

PART 5

Final evaluation, conclusions and proposals

5.1 Final evaluation and conclusions

5.1.1 General evaluation of the period 1940-1944 and of the post-war process of redress

5.1.1.1 Introduction

As of the fall of 1940, it became clear to the Jewish population that the Nazi persecution, which a number of them had tried to escape by emigrating to Belgium, would within a very near future turn into reality. And, indeed, the first anti-Jewish edicts issued by the German Military Command were not long in coming; they were announced as early as October 28, 1940.

Some of the Jews no doubt made a last-minute attempt at safety, whether or not with part of their possessions, but opportunities for escape were few and far between. Those who fled to France were subsequently overtaken by events, namely the German occupation and the Vichy government.

The Jewish population appeared very vulnerable : its concentration in primarily two main urban centres, Antwerp and Brussels, made individuals easy to track down, while its particular composition (approximately 93 % of them were foreigners) limited assimilation and increased the risk of recognition.

That latter factor also contributed its part during the May days in 1940, when the Belgian government proceeded to the arrest of all persons suspected of being sympathetic to the German aggressor. At that time (no doubt influenced in its actions by the panicked reaction of a public that detected spies around every corner), it interned without distinction also masses of Jewish refugees from the German *Reich*. In spite of the fact that these Jewish refugees were victims of the Nazi regime, the government ultimately had them transferred to camps in France. For many amongst them, this became the first step that via Drancy led to their internment in Auschwitz.

5.1.1.2 The period 1940-1944

Berlin dictated the measures that were directed against the Jewish population and which, conform to the blueprint followed within the *Reich*, gradually took on a sharper form and focus. Those measures took for their objectives to identify the Jewish population, to ban them from participation in economic life and at the same time to lay hold of their possessions, and, in the ultimate stage and based on a secret directive that was confirmed at the beginning of 1942, to physically eliminate them.

The consecutive Jewish edicts were meant to give this operation a legalistic and organisational framework. In practice, however, and for diverse reasons, matters did not proceed quite as smoothly as planned.

In the first instance, the interests of the German Military Command and the objectives of the nazi ideologists in Berlin did not always follow a parallel course. The Military Command aimed at maintaining law and order with an occupational force held to a minimum and it looked upon this maintenance of order as a necessary condition for the maximum exploitation of the Belgian economy. They chose to realise such objectives as far as was feasible within the frame of the Belgian legislation and with the collaboration of the Belgian public authorities. This had two significant consequences.

First of all, the Military Command limited its own scope of action by its willingness to conform to the Belgian legislation, a plan whose implications it surely had not explored thoroughly enough. Illustrative in this regard is the example of the *Brüsseler Treuhandgesellschaft* (BTG), founded as a management company under Belgian law : the BTG was allowed to control and manage, but it was denied ownership of what it controlled.

Secondly, the Belgian authorities, which had been allowed to keep functioning under the decree of May 10, 1940, did not always prove as flexible and accommodating as had been expected. In this respect, the Secretaries-General, for instance, basing themselves on the Belgian Constitution, refused to issue the initial anti-Jewish measures (October 28, 1940) (which forced the occupying forces to announce those measures as German edicts). On the other hand, the Secretaries-General later on did send a circular letter to the municipal authorities directing them to open Jewish registers. When the municipalities were subsequently told to distribute the Star of David badges, the Brussels municipalities refused to comply but those in Antwerp acceded.

The Belgian Court in its turn often registered its opposition as well. Amongst other instances, it forbade the sanctioning of acts of forced sale of real estate, which strongly curtailed the implementation of German policy regarding Jewish real property. In contrast, there is the collaboration of the Antwerp police in the process of internment and, in some instances, also in the arrest, of Jewish citizens.

Not surprisingly, the Jewish population managed in part to avoid compliance with the German edicts. There is little doubt that the compul-

sory entry into the Jewish registers was not obeyed to the letter. The same pertained to the identification of Jewish bank deposits – the obligation rested with the Jewish depositors – and to the registration of securities, gold, jewels, and diamonds. On the other hand, the Jewish population experienced greater difficulty in avoiding the identification of their real estate property or of their commercial and industrial enterprises.

Ultimately, it also appears that the directive to the financial institutions that they themselves identify, when necessary, the Jewish deposit and securities accounts and, at a later stage, transfer them to the robber bank *Société française de Banque et de Dépôts* (SFBD) received only a very limited response.

No unambiguous global picture of the despoliation has emerged. Certain is that there existed an indisputable despoilment of Jewish possessions to the benefit of the *Reich*. This is most convincingly demonstrated in the so-called *Möbelaktion*, in the activities of *Einsatzstab Reichsleiter Rosenberg*, and in the direct seizure (ordered by the edict of April 22, 1942) of the possessions of Jews of German origin. Aside from that, there existed a widespread well concealed plan of despoliation : real estate property was sold below the current market value; the same was true of diamonds and in the case of liquidation of Jewish enterprises. Enterprises that were not liquidated were placed under German management and the unreasonably elevated management fees that were exacted for that service were partially siphoned off to the *Reichskasse*. Only the insurance policies were left untouched, with this proviso that the insured policy holders and their assigned beneficiaries could only collect on part of the remitted benefits.

