

November 13 1957

CHARLES GREEN
ATTORNEY AND COUNSELLOR AT LAW
800 BANKERS SECURITIES BUILDING
JUNIPER AND WALNUT STREETS
PHILADELPHIA 7

OFFICE
OF EUROPEAN AFFAIRS
MESSAGE CENTER

1957 NOV 4 AM 10 35
PENNYPACKER'S 0860

November 1, 1957

DEPARTMENT OF STATE

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262.0041-HANOWER, GOLDA/11-157

Department of State
Office of German Affairs
Washington 25, D.C.

Dear Sirs:

I represent Mme. Golda Hanower, of this city, who is the widow of Szoel Hanower. Mr. Hanower was born October 8, 1899, at Radum, Poland, arrested April 8, 1942 at his residence, 150 Rue St. Martin, Paris, interned, deported September 26, 1942 to Auschwitz, and finally executed April 3, 1945 at Zwiherge.

The following other members of Mme. Hanower's family were also deported and executed:

Aron Siegel (brother), wife Deborah and Daughter Berta, from Nice to Draney to Germany, about 1945.

Nathan Siegel (brother), wife Jenny and daughter Gizelle, from Essen to Germany, about 1945.

Sarah Siegel Reingertz (sister), husband Joseph and two children, from Przemyslu, Poland, about 1942.

Mme. Hanower is interested in asserting any possible claims she may have in order to recover for the murder of her family. She would also like to recover for property stolen from her in Paris, and would like to recover title to a house in Przenlu, Poland, owned by her brother, Aron, before his deportation and execution.

Please advise me of the necessary steps to be taken in asserting my client's claim.

Yours very truly,

Charles Green

CHARLES GREEN

CG:al

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[Handwritten initials]

Reply drafted by
EVA BERGER/LP Fichelt/EUR/EE/CC
11-7-57

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262.0041 Hanower
[Handwritten signature] 11-15-57

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Authority NND 969003
By JK NARA Date 6/20

RG 59
Entry CDF 1955-59
File 262.0041
Box 1074

November 13 1957

In reply refer to
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Dear Mr. Green:

The Department has received your letter of November 1, 1957, concerning various types of loss and injury which your client, Mrs. Golda Hanower, and her family suffered during World War II.

Although the Federal Republic of Germany has enacted indemnification legislation to compensate victims of Nazi persecution, it would not appear that the types of damage suffered by Mrs. Hanower and her family come within the purview of this legislation. In this connection, however, a general explanation of what that legislation provides may be helpful.

On September 18, 1953, the Federal Republic of Germany enacted legislation entitled "Supplementary Federal Law for the Compensation of Victims of National Socialist Persecution (BEG)". This legislation which has been recently amended provides compensation to those who were persecuted because of political conviction or on racial, religious or ideological grounds and who suffered damage to life, limb, health, liberty, possessions, property or economic advancement. To be eligible a persecutee must satisfy certain requirements regarding residence in Germany or be a displaced person or expellee within the meaning of the law. Where a persecutee satisfies this and the other requirements of the law, he qualifies for compensation from the German Government.

The Department does not have an English translation of the German Federal Indemnification Law or the requisite forms available for general distribution. However, it is our understanding that the German Consulates throughout the United States are supplied with forms for the filing of claims and are in a position to advise claimants on the procedure to be followed. If you have not already done so, you may wish to communicate with the German Consulate General at 745 Fifth Avenue, New York, New York, to ascertain whether the claim

about

Mr. Charles Green,
Attorney and Counsellor at Law,
800 Bankers Securities Building,
Juniper and Walnut Streets,
Philadelphia 7, Pennsylvania.

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about which you are inquiring is cognizable under this law and, if so, to request advice and guidance in the matter. In addition, the Department has been informed that the World Jewish Congress at 15 East 84th Street, New York 28, New York, has prepared for the convenience of claimants residing in the United States an explanatory memorandum of the principal provisions of the Federal Indemnification Law, which is available upon request. The time limit for filing claims under the Federal Indemnification Law is April 1, 1958.

With respect to Mrs. Hanover's possible claim for property stolen from her in Paris, you may be interested in the provisions which were made in Chapter Five of the Convention for the Settlement of Matters Arising Out of the War and the Occupation, as amended by the Paris Protocol of 1954, between the Three Powers and the Federal Republic of Germany for the filing of claims for the restitution of property removed from territory occupied by Germany. Chapter Five makes provision for two types of cases. The first situation pertains to cases involving restitution to a government of cultural property, jewelry, silverware, and antique furniture as specified in paragraph 1 of Article 1. As far as the processing of such claims is concerned, a German agency, the Bundesamt fuer aussere Restitutionsen, was established pursuant to Article 1 of Chapter Five, the responsibility of which is limited under Article 2 to the processing of claims only by the governments of the states from the territory of which property of the nature defined in Article 1 was removed.

Provision was made in Chapter Five, Article 2, paragraph 3, for the referral to the German agency mentioned above by one of the Three Powers of governmental claims falling within the scope of Article 1 provided that the claims had been filed with an agency of one of the Three Powers before May 5, 1955, and final disposition had not yet been made of them. However, as stated above, this procedure was applicable only to cases involving the restitution of property of the type specified in paragraph 1 of Article 1 and only if the government of the territory from which the property had been removed had filed a claim with one of the Three Powers prior to May 5, 1955.

The second situation involves cases where an individual finds property in Germany which was taken from him. In this connection your attention is directed to Articles 3 and 4 of Chapter Five of the Settlement Convention which contain provisions for the bringing of suits in a German court for the restitution of or compensation for property removed from territory occupied by Germany. Pursuant to Article 3 of Chapter Five claims for the restitution of property in this category could have been brought before a German court by the claimant on or before May 8, 1956, or may still be brought before

a German

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a German court if the possessor has not had bona fide possession of the property for ten years. In addition, Article 4 provides for the filing of claims for compensation in cases where property after identification in Germany was either utilized or consumed in Germany before return to the claimant, or destroyed, stolen or otherwise disposed of before the claimant obtained restitution. Suits for compensation under this Article should have been brought before a German court by the claimant by May 5, 1956. However, the bringing of a suit may still take place if one year has not yet expired since notification to the claimant that the property is not available for restitution.

You will note that the deadline for filing such claims has expired. It is suggested, therefore, that you should communicate with the German Embassy at Brussels in order to ascertain if it is still possible for you to file claim for your losses.

In the economic negotiations concluded on June 7, 1957, between the United States and Poland, the two Governments agreed upon early negotiations looking towards the settlement of American property claims against Poland, resulting from nationalization measures after World War II. As one step in the preparation for these discussions, the Foreign Claims Settlement Commission issued a public notice requesting American claimants to furnish certain information with respect to possible property claims against Poland. The Department has been informed by the Commission that claims statements may still be filed and it is suggested, therefore, that you communicate with the Foreign Claims Settlement Commission, Washington 25, D.C., concerning the house in Przenal, Poland.

Sincerely yours,

For the Secretary of State:

AWS
Albert W. Sharer, Jr.
Officer in Charge
Polish, Baltic and Czechoslovak Affairs

S/S-CR ✓

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Last paragraph cleared with:

FCSC - Mr. Greer *llg*

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By JK NARA Date 1/1/20

MAY 8 1952

In reply refer to
DS 248.0041/8-152

My dear Mr. McLean:

Reference is made to your letter of May 1, 1952, in which you inquire in behalf of an immigrant from Poland whether there is a procedure whereby a claim may be filed against German property in the United States for property which was allegedly confiscated in Poland by the former German Nazi regime.

Unless the whereabouts of the property is known, enabling steps to be taken for its identification and recovery by the rightful owner under restitution proceedings, there are no presently available remedies or procedures known to this Department that would be applicable in a case of this nature. Under the customary rules of international procedure, the United States can espouse only claims of persons who are American nationals and who were American nationals at the time the losses were sustained.

Sincerely yours,

For the Secretary of State:

Francis E. Flaherty
Assistant Chief
Division of Protective Services

Mr. Laughlin H. McLean,
Payne, Hermann and Pusti,
Attorneys at Law,
330 Williamson Building,
Cleveland 14, Ohio.

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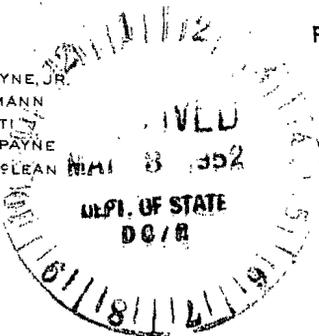
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FRANCIS M. PAYNE, JR.
PHILIP J. HERMANN
MICHAEL PUSTI
FREDERICK J. PAYNE
LAUCHLIN H. McLEAN



PAYNE, HERMANN AND PUSTI
ATTORNEYS AT LAW
330 WILLIAMSON BUILDING
CLEVELAND 14, OHIO

May 1, 1952

ACTION
is assigned to

TELEPHONE
CHERRY 1-2636

Division of Protective Service
Department of State
Washington 25, D.C.

DIVISION OF
PROTECTIVE SERVICES
MAY 5 1952
DEPARTMENT OF STATE

Re: Ostrap BOYCHUK vs.
German Government

Gentlemen:

We represent a client who is a recent immi-
grant to the United States from Poland.

During the German occupation of Poland in the
last war, some very valuable property was taken from him by
the German Army and German authorities.

We would appreciate advice as to what procedure
our client can follow in order to assert his claim against
German property in the United States.

Very truly yours

PAYNE, HERMANN & PUSTI

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JAN 3 1951

In reply refer to

My dear Senator Saltenstall:

Reference is made to your letter of December 27, 1950 containing another inquiry from Mr. Henry J. O'Brien regarding the Tripartite Gold Commission.

The answers to Mr. O'Brien's questions follow:

(a) Question: "What does the Department mean when it says \$260,000,000.00 worth of gold has been tentatively distributed? Does it mean that a decision has been made, but no actual delivery of the gold has been made?"

Answer: \$260,000,000.00 worth of gold have been actually delivered to some of the claimant countries whose claims seemed clearly established "on an installment basis against their obligation to return to the pool any excess receipt after final accounting".

