

Final Report of the  
Independent Commission of Experts Switzerland – Second World War

**Schlussbericht der Unabhängigen Expertenkommission  
Schweiz – Zweiter Weltkrieg**

**Rapport final de la Commission Indépendante d'Experts  
Suisse – Seconde Guerre Mondiale**

**Rapporto finale della Commissione Indipendente d'Esperti  
Svizzera – Seconda Guerra Mondiale**

**Final Report of the Independent Commission of Experts  
Switzerland – Second World War**

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**Independent Commission of Experts Switzerland – Second World War**

# **Switzerland, National Socialism and the Second World War**

**Final Report**

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## Preface

This book focuses on Switzerland throughout the years of National Socialist dictatorship in Germany and during the Second World War in general. As a historical investigation, it also examines how this past was dealt with in the post-war era. It thus has relevance to the present day, for this history continues to have an impact be it on current debates and decisions or on concepts for the future. On the following 525 pages, the research results compiled by the Independent Commission of Experts Switzerland – Second World War (ICE) during its five years of existence are summarised and placed in an international context. In the months prior to the ICE's appointment in late 1996, the debate on the gold transactions between the Swiss National Bank and National Socialist Germany and the dormant assets in Swiss banks had unexpectedly come to a head. In light of the growing criticism from the outside at that time, the Swiss Parliament and the Federal Council decided to investigate these accusations, which had never ceased during the post-war period. The ICE was mandated to conduct a historical investigation into the contentious events and incriminating evidence. Article 1 («Subject») of the Federal Decree of 13 December 1996, which was adopted unanimously by both houses of Parliament – the National Council and the Council of States – defines this task as follows: «Investigations shall be conducted into the scope and fate of all types of assets which were either acquired by banks, insurance companies, solicitors, notaries, fiduciaries, asset managers or other natural or legal persons or associations of persons resident or with headquarters in Switzerland, or which were transferred to the aforementioned for safekeeping, investment or to be forwarded to third parties, or which were accepted by the Swiss National Bank.»<sup>1</sup>

The appointment of such a Commission was an unprecedented step. In a situation which was widely regarded as a domestic and foreign policy crisis, further measures were adopted soon after spring 1997; firstly, there was the Memorandum of Understanding which created the basis for the mandate for the Independent Committee of Eminent Persons (ICEP, known as «Volcker Committee»); secondly, the banks, industrial enterprises and the Swiss National Bank provided the finances for the Swiss Fund for Needy Victims of the Holocaust/Shoah (*Schweizer Fonds zugunsten bedürftiger Opfer von Holocaust/Shoah*); and thirdly, the then Federal President Arnold Koller announced the Swiss

Solidarity Foundation (*Stiftung solidarische Schweiz*) on 5 March 1997, although at the time of this report's publication, it is still unclear when this Foundation is likely to begin its work.

The recognition that Switzerland needed to take a number of courageous steps to face up to the problems of its past and develop innovative ideas for the present and future was reflected, above all, in the framing of the Federal Decree to establish the ICE. This parliamentary decree constituted a significant breakthrough in that it facilitated access to private company archives – held by banks, insurance companies and industrial enterprises as well as natural persons – which had so far as a rule not been made available to historians. There had been no comparable public law intervention in private law since 1945/46, when Switzerland – under pressure from the Allies – was compelled to freeze and register German assets and make restitution for looted assets. Neither banking secrecy nor other legal provisions governing access to archives were allowed to impede the work of the Commission and its staff. All Swiss companies which had operated during the period in question were banned from destroying any files of relevance to the ICE. In return, all persons involved in the research project were bound by official secrecy and were thus required to treat all information with professional discretion. To guarantee transparency, the Swiss Government pledged to publish the Commission's research findings in full.<sup>2</sup> This provision made it easier for the ICE to withstand political pressure and carry out research freely and at its own discretion.

With the Federal Council Decree of 19 December 1996, the nine members of the Commission were appointed. Wladislaw Bartoszewski, Saul Friedländer, Harold James, Georg Kreis, Sybil Milton, Jacques Picard, Jakob Tanner and Joseph Voyame were assigned to assemble themselves under the chairmanship of Jean-François Bergier, to devise a research programme to implement the mandate, and to carry out the historical and legal research.<sup>3</sup> Linus von Castelmur took on the role of Secretary General. In spring 2000, Joseph Voyame was succeeded by Daniel Thürer, who specialises in constitutional and international law. In June 2000, Wladislaw Bartoszewski was appointed Polish Foreign Minister and – while remaining a member of the ICE – could no longer play an active part in coordinating the research work. With Sybil Milton's death in autumn 2000, the Commission lost a highly competent scholar and a stimulating and charming personality. In February 2001, the Federal Council appointed the economist Helen B. Junz as her successor. In April 2001, Myrtha Welti succeeded Linus von Castelmur as Secretary General.

As regards the research programme's content, the Swiss Government broadened the parameters set by Parliament as early as 1996 and identified other sensitive issues such as economic relations, arms production, «Aryanisation measures»,

the monetary system and refugee policy as areas which – logically – were pertinent to the investigation of Switzerland's role during the period 1933–45. The Commission took the view that it should also examine the exploitation of forced labour by Swiss companies in Germany and other Nazi controlled territories – an issue which had become the focus of renewed debate. The research mandate also focused explicitly on the post-war period and especially on issues concerning the restitution of assets, the handling of property claims and – more generally – how Switzerland has dealt with its past and its memory thereof.

In spring 1997, at the ICE's request, Parliament substantially increased the Commission's initial budget of 5 million francs and committed itself to allocating 22 million francs. With these financial resources, a research organisation was set up under Jacques Picard and a research project elaborated.<sup>4</sup> In Berne and Zurich, different teams examined and evaluated source material held in private and public archives. At the same time, the ICE commissioned a number of experts to deal with specific issues; in particular, they included Marc Perrenoud, who acted as scientific advisor for the various part-projects, and Benedikt Hauser, who coordinated research in private archives. Research teams also worked in archives in Germany, the USA and other countries; in Italy, Israel, Austria, Poland and Russia, the ICE employed individual researchers on a commission basis. In total, more than 40 researchers collaborated on the project – mainly on a part-time basis – during the two most intensive years of work in Swiss and foreign archives (cf. list of researchers in the Appendix).

In 1998, at the Federal Council's request, the ICE published its interim report on the gold transactions between the Third Reich and the Swiss commercial banks and the Swiss National Bank. This was followed a year later by the report on «Switzerland and Refugees in the Nazi Era». Seven teams worked on themes relevant to the ICE's mandate, especially the role of the banks, insurance companies, industrial enterprises, foreign trade, and asset transactions (including the transfer of cultural assets and securities) during the period 1933–1945. A series of juridical reports provided the basis for a legal assessment of the historical events. From summer 2000 on, the factual research – which had always covered the issue of restitution as well – drew to a conclusion. Under the Scientific Project Management team set up at the start of 2000 and comprising Stefan Karlen, Martin Meier, and Gregor Spuhler (until March 2001), as well as Bettina Zeugin (from February 2001), a total of 17 studies and 6 (shorter) research contributions were produced as well as two volumes containing 11 juridical reports by legal experts. With the support of the ICE secretariat (Regina Mathis and Estelle Blanc), these volumes were published from August 2001 by Chronos Verlag Zürich, which specialises in academic literature (cf. list of ICE publications in the Appendix).

This final report, which draws together the research findings and places them in a wider context, was written by the members of the ICE. On the ICE's behalf and in collaboration with the Commission members Peter Hug wrote chapter 4.2, Christian Ruch chapter 4.9, Gregor Spuhler chapter 4.10 and Frank Haldemann chapter 5. The final report was edited by Mario König and coordinated by Bettina Zeugin. It is structured in a total of seven chapters. Part I (Chapters 1 and 2) provides an introduction to the research project, the key issues and the general historical context. Part II (Chapters 3–6) – by far the most extensive section of the report – summarises the research findings. Part III (Chapter 7) provides answers to the questions posed at the outset and focuses on some of the key debates in modern Swiss history. A general work, the report can be read and used in various ways. The ICE felt it was important that the findings already published in the studies and research contributions should not simply be bound together and presented without further comment, but that they must form part of a broad overview and be analysed on a comparative basis. This is the purpose of Part I. Neutral Switzerland was part of the international system; in many respects, it was a «normal» European country, yet it was also a «special» case with specific national features which shall be pointed out. Readers who are already familiar with these developments and who wish to focus on the specific themes identified in the ICE's mandate should go straight to Part II, which contains summaries of the research findings. The chapters are structured in a way which ensures that the reader does not have to search through the entire book to find theme-specific information; instead, each individual theme is presented in a short chapter of its own. The concluding section, Part III, examines the potential impact of these research findings on Switzerland's historical image and on interpretations of Swiss history respectively, and, in this context, also discusses the limits to the ICE's research.

The ICE is deeply indebted to a great many people who assisted in carrying out its complex research mandate. The Commission would like to thank the private company archivists. Despite their broad legal empowerment, the ICE's staff were reliant on the companies' co-operation in order to gain an overview of the hundreds of stacks holding relevant documents. Staff in the public archives in Switzerland and abroad also gave us considerable practical support. We would also like to thank all those persons who shared their knowledge of the 1930s and 1940s with us, either as advisors, information sources or interviewees. In fulfilling our mandate, a vital role was played by the legal experts, whose opinions were not only published in their entirety but were also incorporated into the historical analysis. Above all, however, we wish to express our gratitude to our research/scientific staff/team and secretariat for their commitment and competence during the five years of work on the ICE's research project under

sometimes difficult conditions and in an ever-changing environment. The ICE's success in fulfilling its mandate was entirely due to their unstinting efforts. They created the stimulating atmosphere that made the project such an enriching experience for the Commission members as well.

- <sup>1</sup> All the legal texts are available under <http://www.uek.ch/>. The «Federal Decree of 13 December 1996 concerning the historical and legal investigation into the fate of assets which reached Switzerland as a result of the National Socialist Regime». AS 1996, 3487, in force until 31 December 2001.
- <sup>2</sup> Article 7 of the Federal Decree of 13 December 1996 states: «The Federal Council shall publish the research findings in full.» The only restriction, which can be justified on grounds of moral rights, concerns the anonymity of personal data. Paragraph 2 of this Article states: «The anonymity of personal data will be upheld for publication if this is necessary to protect the interests of living persons.»
- <sup>3</sup> «Federal Council's Decree concerning the appointment of the Independent Commission of Experts» of 19 December 1996, see <http://www.uek.ch/>.
- <sup>4</sup> The research concept is reproduced in a condensed form in: Sarasin/Wecker, Raubgold, 1998, pp. 169–181.



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## Abbreviations

A.G.I.U.S.	Assistenza Giuridica agli Stranieri
AAMD	Association of Art Museum Directors
ABB	Asea-Brown Boveri AG
ADAP	Akten zur Deutschen Auswärtigen Politik ( <i>Records on German Foreign Policy</i> )
AEG	Allgemeine Elektrizitätsgesellschaft, Berlin
AEL	Arbeitserziehungslager ( <i>Work Educational Camps</i> )
AfZ	Archiv für Zeitgeschichte ( <i>Archives for Contemporary History</i> )
AG	Aktiengesellschaft ( <i>Joint-stock company</i> )
AHN	Archives Historiques Nestlé
AHV	Alters- und Hinterbliebenenversicherung ( <i>Old-Age Pensions and Survivors' Insurance</i> )
AIAG	Aluminium-Industrie-Aktien-Gesellschaft
AL	Algroup
ALIG	Aluminium-Industrie Gemeinschaft
ANAG	Bundesgesetz über Aufenthalt und Niederlassung der Ausländer (1931) ( <i>Federal Law on Residence and Settlement of Foreigners</i> )
AS	Amtliche Sammlung der Bundesgesetze und Verordnungen ( <i>Official Compilation of Federal Laws and Ordinances</i> )
AVP RF	Archiv der Aussenpolitik der Russischen Föderation ( <i>Foreign Policy Archives of the Russian Federation</i> )
AWS	Aluminium-Walzwerke Singen
BA-MA	Deutsches Bundesarchiv-Militärarchiv ( <i>German Federal Archives-Military Archives</i> )
BArch	Bundesarchiv Berlin ( <i>Federal Archives Berlin</i> )
BB	Bundesbeschluss ( <i>Federal Decree</i> )
BBC	Brown, Boveri & Cie. AG
BBl	Bundesblatt ( <i>Official Gazette of the Swiss Confederation</i> )
BCB	Basel Commercial Bank
BDC	Berlin Document Center
BGB	Bauern-, Gewerbe- und Bürgerpartei ( <i>Farmer, Trade and Citizen Party</i> ); today: Schweizerische Volkspartei, SVP ( <i>Swiss People's Party</i> )
BGE	Bundesgerichtsentscheid ( <i>Swiss Federal Supreme Court Decision</i> )

Bger	Bundesgericht, Lausanne ( <i>Swiss Federal Supreme Court</i> )
BGHZ	Bundesgerichtshof, Entscheidungen in Zivilsachen ( <i>Federal Court of Justice, Judgements in Civil Matters</i> )
BHB	Basler Handelsbank ( <i>Basel Commercial Bank, BCB</i> )
BIGA	Bundesamt für Industrie, Gewerbe und Arbeit ( <i>Federal Employment Office</i> )
BIS	Bank for International Settlements
BIZ	Bank für Internationalen Zahlungsausgleich ( <i>Bank for International Settlements, BIS</i> )
BLS	Bern–Lötschberg–Simplon-Bahngesellschaft ( <i>Bern–Lötschberg–Simplon–Railway Company</i> )
BR	Bundesrat ( <i>Federal Council</i> )
BRB	Bundesratsbeschluss ( <i>Federal Council's Decree</i> )
BV	Bundesverfassung ( <i>Federal Constitution</i> )
cf.	confer
CH	Confoederatio Helvetica (Schwitzerland)
CHADE	Compañía Hispano-Americana de Electricidad, Madrid
CIMADE	Comité inter-mouvements auprès des évacués ( <i>Joint Committee on Behalf of Evacuees</i> )
CS	Credit Suisse ( <i>Schweizerische Kreditanstalt</i> )
CSG	Credit Suisse Group
CSG-ZFA	Zentrales Firmenarchiv Credit Suisse Group ( <i>Credit Suisse Group Central Archives</i> )
CVP	Christlichdemokratische Volkspartei ( <i>Christian Democratic People's Party</i> ); earlier: Katholisch Konservative ( <i>Catholic Conservative Party</i> )
DAF	Deutsche Arbeitsfront ( <i>German Labour Front</i> )
DAN	Deutsche Aktiengesellschaft Nestlé ( <i>Nestlé Ltd. Germany</i> )
DDS	Diplomatische Dokumente der Schweiz ( <i>Swiss Diplomatic Documents</i> )
DIKO	Deutsche Industriekommission ( <i>German Industrial Commission</i> )
DM	Deutsch Mark
EAZD	Eidgenössisches Amt für Zivilstandsdienst ( <i>Federal Office of Civil Status</i> )
EBK	Eidgenössische Bankenkommission ( <i>Federal Banking Commission</i> )
EDA	Eidgenössisches Departement für auswärtige Angelegenheiten ( <i>Federal Department of Foreign Affairs</i> )
EDI	Eidgenössisches Departement des Innern ( <i>Federal Department of Home Affairs</i> )

EFV	Eidgenössische Finanzverwaltung ( <i>Federal Finance Administration</i> )
EFZD	Eidgenössisches Finanz- und Zolldepartement ( <i>Federal Department of Finance and Customs</i> )
EIBA	Eidgenössische Bank ( <i>Federal Bank, FB</i> )
Eidg.	Eidgenössisch ( <i>Federal</i> )
EJPD	Eidgenössisches Justiz- und Polizeidepartement ( <i>Federal Department of Justice and Police</i> )
EKR	Eidgenössische Kommission gegen Rassismus ( <i>Federal Commission against Racism</i> )
EMD	Eidgenössisches Militärdepartement ( <i>Federal Military Department</i> )
EPD	Eidgenössisches Politisches Departement ( <i>Federal Political Department</i> ); today: Eidgenössisches Departement für Auswärtige Angelegenheiten (EDA) ( <i>Federal Department of Foreign Affairs</i> )
ERR	Einsatzstab Reichsleiter Rosenberg
ETH	Eidgenössische Technische Hochschule ( <i>Swiss Federal Institute of Technology</i> )
EVA	Eidgenössisches Versicherungsamt ( <i>Federal Insurance Office</i> )
EVAG	Eidgenössische Versicherungs-AG
EVD	Eidgenössisches Volkswirtschaftsdepartement ( <i>Federal Department of Economic Affairs</i> )
EVED	Eidgenössisches Verkehrs- und Energiewirtschaftsdepartement ( <i>Federal Department of Transport, Communications and Energy</i> )
f. / ff.	following (pages)
FA	Federal Archives
FAO	Food and Agriculture Organisation
FB	Federal Bank
FDP	Freisinnig-Demokratische Partei ( <i>Radical Party</i> )
FO	Foreign Office
FPD	Federal Political Department
FRG	Federal Republic of Germany
FRUS	Foreign Relations of the United States
+GF+	Georg Fischer AG
GA	Geigy Archives
GDR	German Democratic Republic
Gestapo	Geheime Staatspolizei ( <i>Secret State Police</i> )
GLA	Generallandesarchiv, Badisches (Karlsruhe) ( <i>General State Archives Baden, Karlsruhe</i> )

GmbH	Gesellschaft mit beschränkter Haftung ( <i>Limited liability company</i> )
i.e.	id est
I.G. Farben	Interessengemeinschaft der Farbenindustrie AG
IB	Institutioneller Bestand ( <i>Institutional Fund</i> )
Ibid.	Ibidem
ICE	Independent Commission of Experts Switzerland – Second World War
ICEP	Independent Committee of Eminent Persons («Volcker-Komitee»)
ICHEIC	International Commission on Holocaust Era Insurance Claims («Eagleburger-Kommission»)
ICRC	International Committee of the Red Cross
IG Chemie	Internationale Gesellschaft für chemische Unternehmungen AG
IGCR	Intergovernmental Committee on Refugees
IRO	International Refugee Organization
Istcambi	Istituto Nazionale per i Cambi con l'Estero
JDC	American Jewish Joint Distribution Committee
JRSO	Jewish Restitution Successor Organization
kg	Kilograms
KHVS	Kunsthandelsverband der Schweiz ( <i>Swiss Art Dealers Association</i> )
KTA	Kriegstechnische Abteilung ( <i>War Technology Division</i> )
kWh	Kilowattstunde ( <i>Kilowatt-hour</i> )
KZ	Konzentrationslager ( <i>Concentration camp</i> )
LdU	Landesring der Unabhängigen ( <i>National Ring of Independents</i> )
MAK	Maggi-Archives Kemptthal
MAN	Maschinenfabrik Augsburg-Nürnberg
MAS	Maggi-Archives Singen
MED	Militäreisenbahndienst ( <i>Military Railway Service</i> )
MEW	Ministry of Economic Warfare
MF	Microfilm
mio.	Million
NAG	Niedergelassenen- und Aufhaltergesetz (1891) ( <i>Law on the Settlement and Residence of Foreigners</i> )
NARA	United States National Archives
NL	Nachlass ( <i>Bequest</i> )
NSDAP	Nationalsozialistische Deutsche Arbeiterpartei ( <i>National Socialist German Workers' Party</i> )
NZZ	Neue Zürcher Zeitung

OECD	Organization for Economic Cooperation and Development
OECE/OEEC	Organization for European Economic Cooperation
OKW	Oberkommando der Wehrmacht ( <i>Supreme Command of the Wehrmacht</i> )
OMGUS	Office of the Military Governor, United States
OR	Schweizerisches Obligationenrecht ( <i>Swiss Code of Obligations</i> )
ORT	Organisation, Reconstruction, Travail ( <i>Organisation, Reconstruction, Work</i> )
OSE	Oeuvre de secours aux enfants ( <i>Childrens Relief Committee</i> )
OSS	Office of Strategic Services
PA/AA	Politisches Archiv der Auswärtigen Amtes ( <i>Political Archives of the Foreign Ministry</i> )
PCI	Pabianicer Aktiengesellschaft für Chemische Industrie
PRO	Public Record Office
RELICO	Relief Committee for Jewish War Victims
RGB	Raubgutbeschluss ( <i>Decree on Looted Assets</i> )
RGVA	Russisches Staatliches Militärarchiv ( <i>Russian Military State Archives</i> )
RM	Reichsmark
RWM	Reichswirtschaftsministerium ( <i>Reich Ministry of Economic Affairs</i> )
RWWA	Rheinisch-Westfälisches Wirtschaftsarchiv ( <i>Economic Archives of North-Rhine Westphalia</i> )
SAH	Schweizerisches Arbeiterhilfswerk ( <i>Swiss Workers Relief</i> )
SAK	Schweizerische Arbeitsgemeinschaft für kriegsgeschädigte Kinder ( <i>Swiss Coalition for Relief to Child War Victims</i> )
SAR	Sandoz-Archives
SB	Schweizer Börse ( <i>Swiss Stock Exchange</i> )
SBA	Swiss Banker's Association
SBB	Schweizerische Bundesbahnen ( <i>Swiss Federal Railways</i> )
SBC	Swiss Bank Corporation
SBG	Schweizerische Bankgesellschaft ( <i>Union Bank of Switzerland, UBS</i> )
SBV	Schweizerischer Bankverein ( <i>Swiss Bank Corporation, SBC</i> )
SBVg	Schweizerische Bankiervereinigung ( <i>Swiss Banker's Association, SBA</i> )
SEK	Schweizerischer Evangelischer Kirchenbund ( <i>Federation of Swiss Protestant Churches</i> )
SFH	Schweizerische Flüchtlingshilfe ( <i>Swiss Refugee Relief</i> ); earlier: SZF

SFIC	Swiss Federation of Insurance Companies
SFJC	Swiss Federation of Jewish Communities
SHEK	Schweizerisches Hilfswerk für Emigrantenkinder ( <i>Swiss Committee for Aid to Children of Emigres</i> )
SHIV	Schweizerischer Handels- und Industrieverein (Vorort) ( <i>Swiss Federation of Commerce and Industry</i> )
SIG	Schweizerische Industrie-Gesellschaft
SIG	Schweizerischer Israelitischer Gemeindebund ( <i>Swiss Federation of Jewish Communities, SFJC</i> )
SIK	Schweizerisches Institut für Kunsthistorisch ( <i>Swiss Institute for Arts</i> )
SKA	Schweizerische Kreditanstalt ( <i>Credit Suisse, CS</i> )
SKHEF	Schweizerisches kirchliches Hilfskomitee für evangelische Flüchtlinge ( <i>Swiss Church Relief Committee for Protestant Refugees</i> )
SNB	Schweizerische Nationalbank ( <i>Swiss National Bank</i> )
SP(S)	Sozialdemokratische Partei (der Schweiz) ( <i>Swiss Social Democratic Party</i> )
SR	Systematische Rechtssammlung (auch: Systematische Sammlung des Bundesrechts) ( <i>Systematic Compilation of Federal Laws</i> )
SRK/SRC	Swiss Red Cross
SS	Schutzstaffel der NSDAP ( <i>Protective Echelon of the NSDAP</i> )
STO	Service de travail obligatoire
StaF	Staatsarchiv Freiburg im Breisgau ( <i>State Archives Freiburg in Breisgau</i> )
SVB	Schweizerische Volksbank ( <i>Swiss Volksbank</i> )
SVP	Schweizerische Volkspartei ( <i>Swiss People's Party</i> ); earlier: Bauern-, Gewerbe- und Bürgerpartei (BGB) ( <i>Farmer, Trade and Citizen Party</i> )
SVSt	Schweizerische Verrechnungsstelle ( <i>Swiss Clearing Office</i> )
SVV	Schweizerischer Versicherungsverband ( <i>Swiss Federation of Insurance Companies</i> )
SWA	Schweizerisches Wirtschaftsarchiv ( <i>Swiss Economic Archives</i> )
SZF	Schweizerische Zentralstelle für Flüchtlingshilfe ( <i>Swiss Central Office for Refugee Relief</i> ); later: SFH
t	Tons
UBS	Union Bank of Switzerland ( <i>Schweizerische Bankgesellschaft, SBG</i> )
UEK	Unabhängige Expertenkommission Schweiz – Zweiter Weltkrieg

UFA	Universum-Film-Aktiengesellschaft
UNO	United Nations Organization
UNRRA	United Nations Relief and Rehabilitation Administration
URO	United Restitution Organization
vol./vols.	Volume/Volumes
VR	Verwaltungsrat ( <i>Board of Directors</i> )
VSIA	Verband Schweizerischer Israelitischer Armenpflegen ( <i>Association of Swiss Jewish Poor Relief</i> ); later: VSJF
VSJF	Verband Schweizerischer Jüdischer Fürsorgen ( <i>Association of Swiss Jewish Welfare and Refugee Relief</i> ); earlier: VSIA
VSM	Verein der Schweizerischen Maschinen-Industriellen
WJC	World Jewish Congress
WO	Werkzeugmaschinenfabrik Oerlikon
WRB	War Refugee Board
YMCA	Young Men's Christian Association
ZGB	Zivilgesetzbuch ( <i>Swiss Civil Code</i> )
ZKB	Zürcher Kantonalbank
ZL	Zentralleitung der Heime und Lager ( <i>Central Directorate of Homes and Camps</i> ); earlier: ZLA
ZLA	Zentralleitung für Arbeitslager ( <i>Central Directorate for Work Camps</i> ); later: ZL

# **1      Introduction**

Looking back at the Nazi era and the Second World War will always pose problems. In our cultural memory, no final word can be said about the catastrophe of the Holocaust. The «Drowned» (Primo Levi), Jews, Roma and Sinti and other victims of political, religious and «racial» persecution, who «perished» in the extermination camps of Auschwitz-Birkenau, Sobibor, Chelmno, Belzec, Majdanek and Treblinka, remain as vivid in the respective collective memory of minorities and political groupings, as in the history of Europe and of other areas of the world.

For the general public in the post-war period, the horror over the mass crime was related to the question of how this could have happened in one of the major civilised European countries. However, people gave little thought to their own conduct as far as the victims of persecution and their assets were concerned. Even after certain aspects had become the subject of research and debate, there was at first only limited interest in a comprehensive analysis of how assets that were confiscated or stolen or which were left behind as a result of the Holocaust were dealt with (which later have come to be known as «Holocaust era assets»). In the latter part of the 20<sup>th</sup> century, the questions as to relationships and transactions in this field have so far given rise to historical investigations in 25 countries into what happened to the property of victims of the Nazi regime, into the restitution of looted assets, and into the responsibility of private companies and public authorities.

## **1.1    Switzerland during the Nazi Period seen as a Problem of Today**

Today, Switzerland is faced with a past which has never been incorporated into the prevailing view of history. The resulting problems are linked to difficulties in the country's finding its bearings. How did this come about?