Ultimately, a large number of liquid funds under the management of *Brüsseler Treuhandgesellschaft* remained in frozen accounts with the *Société française de Banque et de Dépôts*. After the liberation, they were placed in Belgian custody.

5.1.1.3 The post war restoration process

The settlement of the material consequences of what had happened during the war was after the liberation entrusted in essence to three departments : the Department of the Sequestration of enemy goods (as security for the damage inflicted by the occupying forces to the national heritage), the Department for Economic Recovery (an offshoot of the Allied agreements concerning German restitution and compensation for war damage caused), and the Department of War Damage, an organ of the Ministry of Public Works and Reconstruction.

The first two services were established respectively on August 23, 1944, and November 16, 1944; the Department of War Damage derived its competences from the decree-law of November 19, 1945, concerning war damage to private goods.

During this early period after the liberation, no particular attention was paid to the victims of the racial persecutions by the occupational forces, likely because the precise nature and extent of the judeocide had not yet

been fully appreciated. As a result, no effort was made to accommodate the victims in a way that was adapted to the particular manner in which their possessions had been despoiled during the occupation, this in spite of an initiative – albeit isolated – by the Administration of Registration and Domains of the Ministry of Finance.

This explains why, initially, the Jewish holdings with the Department of Sequestration also remained frozen at the *Brüsseler Treuhandgesellschaft*. Nonetheless, it was speedily realised that these could not possibly be categorised as “enemy” assets; subsequently, the sums in question were in a practical way processed to the benefit of the Jewish depositors or legal beneficiaries, or transferred to the banks of their origin. It did, however, demand a great deal more time to isolate the assets of Jews that were refugees from the *Reich* (borders of September 1, 1939), and who had in the meantime regained their original German or Austrian nationality, from the “enemy” category. The problem was only legally solved by the decree-law of January 13, 1947, following two and a half years of half-hearted attempts. Where it concerned the holdings of those victims amongst them who had failed to survive the judeocide, these were transferred to the State Treasury in the same manner as happened with “enemy” accounts.

The deposit accounts, securities, and goods whose Jewish owners were unknown or could not be located over time were in turn transferred to the State Treasury via the Administration of Registration and Domains of the Ministry of Finance or via the Department of the Official Receiver. From its side, the Department of Economic Recovery (DER), within the context of the recovery of the country’s economic potential, gave prime attention to the compensation in industrial goods, production plants, and means of transport assigned to Belgium. In addition, the DER further recovered a significant number of stolen diamonds. The restitution of these articles to their legal owners was carried out with exceptional efficiency thanks to the assistance of the Federation of Belgian Diamond Fairs.

Only a small section at the DER was occupied in the recovery of stolen artwork and objects of cultural value, a sector within the Jewish community that had been particularly targeted during the war. In comparison with what was being achieved in the Netherlands and in France, this section’s results remained only negligible. Furthermore, for the lack of any systematic system of tracing the legitimate owners of the recovered artworks and cultural objects (interested parties could present themselves in storage centres), few of the items were actually restored. Most of the Jewish artwork and cultural objects were sold off, with the proceeds going to the Treasury; some of them found their way into museums.

The clearest evidence of exclusion of the victims of Jewish persecution by the nazis found its *de facto* expression in the law bearing on the restitution of material war damage (more particularly the decree of October 1, 1947). In three areas, this decree led to an effective exclusion of most of the Jewish victims. Under the established conditions for citizenship, only about 7 % of the Jewish population at the outbreak of the war could claim redress.

In this process, political prisoners could count on preferential treatment, to the degree of complete compensation for all despoiled moveable and immoveable goods, while those persecuted on racial ground were excluded as they could not, in fact, lay claim to the Status of political prisoner. Finally – but this point is based rather on deduction – the traditional means of investment for the wealthier Jews – bank accounts, jewellery and artwork – did not qualify for restitution.

The decision to withhold the Status of political prisoner from the victims of racial persecution received, years later, an extension at the time of the distribution of the global moral indemnification of circa 1 billion BEF paid by Germany. The Belgian-German agreement of 1960 stipulated that this global indemnification had to be paid out to the victims of racial, religious, and ideological persecutions during the national socialist regime. However, this same accord did also grant Belgium the right to define the criteria for the restitution payments. In keeping with the decisions for the implementation of the decree of March 4, 1961, only those victims eligible for the Status of political prisoner and their legal beneficiaries could submit their claims. As a result of this decree, the victims of the Jewish persecution once again fell by the wayside.

In conclusion, one may state that only in the diamond sector the restitution of property was well-nigh total. Everywhere else one has to face the bare facts : the political and administrative authorities failed to grasp the true significance of the judeocide, a failure of insight that formed the basis for a whole range of shortcomings. It is these shortcomings that ultimately caused the Belgian authorities to partially fail in their course of action to restore the possessions of Jewish war victims.

