion, the Committee's decisions and the instructions to the staff. These minutes were sent to the Arbitrators and distributed to the staff. Later, the minutes were included on an electronic database where they could be accessed by the staff.

Another important element of the Secretariat's organization was the establishment of working teams, consisting of 4 – 7 lawyers, plus paralegals and administrative personnel. Each team was lead by an experienced staff attorney and focused on cases in one or more of the Tribunal's four working languages. Since a published dormant account was often claimed by several Claimants with different languages, close co-operation between the teams was required.

(d) Working Languages and Translators

The Tribunal reviewed and decided cases in English, French, German and Italian, and a much smaller number in Spanish. However, a claim could be submitted in any language. In fact, the Tribunal received claims in more than 15 different languages.

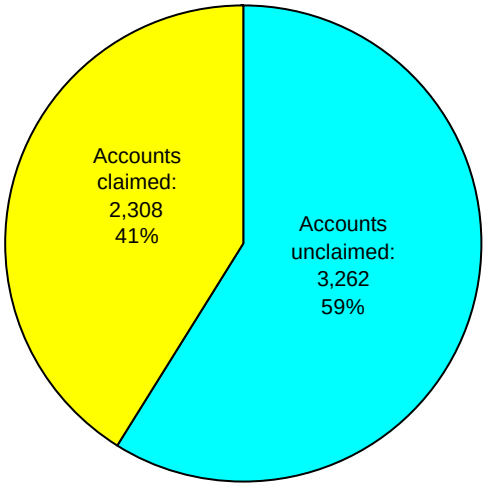
Where claims were submitted in these other languages, the Contact Offices operated by ATAG Ernst & Young provided translations of Claimant's documents. All other translations, in particular translations of correspondence, orders, decisions and documents exchanged between several Claimants of different languages in joined cases, was provided by the Tribunal. Therefore, the Tribunal employed two full-time in-house translators covering English, German, French, Spanish and Czech. Translations in other languages (such as Hebrew, Italian, Portuguese, Hungarian, Polish, Russian, Slovak, Romanian and Dutch) were out-sourced to external translators. The CRT in-house translators established a tracing system to keep track of duration and whereabouts of pending translation jobs.

Decisions and cover letters were signed in the language of the Arbitrator and translated into the language of the Claimant. A standard disclaimer was added, indicating that the translation was provided for the Claimant's convenience only, and that where there was ambiguity between the original text and the translation, the wording signed by the Arbitrator would be authoritative. The Banks received the decisions in the original language only, since most Banks had employees understanding at least one of the Tribunal's four working languages.

6. PUBLISHED ACCOUNTS AND NUMBERS OF CLAIMS

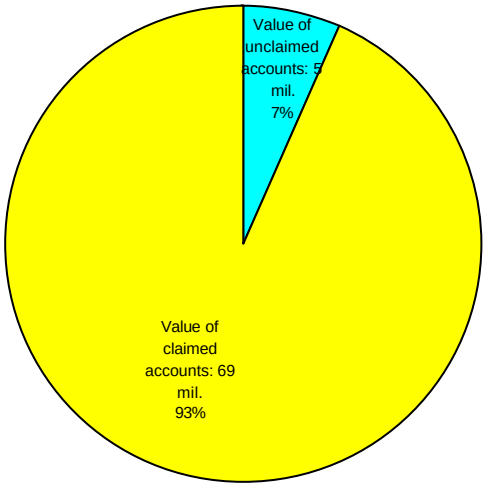
In July and October 1997, the SBA published the names of 5,570 foreign owners of dormant Swiss bank accounts. It also published the names of 10,758 Swiss owners of dormant bank accounts. The CRT claims resolution process was limited to the 5,570 foreign accounts. Of these 5,570 published accounts, 2,308 (41%) were claimed. The other 3,262 accounts (59%) remained unclaimed.

Fig. 1: Accounts published / Accounts claimed



The 5,570 published accounts represented an aggregate reported account value of approximately 74 million Swiss Francs.[11] The 2,308 claimed accounts represented a reported account value of approximately 69 million Swiss Francs.[12] It is therefore worth noting that while only 41% of the published accounts were claimed, these 41% represent 90% of the aggregate reported value of all foreign accounts published.

Fig. 2: Account values published / Account values claimed



[11] At the time of publication of these accounts in 1997, the value of the published accounts was estimated at 66 million Swiss Francs. This estimate was based on preliminary reports requested by the SBA from its member banks. In the further course of the process, uniform criteria for the reporting and evaluation of these accounts were established. Based on these criteria and on a review of the preliminary reports by the SBA, the aggregate value was adjusted to a confirmed amount of 74.31 million Swiss Francs.

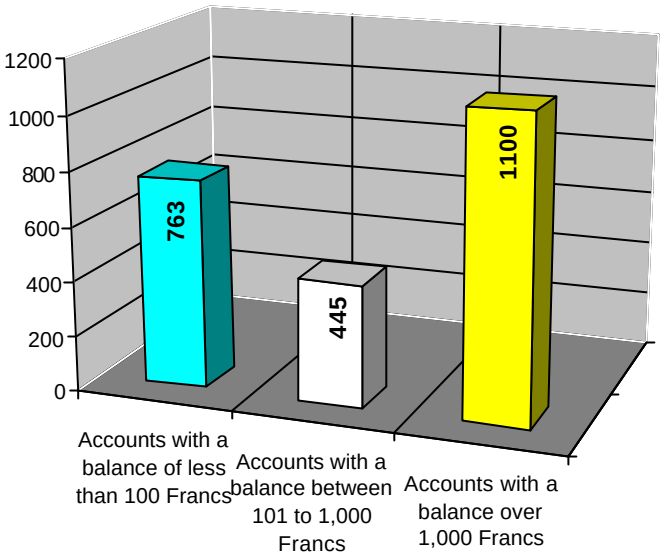
[12] Of these 2,308 claimed accounts, 987 accounts were eventually awarded. After additional adjustments for interest and fees, the 987 awarded accounts represented an aggregate value of 65 million Swiss Francs (see below, page 15).

The 2,308 foreign accounts claimed represent the following range of values (amounts in Swiss Francs):

Lowest claimed account value:	0.08 Francs
Highest claimed account value:	4.1 mil Francs[13]
Highest claimed Victim account value:	2.4 mil Francs[14]
Number of accounts with a value of less than 100 Francs:	763
Number of claimed accounts with a balance between 101 Francs and 1,000 Francs:	445
Number of claimed accounts with a balance of more than 1,000 Francs:	1,100

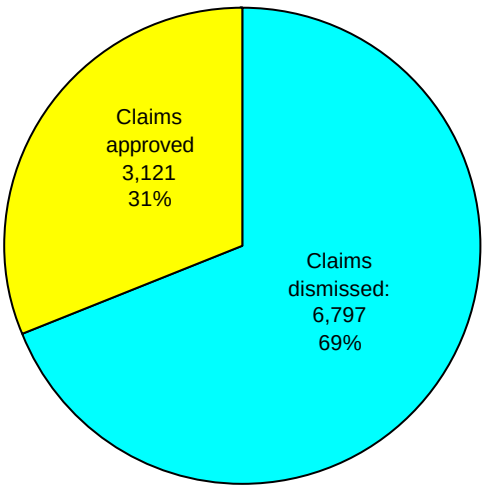
Fig. 3 Range of account values (Account balances below 100/between 100-1,000/above 1,000 Swiss Francs)

[13] Docket No. 6919. The account was a securities account. The amount reflects the value of the securities as of 23 December 1998.
[14] Docket No. 3332. The earliest reported value in the bank records was 666,822 Francs as of 1983. Pursuant to the Rules on Interest and Fees, the Claimants received a special adjustment of an additional 1,781,449 Francs.



The CRT treated 9,918 claims. This number includes both claims filed with the Contact Offices, and claims resulting from invitations extended by the CRT to third parties, such as other heirs, intermediaries or beneficiaries, to participate in the proceedings.[15] Of these 9,918 claims, 3,121 (31%) were approved and 6,797 (69%) were dismissed.[16]

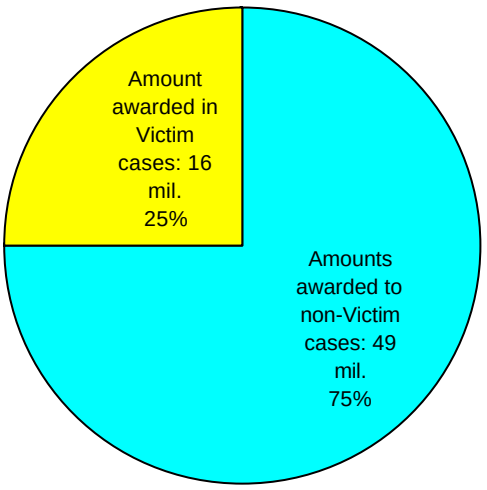
Fig 4: Claims approved / Claims dismissed



[15] Third party invitations in accordance with Article 21 of the CRT Rules of Procedure.
[16] Claims dismissed include both claims rejected in Initial Screening as well as claims dismissed in Fast Track and Ordinary Procedure.

The CRT awarded approximately 65 million Swiss Francs[17] to Claimants, out of which approximately 16 million Swiss Francs were awarded to Claimants of Victim accounts and 49 million Francs to Claimants of non-Victim accounts.

Fig. 6: Value of awards in Victim and non-Victim cases (in Swiss Francs)



7. CONTACT WITH CLAIMANTS

The CRT was faced with a large variety of Claimants from over 70 countries[18], communicating with the Tribunal in more than 15 languages. The Claimant community was composed of all generations, but most Claimants were elderly people. Very few Claimants were represented by lawyers. Many Claimants required assistance from the Tribunal, and in a majority of cases the Tribunal had to obtain additional information from Claimants. While the proceedings were conducted in writing[19], the Tribunal had extensive telephone contact with both Claimants and Banks. A toll free number was available to all parties. Thanks to the international composition of the Tribunal's staff, the CRT was able to handle telephone calls in a variety of languages, including English, Hebrew, French, German, Italian, Spanish, Hungarian, Polish, Russian, Czech, Dutch, Danish and Swedish. The Tribunal's staff

[17] This amount does include additional adjustments for interest and fees.
[18] See Annex 3.
[19] The parties were free to submit any kind of evidence they considered appropriate to support their claim. However, in most cases, the parties limited the evidence to documents. There were no cases in which the Tribunal requested the deposition of witness statements. In a few cases, the Tribunal sought the opinion of experts, and there was only one case in which the Tribunal held a hearing with the parties (Docket No. 1897).

attorneys spent an average of one hour per day advising Claimants and Banks over the phone.

Fig. 7: Claimants' countries of origin

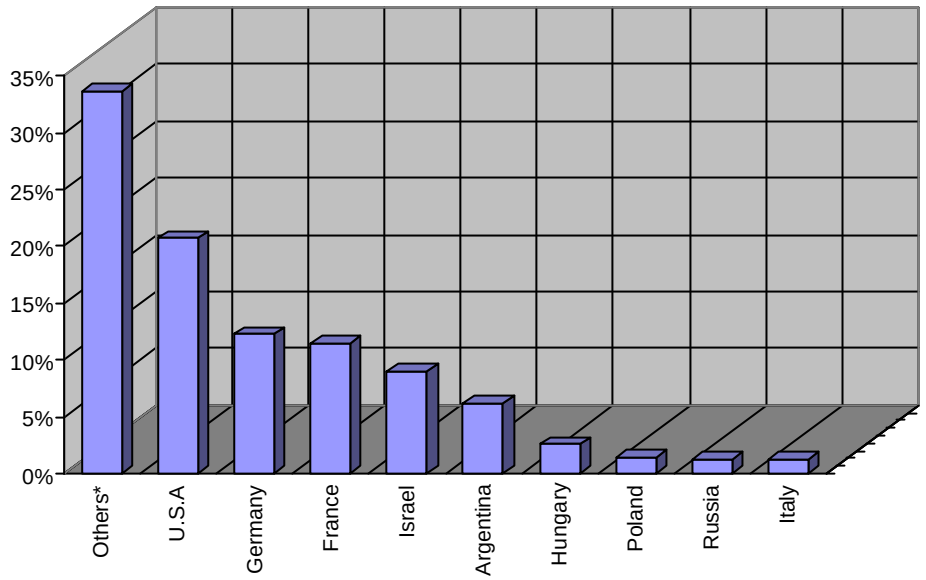
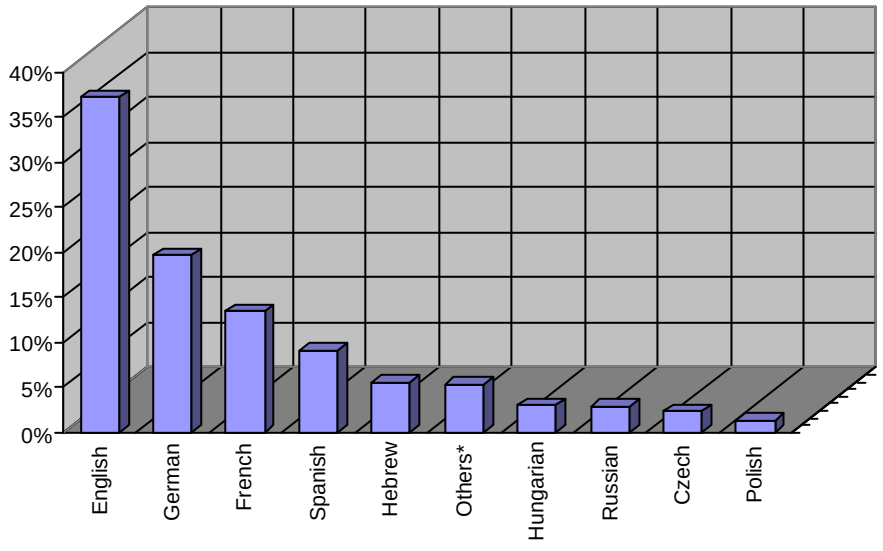


Fig. 8: Languages in which claims were received



The vast majority of claims were filed in good faith. There were only a few attempts from either side to abuse the process.[20]

[20] see below, page 37.

8. CONTACT WITH BANKS

The Tribunal was in contact with 79 Banks holding claimed accounts. The Tribunal communicated directly with bank employees, with the exception of one Bank that was represented by a law firm. The SBA provided guidance to its member banks on the Tribunal's procedures. Many bank employees called the Tribunal for additional assistance with regard thereto. These contacts were often helpful in facilitating the settlement of cases between the Banks and Claimants. After initial misunderstandings were overcome, the Banks' participation was generally cooperative and communication with them constructive.