### **The «small neutral state» as an impartial observer?**

In continuation of a long-standing national self-image, Switzerland saw itself after 1945 as a «small neutral state», which because of its will to resist and a

clever policy managed not to be drawn into the war of 1939 to 1945. Switzerland was not occupied and succeeded in preserving its institutional independence as a constitutional, democratic and federal state in the midst of the Nazi sphere of influence. It remained an «observer»<sup>1</sup> – as Raul Hilberg stated – in the «eye of the hurricane», spared the destruction of property, as well as moral devastation. Completely encircled by the Axis powers between summer 1940 and autumn 1944, it was for years threatened by an aggressively expanding Nazi Germany characterised by a racial ideology and a desire to gain «living space». The country therefore settled down into a «fortress mentality» («*Reduitstellung*»)<sup>2</sup> to face an uncertain future. Swiss Legation Counsellor Robert Kohli, who was a leading figure in Swiss trade negotiations with Germany, said on 13 October 1943 when preparing an economic delegation about to depart for London: «The entire policy [...] will consist of playing for time».<sup>3</sup> A few days before the war ended, on 4 May 1945, Heinrich Homberger, who along with Kohli was on the delegation for trade negotiations, said in an address to the Swiss Chamber of Commerce: «It is characteristic of neutrality policy that we adapt ourselves to the state of affairs, but this is subject to the proviso that we allow the situation develop.»<sup>4</sup> This «temporising tactic» was as widespread in the Swiss government as it was among the population, thereby giving free rein to the strong Swiss tendency to disengage themselves as a «special case» («*Sonderfall*») from the overall historical context, to maintain political self-sufficiency, and withdraw to the spectator's bench of world history or – as Pierre Béguin put it approvingly in 1951 – to the «balcony overlooking Europe» («*balcon sur l'Europe*»).<sup>5</sup>

In another respect, however, Switzerland was anything but an observer. The standard of living of its population was heavily dependent on close economic ties with Europe and overseas, and in particular of course with neighbouring countries. After 1940, trade with Germany thus intensified considerably. Switzerland had a stable, convertible currency that was particularly attractive to a Third Reich which suffered from a perennial shortage of foreign currency. It had efficient road and rail links across the Alps to offer, which represented the shortest route between the two Axis powers, Germany and Italy. In addition, the German-speaking part of Switzerland had close intellectual and cultural links with Germany; even when they clearly distanced themselves from each other after 1933 and the gulf widened still further with the outbreak of war, the personal network did not break up completely – nor did the network that linked French-speaking Switzerland with France. Switzerland's self-image could never eliminate these many and varied trade relationships and common interests completely. For example, in spring 1946, Ernst Speiser, director of Brown Boveri & Co. (BBC) in Baden, head of the important Federal War Industry and Labour Office (*Kriegs-Industrie- und Arbeits-Amt*) since 1941 and also a Radical

Party member of the National Council since 1943, wrote in an article about economic relations with Germany during the war: «*Le malaise suisse*» has recently become a common expression, although probably more in public debate and in press articles than in private conversation and discussions in the pub down the street.»<sup>6</sup> This supports the finding that although in the years around 1945 a debate was raging in the political arena about the charges made by the Allies, this hardly had an effect on personal attitudes. Rather, the attitude persisted as expressed – to quote just one example – in the foreword to the report of the Federal Department of Economic Affairs (*Eidgenössisches Volkswirtschaftsdepartement*, EVD) on the Swiss war economy from 1939 to 1948 published in 1950. The intention of that report was, in the authors' words, «to remind the Swiss people of a period in their economic history when much was achieved through motivation and adaptability, community spirit, national solidarity and fruitful cooperation between governmental control and private initiative which enabled us to hold out in difficult times».<sup>7</sup> In keeping with the nation's collective memory, the «lessons of those years» were held up as a model for the country's future. This positive appraisal of national achievements was underpinned by references to the country's military preparedness and the army's resolve to fight.

### **Switzerland's dual image**

Already during the war there was a gulf between Switzerland's self-image and the way it was perceived by the Allies. A much-quoted statement by Winston Churchill in autumn 1944 reads: «Of all Neutrals Switzerland has the greatest right to distinction. She has been the sole international force linking the hideously sundered nations and ourselves. What does it matter whether she has been able to give us the commercial advantage we desire or has given too many to the Germans, to keep herself alive? She has been a democratic state, standing for freedom in self-defence among her mountains, and in thought, in spite of race, largely on our side.»<sup>8</sup> must be seen primarily as a response to an indignant criticism of Switzerland by Stalin. In general, opinions of Switzerland were not positive. As early as the spring of 1941, a memorandum to the British Foreign Office reported the opinion of a *London Times* journalist that the Third Reich would not occupy Switzerland on the basis of rational considerations; this was not only because Swiss industrial and banking concerns helped to equip the *Wehrmacht*, but also because Switzerland was the place «where the bigshot Nazis have parked their loot».<sup>9</sup> The American attitude can be summarised as critical. Hence, among the staff of the Economic Warfare Division, which was established at the US embassy in London in 1942, the opinion prevailed that Switzerland was «an economic satellite of the Axis, and the source of part of Axis

economic and military power».<sup>10</sup> In the Safehaven Programme, launched by the US from 1944 onwards, Switzerland figured as a potential centre for massive capital transactions with which – it was hypothesised – the Third Reich, now heading towards military defeat, intended to create a capital and operations base for a further war. The attitude of the two Western Allies as expressed in these passages was based on what happened in the period after the First World War, when large amounts of German capital had flowed into Switzerland.

The polarised projections give two different, but equally effective versions, one highlighting the economic and financial involvement of Switzerland as a highly developed industrial country with the Axis powers, the other stressing the common will of the people to defend themselves and the social and cultural independence of the «small neutral state». If these aspects are separated, they can serve as the basis for two stereotypical but diametrically opposed images. In one, Switzerland is a bastion of moneymaking immorality; in the other, it is presented as a shining example of a dauntless strategy for survival. «Adaptation» or «resistance» was for decades, and in particular in Switzerland, the crucial question and it is not surprising that the manifestations of resistance and the image of Switzerland as a sanctuary – as depicted for example in the film *«Die letzte Chance»* (The Last Chance) (1945) – predominated in the cultural memory of the nation, although throughout the whole of the post-war period a few eminent persons protested at the prevailing suppression of other aspects of this same past.

### **The blind spot in the writing of history**

Switzerland's self-image has been the subject of an increasingly heated debate since the 1970s. Historians and experienced publicists have published a whole series of economic, social and political histories of various aspects of the period from 1939 to 1945. For all its fierce criticism of authoritarian trends, the readiness to adapt to the Nazi regime and economic cooperation with the Axis powers, this critical historiography did not as a rule raise the issue of returning the property of the Nazi regime's victims or the scale of the injustice committed. The argument that Switzerland had above all been a «victim of developments in world politics»,<sup>11</sup> was increasingly confronted with the counter-argument that this country had aided the perpetrators in important – mainly economic – areas. This critique virtually turned the tables, bringing important, previously forgotten, suppressed, but also previously unknown aspects to light. It too, however, persisted in depicting this issue as a national problem and continued to concentrate on the conduct of the decision-making elite. Apart from a few exceptions, critical historical studies aimed to demolish the icons of national resistance and directed their analytical spotlight on the

«negative heroes» of Switzerland's accommodation with Nazi Germany. Yet even in these portrayals the fate and the point of view of the victims of the Nazi regime continued to be neglected.<sup>12</sup>

This has mainly to do with the fact that historical interest and enquiry in Switzerland have concentrated much more on the war and the war economy than on the Holocaust. This paradoxically reproduced an attitude in the public that had been prevalent already at the time: although as of 1942 people in Switzerland were able to obtain information about the mass crimes being committed in the territories under the Third Reich's control, it was only after the liberation that there was certainty about the industrial scale and systematic implementation of the extermination programme. Nevertheless, few people made the connection between the refugees seeking refuge in Switzerland and these acts of persecution and extermination.<sup>13</sup> We also find this dichotomy in the writing of history, which has only developed a morally founded interest in the Holocaust since the 1960s – as a result of the Eichmann trial and the Auschwitz trials. This should have sparked off a critical debate on all forms of collaboration and trade relations between Switzerland and Nazi Germany. This is, of course, precisely what the critics opposed to the national historiography legitimising the state's conduct aimed to do, but their attention remained firmly centred on ideological affinities and trade relations between Switzerland and the Nazi regime, holding up a mirror to the country's elite, in which they neither could nor would recognise themselves. If this «return of repressed memory» indeed made people aware of the Holocaust as a problem in Swiss history, specific studies of Swiss-German financial links, the banking system and the industrial sector nonetheless had a blind spot: the real history of the Holocaust victims and the whereabouts of assets which were either handed over to the Nazi authorities prior to 1945 by Swiss banks and insurance companies, or which after 1945 had – or were to – become «unclaimed assets» and «dormant accounts».

## 1.2 Focus of Research, Questions, Work Phases

«Clear questioning is the first principle of any genuine historical research», wrote the French historian Marc Bloch.<sup>14</sup> The remarks below show the investigative contexts within which the ICE has positioned its research work and the questions from which it takes its lead.

### Investigative contexts and questions

We have tried to relate two research contexts to each other: the context of the

Holocaust and the context of the Second World War. In doing so, we are less interested in the question of the extent to which the war facilitated government-backed mass murder under Hitler. Rather, we are concerned with Switzerland's response to this dual catastrophe and the question of how deeply it was involved. A historical depiction integrating the Holocaust produces interpretations different from one limited to the challenges posed by the war. As far as the war years are concerned, the prevailing opinion in Switzerland was that the country had passed the test. On the other hand, the question as to what extent Switzerland was involved in the Holocaust has given rise to considerable vexation and in most cases bewildered defensiveness. It is not easy to shed light on this relationship in an adequate manner, and yet any investigation of the treatment of refugees and the property of the Nazi regime's victims undoubtedly refers us to this investigative context.

When it started work in early 1997, the ICE found that Swiss historiography dealing with the Nazi period had focused heavily on the context of war. Whether it was positive about the country or critical of society, the question as to how Switzerland responded to the injustice created by the Nazi regime concentrated much more heavily on the decision-makers (who tended to be let off lightly in the former case and criticised in the latter) than on the victims of the Holocaust and the related problem of restitution. The question of why there was such strong resistance in Switzerland to legislation affecting private law with the aim of protecting the victims of National Socialism was seldom asked. In the investigations connected with the Washington Agreement of May 1946 and the analysis of the execution of the provisions concerning German assets in Switzerland which continued until 1952, the victims' perspective also received only scant attention. Hence for example, no mention was made of the fact that Switzerland had made an unpublished declaration, which it did not then fulfil, to look into the question of «assets of deceased and heirless Nazi victims» on its territory.<sup>15</sup> There are no signs of any international comparative analysis of post-war legislation with respect to looted assets in different countries. Neither is there any research into the involvement of Swiss companies in the «Aryanisation» of the German economy or the corporate policy of the Swiss insurance industry in the Third Reich. The «Federal Decree on the Registration of Dormant Accounts» which came into force in 1962 after many false starts and which – in the words of the Federal Council – was intended to refute any suspicion that Switzerland had «intended to enrich itself from the assets of the victims of contemptible events»<sup>16</sup>, was likewise not subject to any historical investigation – although it was clear that it could not be used to find an acceptable solution with regard to the property rights of Holocaust victims. The ICE's mandate was formulated in such a way as to take these shortcomings into account.

This state of research strengthened the ICE in its resolve to concentrate its own efforts more forcefully on the victims' perspective, which raises an *initial issue area* centred on personal rights, protection of legal ownership, and restitution. The first two reports – the interim report on gold transactions and the report on refugees – did not confine themselves to the way Switzerland dealt with dispossessed people and stolen goods, but followed the trail of injustice and crime into the Third Reich. Within the context of the morally charged issues surrounding the economic cooperation of Swiss banks, insurance companies, industrial concerns, financial intermediaries, politicians, and military officials with the Nazi regime, the basic question arises as to how Swiss players dealt with the victims of National Socialism and their property. Were the rights of these people respected, did their *property rights* enjoy the protection of legal force? How were those standards of justice and basic legal principles which together constitute the «*ordre public*», expressed in the way persecuted and dispossessed people were treated? How did companies make use of the room for manoeuvre accorded to them under the existing legal system? To what extent were individual interests pivotal in utilising the argument of consistency in private law to ward off any regulation which would have simply made it possible to return the «unclaimed» assets of murdered and surviving victims, either by making pay-outs to surviving family members, relatives, or organisations acting as legitimate contacts with the asset manager on behalf of victims? What relation to this did private enterprises, economic interest groups, government administration, and political authorities have? Should the government have been more active and should it not have supported the legitimate owners and their heirs or – in the absence of the latter – the victim organisations? Or did it only have a subsidiary role to play? Were Swiss companies that had come to terms with the Nazi regime even to be considered contacts for restitution claims or should such have been directed, once the foundation of the Federal Republic of Germany had taken place in 1949, to the German government that came to power as the legal successor to the Third Reich and that as such was also responsible for global reparations? These questions mainly relate to the post-war period; they relate to the social transformation, the development of political institutions and the change in notions of law in Switzerland. It is not possible to analyse all these processes within an isolated national context; therefore a comparative approach has been consistently chosen to relate the «Swiss case» to other countries and international trends.

Knowledge is relevant – as the *second issue area* – in this connection. The investigation of the state of knowledge at the time is equally significant in many respects. *Firstly*, it implies the question of what alternative decisions could have been taken and how much room for manoeuvre there was. A person who is well

informed will see more options, set different priorities, and may feel obliged by an exceptional situation to deviate from «business as usual», take special precautionary measures, or desist from certain actions. *Secondly*, the question of knowledge is linked to that of accountability. A person who is informed about an injustice committed and about crime taking place is confronted with an existential moral problem in a different way than someone who does not, or cannot, know anything. The acceptance or rejection of refugees, transactions involving confiscated and looted gold, trade in looted assets (securities, works of art, jewellery, postage stamps, cash assets), the payment of insurance claims to the tax authorities in the Third Reich at the policyholder's expense, the transfer of bank deposits to the German government, the acquisition of company assets expropriated by force or traded at too low a price as part of the «Aryanisation process»: these actions have to be assessed differently depending on the state of knowledge. What could one have known, what should one have known, what must one have known?

The acquisition of knowledge is a dynamic process which is dependent on the political culture of a country and associated with prevailing attitudes in a specific social and moral environment. Knowledge is not a fixed quantity but the result of caring about other people and a willingness to dare, i.e., the product of a moral endeavour. People who are sensitive to injustice will gain access to key information and translate this into actions faster than people who do not allow themselves to be troubled by moral issues in their daily lives. In this way, knowledge is created in constant recourse to action – and, conversely, ignorance is connected with a mental disposition that wants to avoid any involvement. This raises the question of what to do with this knowledge. When a report of a terrible event is received, there are people who believe it because they assume that the regime from which the news comes is capable of this kind of thing. On the basis of different experience, other people tend to regard the same information as atrocity-propaganda spread as part of psychological warfare. Another aspect is the anticipation of knowledge. When it becomes clear in retrospect what the upshot of the events unfolding really was, people will say: «I always knew» (or at least surmised). This uncertainty in turn brings to the fore the question of when the knowledge was acquired: since when was information actually available, what channels were used to disseminate it, and to what extent had it been censored? In 1933 and 1938 what could «anyone» know about the persecution of Jews and other «racially inferior» or unwelcome groups? What information was circulating at what time and among what groups about the systematic looting and the extermination camps? Are decision-makers who knew nothing (because they did not want to know) to be treated the same as those who were informed and acted against their better judgement?

The *third issue area* is wider in scope. It concerns the justifications arising from the situation in which Switzerland found itself in the years 1933–1945. What type of pressure was exerted by the Nazi regime? What were the challenges that Switzerland faced and how did it deal with them? How are the deterrence measures used in Swiss refugee policy linked with the permeability of the borders in economic matters? Any analysis that asks these questions must incorporate the will to resist and readiness to adapt in equal measure, where terms such as accommodation and cooperation become important as they cut through a rigid comparison of the opposite attitudes of «good» and «evil» and reflect the contradictory nature of the situation. The question should be asked from the dual perspective of how Switzerland managed to combine cooperation with the power from which the threat emanated with a national defence policy that was directed against this threat.<sup>17</sup> Under these conditions, how was the state's policy of neutrality interpreted and instrumentalised?

What role was played by the fact that Switzerland was useful to the Third Reich in terms of finance and industry? Is it actually possible to make this kind of cost/benefit analysis, all the more so when set against the complex background of the invading enemy being threatened by the high «admission price» and high «accommodation expenses» caused by the country's being militarily defended? How did «dissuasive perception» and «dissuasive communication»<sup>18</sup> work, based as they were on the realisation that the «dissuasion effect» produced by usefulness and resistance did not result from Swiss intentions, but from their perception by the potential aggressor? Thereto has to be added the question as to what effect this complex amalgam of adaptation and resistance had on the attitude of individuals, the memory-culture of different social groups, and the nation's collective memory.<sup>19</sup>

A fundamental problem that runs through all three issue areas concerns the standards to be used in evaluating historical events. The debate about the way Switzerland handled its Second World War past opposed two rival schools of thought. Since the inception of the modern state-building process and since the rise of the nation as a collective with a powerful common consciousness, the assumption that the end – preservation of national security and self-assertion – justifies the means has been part of the rigid repertoire of conduct in terms of the *national interest* (*Staatsräson*). In the case of the modern nation state the primary concerns are the assertion of sovereignty, the preservation of independence, the securing of power, and not infrequently the increase of power. By contrast, in this bipolar model of reasoning, the adherence of the nation state to universal values and human rights is exiled to the area of *national morality* (*Staatsmoral*). Whereas in normal times there is a common obligation for all countries to place their relations on a civil and legal footing, when they are faced

with a violent threat, emergency legislation must apply internally and self-assertion externally. It is – according to the frequently heard argument – actually irresponsible when facing acute danger to worry about values that your opponent would never respect, thereby consigning to destruction the very institutional structure safeguarded by the constitution that makes freedom and democracy possible in the first place, and moreover to do so out of a one-sided and therefore naive belief in truth, goodness and beauty. Even the discussion to date on Switzerland's role during the Second World War has usually not managed to extricate itself from the dilemma of national interest and national morality, or between national interests and human rights and fundamental freedoms.

### **State of historical research**

The effort to revise history began with a study commissioned by the government to look into the country's refugee policy. When the report prepared by Basel's former cantonal government member Carl Ludwig was published in 1957, it caused a brief discussion but had no lasting effect.<sup>20</sup> The next impetus for debate also came from above. In 1962, the same year in which the Registration Decree was adopted, the Swiss government commissioned the historian Edgar Bonjour to independently conduct a major study of Swiss neutrality. This was an important breakthrough, insofar as systematic attempts had previously been made at the highest level to keep quiet about the agreements between General Guisan and the French General Staff which were felt to be problematic in terms of neutrality policy. This had blocked historical research about the Second World War for over a decade.<sup>21</sup> After this, a whole series of studies was conducted in rapid succession. On the one hand, these studies reinforced the conventional «redoubt-centred» («reduitzentrierte») view of history; and on the other hand, they triggered new debates. When Edgar Bonjour published his multi-volume report at the beginning of the 1970s, he impressed even his critics and soon rose to become the Grand Old Man of Swiss contemporary history.<sup>22</sup> Yet he too, was still inclined to pin the phenomena of Switzerland's accommodation with the Third Reich on a few scapegoats, such as the promoters of the «Petition of the 200»,<sup>23</sup> or Heinrich Rothmund, Hans Frölicher, Marcel Pilet-Golaz, and others. Since the 1970s, historical research has increasingly proceeded to focus attention on taboo subjects and problem clusters which had been faded out. A whole series of studies corrected the image that had previously been created of the threat that existed during the war years. The high importance of national military defence policy was put into perspective by a more complex understanding of «national security», which included trade relations and financial services – in particular gold and foreign

currency transactions. The assessment of pre-eminent personalities also saw a paradigm shift; on closer examination General Henri Guisan proved to be a more complex character than his mythical transfiguration made him out to be. A new wave of publications began in the mid-1980s, which extended – with shifts in emphasis in subject matter – into the 1990s.<sup>24</sup>

The abundance of research literature could not prevent the debate which broke out in the mid-1990s from producing some grotesque mistakes from time to time. With regard to gold transactions, for example, the media reports soon proved to be a rehash of events, the essentials of which had been described since the late 1970s and minutely detailed in 1985 in a book by Werner Rings.<sup>25</sup> As to the question of the amount of the assets Holocaust victims or survivors had transferred to Switzerland and the route they followed, however, the investigations were just as ill-founded as they were with regard to the entire issue of restitution. This created the right conditions for sensationalist reports on the amount of «unclaimed assets» and for further speculation. Jacques Picard had raised the issue seriously for the first time in 1993;<sup>26</sup> a report by Peter Hug and Marc Perrenoud published in 1997 added a whole new series of discoveries.<sup>27</sup>

May 1997 saw the publication of the Eizenstat Report which had been commissioned by the US government. This caused great excitement in Switzerland mainly because it contained a theory about the prolongation of the war and described Switzerland as the financial «hub» of an efficient gold and capital market.<sup>28</sup> However, less than a quarter of the report's 205 pages were devoted to the war years; the emphasis of the study was placed squarely on the post-war period, in which the subject was not only the attitude of Switzerland but also that of the USA. The report presented the opinion that Switzerland, under the pretext of proceeding with *business as usual*, had provided assistance for the Nazi regime's war machine over and above what could have been expected from a neutral country.<sup>29</sup> It was deemed to be among those countries whose financial transactions «helped sustain the Nazi regime and prolong its war effort»; by the end of the war it was «one of the wealthiest nations in Europe».<sup>30</sup> All in all, the report did not produce any sensational new revelations but it did contribute, in working directly with the source material, to a more elaborate understanding of events, the outlines of which were already known. However, the reference to «dead men's gold» («*Totengold*»), i.e., victim gold or gold from the deceased, contained in the gold shipments made by the German Reichsbank to the Swiss National Bank, prompted new research efforts. In the general conclusion of the Eizenstat Report, a specifically American perception of neutrality again emerges. As other studies have shown, the Swiss and the US conceptions of neutrality diverged radically. While Switzerland increasingly withdrew into its neutral credo (which did not preclude economic collaboration with Nazi

Germany although against the *courant normal* (normal course of business)), the USA in 1941 abandoned the isolationist stance that had prevented it from joining the League of Nations after the First World War. In terms of developments in foreign policy considerable divergences and even misunderstandings persisted over decades between the USA and Switzerland, but were not highlighted in the second Eizenstat Report of June 1998 because of its markedly multilateral scope and the comparison it made with the conduct of other countries.

### **The relationship between historiography and jurisprudence**

The ICE was commissioned to undertake a historical and legal probe into the events it was to examine. However, it is not to be regarded as «historisdition», an imitation of jurisdiction, but rather as a historical project that presents interpretations and makes assessments, without passing judgment. This makes it all the more important to explain the links between historiography and jurisprudence or legal history. It turns out that there are different ways of combining historical analysis and legal expertise with the relationship between law and politics being open to discussion at all times. There are three approaches: first, the law can be an instrument for fashioning politics. Second, it can be regarded as a reflection of social reality and, third, it also encompasses «superior law», that is to say it is by its nature related to the universal standards by which «simple law» is to be judged.

An important inherent function of jurisprudence for historical work lies in its «applicative» role, on the principle of «*Da mihi facta, dabo tibi ius*» (Give me the facts, I will give you the law). The lawyer makes a substantial contribution to objectifying matters by endeavouring to reconstruct the legal norms of the time («*lex lata*») and not confusing them with mere legal projects («*lex ferenda*») or later law («*lex posterior*»). He attempts to appraise facts and circumstances as a judge would have understood them at the time. In other words, it would be against the basic principles of intertemporal law to judge events that took place in the Second World War by principles and rules that became legally valid only much later.

However, it is equally interesting to investigate if and how the law absorbed and reflected the «*Zeitgeist*» and the dominant political and economic factors. Did Nazi ways of thinking leave their mark on or even «impregnate» law and legal terminology in Switzerland – and if so, to what extent? This problem is linked to the question of whether the legal system itself contains standards for «proper law» and the extent to which they can shape events. Did the Constitution prove its worth as the basic legal instrument of the state? Was it effective in safe-guarding and guiding a legitimate political and social order? Did it

strive to comply with higher standards of justice such as those that the German jurist Gustav Radbruch contrasted, after the Second World War, with the legal positivism that had prevailed until then and which were adopted by the German legal system? Was it committed to the new system of international law devised expressly as a response to Nazi injustice and has become the criterion for legitimising the legal system of a modern state?<sup>31</sup> As far as the Nazi regime is concerned, these questions also make it clear that positivistic legal relativism, which assumes the uncritical acceptance of established norms, results in «a criminal code privileging state-abetted criminality».<sup>32</sup>

Legal history endeavours to investigate the significance of legal norms and legal practice within a context of social development, not forgetting that the law has its own specific mode of operation, control capacity, resistance and momentum, which is not dissolved in a general historical context but requires special analysis. Legal systems are neither mere derivatives of power nor entities *sui generis* that develop independently of social forces and political conflicts. In society, law enjoys relative autonomy. It is a complex factor in the shaping of the socio-political system, one which can be explored only by conducting a differentiated study of legal history. The ICE adheres in principle to this way of looking at legal history.

The ICE was conceived as a commission of historians. Only one of the commission members and only one of its approximately 25 staff members are lawyers. However, eleven legal opinions have been obtained in order to look into the issues raised by the historical research programme.<sup>33</sup> The ICE has published these legal texts to enable interested parties to study the legal views. At the same time, the key findings of the legal opinions have been incorporated into the historical studies and research contributions to enable us to present an interpretation in accordance with our mandate and the legal point of view.

### **Research programme and work phases**

The establishment of the ICE as an *ad hoc* commission was an unprecedented move. The far-reaching and, in legal terms, extraordinary, privileged access to archives which was to enable the Commission to perform the task it had been set, had consequences for the way the research was organised. It made it impossible, for one thing, to integrate the project into the structures of the Swiss National Science Foundation (*Schweizerischer Nationalfonds*). The obvious alternative of dividing up the entire task area, putting the individual «modules» out to competitive tender and awarding them to independent (groups of) researchers who submitted the most convincing skeleton projects was out of the question under the circumstances. The Commission and all its staff and agents were subject to strict official secrecy. As far as the content of the research is

concerned, the findings are released from the seal of secrecy with the publication of the studies and contributions. The ICE thus considered it important to publish all the results that have passed the scientific quality test.

The Commission had to adopt these terms of reference when it set about organising its work in early 1997. With the definition of the mandate, it received the general questions that were to be the focus of the research. At the same time it was confronted with an enormous challenge. The mission to find out the «truth» about the «extent and fate of assets» that had been transferred to or through Switzerland during the Nazi era, was an indication of the great uncertainty that existed as to how these transactions had come about. Of what magnitude were they, how were they carried out, and what role was played by various companies, private individuals and political institutions? The media hysteria that raged for several months had created a tangle of facts and suppositions, along with justified claims and grotesque suspicions – a situation initially impossible to unravel. From a political perspective, it was possible to see the ICE as a measure for relieving Switzerland of the burden of serious accusations, but in terms of its self-image it has considered itself to be a comparatively well-funded scientific research project set up to run for five years, i.e., until the end of 2001. To begin with, at the express request of the Federal Council, it was prepared to deal with two particularly sensitive issues: the purchase of looted gold by the Swiss National Bank and Swiss policy on refugees, and to publish two interim reports on these subjects. Yet, from the outset, it had set its sights on a broader range of issues and conceived a research plan that took account of the entire breadth of the subject under investigation. From this it was clear that the ICE could not be of any use in the search for individual assets and their legitimate owners. This realisation was supported by the research work of the Independent Committee of Eminent Persons (ICEP) being conducted in the banking system. The model of a division of labour soon came into focus with the ICEP (which had far greater financial and human resources at its disposal than did the ICE) dealing with individual claims from victims of the Nazi regime and the Holocaust, while the ICE investigated the relevant context on a more general level.

In the spring of 1997, some 500 applicants responded to the advertisement for posts, which showed that there was a huge amount of interest in this research project. Subsequently, twenty staff members recruited in Switzerland and ten abroad commenced their work and were coordinated by the research managers. Once a functioning working structure had been created, the Commission pressed ahead with the project on two levels: on the one hand, an intensive operation was initiated to tap the rugged terrain of archival sources. The aim was to combine an open «discovery procedure» by staff on the spot with a

systematic enquiry based on correspondence. On the other hand, the ICE finalised a research plan which was presented to the public in June 1997 and which identified the subjects on which emphasis was to be concentrated.<sup>34</sup> A series of fields of enquiry were defined based on general issues. These were then narrowed down with a view to establishing specific fields of research but remained very broad in terms of their analytical depth and thematic scope. The main keywords were: international trade relations, the finance industry, flight capital and looted assets, services relevant to the war economy, policy on foreigners and refugees, cultural memory, and policy on dealing with the past after 1945.

The five-year research project was completed in several phases comprising various processes that interlocked both in chronological and subject-related terms. The first involved a broad-based investigation of sources in the entire field of enquiry geared to numerous questions and hypotheses. As of mid-1997, research became more focused on organisational aspects as fixed working teams were formed and specific research goals were defined so as to place the task-relevant issues in the foreground. The decision made by the Commission to publish the results of this research process and not to use them purely as internal working papers for the final report constituted a turning point. The teams thus had the opportunity to publish the results of their work, provided they satisfied the scientific quality standard that would be evaluated by the Commission. Since autumn 1998, a publication programme including seventeen studies, six shorter research contributions, and finally two anthologies on historical legal questions has materialised. The Commission's task was to supervise the working process and the teams by allocating mentors; this generated useful discussion on the scientific research requirements and facilitated concentration on that which was feasible.