(b) Q: "Was the country of Poland among those eleven, if so, how much gold is tentatively to be delivered to her?"

A: Poland was not among the countries receiving gold out of the pool. No gold was delivered to Poland from the pool.

(c) Q: "Did the country of Poland make its claims, if so, for what amount? Has Poland a claim pending, if so, for what amount?"

A: Poland submitted her claim to the Commission about two years later than the other claimants because she was not

originally

The Honorable
Leverett Saltenstall
United States Senate

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200.6241-Add
/12-2750

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By JK NARA Date 6/26/00

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originally included among the gold pool participants and was only subsequently admitted. The Tripartite Gold Commission has made no final decision regarding Poland's claim. The Department is not free to reveal the exact amount of the claim submitted by the Polish Government.

Mr. O'Brien's letter to you of December 22, 1950 is hereby returned to you in accordance with your request.

Sincerely yours,

For the Secretary of State:

Jack K. McFall
Assistant Secretary

Enclosures:

- ✓(1) Mr. O'Brien's letter of December 22, 1950

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E. MERRICK FOWLER
CLERK
JAN 29 1951

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FOREIGN SERVICE OF THE UNITED STATES OF AMERICA

SECURITY: CONFIDENTIAL

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PRIORITY: AIR POUCH
4 Enclosures

TO: Department of State - MN

200.6241 GOLD/12-1350

FROM: US COMMISSIONER, TCC, AMEMBASSY, BRUSSELS - 199 - December 13, 1950

REF:

SUBJECT: Statement by Polish Representative before Gold Commission, September 5, 1950.

For Dept. use only.

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ACTION INFORMATION

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200.6241-GOLD/12-1350

DC/R Central Files

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There are transmitted herewith copies of the verbatim report of the statement made by the representative of Poland at the meeting of the Tripartite Commission for the Restitution of Monetary Gold held in Belgium on Tuesday, September 5, 1950.

The obtaining of copies of this statement has been delayed by various untoward and unforeseen circumstances. However, it will be noted that the statement of the Polish representative is to be continued at some later meeting of the Commission. This future statement, or continuation of the statement, has also been delayed by the absence of the Polish representative in New York, and hence the delay in transmitting copies of the first part of the statement may not have caused any particular inconvenience.

It may be observed that the Polish representative's statement raises certain questions which might be of interest, not only in connection with the Polish claim, but also in connection with the operation of the Commission and of all claims submitted to it. As an example, the Polish representative spoke at some length on the question of the interpretation of the phrase "Monetary Gold". He argued for a liberal interpretation of this phrase, but claimed that the Commission itself was tending to take a restricted interpretation.

It is suggested that his statement might be considered from this broader point of view, as well as from its application to the specific Polish claim. The statement has not yet been formally considered by the Commission itself.

(NOTE: The enclosures consist of the original copy of the Polish representative's statement as received from the Commission Secretariat and as corrected by the Polish representative himself. The other copies have been made from this original, but have not been proof-read.)

Homer S. Fox
United States Commissioner
Tripartite Commission for the
Restitution of Monetary Gold

DEC 14 1950

Enclosures as stated above.

ACTION COPY - DEPARTMENT OF STATE

The action office must return this permanent record copy to DC/R files with an endorsement of action taken.

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VERBATIM REPORT
OF THE STATEMENT
MADE BY THE REPRESENTATIVE OF POLAND
AT THE MEETING
of the
TRIPARTITE COMMISSION
for the
RESTITUTION OF MONETARY GOLD

which was held at 3.30 p.m. on Tuesday, 5th September, 1950.

2. POLISH REPRESENTATIVE

May it please the Commission. The Polish Government has availed itself of the opportunity to examine the case which is before the Commission in connection with the claim which it has put forward to the Commission some time ago, and I have come here on the instructions of my Government to appear before the Commission in order to present its views in connection with this claim concerning gold looted from Poland and removed illegally by Hitlerite Germany during the war.

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As the members of the Commission are aware, my Government signed with the three Governments of the United Kingdom, the United States of America and France on July 6, 1949 a protocol by which Poland became a party to Part III of the Agreement on Reparations from Germany and the establishment of an Inter-Allied Reparation Agency signed at Paris on January 14, 1946, i.e. the part dealing with the restitution of monetary gold. Pursuant to this protocol, Poland acquired all rights to which the signatories of Part III of the Reparation Agreement of January 14, 1946 have been and are entitled. May I therefore state from the very outset of the remarks I wish to make today, that I am addressing the Commission as the representative of a Signatory Government to the document in question, in order to prevent its views and attitude concerning the claims it has advanced for restitution of the gold in question.

Members of the Commission will recall that my Government has submitted to the Commission certain information, detailed information I should say, concerning our losses in gold. We have submitted documents and affidavits. We have also delegated an expert in Brussels here who could supply the Commission with any information it may have wished to obtain. In reply, My Government received from the Commission a letter dated July 27, 1950. The Commission was good enough to inform my Government of the views it has taken on the documents submitted to it by the Government of Poland and arrived at what is called a preliminary decision, that it was unable to find any basis for the favourable consideration of the claim submitted by Poland. It was mentioned that this decision was a very preliminary decision and was not the final judgment of the case. There is one particular instance in the letter of July 27, in its first paragraph, which I would like to mention. It concerns the word "alleged", and to quote, it was stated that the Polish Government's claims concerning 138,738,5309 kgs. of fine gold are qualified as "alleged". My Government cannot but be astonished by both the wording and substance of this part of the letter. It seems that the Commission questions the losses incurred by Poland as a result

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result of the war. Can it be possibly said that the losses in gold as notified by the Polish Government to the Commission are only "alleged" losses? Is it possible to question even for a moment that Poland has not suffered those losses? Can it be said that our claim concerning these losses has not the full backing of facts? Is there anyone who can doubt? I believe there is no doubt. Indeed there are facts and documents and history itself which supply full evidence of the case. Even more, let me quote some of the documents of the United Nations published during and after the war, which bear evidence of these and similar losses suffered by countries under occupation, and Poland was undoubted in the forefront of those countries which suffered occupation.

On January 5, 1943 the United Nations published a declaration simultaneously in Paris and London, Washington and Moscow, which used the following wording:- "The systematic spoliation of occupied or controlled territory has followed immediately upon each fresh aggression. This has taken every sort of form and it has extended to every sort of form and it has extended to every sort of property, from works of art to stocks of commodities, from bullion and bank notes to stocks and shares in business and financial undertakings." The same declaration said also something else. It said that the object of those acts has always been the same: "to seize everything of value that can be put to the aggressor's profit and then to bring the whole economy of the subjugated countries under control so that they must slave to enrich and strengthen their oppressors". These points were supplemented by the declaration issued on February 22, 1944 which states that "one of the particular methods of dispossession practised by the Axis powers has been the illegal seizure of large amounts of gold belonging to the nations they have occupied and plundered".

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By <u>JK</u> NARA Date <u>6/26/00</u>

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The hideous criminality of these deeds has been corroborated by the judgment of the Nuremberg Tribunal. We read in it that as a result of Goering's order of October 19, 1939, an order which mentions particularly Poland as a territory of special plunder - I quote - "Agricultural products, raw materials necessary for German factories, tools, transport equipment, other finished products and even foreign currency and the stocks of foreign values have been seized and sent to Germany. These goods have been seized in a manner out of any proportion to the economic possibilities of these countries and as a result brought hunger, inflation and a gigantic black market". These problems have also been dealt with by the declarations of Yalta and Potsdam, and a particular aspect of them found its expression in the Paris Reparation Agreement.

The brutal reality spoke through the words of regulations, orders and instructions of the Hitlerite occupant; the order of the Chief of the Civil Administration at the Military H.Q. in Krakow of September 14 1939, which introduced the duty to deliver to the Bank all foreign exchange and gold both in bars and coins; the order of the Chief of the Civil Administration in Poznan, the famed Greiser of September 14 1939 which provided for the delivery of currency, foreign exchange and gold within ten days - the order gave permission for the population to retain in domestic currency no more than an amount necessary to cover living expenses for one week only; the regulations of October 7 1939 which provided for the duty to deliver gold from occupied Poland to the so-called Reichskreditkassen; further regulations ordering the seizure of gold coins, pure and melted gold, the forcible opening of safes in banks and other institutions and the mass confiscation of everything found in them. Yet the picture would not be fully painted if I would not say that more than legislative acts, more striking than all documents, were the facts, the facts of an occupation which surpassed all human imagination, surpassed the fantasies of legislators and men

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of law. We know from those who have lived in Poland in the days of the occupation that all this and even more happened than the plunder of Nazi legislation. The world knows it too. The world knows it through documentary evidence produced at the Nuremberg Trials, through reports of Hitler's henchmen themselves, as for instance the report of Globocnik, the Commander-in-chief of the SS in the Lublin district, through depositions of witnesses in the many trials of war criminals.

The question I want to put is, is there any need for me to reproduce all this before you and to recall the memory of those facts? Is it not established fact that all the occupied territories suffered losses in the war, and that Poland not only lost about 40% of her national wealth but suffered the greatest losses in human beings killed and tortured? Is it necessary to recall again that we were the victims of the most brutal exploitation and destructive activities of the enemy? These facts lay at the very basis of all acts passed by the United Nations; from them sprang the need and necessity for restitution and compensation. As Delegate of the Polish Government I think to be fully entitled to put forward the question, can there still be imposed on us the duty or obligation to produce evidence that we have suffered losses, tremendous losses? The looting of gold from Poland is of course a small part of the whole story. In the light of the painful truth, in the light of the declarations of 1943 and 1944, in the light of the Yalta and Potsdam Agreement, there is no need for Poland to produce evidence that she has suffered losses as a result of looting of her gold. Both declarations start with the presumption that the occupant countries - that they accepted the

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basic presumption that gold was looted and removed by Germany; they stress the fact of looting in occupied territories - and Poland was an occupied territory. The Agreement of Yalta and Potsdam speaks about losses and sufferings inflicted on the United Nations - and Poland is one of the United Nations. The various documents issued by the United Nations accept with certainty the fact of looting; it has therefore acquired the loment of notoriety. These documents have thus accepted as principle the presumption of looting and confiscation.