5.1.2 **Evaluation of our study**

Like all the other study commissions set up abroad to conduct, now more than 50 years after the facts, a thorough inquiry into the destiny of Jewish possessions during and following the Second World War, the Belgian Study Commission encountered the obstacle of inaccessible archives and incomplete source material.

Our first important task thus consisted in drawing up an exhaustive bibliography describing the nature, the value, and the extent of the scientific literature and archives useful and available to the Study Commission. In this task, the Commission was assisted enormously by the research project worked out by the Study and Documentation Centre War and Contemporary Society (SOMA) and for which purpose a researcher was assigned to that institution (Inquiry concerning the stolen and abandoned possessions of Jews in Belgium during the nazi period).

As the Study Commission wished in the first instance to formulate a picture of the general logistics of the plunder process and its total extent on the one hand, and of the post-war instruments used for the restitution and redress on the other, a very significant number of public archive groups appeared very useful. These were scrutinised by the SOMA-project re-

searcher, who was able to carry out his study in complete freedom of movement and with total access to public archives.

After the completion of the bibliography and the scrutiny of the archives (that frequently had not yet been deposited with the State Archive, are kept in abominable conditions, and have barely been opened – see below), assistance from the General State Archive was requested for the actual opening up and inventorising of certain important archive groups. This approach did not, however, lead to concrete results. This obstacle was overcome only in May 1999, when the Study Commission received additional assistance in personnel and data processing infrastructure.

From that time onwards, the Study Commission opted to conduct its inquiry in greater depth and with greater focus on the personal aspect. It should be emphasized that, in this respect, the methodology employed by the Belgian Study Commission is clearly distinct from methods that have been followed abroad. The Study Commission integrated the personal data of the victims of anti-Jewish edicts into the Mala Zimetbaum databank (MZDB). Information concerning these victims' belongings was systematically added to these personal data; this consisted of information that the Study Commission was able to gather from all examined public and private archival sources.

Combining 'persons' and 'goods' required a detailed search throughout all sectors and institutions where the Study Commission suspected to find remaining traces of non-restored Jewish possessions dating back to the war years : these included public authorities, the arts and culture sector, the insurance companies, and the financial institutions.

In the public sector, it proved possible to a large degree to trace back to what extent Jewish possessions had not yet been restored. However, the Study Commission also noted on occasion that essential parts of the archives were missing, with the inevitable result that its findings had to be left incomplete. For that reason, it will later no doubt be necessary in some cases to have recourse to extrapolations. As a case in point, reference may here be made to the study concerning the heirless legacies that have fallen to the State Treasury; this study found that the archives at one of the most important offices of the Administration of Registration and Domains (the Brussels office) demonstrated glaring lacunae.

In the arts and culture sector, where the inquiry started later than in the other sectors, the study was limited to the cultural institutions and museums in Belgium. This means that the private art market and private collections, in addition to foreign collections, have been excluded from consideration. What concerns the cultural institutions and museums, it can be categorically stated that the archives were available practically in their entirety and that the Study Commission was able to count on a high degree of collaboration across the entire sector. Sometimes it appeared impossible to determine a conclusive source of origin for an object or a work of art; this failing, however, was not the result of any absence of sources but rather due to lacunae in the sources themselves.

The insurance sector has done a commendable job of preserving archives concerning life insurance policies. Many of the companies even state that they have kept the complete archival record intact. A cross-referencing of the submitted lists of holders of still outstanding and unremitted policies with the MZDB of the Study Commission could for that reason offer a picture of what in the post-war years was left unpaid to Jewish policy holders. To remain on the safe side, the likely, but not 100 % certain, identifications were - for reasons already mentioned with regard to the financial institutions (cf. Chapter 4.1.4) - retained for only 50 % of their numbers.

Nonetheless, we did register in the insurance sector a number of exceptions where it concerned the conservation of archival records. As we did in the public sector, the Study Commission in those instances took recourse to an extrapolation in order to arrive at a picture of what we could reasonably have expected to find if the archives had remained available in their entirety. In four cases, when faced with a total absence of archives, the Commission proceeded to fix an estimate by applying the 1939 market share of the insurance companies involved to the total amount which it had calculated for the other companies.

In the financial sector, public and private, the archives were found to have been kept very negligently, for whatever reasons, but we suspect that the numerous mergers and acquisitions of bygone years no doubt had something to do with the absences. Also, the absence of a regulation bearing on the management of 'unclaimed' possessions and the divergent manner in which the institutions themselves determined their own rules did hardly facilitate the search for Jewish holders of accounts.