In view of the numerous – and, from a scientific perspective, highly attractive – options that presented themselves in the course of classifying the available sources and gaining new insights, it became necessary to make a choice. To give one example: we were unable to undertake parallel, in-depth studies of the chemical, pharmaceutical, engineering industries, the food manufacturing sector, textile companies, and other economic branches. We therefore concentrated on culling examples based on selected lines of business and issues essential to our research mandate – in particular forced labour and financial transfer transactions. This was based as much on pragmatic considerations (archive holdings) as on the significance of the companies or industries concerned for the export economy. Furthermore, the time-consuming work on gold transactions and refugee policy (including several supplements published in 1999) militated in favour of abandoning individual research project dossiers.

Projects that had been suggested in the beginning, such as «Ideology and the Elite» and «Victim Protection» (*«Opferschutz»*) as well as a project based on the method of oral history, were thus not pursued any further. At the same time, individual topics were outsourced to specialists as external mandates and some new topics were included in the programme. For instance, several legal experts were commissioned to submit a series of legal opinions with a view to clarifying various legal facts.

In terms of organising the work and making strategic research decisions, it was crucial for the Commission to work primarily in those areas that had been newly opened up through the privileged access to the archives. The focus here was on the corporate archives of the private sector. Valuable references to company strategy and transactions were also found in public archives both in Switzerland and abroad – for instance in Washington and Moscow. It was also important to consider how the material and results of the ICEP could be put to use, as the latter's work was nearing its end. It was and remains entirely unclear to what extent companies will be prepared to grant researchers access to their archives after the end of 2001.

In spring 2000, the scientific research project management – which had already been planned the previous year – commenced operations to prepare publication of the studies. This included processing the comments and opinions provided by members of the Commission and external specialists as well as undertaking additional research where necessary. Companies that had already received the entire (or even only a part) of the study concerning their enterprise – based on material from their own archives – also provided feedback which was at times extensive. The relevant objections or references were taken into account whenever this was deemed appropriate. There has been close cooperation since early 2001 with the publishing company Chronos (Zurich) which is responsible for publishing the studies and contributions. These were published in three stages between August 2001 and March 2002. At the same time, intensive work was conducted on this concluding report, a rough outline of which had been prepared in late 1998. The latter was constantly adapted and modified to reflect the progress and results of the on-going research. All members of the Commission were involved in drawing up this synopsis.

Over the last five years, the ICE has completed a fascinating, technically difficult, and scientifically demanding research project on a subject area overshadowed by unresolved moral issues and depressing discoveries. In addition to gaining important knowledge of the «fate of assets» that arrived in Switzerland from the Nazi sphere of influence or were moved on from here, it has also tried to link them to the fate of people, which is – after all – what really matters. As far as the «extent» of these assets is concerned, our findings remain

fragmentary. Regardless of whether the transmission of records is incomplete or the relevant transactions were concealed in advance, it was possible only in very few cases to arrive at quantitative estimates. The ICE has therefore probably reached not only the limits of its own research strategy in terms of the questions posed in the mandate, but also exhausted the options available to historical research in general.

### **1.3      Transmission of Records and Privileged Access to Archives**

The issues that the ICE had to tackle had already been known for two generations. What was new, however, was the mandate to conduct a comprehensive analysis and to attempt a theoretical conceptualisation of a possible answer. This not only required a broad overview of the state of research and the generally known holdings of source material, the ICE also had to look for previously inaccessible material that could shed new light on the matters under investigation.

In this respect, the ICE was in a good starting position. Not only did it have at its disposal the resources to conduct an in-depth investigation of the relevant subject area, it also had extraordinary rights in terms of access to archive material, particularly in the private sector. Article 5 of the Federal Decree of 13 December 1996 which imposes an «obligation to grant access to the records», states that private companies affected by the investigation mandate are obliged to grant the ICE and its staff «access to all records» and that this duty «has precedence over any legal and contractual secrecy obligation». Obviously, this rule applied both to public and to private archives but access to the latter was more important because much of the source material they contained had not previously been available for historical research. It is precisely these records, however, that are of great importance as they not only render comprehensible the decision-making processes central to our mandate, but because they also open up additional dimensions in the shaping and implementation of policy. The opening of archives legally guaranteed by the 1996 Federal Decree for the five years of the ICE's assignment was a decisive factor in the implementation of the research mandate and objectively well founded. However, it also gave rise to a problem: the opening of archives to an exclusive group of researchers with a single assignment runs counter to the basic premise of scientific research. This is because, in order to uphold their claim to scientific validity, results must not only be verifiable and consistent, but also form the basis for further research and a more profound understanding of the phenomena under investigation.

Conscious of the importance of personal rights and their restrictive effect on the general accessibility of source material, the Commission members were of the opinion that their research archive should be preserved in its entirety. However, in July 2001, the Swiss Federal Council decided otherwise and granted companies the option to take back the photocopies made in their archives. This affects some 12,000 records.

Important as privileged access to archive material was for the ICE, there was no guarantee that it could make events dating back over half a century fully transparent. This is because even corporate archives tell only part of the story, and only one of many possible stories. First of all, no archival sources exist that would be able to provide us with information on everything that was put down in written form and is still available as a document today. In many cases, meetings that lasted for days get only a few terse sentences informing us of decisions. Differences of opinion and controversies seldom leave any trace on paper; nor do conversations in the lobby, telephone calls or an exchange of views during a chance encounter. The more confidential matters were, the less likely they were to be recorded on paper. Second, there are intuitive relevance criteria within companies that decide what is worth keeping and what is not. Third, the documents that we use as historical sources served specific interests and purposes. Far from giving a «neutral» depiction of events, they view facts from a specific perspective and therefore charge them with meanings which in turn – implicitly or explicitly – suggest a specific interpretation. Nevertheless, it cannot be concluded from these qualifications that access to company archives was of little value. On the contrary, only by using this source material will we be able to understand management decision-making processes and arrive at a more complex and at the same time differentiated interpretation of historical development. The interconnection of different perspectives is always important in this regard, as instanced by the affair surrounding the financial holding company Interhandel.<sup>35</sup> This shows how much Swiss, German and US source material was coloured by a specific interpretation of events, resulting in a large number of divergences and various alliances of interests. An attempt to research the circumstances on the basis of corporate sources led to the sobering realisation that the Union Bank of Switzerland, into whose possession Interhandel's records had passed when it acquired the company in the mid-1960s, had in 1994 destroyed around 90% of all the material transferred. However, what remained in the Bank's archives was sufficient, together with other sources from private and public archives at home and abroad, to provide a plausible reconstruction of events.

At the same time, this experience also encourages scepticism. It is a well-known and undeniable fact that both private and public archives routinely – and now

and again deliberately – destroy source material. As far as the public institutions and Federal authorities in Switzerland are concerned, the way they handle the documents handed over by the government and by authorities is more or less transparent, and access to archives is uniformly controlled on a statutory basis. Although many of the documents produced by the government have been destroyed, key areas are well documented. Foreign national and state archives in Washington, London and Moscow that hold records taken by the victorious powers from Germany contain varied, fragmentary, and yet indispensable holdings. For example, it would have been almost impossible to write the report on gold transactions between Swiss banks and the German Reichsbank if numerous German documents (microfilmed after 1945) that enabled a detailed listing of gold shipments had not been available. This wealth of source material was all the more precious as the corresponding original material was subsequently destroyed in the Federal Republic of Germany or is no longer accessible, whatever the reason.

The conditions in Swiss company archives were highly disparate. No company can transfer the quantity of paper documents generated by a complex internal information production process to an archive on a one-to-one basis. As far as legal requirements are concerned, Swiss company legislation stipulates a ten-year storage period for routine business records. Thereafter, all the material can be disposed of. Can it really be in a company's interest in terms of historical self-portrayal and corporate identity to store source material that is not directly relevant for a prolonged period? Conversely, is anyone going to bother about documentation that far exceeds the legal requirements? In this regard, considerable differences were apparent in the way documents were evaluated and hence a great diversity in what was saved for posterity. Banks, insurance companies, and industrial enterprises, which are very similar in terms of their mode of operation and size, often exhibit widely differing patterns of behaviour and criteria when it comes to archiving.<sup>36</sup>

Over the past few decades, record-keeping has also been made difficult by rapid economic growth and the transformation in the way work is organised. Mergers and acquisitions have resulted either in the planned destruction of files or in unnoticed losses of material, while the spread of digital data processing and the trend towards reducing administrative costs can lead to neglecting a company's support structures such as libraries and archives. This means that the transmission of records is extremely fragmentary and access to what is left is made more difficult. Much archive material was simply piled up with no form of indexing. Often, the administration of records was discontinued or reduced; the company's memory disappeared – not only with regard to its own history, but also in terms of its knowledge of the condition and whereabouts of historical documentation.

Considering all these developments, it is quite impressive how many companies still possess central corporate records today. There have always been workforces and individual employees who have «rescued» archive holdings, fully aware of the significance of history in times of radical changes in company policy and – when a drastic reduction in the size of the archive could no longer be avoided – using their expert knowledge and vigilance to protect important material.

Besides the random and arbitrary cases of destruction of source material by companies due to a lack of sensitivity towards the richness of their own historical tradition, there was also the deliberate disposal of critical material as part of a corporate damage-limitation exercise. For instance, when Switzerland's largest arms exporting company, now Oerlikon-Bührle AG, says that its annual reports for the period 1939–1945 are missing, this is unlikely to be a coincidence. It would be naïve not to include specific acts of destruction in an evaluation of the sources. Conversely, it would be an expression of an ill-considered conspiracy thesis if the assumption were made that entrepreneurs systematically and concertedly attempted to cover up their tracks. The experience gained by the ICE in company archives points instead to a substantial element of coincidence. A wealth of documents and references has been preserved. Frequently, documentary evidence and clues often exist even when there are strong grounds to suspect that efforts might well have been made to make them disappear. Still if the ICE eschewed conjecture in this area, its researchers were unable to close their eyes to the destruction of source material by avoiding *a priori* to ask pertinent questions. In such cases, every effort was made to supplement the incomplete material from other holdings. For example, the ICE made use of information held by the Allies, of information that can be found in the archives of the former Axis powers, as well as of information available in the Swiss Federal Archives, in cantonal archives, and at the Federal Supreme Court (*Bundesgericht*). This meant that even in the absence of direct information sources, it was possible to adopt an indirect approach to establishing the facts. The Federal Decree of 13 December 1996 brought an end to the phase in which companies that were active prior to 1945 had discretionary power in managing their archive holdings. Article 4 stipulated an «obligation to preserve records» and went on to specify that «records that could be of use to the investigation referred to in Article 1, must not be destroyed, transferred abroad or otherwise made more difficult to access.»<sup>37</sup> In the case of the Union Bank of Switzerland (*Schweizerische Bankgesellschaft*, SBG), however, documents were being disposed of even after the Federal Decree entered into force. In early 1997, an observant night-watchman rescued documents that were already in the bank's shredder room awaiting destruction. Among other information, they included minutes of the Federal Bank (*Eidgenössische Bank*) which went bankrupt in 1945 when its

German business collapsed and whose most important records had been taken into the possession of the Union Bank of Switzerland. The fact that the documents intended for destruction included records relating to house renovations in Berlin between 1930 and 1940 and after 1945 gave rise to the suspicion that these may have been cases of «Aryanisation», or at very least touched upon sensitive issues. A criminal investigation was therefore launched on the grounds of possible violation of the Federal Decree. At the same time, the Bank initiated proceedings against the night-watchman, who was accused of having breached bank secrecy by passing on classified documents to the Jewish community in Zurich (*Israelitische Cultusgemeinde Zürich*), which publicised the incident. Both proceedings have since been dropped without result.

#### **Current archive situation and oral history**

A further set of problems relates directly to the difficulties encountered by the ICE in the course of its researches. First there was the problem of quantity: the archive of the Swiss Clearing Office (*Schweizerische Verrechnungsstelle*, SVSt) alone, which recorded, supervised and audited most of the relevant financial transactions between Switzerland and Germany, still comprises well over 1000 boxes, and this after being reduced by an eighth in the 1950s and then again by almost three-quarters between 1959 and 1961. They were transferred from ten locations in Zurich to the Swiss Federal Archives in Berne, where they can – up to now with the exception of the so-called «Rees Report» – be inspected today.<sup>38</sup> As early as September 1996, an internal study showed that a full evaluation of the source material relevant to the ICE's mandate to assess the role played by the Swiss financial centre during the years 1933–1945 in the Federal Archives alone, would require around 45 man-years to complete.<sup>39</sup> Besides that, the archives of the Swiss National Bank have voluminous holdings which have hardly been evaluated to date, not to mention the enormous quantities of material which were available in US, British, German, Russian, Polish, Italian, French, Dutch and Austrian archives for the investigation of a wide variety of issues.

Work on source material in the ICE's key area, the archives of private companies and trade associations, turned out to be particularly complex. A questionnaire was sent out to the major Swiss companies at the beginning of the project and this was completed by all of them, with one exception (Burrus SA in Lausanne). It soon became apparent that despite some lacunae in the archives, a plethora of material is still available. How could we ensure a targeted and problem-oriented coverage of highly heterogeneous, often fragmentary source material, frequently stored pell-mell in different locations, without any standardised finding aid? This was the key question around which many of the ICE's efforts were to centre

over the next few years. Only a few archives were found to be in a condition conducive to research. Whereas in some major companies an archive on company history was maintained by professional staff, other archives were in such a state of neglect that they had to be dusted and tidied up first before we could begin with our research. Often, those responsible had no idea what was still available. Here is an example: in 1989, the Swiss Bank Corporation (*Schweizerischer Bankverein*, SBV) sold the Basler Handelsbank, acquired in 1945, when it became insolvent as a result of substantial commitments in Germany and Eastern Europe, to an institute in Luxembourg. The historical archive remained in a cellar of the Swiss Bank Corporation, without the bank being aware of this. In addition, the key to the room concerned had been lost. It was only when access was gained to these premises as part of the ICE's fact-finding exercise that managers found out that they had holdings in their archives that no longer rightfully belonged to them.

Other problems related to the fact that the scope of the privileged access was restricted to archives in Switzerland while many major companies were internationally oriented to a considerable extent as early as in the 1930s. Whereas documentation from branch offices can often be inspected at a company's head office, foreign subsidiaries usually maintain their own archives. This meant access problems for the ICE which could only be solved by finding an agreement with the companies concerned. In this way, algroup, Lonza, and Nestlé opened to us the archives in their German plants.

Archival work is very difficult in cases where no catalogues or index lists exist. If these are lacking or incomplete, only the knowledge of the archivists can be of any help. For this reason, the ICE operated on the basis that the «key» to the archive lay in the information necessary to find one's way about in the chaos or wealth of the source material and pursue a rational research strategy. It was precisely in this key area that difficulties persisted until the conclusion of research activities. For example, problems arose from the doubly asymmetric state of information, particularly in the banking sector. In this case, the research commissioned by the ICEP considerably improved our state of knowledge of the available archive holdings. The auditors (Arthur Andersen, Coopers & Lybrand, Deloitte & Touche, KPMG and Price Waterhouse), who were searching for «dormant accounts» in bank archives, worked with the History Teams and Task Forces of the banks concerned, who in turn created new, database-assisted finding aids. Whereas in some cases the ICE had to work with old archive lists and material summaries specially compiled for it which were often very comprehensive, but unsatisfactory in terms of answering questions, the banks would have new search tools to provide it with a much better overview of the available documents. Individual banks – without the ICE's knowledge – corresponded on

whether at all and if so, how to make these finding aids available to the ICE team. In the case of the UBS, the ICE received an inventory of the holdings of the former Union Bank of Switzerland (*Schweizerische Bankgesellschaft*, SBG) and the Swiss Bank Corporation (*Schweizerischer Bankverein*, SBV) records in 1997. It was only in early 2001 that researchers stumbled across the newly created IRAS system which was able to compile the wealth of information on problem areas and open up new research paths. When the UBS finally provided the ICE with an IRAS printout, it was still of only limited use, albeit decisive in some areas. In this case, it is clear that the ICE and the bank each applied a different definition of «archive». Whereas the bank regarded the newly created finding aid as a corporate management tool for its own use and not necessarily to be shared with the ICE, the ICE operated on the premise that finding aids are an integral part of the archive, and that this was a case of improper conduct.

A contribution was also made by the ICE to this process of mutual enrichment. Its research work was constantly supported by internal company staff, the so-called «explorers», especially when a problem area new to them was to be opened up. In this case, the ICE had a headstart on the information needed as it had already made some investigations in other archives. However, it was also impossible to rule out further documents turning up at a later date and being published by the company, particularly in those fields of research in which the ICE has broken new ground and brought previously unknown events to light. In this connection, it is worthwhile reminding the reader again of the scale of the available resources. Although – with a total budget of 22 million francs – the ICE appears to be a huge project in terms of serious historical research, it was dwarfed by the scale of the task that had to be or might have been performed.

Naturally, those companies that had for decades taken care of their archives and had consequently amassed a wealth of resources and were equipped with efficient finding aids, were of particular importance to the ICE in the reconstruction of complicated capital transactions and finding evidence of economic relationships with the Axis powers. Time and again, this caused feelings of uneasiness in the companies concerned because they presumed that a well-stocked and professionally managed archive would result in their receiving substantial exposure in the ICE studies, unlike similar companies which had parted with their historical source material or did not have an inventory of it. In the wider context of ICE research, however, such problems did not arise since companies that the Allies had considered suspect during the war were closely observed and left behind many traces in source material which is accessible. For example, the USA carried out comprehensive research, particularly in the context of the «Safehaven» Programme, into Swiss companies which had been involved in problematic transactions. Like the Western Allies, at the end of the

war the Soviet Union seized massive amounts of material and took it into its safekeeping, and this is now available to historical research. On the Swiss side too, some revealing documentation was provided – in particular by the Clearing Office, various Federal offices dealing with the wartime economy, and a whole series of Federal departments – precisely on those cases which had caused difficulty. In addition, there is source material which stems from case law or investigations by intelligence services. If a company whose trail could be identified in a variety of different private and public archives no longer had any records in its possession, the ICE did not consider this fact as cause for discontinuing the historical research. Moreover, the ICE did not concentrate primarily on evidence of individual cases and individual accounts but on analysing structural conditions, system-dependent mechanisms, business routines and typical behavioural patterns. Companies that were able to provide comprehensive source material for this work were thereby documenting the seriousness with which they took their own interest in carrying out a historical probe of the past. This attitude is duly appreciated by the researchers of the ICE.

The ICE's research is based first and foremost on the written sources as described, but it also made use of oral history. Contemporary witnesses were involved on three levels: first, Commission staff had to do some fact-finding. In order to obtain pertinent information and further evidence on subjects not covered by paper documents, people were interviewed who had been employed in relevant occupations or who could have been assumed to have specific knowledge. Bank and insurance company staff, auditors, trustees, art dealers and gallery owners were questioned in some 50 interviews, the majority of which were prepared for and conducted by the individual work teams. Second, ICE staff conducted half a dozen longer interviews with surviving victims of the Nazi regime living in Switzerland, in which they recounted memories from their life history. These oral history interviews were less about specific information than about people's fate and the relating of biographical details. Third, the ICE issued an appeal to the Swiss people in 1997, calling upon contemporary witnesses to inform the Commission of occurrences and events of relevance to our investigation mandate. For three months ICE staff in Bern received telephone calls in three of Switzerland's national languages. Some 400 reports were received in this way, plus 120 letters provided by the «Loeb campaign» (*«Aktion Loeb»*).<sup>40</sup> Contemporary witnesses who could be expected to provide important evidence to aid the ICE's work were then interviewed. These interviews provided supporting material; we lacked the resources to make further efforts which would have enabled us to break new ground in terms of historical attitudes and daily life at the time. The ICE therefore renounced designing a study with this aim.<sup>41</sup>

As to the issue of whether to anonymise personal data, the historian walks a tightrope between personal rights and freedom of research. Basically, the ICE adhered to the rule that it would anonymise data only in those cases where serious objections could be raised against naming names. In many cases – for example in the report on refugees – those concerned were willing or actually wished to have their identity revealed. We have anonymised the personal data of bank customers who subsequently became victims of the Nazi regime as we have no way of knowing whether those concerned would have agreed to publication. Nevertheless, the ICE saw to it that the details required for investigation and restitution were transferred to the appropriate published lists of names if they had not already been made accessible by the ICEP. Customers of the cantonal stock exchanges in Switzerland who traded in looted shares have not been anonymised; in general, neither have the names of senior staff or executives of companies and officers in government departments and agencies.

The subject matter dealt with does not allow us too much simplification and involves highly complex reflections. It is precisely because we are aware of this complexity that we have endeavoured to write a text that is as easy as possible to understand. This book is intended to appeal both to those who until now knew little about Swiss history and to those who have already reviewed the state of research to date and are now asking what is «new» in this study.

<sup>1</sup> Hilberg, Täter, 1996, pp. 280ff.

<sup>2</sup> The term «*Reduit*» is used for those military fortifications in the Alps of Central Switzerland which were built and extended after Switzerland was encircled from 1940 onwards; see also chapter 2.3. In Switzerland, the expression has been used frequently in a figurative sense ever since to describe the retreat and wait-and-see policy in a defensive position.

<sup>3</sup> Quoted from Perrenoud, Banques, 1988, p. 79 (orig. French).

<sup>4</sup> FA, E 2800 (-) 1967/61, vol. 101, minutes of the 160<sup>th</sup> meeting of the Swiss Chamber of Commerce of 4 May 1945, p. 21.

<sup>5</sup> Béguin, Balcon, 1951.

<sup>6</sup> Speiser, Handelsbeziehungen, 1946, pp. 738–748. See also Perrenoud, Commerce, 1997, pp. 477f.

<sup>7</sup> Kriegswirtschaft, 1950, p. XIII.

<sup>8</sup> Churchill, Second World War, 1953, p. 712.

<sup>9</sup> PRO, FO 371/27012, Memorandum by Press Attaché, «Axis Powers and Swiss Independence», 6 June 1941. See also Uhlig/Barthelmess/König/Pfaffenroth/Zeugin, Tarnung, 2001 (Publications of the ICE), chapter 4.

<sup>10</sup> Jost, Politik, 1998, p. 116; Schiemann, Neutralität, 1991, pp. 68f.

<sup>11</sup> Cf. Hofer, Walter, «Wer hat wann den Zweiten Weltkrieg verlängert? Kritisches zur merkwürdigen These einer Kriegsverlängerung durch die Schweiz», *Neue Zürcher Zeitung*, 7/8 June 1997.

- <sup>12</sup> It is symptomatic in this context that the author of one of the few depictions that deals with this question, Alfred A. Häslер, is not a historian. Cf. Häslér, Boot, 1967.
- <sup>13</sup> Cf. section 3.2.
- <sup>14</sup> Bloch, Apologie, 1985, p. 53; Bloch himself took part in the resistance and was shot by the Germans in 1944. See also Friedländer, Kantorowicz, 1999.
- <sup>15</sup> Both Durrer, Finanzbeziehungen 1984, and Castelmur, Finanzbeziehungen, 1992, overlook this fact.
- <sup>16</sup> BBI 1962/I, 936.
- <sup>17</sup> Wegmüller, Brot, 1998; Tanner, Bundeshaushalt, 1986.
- <sup>18</sup> Wegmüller, Brot, 1998; Däniker, Dissuasion, 1996.
- <sup>19</sup> The terms «adaptation» and «resistance» were popularised in the book by Alice Meyer (Meyer, Anpassung, 1965); however they were already used at that time.
- <sup>20</sup> See Ludwig, Flüchtlingspolitik, 1957.
- <sup>21</sup> Zala, Geschichte, 2001.
- <sup>22</sup> Bonjour, Neutralität, vols. IV–VI, 1970; see also the critique by Niklaus Meienberg: Meienberg, Aufforderung, 1972.
- <sup>23</sup> Refers to a petition submitted to the authorities in 1940 calling for a pro-German slant in journalistic reporting; cf. chapter 2.3; see also Waeger, Sündenböcke, 1967.
- <sup>24</sup> For the state of research achieved by the mid-1990s, cf. Kreis/Müller, Schweiz, 1997; an overview of the subjects dealt with and the dynamics of the debate is given in: Kreis, Debatten, 1997, pp. 451–476.
- <sup>25</sup> See also the research overview in ICE, Goldtransaktionen, 2002 (Publications of the ICE).
- <sup>26</sup> Picard, Assets, 1993.
- <sup>27</sup> Hug/Perrenoud, Vermögenswerte, 1997.
- <sup>28</sup> Eizenstat, Efforts, 1997.
- <sup>29</sup> The first Eizenstat Report published in May 1997 developed a critical view: «Switzerland figures prominently in any history of the fate of Nazi gold and other assets during and after World War II because the Swiss were the principal bankers and financial brokers for the Nazis». (Eizenstat, Efforts, 1997, p. iii). In 2001 Eizenstat toned down some of the charges he made against Switzerland in an interview. Cf. interview in *Cash*, no. 17, 27 April 2001.
- <sup>30</sup> Eizenstat, Efforts, 1997, Conclusions.
- <sup>31</sup> Thürer, Völkerrecht, 2000, pp. 557–604, with reference to the management of the Nazi (in)justice system as the starting point for a changing legal structure.
- <sup>32</sup> Naucke, Privilegierung, 1996.
- <sup>33</sup> Cf. Publications of the ICE, vol. 18 and 19.
- <sup>34</sup> See Jacques Picard, Forschung zwischen politischem und wissenschaftlichem Anspruch, in: *Neue Zürcher Zeitung*, 28 October 1997; for a more detailed version see the same, in: Sarasin/Wecker, Raubgold, 1998, pp. 169–181.
- <sup>35</sup> See König, Interhandel, 2001 (Publications of the ICE); chapters 4.12; 6.7.
- <sup>36</sup> A reliable study is now available for Credit Suisse: Halbeisen, Schriftgutverwaltung, 1999.
- <sup>37</sup> AS 1996, 3487.
- <sup>38</sup> Swiss Federal Archives, SVSt Archives. Locations and Transmission of files. Report in the possession of the ICE, 8 June 1998; the so-called «Rees Report» is an auditors report that was blocked for a long time and which dates from early 1946. It deals with the question of a continual German control over the IG Chemie holding company (later Interhandel); the ICE was able to inspect the report, and in autumn 2001 the Swiss Federal Council waived the block.

- <sup>39</sup> Hug, Analyse, 1996, p. 6.
- <sup>40</sup> This campaign was initiated in 1998 by the Bernese National Councilor François Loeb. He made an appeal in the media to the Jewish refugees who were admitted to Switzerland during the Second World War calling upon them to send reports and recorded memories of their stays in Swiss refugee camps.
- <sup>41</sup> The Contemporary History Archives (*Archiv für Zeitgeschichte, AfZ*) at the Federal Institute of Technology in Zurich has been holding a colloquium since 1973 under the direction of Klaus Urner, in which people of importance in contemporary history present their considerable knowledge of the past under expert supervision; a large number of wartime decision-makers told their story as part of this series of colloquia. In the meantime the project entitled «Archimob», initiated by film-makers and historians, has been realised and has amassed a wealth of audiovisual documentation: 555 video interviews from all strata of society and parts of the country provide an interesting cross-section of experiences in the war years. In addition, there is the «Memoriav», an association seeking to preserve Switzerland's audiovisual cultural assets; see [www.memoriav.ch](http://www.memoriav.ch).