In the case of Nazi Germany we find much stronger evidence of presumption of looting, but we find it also in other documents, for instance, in the peace treaty with Italy. Article 75, section 7 of the peace treaty with Italy says: "the burden of proving that the property was not removed by force or duress shall rest on the Italian Government". It goes without saying that if this principle found its expression in the treaty with Italy, the more it should be fully applied in the case of Nazi Germany.

Having said that I wish to proceed with the further views of the case.

3. CHAIRMAN

May I just interrupt you for a moment. I think we have come to a part where the translator can translate without interfering.

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There is some further evidence to be offered in this respect, namely, in the legislative acts issued in Occupied Germany. To quote, first of all, the decision of the Allied Control Council of January 21st, 1946; the Military Government Regulation, United States, of the 15th April, 1946; and the American Law No. 59, which enumerates acts of confiscation; and then qualifies as confiscation by Governmental acts, inter alia; sequestration, confiscation, forfeiture by order or operation of law, and transfer by order of the State or Trustee appointed by the State.

This leads me to the first submission of the case I am presenting to you, to wit; the question of principle as to whether Poland has suffered losses through looting and wrongful removal of gold to Germany, requires no proof on our part, being an established fact. But, we have to give evidence on top of this, but we have not based ourselves fully on the basis, and I should say, comparative presumption of the losses. We have every reason to believe that the evidence we have submitted reinforces our case, so that it would be regarded as fully proven.

Having said so much on this particular aspect of the problem, while resting really on the threshold of the issue itself, I might explain the reasons for doing so. Although only five years have elapsed since the seminal war was brought to an end, these facts have very frequently been forgotten. The damage and suffering seemed to have disappeared from the eyes and minds and thoughts of many - many thoughts wander in different directions, and that is why I would like you to bear in mind that I come here from one of the most devastated cities of Europe, from one of the most ravaged capitals of Europe - a capital which has been re-built through the superhuman effort of the whole Nation, and which is growing in our eyes, but where ruins and ashes did not cease to speak to us with memories of the years we have gone through of the occupation. These things, of course, should not be taken

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sentimentally, but they are essential, as they are linked with facts; because they are the background of the facts we are discussing today. They are the background of the whole picture. We have suffered losses other than gold, but we have suffered losses in gold too. This fact remains undeniable and undisputable. Therefore, I go back to the sentence I started with, that we have been struck by the word "Alleged", when reference was made to our losses.

The figure of 138,738,5309 kgs. of gold is but a small part of the total loss in gold inflicted upon us. In these circumstances, we maintain and insist that the problem of whether we suffered losses is beyond discussion. The discussion can affect only the question of how much. There is no question of if; there is a question of the amount of the figure, but there can be no question of principle.

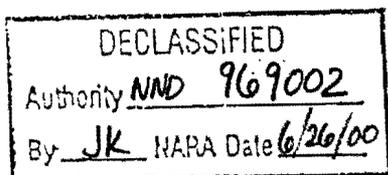
Thus, I think that having clarified the preliminary question, I can arrive at the first conclusion:-

1) that gold was looted from the Territory of Poland and wrongfully removed to Germany;

2) that it has been looted and removed by Hitlerite Germany;

and therefore, the two constituent elements of the definition as adopted by Part III of the Paris Reparations Agreement, are fulfilled. Both elements come within the province of the definition of Part III, to which you, Mr. Chairman, made reference at the beginning of our meeting.

Having clarified the first question, I proceed now to the next. Having stated the undeniable fact, in principle, that losses have been suffered by Poland and that there is no question of if, but only the question of how much, I put forward the next question. Are we entitled to claim satisfaction for the losses thus incurred? The right of Nations which suffered losses in the last war - the right to claim satisfaction through restitution of looted property, has been established more than once. In the same way as it is the duty of other nations to help and to



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assist the victims of Hitler's aggression. Some declaration I referred to earlier of 5th January, 1943, announces the unyielding determination of the United Nations to combat and defeat the plundering of the Occupied Territories by enemy powers. It laid down that these misdeeds of the enemy, regardless of their form, will not be recognised, that they are null and void, and adds: "It is obviously impossible to define exactly the action which will be required to be taken when victory has been won and the occupation or control of foreign territory by the enemy has been brought to an end". The declaration of 1943 provided the machinery for restitution; it foreshadowed such action, without specifying and defining precisely its shape or content. At a later stage of the war and immediately upon the termination of hostilities, principles of restitution were embodied in various international documents. Declaration of February 22, 1944, was based on the same principles, but it is already more concrete and categorised that any transfer of title to the looted gold which the Axis Powers may have effected in neutral countries, is to be considered illegal. It is worth recalling that at the time of the publication of that Declaration of February 22, 1944, it was estimated that Nazi Germany gold stock at the beginning of the war amounted to 50 million pounds, including the gold looted from Austria and Czechoslovakia, while she was at the same time continuing to make international transactions covering manifold bigger amounts, and therefore, it was obvious, as stated on the occasion, that she has made payments of other countries with gold looted from occupied territories.

The Final Act of the Conference of Bretton Woods, of July 22, 1944, makes also clear reference to the need of safeguarding property and gold looted and expropriated from occupied territories, with a view to returning it to its rightful owners. The same is established by the Yalta and Potsdam Agreement, and in such as monetary gold is concerned, this question was dealt with by Part III of the Paris Agreement on German Reparation. There, we find the exact formula - we are so

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FAMILIAR WITH "all monetary gold found in Germany by the Allied Armies and the gold recovered from third countries, shall be distributed by way of restitution to the countries where it was looted from, or where it was illegally removed from". This feature of restitution was also stressed, as you will know, in Resolution No. 1, attached to Part III of the Paris Agreement on Reparation, bearing the signatures of ten Governments, inter alia of the French Government, who is represented on the Commission. This resolution pronounces the right and duty of restitution. The same line is also being followed by the Allied Control Council. The decision I make reference to earlier, of January 21, 1946, specifically invokes the United Nations Declaration of January 5, 1943, and places the problem of compensation for damages and losses incurred by the Occupied countries during the war, on the very same basis.

The instructions of April 15, 1946, issued to implement the decision, lays down that all property seized by force, be it by looting, theft or other means, is to be returned and restored, regardless of whether it was so seized on instructions from Nazi Authorities, or arbitrary action by officials of the occupation administration. All these Acts pronounce clearly and without any ambiguity, the categorical principle of restitution, which is of restoring looted property and I think there is no need to stress that restitution is not indeed a new legal notion. Its essential element, as we all know, is accepted by all legal instruments of the world - is reinvestment of rights to those who were deprived of them in defiance of the law. The very reason of restitution is, on the one hand, refusal to sanction lawlessness and force, to maintain the principle of law and not to have the criminal profit from this activity, and on the other, the absolute right of the wrongfully dispossessed to claim the return of his property and have his claim fully recognized.

Restitution is, therefore, one of the basic commands of law. It is the

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guarantee that crime should not pay. There is also an international practice where this principle has found full application. It was stated, for instance, by the Permanent Court of Arbitration in the Norwegian Shipping Claim of 1922, "that proper satisfaction means restitution to the status quo". Violation of the obligation of law require by their very nature appropriate sanction. The basic action of law is to restore the state which existed prior to the violation of law. Other action is only applied and sought for, if restitution has become impossible. This principle has found confirmation in many international agreements and documents. In actual circumstances, we find, therefore, full justification for the thesis that the fullest compensation for the damages incurred by the occupied countries as the result of Nazi looting, should apply to those who were its victims. In the first instance, it should be restituted. But let us move a step further in order to study that in many circumstances, restitution of identified goods and objects, in other words, what was classically called the "restitutio in integrum", becomes impossible. In many cases, the objects in question cannot be traced, or underwent such radical changes, that their identification creates serious and sometimes unsurmountable difficulties. Hence, the so-called "Restitution by replacement". It found, as you well know, its practical application already after First World War, but more generally in the legal instruments after the Second World War.

The Allied Control Council in Germany, in implementing the Declaration of January 5, 1943, goes beyond the formal definition of restitution, by its resolution of January 21, 1946, provides for a special restitution procedure for "items subject to replacement". The principle of restitution by replacement has also been applied in Peace Treaties already concluded after World War Two. We have it again in the Peace Treaty with Italy, which says that "if, in particular cases, it is impossible for Italy to make restitution of objects of artistic, historic or archaeological value, belonging to the cultural heritage

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of the United Nations from whose territory such objects were removed by force or duress by Italian Forces, authorities or nationals, Italy shall transfer to the United Nation concerned objects of the same kind as, and of approximately equivalent value to, the objects removed". This is Article 75, para. 9 of the Peace Treaty with Italy.

But, to sum up this part of my explanation, it is clear that this principle has been adopted in connection with monetary gold. It is clear that this is what is meant by para. A of Part III of the Paris Reparation Agreement, that "all monetary gold found in Germany by the Allied Forces, and that referred to in paragraph G below, shall be pooled for restitution, as restitution among the countries participating in the pool, in proportion to their respective losses of gold through looting or by wrongful removal to Germany".

What are the essential elements of this Article? Firstly, a pool is being created without regard being paid to the identity of the means. Secondly, out of this pool, the pro rata satisfaction of the claims will be made. Here again, we have the basic presumption I have made earlier in my intervention that gold has been removed from Poland. There is no need to identify the gold found in Germany or recovered from third States; there is no duty to offer any evidence in the field of identification on the part of the countries claiming the restoration of gold; there is no need to do anything in this field. The more so, if one considers that in relation to the gold coins mentioned in the same paragraph of Part III. These are to be returned in specie. Therefore, to sum up, we are faced here with a clear concurrence of two procedures:-

- (a) Gold coins of numismatic or historic value are being returned in case of recovery in specie as stated:
- (b) All other gold looted or wrongfully removed to Germany, including gold coins, is to be allocated from the pool pro rata parte, without identification.