As mass-claims arbitration was a new and untested procedure for resolving great numbers of claims to dormant bank accounts, a number of high level meetings between the Tribunal and representatives of the SBA, UBS and Credit Suisse were held to discuss procedural matters of general importance and to develop methods designed to accelerate the claims resolution process.[21] The topics of discussion included the degree of verification of entitlement to be required by the CRT, the category of cases suitable for Fast Track procedure, the development of the so-called Small Amount Settlement Procedure (for accounts with a value of 100 Swiss Francs or less), the drafting of a standardized wording for Large Amount Settlement Agreements, the rescission of arbitration agreements by one Bank, the adoption of the Rules on Interest and Fees, and the funding of the Tribunal. The Board's Counsel was present at most of these meetings. In addition, representatives of the Tribunal were invited in the start up phase of the process to participate in some of the meetings of the SBA's Steering Committee for Dormant Accounts.

9. PROCEEDINGS

(a) Initial Screening

Due to Swiss laws on bank secrecy, the published lists of Account Holder names included neither the name of the bank holding the account nor the value of the account. Therefore, all claims received by the Contact Office were first sent to the

[21] These meetings were held at the Tribunal's offices in particular on 7 January 1999, 25 February 1999, 13 April 1999, 31 May 1999 and 27 September 1999.

relevant Bank holding the claimed account. The Bank had to review the case and decide whether it considered the information submitted by the Claimant as sufficient to warrant disclosure of the Bank's identity and the account value. If the Bank decided not to disclose its identity, the file was sent to the Tribunal which had to review the Bank's non-disclosure decision in the Initial Screening procedure. Conversely, if the Bank disclosed its name, this information was forwarded to the Claimant and the case was treated directly in Fast Track or Ordinary Procedure.

The issue of disclosure was a prelude to the question of entitlement. Disclosing the name of the Bank and the account balance did not mean that the Claimant was entitled to the account. It simply meant that the Claimant had submitted enough plausible information to start arbitration proceedings regarding the entitlement or that it was not apparent from the outset that the Claimant was not entitled. Therefore, the Initial Screening procedure was in effect an admissibility review, by which cases were eliminated before moving to arbitration.

The Initial Screening procedure was of particular importance, since many Claimants filed claims in good faith without knowing if the published Account Holder was in fact their relative.[22] Often, Claimants recognized a family name and filed a claim although they could not indicate a relative with the same first name as the published Account Holder. The Initial Screening procedure was intended to segregate these weaker claims from the stronger claims that later moved to arbitration. All claims to the same account that eventually passed Initial Screening, were then reviewed collectively for the particular claimed account. This did, however, require that the Tribunal first had to complete the entire Initial Screening process before being able to render final awards transferring dormant assets to Claimants.

In 5,970 cases the Banks did not disclose their identity. This represents approximately two thirds of all claims submitted. In 5,444 cases (91%), the Tribunal concurred with the Bank's determination and confirmed the non-disclosure decision. In 526 cases the Bank's decision was overturned, and the identity and account balance was disclosed by the Tribunal.

[22] see below, page 37.

Number of claims filed with Contact Office:[23]	9,811
Number of cases in which Banks disclosed:[24]	3,218
Number of cases in which Banks did not disclose:[25]	6,039
Number of cases in which the Bank's non-disclosure decision was confirmed by CRT:	5,444
Number of cases in which the Bank's non-disclosure decision was overturned by CRT:	595

Regarding challenges of Tribunal's Initial Screening decisions, see below, page 59.

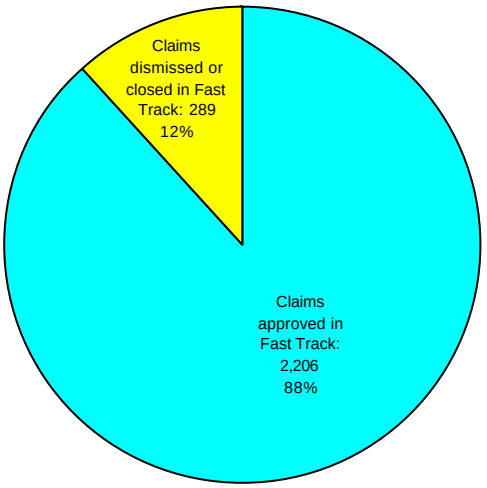
[23] Claims filed to publish foreign accounts registered by the Contact Office, as reported by the Contact Office to the CRT as of 7 January 2000. Of these 9,811 files, 9,501 were claim forms transferred by the Contact Offices to the CRT, the balance being Information Forms and a small number of claims settled directly by the banks. The CRT treated a small number of the 279 Information Forms as claims to published accounts.
[24] Only 2,975 claims were forwarded to the CRT. 243 claims were not forwarded due to the fact that the Claimants did not sign the necessary Claims Resolution Agreement.
[25] i.e. number of claims treated by CRT in Initial Screening.

(b) Fast Track

Fast Track procedure was available in cases in which Banks offered a payment to Claimants. These settlement offers were reviewed by the Tribunal, and approved, if deemed to be fair. In a small number of cases, Fast Track claims were either dismissed because the Claimant was apparently not entitled, or closed because the Claimant withdrew the claim. The vast majority of Fast Track cases was approved, resulting in an award to the Claimant(s).

Number of claims resolved in Fast Track procedure:	2,495
Number of claims approved in Fast Track procedure:	2,206
Number of claims dismissed or closed in Fast Track procedure:	289
Claims resolved in Fast Track as percentage of claims received:	25%

Fig. 9: Claims approved or dismissed in FT



In the context of Fast Track procedure, the Tribunal, in cooperation with the SBA, developed an expedited procedure for accounts with a balance of less than 100 Swiss Francs (Small Amount Settlement Procedure). In the interest of efficiency, the Banks were willing in such cases to offer the reported account value multiplied by a factor 10 in full and final settlement of the claim. In non-Victim cases, these amounts were higher than what could have been expected by the Claimant if the Bank had applied

the relevant interest rate to the individual account category. Therefore, the Tribunal approved these offers in non-Victim cases without having to review issues of interest and fees. The Small Amount Settlement Procedure was not used in Victim cases, as the application of the Rules on Interest and Fees usually resulted in higher adjustments than ten times the reported value, and as payment came from the Settlement Fund requiring a finding by the CRT on the Claimant's entitlement.

(c) Ordinary Procedure

Some claims that passed Initial Screening could not be resolved in Fast Track proceedings because the Claimant's entitlement to the account was controversial and these claims had to be treated in Ordinary Procedure. Depending on the account value, the case was either reviewed by a Sole Arbitrator (accounts with a value up to 3,000 Swiss Francs) or by a panel of three Arbitrators (accounts with a value in excess of 3,000 Swiss Francs). The following number of cases were resolved in Ordinary Procedure:

Number of claims resolved in Ordinary Procedure:	1'841
Number of claims approved in Ordinary Procedure:	915
Number of claims dismissed in Ordinary Procedure:	926

Fig. 10: Claims approved/dismissed in OP

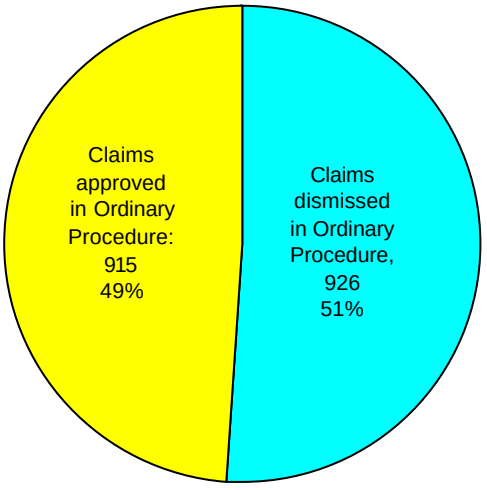


Fig. 11: All claims/claims treated in FT and in OP[26]

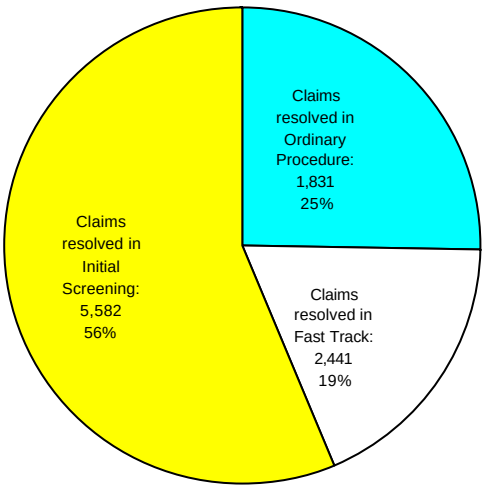
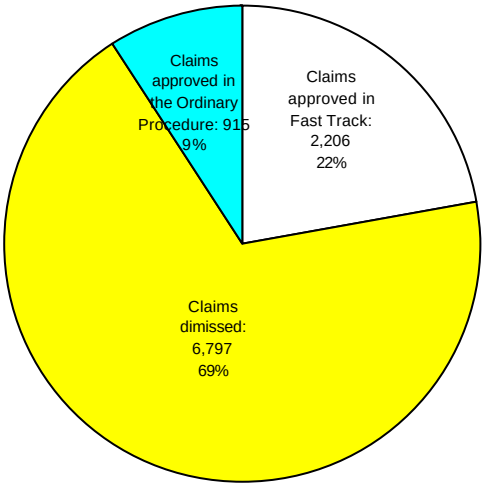


Fig.12: All claims/claims approved in FT and in OP



(d) Multiple Claimants to Same Account

It was one of the unexpected particularities of the CRT claims resolution process that there was usually more than one Claimant claiming the same account. In fact, out of the 2,308 claimed accounts, 1,515 were claimed by more than one person. This represents 65% of the claimed accounts.

There were either different members of the same family filing claims independently from each other, or, more often, members of different families who all had a relative

[26] The 5,582 claims resolved in Initial Screening includes 5,444 claims that were denial decisions and 138 claims in which the file was closed after the Claimant withdrew the claim or refused to sign the Claims Resolution Agreement.

by the same name of the Account Holder. On average, there were four claims per claimed account. One account was claimed by as many as 125 Claimants.[27] The multitude of Claimants required the Tribunal to engage in extensive translation and exchanges of documents between the parties. The following examples illustrate the situation:

- In Docket No. 2079, nine Claimants claimed the same account held by two joint Account Holders. Three Claimants identified the same persons. One of these Claimants lived in Germany, another in the Czech Republic and a third in Ecuador. Two relatives of the German Claimant were invited by the Tribunal to join the proceedings. The language of the procedure was English, and the claims in German and Czech had to be translated. Four other Claimants, British and Czech nationals, identified a couple whose names also matched the Account Holders' names but their claims were denied and so were the two additional claims to the same account.

- In Docket No. 1319, eight Claimants identified the Account Holder as their relative. The Account Holder had a very large family, and the Claimants submitted inheritance documents showing that he had left his estate to twelve nieces and nephews. As most of them were deceased, invitations to join the proceedings had to be sent to 46 other relatives. The Arbitrator had to determine to which portion each of these 54 Claimants was entitled.

- In Docket No. 3437, 39 Claimants submitted a claim to the same account.[28] 29 claims were denied in Initial Screening while 10 Claimants reached arbitration, identifying among them six different people as the person they believed to be the Account Holder. The language of procedure was English. The 10 Claimants lived in Germany, the Czech Republic, the United Kingdom, and Israel, spoke, varyingly, German, Czech, English, and Hebrew, and their submissions also included documents in those languages as well as Spanish. Invitations to join the proceedings were sent to relatives of the original Claimants in German, Czech, and English. The bank corresponded in English and German, and original bank

[27] Account published under the name of Josef Guttman.
[28] The 39 Claimants broke down as follows: German 13, English 10, Hebrew 7, Czech 3, French 2, Spanish 2, Dutch 1, Ukrainian 1.

documents were in German. In order to determine which set of Claimants had plausibly identified the Account Holder as their relative, the case went through several procedural orders and exchanges of documents, and therefore required extensive translations.

(e) Applicable Laws

In determining a Claimant's entitlement, the Arbitrators were faced with a variety of legal issues. Particular complexities arose from the international context and the fact that the original Account Holder and today's Claimants were usually two generations apart from each other. To establish a consistent practice, the Tribunal needed to establish rules covering three main topics: (i) the identification of the country whose laws determined the Claimant's inheritance rights (conflict-of-law issues); (ii) the research and application of foreign national laws on inheritance rights; and (iii) the research and application of Swiss banking law determining the relation between the Claimant and the Bank.

(i) Conflict-of-law rules

The CRT had to decide who the rightful owner of a dormant account was. In all but a few cases the Account Holder was no longer alive. The account was therefore claimed by his or her heirs. There were usually two or more heirs claiming the account, and often these heirs lived in different countries. To complicate matters, there were usually two generations between the Account Holder and the Claimant. In one case, for instance, the deceased Account Holder had lived in France. He had three children, one of whom emigrated to the U.S.A. The son of this emigrant (the Account Holder's grandson) moved to Argentina and claimed the dormant account. Which national law determines the entitlement of the grandson: French, U.S., Argentinean or some sort of international inheritance law?

As there is no "international inheritance law", the CRT had to apply the law of the country with which the matter had the closest connection.[29] At the request of all parties involved other than the Swiss Bank, inheritance matters could also be resolved

[29] Article 16(1) of the CRT Rules of Procedure.

according to Talmudic law. There was one case in which a Claimant requested the application of Talmudic law.[30]

To determine the law of the country with the closest connection to the matter in dispute, the Arbitrator Committee on Applicable Law issued guidelines based on the Hague Convention of 1988 on the Law Applicable to Estate Successions[31]. For claims not connected to the Second World War, the Tribunal applied, as a general rule, the law of the country in which the Account Holder had his or her last domicile.[32] Exceptions were made in cases in which the Account Holder emigrated or fled as a consequence of World War II,[33] and in cases in which the Account Holder was deported or killed during the War.[34] If the direct heirs of the Account Holder were also no longer alive, the process of determining the applicable law had to be carried out for every generation.