## **2      The International Context and National Development**

When National Socialist Germany overran the Western democracies in a series of lightning victories in a few short weeks in spring 1940, occupying Paris and seizing control of virtually the entire European continent, Switzerland – now surrounded by a ruthless and single-minded group of powers – faced an unprecedented situation. Economically and culturally, Switzerland had always maintained a strongly international focus, and with its intensive links in the industrial sector and highly developed cross-border financial relations, its economy was heavily dependent on European and international markets. In its international relations, however, Switzerland's neutrality policy had fostered the illusion that by radically restricting its foreign policy, not only could it remain outside the «game of powers», but also remain aloft from the social and political developments of the day. The events of 1940 shattered conventional wisdom about Switzerland's status in Europe and the world; suddenly, it found itself in a unique and extremely one-sided situation of dependency. The challenges arising from the ominous proximity of Nazi Germany after 1933 culminated in an acute crisis which lasted for many years, continuing even after the fortunes of war changed in 1942/1943 and Germany's defeat appeared increasingly inevitable. The impact of this situation and how it was mastered are central themes in this study. In this context, the issue of Switzerland's involvement in the events which occurred after 1933 are presented as part of a broader and more complex process which includes the domestic policy debate about the social order and the shaping of international policy in line with the country's own specific priorities. Foreign and domestic policy had always been strongly interlinked, so that it would be accurate to speak about the «primacy of interdependence». This interplay was particularly intense during the inter-war years. For simplicity's sake, we will begin by examining the two dimensions – the national and the international – separately in this introductory chapter.<sup>1</sup>

### **2.1    The International Context**

The first half of the 20<sup>th</sup> century – but especially the years between 1914 and 1945 – was an era of military, political, economic, social and cultural conflict.

These decades appear to have been marked by discord, despair and disenchantment, as well as by new ideological absolutes which unleashed immeasurable hatred and called humanity's very foundation into question.

This development would have been incomprehensible to an observer at the turn of the century. At that time, there were many grounds for optimism: at domestic level, representative and constitutional forms of parliamentary government were gaining ground in many European states. At international level, the Great Powers regulated conflicts by mutual arrangement. In economic terms, a high degree of international integration had been achieved; the mobility of goods, capital and labour was increasingly drifting away from national control and regulation; indeed, some historians refer to this period as the first phase of «globalisation». Private property was ensured and was widely regarded as the basis of modern civilisation; social reforms seemed possible despite the existence of major social inequality. It seems plausible that both the trend towards a more responsible and less arbitrary form of government and tendency towards international stability and economic integration were interlinked and mutually reinforcing. The widespread confidence in progress also seemed plausible to contemporaries. Indeed, some observers, notably the British author Norman Angell in his widely translated book «The Great Illusion», took the view that the high level of integration and mutual dependence made war a virtual impossibility.

This optimistic prediction was made in 1910. Four years later, a European conflict broke out which destroyed human life in a hitherto unimaginable way and was marked by socio-political brutalisation on a scale which cast a shadow over the lives of an entire generation. Warfare had taken on an almost genocidal quality. It was accompanied by the powerful ideologisation of society whose roots stretched far back into the pre-war period: nationalism and fear of foreigners, deep social conflicts, fear and hatred of the bourgeoisie alongside the development of an increasingly radical socialist workers' movement, and ever more virulent anti-Semitism which blamed the Jews for all the ills facing modern society.

The outcome of war changed Europe's political landscape. Four political empires were destroyed. The Russian Revolution had far-reaching international ramifications. For the other three defeated empires, the peace treaties (signed in Saint-Germain, Trianon, Versailles and Sèvres) created new borders, and new states emerged within their territories. Their borders were not always compatible with the principle of self-determination which had been proclaimed by US President Woodrow Wilson in 1918. Nonetheless, the peacemakers built on the protection of national minorities under the auspices of a unique new international organisation, the League of Nations, which was also intended to be a bulwark against the forces of revolution.

The revolutionary upheavals at the end of the war, especially the Bolshevik Revolution, inspired international mass movements and powerful hopes; at the same time, however, in view of the social conflicts and quasi civil wars in many European countries, they also triggered militant opposition to the feared global revolution. For more than seventy years, the Russian Revolution divided the European continent in a form of political Manicheism which the democratic social reform movements were often powerless to counteract. Anti-Bolshevik sentiments were expressed as early as the 1920s in anti-revolutionary, anti-liberal and fascist regimes which attempted to seize power in many European states.

In addition to the human costs, the financial costs of the war had been exorbitant. The warring countries partly covered these costs through higher taxation, but also sought to externalise them or pass them on to future generations by printing money and thus triggering inflation, or confiscating the property of enemy aliens. Under these circumstances, the neutral states whose fiscal and monetary burdens were lower and which obviously did not resort to confiscation of foreign-owned assets soon came to be regarded as islands of stability.

Unsurprisingly, in view of the dramatic impact of war, belief in progress was soon extinguished. The conservative and bourgeois peacemakers in 1919/20 invested their hopes in a «return to the normalcy» of the pre-war world. International stability was to be guaranteed through institutions such as the League of Nations, established in 1919, or agreements such as the 1928 Kellogg-Briand Pact, which renounced war as a political instrument. As part of this new international order, political decision-makers relied on the operation of market forces and the newly restored international capital flows. They hoped that the gold standard, re-establishing fixed exchange rates between currencies, would serve as a kind of guarantee for good housekeeping and thus promote responsible fiscal and monetary policy. In one notable caricature, George Grosz depicted the dollar as a sun warming the European continent. The functioning of the market economy would, it was felt, also stabilise peace. Leading international politicians were optimistic that the dependence on foreign capital flows would even curb the antics of eccentric and destructive political figures such as the new Italian dictator Benito Mussolini.

The experiences of the global economic crisis after 1929 shattered this confidence in the restoration of a stable order regulated by the markets. Militant social mass movements, burgeoning economic nationalism and protectionism dominated the 1930s world. The market economy and democracy offered an equally desolate picture, and were attacked by their numerous opponents as «capitalism» and a mere mask of «plutocracy» respectively. The beginnings of

international co-operation were in jeopardy. The two international organisations – the League of Nations, based in Geneva, and the Bank for International Settlements (BIS) (*Bank für Internationalen Zahlungsausgleich*, BIZ), which was set up in Basel in 1930, were intended to safeguard the stability of the world order, but failed in this task. This was largely due to the fact that both institutions were hopelessly embroiled in the legacy of war.

The League of Nations was set up to prevent future wars and solve international disputes. In reality, however, it was one of the outcomes of the Treaty of Versailles imposed on Germany. Germany and the USSR – the successor state to the now defunct Russian Empire – were initially excluded from membership. Germany joined in 1926; the Soviet Union did not join until 1934. Congress, on the other hand, consistently blocked US membership. This meant that three major powers remained temporarily or permanently outside the international key organisation. The League of Nations proved powerless to halt Japanese aggression against Manchuria in 1931; a few years later, in 1935, it proved equally incapable of preventing the Italian attack on Abyssinia.

In 1931, the year of the Manchurian crisis, the Bank for International Settlements (BIS) also proved unequal to the challenges it faced when it was supposed to guarantee co-operation between the central banks and the restoration of the gold standard while administering the reparations paid by Germany. It proved incapable of halting a burgeoning banking and monetary crisis in Central Europe – in Austria, Hungary and Germany.

The most dramatic collapse of democracy in inter-war Europe occurred in Germany where the social crisis was most intense. Extreme nationalism, anti-liberal and anti-socialist hatred, the perceived shame of Germany's defeat in the First World War and militant anti-Semitism opened the way for the National Socialist mass movement's seizure of power. The blame for Germany's defeat in 1918 and its current economic plight was laid firmly at the door of the Weimar Republic, the democratic parties, the trade unions and the «Jews». In this respect, the demise of the Weimar Republic is emblematic of a widespread crisis of democratic legitimacy. Yet in a direct sense, Hitler's arrival in the Chancellery was due to a relatively small group of supporters from the conservative/bourgeois, noble and industrial elite. Initially confronted with a coalition government, Hitler smashed Germany's key democratic institutions – the constitution, the political parties, and the trade unions – with speed and determination. Yet he failed to offer any clearly defined policies other than his vague proclamation of a «national awakening» and boundless hatred of the Jews. The image of the Jewish «enemy» became the National Socialists' stock explanation for all the problems facing Germany.

In April 1933, Jews were banned from public service. The Nuremberg Laws of

1935 established a racial basis for their general exclusion from all of German life. In the face of growing discrimination, they found it increasingly difficult to survive economically. In 1938, they were banned from the academic professions. Terror, exclusion and impoverishment drove many to emigrate. Those who remained in Germany or who came under German dominion in territories which were later annexed and occupied fell victim to a systematic policy of genocide.

In his foreign policy, Hitler strove for territorial expansion, which was designed to halt the feared degeneration of the German people by augmenting the «*Lebensraum*». His initial tactics used the German minorities as a lever to destabilise neighbouring countries such as Austria, Czechoslovakia, Poland and the Free City of Danzig, which was under the protection of the League of Nations. In Austria, German interests were allegedly ignored because the Treaty of Versailles prohibited its «*Anschluss*» (annexation) to the Reich; in Czechoslovakia and Poland, the issue was the alleged mistreatment of the German minorities. Hitler thus exploited the stability and order created by the Great Powers and the League of Nations, which placed a great deal of emphasis on protecting the collective rights of minorities but focussed little on the rights of the individual.

Foremost in the minds of political leaders at the time was the conflict between competing notions of society against the background of the major economic crisis, together with the need to resolve their own security problems through national economic protectionism, diplomatic agreements and military alliances. The violation of rule-of-law principles, the persecution of political opponents (in Italy, Spain, Germany and the Soviet Union), the systematic discrimination against the Jews which took place under the eyes of the world from 1933 onwards, the flouting of human rights – these were not the major state policy concerns in the first years after 1933. Thus at the Evian Conference on Jewish Refugees in 1938, it was not the fate of the persecuted individuals but the threat posed to potential receiving countries by the mass expulsions – i.e., whether a state could afford this form of indirect aggression – which was the main focus of the agenda. Respect for human rights was not declared a fundamental principle of the new international community (diplomatically disregarding the Soviet Union) until the end of the war as a response to the systematic mass murder and genocide.

The Atlantic Charter of 14 August 1941 is often regarded as the basic catalogue of principles governing the new world order. However, its primary aim was to co-ordinate the military efforts of the USA and Great Britain and guarantee – in line with US aims – that Great Britain would not revert to the course it had adopted in the First World War and make territorial agreements to increase its

sphere of influence through secret accords in the style of the nineteenth century. The founding of the United Nations in San Francisco on 26 June 1945 was the organisational implementation of the principles enshrined in the Atlantic Charter and an attempt to avert future catastrophes such as the recent World War. On 10 December 1948, the United Nations General Assembly met in Paris and adopted the Universal Declaration of Human Rights with its 30 articles. The enthusiasm for this initially non-binding document may seem surprising, given that the anti-Hitler coalition of the war years had already collapsed by this point. This step merely held out an initial promise whose fulfilment is still being struggled for today.

## 2.2 Swiss Domestic Policy and Economy

The situation in Switzerland was largely determined by the international context described above. Here, too, the social crisis, economic depression and authoritarian shift in politics were apparent, as were the diverse effects of war. In contrast to neighbouring countries, however, Switzerland had not been conquered, nor had it taken any direct part in military conflicts. Apparently just an observer, Switzerland's image as an «island of peace» in a «Europe of ruins» took on a suggestive power – not only within its borders, but also abroad.<sup>2</sup> The major ideological and social debates had, however, also left their mark on Swiss society.

### A small neutral state – an economic power

The debate about Switzerland's role in Europe and in the global context always takes place on the tightrope between Switzerland's (self-)image as a «small neutral state» focussed on its «peace mission» and «good services», and the contrasting image of a very successful economic power which was able to establish a strong position during the industrialisation process. The two dimensions were complementary and mutually reinforcing. This was especially apparent during the two World Wars. The small neutral state which was able to stay outside the hostilities proudly pointed to the humanitarian aid it had supplied, but it also benefited from specific opportunities to make profit in the financial services sector, and from the supply of industrial products to the warring countries. This privileged position was also an ongoing source of difficulties in its dealing with the warring parties which, as in the First World War, began to intervene to a significant degree in Switzerland's internal affairs or – as with the Allies in the Second World War – showed limited understanding of the neutral country's economic serviceability.

### **The small state of Switzerland**

The Swiss people's self-image as a small state results from the country's geographical size. It has a total area of 41,000 km<sup>2</sup>, equivalent to just 7.5% of French, 11% of German or 14% of Italian territory. Its four neighbours (France, Germany, Austria and Italy) constituted a fairly balanced environment until the 1930s; however, this balance was destroyed with the «Anschluss» (annexation) of Austria in March 1938 and the armistice between Germany and France in June 1940. For the first time in the history of the modern Confederation, a single bloc of powers surrounded Switzerland. This situation also emerged because Switzerland is a landlocked country with no access to the sea. The Rhine was its most important link to the sea, but during the war, this waterway could only be utilised to a limited extent. Chartering ships of its own on international waters during the expansion of the war economy towards the end of the 1930s was a poor substitute. On its own territory, Switzerland had important Alpine passes (Gotthard and Lötschberg-Simplon); during the war, these efficient north-south links were a great advantage in its dealings with the Axis powers, but a burden in its relations with the Allies.

In 1941, around 4.3 million people lived in Switzerland; just 5.2% of them were foreigners – an all-time low for the 20<sup>th</sup> century.<sup>3</sup> On the other hand, more than 260,000 Swiss lived abroad in 1940, including 150,000 in neighbouring countries. The 223,554 foreign nationals living in Switzerland included 96,000 Italians (45,800 males), 78,300 Germans (29,800 males) and 24,400 French (9,200 males). The Austrians were no longer recorded as a separate group after 1941. As regards religion, in 1941, 57.6% stated that they were Protestant, and 41.4% were Roman Catholic; 0.7% were Old Catholics and around 19,500 people were Jewish, amounting to 0.5% of the total population. Due to the obstacles to naturalisation, the proportion of foreign nationals in the Jewish community was especially high, amounting to around 50%. 72.6% of the population spoke German as their mother tongue; 20.7% spoke French, 5.2% Italian, and 1.1% Romansh.

Economically, Switzerland – with its high degree of openness and intensive external relations – was integrated into the global economy, over whose framework conditions, however, it exerted little influence on account of its small size. In terms of its employment structure, around 20% of the population depended on the primary sector, 45% on the secondary sector and 35% on the tertiary sector. Swiss industrial companies were present throughout the world, specialising in products with high added-value. At home, it had an efficient rail, postal and telegraph system, and many mountain regions had hydroelectric

plants for electricity production. Switzerland was heavily dependent on exports. Around one-third of the population earned a living from the export sector of the metal, machine building, electrical, and clock-making industries. The chemical/pharmaceutical industry, which had proved to be a mainstay of the economy during the global economic crisis of the 1930s, sold more than 90% of its output abroad. The domestic economy – especially construction and the timber industry – increased in significance during the crisis years of the 1930s, and continued to do so during the war.

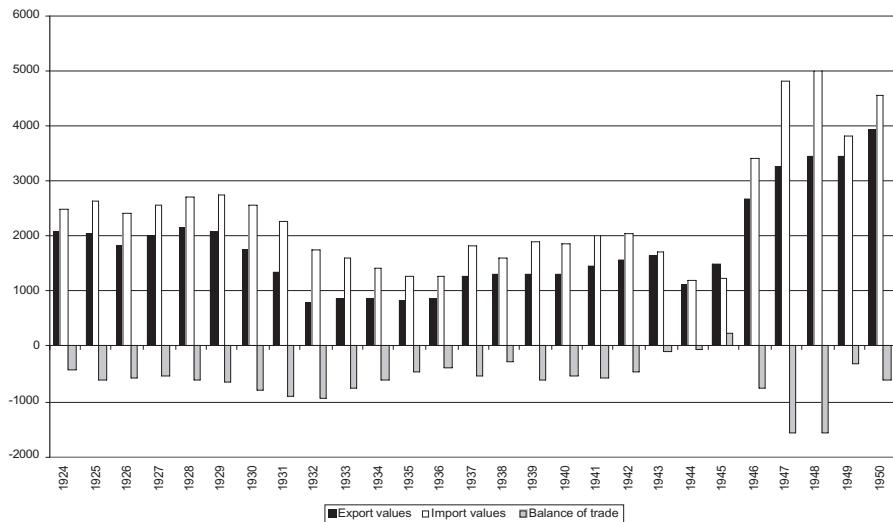
This also applied to the «secret empire»<sup>4</sup> which the companies had established abroad, and to the financial centre, whose services had helped to optimise the interaction between export-oriented industry and capital exports. The major Swiss industrial companies and the finance companies which they established with the assistance of the major banks – underpinned by the strong franc, which remained on the gold standard until September 1936 and was only devalued thereafter – were able to expand their foreign direct investment despite the crisis; here, a shift of assets away from the European continent – and especially away from Germany – towards the Anglo-American economies, above all the USA, can be observed. In return, the Swiss banking system expanded its asset management, and foreign companies used Switzerland, with the assistance of newly established holding companies, as an operational base for global business. In this respect, Switzerland was not a «small state», but a significant economic power in the 1930s and during the war.<sup>5</sup> The problems arising from this status were a major subject of study for the ICE.

### **Switzerland's foreign trade focus**

Switzerland's foreign trade was based on a modern, export-oriented industrial sector in which companies which were also heavily engaged in capital exports, led the field. As regards the sectoral structure of Swiss exports, relative stability could be observed. The key changes here took place during the crisis years of the 1930s; other gradual trends continued throughout the war years and beyond. Examples are the sustained increase in the significance of the chemical/pharmaceutical industry and metal and machine-building sectors during the 1930s, and the long-term decline of textiles. The food industry also declined a bit, but recovered to some extent after 1945.

Figure 1 shows import and export trends (in million francs) for the period 1924–1950. It reveals that at the start of the 1930s, imports and exports declined significantly from a high level in the 1920s, gradually recovering slightly in the years prior to the Second World War. After the adjustment crisis of the last two years of the war, there was a rapid expansion of cross-border trade in goods beginning in 1946. If these values are translated into relative figures,

**Figure 1: Import and export trends, 1924–1950 (in million francs)**



Source: Ritzmann, Statistics, 1996, Tab. L.7, L.8 and L.9, pp. 672–673.

it is clear that imports, as a share of net national product, amounted to around 30% at the end of the 1920s and in the 1950s, while exports fluctuated between one-fifth and one-quarter. Between them lay the years of crisis and war which were a significant watershed, depressing the import rate to 10% as early as 1932; in 1945, the share of imports and exports in the net national product amounted to just 9% – an all-time low.

In the 19<sup>th</sup> and 20<sup>th</sup> century – apart from a few exceptional years – Switzerland had a negative balance of trade. The value of imports exceeded exports by a substantial margin. Apart from 1945, this was the case during the Second World War too – a finding which initially contrasts sharply with the impression of a strongly export-oriented industrial and service economy. Not only many raw materials and semi-finished products, but also consumer goods and foods had to be imported from abroad. Some of these were processed further into high-quality export goods (with a significant share of wealth creation), which again improved the opportunities to import resources in short supply. The deficit resulting from these trade relations was offset primarily through revenue from tourism, transport services, insurance and the yield on foreign assets. Ultimately, the Swiss balance of payments, taking account of capital movements, was extremely positive in most years, and resulted in a corresponding increase in the currency reserves held by the Swiss National Bank. Despite a balance of trade which had an average annual deficit of around

300 million francs between 1939 and 1945, these reserves increased on average by 400 million francs each year during the same period.

In the field of capital movements, historical research has to work in largely uncharted waters. The banks vigorously opposed the introduction of reliable statistics on these movements, which were demanded by the League of Nations and repeatedly called for by the National Bank. These statistics would have made it possible to calculate Switzerland's balance of payments. The commercial banks' successful opposition to this move bears witness to the asymmetrical power relations between private and political actors. For historians today, this is a problem which was also familiar to the regulatory bodies at the time. The League of Nations, in a study on the commercial banks in 1934, wrote: «It is not possible to determine, on the basis of Swiss bank statistics, how much foreign capital took refuge in Switzerland.»<sup>6</sup> Until well after 1945, only approximate calculations for Switzerland's profit and loss account existed. The difference between this and the foreign exchange balance sheet nonetheless allows trends to be identified. This «omitted item» was always positive, which indicates a capital import surplus. However, this does not provide information on the volume of capital transactions. The constant flow of assets into the Swiss financial centre was offset – in accordance with the logic of a capital «hub» – by capital (re-)export abroad. These capital imports and exports cancelled each other out in terms of their effect on the balance of payments, and their scope and scale can only be guessed at. As shown in section 4.6, the flow of assets into Switzerland was far higher than previously assumed, so that equally substantial capital exports must also be assumed to have taken place.

#### **Bilateralism, Clearing Agreements and the strong franc**

The worldwide economic crisis of the 1930s led to a dramatic shortage of currency reserves (gold and foreign exchange) in many countries and Switzerland reacted immediately to the advent of protectionism. Counter-measures and threats of boycotts against US products followed the US Smoot-Hawley Tariff Act of 1930, and at the same time Swiss economic diplomats proposed a system of controlled payment transactions to strategic partners who had introduced exchange controls. In this respect, Switzerland was seen in the role of a pacesetter with the introduction of bilateral clearing agreements, and trade policy moved into an «era of bilateralism» which lasted until the end of the 1950s.<sup>7</sup>

The introduction of the bilateral clearing procedure involved the receivables and liabilities of Swiss economic entities being offset against those of the partner country via state authorities. Payments from abroad for Swiss exports together with services, tourism and investment income were transferred via this clearing

system. Payments from Swiss debtors (primarily importers of goods) were made in francs to the Swiss Clearing Office (*Schweizerische Verrechnungsstelle*, SVSt) which was an autonomous corporate body founded in 1934 and subject to banking secrecy. It fulfilled the role of a mediatory office between the Federal Administration, the banking system, the National Bank and a large number of foreign trading participants. However, the export creditors had to be satisfied by the incoming payments of the importers, and the numerous claims caused severe disputes within the Swiss economy in respect of the allocation of these payments. Movements of capital were not integrated into this controlled payment system but were still heavily restricted due to foreign bans on exporting foreign exchange.

In light of past experiences, Switzerland adopted a twin strategy in the worldwide economic crisis of the 1930s which was continued in principle throughout the war years and into the post-war years. On the one hand, it opted for special bilateral regulations and promoted the conclusion of clearing agreements together with customs tariffs and quotas. It therefore decided to negotiate directly with states which had renounced the free world market and strove to conclude bilateral agreements under international law. On the other hand, Switzerland expressed a clear preference for stable international frameworks and attempted to cling to the international currency system which was reconstructed in the 1920s. This was based on the model of the classic gold standard which existed before 1914, even though it rapidly became clear that the conditions which had given the system stability before the First World War were no longer in place. Fixed exchange rates and adherence to gold parity appeared to be indispensable from a Swiss perspective, which could not envisage any viable long-term alternative. The gold standard, a transaction system which obliged the participating countries to adhere to fixed regulations, seemed to guarantee the security which was sorely needed to process the remaining foreign trade through proper channels. Even after Great Britain made the astonishing move of suspending gold redemptions for the pound sterling in September 1931 and caused a flood of devaluations worldwide, the Swiss monetary regulators defended the model of an international currency system based on gold. Membership in the gold bloc was synonymous with support for an austerity policy within public expenditure and the abandonment of an active job-creation policy.

Interventionist bilateralism and liberal internationalism were two objectives which overlapped in the 1930s and often caused confusion. They were supposed to play substantial roles in shaping the principles of Swiss foreign trade policy and the development of a wartime economy. Switzerland's foreign trade during the war was subject to a strict regime; however, at the same time, the free

convertibility of the franc was upheld. Still, the objective was trade promotion, not economic self-sufficiency. Switzerland particularly opposed economically self-sufficient concepts aimed at a «continental bloc», as propagated by Germany. Customs tariffs remained moderate in comparison to protectionist countries. However, the fact that a total of 35 countries introduced exchange regulations and sometimes extensive and rigid exchange controls between 1931 and 1934 meant that Switzerland was confronted with a new environment and had to break with its traditional policy of free trade.<sup>8</sup>

### **The Swiss economy and financial centre**

The financial centre comprises not only banks but also finance companies, insurance companies and a range of so-called intermediaries (lawyers, public notaries, and trustees) active in the areas of asset management, contact brokering and investment counselling. Its basis was formed with the national integration of the most significant banking centres (Geneva, Zurich and Basel). The insurance companies, like the banks, took advantage of the currency turmoil in many countries after the First World War in order to expand throughout Europe. The foreign business of the Swiss insurance industry increased more quickly than the domestic business in the inter-war years, promoting the level of internationalisation of the insurance companies.

The two central trademarks of the Swiss banks in their European and international orientation are the long-term nature of their customer relationships and discretion in their business practices. The First World War caused the banks in particular to take on an important international role.<sup>9</sup> After the international gold standard and the world market collapsed with the outbreak of war in 1914, gold redemptions were also suspended in Switzerland and the national currency, the franc, was declared to be the legal tender. Due to the rapidly deteriorating economic and currency situations in the warring countries, the neutral state, which was exempt from military operations, offered itself as a stronghold for flight capital and a financial «hub» for Europe, thus enabling it to realise a substantial «neutrality dividend». Economic relations with Germany had become particularly important in the crisis years after 1918. In the mid-1920s, Switzerland returned the franc to gold parity (shortly after Sweden, and at the same time as Great Britain) and, with the amendment to the National Banking Law (*Nationalbankgesetz*) of 1929 and the Law on Coinage (*Münzgesetz*) of 1931, the gold standard, which had actually been in practice since 1925, was sanctioned by law. From now on, defending the gold parity and strengthening the franc became priorities over other economic-policy objectives.

The important prerequisites were now in place to set in motion Switzerland's rapidly increasing importance as an international financial management centre.

Foreign investors desired security and stability, and the Swiss financial centre offered both. The structure of its political institutions and the country's standing in the international community created the confidence, which went beyond the technical financial and currency aspects, to make Switzerland one of the most important centres for long-term capital movements.

It is an observable fact that the Swiss financial system was to a high degree domestically accepted, due to its capacity to combine its role in the national economy with an international expansion in an optimum manner. There was a tight network of banks at cantonal and also at communal level which took advantage of the local savings potential. As a stronghold for flight capital, the Swiss economy achieved a high level of liquidity on the financial markets, despite ongoing capital exports, thus guaranteeing low interest rates. The large banks also acted as «gears» between capital export and export financing activities for industry and enabled the growth of more intensive value-added industries far above the capacity of the Swiss domestic markets. Assets of Swiss investors abroad (which by far exceeded the assets of foreign nationals in Switzerland) boosted the income statement and made a significant contribution – along with tourism – to funding the notoriously passive balance of trade and squaring the Swiss balance of payments in the long term. Despite conflicts and points of friction, the strong currency and efficient financial centre proved beneficial to the whole economy.<sup>10</sup>

The banks were able to retain autonomy in their operations throughout the entire period from 1933 to 1945. This was not a matter of course, as the efforts to restore a free world market with convertible currencies in the 1920s were dealt a severe blow by the onset of the worldwide economic crisis. 1931 was a turning point; the transition to exchange controls in Germany and the departure of British sterling from gold parity were signs of a disintegration of the worldwide economy which gathered breathtaking momentum in the subsequent years. Banks in Switzerland (particularly the Swiss Volksbank) also found themselves in severe crises and were only saved with help from the Confederation, i.e., from the state. In return (indirectly) for the state recovery measures, the banks had to consent to the creation of the first Swiss banking law. However, the banks participated actively in shaping this legislation, and its form, when passed in parliament, hardly restricted the financial centre's scope for manoeuvre.<sup>11</sup> The introduction of banking secrecy, which was enforceable under criminal law, significantly increased the discretion of business transactions and precluded investigations of foreign states into the financial situations of their citizens. In this way, the financial centre developed into an international financial management centre and this became the most significant, long-term development in Switzerland between the First and Second World Wars.<sup>12</sup>

### **State institutions, political culture and national identity**

Swiss society is structured in a complex way. The social divides with regard to level of education, profession, financial situation, language and creed overlap rather than run parallel to one another, a phenomenon which sociologists refer to as cross-cut cleavages. Switzerland, unlike other countries, has defined itself as a «*politische Willensnation*» (a nation shaped by the political will of its citizens) due to the lack of any ethnic unity. This concept is supposed to reflect the fact that the political and territorial unity of the state cannot be determined by one uniform criterion. Reverting to history became of central importance, particularly to the story of the founding of the old Swiss Confederation which became significant from the end of the 19<sup>th</sup> century onwards.<sup>13</sup> This historical dimension of cultural recollection, which was connected with the three stylised principles of federalism, neutrality and direct democracy – the main forces forming the state, played a particularly significant role during the Second World War. At times, mythical figures such as Wilhelm Tell and Arnold von Winkelried inhabited a historical image shaped by ancient ideas of «storming castles», «liberation from foreign rule» and «battles against foreign protectorates». At the same time, Switzerland saw itself as a kind of miniature Europe. It was the country in which the large European rivers had their sources and it portrayed itself as the «*Gotthardstaat*» (Gotthard State), a state which based its national identity on a «mountain of connection and separation».<sup>14</sup>

The founding of the Confederation in 1848 was an epoch-marking moment in the history of the Confoederatio Helvetica (CH), which is the official name of the state, in terms of its institutions and Constitution.<sup>15</sup> The basic structure of the federal state formed at that time has not really changed to this day, even though from a social perspective, the conditions for political action have changed fundamentally, in particular through the configuration of social interests and the media revolution.<sup>16</sup> Since 1848, the Confederation has consisted of 22 cantons with a unified foreign policy, a common defence system, a general right to vote and a bicameral system (the *Nationalrat* – National Council, representing the people; and the *Ständerat* – Council of States, representing the cantons). The basic civil rights which have been guaranteed since 1848 (freedom of religion, freedom of the press and freedom of association, etc.) were extended at a later stage by new rights of direct democratic participation (1874, referendum on laws – *Gesetzesreferendum*; 1891, right to put popular initiatives to a plebiscite – *Initiativrecht*). Swiss Jews were only granted the same rights as non-Jewish Swiss in 1866 and 1874 and only as a result of external pressure.<sup>17</sup> The semi-direct democracy was very much influenced by a republican tradition which associated the principle of equality with fitness for military service, therefore defining the sovereign body as exclusively male.