We thus found that certain institutions were unable to submit lists of 'unclaimed' accounts or that, where the lists did exist, no traces of judeocide victims could be found in them, even though it was evident, based on archival records of the occupation period, that the institutions in questions had during the war years managed Jewish accounts. Starting from the certainty that approximately 45 % of the individuals classified as "Jews" by the occupational forces in Belgium lost their lives during the war, it was hard to accept that of the former Jewish depositors not a single trace should be left behind. Other institutions in turn could only provide us with very limited lists, certainly not in proportion either to their total market share in 1940 or to their share in the compulsory transfer of Jewish assets to the *Société française de Banque et de Dépôts* (SFBD, the robber bank designated for such transfers by the German Military Command).

For such reasons, and on the basis of the partial data at its disposal, the Study Commission has opted for a bank by bank reconstruction - albeit theoretical but nonetheless founded on real parameters - of what at the beginning of 1945 could well have been the starting point. Indeed, at the beginning of 1945, some accounts that were centralised at the robber bank SFBD came back to the banks of their origin, even without the intervention of the depositors. They were thereupon combined with accounts of Jewish depositors that had never left the banks. Because of the absence of data re-

garding what amounts were subsequently paid back to the depositors or to their legal beneficiaries (the banks are obviously not in a position to furnish documentation about repayments of decades ago and the Study Commission did not request them to do so), a total repayment coefficient of 50 % has been applied to the reconstructed situation of the year 1945. The last figure takes into account the relative number of judeocide victims in 1945 and the estimated differences in repayments resulting therefrom.

In the case of institutions that did have lists available that could be cross-referenced with the MZDB, the likely, but not 100 % certain, identifications were again for safety's sake taken into account for only 50 % of their numbers, as set forth in Chapter 4.1.

Finally, in the case of securities accounts at the time kept by the financial institutions "in open custody", it was necessary to do a weighting between, on the one hand, the portion of bonds and term deposits to bearer and, on the other hand, the portion of shares. As it is impossible to fix this ratio with any degree of certainty, the Study Commission bases its figures on the model that is considered the most representative by the Belgian Association of Banking Institutions (50 %/50 %), with as the sole variant that the Study Commission, on the grounds of the study's findings, also includes a limited portion of the share package in its total calculations.

In the four principal sectors, - the public authorities, the arts and culture sector, the insurance companies, and the financial institutions - the Study Commission has in effect arrived at a number of findings that allow it to identify with certainty a number of objects or assets of judeocide victims. Yet, the still available archives (nearly 60 years after the facts) make it impossible for it to draw up a mathematically irrefutable global balance of the possible total number of such remaining Jewish objects or assets. Notwithstanding this caveat, the Belgian Study Commission is convinced that by using its particular research methodology, it has been able to surpass the results of commissions in neighbouring countries in the degree of completeness and the accuracy of its findings.

Depending on the area of inquiry, either certainties or uncertainties and hypotheses prevail. The public authority archives, those of the arts and culture sector and of the insurance companies appeared to have remained the best preserved; no doubt the study most closely approached a realistic picture in those three sectors. A greater degree of uncertainty prevails in the financial sector. There, the recovered elements formed the corner stones for a formula built up along the most rational lines, taking into account a broad gamut of parameters but hardly laying claim to an established fixed pattern. For the above reasons, the Study Commission can present its findings in the four sectors with the following final evaluation :

- With reference to the public authorities, the total mentioned in Chapter 4 represents a quite accurate figure ;
- This is also the case with reference to the arts and culture sector, with this proviso that the study, as described in Chapter 4.4, has remained

- incomplete and was conducted solely within the museums and cultural institutions in Belgium ;
- in the insurance sector, the total mentioned in Chapter 4.3 represents a quite accurate order of magnitude, with this understanding that the Study Commission, where it concerned the completeness of the archives, had to rely exclusively on the information supplied by the sector;
 - with regards to the financial sector, the total given in Chapter 4.1 represents a reliable but rather broader order of magnitude.

5.1.3 **Submission of individual claims to the Study Commission**

The establishment of the Study Commission in 1997 and the international commotion around this dossier led a number of victims or their surviving relatives to deposit requests for compensation with the Belgian authorities or with bodies of the organised Jewish community. From the time of its inception, the Study Commission received such unsolicited applications. The evolution in our neighbouring countries (especially the establishment of a Commission for Indemnification in France and the global ruling in the Netherlands), combined with the address of Belgian Prime Minister Verhofstadt (Malines, September 24, 2000) wherein he held forth the prospect of a Belgian commission for restitution, was responsible for a substantial increase in the number of applications.

In order to be able to accommodate such requests and to bring some uniformity into the submitted claims, the Study Commission drafted a trilingual (FR-DU-EN) standard circular letter. This letter requested personal data from the applicant and his family, as well as information concerning the despoiled victims and the goods stolen from them. At the start of 2001, this standard form was entered on the Study Commission's website (com-buysse.fgov.be). Copies of this form were also made available in some of the main Belgian embassies (the Netherlands, the United Kingdom, France, South Africa, the United States, Australia, Brazil, ...).