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This analysis brings me to the second conclusion of my exposé; that we have suffered losses in gold through looting and wrongful removal to Germany is an established fact; that we have the right to claim restitution is based on those principles of law and provisions of United Nations documents. Since the restitution of gold is provided for by establishment of the pool, and our losses in principle are unquestionable, it suffices to put a claim forward to become a member of the pool. This is the obvious and undeniable conclusion in the case. A member of the United Nations, as a country which was under enemy occupation, has a right to become a member of the pool for the distribution of looted and wrongfully removed gold to Germany. This right of Poland is unquestionable for she has, as I said, satisfied the two conditions laid down in the Paris Agreement on German Reparations. Therefore its claim to satisfaction cannot be disputed. The more so that documentary evidence concerning the amount of gold lost through looting has been produced and this makes the situation to my mind quite clear. Again we are bound to state that anybody called upon to decide on the legality of our claim could only confine itself to the question of how much of the amount is substantiated, and may only dispute one or other figure, or one or other item, but never the principle or right to restitution and part of the pool, because as I said earlier the legality of the claim and its validity could not be in doubt.

But having said this, may I now pass to the second conclusion contained in the Commission's letter of July 27, 1950.

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analysis brings me to the second conclusion of
have suffered losses in gold through looting
an established fact; that

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In this letter the Commission says it "has been unable to find that the Polish Government has established, in respect of any of the above mentioned claims, that a definite amount of monetary gold belonging to it was looted by Germany or, at any time after March 12 1938, was wrongfully removed into German territory." How was it indeed possible that the Commission could have arrived at such a conclusion? My Government was both astonished as to the form and substance of this statement. My Government was particularly concerned by the fact that the Commission found it possible to dispose of the tremendous documentation, gathered with such an effort by the Polish authorities, in a few words with such a brief formula. I stress again that although the decision was provisional, and although it had a strongly provisional character, yet I have to express the astonishment of my Government as to this decision. In one sentence a case deserving serious consideration and detailed reasoning has been answered, and though my Government cannot consider this conclusion as anything but a provisional and not a binding view, yet it has the impression that any impartial observer must gather, that those who scrutinized the documents and arguments submitted by Poland either did not understand the essentials of the case or problem, or did not thoroughly get acquainted with the documents before it. With all due respect I submit that I must come to the conclusion that elements extraneous to the case and not matters of substance may have influenced this decision, but before going into the substance I wish to detain you for a few moments and dwell on a strictly procedural issue.

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It has been stated many times that the Commission has the character of a quasi-judicial body, from which it follows that the Commission should apply rules of procedure generally accepted for international bodies of this kind. It is worthwhile to go into certain international customs in this respect, such as the Convention of 1907 and statutes of international bodies of this type, which have laid down for those bodies always the duty to state reasons on which decisions are based - but I wish to add not only final decisions, even preliminary decisions. It is obvious that during proceedings an international body may pronounce decisions of an incidental character. These are interim measures; they may concern such questions as fixation of time limits or their prorogation, measures of interim protection, expert enquiry, joinder of application, or similar cases. The very essence of these decisions lies in the fact that they are matters of strictly procedural character, that they concern issues of less importance, and that they never have the binding force or effect of decisions in substance or a judgment. It is a well established rule, which again with due respect I wish to stress here, that decisions even if provisional in character must require a statement of reasons. The International Court of Justice laid down that in any decisions "reasons in point of law and fact" must be put down. All the Polish Government was informed was that the Commission was unable to find that the Polish Government have established certain facts upon which its claim is based. The Commission added that before taking a binding decision in the

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matter "it will be glad to give the Government of Poland an opportunity of presenting to it, through an accredited representative or representatives, any further arguments or observations which the Government of Poland may see fit to put forward in support of the claims concerned." As far as this sentence is concerned, there is an obvious discrepancy between the French and English text of the letter of July 27. The French text uses the words "arguments ou observations supplémentaires;" the English text uses the words "further arguments," which does not amount to the same. These words do not mean the same in English and French.

Without having been told the reasons of the provisional decision the Polish Government has been offered the possibility to present its case orally before the Commission, as I do it now. This makes it clear that the exposé which I am presenting to the Commission cannot be regarded as the final and last opportunity the Polish Government has to substantiate its claims. Not having had the reasons for this decision, the Polish Government have by the very nature of the situation not been able to deal with the reasons which led to the Commission's unfavourable decision. But no doubt this procedural issue, which I consider as being rather important, turns on the substance: on what grounds does the Commission base its provisional decision? This is the crucial point really which I am trying to ask. As I have said, the Commission could not have based its decision on the fact that gold has not been looted from Poland, because it was; it could not have based its decision on the fact that it was not removed

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to Germany, because it was; neither could the Commission have arrived at the decision that, the gold having been looted and removed, Poland should not receive restitution, because that conclusion flows automatically from the proceedings. The Commission could neither have reached its conclusion on the basis of the definition of gold as subject to restitution in conformity with Part III of the Paris Agreement. The last problem, the problem of definition, not having been dealt with by me hitherto, I shall devote some remarks to its analysis.

Part III of the Paris Agreement on German Reparation employs concurrently the two terms "gold" and "monetary gold." Paragraph A refers to "all the monetary gold found in Germany" and paragraph G says "any monetary gold which may be recovered from a third country." But when dealing with losses - and this is the key problem - the document employs exclusively the term "gold," as it refers, for instance, to "respective losses of gold through looting or by wrongful removal to Germany." The same wording is found in the French text which employs the terms "quantité d'or." The concurrence of the French and the English text is not incidental, and therefore one cannot regard the fact that the word "monetary" has been omitted as being devoid of its meaning and legal consequence. It was rightly pointed out on another occasion by a high authority on international agreements, in connection with another case, that "words must not be considered as being without any meaning," that words and international documents have always a meaning. What is the meaning of these words, and what is the possibility which is open to us while interpreting these two terms "monetary gold"

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and "gold"? The notion "monetary gold" as used in the text leaves no doubt as to the possibility of a double interpretation. The gold may be monetary at the time it was looted, and having found its way into Germany have been transformed into a different kind of gold and ceased to be monetary. But it may be the other way round. Gold may be devoid of the element of "monetary" at the time of looting and having been passed to Germany, transformed into monetary gold. Those two possibilities are undoubtedly at the back of the Paris Agreement, and I would say that the Paris Reparation Agreements calls for such an interpretation. For let us look at Paragraph E of Part III, where we find the following words "gold losses suffered in looting or by removal to Germany." It refers to the need for supplying the three Governments with data concerning the losses of gold. Again I come back to what I said at the beginning, data concerning various items but never questioning the principle, never questioning the right to compensation - only data concerning this or the other item. This Paragraph E says that these Governments can claim the right for restitution who supply the three Governments with data. Thus the data which has been asked for completely dispenses with the qualification of gold as "monetary" and bases the whole claim on the amount of gold.

In view of the above, the definition accepted at a later stage by the Commission seriously restricts the notion of gold which is subject to restitution. Does it in these circumstances conform with the principle accepted by the Paris Reparation Agreement? One is bound to arrive at the conclusion that it contradicts

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the principle of liberal construction of treaties, and limits the rights of those who suffered most in the last war. It must be said that this definition went much further than the situation visualized by the International Court of Justice when it stated that whenever restrictive interpretation is admissible - I quote: "it must stop at the point where the so-called restrictive interpretation would be contrary to the plain terms of the article and would destroy what has been clearly guaranteed."

But I go even further. I put the question, was the restrictive interpretation of the term "gold" subject to restitution admissible in this case altogether? And what are the practical consequences and result of such a restrictive interpretation? Big quantities of gold which had been looted in death and concentration camps, gold which is only in part covered by the figures submitted by the Polish Government, would be excluded from restitution and Poland would therefore be deprived of her right to recompensation for damages and losses incurred. In the documents we have submitted we have proved amongst other things, on the basis of the report of Globocnik who was responsible for the liquidation of Polish lives and property in one only district of Poland, that apart from jewellery and objects of gold, 236 bars of gold of the weight of 2909.68 kgs. were looted. On the basis of other documents we have been able to prove the methods and results of looting of gold in other parts of Poland. These stocks of gold were eventually transferred to Germany. They increased and contributed to the increase of the stocks of the Reichsbank and contributed to the increase of the monetary gold

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of the Third Reich. The fact that there existed on Polish territory many extermination and concentration camps requires, I think, no proof. I think no proof is also required as to the facts which occurred in those camps. In camps like Oswiecim, Majdanek, and Treblinka hundreds of thousands of people were imprisoned, and when we take into account the fact that they were dragged into those camps with their belongings, that there existed in those camps special squads used by the Nazis for the sole purpose of collecting and sorting out the gold from their murdered victims, and that finally, if I shall not refrain from mentioning this gruesome fact, the corpses of the victims were checked in order to extract their gold teeth - then the figure of 100,000 kgs. of gold, which was submitted by the Government of Poland, is, of course, the very minimum estimate.

It must therefore be recognized, and I think there can be no doubt about it, that our claim in this connection has been prima facie established. If then the narrow definition that I have just mentioned is accepted - a definition which is not backed by the Paris Agreement - Poland will be deprived of the possibility to receive satisfaction in those of her claims. This would be the result even though she has legal title to it. Moreover it is not only probable, but almost certain, that the gold seized in those camps was eventually delivered to the Treasury of the Reichsbank, thus acquiring the qualification of "monetary gold" in the second state, and thus falling within the definition as adopted by the Paris Agreement, and therefore we claim that this gold is subject to restitution. That is why the

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Government of Poland has on several occasions protested against the restrictive and in fact discriminatory character of the definition which above all affects - and this should be borne in mind - affects those who suffered most, those with whom the Nazis did not deal in bluffs, those against whom the Nazis displayed the most ruthless campaign of brutality. Whether this was the intention of the Agreement of 1943, that those who suffered most should be deprived of restitution, I beg to doubt. The Polish Government therefore renewed on several occasions its protests, basing itself on the Reparations Agreement, and considering the definition as accepted by the Commission is limited and discriminatory in character, as laid down in ultra vires.