Although the political equality of women had been a subject of discussion in the general political public since the end of the 19<sup>th</sup> century, a breakthrough on the national level only occurred in 1971.

Whilst Switzerland was strictly broken down within the federalist system into the Confederation, the cantons and the municipalities, it also possessed a highly integrated elite on a national level in the economy, the army and politics who were in a position to absorb new and also oppositional forces. The fact that there was no independent «military caste», no «political class» and no bureaucratic rank, owing to the military and also the civilian militia systems, meant that this elite had the power to assert itself. The forces of liberalism determined the political landscape of the Swiss Confederation after 1848. After the *Kulturmampf* (the cultural war between the Church and the State) had abated, the Catholic Conservative Party (now the Christian Democratic People's Party – *Christlich-demokratische Volkspartei der Schweiz*, CVP) won their first seat in the seven-member government (the Federal Council – *Bundesrat*). The Catholic Conservative party won another seat in government in 1919 when the middle-classes and farmers bloc held its ground against the opposing labour movement during the First World War and the *Landesstreik* (General Strike) and a crisis of liberal authority had become apparent. In 1929, a representative from the conservative *Bauern-, Gewerbe- und Bürgerpartei*, BGB (a party consisting of farmers, small businessmen and middle-class citizens) entered the Federal Council, thus creating a multiparty government approved by a good 53% of the electorate, to function as the executive. In 1935, another force opposed the government coalition along with the left wing parties, namely the «National Ring of Independents» (*Landesring der Unabhängigen*, LDU) led by the charismatic figure of Gottlieb Duttweiler, and which arose as part of the Restoration Movement invoking highly traditional values.<sup>18</sup>

The Social Democrats were regarded at the level of Federal Government as being opposed to the system during the entire inter-war period, and therefore unsuitable for government. This was due to their fight for the improvement of conditions for the socially weaker levels of society and their central claim as sole representatives of the working classes. However on a cantonal and communal level, in particular in the «red towns», their «suitability» had long been proved.<sup>19</sup> Not surprisingly there was no Social Democrat or trade union representation in any of the economic executive bodies or in the management of any public institutions. The «*Geistige Landesverteidigung*» (Intellectual National Defence) of the 1930s, formed and supported to a great extent by the labour movement, did not result in any initial moves towards conciliation on the part of the middle classes. In the four complementary elections in 1940, the Social Democratic Party's claim for representation in the government was refused,

partly due to reasons of foreign policy vis-à-vis neighbouring Germany. The Swiss Social Democratic Party (*Sozialdemokratische Partei der Schweiz*, SPS) won its first seat in the Federal Council in December 1943 when it increased its electoral share to 28.6% after the turnabout in the war in 1943 (from 25.9% in 1939) and became the strongest parliamentary faction. The national consensus which was consolidated during the Cold War era after 1945 created the «magic formula» («Zauberformel») in 1959 which still exists today: namely the Socialists (SPS), the Radicals sometimes referred to as the Liberal Democrats (*Freisinnig-Demokratische Partei der Schweiz*, FDP), and the Catholic Conservatives (today: the CVP) with two seats each, and the BGB (today: Swiss People's Party – *Schweizerische Volkspartei*, SVP) with the remaining seat. This broad governmental coalition was based both on anti-communism and the conviction that Switzerland was a «special case» that was able to go it alone amongst the international power plays.

The compromise in party politics was accompanied by moves among political associations. In 1929, the historian Emil Dürr had spoken of «an economisation of political motives and parties» giving an indication of the increasing significance of economic associations in domestic politics that became evident in the First World War.<sup>20</sup> Industry, trade, agriculture and the labour force had begun to represent their interests on an organised basis in the latter third of the 19<sup>th</sup> century. By the beginning of the 20<sup>th</sup> century, these four economic associations had already risen to become important political participants and «private governments». The ability of these associations to bring parliamentary bills to a plebiscite via a referendum contributed to the establishment of a pre-parliamentary consultation process. These centralised associations compensated for the relative weakness of the fragmented cantonal party system. Important political decisions were made on this level of para-state structures, which became increasingly influential, and *Vorort* (*Schweizerischer Handels- und Industrieverein*, SHIV – Swiss Federation of Commerce and Industry), played a dominant role in the crucial area of foreign trade. Also included in these structures were the National Bank, since the First World War, and the Clearing Office in the 1930s. The right of freedom of trade, established in the Federal Constitution in 1874, seemed increasingly anachronistic during the economic crisis of the 1930s. In 1937 the Federal Council spoke of a «politicisation of the economy» in its official message about the amendment of the articles in the constitution regarding the economy, and a parallel «economisation of politics».<sup>21</sup> This new «constitutional reality» was not sanctioned in a plebiscite until 1947, but thereafter the legislative decision-making powers of the associations – contrary to those of the parties – became constitutional.<sup>22</sup>

This system of private and semi-private forces and their powerful influence on

the state and legislation was also known as «liberal corporatism.» The Second World War and the government by emergency plenary powers (*Vollmachtenregime*) accelerated this development and the transition to a negotiated democracy dominated by associations. In this context it is evident that the multi-party or concordance principle had the effect of not only strengthening national integration, but also of obscuring responsibilities.

Compulsory military service belonged to the republican principle of citizenship; however, this was only realised in effect between 1874 when military training became centralised and 1907 when the new law on military organisation came into force.<sup>23</sup> Compulsory military service was also an actual right from a historical perspective, namely the right of men to carry weapons and to defend itself on a collective basis, the latter corresponding to the right to participate in political decision-making. During the 19<sup>th</sup> century the army was an important element of national integration and was also a place of education where civilian skills (from the discipline required to work in a factory to basic personal hygiene) were taught. At the beginning of the 20<sup>th</sup> century a new, authoritarian leadership style was introduced which included the Prussian-inspired training drill. At the same time there was an increasing move towards maintaining internal order which was aimed against striking workers. This experience caused a growing anti-militarism among left-wing supporters which intensified during the First World War and which only gave way to a positive view of an armed national defence in the middle of the 1930s with the perception of the threat from National Socialism.<sup>24</sup>

At the start of the war in 1939, the question as to who should be elected General of the Swiss Army became very important. The Swiss defence structure only provided and continues to provide for the appointment of a General, i.e., a Supreme Commander, in cases of extreme threat or in the event of mobilisation. When both chambers of the Federal Assembly voted Henri Guisan as General on 31 August 1939, they in fact decided against Ulrich Wille, an officer from the traditionally pro-German officers' environment in Zurich.

Until long after 1945, the perception of threat and the concept of political security remained embedded in an image of war from the 19<sup>th</sup> century. No lessons were learned in this respect during the First World War. These outdated images were reinforced again during the Second World War and were of significant importance during the entire post-war period.<sup>25</sup> Based on information for 1941, the stipulations of the Swiss militia system meant that if around 430,000 men were mobilised, 10% of the population and more than 20% of the gainfully employed would be summoned for military defence purposes. At the peak of the mobilisation in June 1940, almost one-third of the men capable of gainful employment were under arms. The companies and labour markets therefore felt

the shock of adjustment caused by the anticipation of war. Due to the fact that the conception of a national defence and the organisations involved in this task are inherently based on «an enormously high level of militarisation», army leaders were quickly faced with the question as to whether the available personnel resources were to be used on the military or, alternatively, the civil side. If the mobilisation of hundreds of thousands of soldiers lasted over a long period of time, the «flagging [...] of the economic life of the country» was to be expected. If, on the other hand, a rapid demobilisation took place, the «fighting strength» would be seriously undermined.<sup>26</sup> This dilemma was particularly evident during the Second World War. On the one hand there was controversy about the mobilisation or demobilisation of troops in times of danger. On the other hand, the so-called «military dispensation system» which decided on requests to be excused, became embroiled in the area of conflicting interests and proved to be a permanent problem. The fact that the economy was crucial – for the food-supply of the country and for safeguarding purchasing power and export activities – resulted in the realisation that «it was in no way possible to maintain authentic military readiness throughout the entire period of active military service».<sup>27</sup>

### **Neutrality**

An important element of the Swiss national identity is its neutrality. Not only was it a significant principle of foreign policy, it also eased various areas of conflict within Switzerland. The primary example of this is the relationship between the German-speaking and French-speaking areas of Switzerland which had been psychologically affected by the «traditional hostility» between Germany and France since the beginning of the 19<sup>th</sup> century. This conflict had escalated to a dangerous level amongst the population during the First World War due to the opposing declarations of solidarity with the warring powers. In the 1930s a new European situation developed where the German-French area of conflict could have resulted in extreme oppositional positions in Switzerland. However, the centrifugal tendencies were contained both by the so-called «*Geistige Landesverteidigung*», with its effect of bringing about consensus, and a neutrality policy with a strong domestic focus.

With regard to foreign policy, Switzerland had documented in the «London Declaration» of 13 February 1920 that, despite its membership in the League of Nations and its willingness to participate in economic sanctions, its «eternal neutrality» was recognised amongst the states. In 1938, the League of Nations Council released Switzerland from this commitment and permitted it to revert to «integral neutrality». Switzerland was very satisfied when *Reichskanzler* Adolf Hitler declared in February 1937 that he respected the inviolability of

Switzerland – «come what may».<sup>28</sup> Switzerland reacted with great caution, however, when guaranteed neutrality, discussed publicly two years later in January/February 1939, was offered by the French and the British. At the beginning of the war, the government declared that the army would guarantee neutrality. In accordance with the Hague Conventions V and XIII of 1907 respecting the Rights and duties of Neutral Powers and Persons in Cases of war on Land and of War on Sea, the duties of neutrality related to certain possible key scenarios such as the obligation to intern enemy troops, the ban on enemy troops marching through the country or the ban on state deliveries of war materials to the warring powers. However, they disregarded important areas, in particular the entire area of private foreign trade and also the trade of war materials in the private sector.<sup>29</sup>

Since neutrality as such is only defined in a negative manner by the principle of non-participation in international armed conflicts, it was important for Switzerland to be able to show and give positive evidence of its commitment in the humanitarian area, as shown in the experiences between 1914 and 1918. Switzerland's image of itself during the Second World War was very similar to that of the First World War although this war took on a completely different dimension due to the characteristics specific to it and to the persecutions caused by a boundless will of destruction. A leading Catholic newspaper described Switzerland in September 1943 as a «European post of Good Samaritans», as a «giant European sick-bay» and as a «world refuge for children».<sup>30</sup>

Although it does not have governmental status but rather fulfils a function under international law to serve the international community of states, the International Committee of the Red Cross (ICRC) liked to be seen as an asset to Switzerland's position in the world. For reasons of state, the ICRC took a passive stance in respect of the German persecution and destruction policy of the war years. Retrospectively in 1989, the ICRC acknowledged that it was morally obliged to care for the Jews in the German area of control and also for the inhabitants of the annexed regions. However, it also declared that the protection of the civil population was not agreed under international law until the IV Geneva Convention of 1949.<sup>31</sup> The «good services» which Switzerland carried out on behalf of other states whose usual diplomatic relations were no longer available to them due to the war enabled a valuable connection to be maintained to other states. This considerably compensated for the isolating effect of Switzerland's neutral position.<sup>32</sup> The first solicitations to safeguard the interests of outside states on their behalf were received immediately after the outbreak of war. The number of protecting power mandates increased with the continuous expansion of the war zones, peaking at 219 individual mandates in 1943/44. At times, over 1200 people were entrusted with these tasks. An

important activity of a protecting power involved visiting prisoners of war and organising prisoner exchanges, tasks which were thought highly of by the Allies, especially the British. These «good services» were therefore not only of humanitarian, but also political value and increased the international reputation of Switzerland.

#### **The First World War, the Landesstreik and the political parties**

The experiences of the First World War had a lasting effect on the evolution of the subsequent decades. In Switzerland, as in the other European countries, the four and a half years of war were characterised by drastic reductions in the purchasing power of many levels of society, on the one hand, and war profits benefiting entrepreneurs as well as farmers. The rationing system and the wartime economy came late, were badly organised and hardly made any contribution to alleviating the emerging social crisis. This social polarisation caused a growing political conflict which led to radical political changes and revolutionary disruptions. The confrontations of the class struggle climaxed in the *Landesstreik* (General Strike) of November 1918, which was accompanied by a devastating influenza epidemic. The striking workers were eventually forced to capitulate by the troops summoned to break up the strike.

The *Landesstreik* was a highly politicised clash between the labour movement and the middle class or bourgeoisie, and also formed the starting point of the crisis era in the inter-war years.<sup>33</sup> The challenge to the middle-class powers remained an effective point of reference for individual middle-class politicians even at the end of the Second World War, both for those who warned of the dangers of a socialist revolution and those who called for an end to domestic confrontation.<sup>34</sup> Tensions prevailed until the middle of the 1930s, the shock of the *Landesstreik* being still felt by all. An example of this is the statement by Ernst Steinmann, General Secretary of the Swiss Liberal Democratic Party popularly known as the Radicals, six months after Hitler's rise to power: « It was the destruction of German Social Democracy and the trade unions that provided the necessary impetus, for by rocking Swiss Socialism – which we had come to regard as an ineradicable evil – to its very foundations our citizens were confirmed in their long-standing belief that unfailing resolve would enable them to attain their goals.»<sup>35</sup>

In this period of social crisis extremist forces gained ground once more. Communists described the Social Democrats as «social fascists» and caused street fights in 1932 in «red» Zurich.<sup>36</sup> The fascist fronts advertised themselves as a bourgeois coalition movement and as a national renewal movement, their prime target being the Liberals, who were stigmatised as failures. Still, there was agreement on a number of points between the fronts and the right wing of

the Radical Party leading to a combined list in the Zurich community elections in 1933.<sup>37</sup> The doctrine and political culture of the Conservatives had a certain affinity with that of the fronts and until well after 1945 they considered it was their historical mission to bring about a – conservative – renewal of society.<sup>38</sup> In November 1932 a tragic clash took place in Geneva where the deployment of inadequately trained recruits against a demonstration of workers resulted in 13 fatalities and over 80 casualties. Colonel Emil Sonderegger, the troop commander in the *Landesstreik* in 1918 who in the meantime had become involved in the international arms trade and in 1933 had gone over to the fronts, had no doubt that the events in Geneva were the result of renewed agitation aimed at political revolt.<sup>39</sup>

In the 1930s the democratic model, which provided for a broad level of participation on the part of citizens (female citizens in conforming with the bourgeois mentality of the time of course being excluded) and of parliament, more and more was democratic in appearance only. As early as 1933 Philipp Etter, who soon after was to be elected to the Federal Council, had announced that: «Stronger bodies of authority should be reintroduced into our democracy. Everything which obstructs and cripples authority must cease to exist.»<sup>40</sup> First the right to democratic participation was curtailed by the so-called emergency policy in accordance with Article 89, (3) of the Federal Constitution, which stipulated that the optional referendum could be suspended.<sup>41</sup> In 1934, parliament subsequently voted, via the emergency procedure, to cut the wages of government civil servants by 7% although the same wage-cut had been rejected in a plebiscite in May 1933.<sup>42</sup> However, the anti-parliamentary currents had still deeper roots. The bourgeoisie still smarted from the introduction of the fairer proportional representation system in 1918 resulting in the Social Democrats doubling their number of seats and the Radicals losing more than one-third of theirs in the 1919 elections. Anti-parliamentarianism in Switzerland corresponded in many respects to that found abroad, particularly in the neighbouring countries, where Pierre Laval and Heinrich Brüning were imposing unpopular measures with emergency decrees in France and Germany respectively.

The success of the nationalistic front movements, the Swiss variation of fascism, were not long-lived and restricted to an initial success in 1930–1934 and another, short «Frontenfriihling» (flourishing of the front movements) in the autumn of 1940. At the same time, however, the desire for democracy to be dismantled intensified amongst the respected middle classes with strident demands for the restriction of parliamentarianism, the end of «party rule» and the development of a strong leadership.<sup>43</sup> Whilst the fronts remained insignificant on a political level and only won one parliamentary seat on the Federal

level, the anti-democratic forces had a far-reaching, if rather diffuse following. The attempt to make the Federal Constitution more authoritarian by way of a total revision, which was supported in particular by the younger forces within the Catholic Conservative Party (*Katholisch-Konservative*) had the same aim, and even though the popular initiative was defeated in a plebiscite in 1935, it still managed to win 28% of the votes (38% in French-speaking Switzerland). However, this trend was only partly of benefit to the central state authority, the Federal Council. The anti-democratic forces were more concerned with dismantling the modern Federal State and increasing the importance of the cantons.

#### **The worldwide economic crisis and the labour market**

The effects of the worldwide economic crisis were slow to affect Switzerland thanks to its strong external focus primarily due to the continuing strength of exports in certain industries involving intensive value-added activities, together with the stability of general sectors of the domestic economy. The crisis had a less devastating effect than in the USA and Germany, but it lasted longer, culminating in the summer of 1936. Export volumes shrank to less than half from 1929 to 1932, and imports declined in a similar way. There were huge outflows of funds in 1933 and those with mortgages and business loans were confronted with interest rate increases. Banks were on the brink of insolvency, many businesses had to be closed and even a great number of farms fell under the hammer. Purchasing power fell and a steep fall in prices was felt in the agricultural sector. In short, the crisis was self-perpetuating and led to further hardship. Long-term unemployment weighed heavily on people's minds, as there was no effective social insurance system.

At the start of the war the problem had, however, eased considerably. The war years even caused a demand for labour which could not be met. However, in the summer of 1940 the primary worry was that there could, under certain conditions, be renewed unemployment. Federal President Marcel Pilet-Golaz therefore promised work «at any cost» in his controversial radio speech in June 1940.<sup>44</sup> Shortly afterwards he remarked to General Guisan, who was not only responsible for external security but also for the maintenance of internal order: «Unemployment will turn out to be a dreadful problem that could give rise to disturbances».<sup>45</sup> These assessments, however, as they were marked by the experience of the crisis years, ignored the fact that a turnaround was already apparent. With the conclusion of the clearing agreement with Germany on 9 August 1940, the emerging labour shortage increased further, leading to ongoing disputes about leaves of absence for the military services. Nevertheless the worry of maintaining full employment did not go away; it was just shifted to the post-war crisis period anticipated by many. This fear of a steep downturn

in the economy in the post-war period was also related to the decision to refuse entry to refugees in 1942 which was justified by the intention of maintaining jobs in the long-term for «our own people».<sup>46</sup> Anxiety about renewed mass unemployment in the crisis-ridden transition to a peacetime economy was particularly noticeable on the left wing of the party spectrum in 1943/44.<sup>47</sup>

#### **Fear of «over-foreignisation» and Anti-Semitism**

In Switzerland, as in other countries, the perennial problems of the labour market and the sustained fear of Bolshevism were linked, in the inter-war years, to a growing xenophobia, sometimes accompanied by strong anti-Semitic tendencies. At the core of the debates was the slogan of losing national identity due to the presence of an excessive number of foreigners. This «over-foreignisation» (*«Überfremdung»*) had many different interpretations in politics. The experience of the First World War and the social disruptions of 1917/18 nurtured the fears spectre. The political and bureaucratic instrument to combat «over-foreignisation» was the Federal Police for Foreigners which was formed during the emergency plenary powers in 1917 as a Swiss state institution.<sup>48</sup> Hostility towards foreigners was expressed in the media, in political debates and in plebiscites. On an administrative level, the asylum policy formed part of a policy towards foreigners, the guidelines for which were laid down in the Federal Law of 1931 on the Residence and Settlement of Foreigners (*Aufenthalt und Niederlassung der Ausländer – ANAG*) which again enshrined the battle against «over-foreignisation» in law. Paradoxically, the level of foreign nationals living in Switzerland had been continuously dropping from 1910 to the 1930s. In 1910 it was 14.7%; in 1920 only 10.4%; by 1930 it had fallen to 8.7%; and in 1941 it reached the lowest level of the century at 5.2%. On the one hand, «fear of over-foreignisation» was nebulous in nature with no clear points of reference. On the other hand, however, it was directed quite clearly against the immigration of Jews and – something often seen as identical – against socialist immigrants and dangerous «elements» that might undermine a social and cultural solidarity already under threat.<sup>49</sup>

When assessing anti-Semitism, it is important to investigate whether it was a latent attitude which surfaced on a case-by-case basis, or whether it was transformed into a principle which found its way into administrative practice and legislation. The aim to protect the country from «over-Jewification» (*«Verjüdung»*) had been growing in Switzerland since the First World War.<sup>50</sup> This stance influenced naturalisation, which became increasingly restrictive. From 1916 onwards, files of candidates for naturalisation bore handwritten comments attesting the intention of making it difficult for Jews to gain Swiss citizenship. In 1919, the Federal Administration used a stamp in the form of

the Star of David.<sup>51</sup> Swiss civil servants used this system of stamping documents from 1936 onwards, and thus well before the introduction of the notorious stigmatisation in 1938.<sup>52</sup>

### Culture of stability and overcoming crises

A paradoxical mixture of rhetoric about the class struggle and the common belief of the political parties in the advantages of a currency based on gold characterised the inter-war period. The Swiss Federal Council, in its return to the gold parity of the pre-war period, had already re-entered into the currency system of the restored gold standard by the middle of the 1920s. This may be interpreted as a binding regulation and also a self-obligating mechanism which restricted the scope for action in economic policy and prioritised currency policy and the interests associated with it. On the basis of the fact that the labour movement supported the gold standard in principle, despite the sometimes violent disputes with the middle-class powers, it was not unreasonable to talk of a domestic culture of stability.<sup>53</sup> This consensus with respect to a strong franc was also of great importance during the Second World War. Beyond the party-political differences, the prevailing impression was that a small state dependent on foreign trade and therefore vulnerable should be interested in an international currency system based on fixed exchange rates and that there was no workable alternative to the gold parity of the franc.

However, the concentration of economic and financial policy on maintaining the Swiss gold standard restricted the possibilities for intervention in economic policy during the crisis years. The government, dominated by the bourgeoisie, and parliament opted for a rigorous deflationary policy which was implemented with the aid of emergency legislation, i.e., by abolishing the rights of the people, and was aimed at restoring the international competitiveness of the Swiss export economy by way of a general wage and price reduction. The bourgeois camp rejected the labour movement's demands for a «Keynesian» and social interventionist reflationaly policy through deficit spending, and pillorying it as an attack on the stability of the value of money. In the battle against the «crisis initiative» (*«Kriseninitiative»*) of the trade unions, which was moderate in its demands and thoroughly conformed to the market, the Swiss Bankers Association (*Schweizerische Bankiervereinigung*, SBVg) did not hesitate to make considerable funds available to the front movement which aimed to destroy the labour movement. The «crisis initiative», which was oriented towards the American «New Deal», was rejected in the referendum vote in the middle of 1935 though with a respectable 43% of the voters in favour. The initiative launched by the other end of the political spectrum for the total, authoritarian revision of the Federal Constitution in the same year, was rejected

in a far more clear-cut manner. It became apparent that the nationalist and anticommunist propaganda of the frontists was not effective on a national basis.<sup>54</sup>

It was not until September 1936 that the franc, which belonged to the shrinking gold bloc, was devalued by 30% as a reaction to the devaluation of the French franc. It should be noted that the labour movement basically supported this move for considerations relating to prices and foreign trade, despite harshly criticising the wage reduction. The gold bloc was a thing of the past. The devaluation came as a surprise to the Swiss public as the government and the National Bank had made recent assurances that such a step was out of the question. This calmed speculation on the Swiss currency, increased liquidity on the capital market, supported the recovery of the economy in the light of international rearmament and, last but not least, strengthened confidence in the franc.<sup>55</sup> In conjunction with the improving economies abroad, devaluation brought about the desired upturn in the economy that opened the way for internal solidarity. The removal of the pressure of deflation was an important prerequisite for the success of domestic integration within the «*Geistige Landesverteidigung*» of the late 1930s described hereafter. A common denominator for an economic and financial policy which had national support was found by combining the strengthening of the army with job creation programmes.

#### **Cultural consensus and converging positions in domestic policy**

It may seem surprising that the policy of rapprochement which prevailed from the mid-1930s onwards was implemented so readily in light of the often fiercely conflicting views which were held at the time. However, during the two decades after 1918 a broad moderate field had developed in the most important groups across the Swiss political landscape – the Radical Party, the Catholic Conservative Party, and the Social Democratic Party – which distanced itself increasingly from the extreme positions of 1918 and 1933 and converged within the «*Geistige Landesverteidigung*» from 1935 onwards. The more radical power groups continued to exist, however, either as extreme wings within parties or independent groups outside the party structures.<sup>56</sup>

In the late autumn of 1936, a contemporary commentary accurately predicted that the imminent economic change would also enable a political change to take place: «the movement, which is gathering more and more ground, strives to achieve a non-partisan union of all forces willing to develop and declare their unconditional support for democracy», thereby «ending the sterile intransigence of the parties».<sup>57</sup> The relative success of the «crisis initiative» did not blind the labour movement to the fact that a «*Front der Arbeit*», i.e., an alliance including important rural groups, would not be a realistic option. The so-called

«Richtlinienbewegung»<sup>58</sup> (Movement of Guiding Principles) initiated by the publishers of the newspaper «*Die Nation*», provided a common forum for the converging left and right wing groups to test rapprochement solutions: the Radicals (*Freisinnige*) moved away from the principle of pure economic liberalism and gave their limited approval to welfare state reforms. On the Left, the trade unions began to say goodbye to the class struggle back in the 1920s (the relevant article was deleted from the statutes in 1927). In 1933, the SPS declared that the defence of democracy was its chief objective. Subsequently, in 1935, the party took the path towards co-operation on a national basis (by supporting national defence and redefining itself as a «people's party»).<sup>59</sup> Too, the so-called peace agreement in the clock and watchmaking, metal, and machine industries in the summer of 1937 was a sign that the disputes on the labour market were easing.<sup>60</sup>

The convergence of positions led to the «*Geistige Landesverteidigung*» movement, which emerged out of a complex combination of factors and served different and sometimes conflicting ends.<sup>61</sup> The «*Geistige Landesverteidigung*» aimed to emphasise Swiss individuality and thereby strengthen the desire for political independence and military national defence. It thereby fulfilled a desire (and the necessity) to demarcate itself from the outside world, in particular from the Third Reich, and also promoted internal social stability. Springing from a process of social self-mobilisation it was at the same time engineered by state and private elitists, as reflected, for example, in the postage stamps of the time or in children's books.<sup>62</sup> Although it took its cue to a large degree from traditional values and tended towards anti-modernism, propagating a conservative view of women, it also promoted domestic political stability and increased the readiness of the middle class to accommodate the labour movement's demands for social reform. There is no doubt that the overwhelming majority of the Swiss population rejected the National Socialist ideology. This rejection was also very apparent amongst certain academic groups such as constitutional law specialists.<sup>63</sup> There were also calls from influential voices in scientific circles, churches and humanitarian groups, the media and politics for Switzerland to take a long-term share of responsibility for international events.