(ii) Foreign laws on inheritance rights

The Tribunal had to apply inheritance and estate laws of many different countries, including the laws of France, Germany, Israel, the U.S.A., Italy, Rumania, Poland, Russia, Ukraine, Argentina, etc. Thanks to the international composition of the Arbitrator panels and of the staff, the Tribunal could draw on its own resources to research some of these national laws. In cases in which this was not possible, the Tribunal consulted with the Swiss Federal Institute on Comparative Law in Lausanne. Based on a special arrangement with this Institute, the Tribunal could submit legal

[30] In Docket No. 3836, the successful Claimant, a college in England, based its claim on a chain of wills from the Italian Account Holder to his wife to their only son to the College. The unsuccessful Claimants were distant family members of the Account Holder in Italy. In order to explain why they had a better claim to the Account than the College, the Italian Claimants requested that the Tribunal apply Talmudic law. However, the Sole Arbitrator noted that, according to Article 16 of the CRT Rules of Procedure, Talmudic law would apply in cases only in which all involved parties other than the Bank requested it, and the College had not requested that the Tribunal apply Talmudic Law. Therefore, the Sole Arbitrator rejected the Italian Claimants' request for Talmudic law, and instead applied the Hague Convention guidelines regarding habitual residence, resulting in this case with the resolution of questions of inheritance using English law.

[31] CRT Guidelines of 11 March 1999 on the "Closest Connection" Test. See also the article published by a former staff member of the CRT Secretariat: "Arbitrability and the Applicable Law in the Claims Resolution Process for Dormant Accounts in Switzerland", by Dr. Nathalie Voser, published in: Arbitration International, Vol. 15 (1999), p. 237 – 262, and in: ASA Special Series No. 13, 2000, p. 50 – 79.

[32] If the Account Holder was not a national of the country of his or her last domicile, then the law of the country of his citizenship was applied, unless the Account Holder had lived for more than five years immediately prior to his death in the country of his last domicile.

[33] If the Account Holder was more closely related to another country than the country of his last five year domicile or the country of his nationality, then the law of this other country was applied. This was usually the law of the country of emigration.

[34] In this cases the law of the time and place of the last known domicile was applied.

questions concerning foreign jurisdictions to the Institute and receive the results of the Institute's analysis and legal research within four to eight weeks. Arrangements were made to ensure confidentiality. The Institute provided its services to the CRT at a discount of 50% on its regular rates.

(iii) Swiss banking law

Pursuant to Article 16(2) of the CRT Rules of Procedure, the relationship between the Claimant and the Swiss Bank was governed by Swiss law. Issues regarding interest and fees were governed by the Rules on Interest and Fees adopted by the Trustees and by guidelines for non-Victim accounts issued by the Arbitrator Committee on Interest and Fees.[35] Apart from interest and fees, a recurring banking law matter concerned the entitlement to assets in joint accounts and the relationship between the Bank and joint Account Holders. These questions were addressed in guidelines issued by the CRT Secretariat covering, among other scenarios, cases in which the claim of one of the original Account Holders competed with claims from heirs of the other joint Account Holder, and cases involving so-called exclusion clauses between joint Account Holders.[36]

(iv) CRT database for legal research

To ensure consistency in the CRT's judicial practice, the Secretariat established an internal database containing legal memoranda, guidelines, minutes from the Policy Committee meetings, sample decisions, and various other reference material. The database was updated on a regular basis and could be searched by all members of the Tribunal's staff.

(f) Intermediary Accounts

Pursuant to Article 15(2)(i) of the CRT Rules of Procedure, the Tribunal was to reject claims if by a preponderance of the evidence if it was established that the published Account Holder was acting as an intermediary for a victim of Nazi persecution. There were some cases in which Claimants alleged that the published name of the Account Holder was a pseudonym or cover name used by the Claimant's relative. However,

[35] See below, page 42.
[36] See CRT Memorandum from Professor Luc Thévenoz regarding joint accounts and entitlement to the assets.

there were no cases in which it was established either by a Claimant's statement or by information contained in bank records that the Account Holder had been acting as an intermediary for another person.

(g) Looted Assets

(i) Accounts containing assets looted from victims of Nazi Persecution

Article 15(2)(ii) of the CRT Rules of Procedure provided that the Sole Arbitrator or Claims Panel had to reject a claim if, *"by a preponderance of the evidence, it is established that […] the assets deposited in the account were looted from victims of Nazi persecution."*

Accordingly, the Tribunal was under an obligation to identify accounts which might (by a preponderance of the evidence) contain assets looted from victims of Nazi persecution. During the adjudication of claims, such identification combined a two step finding: first, that the Account Holder was a Nazi official or otherwise affiliated with the Nazi regime; and second, that by a preponderance of the evidence it was established that the assets which the Account Holder deposited in the account were looted from victims of Nazi persecution.

In the course of the adjudication of claims, there were four cases in which an Arbitrator Claims Panel made a *preliminary* finding that the account might contain looted assets. Out of these, two cases ended with a denial of the claims, since there was information indicating with a sufficient degree of probability that the assets deposited in the account were looted from victims of Nazi persecution. In the other two cases, the preliminary finding was reversed in the further course of the process, since there was either not enough evidence to support the suspicion that the account might contain looted assets, or information indicating that the assets were not looted.

(ii) Identification of Account Holders with a possible Nazi connection

In order to identify Account Holders with a *possible* Nazi connection, the Tribunal used three lists containing names of Nazi officials provided by the Simon Wiesenthal Center. One of these lists was a general and very detailed list of senior Nazi officials who had the ability to transfer looted assets to neutral countries. The two other lists were created especially for the CRT by isolating German and Austrian names from the

lists published in 1997 and comparing them with SS lists and two United Nations War Crimes Commission lists.

The Tribunal marked approximately 140 accounts as accounts with a possible Nazi connection requiring special attention and further examination.

When an Account Holder's name matched to the name of a Nazi official on the Wiesenthal lists, the Tribunal had to examine whether the Account Holder and the Nazi official was actually the same person. While in some cases such an identity match could be ruled out on the basis of information contained in the bank records, other cases required further research. To ensure a thorough investigation and to complement the Tribunal's in-house research, the Tribunal obtained the assistance of the German Federal Archives in Berlin. In 31 cases, the Tribunal contacted the German Federal Archives and requested that information about an Account Holder be checked against the Archives' records of Nazi officials and NSDAP members to determine whether the holder of a dormant account was affiliated with the Nazi regime.

(iii) Determination that assets deposited in account were looted

Once it was established that the holder of a dormant bank account was affiliated with the Nazi Regime, the case was referred to a Claims Panel pursuant to Articles 4(ii) and 13(i)(c) of the CRT Rules of Procedure. The Claims Panel then had to determine whether by a preponderance of the evidence the assets deposited in the account were looted from victims of Nazi persecution. This was a challenging task, since neither the Claimant nor the Bank had an interest or were in a position to provide the Tribunal with the necessary information to establish that the assets were looted. The Tribunal therefore had to base its examination on the information contained in the bank records, the Claimant's submissions, and the Archives mentioned above.

With regard to collectivized accounts and other accounts with small balances, the information about the Account Holder contained in the bank records was so minimal (usually just a name) that it was of no use to confirm or rule out that an Account Holder was affiliated with the Nazi Regime. In such cases, other evidence was important, such as the information provided by the Claimant about the relative they

believed to be the Account Holder, the amount contained in the dormant account, and the opening date of the account. For instance, dormant accounts that had been opened prior to 1933 and remained inactive since that date obviously could not contain looted assets. Also, assets of minimal value, such as accounts with a balance of less than 100 Francs, were treated as an indication that the account did not contain looted assets.

If the information before the Tribunal gave rise to a suspicion that the assets in the dormant account might have been looted, due process of law required that the parties be given the opportunity to comment on this question and to provide further evidence. In light of the sensitivity of the issue, the Tribunal invited the parties to comment only in cases in which, after an initial careful examination of the information already on file, it could not be ruled out that the account contained looted assets. The following cases are illustrative:

- The Tribunal reviewed a claim to the account of a German government employee who had held an influential position within the German Foreign Ministry.[37] Upon request by the Tribunal, his relatives claiming the account provided substantial further biographical details about the Account Holder. These included third party statements and documents from the 1940s concerning the Account Holder's relationship to the Nazi Regime as well as a request written on 16 June 1945 by the Account Holder himself for the certification of an *Unbedenklichkeitsbescheinigung* (certificate of non-involvement in Nazi crimes). The bank documents showed that the account had been opened before the Nazi regimes came to power. There were no records documenting any transactions that took place during the relevant period. In light of the additional contemporary information provided by the Claimants about the Account Holder and the fact that there was no evidence that deposits had been made during the relevant period of the Second World War, the Claims Panel found that it was not established by a preponderance of the evidence that the assets deposited in the account were not looted from victims of Nazi persecution. The account was awarded to the Claimants.

[37] Docket No. 3892.

- In another case, the Tribunal denied the claim to the account of a well-known dealer in Nazi looted art who fenced stolen paintings worth millions of dollars.[38] The bank documents indicated that the account was opened during the Second World War. Furthermore, although the current amount in the account was below 2,000 Swiss Francs, the bank documents showed that the account contained significant amounts during the war. The Claimant did not comment or provide any further information about the Account Holder that suggested the absence of looting. The factual information before the Tribunal regarding the Account Holder as well as the details contained in the bank documents led the Claims Panel to conclude that, by a preponderance of the evidence, the assets in the Account were looted from victims of Nazi persecution. Therefore, the claim was denied.

- The Tribunal's activities with regard to looted assets in dormant bank accounts are further illustrated by the adjudication of claims to a dormant account of a company which was seized during the Nazi regime from its Jewish founders.[39] The Tribunal received claims from the heirs of the Jewish founders who provided information indicating that the company had been unlawfully and forcefully taken over in return for only a paltry sum. The Tribunal also received claims from the heirs of the owner who had taken over the company. Based on the information provided by the heirs of the company's founders, which was not refuted by the other Claimants, the Claims Panel found that it was established with a sufficient degree of certainty that the assets contained in the company's account constituted looted assets in the sense of Article 15 of the CRT Rules of Procedure. In this regard, the Claims Panel noted that Article 15 of the Rules was intended to prevent awarding assets to persons responsible for looting them, and, if possible, to return the assets to the victims or their heirs. In light of this the Claims Panel awarded the assets in the account to the heirs of the company's original founders and denied the claims of the other Claimants.

- Finally, in Docket No. 7094, the Tribunal adjudicated the claim to an account belonging to a minister of a vassal government installed by Nazi Germany in Eastern Europe. A large number of historical texts before the Tribunal showed

[38] Docket No. 6136.
[39] Docket No. 2012.

that the Account Holder was a strong supporter of Hitler and the moving spirit behind the nazification of the public and political life in his country. Information before the Tribunal further indicated that the Account Holder was responsible for the deportation of approximately 107,000 Jews to Nazi death camps. In light of the fact that Nazi and Fascist officials involved in the deportation of Jews benefited monetarily by looting the assets belonging to the deported Jews, the Tribunal paid special attention to the question whether the assets in the account were looted from deported Jews. Several of the Claimants suggested that the account contained the Account Holder's salary that he earned as a university tutor and official of the government. In this regard, the Arbitrators noted that the account records showed that the account had been opened in August 1928 and that the Bank was unable to provide documentation that would shed light on the transactions that took place from 1 January 1933 through 31 December 1945. The Claims Panel therefore had to conclude that it was impossible to find that the assets in the account were looted from Jewry. The Claims Panel pointed out that the language of Article 15, which required that a claim shall be rejected if, *"by a preponderance of the evidence, it is established that the assets in the account were looted from victims of Nazi persecution*" did not provide a basis for denying the claims of the Account Holder's heirs. Therefore, the account, which contained approximately 1,000 Swiss Francs at today's value, was awarded to the Claimants.

(h) The Scope of the Tribunal's Jurisdiction

The Tribunal's assignment was defined by Article 1 of the CRT Rules of Procedure, providing that the CRT had to review claims to accounts opened by non-Swiss nationals or residents that were dormant since 1945 and published by the SBA in 1997 (or a later date). This provision gave rise to a number of jurisdictional issues. The three major issues concerned questions as to the extent to which the Tribunal had authority to rule on (i) claims filed to accounts not published in 1997 on the list of foreign dormant accounts, (ii) claims filed to accounts that were published but not dormant, and (iii) claims for damages for allegedly mismanaged accounts.

(i) Claims filed to accounts not published in 1997 or to Swiss accounts

Occasionally, the Tribunal was approached by Claimants or Banks with the request to resolve controversies involving accounts that were not published by the SBA on the list of foreign accounts of 1997. This included both accounts not published at all or published on the 1997 list of *Swiss* rather than of *foreign* Account Holders. Such cases were outside of the Tribunal's jurisdiction as defined by Article 1 of the CRT Rules of Procedure. Pursuant to this rule, the Tribunal's jurisdiction was limited to accounts published by the SBA in 1997 that were held by non-Swiss nationals or residents.[40]/[41] As the CRT was not a permanent institution and had to complete its assignment within as short a time as possible, and as the claims resolution process was costly and therefore reserved for a predetermined assignment, it was clear that the Arbitrators could not go beyond this limitation and review cases on a voluntary basis. However, by request of the Board's Counsel, the Tribunal did assist the parties in reaching an amicable solution in a few cases outside the scope of its jurisdiction.

(ii) Claims filed to accounts published but not dormant

Pursuant to Article 1 of the CRT Rules of Procedure, the Tribunal's jurisdiction was limited to accounts that had been dormant since 1945. In the course of the proceedings it became clear, however, that a number of published accounts were not dormant, since there was recorded contact between the Bank and the Account Holder after 1945. However, by publishing these accounts the particular Banks had in effect communicated to the public that they could submit claims relating to these accounts to the Tribunal's jurisdiction. Accordingly, in most of these cases, the Banks signed standard CRT arbitration agreements which, in the Tribunal's view, were worded broadly enough to encompass the particular published non-dormant account.[42]

[40] This provision was construed by the Arbitrators as providing authority to review a claim to an account owned by a Swiss Account Holder living abroad, whose account was published on the list of non-Swiss accounts. The Arbitrators determined that Article 1 would exclude the Tribunal's jurisdiction in cases only in which the Account Holder was a Swiss national residing in Switzerland.