In addition, an agreement was reached with the Jewish organisations (the Belgian section of the *World Jewish Restitution Organisation*, in the meantime transformed into the National Commission of the Belgian Jewish Community for Restitution) that would ensure that applications received by them would be forwarded to the Study Commission.

These applications make up the lion's share of the total of 1.029 claims (registration was closed on April 5, 2001) that were registered and entered into our databank. The tables below present a summary of, respectively, the geographic origin of the applicants and the nature of the possessions that were submitted in the applications.

Table 52 : origin of the individual claims

Belgium	79,1 %
Israel	9,9 %
USA	4 %
Canada	1,7 %
France	1,7 %
United Kingdom	1,5 %
Other	2 %

Table 53 : nature of the possessions submitted in the claims

Jewels	60,5 %
Furniture and other objects	58%
Gold	36,5 %
Diamonds	35,5 %
Supplies (business-)	34,6 %
Bank accounts and securities	17,2 %
Insurance policies	7,6 %
Bank notes	6,7 %

In 1999, the Study Commission decided that it could not devote itself to the research work that is inherent in these individual applications (cf. Second interim report to the Government). Nonetheless, it did ensure - by standardizing the applications (that significantly increased in numbers during the months of April, May, and June 2001) and by computerizing the processing - that the work of the Commission for restitution was properly prepared.

5.1.4 **Total evaluation of the unclaimed stolen possessions**

As already mentioned in the introduction, the Study Commission chose to focus its efforts on those sectors where the likelihood existed of tracking down the existence of unclaimed stolen possessions. For that reason, it was decided not to retain in Part 4 of this Final Report any further data relating to the *Möbelaktion*, enterprises, the diamond, and the real estate sectors.

It was ostensibly impossible at this late stage to restore the stolen household effects and furniture that were shipped off to Germany. This part of the despoilment was in the sixties only partially indemnified by Germany within the framework of the BRüG-law. The same is true for the diamond sector and the enterprises. For the diamond sector, the Study Commission reached the conclusion that the restitution during the post war years had been substantial, owing to a constructive approach to the problem. The sums of money that through Belgian efforts at securing restitution were received, when added to the indemnifications on the part of Germany, approximately covered the estimated losses incurred during the war. With

respect to the issue of despoiled enterprises, as far as the Study Commission could determine, certainly 18.8 million BEF (wartime currency value) of extorted “management compensation fees” were transferred to Germany and never restored. When questioned about this, the Ministry of Foreign Affairs informed the Study Commission that the post-war German-Belgian agreements on this point could no longer be revised.

In the real estate sector, the Study Commission, on the one hand, found itself faced with the problem of “compulsory” sales during the occupation for non-payment of mortgage debts and, on the other, a post-war restitution plan of little uniformity. With respect to the ‘compulsory’ sales, often the result of individuals going in hiding or being deported, the Study Commission was obviously not in a position to turn back the clock on events. In what concerns the restitution of real estate property, both the Department of Sequestration (Brussels) and private ‘temporary trustees’ designated by the Courts (Antwerp) were involved. With reference to the latter group, the Study Commission determined that it was impossible to carry out systematic searches. The management activities of these ‘temporary trustees’ were not placed under the control of any official authority (as was the case in the Netherlands), which resulted in the absence of necessary sources to assist with the research. By sheer coincidence, the Study Commission managed to pick up the trail of a property in Antwerp that in the year 2000 continued to be managed by a ‘temporary trustee’ (the son of a ‘trustee’ appointed at the time of the liberation). It managed to track down a rightful claimant and informed the latter of the existence of the property. The Study Commission was unable to determine if similar trusteeship situations are still existing elsewhere.

In the public sector, as well as in the arts and culture, insurance, and financial sectors, the Study Commission can point to significant successes.

In the Belgian public sector, the total amount of the restitution was calculated at nearly 74.2 million BEF (in 1945 values). The lion’s share of this amount originated, either directly or indirectly, from : (1) the sequestration of the German management company *Brüsseler Treuhandgesellschaft* and the possessions of the German-Jewish ‘enemies’, (2) the ‘unclaimed’ assets of the Giro Services Executive and (3) heirless estates fallen to the Crown. This result may be taken as indicative but is nonetheless incomplete, owing to the absence of necessary archival records and the lack of a systematic search of certain areas.

In the arts and culture sector also, a number of concrete research results were achieved. In museums and cultural institutions in Belgium, 331 unclaimed objects and artworks were found that, on various levels of identification, may be considered to be the stolen property of Jewish owners. But, as already mentioned, the study in this area has remained very incomplete.

In the sector of life insurance plans, the Study Commission calculated a total of 10.9 million BEF (in 1945 values) in non-remitted benefits to Judeocide victims. In this, it is nonetheless necessary to make allowances for the incompleteness of archival records at certain companies.

With respect to the financial institutions, an end result of 88.5 million BEF (in 1945 values) was arrived at. This amount, as has been explained in greater detail previously, is not the result of an exact addition but – in the Study Commission’s firm conviction – nonetheless represents a reliable albeit more flexible interpretation of the magnitude of the total.