Both of the large churches in the country, the Reformed Evangelical (or Protestant) Church and the Roman Catholic Church, took part in the intellectual defence movement by way of a so-called «spiritual» defence of the country.<sup>64</sup> Church and state moved closer together, which was particularly beneficial for the Roman Catholic side.<sup>65</sup> This church profited more from the anti-Enlightenment mood of the time than did the more heterogeneous Reformed Evangelical Church, and was able to portray itself as the oldest power in the country at a time when many parts of Switzerland wanted to return to

«original» Swiss values, so to speak.<sup>66</sup> On the protestant side, the mass meetings, in particular the People's Day in Vindonissa in June 1942 with 10,000 participants or the Oerlikon Day of the Young Church (*Junge Kirche*) in August 1942 with 6,000 participants, were typical for the time. Of the truce obtaining on the party political scene there was, very little trace in relations between the two denominations, where intolerance, sometimes extreme, continued to prevail.<sup>67</sup> A factional dispute also existed in the Reformed Evangelical Church between the conservative «positivist thinkers» («Positive») and the «liberal thinkers» («Freisinnige»). There was also a third position, formed by followers of the dialectical theology of the famous theologian Karl Barth, who was very critical of the government, and also followers of Leonard Ragaz's socio-religious movement. The conviction of Karl Barth voiced publicly as early as 1938, that every Czech soldier was also fighting for Switzerland and the Christian Church was not very widespread.<sup>68</sup> The Jewish side sought to co-operate cautiously with the churches, and in doing so emphasised the common sources of Christian and Jewish ethics. However, any hope for co-operation and support in the war years was usually proved vain and dialogue would only commence after the war on a step-by-step basis.<sup>69</sup>

Critical as one may be of its authoritarian characteristics, one should not overlook the liberal impact of the «*Geistige Landesverteidigung*» movement and its promotion of social reform and basic democracy when considering its historical significance. On the political scene, this was embodied in the «*Aktion Nationaler Widerstand*» (National Resistance Movement) which resulted in the reformist elements of the bourgeoisie co-operating with nationally conscious Social Democrats. Intellectually, too, the «*Geistige Landesverteidigung*» was considered to have a broadening rather than a restricting effect.

The passing of a financial bill in June 1939 combining improved military defence of the country with the fight against unemployment, underlined the growing convergence of the previously diverging forces. In January 1940, no one disputed the fact that a compensation system for the loss of earnings of persons entitled to support benefits because of having done military service was imperative in order to ease the social crisis. This would have been inconceivable in the First World War. The system was based on a combination of funding: employers and employees contributed two percent of wages each, the state (Federal 2/3, and cantonal 1/3) contributing the same amount. The success of the system induced the Swiss state pension scheme (*Alters- und Hinterlassenenversicherung*, AHV) to adopt the same financing principle in 1947. The fact that this social security system, which was approved in principle on a Constitutional level as early as 1925, was implemented so late is but one example of the belated reforms that had to be introduced after 1945.

The convergence of domestic political thought was consolidated by the rise of the welfare state – introduced rather late in comparison to other European countries – which was accompanied by a reorganisation of the national budget and in particular of the taxation system.<sup>70</sup> The Federal Government pursued a policy of moderate redistribution by levying special taxes in order to secure its additional financial requirements (to finance the defence of the country and other extraordinary public expenditure). A tax on war profits skimmed off up to 70% of the profits. The two-time imposition of a tax on assets labelled «Wehrspfer» (defence offering) brought in over 600 million francs, and finally a tax on luxury goods was introduced. A withholding tax on undeclared wealth was also established. The Federal Government's income tax was introduced in 1941 (called «defence tax» until well into the 1990s) whereby the high-income bracket incurred particularly high taxes. On the other hand, worker and employee families were obliged to make a disproportionately high contribution to the sales turnover tax introduced at the same time. The principle of a «two-pronged» financial reform combining consumer taxes with a regressive effect and income taxes structured in a progressive way formed the basis of compromise of all Federal financial bills during the post-war years.

In retrospect, the generation of those in active military service considered the introduction of the Swiss state pension scheme (AHV) in 1947/48 as the most impressive consequence of the war, although the pensions were initially very low and in no way fulfilled the aim of securing a livelihood. The experiences of a wartime economy which functioned far better in comparison with 1914/18 fostered a positive recollection of the war years.

## 2.3 Switzerland during and after the War

Internal tensions in Switzerland, which were at times severe, had calmed significantly by the beginning of the war in the autumn of 1939. It was only in the second half of the war, when the imminent fall of Germany became apparent, that public debate on a variety of unresolved social and political problems sprang up anew. Debate was primarily concerned with domestic issues; however, towards the end of the war the relationship to Germany and the Allies also became a subject of public discussion.

### **«Authoritarian Democracy» and Government by Emergency Plenary Powers (*Vollmachtenregime*)**

As in 1914, the Federal Council had by the beginning of the war been granted emergency powers by both parliamentary chambers, enabling the executive to

take the measures deemed necessary without reference to the Constitution.<sup>71</sup> Due to pressure from the Social Democrats, who were not yet represented in the executive and were therefore unhappy about executive authority being granted unconditionally, each chamber was accorded a special «Parliamentary Committee that granted plenary powers» (*Vollmachtenkommission*). This was, however, not fully to the liking of the bourgeois side. Federal Councillor Ernst Wetter accused his middle-class colleagues of giving in too quickly. He called these committees a «parliamentary cloven hoof» and feared a «shadow-government».<sup>72</sup> It now seems that the function of the «Emergency Plenary Powers Committees» was that of an auxiliary committee supporting the executive rather than a hostile body bent on determining policy and passing judgment itself. The committee meetings were thus not a venue for heated exchanges although there was a considerable divergence of opinions.

The Government by Emergency Plenary Powers prevented the electorate, the actual sovereign body, from exercising their right of involvement as guaranteed by the Constitution. The *Referendum* had already been seriously undermined by the emergency politics that had preceded; however, the voters accepted the restriction of their rights in a silence which may be interpreted as consent. The direct-democratic elements were not completely suppressed, however, as a total of seven national plebiscites took place during the war period. The emergency plenary powers framework was based on a consent which was very widespread but had different motivations.<sup>73</sup> Zaccaria Giacometti, a young constitutional lawyer saw it as an unconstitutional «temporary dictatorship of Federal bureaucracy» with «authoritarian and totalitarian tendencies». However, it is significant that Giacometti was somewhat alone amongst the experts in his relatively late outspokenness in July 1942.<sup>74</sup> Whilst the lawyer criticised the lack of formal legal authority, it is clear that with regard to the Constitutional reality, the emergency plenary powers primarily allowed the interest groups (or associations) more scope for influence. It strengthened the role of the so-called pre-parliamentary consultation process and protected the compromises of the «organised interest groups» from being contested in a plebiscite, particularly in the area of fiscal policy. It therefore contributed in the long-term to the further development of negotiated democracy dominated by associations.

The way in which media censorship (introduced by emergency plenary powers for the press, radio, film, photographs and books) was handled is an informative indicator of the political nature of society during these years. There were numerous restrictions on the various newspapers; however, the media producers and media houses also made their own decisions about what could be published in a process of reciprocal control and self-censorship. A decisive factor was that the public expected, or rather respected and sanctioned, certain stances taken

by the media. Successful publishing, and thus commercial success, was created by criticism of the Axis powers and by the support of clear disassociation from them along with the notion of freedom in the form of independence and not just limited to national freedom.<sup>75</sup> The entire area of foreign trade, on the other hand, was subject to extremely severe press censorship.<sup>76</sup>

The development and extension of emergency plenary powers is an important indicator of the government's view of which areas required additional regulation and which needed no regulation at all. A significant fact here was the belief that film newsreels should be regulated, but not arms trading. Furthermore, although the freedom of private enterprise in the domestic supplies area was heavily restricted, the same was felt to be unnecessary with regard to international trade, major financial transactions, trading in foreign securities, or imported art objects. An attempt to impose regulation in the area of trade in war material was abandoned after a very short time with the issue being re-addressed only much later.

### **The Federal Council and the General**

Overall the political culture of the crisis years and the war years was characterised by a tendency towards authoritarianism. With regard to the party-political groupings, this was apparent in the composition of the Federal Council. In 1919, the Catholic Conservative party had two seats in this body of seven representatives (due *inter alia* to their support in averting the *Landesstreik*), which were filled by Giuseppe Motta (later, from 1934 on, Philipp Etter) and Jean-Marie Musy, both right-wing nationalists and city councillors. In 1929, the recently formed Farmers' Party (*Bauernpartei*) led by the farmer Rudolf Minger succeeded in reaching the upper Federal Government. His party political successor, the Bernese lawyer Eduard von Steiger who later (in 1941) became a member of the Federal Council, further strengthened the right wing contingent. The political leanings of his successor in the Military Department, the Radical Karl Kobelt who had also been elected to the Federal Council in 1941, are as hard to assess as are those of Motta's elected successor in 1940, Enrico Celio of the Catholic Conservative Party, but tended rather more towards the centre. During the war years, in particular in 1940, the Federal Council was united on the most important issues and passed unanimous resolutions.<sup>77</sup> The two crucial Radical members, Ernst Wetter from Zurich and Pilet-Golaz from Vaud, belonged to the right wing of their Party. The Radicals from Solothurn, Herman Obrecht, Minister of the Economy, and his successor, Walther Stampfli, tended more towards the bourgeois side eager for reform. In 1945, Max Petitpierre entered the government as the «man of the hour», who on the one hand was pro-business and interested in the global market, but who was

also committed to an ideological concept which only allowed limited commitment to foreign policy.<sup>78</sup>

Emergency Plenary Powers did not really strengthen the Federal Council. It became more exposed to the influences of interest groups now that it only required limited support from parliament, and it also had competition from the General who was becoming increasingly more popular. The question as to whether the Federal Council in its composition of May 1940 was the weakest Federal Government since 1848, to quote a seemingly competent source, will not be answered here.<sup>79</sup> There is, however, no doubt that the responsibilities in these years were particularly demanding.

Various statements, public appearances, and files, especially of the Federal Councillors Philipp Etter and Marcel Pilet-Golaz, created the impression that the Federal Government would like to have imposed an authoritarian social structure on the country in the style of French Pétainism, which was regarded as exemplary in many respects.<sup>80</sup> For a time in 1940, a further debate regarding the constitution seemed likely (following that in 1935). However, even Federal Councillor Philipp Etter, who was perhaps its keenest advocate, wanted to wait until the international situation was less confused. Federal Councillor Pilet-Golaz publicly declared in September 1940 that the state institutions were not «as bad as some people claimed», and that they were «in principle, healthy».<sup>81</sup> However, on a confidential level his opinion was remarkably different. On 9 September 1940 Pilet-Golaz wrote to General Guisan: «Personally, I am convinced that we should be able to improve our relations with our northern neighbour if we could free ourselves from an irritatingly ideological way of seeing things, and from a certain demagogic ultra-democratism inspired by that French-style parliamentarianism which has proved so deadly for France. But we shall be able to achieve this only slowly, taking advantage of every opportunity, and avoiding – if possible – any incident to the extent that it is in our power to do so.»<sup>82</sup> In the summer of 1940, the media also expressed the desire for more leadership and authority.<sup>83</sup> Those who wanted to strengthen the government, such as the influential intellectual Gonzague de Reynold from the Catholic Conservative Party,<sup>84</sup> were concerned with strengthening the leadership structures on a cantonal level as opposed to the central Federal state powers. However, with regard to Switzerland as a whole, the same forces wanted to eliminate the influence of the parties and parliament and strengthen those of the economy. The Federal Council wanted subordination and loyalty (hierarchy was an integral concept in formative military service anyway), the smaller lower-level authorities in both the public and private domains insisted more and more on obedience and discipline.

The General, as an additional and in some respects even higher authority than

the civil leaders, had a similar influence. It is no secret that he was no great friend of parliamentarianism and liberal democracy.<sup>85</sup> In 1934, he expressed his great admiration for the Italian dictator: «The great merit of this man, of this genius, is to have been able to discipline the nation's various forces.»<sup>86</sup> It is characteristic of Henri Guisan that he was more concerned about the popular front government in France in 1936 than about the Nazi regime in Germany. He declared to a French contact: «[...] Germany? Yes...of course..., but it is not Germany that worries us at the moment..., it's you.»<sup>87</sup> Accordingly, he supported the ban on Communist parties in the French-speaking part of Switzerland and maintained friendly relations with Pétain until 1944. Nonetheless, the General grew to his task and was soon able to develop a good relationship with the Social Democrats.<sup>88</sup> Guisan was the central integrating figure of the wartime period and embodied the spirit of resistance to such an extent that efforts to relativise this at a later date met with vehement rejection from the older generation.<sup>89</sup>

#### **National solidarity and new tensions**

The national solidarity and spiritual cohesion which had grown from 1935/36 and formed a firm basis for co-operation by 1939/40 experienced a certain weakening during the war years, described by some with the analogy of a «tunnel». In the years from 1939 to 1942/43, the parties practised an internal and party-political moratorium with no real formal agreement, resulting in a kind of truce. The real scandal regarding the attempt to remove the chief editors of the main liberal newspapers in 1940 – the so-called petition of the «two hundred» – was not part of any complicated submission to the expectations of the Reich. It consisted in the fact that the right-wing bourgeois circles wanted to use the moment of national crisis to settle the score with exponents of more left-wing positions, thereby ending the truce.<sup>90</sup> This rigid stance, which in different times and under different circumstances would have signified weakness, proved here to be a strength. Switzerland reacted to external influences and internal disruptions with, as Herbert Lüthy said, a combination of individual and collective defence reflexes, with no central organisation or planning and no commando headquarters, and proved itself to be «a more viable, loosely structured but cohesive social body» which took spontaneous action in order to maintain the *status quo*.<sup>91</sup> This stance also produced a healthy portion of scepticism against the high ambitions of the national government and certain stage-managed bourgeois moves.

After 1940, however, relations between employers and the workforce began to deteriorate. Despite a price surveillance operation, an increase in consumer prices could not be avoided due to the diversion of economic resources into the

defence sector. The consumer price index increased by almost 50% between the beginning of the war and 1942. Wage development lagged behind, causing real wages and purchasing power to drop by one-sixth on average. Social issues therefore moved increasingly to the foreground from 1942 onwards. The main single advances introduced in 1942/43 included the popular initiatives on family protection, pension insurance, the right to work, the prevention of speculation, and finally a general economic reform.<sup>92</sup> These reform proposals were determined by the post-war debate which began in 1942. A similar debate was held once in the summer of 1940 when the Swiss thought they would have to live under National Socialist hegemony for a long period. With the defeat of Germany at Stalingrad in the winter of 1942/43 and further allied victories, the focus shifted to a peace framework organised by the Allies which, however, had no clear timescale at this stage. In the autumn of 1942, a special section was established in the Federal Political Department (*Eidgenössisches Politisches Departement*, EPD) which was to deal with foreign post-war plans.<sup>93</sup> In the «election year» of 1943, the post-war framework was obviously an important subject.

### **The military situation and the awareness of threat**

For a long time the illusion of the threat of war was shaped to a great extent by the recollections of the First World War. The view was that the mistakes «of the last time» should not be repeated, but hopes were also again focused on the success of neutrality and the military defence of the country. In 1939/40, the overriding desire must have been for the war to be over quickly. After the first successes of the *Wehrmacht*, this desire was probably superseded by the hope in the minds of most of the population that military preparations should continue and that the war should not end with the establishment of a «new order» dominated by the Third Reich. There was a widespread view that such an end to the war would put an end to Switzerland's neutrality. According to contemporary reports of the mood at the time, the Swiss people had never really identified with any one of the warring parties; however, they were always pro-British due to a marked and profound aversion to both National Socialism and, to a great extent, to a powerful Germany, and also, surprisingly, increasingly pro-Russian as early as 1942.

A description of the course of events must take into account the difference between the inevitably varied and subjective assessments of the situation and the operational, military course of the war. An acute fear of invasion need not mean that a direct, planned attack by the military forces of the enemy power is imminent. Conversely, it is also possible for a country to exist in relative security in times when there is a direct threat of attack. The question as to when

Switzerland was under military threat and to what extent has been disputed for some years.<sup>94</sup> Contrary to the predominant view at the time, today's descriptions of military history stress that the *Wehrmacht* was developing plans of attack on Switzerland after their victory over France which, however, never came to fruition.<sup>95</sup> On the other hand, the fear of attack was great in May 1940 and March 1943, when there was little threat from external military powers.<sup>96</sup> The events in Norway produced a particularly vivid impression, one which intensified in April/May 1940 and continued to grow thereafter, that Switzerland could be under threat behind the front lines from a combination of parachute troops and members of a «Fifth Column» («*Fünfte Kolonne*»).<sup>97</sup> The Federal Council's Decree of 7 May 1940 to create hundreds of local defence outposts containing men who had not yet been mobilised should be seen in this context. In retrospect, however, the summer of 1940 was nevertheless characterised by a surprising lack of fear (of a military invasion rather than that of the general supremacy of Germany). Heinrich Homberger, director of *Vorort* felt that the existence of Switzerland was more under threat economically than it was from military powers in November 1940. In March 1941, he declared: «Fortunately we have [...] a proven production capability and significant financial capacity. Germany is only interested in Switzerland as a free and willing partner.»<sup>98</sup> As early as June 1940, investors in the Swiss financial market considered Switzerland to be a safer market than in the previous months.<sup>99</sup> This should not, however, obscure the fact that morale in the army was extremely low in these critical months. A report dated 13 August 1940 showed that the morale of the troops was low and that there were widespread defeatist attitudes: 75% of the troops no longer believed that the command to fight would be given in the event of attack.<sup>100</sup> *Wehrmacht* planners also assumed, in a study of October 1940, that there would have been a rapid surrender in the event of an attack – an assumption which may well have proved to be false.<sup>101</sup> Overall, a feeling of uncertainty and fear had prevailed since the end of the 1930s. Switzerland was, however, primarily caught up in internal problems. Although events on the international scene left some mark on the national psyche, the «domestic» situation was at the forefront of most people's minds.

#### **National economic supply and the securing of food supply**

Apart from notoriously pro-German groups or those dazzled by the power of the Nazi regime, it was clear to most contemporaries that sooner or later Hitler would make Switzerland into a vassal state or even divide it up.<sup>102</sup> The meaning of «national defence» («*Landesverteidigung*») became important in these circumstances and was extended to include all social dimensions. The security and independence of the country was to be achieved with a combined military,

economic, social, cultural and spiritual national defence. If social disruptions similar to those during the previous war were to be avoided, such as the *Landesstreik* of 1918, there had to be a better social security system for soldiers, excessive price rises should be avoided, and the diminishing food supplies should be distributed more justly. Too, there was the question of whether Switzerland would be more successful this time in preserving its sovereignty in the area of foreign trade and in preventing any direct intervention from the warring powers into domestic matters.

At the start of the war there was great uncertainty as to whether Switzerland would be able to meet its food requirements. Accordingly, the dominant motivation in the government administration offices and among the population was to prepare for the worst.<sup>103</sup> The Swiss were vulnerable inasmuch as they could only produce about half of their required calorie intake and had to import the other half. These imports diminished constantly throughout the war, however. In 1941/42, 50% of the amount of 1939 could still be imported whereas in 1944 the level was only 20%. If this calculation were to include only the overseas imports, the amount for 1943 would be significantly lower as the Allies had cut off the supply of food from the spring to the end of 1943. Supply (production) and demand (requirement) diverged to varying extents for different types of food. The aim of official agricultural policy was to reduce the overproduction of livestock and promote arable farming. Whilst the agricultural surplus could be exported to the neighbouring states, i.e., in actual fact only to the Axis powers, most of the food imports required had to come from the Allies' sphere of influence.

An agricultural programme launched in November 1940 («*Plan Wahlen*» – the «Wahlen Plan») does not appear to have been implemented to compensate for overdue supplies from the Western powers; instead, it seems to have been a defensive measure against the threat of being cut off by the Axis powers. This cultivation scheme, also called «*Anbauschlacht*» aimed virtually to triple the area of agriculturally cultivable land. By 1943, the area had doubled from 182,500 hectares to 366,000 hectares. This increased the level of agricultural self-sufficiency from 52% at the start of the war to 59%. However, the reduction in average calorie consumption is not included in this calculation; if this reduction of the total calorie requirement is taken into account, the self-sufficiency quota rose to over 80%. The increased cultivation succeeded to a significant degree in compensating for the loss of overseas imports.<sup>104</sup> Whilst the Swiss viewed the «*Anbauschlacht*» as a strengthening of the spirit of resistance and survival, the Germans welcomed it as a contribution to the safeguarding of the European food supply.

A differentiated rationing system ensured the supply of the most important,

life-essential goods to individuals. The allocation of rations, however, could only function if price rises did not devalue the purchasing power of most levels of society to such an extent that there was simply no money left to exchange for the ration coupons. Those responsible for the wartime economy also attempted to learn from the adverse experiences of the previous world war in this respect and made a greater effort to keep prices under control. To a great extent, they were successful. More and more types of food became subject to rationing and from 1942 onwards, all the key foodstuffs were integrated into the rationing system. Poultry, fish, and potatoes, however, could still be purchased without limitation. Psychological aspects too played a role. Contemporary witnesses recall feelings of hardship and actual deprivation. In 1941, the *Kriegernährungsamt* (Federal Office for Wartime Nutrition) published a report with the revealing title «Will we get through the war without hunger?». This stated that an empty stomach before lunch and a strange feeling due to a change in diet were not indicative of hunger, which would result only after actual inadequate nourishment over a long period of time. According to a League of Nations study, the nutritional situation in the neutral states of Europe was comparatively good in 1944. The *Eidgenössische Kommission für Kriegernährung* (Swiss Federal Committee for Wartime Nutrition) observed in 1946 that nutrition in Switzerland during the war had been good and «in some respects even excellent». Contemporary documents show that the Swiss nutritional situation was often even thought to be «fabulous» in comparison to that of its European neighbours.<sup>105</sup> Problems with nutrition were therefore not a determining factor in refugee policy. With specific regard to the refugee issue, however, it is probably not surprising that broad areas of the population thought food was the main problem and not, as would have been more appropriate, the clothing and accommodation problem. The major part of the rationing system continued for quite a while after the war and it was only in April 1948 that bread could be sold again without restriction.

### National Defence

Efforts aimed at improving national defence were made long before 1939 and in a variety of forms. Paradoxically, the military defence situation was the least satisfactory on 1 September 1939, Switzerland being even less prepared in 1939 than in 1914. As regards legal measures, some progress had already been made in the early 1930s. This included the ban on party uniforms of 12 May 1933 (amended on 1 July 1938) and the Emergency Federal Decree of 21 June 1935 on the Safeguarding of Federal Security (creation of the Swiss Federal Police). Nor should one forget the negative outcome of two popular initiatives, i.e., that of 9 September 1935 for a total revision of the Federal Constitution and that of

28 November 1937 for a ban on Freemasonry, as well as the Federal Council's Decrees of 27 May 1938 against propaganda material threatening the security of the state, and that of 5 December 1938 against activities threatening the security of the state and for the protection of democracy. The same year saw the convergence of diverse efforts to consolidate national defence. Switzerland redefined its status under international law with the return to «integral neutrality» made possible by the release obtained from its economic sanctions commitment to the League of Nations. A round the same time, the project for a wartime economy shadow organisation of the Department of Economic Affairs was put on standby. This had been proposed at the end of 1937 by Federal Councillor Herbert Obrecht, who earlier had come under fire due to his position on the board of the German-dominated Waffenfabrik Solothurn AG. With the Federal Law of 1 April on Securing National Supply and with the initiation of negotiations in September 1938 to secure imports in the event of war, Obrecht proved to be the courageous liberal statesman extolled at the time of his early death in August 1940.

The Federal Council's official message on «the organisation and responsibilities of safeguarding and promoting Swiss culture», drafted by Federal Councillor Philipp Etter and likewise published in 1938, soon became a kind of «Magna Charta of the *Geistige Landesverteidigung*» with its nationalistic and authoritarian thrust. The Swiss credo was expressed thus: «the idea of a Swiss state was born neither of race nor of the flesh, it was born of the spirit. There is something magnificent, something awesome about the fact that this tremendous idea should have led to the creation of a state whose heart is the Gotthard, the mountain that sunders and the pass that connects. It is a European, a universal idea: the idea of a spiritual community of peoples and Western civilisations!» According to the message, this was «nothing other than the victory of the spirit over the flesh on the rugged terrain of the state». <sup>106</sup>

The wartime economy regime, instituted in September 1939, was under the control of the Federal Department of Economic Affairs (*Eidgenössisches Volkswirtschaftsdepartement*, EVD) and represented the backbone of the «economic defence of the country». Under the management of the *Eidgenössische Zentralstelle für Kriegswirtschaft* (Federal Central Agency for Wartime Economy) which was advised by the *Kommission für Kriegswirtschaft* (Committee for Wartime Economy), various control and management tasks were entrusted to the *Kriegsnährungsamt* (Federal Office for Wartime Nutrition), the *Kriegs-Industrie- und Arbeitsamt* (Wartime Industry and Employment Office), the *Kriegs-Transportamt* (Wartime Transport Office), the *Kriegs-Fürsorgeamt*, (Wartime Welfare Office), the *Eidgenössische Preiskontrollstelle* (Federal Price Control Agency), and the *Handelsabteilung des Volkswirtschaftsdepartements* (Trade Agency).

Division of the Department of Economic Affairs). The organisation of the wartime economy was, however, structured in a highly asymmetrical way. On the one hand, the Federal Administration would now intervene in important issues regarding national supplies and conservation of resources. Wholesale and retail prices, rent, mortgage rates, electricity and gas tariffs, etc., all became subject to approval. The employment market and the food sector were particularly heavily regulated. The compulsory labour service project and the system of closed and graded rationing enabled important economic resources to be managed in an ingenious way. At the other end of the scale was to be found the currency issue, where the free convertibility of the franc was maintained and where there was hardly any state intervention. Foreign trade, raw materials and investments occupied a middle field dominated by wartime economy trade unions, with whom the most significant economic entities regulated their claims free of interference. Here too were situated the negotiating delegations which accumulated considerable power and authority during the war years and kept Switzerland running as a modern industrial country even under difficult circumstances. Stipulations and quotas do not seem to have hampered the modernisation of the Swiss economy in any way. On the contrary, a dynamic innovative movement could be made out since the summer of 1940. This movement was oriented towards a succession of post-war scenarios and, from 1942 on, towards preparing the industry of Switzerland for the future peacetime economy.

The national military defence was closely linked to the economic defence. This started as early as 1936 with the issuance of so-called «defence bonds» («Wehranleihe») in the amount of 235 million francs which had widespread public support. This arms loan, also welcomed by the left wing as a job creation loan, amounted to at least half of the ordinary Federal expenses for that year.<sup>107</sup> With that amount military protection could at least partly have been pushed up to the required level. However, the national military defence situation was precarious at the beginning of the war. There were no operational plans, and insufficient heavy artillery. Mobility was based on antiquated conditions (too many horses, too few motor vehicles), and there were practically no tanks or military aircraft. In order to go some way towards compensating for these weaknesses, the French and Swiss military forces had a secret understanding as early as 1938/39 that they would work together in the event of a *Wehrmacht* attack on Switzerland. The infantry was in a better condition and at that time the soldiers were still prepared to wage a bitter struggle to defend Switzerland. Here the initial natural spirit of self-defence can be seen. This was implemented by the conscription mentioned above, the maintenance of an army, the arms loans, the general mobilisation at the start of the war and the election of a

Supreme Commander – the General – a measure only designed for times when the country was under extraordinary threat. Military readiness was supported by the formula of «armed neutrality» which was directed at the outside world. It was a logical complement to the foreign policy of not to aid or abet, and its aim was to prevent a warring party from occupying Swiss territory. No side was to be able to gain advantage here. This was why it was important to make potential and seriously menacing enemy forces believe that Switzerland was in a position to defend its borders by military means. Even though this vision did not really concord with the military situation, neutrality was an important element of the collective self-image of a country which was fully aware of how much it depended on the strategic plans of the warring powers for its own survival.