[41] Pursuant to Article 1(1)(ii) of the CRT Rules of Procedure, the Tribunal had jurisdiction over Swiss accounts if and to the extent an Arbitrator determined that the account may have been held by a Swiss intermediary for a victim of Nazi persecution. There were no such cases submitted to the Tribunal for review.

[42] E.g. considerations in Docket No. 1868. There were hardly any cases in which one of the parties challenged the Tribunal's jurisdiction over published non-dormant accounts. Therefore, the Tribunal abolished its initial practice of requesting the parties to sign special arbitration agreements in cases of non-dormant accounts. Some complexities arose in the few cases, in which one of the parties (typically the Bank)

(iii) Jurisdiction over mismanagement claims

The CRT's principal competence was to adjudicate claims to certain types of dormant accounts. In general, its task was to determine whether the Claimant, as a legal successor of the Account Holder, was entitled to the account and to award the amount in the account, plus, where applicable, an adjustment for interest and fees, to the entitled Claimant.

In six cases Claimants also submitted claims against Banks for payment of damages based on the allegation that the Bank did not manage satisfactorily the assets during the dormancy of the account (so-called "mismanagement claims").[43]

Based on these claims, the CRT had to decide whether its jurisdiction was limited to the adjudication of entitlement to the account or whether it was also authorized to resolve mismanagement claims based on an alleged unsatisfactory management of the assets in the account.

The six Arbitrator Panels involved initially agreed to adopt a common legal approach to all mismanagement claims. After mutual consultations and deliberations, they reached the conclusion that the CRT, as a general rule, lacked jurisdiction to consider mismanagement claims. This conclusion resulted from a careful analysis of the laws and rules governing the CRT claims resolution process as well as a comprehensive review of the statements contained in claim forms, question and answer sheets, and other written material provided to the parties at the outset of the claims resolution process. Based on this research, the Arbitrators concluded that the CRT and the claims resolution process were intended and designed exclusively to resolve the question of entitlement to an account and the payment of adjustments for interest and fees. Obviously, especially the relaxed standard of proof was inadequate to be applied to the complex issues arising in connection with mismanagement claims. While a showing of plausibility appeared to be reasonable with respect to the transfer of an account to a Claimant, it was probably too low of a standard to determine issues of

challenged the Tribunal's jurisdiction over such non-dormant accounts prior to having signed the relevant arbitration agreement. These issues were dealt with on an individual basis and resulted in satisfactory solutions for all parties involved.

[43] Docket Nos. 1897, 2493, 4872, 4876, 6088 and 6694. Docket No. 1897 was settled by the parties outside of the CRT, after the Arbitrators had held a hearing with the parties to facilitate an amicable solution.

negligence and damages. A determination of mismanagement responsibility would also have required extensive investigations by the Tribunal and the deposition of witness and expert statements and other evidentiary material. The CRT Rules did not provide for such full-fledged discovery proceedings. To the contrary: the CRT Rules required the Arbitrators to conduct the proceedings "*in an informal manner under relaxed procedural rules that are convenient for the claimants*"[44]. Last but not least, the review of mismanagement claims would have been inconsistent with the funding mechanisms of the Tribunal. As explained in this Report, the CRT was instructed by the SBA to apply standard billing rates for each case and type of procedure. The limited amount of these rates made it clear that neither these rates nor the overall funding were ever intended to cover massive arbitration proceedings outside the limited scope determined by the CRT Rules of Procedure. Therefore, the Arbitrators declined jurisdiction over such mismanagement claims, knowing that this would leave the few Claimants affected by this decision with the opportunity to bring their cases before the public courts. An English summary of the Arbitrators' considerations based on a German legal opinion by the CRT Secretariat of 10 August 2000 is attached to this Report.[45]

(i) Swiss Federal Decree of 1962

A small number of claims reviewed by the Tribunal related to accounts that had already been subject to restitution programs on earlier occasions. The most important of these earlier programs was the process launched in 1962 by the Swiss government. The process was based on the Federal Decree on Assets Belonging to Foreigners Persecuted for Reasons of Race, Religion or Politics of 1962 (*Bundesbeschluss über die in der Schweiz befindlichen Vermögen rassisch, religiös oder politisch verfolgter Ausländer oder Staatenloser*) ("Federal Decree of 1962"). According to this Decree, banks in Switzerland were obliged to report to the Swiss government the existence of assets about whose last-known owners no reliable news had been received since 9 May 1945, and who were presumed to have fallen victim to racial, religious, or political persecution. Assets for which no rightful claimants were found were liquidated and the proceeds transferred to the Heirless Assets Fund, which was paid

[44] Article 17(i) of the CRT Rules of Procedure.
[45] Annex 4

out in two installments in 1975 and 1979. Two-thirds were paid to the Swiss Federation of Jewish Communities, and one-third was paid to the Swiss Central Office for Refugee Relief. In 1998, the Swiss Federal Council decided to reactivate the process and pay compensation to rightful claimants who could still be located, i.e., the original owners of an account or heirs whose assets were paid out to charitable organizations at the time. To this end, the Swiss government published in 1999 a list with 580 names of account holders, whose accounts were reported and transferred to the government in 1992, and whose rightful owners could not be found at the time.

Parallel to this government process, a few Banks reported to the SBA, for publication on the 1997 lists, names of account holders whose accounts had already been reported and transferred to the Swiss government in the 1962 program. This caused a few overlaps between the CRT claims resolution process and the Swiss government restitution process. This included the following cases:

- In one such case, the Bank published the account on the 1997 lists as a dormant account despite the fact that the account had already been transferred to the Swiss government in 1963.[46] One of the Claimants who filed a claim with the CRT to this account was the daughter of the Account Holder. She provided her father's address and profession, both of which were not published and were contained in the bank documents. She also identified the unpublished legal representative of the Account Holder as her brother. All members of the Claimant's family were killed in the Holocaust. Although the account had been closed and transferred to the government fund in 1963, the Bank agreed in the course of the CRT process to pay the Claimant on a voluntary basis the amount that was in the account at the end of the Second World War, subject to the Rules on Interest and Fees.

- In another case, the account was a safe deposit box.[47] As the Account Holder could not be located, the Bank eventually opened the safe deposit box in 1959 and 1963, and delivered the contents to the *Eidgenössisches Kassen- und Rechnungswesen* (Federal Transaction and Accountancy Office) in 1973 pursuant to the Federal Decree of 1962. Nevertheless, the Bank republished the account on

[46] Docket No. 7260.
[47] Consolidated Docket No. 5844.

the 1997 lists, and claims were submitted to the Contact Office. The Bank informed these Claimants that they should make a claim to the Swiss government for compensation under the reactivated 1962 restitution program and the Bank later informed the Tribunal that three Claimants had made such claims to the Swiss government and had been awarded compensation. The Tribunal, after consulting with the Swiss Federal Department of Foreign Affairs in charge of the reactivated 1962 program, then determined that, as the assets in the safe were delivered to the Federal Transaction and Accountancy Office at the time, the account was not a dormant account, but rather, a closed account over which the Tribunal had no jurisdiction. As the Claimants had received compensation from the Swiss government fund, which was confirmed by the Federal Department of Foreign Affairs, the Tribunal determined that the claims would not be processed any further and closed the files.

- Similarly, in a third case, the Bank had opened an Account Holder's safe on 9 December 1963 after having been unable to locate the Account Holder or his heirs and after the fees on the safe deposit box had fallen into arrears.[48] The safe contained two safe deposit box keys and six savings and deposit books. According to the Bank, on 30 May 1973, the balance of the six savings and deposit accounts was paid to the Swiss government, in accordance with the Federal Decree of 1962. The Tribunal was subsequently informed by the *Eidgenössisches Kassen- und Rechnungswesen* (Federal Transaction and Accountancy Office) that compensation for the savings and deposit accounts was paid to the Claimant. Thus, in its award the Tribunal ordered the Bank to transfer the two keys in the Bank's possession to the Claimant, and noted that the balance of the savings and deposit accounts had been transferred to the Swiss government. The Tribunal therefore determined that the matter must be closed.

The 1962 program had some significant differences from the CRT claims resolution process. In particular, the 1962 program was not based on a publication of names and a review of claims, but was a program in which government officials took an active role in trying to locate heirs of account owners. In performing these investigations, the officials compiled comprehensive records regarding approximately 1,100 possible

[48] Docket No. 8856

victim accounts. These records continue to be kept in the Federal Archives in Bern (*Bundesarchiv*). In 1998, Professor Riemer and Alexander Jolles visited these Archives and learned that in some cases its records contained significantly more information than what was available to the CRT. Therefore, they arranged for the Tribunal to be granted unrestricted access to these records. This access was of particular interest in cases in which the Tribunal reviewed claims to accounts whose owner had already been subject to the 1962 program and who held published accounts in addition to the ones transferred to the government fund in 1962.

(j) Abuse of Process

As mentioned above, there was hardly any abuse of the claims resolution process. Most claims were filed in good faith. This includes the many cases in which a Claimant recognized a family name on the list of published accounts without knowing whether the Account Holder was actually a relative. For instance, a Claimant by the name of Fischer saw an account published under the name of Hermann Fischer. Although the Claimant did not know who Hermann Fischer was, he filed a claim based on the argument that a person by the name of Fischer could be related to his family. Most of these so-called "same name claims" were treated in Initial Screening. If the Claimant could not identify a specific relative, the claim was denied on the grounds that a shared surname between the Claimant (or a relative of the Claimant) and the Account Holder was, without more detailed information about the Claimant's relationship to the Account Holder, insufficient to satisfy the requirements of Article 10 of the CRT Rules of Procedure.

Such legitimate "same name claims" often occurred where Claimants did not have a lot of information about the claimed account holder or their family due to the circumstances of the Second World War and the Holocaust. However, there were some Claimants who filed claims even though they evidently knew that they were not related to the Account Holder. These Claimants, apparently acting in bad faith, often filed large numbers of claims. The CRT identified between ten and twenty Claimants as so-called "multiple claim claimants", who each filed between 10 and 500 claims. As one such Claimant stated in a telephone conversation with the Contact Office, for him submitting claims to the CRT was "like playing the lottery, only with better

chances of winning". The following briefly describes the most egregious examples and the special procedures adopted by the CRT to treat these cases:

- W. W., a German Claimant, his wife G. W., and his father-in-law K. T. B. submitted approximately 500 claims to the Contact Office. Of these claims, 91 were forwarded to the CRT (the other claims being claims to accounts of Swiss Account Holders not subject to CRT jurisdiction).[49] W. W., G. W. and K. T. B. each used a small selection of family documents (excerpts from family registries, hand written or typed family lists or letters concerning the estate of a family member) and submitted with each claim a copy of one or two of these documents showing a relative with the same last name as the claimed Account Holder. The relationship between themselves and the claimed account holder was always described as "nephew", "niece" or "great-nephew", "great-niece". They never described how their relative with the same last name as the Account Holder was related to the Account Holder, nor did they describe how they themselves were related to either the family member with the same last name as the Account Holder and/or the claimed Account Holder.

- R. E., a Californian Claimant, filed 86 claims to specific accounts and stated that the Account Holders were relatives of his deceased mother, his deceased grandparents or his deceased great-aunt.[50] Additionally, R. E. submitted three claim forms to "all unclaimed accounts" in which he stated: "I am a relative to many who met their demise including my grandparents F. and L. B. in the concentration camps. As such I am entitled to receive any and all funds from all unclaimed accounts". He did not identify in any of his claims a specific relative bearing the name of any of the claimed Account Holders, nor did he provide details of his relationship to any such relative.

- N. H., a Claimant from New York, filed 69 claims to the accounts of 64 Account Holders.[51] In almost 20 of her claims, N. H. stated that she herself was the Account Holder, despite the fact that her name did not correspond with any of the claimed Account Holders' names. In more than 20 further claims, she identified

[49] Consolidated Docket Nos. 0651 and 9783.
[50] Consolidated Docket No. 8624.
[51] Consolidated Docket No. 8562.

her parents as Account Holders, although none of the claimed Account Holders' names corresponded with the names of her parents as indicated in her birth certificate. N. H. did not provide relevant biographical information for any of the claimed Account Holders.

- M. L. W.-S., an Argentinean Claimant, filed claims to the accounts of 51 Account Holders.[52] She submitted an impressive number of birth, death and marriage certificates relating to members of her family. However, none of the documents mentioned a person bearing the same first and family name as the claimed Account Holders. Furthermore, M. L. W.-S. did not provide any relevant biographical information about specific relatives she identified as Account Holders.

Under Article 10 of the CRT Rules of Procedure, if the Bank declined to disclose its name and the amount held in the dormant account, the claim was to be presented to the Tribunal for an Initial Screening decision by a Sole Arbitrator. For each of the above claims, the Bank declined to disclose to the Claimant its identity and the amount in the account, and the Tribunal created a separate docket number for each claim. Thus, under Article 10 of the Rules, each of the above Claimants' claims would have had to be reviewed individually, and separate Initial Screening decisions would have had to be rendered for each claim. This was done with respect to the claims of the "multiple claims claimants" who had filed fewer than 20 claims as well as with the first 20 claims of W. W., G. W. and K. T. B.

However, to treat the numerous claims of the Claimants described above fairly and at the same time expeditiously, a special procedure was developed. Under Article 20, the Tribunal had the authority to join all relevant claims into one procedure before the same Sole Arbitrator or Claims Panel if one person claimed accounts with several Banks. Further, under Article 42 of the CRT Rules of Procedure, the Rules were to be construed *"so as to accomplish the purpose of fair and expeditious disposition of all claims."* Moreover, the CRT had the right to establish such procedures, consistent with the Rules, in order to *"fill gaps in these Rules and to deal with unforeseen circumstances."* Based on these provisions, Prof. Dr. H. M. Riemer, as Chairperson of the CRT, joined all the claims of R. E., of N. H. and of M. L. W.-S. into one procedure

[52] Consolidated Docket No. 8553.

for each Claimant and appointed a Claims Panel to decide whether the names of the Banks and the amounts held in the dormant accounts should be disclosed. With respect to W. W., G. W. and K. T. B., the Chairperson consolidated 20 claims into one procedure and a further 51 claims into another. The Claimants were given the opportunity to re-submit the claims for consideration by a further three-Arbitrator Claims Panel. Only N. H. re-submitted all her claims, and a second Claims Panel rendered a second decision denying disclosure for all her claims.