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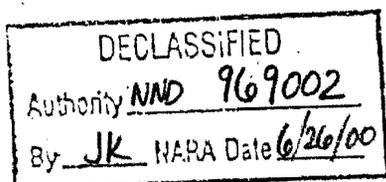
I have dealt so far with one of the claims, namely, the claim estimated at 100,000 kgs. of gold which, in accordance with the definition of monetary gold as laid down in Part III of the Paris Reparation Agreement, made our losses subject to restitution. It might be barred from restitution, as a result of the restrictive definition adopted by the Commission, but all other claims we have submitted come within the province of both definitions, as adopted by Part III of the Paris Reparation Agreement, and the definition as drafted by the Tripartite Gold Commission. All these items we have submitted, apart as I said, from the 100,000 kgs. of gold, are fully covered and thus within the framework of both definitions.

The letter of the Commission of July 27th, did not deal with the specific claims which were forwarded and for which we asked for restitution. It is worth while to devote some attention to the specific claims. The Polish Government has submitted documents, original accounts, books, testimonies and affidavits, which bear out the losses through looting of:

- 1) 1,654,201 Kg. of gold through the Reichskreditkassen and the Emissionsbank.
 - 2) 260,300 Kg. of gold through the Reichsbank branches in Posnan.
 - 3) 466,1012 Kg. of gold through the Reichsbank branch in Lodz.
 - 4) 91,8980 Kg. through the Deutsche Bank in Krakow.
 - 5) 10,6652 Kgs. through the Landesgenossenschaft in Bydgoszcz; and
 - 6) 260,0489 Kg. of gold from the safes of the Postal Savings Bank; and
 - 7) 4,877,2047 Kg. of gold, the looting of which has been established by affidavits of persons concerned and by documents which are fully trustworthy.
- Moreover, we have proved by way of estimate the loss amounting to about 27,000 Kg. of gold looted from the civilian population, apart from the 100,000 Kg. of gold referred to earlier, and the gold of Cdanak.

It may be possible

, as far as the figures of our claim are concerned, to



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...one of the claims, namely, the claim estimated
...the definition of monetary losses

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argue that the estimates made by the Polish Authorities were exaggerated, or not based on actual facts. But, here again our figures have been reinforced by detailed analysis of which the following example is the best proof. The average figure of gold delivered to the Branch Offices of the Reichsbank, was based on the account found in one of them, namely, in the Branch Office of Poznan. The books and receipts of that Branch Office indicated the figure of 260 Kg. but the documents found later and since handed over to the Commission have shown that, for instance, in other Branch Offices of the Reichsbank the amount of gold delivered was much higher. For instance, in the case of the Branch Office of Lodz, where documentary evidence is available that 460,6 Kg. of gold were delivered to the account of the Reichsbank. This goes to prove that our estimate based on an average calculation was more than conservative and the real figure, the real amount is much higher and in some cases, as I have shown in the case of Lodz, 100 higher than indicated in our original application. What more can prove the very careful and indeed serious approach to the whole problem as made by the Government of Poland? But let me continue and examine now more closely the character of these claims, so as to place their relationship to the right of restitution. To this end, let me for a while take as basis the definition of the Commission itself, which states that objects of restitution is all gold which "at the time of its looting or wrongful removal was carried as part of the claimant country's monetary reserve, either in accounts of the claimant Government itself, or in the accounts of the claimant country's central bank or other monetary authority at home or abroad". In other words, let us consider whether this gold at the moment of looting or wrongful removal to Germany, had the character of monetary gold, within the meaning, as I said, of the definition adopted by the Tripartite Commission. This leads me to the preliminary question, what is monetary gold altogether?

On the basis of expert opinion, it must be stated that the most essential feature of monetary gold is the fact that it is gold which is out of circulation,

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and an authority defining this element - "il ne circule pas dans le public". This is also the meaning which should be attached to the definition accepted by the Commission when it says "it was carried as a part of the eminent country's monetary reserve". Thus, the essential feature distinguishing monetary gold in its various aspects and forms, is the fact of its being immobilized, its exclusion from circulation so that it acquires the character of bullion reserve, which apart from the backing of the currency, serves to regulate international payments.

This is why when, in the years between the wars the majority of states left the gold standard, one of the first measures was to immobilize the gold in private hands. This found its expression, first of all, in the prohibition of dealings in gold; in its seizure and ultimate taking over by the Central Banks. The most typical example was the law of the United States of March 6, 1933, respectively, the Banking Act of March 9th of the same year. According to the provisions of this law, as you well know, the President of the U.S. was vested with the right to issue regulations in order to compel the population to pay and deliver to the Treasury of the U. S. any or all gold coins, gold bullion, and gold certificates. This law affected even gold certificates, which from a historical point of view are interesting, because they were first issued during the Civil War. Practice has proved that the duty to deliver gold to the monetary banks of the U.S. was not only based on individual declarations and was not limited to registration by persons being in possession of the gold, but also that the execution of the law was checked ex officio, and owners of safe deposits in banks had been directly or indirectly compelled to deliver the gold in these very safes. This gold, as I mentioned above, became thus part of the monetary reserve of the U.S.

Legislation of that kind was also issued in most countries which introduced foreign exchange control. The pre-war Polish Government also issued a similar law on September 2, 1939. Its provision laid down that all physical and juridical persons were bound to deliver gold coins and gold bullion for purchase to the Bank of Poland.

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As the result of this order, the entire gold reserve remaining in Poland, either in coins or in bullion, has been incorporated into the national reserve of monetary gold. Had the then Polish Government had the time to carry out and enforce the law of September 2, 1939, the gold covered and legally already incorporated into the gold reserve of the bank, would have found its physical way into the treasury of the Central Poland Monetary Authority. Nonetheless, though it has not flows into the Treasury of the Bank for obvious reasons, yet from a juridical and economic point of view, it was already from the moment of the issuing of the law, that the gold acquired the qualification of monetary gold. This is the first element of the definition - the first element which I want to stress - that all the items which I quoted earlier to you covers the definition of monetary gold, as adopted by the Commission itself. But let us now admit for the sake of argument that by the law of September 2, 1939, the gold has not acquired the qualities of monetary gold. I do it, as I say for the sake of argument. In the meanwhile, Poland was, as you will remember, overrun by the Hitlerite hords and the civilian authorities of the occupent had issued orders, enacting not only the purchase of gold but also its compulsory delivery without compensation or equivalent. I shall not indulge upon your patience by quoting the many laws on the occasion, since I have done it in part earlier. They can be found everywhere, and their existence and stipulations are well known. But, what is essential is that simultaneously the Hitlerite occupant has commenced the opening and breaking open of safes in banks and saving institutions, as for instance in Warsaw. Already in October 1939 and according to reports from the Capital, up to the end of October, 660 safes with 2,000 items have been opened and looted, which covered $\frac{1}{3}$ of the total amount of safes in the capital of Poland.

Let me now put the question - what was the significance of these measures and acts of the occupent? By these regulations the occupent had qualified the entire stock of gold which was at that time on Polish territory, as monetary gold, not only from a strictly formal point of view, but also in fact, as the provisions of those measures had been fully put into operation. The gold thus acquired had been

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taken over for the Reichsbank as monetary gold, through the instrumentalities of the so-called Reichskreditkassen and later of the branches of the Reichsbank, respectively branches of the Emissionsbank.

What was the real nature of those bodies, which by the authority of the occupant, dealt with the purchase and seizure and confiscation of the gold?

We did submit to the Commission a translation of the Verordnung über Reichskreditkassen from September 23, 1939. These Reichskreditkassen had been established throughout occupied Poland, with the exception of Upper Silesia, which was immediately illegally incorporated into the Reich. What are the obvious conclusions every reader must draw from those legislative acts we have submitted?

- (a) that these Reichskreditkassen have been established in order to regulate the circulation of the currency -
- (b) that they have been vested with the right to issue bank notes, so-called Reichskreditscheine, which constituted the legal tender within the occupied territory.
- (c) The backing and coverage of the bank notes issued by them constituted inter alia their credit accounts in the Reichsbank, so-called Guthaben - in the Reichsbank. These were the constituent elements of these institutions.

It is, therefore, clear that the Reichskreditkassen did exist as banks with the right of issue, thus being monetary authorities, within the strictest meaning of the term. Their activities did not last long. Soon after, the territory of the Polish State was divided into two parts, one of them, the western part, was incorporated into the Reich. By an order of December 21, 1939, published in the Reichsgesetzblatt I.S.2., it was announced that in the incorporated territory of the Polish State the law of June 15, 1939, is hence to be applied. This was the law concerning the Reichsbank. Thus, the Reichsbank became the successor, the authority with the right to issue within the territories for which the Germans introduced the German Mark. The Reichsbank established through the territory illegally incorporated into Germany, Branch Offices amounting in number to 18. A list of them was submitted

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by the Polish Government.

At the same time, the so-called Verordnung Uber die Emissionsbank of December 15, 1939, established the latter institution - I mean the Emissionsbank, within the so-called General Government. By virtue of this Verordnung, it was laid down that the Emissionsbank:-

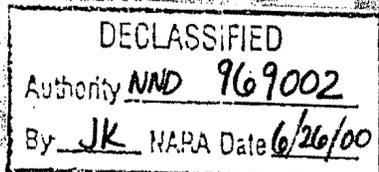
- a) Was the institution called upon to regulate the circulation of currency in the territory of the General Government.
- b) Had the right to issue banknotes, etc.
- c) That its emission was covered and backed by the credit account (Guthaben) inter alia in the Deutsche Reichsbank.
- d) Its banknotes constituted the exclusive legal tender within the General Government.

Consequently, it was also this bank which had the right of issue and all the qualifications of a monetary authority sensu stricto. We had, therefore, on Polish Territory the following institutions which the character of monetary authorities:

- 1) The Reichskreditkassen through the whole of Poland, with the exception of Upper Silesia, later was the illegally incorporated territories of Poland - the Deutsche Reichsbank - and for the General Government, the Emissionsbank.

Did these banks and these institutions have the characteristic features of monetary authorities? The reply must be an unqualified "yes". True enough they were established by the occupant; no-one denies that. They were bound to become instruments he used in order to exploit the Polish economy, but no-one can deny that they were acting on Polish territory, and in the country of Poland, and that they were regulating, in fact, the monetary aspect of Poland's economic life.