In closing, it needs to be pointed out that, for the absence of time and means, there has been no research conducted in the activities of the sector of currency exchange bureaus and notaries public.

5.2 Proposals

Having reached the conclusion of its inquiry, the Study Commission offers to the Government some of its proposals with respect to the follow-up of its activities and presents certain specific problems that it deems should be brought to the Government’s attention.

5.2.1 Future follow-up of the Study Commission’s activities

5.2.1.1 Completing the process of redress

As mentioned in the conclusion of Part 3 of the report, the government did in the years immediately following the war pay due attention to the restitution of possessions of victims of despoilment, also with respect to victims of Jewish persecution. This restoration of rights, however, remained incomplete, as during that particular period there was an insufficient understanding of what, in essence, was the true depth of meaning of racial persecution; no effective measures were taken to look after the unmanaged possessions left behind by the victims of judeocide.

In the public sector, as well as with the insurance companies and financial institutions, efforts were made to trace ownership of possessions and assets left behind. Later on, the dossier was removed from circulation.

With the establishment of the Study Commission, the Government has brought renewed attention to bear on the problem of restitution. The Study Commission notes that the Government has already taken the initiative in drawing up a bill that will ensure that the question of restitution be concluded on the basis of the findings proposed by the Study Commission.

On June 14, 2001, the Study Commission was invited to present its findings on the said bill.¹ The advice pertaining was voiced during the meeting of June 20.

The Study Commission once more wishes to point out the importance of setting up the planned Commission for indemnification in such a way that it may have recourse to all the necessary support in order to complete its assignment in the shortest possible term and with the greatest possible efficiency. The bill quite justly provides that the databank set up by the Study Commission on persons that have been victims of anti-Jewish measures be transferred as a working tool for the use by the new Commission. The Study Commission also advocates the careful selection of the personnel

that will be chosen to provide the necessary support to the Commission for indemnification, stressing that the expertise gained by its own personnel can be a valuable added asset to future undertakings in that regard.

5.2.1.2 A continued search for missing cultural objects and artworks

In the brief period during which the researchers-art historians engaged in June 2000 were active in museums and cultural institutions, significant results were already realised (cf. Chapter 4.4 of this report).

These results were entered in a separate databank (*Jewish Cultural Assets-Belgium*), wherein all relevant information - until then distributed across the Management of War Damage, the Department of Economic Recovery, the German archives of the *Einsatzstab Reichsleiter Rosenberg*, and the *Möbelaktion* - were stored. The record consists of more than 4.000 entries that describe art works stolen from more than 225 Jewish collections.

For the lack of time and means, this research was not completed.

From a meeting that was held on June 15, 2001 between the policy administrators of the federal government and the Communities, it has become obvious that the necessity for further tracking down missing Jewish cultural and art works is being felt as a general concern.

In this respect, the Study Commission emphatically proposes that the mandate of the two researchers-art historians made available to the study be confirmed, in order that they may continue their research and further assist the Commission for indemnification with their advice where and when needed.

To avoid all confusion, it is not necessary that they should join the Commission for indemnification for, indeed, this Commission is not empowered to assign financial compensation for stolen artworks and cultural objects. The Study Commission therefore advocates an assignment by the Services of the Prime Minister- scientific, technical, and cultural affairs, or by the Royal Institute of Artistic Heritage, as functionally more appropriate.

Their research work needs to encompass the following areas:

- Identification of the legal claimants of the identified objects at museums and cultural institutions;
- Identification of the legal claimants of the objects recuperated and subsequently sold by the Belgian authorities after the liberation;
- systematic search relating to the private markets and the private collections;
- systematic search relating to artworks recuperated after the liberation in foreign countries (mainly France and the Netherlands, but also in the United States of America and various East European countries).

With respect to the final destination of artworks and cultural objects that can with certainty be designated as Jewish possessions stolen during the war years, only some provisional rules of thumb can be formulated, in function of essentially two possibilities.

- The original Jewish owner is known and legal claimants can be identified: in this circumstance, the only correct procedure is to inform the beneficiaries about the results of the searches in order that they may determine the proper avenues for proceeding that seem most appropriate to them;
- The despoilment of the artwork or of cultural object within the framework of the anti-Semitic war edict is not in doubt but the original Jewish owner is not known or no legal claimants can be traced: objects or artworks that relate to Jewish public worship or that are inherent to the Jewish community and culture in Belgium need, in principle, to be returned to the Jewish institutions; for other works of art, specific solutions can be worked out in time, for instance where it concerns museum collections, the explicit mention of their wartime record.

5.2.1.3 The destination of objects that are kept in the safes and sealed envelopes with the financial institutions

A number of financial institutions are still holding sealed envelopes that contain the content of safekeeping boxes whose depositors are subject of the Study Commission's scope of investigation.

Some of these safety boxes were forcibly opened by the Germans; sometimes, an inventory was drawn up.