There were more re-submissions for the claims of the "multiple claims claimants" whose claims had been treated individually. For these re-submitted claims, a similar approach to the one described above was adopted, and the re-submitted claims were consolidated. For example, W. W. and G. W. re-submitted 15 of their first 20 claims that had been treated individually and a Claims Panel resolved the 15 re-submissions in one decision. W. W. and G. W. did not resubmit any of the claims that were treated in the two consolidated decisions by the Claims Panel.

(k) Impartiality and Independence; Challenge of Arbitrators

In accordance with Swiss law and the Tribunal's Rules, each Arbitrator had to be and remain impartial and independent.[53] Therefore, the Arbitrator Committee on Conflict of Interest established procedures to exclude the possibility and appearance of bias by Arbitrators. Each Arbitrator had to sign a Statement of Independence and was required to report to the CRT Secretariat the names of participating Banks with which the Arbitrator or his or her business partners maintained professional contacts. Depending on the degree of professional dealings with these Banks, the Arbitrator had to either recuse himself or herself from cases involving the particular Bank or had to disclose to the parties his or her relationship to the Bank. This applied to both Fast Track and Ordinary Procedures. As disclosure was not possible in Initial Screening procedures, Arbitrators could not be involved in any Initial Screening cases involving any of the Banks with which the Arbitrator was or had been in professional contact. Based on these rules and conflict-of-interest lists, the CRT Chairman and Secretariat assigned the cases to the Arbitrators in a manner ensuring impartiality and independence.

[53] Article 8 of the CRT Rules of Procedure; Article 3 of the CRT Internal Rules; Article 180(1) of the Swiss Act on Private International Law.

Pursuant to Article 8 of the CRT Rules of Procedure, an Arbitrator could be challenged *"if circumstances exist that give rise to legitimate doubts concerning his or her independence or integrity."* The challenge petition was to be submitted to the Chairman of the CRT *"immediately after the party making such challenge becomes aware of the relevant facts."*

The Tribunal received a few letters of complaint which were directed more against the outcome of a case than alleging impartiality of an Arbitrator. In fact, the Tribunal received only one formal challenge of an Arbitrator's impartiality. The challenge concerned a case in which an Arbitrator on 13 March 2000 had rendered a final decision rejecting the claim.[54] By letter dated 17 April 2000, the Claimant informed the Tribunal that *"[i]n accordance with Article 8 of the Rules (Challenge of a Sole Arbitrator), I hereby request that this letter be submitted to the Chairman of the Claims Resolution Tribunal."* While the Claimant did not explicitly state that he was challenging the Arbitrator's independence nor give any reasons for such a challenge, the Tribunal determined that this letter should be treated as a challenge petition. Based on the applicable rules of law, in particular on Articles 180 and 190 of the Swiss Act on Private International Law, the Tribunal determined that once a final decision was rendered, the parties and the Arbitrator were bound by the decision, and the Tribunal could not unilaterally modify such decision. Thus, the CRT determined that challenges based on Article 8 of the CRT Rules of Procedure had to be made prior to the rendering of a final decision, and that after a final decision was rendered the Claimant's only remedy was an appeal to the Swiss Federal Supreme Court. As far as the Tribunal knows, no appeals were filed with the Swiss Federal Supreme Court challenging the impartiality or independence of CRT Arbitrators.

10. INTEREST AND FEES

(a) Rules on Interest and Fees

Pursuant to Section 5.1(vi) of the Charter of the ICRF, and pursuant to Articles 12 and 16 of the CRT Rules of Procedure, the Board of Trustees was to adopt rules on interest and fees to determine the adjustment of account balances for bank fees and charges

[54] Docket No. 0780.

and for interest and investment returns on dormant accounts under the Tribunal's jurisdiction.

In a note of 27 January 1999, the Board of Trustees recorded the key elements of the future Rules on Interest and Fees. Thereafter, during 1999, the Tribunal received various drafts of these Rules for review. In each case the comments by the Arbitrator Committee on Interest and Fees and the Committee on Rules, Policies and Templates were promptly communicated to the Board.

On 3 May 2000, the Tribunal received the final wording of the Rules on Interest and Fees. In addition, on 14 September 2000, the Tribunal was provided with amended attachments and schedules to these Rules as well as a modified computer program necessary to implement the Rules. As of the latter date, the Tribunal was in a position to render Final Awards.

In the meantime, in order to accelerate the paying out of dormant accounts under its jurisdiction, the Tribunal had adopted a practice of rendering Partial Awards pending the adoption of the Rules on Interest and Fees. By this mechanism, the Claimants received the current account balance by way of a Partial Award, while the decision regarding interest and fees was postponed to the time at which the Rules would become available. It was felt that the benefits of an early partial payout to Claimants outweighed the additional work and costs resulting from this two step approach.

(b) Implementation of the Rules on Interest and Fees

To implement the Rules on Interest and Fees, the Arbitrator Committee on Interest and Fees had to resolve a number of issues left open by the Rules. These issues included (i) the treatment of accounts in other currencies than Swiss Francs, (ii) the treatment of cases in which an Account Holder had several accounts with the same bank (typically a securities account and an adjacent current account), (iii) the treatment of accounts that showed account values prior to 1945, (iv) issues involving safe deposit boxes (in particular the refunding of fees in such cases), (v) due process of law issues in relation to the Tribunal's establishment of account values and assessment of adjustments, (vi) the treatment of non-Victim accounts, and (vii) such good offices as the Tribunal could offer to facilitate agreements between the parties in non-Victim cases. [55] Policies with respect to these questions were established in August and November 2000.

(c) Victim and non-Victim Accounts

As soon as the Tribunal received a final draft of the Rules on Interest and Fees in January 2000, a team of Staff Attorneys and Arbitrators with particular experience in this matter[56] immediately began working to determine which of the Partial Awards would be eligible for adjustment under the Rules. By 10 February 2000, the Arbitrators had reviewed all of the approximately 1,500 Partial Awards rendered as of that date and made determinations regarding whether or not the Account Holder was a Victim, and, where necessary, requested additional information from Claimants. They also adopted guidelines on the application of the Victim definition of the Rules.[57]

In evaluating the numbers of Victim accounts, the following elements have to be understood:

- It was the Account Holder and not the Claimant who had to be the Victim.
- The term "Victim" was limited to persons (or entities) who were (or were believed to be) Jewish, Romani, Jehovah's Witness, homosexual, or physically or mentally

[55] Paragraph 4 (C) of the Rules on Interest and Fees.
[56] Professor Hans Michael Riemer, Dr. Robert Briner, Professor Thomas Buergenthal, The Rt. Hon. The Lord Higgins, Mr. David Friedmann, Mr. Doron Schorrer
[57] Memorandum of 31 July 2000.

disabled or handicapped.[58] All of the Tribunal's cases belonged to the Jewish group. There were no cases involving any of the other groups, such as Romani, Jehovah's Witnesses, etc.

- The term "Victim" included not only persons who were actively persecuted but also persons who were targeted for persecution by the Nazi regime. Therefore, the Tribunal treated Account Holders who emigrated from Nazi- or Axis-occupied countries during World War II as Victims in accordance with the Rules, unless there was evidence that the Account Holder did in fact access the account after he or she emigrated.[59]

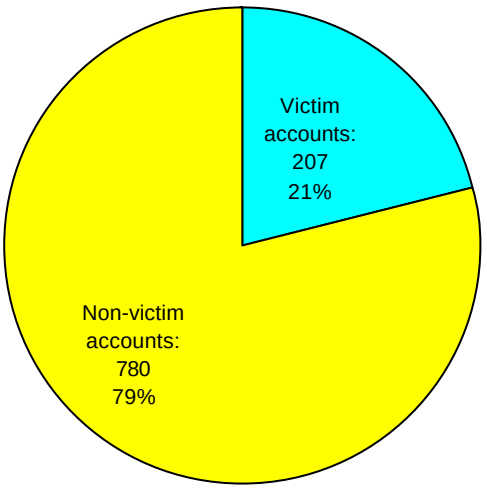
- The question whether an Account Holder was a Victim had to be determined only in those cases in which there was a valid claim against the account. Therefore, the question was reviewed only with respect to 987 accounts out of the 5,570 dormant accounts published by the SBA. With respect to the remaining 4,583 accounts this question was not reviewed because there were no valid claims to these accounts.

- Out of the 987 accounts successfully claimed, 207 (i.e. 21%) were determined to be accounts of victims or targets of Nazi persecution.

[58] Paragraph 2 (I) of the Rules on Interest and Fees. In commenting on drafts of the Rules on Interest and Fees, the CRT Arbitrators had suggested that the Victim definition be extended to include all persons who did not have access to the accounts due to the circumstances of World War II, including persons living in Eastern European countries under Communist regimes.

[59] If an Account Holder was a Swiss national or a Swiss resident, even if he was Jewish, he was not considered a Victim. However, If the Account Holder was a national of a Nazi- or Axis-occupied country and then passed through Switzerland on the way to a third country, the stop in Switzerland did not disqualify an Account Holder who was otherwise a Victim (see CRT Memorandum to the Arbitrators of 31 July 2000 on applying the Victim of Nazi persecution definition). An exception to this guideline was made in a case where the Account Holder, a German Jewish person resident in Switzerland, had his passport confiscated by the German consulate in Switzerland. In this case, because the German authorities directly caused the injury in Swiss territory, it was decided that the account should receive the adjustment for special interest and fees.

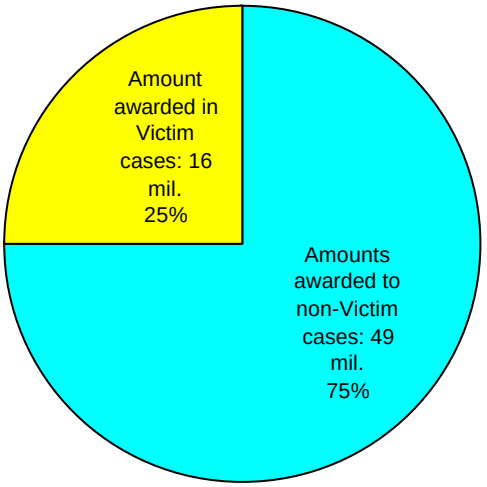
Fig. 12: Number of Victim accounts and non-Victim accounts



(d) Calculation of adjustments to Victim accounts

The statistics for all Victim accounts from CRT-I show that a total of 4,193,576.92 Swiss Francs were awarded in Partial Awards, representing today's account balance, and that 11,434,343.76 Swiss Francs were awarded in Final Awards, representing the additional adjustment awarded in Victim cases under the Rules on Interest and Fees. In addition, an adjusted equivalent of 558,277.40 Swiss Francs in foreign currency was awarded to Claimants of Victim accounts. This results in an aggregate amount of 16,186,198.08 Swiss Francs awarded to Claimants of Victim accounts.

Fig. 13: Amounts awarded overall to Victims and non-Victims (in Swiss Francs)



Broadly speaking, the method used to calculate an adjusted amount to be paid to Claimants of Victim accounts was to estimate an account value as of 31 December 1944 and multiply this amount by ten.[60] The computer program used by the CRT did this by adding back bank fees to the account and, in the case of savings or custody accounts,[61] by deducting interest.

(i) Difference between Partial Award amount and amount calculated under the Rules on Interest and Fees

The total amount calculated under the Rules on Interest and Fees was less than ten times the amounts awarded in the Partial Awards (14.1 million versus 4.1 million). The reason for this relates primarily to the earliest-known account value of each account as found in the bank documents on file and to the type of account in question.

For most, if not all, Partial Awards the Tribunal took the amount to be awarded from the form *"Angaben zur Forderungsanmeldung"*, which was the information form by which the Banks had reported the account values to the Contact Office and the SBA. This amount was almost invariably the balance of the account in 1997 or the last known value of the account if the account had been collectivized. Therefore, there was up to a 52-year difference between this amount and the balance of the account at the end of 1944 (estimated or actual) that was multiplied by ten. In any event, any earliest-known account value after 1944 was adjusted back to 1944, meaning that there was always a large difference between the amount awarded in the Partial Award and the estimated 1944 account value.

Contributing to the difference was the effect that the different types of account had on the calculation process under the Rules on Interest and Fees. The type of account had a significant bearing on the relationship between the amount paid in a Partial Award and the amount calculated under the Rules on Interest and Fees. Some examples from the cases should illustrate this point. In Docket number 2012, the amount awarded under the Partial Award was 9.60 Swiss Francs. The account was a demand deposit (current account) for which a hold mail fee and a numbered account fee had been

[60] The Rules and the computer program allowed for the amount to be multiplied by 15.5 in the case of Managed Accounts, as defined in the Rules on Interest and Fees. However, the 15.5 multiplier was not used, as there were no Managed Account cases.

[61] "Custody account" was the terminology used in the program and referred to securities or depot accounts which contained shares, bonds, or precious metals, or any combination of these.

periodically deducted. Bank documents were available back to 1944 showing a balance of 6,343.00 Swiss Francs. Therefore, the total amount to which the Claimant was entitled was 63,430.00 Swiss Francs.[62] In this case, the amount calculated under the Rules on Interest and Fees was 6,607 times greater than the amount awarded in the Partial Award. Although this may at first glance seem to be an extreme result, the case shows that the program predicted the amount in 1944 reasonably accurately. By entering an account balance of 9.60 and the year 1997 into the program, and including hold mail and numbered account fees, the computed present account value is 6,219.60 Swiss Francs, a difference of only 123.40 Swiss Francs from the actual amount in 1944 that was recorded in the bank documents.

The case is an example of the normal result when adjusting a demand deposit account under the Rules. Because demand deposit accounts had no discount factor applied to them when calculating under the Rules, the estimated account balance in 1944 was always higher than the actual account value that was reported in 1997, as there were only additions of fees made to the account and no subtractions, as would be the case if the account were a savings or a custody account. The largest differences between the Partial Award amount and the amount calculated under the Rules occurred with small account balances that had usually been collectivized. For example, in Docket number 0004 the amount awarded in the Partial Award was 2.25 Swiss Francs. The earliest-known account value was 1.50 Swiss Francs in 1957. In this case, as there were no numbered account fees or hold mail fees to add back to the account, only maintenance fees of 195.00 Swiss Francs were added back to the account, resulting in an estimated account value in 1944 of 196.50 and an computed present account value of 1,965.00. A more common example is Docket number 3406, which had a published account balance in 1997 of 524.50 Swiss Francs. The earliest-known account value was 524.50 Swiss Francs in 1963, when the account was collectivized. Adding back estimated fees from 1963 to 1944 gave an account value of 809.50 Swiss Francs in 1944, and a computed present account value of 8,090.50. The result was that the Claimant received a final amount that was more than ten times greater than the reported account balance in 1997.