It was through these bodies that gold was flowing from Poland in Germany. First stage, looting, opening of safes; second stage, wrongful removal - both elements



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of the definition as established by the Commission. The detailed technique of this wrongful removal was described in detail by one of the witnesses offered by the Government of Poland - Witness Gruner. He explained that the particular branches of the Emissionsbank were purchasing gold on the account of the Deutsche Reichsbank. In other words, this very bank established throughout occupied Poland, was purchasing at a ridiculously low price and later they confiscated gold which flowed into the Reichsbank, into its Hauptkasse - Edelmetall, Berlin C III. They were conducting these activities on the basis of the orders I have quoted to you, and heavy penalties were provided for all those who refused to sell or give up the gold they had. The same witness made it clear that the gold purchased by the branch offices was being transferred to the central office of the Emissionsbank in Cracow, which was the pooling point of all deliveries and forwarded all of them together to the above mentioned address in Berlin. Was it wrongful removal, or was it not? Undoubtedly, it was. The same witness bore evidence to the fact that the Emissionsbank held an account with the Deutsche Reichsbank on which the equivalent of the purchased gold was duly accounted for. The number of that account was 2039.

The technique of purchase of gold by the branch offices of the Reichskreditkassen and branch offices of the Reichsbank, was identical. This is borne out by many documents we have, and some of which have been purchased to the Commission. These are the facts - undeniable facts, from which flow obvious consequences. But, since the gold was being purchased by an institution which had the right and power to issue banknotes by a central bank - the gold, at the moment of its purchasing, became monetary gold, for all intents and purposes, since this gold was bought or confiscated (in the majority of cases later confiscated) - found its way into the safes either of the branches of the Reichsbank or branches of the Emissionsbank, it became monetary gold and it was carried on the account of the central bank. Since this gold, as was known, was later transferred to Germany, it was clear that this removal concerned gold which figures on the account of a monetary authority operating on Polish territory - all monetary gold within the meaning of the definition as

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drafted by the Commission. Since further on, an equivalent of this gold was being credited with the Reichsbank in favour of the Reichskreditkassen or Emissionsbank - this account acquired in accordance with para. 11 section 2 and para. 16 of the Verordnung Uber die Emissionsbank, the character of coverage and backing of the emission of currency circulating on Polish territory. Thus, the gold in question did fulfil all the requirements of monetary gold within the meaning of the Commission, and it was not only either looted or wrongfully removed, it was both, and therefore subject to restitution.

True enough, all these measures, as I said, were taken by the occupant as part of his policy aimed at the economic ruination of Poland and depriving her of all the gold within her boundaries. But, as I said earlier, the gold thus acquired and seized did not, by this very fact, cease to have the qualification of monetary gold. Under these circumstances, it is quite clear that, should the Commission not accept as basis the Polish Decree of September 2, 1939, full account must be taken of the measures introduced by the occupying authorities.

In any case, the figures of gold covered by the documents submitted, are undoubtedly within the province of the definition, and they have satisfied the alternatives offered by the Commission. The gold was either looted or wrongfully removed, but it was both; looted and wrongfully removed. Thus, facts and law do not present any difficulties. Some figures may be higher, some lower, but the principal basis remains unchanged. The gold thus taken over comes under the definition and is, therefore, liable to restitution to Poland, under the terms of the Paris Agreement on Reparations.

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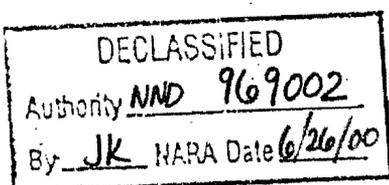
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7. POLISH REPRESENTATIVE

Having said what I did, I am bound to put the question, what are the doubts which may arise in connection with the Polish claim? The acts of the occupants, as I said, were undoubtedly illegal, but can illegality be invoked against a victim? This is the crucial legal point. Can it be invoked as an argument for the non-recognition of this case, which would be the practical effect of such an approach. The definition we are dealing with, and I have in mind all the time the definition as submitted by the Commission, is not a definition of a strictly juridical nature. It is based on a factual state of affairs, which in the case of the Polish claim has been fully supported by the events on Polish territory, and can therefore have no detrimental effect on the claims of the Polish Government. Moreover there is a well known and old legal principle stating that no one can invoke illegality of an act vis-a-vis the victim of the illegality, vis-a-vis the person who has been the victim of such illegality. If this were admissible it would lead us to a paradoxical situation, to wit, that an illegal act and a crime exempts from responsibility the criminal and deprives the victim of the right to prosecute his claim, for the apparent reason that illegality makes the act void - in other words, the act was legally non-existent, and on account of the apparent fact that it was legally non-existent because it was void, the victim is deprived of the right to prosecute his claim; a situation of which no legal system in the world can allow or can approve. But the result of such a situation would on the other side be obvious. The fruits of the crime would be reaped. This principle - that illegality cannot be invoked against the victim - is valid erga omnes not only against the criminal himself but against anybody else who could reap any fruit or profit from the illegality of the criminal. This principle I could put at very great length, but I think there is no need to delve into it, because the principle is a well established principle of law. It is therefore clear that the principle is valid regardless of who could or would become the beneficiary of the illegal act



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as committed by the criminal himself or anyone else who derives direct or indirect profits from the crime. Therefore it cannot be said that in view of the illegality of the act the Polish claim is disallowed.

This I think is a very fundamental and important issue, which reminds me of a statement of a medieval English judge who, when faced with the case of a soldier who had to carry out an illegal order, told him, if you had carried out this illegal order you would have been hanged by a civil court; if you had refused to carry it out you would be shot by a military court. The approach to the whole problem of the case is one essence of recognising the principle of the claim. No institution can base its arguments on the views that it is possible to kill the claim this way or the other, because it makes no difference whether you shoot it or hang it.

It is therefore quite clear that in deciding upon the case the Commission could not possibly argue on the basis of illegality of the acts. It could not argue this point since it is clear that this argument would produce beneficial results to a third state and not the state against whom the illegality was committed. There is a known institution of "estoppel", very well known in Anglo-Saxon law, which would find its application here in a much wider sense. If a different approach is taken to the Polish claim presented here, we would arrive at a situation in which the criminal activity of the occupant would create rights in favour of a third state and thus lead to unjust enrichment which would be contrary both to law and equity and the documents of the United Nations.

Finally, as I stated already before, the Commission construes in its definition a certain state of affairs which in the concrete case took place with all its constituent elements. How then could a negative decision, although provisional, be taken? How was it possible not to recognise fully the claim of the Polish Government?

The brief, and with all due respect I would say the all too brief formula

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of the letter of July 27, did not deal with the case, another part of the case submitted by the Polish Government, namely, the claim concerning Gdansk amounting to 4726 Kgs. of gold. This gold has of course all the qualifications of monetary gold, even within the narrow framework of the definition submitted by the Commission. The figure was substantiated by the books of the Bank of Danzig which have been submitted to the Commission. Moreover the Commission was supplied with evidence concerning the incorporation of the Bank of Danzig into the Reichsbank on September 5, 1939, and the notification concerning the setting up of the branch of the Reichsbank in Danzig on September 6, 1939. These documents established that the gold in question has been looted by the Hitlerite authorities. It is therefore clear that here again all the elements of the definition are available. The gold is monetary gold, and it was looted, and it was wrongfully removed into Germany.

As far as the pre-war status of Danzig is concerned, it is based as you know on article 104 of the Versailles Peace Treaty. While further, article 2 of the Convention between Poland and Gdansk of November 2 1922 has to be borne in mind. In accordance with the provisions of these documents, Poland exclusively had the rights and duty to conduct the foreign affairs of the Free City. Poland represented her interests vis-a-vis third states. It signed on her behalf international documents, protected her interests abroad, acted in the whole international arena on behalf of the Free City. True enough Gdansk had a monetary authority of her own but on the international plain this was irrelevant as Poland was responsible for the international relations of the Free City. The annexation of Gdansk which was carried out on September 1 1939 was and remained a flagrant violation of international law amounting to full-fledged aggression. But the decisive document on which the whole case rests today is the Potsdam Agreement where it states that the Free City of Danzig is to be transferred to the Polish State. Thus full authority over the former Free City has been handed over to Poland. Special attention must be paid to the fact that the Potsdam Agreement uses the term - and I would like you to bear in mind

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the use of this term - "the former Free City of Danzig". The term "former" must under no circumstances be referred to the annexation of Gdanak in 1939 because the Potsdam Agreement could not possibly sanction an act of violence which was really open aggression. It had never received the approval of the United Nations. The term "former Free City of Danzig" carries and means only one thing, namely, that the Free City ceased to exist as a result of its incorporation into the territory of the Polish State.

If this is so, and there is no doubt in this respect, only Poland can both in law and in fact have full title to take over the monetary gold of Gdanak within the meaning of the definition adopted by the Commission. If Poland were refused the gold, who would then received it who has any right to claim it? Germany has never had that right because she renounced all rights to Gdanak in the Versailles Peace Treaty. Part of the gold which is now in the hands of the Commission is undoubtedly of Gdanak origin. Who has any right to claim it? Is it any other state participating in the pool? No other state has any right. Is it any state represented on the Commission? None of them has the right to acquire the gold of the former Free City of Danzig, and the exclusive right to claim this gold is the right of the Polish State. Should any further guidance be required of cases of a similar nature, I can readily supply examples from the Peace Treaty with Italy. It is known that some territories formerly under Italian sovereignty have been transferred to states neighbouring with Italy, and here is annex XIV, paragraph 16, of the treaty, which says the following:

"Italy shall return property unlawfully removed from ceded territory to Italy". Here you can find proof that the cession of territory to another state does not deprive the new state of the rights arising out of restitution. The case of Italy is the more striking as the territories in question were, prior to the act of cession, part of the Italian territory and under its full sovereignty. How much stronger therefore is the claim if the territory had not been under the sovereignty of an enemy state to which the enemy state has no legal title. In the case of ceded territories there is the possibility of another claimant, but in the case of the former Free City of Danzig there is no other who can raise a claim for

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gold thus looted and wrongfully removed. The Free City of Danzig ceased to exist; her territory had become a component part of Poland and therefore Poland's title is fully backed by law and United Nations decisions elsewhere. The refusal to recognize law and fact would amount to obvious violation of the Potsdam Agreement. Gdansk cannot be treated as a political or legal vacuum. Prior to 1939 Poland represented the Free City in international relations by virtue of international agreements. Today she does so because the territory of the former Free City is within the territories of the Polish State.