Once the army had prepared itself for a linear border defence towards the north, namely Germany, and dug itself in during the first winter of the war in 1939/40, the Supreme Commander regrouped the forces, following the sudden arrival of the Germans at the Swiss-French border to the west after the unexpected fall of France in the summer of 1940. These troops were regrouped according to the concept of the *Reduit* (all-round defence from the heartland), a concept which conformed to old models but which was new in this situation. This was accompanied by an order to partially demobilise at a time when powerful German tank divisions were just across the border. At the same time there were discussions about the army being discharged and the preparation of Switzerland for the coming «peacetime». On 21 June 1940 (one day before the German-French ceasefire), Federal Councillor Philipp Etter declared that «our army will probably not be topical next year when we celebrate the 650<sup>th</sup> year of the Confederation!» to the baffled author Cäsar von Arx who wished to stage the festival planned for 1941 as a manifestation of the spirit of military resistance in commemoration of the heroic defence against external dangers in 1291.<sup>108</sup> The number of active soldiers fell between July and October 1940 from around 450,000 to 150,000. Most of the remaining troops were withdrawn from the border and the flat central areas and started to erect defence posts in the Alpine foothills and mountains. This transition from a «doctrine of war» to a «national defence» strategy based ever more on non-military factors meant that the workforce was free to concentrate on economic production. Thereafter, national defence was not so much a short-term defence of the whole country (in a territorial sense) by military means as a longer-term strategy combining economic co-operation, political civility, and maintenance of military readiness to defend the country against the Axis powers. This strategy has, however, only been accorded «symbolic significance» to a great extent by military experts then and now.<sup>109</sup> With the withdrawal of combat troops to the *Réduit national* the

popular meaning of «*Grenzbesetzung*» (border occupation) that had existed to date was undermined. From summer 1940 onwards, the term «*Aktivdienst*» (active military service) became a key concept of political language. After 1945, almost all Swiss defence activities were concentrated in this term with the result that non-military activities, i.e., the all-important economic factors, were barely acknowledged.

The economic national defence activities directed at the outside world were based on close co-operation between the state and private economy and consisted in the main of safeguarding the goods necessary for survival, i.e., fuel and raw materials for industrial production and agriculture. In order to achieve this, much skilled negotiation was necessary to make the double blockade ring, consisting of the Western powers' overseas blockade and the continental counter-blockade of the Third Reich, as permeable as possible and the control practices of the blockade guards as restrained as possible. The decision-makers primarily considered foreign trade in terms of provisions and supplies, job creation and also social peace. Little consideration was given to the question as to whether these economic relations were in some cases less in the national interest and more in the interest of private enterprise. The maximum of attention was invested into taxing the enormous profits generated by the export economy caused by the war, particularly in the arms industry. Max Weber (SPS) of the National Council declared at the start of the war in 1939: «normal income will not be touched, however anything beyond that must also be subject to the military-oriented «conscription of property»»<sup>110</sup> He repeated in the autumn session of 1940: «the principle that the war must not be permitted to lead to individual financial gain should therefore be a guideline of Federal policy.»<sup>111</sup> A further form of national defence comprised the safeguarding of sales markets in view of the post-war period. The worry about jobs or the fear of the «threat of renewed mass unemployment» also dominated the thinking of the Socialist Robert Grimm, who feared falling orders in the arms industry in June 1940.

## 2.4 The War and its Consequences

Since 1936 when Hitler breached the Treaty of Versailles and remilitarised the Rhineland, which had been disarmed in 1919, the view was that another general war in Europe was possible, likely or unavoidable. The «bringing home» («*Heimholung*») of the Sudetenland in autumn 1938 and the occupation of «the rest of Czechoslovakia» («*Rest-Tschechei*») strengthened this view.

### The phases of the war

Hitler hoped to be able to geographically limit the war commenced against Poland on 1 September 1939 even though this would not satisfy his appetites. However, England and France, whilst acting in a passive manner in all other issues, immediately reacted with a declaration of war. Subsequently, a strange «phoney war» («*drôle de guerre*») began after this «first» eastern campaign. The initiative remained on the German side although this was far weaker than was generally assumed. In April 1940, the *Wehrmacht* struck out in a northerly direction and after the occupation of Denmark and the conquest of Norway, the attack on France, Belgium and the Netherlands followed on 10 May 1940. Contrary to all expectations, this battle against France, the main opponent, was over after 41 days. After the armistice of 22 June 1940, the question arose as to whether Great Britain, which had managed to evacuate its troops from the Continent at the last minute, would continue the war more or less on its own. The Royal Air Force subsequently managed to successfully hold its ground against the *Luftwaffe* and the planned German invasion did not come about. Some visionaries saw this to be the first sign of German weakness.<sup>112</sup>

After the introduction of active military service and government of emergency plenary powers in September 1939, Switzerland established a defensive position and was waiting. For Switzerland, lulled into a false sense of security by a supposed balance of power and prey to the delusion that the Western powers were the superior party, the first six months of the war passed in relative calm. In spring 1940, it was not certain whether the German advance on France would also go through Switzerland. Italy's entry into the war in June 1940 created an additional danger zone at the southern border for years. Switzerland's world collapsed with the fall of France. The occupation of Paris caused a great shockwave in Switzerland which was not so much characterised by fear as by bewilderment and sadness. Pro-German circles now declared the war to be over, in concordance with German propaganda, and called for the army to be demobilised. In contrast, even Mr. Pilet-Golaz, the Swiss President, maintained in his radio broadcast of 25 June 1940 which has gone down in history as weak and conformist that «[...] our part of the world remains in a state of alert». <sup>113</sup> On 25 July 1940, General Guisan made an announcement on the Rütli, the legendary founding place of the old Swiss Confederation, that military defence would continue in a post in the Alps which had still to be created, the *Reduit*. The General intimated that the war was not over for Switzerland and that the military spirit of defence was not dead and buried.<sup>114</sup> However, from that time onwards the country was completely encircled by the Axis powers. Eugen Bircher, a Swiss colonel, probably made a correct assessment of the situation at the time when he said

that the Germans would have been able to advance towards Bern with a single tank regiment.<sup>115</sup>

From September 1940 onwards, Hitler's ambitions turned again to the east. This resulted in the Balkan campaign of April 1941 and the long-planned attack on the Soviet Union on 22 June 1941 which was waged with unprecedented brutality in contravention of all obligations under international law and the Conventions on Warfare. After some initial, rapid successes, the *Wehrmacht* already suffered severe setbacks in the winter of 1941/42. The phase of the German «*Blitzkriege*» was over. An unmistakable signal was the simultaneous entry of the USA into the war even though the definitive turnaround in the war would take a few more months. The USA's involvement in the war undoubtedly predated its formal entry on 8 December 1941. The laws on neutrality which came into force in 1935 and were renewed in 1939 were modified on a step-by-step basis, contrary to the development in Switzerland, until the point in time when the US Atlantic fleet began to escort British convoys in the summer of 1941. The entry into the war had obviously been planned a long time in advance.

During this phase, Switzerland had been preparing itself for a time of domination by Nazi Germany. Most people did this without accepting the situation as definitive. Switzerland practised a wait and see policy (as it would again in 1945/47). Federal Councillor Pilet-Golaz had already given the watchword in September 1940: «We must hold out.» He added: «Hold out. Do everything to preserve our independence and our liberties.» And again: «Holding out is difficult when we are in fact dependent on the Axis.»<sup>116</sup> With regard to the economic aspects, the consequences of the new situation were quickly observed in the summer of 1940 and taken to heart. A few days after the fall of France, even Rudolf Minger, the «Federal Councillor of resistance» and the initiator of defence bonds in 1936, called for a change of direction in foreign trade and in particular the export of arms. «We should be able to compensate for the current loss of exports to the Western powers with increased export activities to Germany and the German-occupied regions [...] There is currently a strong demand in Germany for arms products [...].»<sup>117</sup> An agreement was signed with Germany on 9 August 1940 which laid down the basis for intensified economic co-operation.

For almost two years in 1941/42, the Third Reich was at the zenith of its power. This was felt strongly in Switzerland. In this period the war «drifted away» from Switzerland in the territorial sense (while the *Reduit* was being built). There was widespread, guarded optimism with regard to long-term developments which, however, did not prevent the authorities from making extensive concessions during this period. Besides foreign-policy initiatives like Eugen

Bircher sending Swiss doctors to the German eastern front, the economic agreement with Germany of 18 June 1941 is particularly notable.<sup>118</sup> The entry of the USA into the war in December 1941 as a reaction against the Japanese attack on Pearl Harbour and the almost simultaneous faltering of the German advance towards Moscow were not immediately perceived to be a decisive turnaround. It was the German defeats in the autumn of 1942 that heralded the beginning of the end. In September 1942, Ernst Reinhard, the Socialist National Councillor from Bern, made the point that one had to accept the fact that the war was lost for the Axis powers, but also be aware that «we are completely powerless vis-à-vis Germany».<sup>119</sup> In January 1943, a report on the general mood claimed that the anti-German stance had changed to a surprising extent into a pro-Soviet stance which was primarily an expression of impatience at the slow progress of the Western Allies.<sup>120</sup> A determining factor was the economic war which was particularly significant for Switzerland. The two World Wars of the 20<sup>th</sup> century may be interpreted as production wars based on the mobilisation of all available economic resources. From the beginning, it was an important strategic aim of the Western powers to cut off the continent dominated by the Axis powers by a blockade of overseas supplies (and also export opportunities to a lesser extent). Germany reacted to this with a counter-blockade. This was connected with the plan to forge a post-war «New Europe» under Nazi hegemony as an independent, self-sufficient continental bloc in accordance with the ideas of the German «*Grossraumwirtschaft*» (integrated economic area). In actual fact, German occupational rule was based on systematic and methodical exploitation and enslavement which the term «looting economy» only goes some way to describe. With these conquests the Nazi state also appropriated gold, foreign exchange and other valuable assets. The dispossessed owners were deported and murdered, primarily in the «east» where the occupation forces reigned with particular cruelty. Finally, enslaved men and women, namely «*Ostarbeiter*» (Russian and Polish slave workers in occupied countries during the war), forced labour, prisoners of war and concentration camp prisoners were also incorporated into the production process.

When one considers the vehement anti-bolshevist stance of the European governments and the USA and the widespread fear of communism since 1918, it appears surprising how quickly the Alliance against the Axis powers came into being after the German attack on the Soviet Union. Still, it corresponded to the logic of concurring interests if «West» and «East» understood the war against Hitler's Germany to be a common struggle. The level of understanding and co-operation practised amongst the Allies is, however, often overestimated. The military power of the Red Army was based primarily on its own resources. Discussions with the USA, which committed itself as a supplier of important

war material, were few and far between. The «second front» requested by the Soviet side took a long time to materialise. Soviet suspicions that the West wanted to conserve its forces did not disappear even after the invasion of North Africa in November 1942 and the Sicilian landings in July 1943. It took the invasion of Normandy of 6 June 1944 to satisfy Soviet expectations. Even then there was mistrust that the West might conclude a separate peace agreement with a German government (after Hitler) although US President Roosevelt tried to counteract this in the declaration of the Casablanca Conference in January 1943 which demanded the «unconditional surrender» of Germany. The turnaround in the international power struggle did not mean that Switzerland was no longer under threat. The war «approached» the country again during this phase, Italy becoming a battleground in 1943 and France once again in 1944. The arrival of the liberators of Europe at the Western border of Switzerland in August 1944 meant that the country was no longer completely surrounded by the Axis powers. However, the supply situation did not improve – in fact the opposite was true. During these months Switzerland was affected most by aerial warfare and there was fear of border violations and casualties caused by Allied units. There was also a growing risk that the loser in the final phase of the war might himself be carried away and take «desperate actions». The internal situation became more difficult due to price rises and real wage losses, the growing reluctance to serve in the army, and the «holiday mood» as criticised by the Federal Council, i.e., the dangerous assumption that the war was already over. The approaching of the end of the war was not so much a relief as a presage of confrontation with new problems, internal as well as international.

#### **Future prospects and the transition into the post-war period**

On 8 May 1945, the unconditional surrender of the power responsible for the war was celebrated in Europe, and Switzerland joined in the celebration as well.<sup>121</sup> The end of the war in Europe was a doubly pivotal milestone signifying the fall of the criminal Nazi regime and the halting of the machinery of destruction. After two atomic bombs had been dropped on Hiroshima and Nagasaki on 6 and 9 August 1945 respectively, Japan too surrendered on 2 September 1945, marking the definitive end of the Second World War.

The conditions created by the war outlasted the formal end of the war. The flow of goods, already precarious, came to a standstill, while a tide of people flooded a continent which was in complete chaos. Both these situations had a direct effect on Switzerland. The situation regarding supplies and provisions temporarily became even more difficult and at the same time around 50,000 Swiss citizens returning home from abroad had to be absorbed and cared for.

The victorious powers were in agreement that an improved system of collective security be established after the war. The USA endowed the war – which it had accepted only reluctantly and whose entry was initially not motivated by ethical concerns – with a missionary significance as a crusade for a new world order and, hopefully, the last «war against war», using this chiefly as an argument for domestic political justification just as it had done in 1917. The USA also ensured that concrete steps were taken in this direction and created the foundations for the United Nations in the spring of 1945 by organising various international conferences. As early as May 1943, the Hot Springs Conference in Virginia resolved to create the Food and Agriculture Organisation (FAO) in order to implement the «freedom from hunger» provision stipulated in the Atlantic Charter. In November 1943, the United Nations Relief and Rehabilitation Administration (UNRRA) was founded in Washington to reconstruct the regions occupied by the enemy, and in April 1944 the International Labour Organisation (ILO) was reactivated in Philadelphia. The structure of the UN was consolidated at the Dumbarton Oaks Conference in Washington and there were parallel preparations for the creation of a new international currency framework. A new currency system based on gold and the dollar came into existence at the Bretton Woods Conference in July 1944. The International Monetary Fund (IMF) and the World Bank, the International Bank for Reconstruction and Development (IBRD), were founded in order to ensure free world trade, freely convertible currencies, and objectives regarding development aid policy. Switzerland had no part in any of the newly founded organisations. However, the new international framework was beset by severe tensions as soon as it had been established. The fact that the UN has been able to survive for so long despite the opposing objectives of the principal founding powers may be explained by the aims of both sides to use the international organisation to secure their own areas of power and influence. In the years following 1945, two antagonistic camps – or blocs – were formed displaying antagonistic social and political views. The label of the «Cold War» soon became the accepted term to describe the hardening confrontation at the end of the 1940s. Whilst the end of the war represented a complete change for the formerly occupied countries, Switzerland experienced great continuity in the post-war years. During the course of the Cold War, after a short phase of internal reckoning with the pro-German elements, Swiss anti-totalitarianism was soon directed in a rather totalitarian way against the Communist Movement which had found fairly broad support in the country for a time between 1944 and 1947. On the other hand, there was no desire at all to take a self-critical look back at the positions and activities of the broad middle ground and economic players. In the West, too, the Cold War strengthened the tendency towards internal political

discipline, excluding the radical Left and various types of dissidents. In turn, this fostered the willingness not to discuss the unpleasant issues of the recent past. The seamless transition of Switzerland from the war years to the post-war years may be seen most clearly by considering certain individuals. This clearly applies to the important decision-makers of the private economic sector who were much less affected by the political vicissitudes. It was, however, also true for the leading political figures, such as the Federal Councillors Philipp Etter and Eduard von Steiger, the former in office from 1934 to 1959 and supporter of the reorganisation of the Swiss Confederation in the sense of an «authoritarian democracy» in 1940, and the latter in office from 1941 to 1951 and main proponent of the restrictive policy on refugees. The resignation of Federal Councillor Marcel Pilet-Golaz in December 1944, who had been responsible for foreign policy since 1940, was an exception. In addition, Hans Frölicher, who represented Switzerland in Berlin between 1938 and 1945 and who did not fit into the new era due to his accommodating policies vis-à-vis the Nazi regime – policies endorsed by a majority in Bern – also experienced a premature end to his career at the end of the war.<sup>122</sup> Remarkable continuity can be seen, however, on the level of leading civil servants. Heinrich Rothmund, who served in the Federal Police for Foreigners (*Eidgenössische Fremdenpolizei*) from 1919 and was a significant participant in fostering anti-Semitic policy against asylum seekers, reached the age of retirement and left office quite normally in 1955. Walter Stucki, the Swiss ambassador in Vichy, was not able to make as seamless a transition to representing Switzerland in Paris in 1944/45 as the Federal Council had imagined. Still, in 1946 he became chief negotiator for the negotiations in Washington regarding the Swiss purchases of Nazi gold and the assets of German nationals deposited in Switzerland. In 1952, he also chaired negotiations on the «Clearing-Billions» with the newly-founded Federal Republic of Germany.<sup>123</sup> The «strong men» responsible for Swiss foreign trade who not only guaranteed the supplies and provisions for Switzerland through their negotiating tactics but also pushed for Swiss integration in the German wartime economy, continued to remain in their important posts and some, like Jean Hotz and Heinrich Homberger, provided widely-read self-analyses and justifications for their work.<sup>124</sup> The management of the Swiss National Bank remained unchanged.

The fact that Switzerland developed in apparent continuity after the end of the war had much to do with the widespread impression that it had passed a historical test. This positive domestic impression contrasted strongly with the negative image of Switzerland held by the Allies from 1943 onwards, especially by the Americans. The reputation of neutrality was at a low point at the end of the war and there was harsh criticism from the victorious powers.

Walter Stucki declared before the National Council's Foreign Affairs Committee

on 7 March 1945: «after the ‹Russian bomb› of November 1944, the ‹American bomb› exploded on 4 January 1945. The American press has accused us of supporting their deadly enemy and acting as a fence by receiving looted goods from important Germans. Switzerland is being accused of being a country which is not only non-neutral, but pro-German.» This propaganda was said to have been «joyfully» accepted by the Russians, and the accusations also met with some response in South America, and the Middle and Far East. «A perhaps unprecedented isolation was threatening our country. It was clear that we had to take action in this situation.»<sup>125</sup> The so-called Currie Negotiations between an Allied and a Swiss delegation, which took place in Bern between 12 February and 8 March 1945, began with a hard confrontation of conflicting views. In his opening speech, Walter Stucki, the leader of the Swiss delegation, portrayed a Switzerland which had protected itself throughout the «terrible war» courageously as a democracy and irreproachably as a state under rule of law.<sup>126</sup> Laughlin Currie's response, however, gave a completely different impression. He made the point that the Allies could not permit the financial operations of the Axis powers to thwart the objectives of a costly war and wreck the hopes for future peace and security. «Our enemies have chosen Switzerland as a country through which to conduct their financial operations not only because of its geographical position, but also because of certain Swiss banking laws and practices which are designed to permit persons wishing to do so to hide their identity and to operate in secrecy (...)»<sup>127</sup> Currie finally expressed the demand of the three Western Allied Powers that the fulfilment of the demands of Resolution VI of the Bretton Woods Conference of July 1944 should be «conditio sine qua non of the trade agreement under discussion». In view of the inflexible stance of the Currie delegation, Switzerland was left with no alternative but to give way. On 5 March, the American ambassador in Bern reported that the Swiss delegation had today «capitulated» after three weeks of dogged resistance.<sup>128</sup> The Federal Council then caused German assets to be frozen in Switzerland, the transit of goods and foreign trade with Germany to be significantly reduced, and gold purchases to be ceased. Walter Stucki described the objectives of these concessions as follows: «there is too great a danger of being too late. [...] We must be concerned with opening the door to the West today. [...] We must seek to join up with the Allied powers. This issue is the heart of the problem.»<sup>129</sup> However, from a Swiss point of view, the situation remained extremely tense. In a report by the Federal Political Department (FPD) of 23 March 1945 on the Currie Negotiations, the following statement was made about the programme of the Allies: «This programme pursues aims which are, without doubt, incompatible with our neutrality. This is actually a plan of economic warfare.»<sup>130</sup>

After the war ended the Swiss often advanced the argument that Switzerland

was a small and neutral country which had endeavoured not to be diverted from tried and tested norms and had defended itself against attacks on its national sovereignty. The Allies, however, in particular the Americans, were unwavering in their demands for restitution, and met with a lack of understanding on the part of the Swiss. When the USA, Great Britain, and France insisted on Switzerland making reparation payments for the looted gold purchased from the Germans and lifting the bank secrecy laws for all German assets, there was no alternative but to send a Swiss delegation to Washington in March 1946. Swiss Minister Walter Stucki who headed the delegation, stated at the preparatory meeting in Bern that «his blood had boiled» when reading the notes of the Allies: «We are basically being treated as a conquered and occupied country. I can imagine much the same tone being used in a communication from the Allies to a German authority.»<sup>131</sup> In his opening speech in Washington, Stucki went so far as to compare the American «arsenal of democracy» to Hitler's Germany. Such criticism became harsher in the following years with the onset of the Cold War. This position was maintained in the report entitled «West-East Trade» by Alfred Schaefer, the director general of the Union Bank of Switzerland. He writes in his report on a meeting with the director of the Federal Finance Administration, Max Iklé of 12 June 1952: «The Federal Council is truly outraged at the behaviour of the Americans, whose position fails to take into account the Swiss situation and is worse than their view of the Germans during the war.»<sup>132</sup> The Swiss delegation in Washington 1946 lost out to this attitude and had to pay 250 million francs as reparation for the purchases of looted gold from Germany. From the Swiss perspective, this was seen not as restitution, but rather as a voluntary contribution to the reconstruction of a Europe in ruins.

At a later stage, there was once again more range of action for Switzerland in foreign policy. Both the ostracism and self-isolation lessened significantly in 1947/48 with the increase in the East-West polarisation manifested in the Cold War: the «Western camp» was interested in good relations with Switzerland from every perspective, political, economic and military, and in turn Switzerland joined the Western economic community and community of values (*Wirtschafts- und Wertegemeinschaft*) along with the OEEC (today OECD) voluntarily, yet remained out of the UN and NATO.<sup>133</sup> The fast-growing antagonism between the victorious powers affected the attitude towards the conquered, and yesterday's enemy became today's ally. When a new discussion partner for the bilateral resolution of issues regarding assets from the war years was created in 1949 with the birth of the Federal Republic of Germany (FRG) at the same time as the Western defence alliance, Switzerland seized its opportunity. At the end of August 1952, it dissolved the Washington Agreement, which had become

significantly bogged down after 1946 in matters concerning German assets, by way of a bilateral agreement with the FRG. At that time, following the conclusion of the Nuremberg war trials from 1945–1950, the victorious powers were also much less interested in the crimes of the past.

## 2.5 The Crimes of National Socialism

The rule of National Socialism was not only based on the ambition to reign over a boundless geographical area; it was primarily founded on an inherent inhumanity which was justified ideologically and efficiently put into practice bureaucratically. The Jews were the first to experience this and in the most terrible way. The policy of destruction was also directed against other «categories» of people: against gypsies, the sick, and the disabled. Further groups also fell victim to systematic persecution: homosexuals, «asocial persons», groups of certain persuasions such as communists, dissident Catholics, Jehovah's Witnesses, as well as entire population groups, or «alien races» of certain states: Poles, Ukrainians, White Russians, Russians – in short, all those who could be brushed off as «Slavic».

The issue of how much was known at the time about the «Final Solution» and, in particular, how this knowledge was assessed, is an important issue for Switzerland, too, and is examined in more detail in the next chapter. There is no doubt that the systematic policy of destruction of the later years was not evident in the first anti-Semitic boycotts and laws of the spring of 1933. However, what did the introduction of the Nuremberg laws of 1935 mean? What did the rioting directed against the Jews in the «*Reichskristallnacht*» of 9 November 1938 signify? How serious was Hitler's 30 January 1939 threat before the *Reichstag*: «If the international Jewish financiers in and outside Europe should succeed in plunging the nations once more into a world war, then the result will not be the Bolshevisation of the earth, and thus the victory of Jewry, but the annihilation of the Jewish race in Europe». <sup>134</sup> The spirit of destruction increased with the conflict growing into a World War and with the military brutality of the eastern campaign in 1941/42 when the systematic extermination of the Jews commenced. These murders were preceded by the mass slaughter of disabled persons. The deportation of Jews, Roma and Sinti from the Reich to the East began in the late autumn of 1941, and on 20 January 1942 at the Wannsee Conference, Reinhard Heydrich co-ordinated the Extermination already in progress. Those deported were either kept prisoner in ghettos or camps, or murdered directly after their arrival. Deportations also commenced in Western Europe in 1942, and by the end of the war around six

million Jews and more than one hundred thousand Roma and Sinti had been killed.

At the time, most people saw the mass murder of the Jews starting in 1941 as a «normal» crime which was part and parcel of war, especially as it was characteristic of this war that there were considerably more civilian fatalities than military. By the second half of 1942, however, individual voices were heard alerting people to the fact that this was not «simply» killing, but total extermination and eradication. Thomas Mann stated in a radio broadcast on 27 September 1942 that the object was «the complete obliteration of European Jewry». <sup>135</sup> On 17 December 1942, the Soviet Union, Great Britain, the USA and the exiled governments of the occupied countries protested as «United Nations» in a joint declaration against the systematic extermination of the Jews. Why did the Allies not come to the aid of the concentration camp prisoners during the war? The literature talks about the practical difficulties which bombing the concentration camps would have had to overcome. The main reason, however, is that in the war being waged between states and armies there were other priorities.

<sup>1</sup> Very few sources are provided for the international sections in this introduction; however, section 2.2 on the situation in Switzerland refers in some paragraphs to existing important publications.

<sup>2</sup> Cf. for example Schweizerische Demokratie, 1948.

<sup>3</sup> During the war years, the census – which is carried out on a ten-year cycle – was held in 1941 instead of 1940.

<sup>4</sup> Stucki, Imperium, 1968; Höpflinger, Imperium, 1977.

<sup>5</sup> Guex, La Suisse, 1999.

<sup>6</sup> Société des Nations, Service d'Etudes économiques, Les Banques commerciales 1925–1933, Genève 1934, p. 230 (original French).

<sup>7</sup> Hug/Kloter, Bilateralismus 1999; Perrenoud, Banques, 1988.

<sup>8</sup> Hug/Kloter, Bilateralismus, 1999, p. 43.

<sup>9</sup> On the significance of the First World War for the development of the banks, see Guex, Politique, 1993.

<sup>10</sup> Baumann/Halbeisen, Internationalisierung, 2000; La crise des années 30/Die Krise der 30er Jahre, *traverse* 1997/1.

<sup>11</sup> Halbeisen, Bankenkrise, 1998, pp. 61–79.

<sup>12</sup> Hug, Steuerflucht, 2001.

<sup>13</sup> Kreis, Mythos, 1991.

<sup>14</sup> Jakob Tanner, Kollektives Gedächtnis und nationale Identität. Die Schweiz im europäischen Kontext, in: *NZZ*, 31 January 1998, p. 81.

<sup>15</sup> Cf. Thürer, Bundesverfassung 1998, pp. 163ff.

<sup>16</sup> For an introductory overview see Aubert, Exposé, 1978.

<sup>17</sup> On this point see Weldler-Steinberg, Geschichte, 1970, vol. 2, pp. 48–83.