[62] In the Final Award the Claimant was awarded 63,420.40 Swiss Francs, being the total amount calculated under the Rules on Interest and Fees minus the 9.60 Swiss Francs awarded by the Partial Award.

The more statistically significant phenomenon, which accounted for the final ratio between the total amount awarded in Partial Awards and the total calculated under the Rules on Interest and Fees, concerned the calculations made for savings and custody accounts. For both of these types of accounts, in order to estimate an account value in 1944, the Rules on Interest and Fees applied a discount factor[63] to take into account that these types of accounts would have appreciated in value over time. A hypothetical savings account example illustrates the point. Say that the earliest-known value of a savings account was 100 Swiss Francs in 1960. Assuming that no hold mail or numbered account fees were charged, the total fees to be added back amount to 240.00 Swiss Francs, giving a total adjusted book value of 340.00 Swiss Francs. A discount factor of 1.386, listed in Schedule B of the Rules on Interest and Fees, would then be applied to this amount to give an estimated account value of 245.31 Swiss Francs in 1944 and a computed present account value of 2,453.10.

In many custody accounts, the resulting total under the Rules on Interest and Fees calculation was less than a factor ten of the amount of the Partial Award due to this discount factor and due to the escalation of world stock markets in the latter half of the 1990's. For example, in Docket No. 6061 the amount paid out pursuant to the Partial Award was 51,984.70, which was the value of the account on 26 April 1999. The earliest-known account value was 7,026.80 Swiss Francs in 1963, which resulted in an estimated account value in 1944 of 5,265.21 Swiss Francs and a computed present account value of 52,652.15 Francs, only 667.45 Swiss Francs more than the amount paid pursuant to the Partial Award.

In addition to cases like these, in which the amount calculated under the Rules was less than ten times the amount reported in 1997, there were also four accounts to which Rule 3B of the Rules on Interest and Fees applied. Rule 3B states:

"*If the current Book Value of an account subject to these Rules is larger than the value of the account as established under paragraph 3(A), the former value shall prevail and the calculation provided for in paragraph 3(A) shall not apply.*"

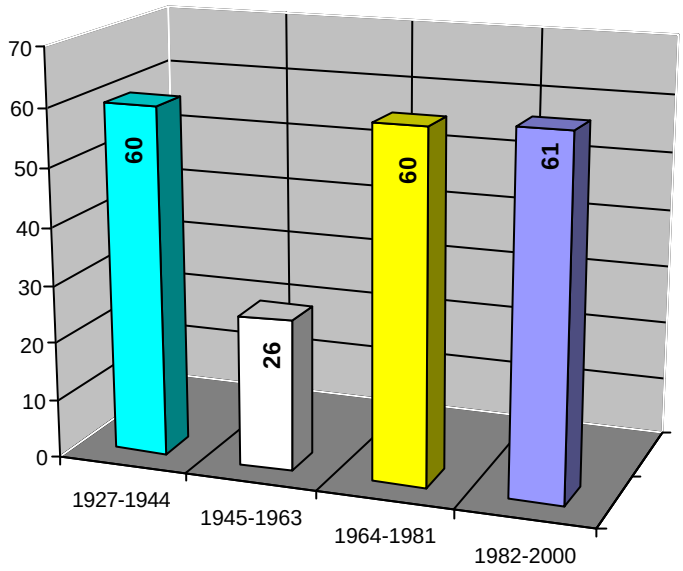
[63] Referred to in the Rules on Interest and Fees as a "Compounded Nominal Value Factor."

In the four accounts, the amount calculated under the Rules on Interest and Fees was less than the amount awarded under the Partial Award, and accordingly no further adjustment was made to these accounts in the Final Awards. Although only four accounts, they are statistically significant because they account for a difference of 1,117,382.25 Swiss Francs between the amount paid out under their Partial Awards and the total for these accounts calculated under the Rules on Interest and Fees. For example, in Docket No. 5050 the account consisted of a custody account containing shares, the dividends of which were automatically reinvested in identical shares. The earliest-known account value was 3,492.50 Swiss Francs in 1946 and the computed present account value was 38,870.19 Swiss Francs. In contrast, the actual account value was 883,474.00 Swiss Francs as of 2 October 2000, and this unadjusted amount was awarded to the Claimant in the Final Award.

(ii) Earliest-known account values

Although the Rules on Interest and Fees assume that the earliest ascertainable account balance in the bank records *"will be the book value of the account in 1986 because prior records are unavailable,"* experience has shown that this was not the case. In fact, in only 5.3% of cases was 1986 the year of the earliest-known account value used for the calculation under the Rules on Interest and Fees. The most frequent year of earliest-known account value was 1944, with 14.5% of accounts, followed by 1963 and 1985 both with 9.2%. Perhaps the most significant statistic is that for 29.5% of accounts, an account value prior to 1945 was known, meaning that the balance of the account closest to 31 December 1944 was simply multiplied by ten. No adjustment for fees or interest was necessary.

Fig. 14: Year of earliest known account value



(iii) Foreign currency accounts

The computer program calculated the adjustments in Swiss Francs only, so accounts in other currencies had to be converted into Swiss Francs before they could be calculated.[64] To avoid any unjustified benefits or disadvantages to the parties from currency fluctuations, the following steps were taken:

a) the foreign currency was converted into Swiss Francs;

b) the exchange rate of the day on which the Claims Resolution Tribunal made the account valuation was used;

c) the calculation was made by entering the Swiss Franc amount in the program;

d) the new amount calculated by the program, which was still in Swiss Francs, was converted back into the original currency by using the same exchange rate used in (b) above; and

e) the Bank was directed to pay the Claimant in the foreign currency.

By using the same exchange rate to convert to and from Swiss Francs, the effect of currency fluctuations was minimized. For example, in Docket No. 3643, the amount

[64] The exception is the case in which the year of the earliest-known account value in the foreign currency was 1944 or prior. That account balance was simply multiplied by ten.

paid out under the Partial Award was 7,132.20 German Marks. The earliest-known account value was 9,117.00 German Marks in 1985. The exchange rate used to convert this amount into Swiss Francs, as provided by the Swiss National Bank on 23 November 2000, was 100 German Marks to 77.76 Swiss Francs. Using this exchange rate, the earliest-known account value in Swiss Francs was 7,089.40, which gave a computed present account value of 89,094.00 Swiss Francs under the Rules on Interest and Fees. The amount of 89,094.00 Swiss Francs was then converted back to German Marks using the same exchange rate, which resulted in a computed present account value of 114,575.61 German Marks, and it was this amount that was awarded to the Claimants in the Final Award.

(iv) Relationship between total amounts paid in Partial and Final Awards and the total amount calculated under the Rules on Interest and Fees

In the majority of Victim accounts, the Tribunal rendered a Partial Award prior to rendering a Final Award that implemented the adjustments mandated under the Rules on Interest and Fees. In most cases, the amount calculated under the Rules on Interest and Fees was the total amount paid out for an account. For example, in Docket No. 3376 the sole Claimant to the account was initially awarded 4,173.25 Swiss Francs. The computed present account value under the Rules on Interest and Fees was 27,524.50 Swiss Francs. Accordingly, in the Final Award the Bank was directed to pay an additional 23,351.25 Francs.[65]

In most cases in which more than one Claimant was entitled to a Victim account, the amount calculated under the Rules on Interest and Fees was still the total amount paid out for the account. The total amount was simply divided amongst the Claimants to the account. For example, in Docket No. 7863, the three Claimants were each awarded 1,761.70 Swiss Francs in the Partial Award. The total amount calculated under the Rules on Interest and Fees was 16,960.00 Swiss Francs, and accordingly each Claimant was awarded an additional amount of 3,891.63 Swiss Francs in the Final Award.

However, although the amount calculated under the Rules on Interest and Fees was the total paid out for each account in most cases, the combined total of the amounts paid

[65] 27,524.50 Swiss Francs minus 4,173.25 Swiss Francs.

out in Partial Awards and Final Awards was greater than the total amount calculated under the Rules on Interest and Fees (15,627,920.68 Francs versus 14,176,575.25 Francs). There are several reasons for this result.

First, as mentioned above, there were four cases in which Article 3B of the Rules on Interest and Fees applied, which accounted for a difference of 1,117,382.25 Swiss Francs between the amount paid out under their Partial Awards and the total for these accounts calculated under the Rules on Interest and Fees.

Second, there were seven Fast Track accounts in which the bank concerned had concluded settlement agreements with several Claimants and agreed to pay out the whole balance of the account more than once, which was reflected in the Partial Awards. At the Final Award stage, the total amount calculated under the Rules on Interest and Fees was paid out several times to the different Claimants. For example, for the account published under the name of Aleksander Pollak, the Bank concluded settlement agreements with twelve different Claimants, and the total balance of the account, 524.50 Swiss Francs, was paid to these Claimants in twelve separate Partial Awards. At the Final Award stage, after each Claimant had separately established that the person whom they believed to be the Account Holder was a Victim of Nazi Persecution, the amount calculated under the Rules on Interest and Fees, 8,095.00 Swiss Francs, was paid out to each Claimant.

Similarly, there were 33 Small Amount Settlement cases in which, due to the small account balance remaining in the account, the Bank concerned concluded settlement agreements with multiple Claimants, as it believed that it would be more efficient to pay out a small amount a number of times than to let each case be resolved in the Ordinary Procedure. For these 33 cases, the difference between the total amount calculated under the Rules on Interest and Fees and the total amount paid out to Claimants in the Final Awards was 62,019.50 Swiss Francs.

Finally, there were three Ordinary Procedure cases in which there were multiple Claimants and in which Article 22 of the CRT Rules of Procedure was construed so as to allow the whole amount of the account to be awarded to more than one Claimant. For example, in Docket No. 0565 the total amount of 29,670.00 Francs calculated under the Rules on Interest and Fees was paid out in its entirety to three separate

Claimants from three separate families, since all Claimants plausibly established that they had a (different) relative by the name of the Account Holder. While these Claimants had submitted all the information that could have been expected under the circumstances, it was impossible to determine which of the three relatives with the same name was the actual Account Holder, since the bank records did not contain any information in addition to the name of the Account Holder, which could have been used to identify the right person. As the Arbitrators considered it the Bank's duty in an open account relationship to maintain sufficient information in the bank records to identify the Bank's customer, the account was awarded three times to each of the Claimants who established a relationship to a person matching the little information available from the bank records.

(e) Treatment of non-Victim Accounts

The Rules on Interest and Fees left it open whether the Tribunal was to award interest to Claimants of non-Victim accounts. However, the CRT Rules of Procedure, the Claim Forms, the Claimant Information Packs, and banking practice, all pointed toward a conclusion that interest was to be awarded to accounts of non-Victims, provided that the original contract between the Account Holder and the Bank required interest to be paid.[66] Accordingly, many Banks had credited interest to non-Victim accounts either prior to reporting the account balance to the Contact Office or in connection with paying out the balance of the account at the time of the Partial Awards. Therefore, a majority of Arbitrator Committee members considered that the Tribunal had to award interest in non-Victim cases, provided that such interest was due according to the agreement between the Bank and the Account Holder. Where, as in most cases, such agreements were no longer on record, the Tribunal applied general banking principles.

To establish the applicable interest rate, the Tribunal designed a form to be completed by the Banks for each non-Victim account that was successfully claimed. The

[66] The "Frequently Asked Questions" section of the Claim Form Pack states: "***Will I receive interest if my claim is successful?****: It depends on what kind of account is involved. If the account was interest bearing, you will receive the appropriate interest that has accrued during the dormancy of the account [...] In addition, the Board of Trustees of the Independent Claims Resolution Foundation has commissioned a panel of experts to report on appropriate adjustments to claims awards for victims of Nazi persecution to take into account interest as well as bank charges and fees. Depending on the circumstances of a case, a claimant may be eligible to receive this special adjustment.*" (Emphasis added).

completed "Financial Information Checklists" were then examined by the Tribunal and compared with the account information available in the Tribunal's records. Where no information regarding the applicable interest was available, the Tribunal used average interest rates established by the Kaufman Panel.

With respect to collectivized accounts, the Tribunal invited the Banks to send a list of such accounts showing for each account what type of account it was before being collectivized. If the Bank had no information about the account type prior to transfer of the account into the collective account, the Tribunal assumed that the account was an interest bearing account prior to being collectivized.[67] In addition, because the Banks had the use of the money in collectivized accounts as if they were savings accounts, interest was awarded to all collectivized accounts from the date when they were collectivized, unless the Bank could establish that no interest was due. Where the Bank did not establish the applicable interest rate, the Tribunal applied the rates for savings accounts established by the Kaufman Panel.

On the other hand, it was clear from the Rules on Interest and Fees that the Banks were under no obligation to return fees and charges debited from non-Victim accounts. Therefore, the Tribunal had no authority to order the refund of such fees and charges to Claimants of non-Victim accounts. Nevertheless, in a few exceptional cases, the Tribunal suggested to the Bank that it consider a voluntary refund of fees. These cases included Docket No. 7275, in which the Account Holder, a Polish professor, was executed by Nazi troops in 1941 in an action directed against university professors in Lviv, and Docket No. 4916, in which both the Account Holder and the Claimant were interned in Nazi internment camps in 1944 for refusing to cooperate with the Nazi Regime and the puppet Romanian government. In both cases the Account Holder was obviously persecuted but was neither Jewish, nor Romani, Jehovah's Witness, disabled nor a member of another group mentioned in the Victim definition to be applied by the Tribunal. As pursuant to the Rules on Interest and Fees the Tribunal could not order the payment of special adjustments in these cases, the Arbitrators expressed their expectation in a cover letter to the Bank, that the Bank would take these circumstances into consideration and make a voluntary payment to the

[67] For example, if a Demand Deposit Account (Current Account) were collectivised in 1952, the Claimant would receive no interest for the period 1945 to 1952, but would receive interest thereafter. If it were a Savings Account the Claimant would receive interest for the whole period.

Claimant.[68] Since such voluntary refunds were to be made after the Final Award was rendered, the Tribunal has no knowledge as to whether the Banks followed the Tribunal's recommendation.