These are the foundations of our claim for the restoration of the gold seized from the Bank of Danzig. This claim is, as I say, very well founded and could not possibly be rejected. I imagine that its rejection would amount to the undue enriching of other states participating in the pool - undue enrichment at the expense of Poland.

I have, Mr. Chairman, arrived at the end of the summary and analysis of the claims submitted by the Government of Poland. May I now turn to some general remarks and comments. The very nature of my exposé was general, in view of the fact which I mentioned earlier, that the letter of the Commission of July 27 did not state any reason for its provisional decision, and I shall now continue with a general approach to the subject. I wish to dwell on the very nature of the United Nations documents which form the basis of the activities. I return to the declaration of January 5, 1943. By it the signatories have said that they intend to do their utmost to defeat the methods of dispossession practiced by the Governments with which are at war against the countries and peoples who have been so wantonly assaulted and despoiled. In stating this intention they have also mutually obligated themselves to do everything necessary in order to achieve the objective contained therein.

The same obligation is contained in the declaration of February 22, 1944. The agreements of Yalta and Potsdam, while laying down the principles did also fix the line of action. It was in particular the Potsdam Agreement which paved the way to the establishment of the whole machinery of restitution. The Paris Agreement on Reparations

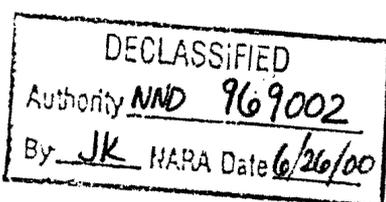
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in its Part III fixes a specific obligation and provides for the procedure to attain the goal. On February 4, 1946 the British Embassy in Warsaw informed the Polish Government that the definition of restitution of property removed by Germans from allied countries, as agreed by the Control Council in Berlin at the meeting on January 21, 1946. The decision of the Allied Control Council makes it clear that the question of restitution of property removed by the Germans from allied countries must be examined ⁱⁿ all cases in the light of the declaration of January 5, 1943. The objective is therefore clear - to make good as far as possible the damage done and compensate the losses suffered. This was also made clear in a statement contained in the bulletin of the Department of State of June 16, 1946, which stresses the right-ful claims of countries like Poland which, "those countries which have borne the main burden of the war, have suffered the heaviest losses, and have organized victory over the enemy".

These were the obvious intentions of the United Nations in establishing and setting into motion the whole machinery of restitution. Can they be lost sight of or remain without influence on the methods and procedure while these documents are being implemented? It is a well established principle of law that the intentions of the parties are of paramount importance. This principle is fully recognized by both theory and practice, and finds its expression in the old Roman maxim: in conventionalibus contrahentium voluntas potius quam verba spectari placuit. The Permanent Court of Arbitration stressed it by using plain words: "here again and always we must look for the real and harmonious intention of the parties when they bound themselves". What was the intention of the parties to the declarations of January 5, 1943, of February 22, 1944, of the Yalta and Potsdam Agreement? The intentions were quite clear - they aimed at satisfying the needs and desires of the devastated countries; they meant to give priority to those who suffered most. These intentions were not only inherent in the documents themselves, they were made clear in statements, declarations and pronouncements made outside the instruments in question. This being so we must throughout the operation of the machinery instituted to implement and carry out those intentions, remember these purposes which were and are like a beacon, a directive which shows the way to put the whole thing into practice.



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...question that Poland stands in the first rank of those who suffered most and that she is therefore among the first who should be considered? Would it under these circumstances be just and right that a narrow formula be put as a bar preventing Poland from having her rightful claims satisfied? Some of the claims are well within even this narrow formula, but I am now trying to approach the issue on a much wider field. We have established the clear and manifest intentions of the parties when they bound themselves to proceed with the restitution of looted or removed gold. Our claims must have been in their minds when the documents were drafted. Our claims are well within the provisions of Part III of the Paris Agreement on Reparations. If this is so, it has to be applied to all our items, all of them, as to have to be accepted. We are faced with another definition as drafted by the Commission, which my Government has questioned and which excludes some of our claims. But there are some claims which are justified by both, being the monetary gold, as I proved in the earlier part of my statement this afternoon. In the light of all I have said can any of these formulas be used to bar our claims? The intention of the parties being clear, the only proper interpretation which could and should be applied is liberal construction of the documents in question. What is this liberal construction? Liberal construction is liberal construction of all the documents, which is backed in theory and practice in law. ... But the result of such a situation would be the heavy and ... The fruits of the crime would be removed. This principle ... liability cannot be invoked against the victim ... not only ... profits from the infamy of the criminal. ... I think there is no need to ... is a well established principle of law. It is therefore clear that the principle is valid regardless of who wins or loses the hostilities of the ...

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There are other examples which I would like to quote to you. Take for instance, the decision of the Supreme Court of the U. S. of 1830 in the case of Shanks v. Dupont. The Supreme Court of the U.S. said: "If the treaty admits two interpretations, and one is limited, and the other liberal, why should not the most liberal exposition be adopted". And in another case, the same court said: "Where a treaty admits of two constructions, one restrictive as to the rights that may be claimed under it, and the other liberal, the latter is to be preferred. Such is the settled rule of the Court" (1879) And, again in another case in 1889, it has been said that the "Treaties shall be liberally construed so as to carry out the apparent intention of the parties". And, again it has been said: "Treaties are to be construed in a broad and liberal spirit, and when two constructions are possible, one restrictive of rights that may be claimed under it, the latter is to be preferred". Asakura v. Seattle (1923). The liberal construction of treaties and extensive interpretation of rights - arising out of them is a well-established principle of law. The more so it is to be applied, where the whole procedure is one of equity. Where equity is in play, the only admissible interpretation is the liberal construction of an instrument. In this case, as sovereign rights of states are not involved, restrictive interpretation is not justified. It leads to the conclusion that claims, certain claims, justified claims, like the claim of the Government of Poland, would be excluded and barred from satisfaction. Otherwise, as I say, we are bound to conclude that the agreements, the United Nation's Declaration of 1943 and 1944, Yalta and Potsdam and the Paris Agreement on Reparations of Part III, are really devoid of any meaning. This agreement would remain meaningless and here again, I wish to quote a high international authority who said that "Nothing is better settled as a canon of interpretation in all systems of law, than that a clause must be so interpreted as to give it a meaning, rather than to deprive it of meaning". That is what the Arbitration Tribunal Court said in the Cayuga Indians Claims Case (1910).

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cases which I would like to quote to you. Take for instance, 1830 in the case of Shanks v. Dupont. and

This brings me to the conclusion that neither in the intention of the parties, nor in the text of the relevant documents, is there any basis for the rejection of the claims as submitted by the Government of Poland. We claim that the agreement concerning the restitution of monetary gold be interpreted and applied in this very spirit, so that the rights of the most affected and their claims, be fully satisfied.

Mr. Chairman, this is the view of the Polish Government this view, I believe, is well founded, as it is not only backed by theory and practice in general; some aspects of the practice of the Commission itself offer further reinforcement, if any reinforcement is really necessary. I have here in mind, inter alia, the case of the Dollfus Mieg et Cie, S.A., which the Commission is not unfamiliar with. But, I hope you will forgive me for detaining you for a few minutes which I shall deal with the particulars of the case, which I think is not without importance and bearing on the general lines of reasoning, in the question of restitution of monetary gold.

As you well know, the French Company purchased 64 bars of gold and lodged them for safe custody at the Bank in Limoges. In August, 1944, the gold bars were forcibly removed to Germany, after having been seized by the German Authorities. Upon the termination of hostilities, the gold was found in Germany, and in 1948 on instructions from the Treasury, an account was opened with the Bank of England, where the mentioned 64 bars of gold were to be deposited. This account was operated by the "representatives of the Governments of the U.S., the U.K. and France, on the Tripartite Commission for the Restitution of Monetary Gold, for the deposit and eventual distribution of a portion of the gold looted by Germany from the occupied States of Europe". The Bank of England accepted the deposit with the explicit proviso that it "Be utilized for the deposit and eventual distribution of gold coming under the jurisdiction", I repeat, "jurisdiction, of the Tripartite Commission for Restitution of Monetary Gold". Meanwhile, the French Company has been trying to locate the looted gold and on June 29th, 1948 approached through the French authorities, the Chief of the U.S. Foreign Exchange

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Depository at Frankfurt. On enquiry, they were informed that "the disposition of this gold is subject to the orders of the Tripartite Gold Commission and the Office of the Mil. Government, U. S., Germany". In July 1948, this gold was despatched to England and deposited with the Bank of England. This was done on the orders of the Tripartite Commission. All these facts have been revealed in connection with an action brought by the Dollfus Mieg Cie. against the Bank of England in the Chancery Division of the High Court in England. The French Company claim delivery of the bars. In delivering the judgment, the English Judge found that the transfer of the gold, I quote, "was clearly done under the orders of the Tripartite Commission" and added "who seem, rightly or wrongly to have treated the 64 gold bars as monetary gold". The reasoning of the Judge who refused the French company the right to have the case considered in substance, by holding that it was a case of sovereign immunity, not to be dealt with by municipal court, is irrelevant. It is, of course, of no importance that the Superior Court when dealing with the case found the bank sold inadvertently 13 bars of gold in question. The essential problem is, and the reason why I mention the case, is the fact that the Commission found it possible to extend its jurisdiction over gold which, for all intents and purposes, was never monetary gold, and the Judge as I quoted earlier, cited all the international instruments on which the authority of the Commission was based, starting with the Reparation Agreement of Paris and ending with the definition, as made by the Commission, and he said: "The Commission seem, rightly or wrongly to have treated the 64 gold bars as monetary gold". I quoted this example as a sideline and a side-light, for illustration only, because I think that all the arguments I have advanced to the Commission earlier prove my case, without having any need to refer to the case of Dollfus Mieg. I think that our case is proven, and there is no room for any alternative - for the rejection.