When the indemnification process cannot identify the depositors or the legal beneficiaries of these envelopes and safety deposit boxes, there is the problem of assigning a definitive destination to their contents.

The Study Commission thus proposes the following:

- That in the first instance and as of the going into effect of the Law of Indemnification, a legal mechanism be put in place for drawing up the inventory of the content of these safety deposit boxes and sealed envelopes in order that they may become part of the protocol that needs to be concluded with the financial institutions;
- That parallel to the globally proposed solution, the contents of these safety deposit boxes and sealed envelopes, at the latest two years after the coming in force of the Law of Indemnification, be entrusted to the care of the Foundation (of the Jewish Community of Belgium) and that a legal framework be created in order to allow this Foundation to undertake the obligations that are now resting with the financial institutions.

5.2.1.4 The destination of the documentation kept by the Department of War Victims

With regards to documents originating from the Dossin Military Barracks in Malines and kept by the Department of War Victims, the Study Commission proposes that :

- the Commission for Indemnification, in active collaboration with the Department of War Victims, take for its objective the restitution of

- documents and personal items of remembrance to as many individual legal claimants as possible, and that, in the meantime, the documents be kept by the Department of War Victims and be handed over by that Department to the rightful owners;
- the Government decide that, at the latest two years following the start of activities by the Commission of Indemnification, the still remaining documents be transferred to the Jewish Museum of Deportation and Resistance in Malines, on the basis of an administrative accord.

5.2.2 Specific problems

In the course of its inquiries, the Study Commission happened upon a number of specific problems that did not exclusively pertain to the destination of the Jewish possessions but that nonetheless did indirectly hamper its research.

In essence, it concerned : 1/the system of the dormant accounts and other unclaimed assets, 2/the state of preserving and the opening up of official archives and 3/the control over the 'temporary trustee' of unclaimed goods. The Study Commission feels it needs to draw the Government's attention to these points.

5.2.2.1 The system of dormant accounts and other unclaimed assets

The Study Commission's own research confirms the findings of many other sources : there is no specific ruling with respect to the manner in which dormant accounts need to be managed.

Only in the public sector were or are a number of rules in effect. The Deposit and Consignment Bank, after the expiration of a 30-year period and following its compliance with the legal obligations vis-à-vis the owners or their legal assigns, is expected to transfer the assets entrusted in its care to the State Treasury. In the past it was customary for the Post and the ASLK, in keeping with legal provisions, to close out non-active accounts after a certain period of time and to transfer the eventual positive balance into the account to the State Treasury or, in the case of the ASLK, to enter it into its own assets.

For the rest, the practice is divergent and regulations are hardly conclusive. Prior to the decree of June 25, 1992, the private sector insurance companies could appeal to the statute of limitations three years after the death of the insured party or after the expiration of the policy. Since that time, the statute of limitation on a life insurance policy is 30 years for what concerns the legal claim on the actuarial reserve (which is in effect on the date of cancellation or on the policy's closing date). The law does not, however, state what shall happen to the amounts that have reached the statute of limitation date. In 1952, the Insurance Control Department issued its recommendation to the insurance companies to deposit the relevant sums with the Deposit and Consignment Bank. In practice, this recommendation seems to have been largely ignored. Furthermore, no special provision has been

made with respect to the keeping of archives. The Insurance Control Department recommended that documents be kept for 5 years, basing itself on the term that is valid for all general commercial documents.

Within the financial sector as well, clear directives are lacking in what concerns the identification, the accounting practices, and the ultimate destination of the unclaimed assets. This point became quite evident during the February 1998 seminar at the *Université Libre de Bruxelles* dealing with “the banker’s obligations in the matter of restitutions”.²

There is, first of all, no conclusive definition as to what is to be understood by the term ‘dormant accounts’.³ Furthermore, many banks do not have a specific accounting system to deal with the unclaimed possessions. Thus, the discrepancies between the release date with respect to the statute of limitation, on the one hand, and the fixed term for the storing of archives, on the other, have led to the creation of a hiatus in the archival records. The Belgian Banking Federation (BVB) has nonetheless issued the recommendation to its members to retain for at least thirty years the identify of holders of unclaimed accounts (those with a balance that would justify the particular accounting of it), but the question remains if this is sufficient to solve the problem.⁴

Through repeated calculations of management fees, while eventually on the grounds of the banking regulations no more interests are added, one ultimately arrives at the final tally of the unclaimed possessions. In her already mentioned report, professor Simonart does not hesitate to denounce this sort of practice as abusive.⁵

With the exception of some three specific instances (for instance, an unclaimed legacy) the financial institutions, like the insurance companies, have no obligation to make transfers to the Deposit and Consignment Bank. In the light of its findings, the Study Commission opines that such a transfer should become the designated procedure.