(f) Objections from the parties to the Tribunal's computations

In order to expedite the paying out of interest and additional adjustments to Claimants, the Tribunal decided that after the parties had submitted all relevant information, it was not necessary to circulate among the parties for comments the Tribunal's calculations and computations prior to rendering the Final Awards. Nevertheless, in order to exclude all possibilities of undiscovered miscalculations, the Tribunal informed the parties in the Final Award that according to the Tribunal's internal procedural rules the parties had a right to request the correction of computational and clerical errors within thirty days of receipt of the Final Award. In 4 cases[69] the parties requested a modification of the Tribunal's calculations regarding interest and fees. These requests were reviewed by the Tribunal and determined to be unfounded.

11. IMPACT OF THE GLOBAL SETTLEMENT AGREEMENT

In the course of the Tribunal's treatment of cases, the two major Swiss banks, UBS and Credit Suisse, reached a settlement agreement ("Global Settlement Agreement") in the Holocaust Victims' Assets Class Action Litigation pending before the U.S. District Court for the Eastern District of New York. Agreement on the settlement was reached in 1999, and the terms of the Global Settlement Agreement were approved by Judge Korman in July/August 2000.

The Global Settlement Agreement and the Distribution Plan based on this agreement provided not only for the CRT to be involved in the distribution of settlement funds to members of the plaintiff classes, which was a new assignment to the CRT referred to as CRT-II, but also had some direct implications for the Tribunal's treatment of pending claims under the CRT-I project.

[68] There were also a few Victim cases in which the Banks, in accordance with the original contract with the Account Holder, opened a safe deposit box and sold some of the contents to cover unpaid fees. In these cases, no refund was due under the Rules of Interest and Fees, but the Banks offered a refund on a voluntary basis (Docket Nos. 7827, 7644 and 4941).
[69] Docket Nos. 8453, 0500, 2538 and 7730.

The most important impact of the Global Settlement Agreement on CRT-I work resulted from the fact that according to the terms of the Global Settlement Agreement, the banks would receive a credit from the USD 1.25 billion Settlement Fund for all payments made to Claimants of Victim accounts, to the extent that such payments exceeded the assets held by the Bank on account of the Account Holder. In other words: If the Bank offered to pay 2,000 Francs to a Claimant of a current account, the Bank would receive a credit from the Settlement Fund in the same amount. This called for a strict application of Article 12 of the CRT Rules of Procedure, which required the Tribunal to approve settlement offers only in cases in which the Claimant had a valid claim, and provided that the Bank's offer complied with the Rules on Interest and Fees. Therefore, the CRT had become in a sense an indirect custodian of settlement monies under the CRT-I project.

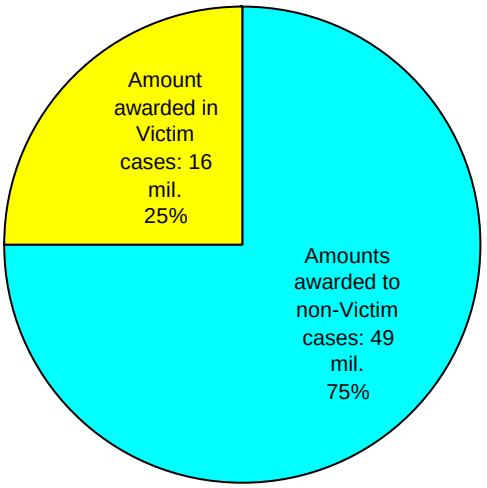
In addition, the Banks adopted a practice under the terms of the Global Settlement Agreement of referring Claimants of Victim accounts to the Escrow Agents of the Settlement Fund in New York to collect the adjustments for interest and fees awarded by the Tribunal. This meant that although the Final Awards rendered by the Tribunal ordered the Banks to pay the adjustments, the Banks argued that by the terms of the Global Settlement Agreement they were released from liability vis-à-vis Claimants of Victim accounts, for which reason these Claimants were to seek payment of Final Awards in New York. The Tribunal, which had no authority to oversee and intervene in the enforcement of awards, received calls from Banks and Claimants to clarify confusions arising from these developments.

12. AMOUNTS AWARDED AND HONORING OF AWARDS

(a) Amounts awarded

The CRT awarded an aggregate amount of 65'251'159.99 Swiss Francs.[70]/[71] From this amount, 16'186'198.08[72] Swiss Francs were awarded to Claimants of Victim accounts, and 49'064'961.91 Swiss Francs were awarded to Claimants of non-Victim accounts. The amount awarded in Victim cases includes the adjustments awarded under the Rules on Interest and Fees. In non-Victim cases, the amount includes payments for interest if the account was interest bearing.

Fig. 15: Amounts awarded overall in Victim and non-Victim cases (in Swiss Francs)



(b) Banks Honoring Awards

The Tribunal rendered decisions which were enforceable against the Banks in the same manner as regular court decisions. However, the Tribunal was not involved in the enforcement of its awards. It had no authority to supervise the payment of awards or to monitor compliance with its orders. Nevertheless, Claimants usually approached

[70] This amount is adjusted to include five accounts in which a part or the whole of the account was awarded in foreign currency.
[71] In cases involving securities accounts, the Tribunal ordered the transfer of the assets to the Claimant rather than the payment of a specific amount. To determine the value of the award for statistical purposes, the Tribunal used the most recent value of the securities contained in the bank records on file.
[72] Adjusted to include amounts in foreign currency.

the Tribunal for assistance whenever difficulties arose in connection with the payment of awards.

The Tribunal made efforts to facilitate the transfer of assets to the Claimants. After consultation with various bank representatives, the Tribunal adopted a practice of sending Payment Instruction Forms to Claimants, to be returned by the Claimant and forwarded to the Bank paying the award. It also provided Claimants with telephone numbers and names of contact persons at the relevant Bank. Finally, the CRT followed up on cases in which Claimants informed the Tribunal about payment delays. At the same time, the Tribunal learned from Banks about the difficulties and expenses involved in transferring small amounts to Claimants living in distant places, where the costs of money transfers would significantly exceed the funds awarded. These situations would typically arise in connections with Final Awards, in which additional interest on a small account balance was awarded.

Although the Tribunal learned of some delays in the payment of awards, and of one Cantonal Bank objecting to honor the awards unless the Claimant would sign a release form, which resulted in an intervention by the Tribunal, the Tribunal is not aware of any award that was not eventually paid by the participating Banks.

(c) Payment of Victim Awards; Escrow Agents

Pursuant to the Global Settlement Agreement, all amounts, including interest and fees, that the Swiss banks paid since October 1996 to Deposited Asset Claimants as a result of determinations made by the CRT, serve to reduce the Settlement Amount and could be credited by the Banks in full against the Settlement Amount.[73] Special adjustments for interest and fees awarded by the CRT pursuant to the Rules on Interest and Fees could be paid directly by the Settlement Fund to Claimants.[74] Based on these provisions, a number of Banks adopted the practice of directing Claimants of Victim accounts to the Escrow Agents administering the Settlement Fund in New York for collecting payment of CRT Final Awards.[75]

[73] Section 5.2 of the Global Settlement Agreement.
[74] Global Settlement Agreement Amendment No. 2, Section 3.7.
[75] Some Banks voiced the view that these provisions of the Global Settlement Agreement restricted the Tribunal's jurisdiction to order Swiss Banks to make payments to Claimants in Victim cases. This objection,

Since many Claimants did not understand why they had to collect payment in New York on an account held by a Swiss bank which was ordered by the CRT to pay, and since there were considerable delays in the paying mechanisms of the Settlement Fund,[76] the CRT was inundated with calls from Claimants and Banks requesting advice and support. The CRT assisted both parties by providing advice and information, but lacked authority to take the necessary measures to accelerate the payment mechanism. The CRT repeatedly brought the matter to the attention of the Board's Counsel.

13. CHALLENGING OF DECISIONS

The parties could appeal the decisions of the Tribunal at two levels: (i) Resubmitting an Initial Screening decisions for review by a Claims Panel, and (ii) challenging decisions on the merits with the Swiss Federal Supreme Court.

Initial Screening decisions where a Sole Arbitrator had determined that bank information was not to be disclosed to Claimants, could be challenged by resubmitting a claim for decision by a Claims Panel within 30 days of receipt of the Sole Arbitrator's decision.[77] This possible remedy was available to Claimants only; the Banks could not appeal a Sole Arbitrator's decision to disclose the Bank's name and the balance of the account. Pursuant to the CRT Rules of Procedure, Claimants did

however, was never formally raised, for which reason the Tribunal did not have to determine to what extent the terms of the Global Settlement Agreement affected the validity and scope of the CRT arbitration agreements between the participating Banks and Claimants to Victim accounts (who were members of the Deposited Asset Class under the terms of the Global Settlement Agreement, unless they had opted-out).

[76] E.g. the Claimant in Docket No. 2972 received his final award in January 2001. In May 2001, he received part of his award from the Bank, with a letter from the Bank stating that it was instructing the Escrow Agents to pay to the Claimant the amount of 19,499.71 Swiss Francs. The Claimant wrote the Tribunal on 19 May 2001 to inquire as to the payment of the remainder of his award. He wrote to the Tribunal again on 15 August 2001 in Russian asking the Tribunal to contact the Escrow Agents and speed up the payment. Likewise, the Claimant in Docket No. 3799 contacted the Tribunal by telephone on 10 September 2001. His situation was quite similar. He received his final award at the end of April 2001. He was awarded 122,000 Swiss Francs, and had received 12,000 Swiss Francs only, the amount that was due from the Bank. He received this amount in May 2001 from the Bank. The Bank instructed him to contact the Escrow Agents for the remainder. He contacted one of the Escrow Agents at the beginning of June and provided him with all of the proper payment instructions. However, by 10 September 2001, he had not yet received any additional amounts. He contacted the Escrow Agent's office again and was told that there were some difficulties with the escrow account and that he needed to be patient. In Docket No. 0075, another Claimant was in a similar position. The Tribunal rendered a final award on 18 July 2001. Since then the Claimant repeatedly called the Tribunal to inquire about the payment of the Final Award. The Claimant stated that she faxed her payment instructions to the Bank upon receipt of the final award. A week later, she received a letter from the Escrow Agents in New York asking her to send instructions for payment. However, by 10 September 2001, the Claimant had not yet received the amount awarded in the final award.

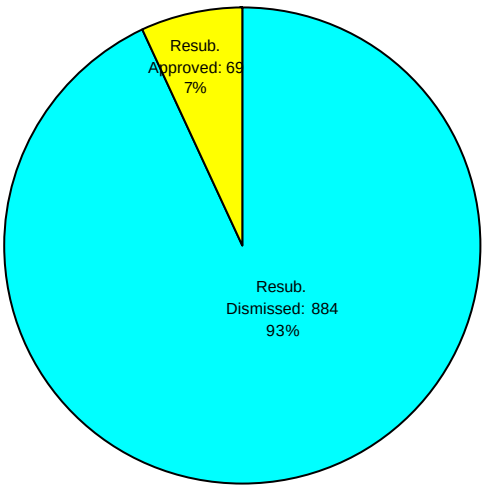
[77] Article 10 of the CRT Rules of Procedure.

not need to submit new or additional information or documents when resubmitting a claim. Therefore, in the majority of resubmitted cases, Claimants did not state the grounds for their challenge nor file additional information; they simply requested that a panel of Arbitrators have a second look at the facts considered by the Sole Arbitrator.

In 953 Initial Screening cases, Claimants resubmitted their claims. This number represents 16% of all Initial Screening decisions. In 69 (7%) of the resubmitted cases, Sole Arbitrators' decisions were reversed by Claims Panels, mostly because the Claimant submitted new information in support of the claim. In 844 (93%) of the cases the Sole Arbitrators' decisions were affirmed by the Panels.

Number of claims resubmitted in Initial Screening:	953
Number of cases in which Sole Arbitrator's Initial Screening decision was affirmed by Panel:	884
Number of cases in which Sole Arbitrator's Initial Screening decision was reversed by Panel:	69

Fig. 16: Total number of IS resubmission approvals and dismissals



With respect to Tribunal decisions regarding entitlement to an account (i.e., decisions on the merits in Fast Track and Ordinary Procedure), the CRT Rules of Procedure did not provide for any challenge of these decisions at the CRT. Therefore, the only recourse was an appeal to the Swiss Federal Supreme Court based on Article 190 of the Swiss Private International Law Act ("SPILA"). This law limits the grounds on which the appeal may be founded.[78]

There were approximately 20 cases in which Claimants requested information about an appeal to Swiss courts. While as a matter of policy the Tribunal did not engage in providing legal advice to the parties, the Tribunal drafted a standard letter outlining in general terms the grounds for appeal provided by SPILA Article 190 and the applicable procedural requirements (deadlines, costs, etc.) for appeals to the Supreme Court. The parties were also informed that the relevant deadlines could not be met by filing an appeal with the CRT instead of the Supreme Court.

[78] Pursuant to Swiss law on international arbitration (Article 190 of the Swiss Act on International Private Law), a party may appeal a final decision of an arbitral tribunal to Swiss courts only in cases in which the party believes that his or her procedural rights were violated in the course of the arbitral proceedings. Such grounds for appeal include cases where a tribunal has wrongly accepted jurisdiction to decide a case; where there has been an improper appointment of an arbitrator, or an improper constitution of a claims panel; where a tribunal has decided matters beyond those submitted to it, or where it failed to decide all of the matters before it; or where a party or parties believe that their right to be heard in an adversarial procedure has not been observed. Additionally, a party may challenge the substance of an arbitral decision only in cases in which he or she believes that the decision violates public policy; or in cases in which new relevant facts were discovered after the decision was rendered, provided that the challenging party was not responsible for the fact that the new facts were discovered only after the decision was rendered.

The Tribunal is aware of four of its decisions being challenged in the Swiss courts:

- In one matter, a Claimant filed an appeal with the District Court of Zurich.[79] This Court was without jurisdiction to hear appeals against international arbitration decisions. The Tribunal was not invited to comment on the appeal and understands from telephone conversations with the Court that the appeals was dismissed and the cases closed on procedural grounds (lack of jurisdiction).