Apart from what I have said already - apart from the fact that the rejection of our claim would amount to violation of our entitlement and rights - would amount

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to nothing short of expropriation - it would create a source of unjust enrichment of other states, at our expense.

From what is know, and there is little doubt about it, Polish gold is in the stocks of gold recovered from Germany and at present held under the jurisdiction of the Commission. By dispensing with the need of identification and accepting the principle of distribution from the pool, the Paris Agreement and the Commission have thus qualified all the gold found in Germany and recovered from third states, as a global fund, from which allocations will be made to the individual Governments. Since, as I say, there are considerable quantities of gold looted and removed from Poland, the conclusion is clear. The allocation, without Poland participating in it, would mean that Polish gold would be allocated to third states. It would be superfluous to argue that should this happen the very object and purposes of restitution of gold after World War 2, would be completely frustrated.

By way of international agreements, as those concluded with Spain, Switzerland and Sweden, the Governments of the three Powers, U.S., U.K., and France, have received and will receive gold which found its way to these countries by various lootings of the Hitler Government and was looted from occupied countries. That is how the three Governments obtained for the jurisdiction of the Commission, 3740 Kgs. of gold from the Bank of International Settlement, in exchange for: waiving all claims against the Bank of International Settlement with regard to looted gold transferred to it by Germany" - the agreement of May 13, 1948. This was one of the typical operations through which Hitlerite Germany was disposing of gold looted in occupied countries. Being fully aware that the gold stocks of the Commission contain gold looted from Poland, its allocation to other countries would amount to an unjust and undue enrichment at the expense of Poland. How could this, I respectfully submit, be compatible with the Declaration of September 27, 1946, on the occasion of the establishment of the Commission by the three Governments represented on it? This was said

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on the occasions - "Il a donc été reconnu qu'il ne serait pas équitable qu'un pays quelconque puisse bénéficier d'un avantage aux dépens des autres pays, parce que les Allemands, par hasard, n'ont pas fait disparaître les poinçons originaux sur une partie de l'or volé. En outre, on a tenu compte du fait que la plupart des pays libérés ont un besoin urgent de devises étrangères pour leurs importations. On espère qu'une répartition de l'or monétaire entre ces pays, au prorata de leurs pertes augmentera leur pouvoir d'achat à l'étranger et contribuera ainsi au redressement général de l'économie européenne".

Here we see it quite clear that the Commission in its first statement, that of September 27, 1946, as stated, has a line of policy that no undue enrichment should ever happen within the activities of the Commission, and therefore, the refusal to recognize our case would be obviously contrary to the principle of equity, on which the distribution of gold should be based, and it would be contrary to the very principle of restitution.

The compensation of damages in this case is built on equity, which requires particular consideration to be given to those who suffered and lost most. It is therefore that the Commission should be guided by the principle of "broad conceptions, rather than by narrow interpretation", as it was stated by a member of international tribunals. Unjust enrichment is certainly not the purpose of restitution, nor is it compatible with the many documents of the United Nations.

In connection with the above, it would be also unjust to admit for only a moment, the possibility of transferring Poland's claim into another sphere. As I pointed out earlier, restitution is and remains the basic institution aimed at compensating losses suffered and damage done. As substance has been saved, and we know that substance has been saved as far as gold is concerned, only restitution can be applied. It would be both unjust and improper if the distribution of gold would be carried out and Poland omitted from it, under the pretext that our damage should be covered from other sources.

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Mr. Chairman, having thus presented the case in its summary and arrived at the definite conclusion that our claim is justified, both in law and fact, that international instruments and practice back the claim advanced by the Polish Government.

Appearing today before the Commission and presenting the view of the Polish Government, we request that international agreements be carried out. The Agreements of Yalta and Potsdam are international instruments, which should be honoured in this, as in all other aspects. We claim that the three Governments who have signed with us the Protocol of July 9, 1949, should carry out their obligations. Pacta servanda sunt. Unilateral repudiation of the agreement amounts to the violation. Apart from the binding force of international treaties, it should be borne in mind that it is not enough to reap the fruits of the treaty, without carrying out its obligation - not to acquire rights resulting from it, without complying with the obligation resulting from it. We are fully entitled to ask for the implementation of this agreement. The three Governments in whose hands rests the distribution of monetary gold, act as Trustees and they are, therefore, bound to act in the interests of those in whose benefit the institution of restitution has been set up. I think these are things which should be borne in mind throughout the procedure. If you mention, Mr. Chairman, that the Commission is bound by strict rules of procedure, then I think that we should remember that the main principle is substance - the question is clear which serves which - substance - procedure, or procedure - substance.

We appear before this Commission on the basis of assurances given to us by the three Governments that our rights will be fully recognised. These assurances had the character of binding obligations, and it is on this basis that we did sign the Protocol of July, 1949. Now, we would like this assurance to be implemented.

On its part, the Government of Poland wishes to repeat and recall that it honours international obligations. Out of many facts, I wish to quote one. I have

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In mind the exchange of notes, with which you may be familiar, between the Embassy of the U. S. in Warsaw and the Polish Ministry of Foreign Affairs on the 5th and 31 May, 1947, in connection with the concrete question in which gold from Portugal was to be used in a transaction. The Government of the U. S. expressed its confidence that "The Government of Poland would not wish to be a party to a transaction by which the Allied countries, including Poland, might be deprived of receiving gold looted from them". The claim to receiving gold from the pool was then recognized by the U. S. Government as early as May 6, 1947, and in reply to that note, the Polish Ministry of Foreign Affairs stated:-

"Le Gouvernement polonais partage les apprehensions du Gouvernement des Etats Unis concernant l'or spolie par les Allemands et se trouvant encore dans les differents pays. C'est dans cet esprit que le Gouvernement polonais est tout dispose a collaborer dans cette question, etant un parti des plus interesses dans ce probleme.

Tenant compte du fait, que la plus grande partie de l'or polonais et d'autres metaux precieux fut transfere par les Allemands pendant l'occupation et a augmente la reserve d'or monetaire allemands, la Pologne est vivement interesse que la somme totale destinee a la repartition, comprenne la plus grande quantite d'or recupere, et par le meme, que la participation de la Pologne dans cette repartition reponde a la valeur de ses pertes".

Here is an example of the attitude adopted by my Government, but it was not only in words, but also in deeds that the Government of Poland has carried out its stipulation concluded among the United Nations. But, as I said earlier, while implementing agreement she has the full right to ask other signatories of this Agreement to do the same.

Appearing today on behalf of the Government of Poland before the honorable members of the Commission, I represent a Government as a fully entitled signatory of an international instrument. We do not plead mercy; we do not call for an act

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of grace; we want our rights, that are due to us, be fully recognised and that agreement be carried out in both letter and spirit.

On the basis of the later documents submitted and additional information, the Polish Government is convinced that its title to the looted and wrongfully removed gold cannot be questioned.

The representatives of three Powers gave assurances prior to the signing of the Protocol of July 9th, 1949, that the Commission as a quasi-judicial body would consider its claim in an impartial manner.

On the basis of this assurance, the Polish Government submitted documents and other evidence. On the basis of this very assurance, the Polish Government has delegated me to present its case before you today - and in summing up the elements I have submitted to you during today's expose, I wish to state briefly that the claim of the Polish Government is based:-

- 1) On the paramount desideratum to give satisfaction by way of restitution for the losses suffered by Poland through the looting of and removal to Germany of Polish gold.
- 2) On concrete, clear and unequivocal obligations and rights resulting from the Declaration of January 5, 1943, February 22, 1944, on the agreements of Yalta and Potsdam, on Part III of the Paris Reparations Agreement and the Protocol signed with us on July 9th, 1949, as well as on other obligations undertaken by the three Governments represented by the Commission.
- 3) On the evidence submitted, which specifies the claim for restitution of 138,738,5309 Kgs. of gold looted from Poland and wrongfully removed by Nazi Germany.
- 4) On general principles of interpretation and implementation of international documents which require and call for equity and liberal construction in this and similar cases.

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- 5) On the undeniable right and fact that among the gold found by the Occupying Authorities in Western Germany and recovered from third states, there is gold looted from Poland.
- 6) On the fact that the refusal to acknowledge our claim would, apart from violating the principles enumerated above, constitute an undue enrichment of a third state at the expense of Poland. It was rightly stated that the United Nations documents on restitution reiterate the historical, moral and legal principle, that neither the person who steals, nor the one who may later come into the possession of the goods, honestly receives the title.

In order to fully satisfy this principle in its both positive and negative aspect, we must insist on the refusal to sanction looting and the imperative command to restore the looted property to those who were deprived of it.

I am at the end of my consideration, but before concluding, I am bound to go back to the letter of the Commission of July 27, 1950. The Polish Government was surprised by its short and brief statement. The letter does not explain whether the Commission questions statements of fact in connection with the evidence submitted by the Polish Government, or the juridical conclusion of the claim. No concrete issue was raised, nor additional information sought as to details to cover the issue as a whole. The Polish Government is convinced that having presented the case as a whole, it has made it. Should, however, the Commission harbour any further doubts, I am prepared, with the Financial Expert who has come from Warsaw this week, to answer any final questions you would like to raise.

I should not only appreciate this, but I think the procedure should really follow this line, but before I conclude, I wish to reserve, Mr. Chairman, for my self, the right to make an additional statement before the conclusion of today's session.

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POLISH REPRESENTATIVE

I want to thank you for your statement. When I say I come from a war ravaged city I mean it literally. I come from Warsaw, where I am going back, and therefore my appearing before this Commission is always linked with the journey, and I think it is a question of continuity. I think it would be best if the Secretary General would get in touch with our Minister in Brussels to arrange a mutually convenient date for the continuation - if that is agreeable to you.

Then, of course - if I may say one word more - I have asked you to give me an opportunity to make a statement at the end of the proceedings, and of course these proceedings are only suspended so that I shall no doubt be given an opportunity at the end of the next session.

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