When these considerations are taken individually and knowing that the Commission for the Banking and Financial Services also does not exercise any controls over the unclaimed assets (except in the case of complaints and suspected irregularities), the Study Commission is forced to conclude that a kind of “grey zone” exists around the unremitted insurance policies as well as around the unclaimed bank accounts and that legal provisions to deal with them are lacking.⁶

5.2.2.2 The keeping and opening up of current public archival records ⁷

With respect to current public archival records, the Study Commission made the following general observations in the course of its inquiry:

- Notwithstanding the legal mandate of the State Archives, most of the documents of the ministerial departments and services are kept distributed across several records departments;
- The documents in question have been kept there in a relatively complete condition (there is no evidence of any selective destruction); on the other hand, it is noted that they are not kept classified (let alone

- inventorised) and are stored in rather abominable conditions (which makes them subject to decay);
- In the instances where the archives in question were transferred to the State Archives, the documents were found to be in disorder and had not been subject to any effort at inventorising; in those circumstances, the documents could only be consulted after an emphatic appeal to the legal obligations imposed by the decree relating to the Study Commission's activities.

The Study Commission thus notes shortcomings in the preservation and the opening up of current public archives. It notes herein both a lack of means and a problem in the management of the documents.

5.2.2.3 The control over the temporary trustees

Quite by accident, the Study Commission in the course of its inquiries happened to come upon a rather special case : the fact that in the year 2000 the son of a temporary trustee appointed at the time of the liberation continued to manage a Jewish real estate property.

In complete conformity with the Civil Code, certain Courts of the First Instance did after the war appoint temporary trustees to undertake the trusteeship of real estate property belonging to Jewish deportees. These trustees could not, of course, themselves dispose of the property in question but were appointed to administer and maintain them in good order. Furthermore, they were not assumed to take the initiative in trying to locate the absent owners of the property.

On the return of the legitimate owners, these trustees were expected to be accountable for their administration of the good. Awaiting the owner's return, there did not, however, exist any obligation on their part to give a regular accounting of their trusteeship, for instance, to a Judge,. In other words, there did not exist a control over the trustees' management which, by way of speaking, remained '*open ended*'.

Here also one may speak of a 'grey zone' because of the absence of any relevant ruling.

5.3 Final conclusion

The Study Commission has herewith concluded its mandate and submits the results of its inquiry and its findings to the attention of the Government.

The Study Commission has executed its inquiry to the best of its capabilities but, owing to the *de facto* term of only 2 years within which its limited research team had to operate and because of the lacunae encountered in a number of sources and archives consulted, it cannot guarantee that it managed to cover the subject in every possible detail.

Where it concerns the historical reconstruction of the material aspects pertaining to the persecution of the Jewish population during the occupation and to the instruments of restitution thereafter, the Final Report is

indeed very complete and may be considered as a work of reference to serve future researchers.

The size of the figures of what precisely was despoiled, indemnified or restored afterwards and, in the end, could not be restored to rightful ownership, must for obvious reasons remain only a responsible and justified estimate on our part. All our efforts in conducting a most thorough, precise, and serious scrutiny notwithstanding, we were not entirely successful, sixty years after the facts, in unearthing all of the data.

In its attempt at reconstructing the possible total magnitude of the non-restored Jewish possessions, the Study Commission has in the areas where it was forced to have recourse to extrapolation resorted to the conscious use of parameters that should lead to a realistic estimation of the facts. In other words, in its choice of what coefficients to use, the Study Commission has always opted for a cautious approach in its interpretation.

It is in that light that the Final Report and the conclusions contained in this Part 5 need to be interpreted.

The present Final Report was approved by the meeting held on July 6, 2001.

The Chairman

End notes Part 5

¹ Letter from L. Coene, Cabinet Chief of Prime Minister Verhofstadt, to the chairman of the Study Commission, 14/VI/2001.

² *L'obligation de restitution du banquier. De restitutieverbintenissen van de bankier. The banker's obligations in the matter of restitution.* Texts for the seminar of February 13, 1998, organised by the *Centre de Droit Privé de la Faculté de Droit de l'ULB* and the European Association for Banking and Financial Rights - (Belgium), *Cahiers AEDBF/EVBFR-Belgium*, Brussels, 1999.

³ VALERIE SIMONART, "Les limites à l'obligation de restitution", in *De restitutieverbintenissen van de bankier*, op. cit., p. 73. (« The Limits to Restitution Obligations ») in *The banker's obligations in the matter of restitution*

⁴ Question in Parliament by P. Segin, M.P., on April 2, 1998. Belgian Chamber of Members of Parliament, Question and Answer period, *regular session 1997-1998*, p. 18401-2.

⁵ See note 3, p. 114.

⁶ Mr. Simonart arrives at the same conclusion. *idem*, p. 115.

⁷ In the private institutions, even in the banking institutions that have fulfilled an important historical and societal role and are continuing to do so, the archival records - for reasons that have already been stated- were found to have been kept only very indifferently. It struck the Study Commission that (with the exception of the only Dutch bank with which it collaborated during the study) not one single Belgian institution has recourse to its own archival service managed by a professional archivist.