- In another matter in which a Claimant was dissatisfied with the Tribunal's decision, the Claimant filed an appeal with the Commercial Court of Zurich.[80] The appeal was dismissed and the cases closed on procedural grounds (lack of jurisdiction). The same Claimant then filed criminal charges against the Tribunal and the SBA, alleging procedural fraud, forging of documents and other criminal acts by members of the Tribunal. Based on these charges the District Attorneys of Basle and Zurich had no choice but to opened criminal investigation. Both investigations did not produce any indications of misconduct by members of the Tribunal and were closed by the respective District Attorneys without bringing charges. The Claimant challenged the closing order of the Zurich District Attorney with the District Court of Zurich, which dismissed the Claimant's appeal for the same reasons. On 17 September 2001, the Tribunal was notified by the Court that the Claimant has filed another appeal, this time with the Zurich Court of Appeals, challenging the District Court's decision. The appeal is pending.

- In Docket No. 4894, a Claimant wrote a letter of complaint to the Swiss Federal Supreme Court. To save the Claimant from incurring unnecessary costs, the Court informed the Claimant and the Tribunal in a detailed letter of the reasons why, in the Court's view, the Claimant's letter of complaint did not meet the procedural requirements of a formal appeal, and why the Court believed that the matter should be resolved by way of correspondence between the Claimant and the Tribunal rather than by an appeal to the Supreme Court. For the Claimant's convenience, the Tribunal translated the Court's letter into English and Hebrew. As of the date of this Report, the Claimant did not pursue the matter with the Court.

[79] Docket No. 6750.
[80] The matter involved Docket Nos. 6714, 4815, 4816 and 5946

- In Docket No. 4138, a Claimant, represented by a Swiss lawyer, filed a formal appeal with the Supreme Court, challenging an Initial Screening resubmission decision rendered by a CRT Panel of Arbitrators. In the challenged decision the Tribunal declined to disclose the Bank's name and the account balance to the Claimant. The Supreme Court invited the Tribunal and the anonymous Bank to comment on the Claimant's appeal. In response, the Tribunal filed a legal brief outlining why it considered the appeal as unfounded both on a procedural level and on the merits. The Supreme Court dismissed the appeal, primarily on the ground that an Initial Screening decision was not an arbitral decision subject to appeal under SPILA Article 190. In the Initial Screening phase of the CRT procedure, the parties had not yet signed a mutually binding arbitration agreement, for which reason the Arbitrators' Initial Screening decision was not an arbitral decision but rather an administrative ruling in preparation of arbitration.[81] The Court released its determination for publication, and the decision was published and commented upon in Swiss newspapers and legal magazines.[82]

At this time, the Tribunal is not aware of any other pending appeal against its decisions.

14. COSTS AND FUNDING

Pursuant to Article 40 of the CRT Rules of Procedure, all costs and expenses of the Tribunal were to be borne by the Foundation, and no part of the costs were to be charged to Claimants.

The Foundation's initial capital amounted to 150,000 Swiss Francs. Pursuant to its charter, the Foundation could accept additional contributions by the founders or third parties. In fact, the process was funded in its entirety by the Swiss banking community. Based on monthly budgets and payment requests by the CRT, the SBA advanced the costs until the final resolution of the entire claims resolution process. The SBA instructed the CRT to prepare invoices for each of the participating Banks for the treatment of claims to their dormant accounts. The billing rates and terms were

[81] Swiss Federal Supreme Court decision of 21 November 2000/BGE 126 III 529 – 534.
[82] e.g. Neue Zürcher Zeitung of 14 December 2000.

determined by the SBA.[83] They were based on various approximations and did not cover the full amount of costs for each individual case. Invoices were sent to the SBA in several batches as soon as all cases of a particular Bank were resolved. By 15 October 2001 the CRT will have sent the final batch of bank invoices to the SBA. The SBA was in charge of forwarding the invoices to the Banks and collecting payment. CRT expenses not covered by the aggregate amount to be paid by the Banks on the basis of CRT invoices was be covered by the SBA.

The overall expenses of CRT-I amounted to 31,784,028.70 Swiss Francs, or approximately 3,200 Swiss Francs per claim. This amount is less than the 35 million Swiss Francs expected by the SBA.

These costs had to be evaluated in connection with a number of considerations. The Tribunal was designed to operate as an independent arbitration tribunal. Unlike state courts benefiting from government funding, the Tribunal had to establish and finance a sizeable infrastructure with private funds only. The Tribunal had to operate in four different languages dealing with claims submitted in more than 15 languages. It had to be composed of an international staff of foreign lawyers and translators. The Board of Trustees appointed a group of highly eminent Arbitrators, who were assisted during peak times by a staff of more than 50 persons. To avoid all appearances of bias, the CRT Rules of Procedure required that cases involving accounts with a balance of more than 3,000 Francs had to be treated by panels of three Arbitrators. Moreover, due to the timing of the adoption of the Rules on Interest and Fees, claims had to be resolved in two steps by a partial award followed by a final award. Finally, due to the fact that accounts were in general claimed by several persons of different origins, and that there were usually two generations between the Account Holder and the Claimants, the determination of family relationships, the resolution of procedural and substantive law issues, and the translations into all of the different languages involved in each particular case tended to be complex and time-consuming. These complexities were unrelated to the account balance, and even accounts with balances as small as a few Swiss Francs involved complex legal and factual issues. In fact, since the bank records of small accounts opened more than 50 years ago contained, in general, minimal information only, the identification of the Account Holder's successor in title

[83] See the attached sample invoice with the terms for bank invoices determined by the SBA (Annex 5).

was often more complicated than in cases involving larger accounts, where there was more information available. Since for many Claimants the claims resolution process was not simply about paying out accounts, but also about family relationships, and, in some cases, about receiving satisfaction that earlier rejections from Banks had been unjustified, the Tribunal was under a responsibility to treat claims to small accounts as carefully as claims to large accounts. Based on these considerations it is evident that the costs of the claims resolution process cannot be considered in relation to account balances, but must be evaluated in the broader context of the magnitude and importance of the Tribunal's mandate and the necessity to meet the expectations and promises made to the public by its founders.

Annex 6 of this Report contains a draft profit and loss statement covering the entire period of CRT-I, and a draft balance sheet as of 30 September 2001. These draft statements are based on the criteria determined by the Board's Counsel and Special Master Michael Bradfield for the allocation of costs between CRT-I and CRT-II. The CRT understands that a final agreement between the SBA and the Special Masters for the CRT-II process regarding the cost allocation and approval of CRT-I expenses is still pending. The attached financial reports are therefore in draft form only, and the Tribunal requests instructions from the ICRF's Board to finalize these statements.

During the term of its existence, CRT-I accounting was audited several times by the SBA and by ATAG Ernst & Young.[84] At the same time, the CRT's books of accounts and financial reports were examined on an ongoing basis by the Secretary of the Foundation. The Foundation's Secretary and representatives of the SBA met with representatives of the CRT Secretariat at regular intervals to discuss the results of their reviews and audits, and to resolve matters regarding the funding of the Tribunal. The CRT fully complied with all of the ICRF's and SBA's financial reporting requests, and the auditors expressed satisfaction with the CRT's financial reporting and accounting.

15. ARCHIVING

The Tribunal's files will need to be archived for posterity. In order to consolidate statistical data, ensure consistent organization and quality of the files, and to maintain

[84] See Auditing Reports of 24 November 1998, 8 June 2000, 19 June 2000, 7 September 2000.

confidentiality of the Arbitrators' deliberations, the Tribunal decided to review each file before releasing it for archiving. To this end, an archiving team was established when the Tribunal moved to its new premises, in October 2000. The team is overseen by the Project Manager, Clare Ducksbury. The archiving team consists of students who work part-time. They are reviewing all CRT-I files with the assistance of Archiving Checklists, which vary depending on the procedure of the claim. The team members ensure that both the computer entries and the physical files are consistent and in a complete and organized state. They are also segregating internal documents (such as file notes, internal correspondence between Arbitrators and Staff Attorneys, and deliberative material) from documents recording the claims resolution process (such as correspondence with the parties, bank records and account statements, documents submitted by the parties, telephone attendance notes, account valuation worksheets, orders, decisions, etc.). The latter documents will be archived, while documents of an internal nature will be removed.

At the time of this Report, the archiving team has reviewed and archived all Initial Screening and the majority of Small Amount Procedure files. As a next step, they will embark on the more complex procedure of archiving Fast Track and Ordinary Procedure files.

The Tribunal requests instructions from the Board regarding the place of final storage for these files.

16. ON THE CRT

(a) Press Coverage, Public Relations, Website and Advice to Other Organizations

The work of the Tribunal received significant public interest. At regular intervals, journalists called the CRT to receive information on the process and progress reports. On 18 November 1998, the Tribunal invited a selected group of news reporters and journalists to the Tribunal's offices at Löwenstrasse, Zurich, for a presentation of the Tribunal's work and organization. In January 1999, the Swiss Arbitration Association dedicated its annual conference to the work of the CRT. The conference was attended by more than 150 international arbitration experts, who listened to presentations from

CRT Arbitrators, Staff Attorneys, legal scholars, representatives from banks and the Swiss Federal Banking Commission, and a member of the Kaufman Panel advising ICEP on matters regarding interest and fees. These presentations were later published by the Swiss Arbitration Association (see bibliography below).

In response to various press articles quoting bank representatives expressing criticism regarding the expenses and time required for resolving CRT claims, the Tribunal issued a press release on 12 May 1999 reporting on the work progress and clarifying misconceptions about the Tribunal's mandate and functions. The Chairman, the members of the Information Committee, and the Secretary General also held numerous conversations, discussions and interviews with representatives from the media to educate the public on the Tribunal's challenging tasks. Also, various members of the Tribunal and its staff made presentations at universities, professional organizations, and legal seminars and conferences.

Also important was the establishment of the CRT website. The website was designed by the CRT Information Committee in cooperation with a website provider who designed the website for the Swiss Federal Supreme Court. The website included the CRT Rules of Procedure, Questions and Answers, the Arbitrators' biographies, a status report and a selection of decisions in three different languages. It can be viewed at: www.crt.ch.

Last but not least, the Tribunal was asked for advice on a number of matters related to its activities. The Bergier-Commission submitted to the Tribunal a draft of the section of its report covering the treatment of dormant accounts by Swiss banks during and after the Second World War. The Chairman and members of the CRT Secretariat met with a representative of the Bergier-Commission to exchange comments on the draft. In connection with proposed Swiss legislation on the treatment of dormant accounts, the Tribunal was invited by the Swiss Federal Department of Justice to submit comments on a draft law. The CRT submitted to the Department of Justice a memorandum with comments on 12 September 2000. Moreover, the Tribunal was consulted on its experience and procedural issues by a representative of the International Commission for Holocaust Era Insurance Claims, and by a French delegation in charge of establishing a compensation commission for victims of Nazi

prosecution ("Commission pour l'indemnisation des victimes de spoliations intervenues du fait des législations antiseémites en vigueur pendent l'occupation" – Commission Drai). Both groups of representatives requested advice on the establishment of mass claims resolution schemes.

(b) Articles on the CRT

Numerous articles were published on the CRT. The following list contains a non-exhaustive selection of some of the more comprehensive publications:

- Thomas Buergenthal: Arbitrating Entitlement to Dormant Bank Accounts, in: Liber Amicorum Ibrahim F.I. Shihata, Kluwer Law International, 2001, p. 79 – 102; also published in: ICSID Revue, 2000, Vol. 15, p. 301 – 321.

- Natasha C. Lisman: Update on Restitution of Holocaust Era Swiss Bank Accounts, in: Justice, Journal of the International Association of Jewish Lawyers and Jurists.

- Amance Dourthe-Perrot: Le Tribuanl Arbitral pour les Comptes en Déshérence en Suisse, in: Revue de l'Arbitrage, 1999, No 1, p. 21 – 34.

- Hans Michael Riemer/Georg von Segesser/Brigitte von der Crone: The Claims Resolution Tribunal for Dormant Accounts in Switzerland – An Overview; in: Mealey's International Arbitration Report, February 1999, Vol. 14, #2, p. 19 – 23, and in: Bulletin of the Swiss Arbitration Association, 1998, p. 252 – 257.

- Riemer/Bauer/Krayer/Romerio/Ben-Itto/Park/Ramasastry/Jolles/Reed/Voser/Girsberger/Ryser/Zulauf/Kellerhals/Holtzmann/Wühler/van Houtte/Rivkin/Pell/Goltz: The Claims Resolution Process on Dormant Accounts in Switzerland, Reports and Material from the Swiss Arbitration Association conference of 22 January 1999, in: ASA Special Series No. 13, January 2000, p. 1 – 221.

- Shai Wade: The Experience of the Claims Resolution Tribunal for Dormant Accounts in Switzerland, in: Mealey's International Arbitration Report, November 1999, Vol. 14, #11, p. 1 – 47.

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17. CONCLUSION

During its four years of existence, the members of the Tribunal struggled for truth and fairness in many difficult and sometimes tragic cases. They had to recognize that more than half a century after the Holocaust and the end of the Second World War, truth could be established only to a fragmentary extent and justice only restored partially. Nevertheless, the Tribunal was fully committed to serve these objectives and did so to the best of its abilities. In this connection, three points need to be emphazised: First, even when Claimants were sometimes only distantly related to the

Account Holders, it was still more equitable to award the assets to the distant relative rather than leave the funds with the Banks. This was particularly true in Victim cases. Second, in the many cases in which the amounts in the accounts were small, the process was driven more by moral and ethical concerns than by financial considerations. Finally, the fact that the process took longer than anticipated and was relatively expensive was largely due to the fact that the Swiss lawmakers had failed in a timely fashion to adopt legislation dealing systematically with the treatment of dormant accounts. The existence of this type of legislation would have greatly simplified later efforts to search for and return these accounts to those entitled to them.

Professor Dr. Hans Michael Riemer Chairman	Alexander Jolles Secretary General

c.c. (with annexes 1 - 6): Mr. Michael Bradfield
Dr. Urs Roth, SBA

c.c. (with annexes 1 - 5): CRT Arbitrators
Mr. Judah Gribetz
Professor Dr. René Rhinow
Mr. Zvi Barak
Dr. Peider Mengiardi
Dr. Thomas Bauer
CRT Secretariat

Annexes:

1. List of Arbitrators
2. List of Staff Members
3. List of Claimants' countries of origin
4. Memorandum summarizing the Arbitrators' considerations regarding the CRT's jurisdiction over mismanagement claims
5. CRT bank invoice, including SBA billing rates and terms
6. Draft CRT-I Profit and Loss Statement and Balance Sheet as of 30 September 2001