- <sup>18</sup> There are no recent studies on Gottlieb Duttweiler and the National Ring of Independents; cf. Jenni, Duttweiler, 1978; Lüönd, Duttweiler, 2000.
- <sup>19</sup> Degen, Sozialdemokratie, 1993.
- <sup>20</sup> Dürr, Wandlungen, 1928.
- <sup>21</sup> Communication about the partial revision of the articles regarding the economy in the Federal Constitution (dated 10 September 1937), in: BBI 1937/II, p. 840.
- <sup>22</sup> Morandi, Entstehung, 1998, pp. 197–248.
- <sup>23</sup> Jaun, Preussen, 1999.
- <sup>24</sup> Lezzi, Sozialdemokratie, 1996.
- <sup>25</sup> Wegmüller, Brot, 1998, pp. 155 and 173ff.
- <sup>26</sup> Hans Wegmüller, Brot, 1998, p. 155 (original German); Tanner, Bundeshaushalt, 1986.
- <sup>27</sup> Hans Wegmüller, Brot, 1998, p. 177 (original German).
- <sup>28</sup> Bonjour, Neutralität, vol. III, 1967, p. 119.
- <sup>29</sup> On this point cf. Schindler, Gutachten, 2001 (Publications of the ICE); Thürer, Perspektive, 1998, pp. 121ff.; by the same author, Humanität, 1986, pp. 279ff.
- <sup>30</sup> Vaterland, 4 September 1943, No. 206, Das Land mit dem Samariter-Kreuz, quotation acc. to Kunz, Aufbruchsstimmung, 1998, p. 42 (original German).
- <sup>31</sup> cf. UEK, Flüchtlinge, 2001 (Publications of the ICE); chapter 3.
- <sup>32</sup> Stamm, Dienste, 1974; Report of the Foreign Affairs Division of the Federal Political Department for the period from September 1939 to the beginning of 1946. FA E 2001 (D) 11, vol. 1.
- <sup>33</sup> Still valid Gautschi, Landesstreik, 1968. And regarding the entire period between the two wars Ruffieux, La Suisse, 1974 is still worth reading.
- <sup>34</sup> Lasserre, La Suisse, 1989, pp. 314ff.; Kunz, Aufbruchsstimmung, 1998, p. 24; Degen, Abschied, 1991; by the same author, Gewerkschaften, 1998, pp. 127–143.
- <sup>35</sup> Ernst Steinmann, Spreu und Weizen, in: Politische Rundschau, August 1933, pp. 312ff. (original German).
- <sup>36</sup> On the Zurich «night of blood» of 15 June 1932 with 30 serious casualties and one fatality see Lindig, Entscheid, 1979, pp. 185ff. For a comparison with the events in Geneva Tackenberg/Wisler, Massaker, 1998; Studer, Parti, 1994.
- <sup>37</sup> Cf. Wolf, Faschismus, 1969; Glaus, Nationale Front, 1969.
- <sup>38</sup> Imhof, Leben, 1996.
- <sup>39</sup> Zeller, Sonderegger 1999, pp. 193, 217 and 243.
- <sup>40</sup> Etter, Erneuerung, 1933, p. 23.
- <sup>41</sup> Cf. Fleiner/Giacometti, Bundesstaatsrecht, 1949, pp. 775ff.; Hungerbühler, Bundesbeschluss, 1951.
- <sup>42</sup> Dickenmann, Bundespersonal, 1983.
- <sup>43</sup> The most recent studies on Fascism/Frontism after the first works from the time around 1970 (W. Wolf, B. Glaus, K.D. Zöberlein, R. Joseph) are: Stutz, Frontisten, 1997; Dosi, Cattolicesimo, 1999.
- <sup>44</sup> On the speech and its echoes Bucher, Bundesrat, 1993. pp. 536ff. For the political consequences of the fear of unemployment in summer 1940 see Gauye, Rütti, 1984.
- <sup>45</sup> Pilet-Golaz to Guisan, 1 July 1940, quotation acc. to Gauye, Général, 1978, p. 32 (original French).
- <sup>46</sup> Federal Councillor von Steiger in the refugee debate in the National Council of 22 September 1942, FA, E 1301 (-) 1960/51, vol. 352, minutes of the National Council, 21 to 30 September 1942, pp. 48–59, here pp. 54f.; Butikofer, Refus, 1996.

- <sup>47</sup> Valentin Gitermann SP-National Councillor from March 1944 to June 1965, predicted that «British-American rivalry over the division of the world market» would flare up after the end of the war and that the Allies would jointly «strive to seize the world trade quotas of the conquered enemies and so gain sufficient room for their own commercial expansion.» Gitermann, Krieg, 1944, p. 46.
- <sup>48</sup> Gast, Kontrolle, 1996.
- <sup>49</sup> On the anti-Semitic orientation of rejection of foreigners cf. Picard, Schweiz, 1994.
- <sup>50</sup> See Kamis-Müller, Antisemitismus, 1990; Gast, Kontrolle, 1997; Mächler, Kampf, 1998; Kury, Ostjudenmigration, 1998.
- <sup>51</sup> See Perrenoud, Problèmes, 1990, pp. 82f.; on the naturalisation process: Kreis/Kury, Einbürgerungsnormen, 1996.
- <sup>52</sup> See Droz, Antisémitisme, 1999, pp. 353–367, 373ff.
- <sup>53</sup> Eichengreen, Goldstandard, 2000, p. 12.
- <sup>54</sup> Stadler, Diskussion, 1969, pp. 75–169.
- <sup>55</sup> Tanner, Goldparität, 2000.
- <sup>56</sup> The example of the national conservative «Ligue vaudoise» shows the difficulty of situating the sometimes overlapping positions; cf. Butikofer, Refus, 1996; on the forming of new interest groups outside the existing parties see also Werner, Wirtschaft, 2000.
- <sup>57</sup> Article in the Zurich *Tages-Anzeiger* of 14 November 1936 with the characteristic title «Front der Mitte?»; quotation acc. to Hettling/König/Schaffner/Suter/Tanner, Geschichte, 1998, p. 53 (original German).
- <sup>58</sup> Morandi, Krise, 1995.
- <sup>59</sup> Degen/Kübler, Gewerkschaften, 1998.
- <sup>60</sup> See Humbel, Friedensabkommen, 1987; Degen, Arbeitsfrieden, 1987.
- <sup>61</sup> For a new assessment of this phenomenon see in particular Mooser, «Geistige Landesverteidigung», 1997; Imhof, Leben, 1996.
- <sup>62</sup> Recent work on the stamps: Schwarzenbach, Portraits, 1999; regarding the books see the trilogy of Barbara Helbling, Verena Rutschmann and Doris Senn about the national idea in children's books: Helbling, Schweiz, 1994.
- <sup>63</sup> On this point see for example Aubert, Gutachten, 2001 (Publications of the ICE).
- <sup>64</sup> For explanations on the whole of German-speaking part of Switzerland see Binnenkade, Sturmzeit, 1999.
- <sup>65</sup> Philippe Chenaux assesses the inter-war years as the «Golden Age» of Swiss Catholicism. Cf. Chenaux, Schweiz, 1992.
- <sup>66</sup> Abbé Journets analyses of the Catholic hierarchy is interesting; see Boissard, Neutralité, 2000.
- <sup>67</sup> The «Oekumenische Kirchengeschichte der Schweiz» only talks of a strengthening of the ecumenical movement, see Kirchengeschichte, 1994, p. 277. It is notable that most of the publications, also about the position of the churches vis-à-vis the refugee issue, deal with the German-speaking part of Switzerland. Therefore the unpublished Master's thesis by Mariama Kaba (Geneva) is especially important: Kaba, Milieux, 1999; Dentan, Impossible, 2000.
- <sup>68</sup> Conzemius, Katholizismus, 2001.
- <sup>69</sup> Cf. Weil, Zeit, 1947; Altermatt, Katholizismus, 1999; Kocher, Menschlichkeit, 1996; Leisibach, Sünder, 1994; Picard, Schweiz, 1994; Ehrlich/Richter, Kirche, 1982.
- <sup>70</sup> Cf. Tanner, Bundeshaushalt, 1986.
- <sup>71</sup> Kreis, Parlamentarismus, 1991.
- <sup>72</sup> Wetter's diary, entry of 30 August 1939.

- <sup>73</sup> See Imhof/Ettinger/Boller, Flüchtlings- und Aussenwirtschaftspolitik, 2001 (Publications of the ICE).
- <sup>74</sup> At the end of the war he expanded this first comment by a further, stronger criticism; cf. Giacometti, Verfassungslage, 1942; by the same author, Vollmachtenregime, 1945.
- <sup>75</sup> Kreis, Zensur, 1973.
- <sup>76</sup> See Imhof/Ettinger/Boller, Flüchtlings- und Aussenwirtschaftspolitk, 2001 (Publications of the ICE), chapter 8, pp. 221ff.
- <sup>77</sup> Bucher emphasises this in particular, Bundesrat, 1993, pp. 520ff., 527.
- <sup>78</sup> Further information in: Altermatt, Bundesräte, 1991; see also Perrenoud, Diplomatie, 1996.
- <sup>79</sup> Böschenstein, Augen, 1978, p. 293. Böschenstein was editor at the Bundeshaus from 1939.
- <sup>80</sup> Bucher, Bundesrat, 1993, pp. 525ff., however states that Pilet-Golaz did not think much of the Pétain regime.
- <sup>81</sup> Speech at the Comptoir de Lausanne, 12 September 1940; cf. Bucher, Bundesrat, 1993, p. 525 (original French).
- <sup>82</sup> DDS, vol. 13, p. 919 (original French).
- <sup>83</sup> On this point see Imhof/Ettinger/Boller, Flüchtlings- und Aussenwirtschaftspolitk, 2001 (Publications of the ICE).
- <sup>84</sup> Mattioli, Demokratie, 1994.
- <sup>85</sup> Gauye, Rütti, 1984; cf. also Bourgeois, Geschäft, 2000, pp. 31 and 185.
- <sup>86</sup> Gautschi, Guisan, 1989, p. 45 (original French).
- <sup>87</sup> Quotation acc. to Senn, Erhaltung, vol. VI, 1991, p. 26 (original French).
- <sup>88</sup> Gautschi, Guisan, 1989, pp. 600–615.
- <sup>89</sup> Kreis, Guisan, 1990.
- <sup>90</sup> On the event but with a different interpretation see Waeger, Sündenböcke, 1971.
- <sup>91</sup> Lüthy, Disteln, 1973, p. 91 (original German).
- <sup>92</sup> Apart from the popular initiative regarding the election of the Federal Council by the people, these were the only initiatives submitted during the war. After the elections of autumn 1943 there were no initiatives until the end of the war. With regard to overviews of the era, these initiatives fall into the gap which existed between the work by Oswald Sigg (1978) about the time until 1939 and that of Hans Weder (1978) about the time from 1945 onwards.
- <sup>93</sup> Fleury, Suisse, 1995.
- <sup>94</sup> On the debate about the usefulness of the army see Kreis, Debatten, 1997, pp. 457ff. The army was called into question to the greatest extent in the course of the popular vote on the initiative to abolish the army in 1989 by Markus Heiniger, Heiniger, Gründe, 1989. The opposite position is represented in particular by Hans Senn, former Chief of General Staff and military historian: Die Rolle der Schweizer Armee im Zweiten Weltkrieg. Widerstandswille und Opferbereitschaft der Aktivdiestengeneration, in: NZZ, 25 April 1997. Der Reduit-Vorschlag eine Demutsgeste? Nachlese zu einer Debatte über die Rolle der Armee, in: NZZ, 22 August 1997. Senn, Armee, 1998. Das Schicksalsjahr 1940. Gründe für die Verschönerung der Schweiz vor einem deutschen Angriff, in: NZZ, 12 September 2000.
- <sup>95</sup> Urner, Schweiz, 1990; Wegmüller, Brot, 1998.
- <sup>96</sup> On the May alert see Vetsch, Aufmarsch, 1973; on the March alert Braunschweig, Draht, 1989, pp. 259ff.
- <sup>97</sup> The term «Fifth Column» originates from the Spanish Civil War and refers to enemy sympathisers within one's own ranks and agents smuggled in from the attacking side.

- 98 AfZ, NL Homberger, 4; Protocol of Homberger's paper at the 145th meeting of the Swiss Chamber of Commerce, 15 November 1940, p. 6; second quotation: AfZ, IB SHIV/Vorort, 1.5.3.11; Vorort protocol, 24 March 1941, p. 3 (original German).
- 99 Marcel, Kucher; Bruno S. Frey: Bedrohte Schweiz im Zweiten Weltkrieg? Eine ökonomische Analyse von Finanzmarktdaten, in: *NZZ*, 13/14 March 1999.
- 100 Wegmüller, Brot, 1998, p. 40.
- 101 Zimmermann, Schweiz, 1980.
- 102 The arrogant discourses of Trump, the German press attaché, in July 1940, are a most remarkable example for the division scenarios offered to Swiss contemporaries.
- 103 Tanner, Fabrikmahlzeit, 1999, pp. 383ff.
- 104 See Maurer, Anbauschlacht, 1985; on agricultural policy see also Baumann/Moser, Bauern, 1999.
- 105 Thus, for example, the Allied delegation headed by Laughlin Currie in February 1945, see Bonjour, Neutralität, vol. VI, 1970, p. 363.
- 106 Message of the Federal Council to the Federal Assembly concerning the organisation and the duties of Swiss cultural protection and publicity, BBI 1938/II, p. 999 (original German).
- 107 The most recent study emphasizes the attractiveness of the bond as an investment and its significance as a move away from the bourgeois deflationary policy. Cf. Degen, Plebisit, 2000.
- 108 Cäsar von Arx to August Kamber, 22 June 1940, quoted from von Arx, Briefwechsel, 1985, pp. 185ff. (original German).
- 109 Wegmüller, Brot, 1998, p. 177.
- 110 Stimme der Arbeit, no. 9 of 7 September 1939; quotation acc. to Eichenberger, Handelsbeziehungen, 1999, p. 55 (original German).
- 111 FA, E 1301 (-) 1960/51, vol. 342. Motion Weber 5 June 1940, meeting of the National Council 18 September 1940 (original German).
- 112 See Lasserre, Jahre, 1989, p. 140.
- 113 Wording in the German version in Bonjour, vol. VII, p. 160ff; in the original French version in Bonjour, vol. IV, pp. 117ff.
- 114 Gauye, Rütti, 1984.
- 115 Bonjour, vol. IV, 1970, p. 379 (original French). On the military threat in June 1940 see Urner, Schweiz, 1990.
- 116 FA, E 1050.1 (-) 1995/489, vol. 1, Emergency Plenary Powers Committee of the National Council, 11 September 1940 (original French).
- 117 FA, E 1050.1 (-) 1995/489, vol. 1, Emergency Plenary Powers Committee of the National Council, 26/27 June 1940 (original German).
- 118 Vogler, Wirtschaftsverhandlungen, 1997.
- 119 FA, E 1050.1 (-) 1995/489, vol. 3, Emergency Plenary Powers Committee of the National Council, 16/17 September 1942 (original German).
- 120 Lasserre, Schweiz, 1989, pp. 224, 281.
- 121 Gysling/König/Ganz, 1945, 1995; Bundesarchiv, Elan, 1995 (Dossier 1); Chiquet/Meyer/Vonarb, Krieg, 1995.
- 122 Widmer, Gesandtschaft, 1997. There is controversy as to whether Fröhlicher has unreasonably become a scapegoat for the official policies of Switzerland.
- 123 Castelmur, Finanzbeziehungen, 1997.
- 124 Homberger, Handelspolitik, 1970; Hotz, Handelsabteilung, 1950.
- 125 Minutes of the of the National Council's Foreign Affairs Committee, meeting of 7 March 1945, in: DDS, vol. 15, p. 976 (original German).

- <sup>126</sup> Stucki's speech on 12 February 1945, quoted acc. to Jost, *Politik*, 1998, p. 154.
- <sup>127</sup> The speech is reproduced in the report of the Political Departement on the financial negotiations with an allied delegation, in: DDS, vol. 15, pp. 1015ff.
- <sup>128</sup> Leyland Garrison to the Secretary of State, in: FRUS, 1945, vol. V, p. 782.
- <sup>129</sup> Minutes of the 7 March 1945 meeting of the National Council's Foreign Affairs Committee, in: DDS, vol. 15, p. 981 (original German).
- <sup>130</sup> Minutes of the 7 March 1945 meeting of the National Council's Foreign Affairs Committee, in: DDS, vol. 15, p. 1028 (original French).
- <sup>131</sup> FA, E 2801 (-) 1968/4, vol. 129 (original German); see also Durrer, *Finanzbeziehungen*, 1984.
- <sup>132</sup> Report by Alfred Schaefer, 12 June 1952; UBS Archives, SBG Fund 1200000 2747.
- <sup>133</sup> Mantovani, *Sicherheitspolitik*, 1999.
- <sup>134</sup> Domarus, Hitler, 1973, vol. 3, p. 1058.
- <sup>135</sup> Quote of 27 September 1942; Mann, *Welt*, 1986, p. 543.



### **3      Refugees and Swiss Policy on Refugees**

During the twelve years of the National Socialist government in Germany tens of thousands of people sought refuge in Switzerland. Among them were people that the regime persecuted for political, religious and racist reasons, as well as soldiers from countries involved in the war, plus civilians from the areas along Switzerland's borders who fled from the war, and loyal Nazi followers who came to Switzerland shortly before the war ended. All these people were «refugees» in the broadest sense. Swiss policy on refugees focused, however, on those that had been persecuted by the Nazi regime. It was thus a reaction to the challenges that the persecution of the political opposition, Jews and other population groups by neighbouring Germany, presented for all democratic countries. On the basis of the ICE's report on Switzerland and refugees during Nazi rule,<sup>1</sup> which was first published in December 1999 and reprinted in a revised version at the end of 2001, and taking into account the information gained from the latest research into the issue, this chapter endeavours to answer the following questions: What type of unprotected people sought refuge in Switzerland between 1933 and 1945? when and for what reasons? How many civilian refugees did Switzerland accept or reject during the Second World War (3.1)? What did the Swiss authorities know about the persecution and extermination of Jews and what were the motives behind their actions (3.2)? Who were the principal players, who decided on the policy adopted with regard to refugees and who was responsible (3.3)? Who bore the cost of accommodating and feeding the refugees (3.4)? How did the refugees get to Switzerland and how were they treated when they arrived (3.5)? What role did Switzerland play with regard to ransom demands and attempted blackmail (3.6)? And finally, how does Swiss policy concerning refugees at that time compare with the policy adopted by other counties (3.7)?

#### **3.1    Chronology**

On 22 September 1942, two men and a woman from Savoy managed to cross the border into Switzerland illegally. They were picked up by a border guard after nightfall. The following day, the two men, who did not have valid entry

papers, had to go back to France. The woman, Elisabeth S., who was stateless but had an entry visa, was allowed to stay. Three days later one of the men, Julius K., also a stateless person, tried to enter Switzerland illegally again, in the vicinity of Martigny. This time he was allowed to stay. There is no further information concerning the third refugee.<sup>2</sup>

Before Elisabeth S. and Julius K., both Jewish, sought refuge in Switzerland in autumn 1942, they had lived for several years in exile. In summer 1938, a few months after Germany had annexed her Austrian homeland, Elisabeth S. settled in Paris. Two years later she was forced to flee from the approaching German army. For a while this doctor of law lived in relative safety in the unoccupied part of France. She worked as a maid and took the necessary steps to emigrate overseas. Her plans fell through, however, when the USA joined the war in 1941. Julius K. had fled from Poland to Switzerland in 1936. When the canton of Zurich refused a residence permit to this Jewish communist, he also moved to France. Thus in autumn 1942 these two refugees were risking life and limb by staying in France. Elisabeth S. was interned and awaiting deportation to an extermination camp. Her only hope was an entry visa issued by a country outside the Nazi-controlled area. Thanks to the intervention of Johannes Huber, a National Councillor from St. Gallen, Elisabeth S. was issued an entry permit for Switzerland.<sup>3</sup> She was thus allowed to leave the detention camp and could be sure that she would not be turned back at the Swiss border. Like most refugees, however, her two companions had no visa. When they were stopped at the Swiss border they were totally dependent on the decision of the Swiss authorities. They had to reckon with the possibility of being refused and sent back, which would have meant imprisonment, deportation and death.

It is clear that between 1933 and 1942 there was a fundamental change in the importance of Switzerland for people who were persecuted by the Nazis. While in the 1930s it was one of many countries where persecuted people could find refuge, in 1942 it was almost the only hope for the refugees who reached the border. The aim of the following chronological overview is therefore to combine information concerning the number and types of refugees and the main turning points of Swiss policy on refugees, with a description of the radicalisation of Nazi persecution and the refugee movements caused by the war.

#### **Civilian refugees between 1933 and 1937**

A large number of people left Germany immediately after the National Socialists took power in January 1933. The two largest groups were, on the one hand, politically persecuted communists and social democrats; and on the other, Jews who were under threat of anti-Semitic violence, boycotts and legalised

discrimination. In spring 1933, the Swiss Federal authorities passed a law, which was to remain in force until 1944, distinguishing between political and other refugees. Political refugees were those who were under personal threat owing to their political activities. The Federal authorities were extremely reticent to recognise political refugees; communists in particular were not welcome. According to an instruction issued by the Federal Department of Justice and Police (*Eidgenössisches Justiz- und Polizeidepartement*, EJPD) only «high state officials, leaders of left-wing parties and well-known authors» should be accepted as political refugees. On the basis of this restrictive interpretation of the term «refugee», Switzerland granted political asylum to only 644 people between 1933 and 1945, of these, 252 cases were admitted during the war. The Federal Council had the final decision on granting political asylum; political refugees were the responsibility of the Federal Prosecutor's Office (*Bundesanwaltschaft*), which was part of the EJPD.<sup>4</sup>

All other refugees were considered simply as foreigners from a legal point of view and were subject to the stipulations of the Federal Law on Residence and Settlement of Foreigners of 26 March 1931, which came into force in 1934. From an administrative point of view, they were the responsibility of the cantonal police, which issued so-called tolerance permits (valid for a few months only), residence permits and settlement permits. The Police Division of the EJPD co-ordinated cantonal policy regarding foreigners; as the highest authority, the Police Division had to approve the issuing of work permits and longer-term residence permits in particular. In addition the Division could lodge an objection to cantonal decisions. Between 1933 and 1938, however, the cantons still enjoyed a good deal of freedom in the way they implemented their policy with regard to refugees. Some cantons adopted a very restrictive policy while others freely issued tolerance permits. The latter were granted on the condition that the recipient did not engage in gainful employment and left Switzerland as soon as possible.<sup>5</sup> Switzerland saw itself as a transit state, a halfway station for refugees where they would organise their emigration to other countries such as France, the Netherlands or the USA. In view of the restrictive policy adopted by Switzerland after the end of the First World War, it was hardly worth considering as a place of permanent residence. In his manual for emigrants published in 1935, the Jewish sociologist Mark Wischnitzer wrote «The ban on employing foreigners is implemented to the letter in Switzerland». He also mentioned the authorities' fight against «over-foreignisation» (*«Überfremdung»*), which had negative repercussions in particular for Jewish emigrants.<sup>6</sup> Accordingly, at the end of 1937 there were only around 5,000 refugees in Switzerland.<sup>7</sup>

### **Increased persecution of Jews and introduction of the «J»-stamp for passports in 1938**

With the intensification of anti-Jewish measures in Germany after 1937, the annexation of Austria in March 1938, the pogroms in November 1938, and the subsequent complete exclusion of Jews from the German economy the situation became considerably more tense. Between the annexation and the outbreak of the war in September 1939, over 100,000 Jews emigrated from Austria alone, of whom an estimated 5,500 to 6,500 came to Switzerland for a longer or shorter period. The total number of refugees in Switzerland thus rose to between 10,000 and 12,000 in 1938/39.<sup>8</sup> The attempt made by the international community to agree on a common policy on the question of refugees at the Evian Conference in July 1938 failed.<sup>9</sup> On the contrary, numerous countries imposed further restrictions on admission. The Swiss Federal Council strengthened border protection and adopted a series of administrative measures: on 28 March 1938, it made it compulsory for all holders of Austrian passports to have a visa; on 18 August 1938, it decided to refuse entry to all refugees without a visa; and from 4 October 1938 on, German «non-Aryans» were also obliged to obtain a visa.

As early as April 1938, Switzerland held discussions with Germany in order to set up measures that would enable the border authorities to distinguish between Jewish and non-Jewish German citizens. When the Federal Council was weighing the idea of making it compulsory for all German citizens to obtain a visa, the German authorities feared that this would signal detrimental consequences for foreign affairs and that other countries would introduce similar measures. For this reason, they agreed to identify the passports of German Jews with a «J». Contrary to the Federal Council and the Swiss Embassy in Berlin, Heinrich Rothmund, the Head of the Police Division at the EJPD, ultimately came out in favour of making visas compulsory for all Germans in order to be able to exert more efficient control over all German emigrants. Furthermore, he recognised the discriminatory and legally dubious character of the Germano-Swiss agreement. It was quite possible that such discrimination would be extended to Swiss Jews, since the bilateral agreement gave the Third Reich the right to demand that Swiss passports be similarly marked. With regard to Rothmund's doubts, Federal Councillor Giuseppe Motta said:

«The Federal Council unanimously approved the agreement with Germany. It also approved (unanimously too) the press release. Mr. Rothmund can therefore put aside the little scruples that are bothering him».<sup>10</sup>

The measures agreed in August 1938 to turn back unwanted immigrants were implemented ruthlessly; despite their awareness of the risk refugees ran, the authorities often turned them over directly to the German police. It even happened that border guards struck refugees with the butts of their rifles to bar them from crossing the border.<sup>11</sup> Nevertheless, several thousand Austrian Jews found refuge in Switzerland, in many cases owing to the efforts of Paul Grüninger, a police captain of St. Gallen, who until the beginning of 1939 allowed hundreds of people to enter the country illegally. He was dismissed in spring 1939, and at the end of 1940 was found guilty by the St. Gallen district court of violating his official powers and falsifying documents. It was not until 1993, long after his death, that he was politically rehabilitated after the cantonal government had refused several applications from the 1960s on; two years later he was also legally rehabilitated by the St. Gallen district court.<sup>12</sup> There were also Swiss consular officials in Italy and Austria who generously issued entry visas to Austrian refugees, for which they were reprimanded by the government.<sup>13</sup> Ernst Prodolliet, for example, a consular employee in Bregenz, was told during his disciplinary hearing that «Our consulate's job is not to ensure the well-being of Jews».<sup>14</sup>

#### **Outbreak of the war: returning emigrants, emigrants, military refugees**

The outbreak of the Second World War in September 1939 changed the political context fundamentally. Firstly, the war made it difficult for refugees present in Switzerland at the time to emigrate to a third country. Secondly, apart from those persecuted under the German dictatorship, the subsequent years brought tens of thousands of refugees as a consequence of the war to Switzerland. The first wave of arrivals in September 1939 was made up of over 15,000 Swiss people from abroad who came back to their home country and needed work and accommodation; between then and May 1945, another 41,000 Swiss joined them in returning home.<sup>15</sup>

The outbreak of the war drastically restricted the possibility of moving on for refugees who were already in Switzerland. Nevertheless, during the first two years of the war a few hundred people managed to emigrate to a third country; but between 1942 and 1944 it was practically impossible to leave Switzerland. The Federal Council reacted to the outbreak of the war and the obvious failure of the concept of Switzerland as a transit country with a decree passed on 17 October 1939 which defined the legal status of emigrants: emigrants were obliged to leave the country as quickly as possible; they were forbidden to engage in political activities, in activities which breached Switzerland's neutral status, and in gainful employment – under threat of deportation. Furthermore, this decree, which was backed up by the authority of the Federal Council,

created a legal basis for the practice, introduced in 1940, of interning emigrants in civilian work camps and demanding a financial contribution from the wealthier ones in favour of refugee relief organisations.<sup>16</sup> In principle, both the setting up of the work camps and the levying of financial contributions from emigrants were welcomed by the aid organisations, although they did not always approve of the way in which this policy was implemented. These contributions represented financial relief for the organisations which had been supporting the refugees since 1933 and which had reached the limits of their financial capacity by the end of 1938. The aim of the work camps was to occupy the immigrants, who were forbidden to take up gainful employment, for the benefit of the country; at the same time, internment was a means of control and discipline. At the outbreak of the war there were between 7,000 and 8,000 immigrants in Switzerland, including around 5,000 Jews; during the war the country hosted a total of 9,909 immigrants, i.e., between September 1939 and May 1945 an estimated 2,000 refugees were allowed to enter the country and issued a tolerance permit.<sup>17</sup> In addition, between the outbreak of the war and the end of 1941, over 200 refugees who had entered Switzerland illegally and whom the authorities considered it untimely to deport, were interned on the basis of the law on foreigners.<sup>18</sup> Thus in contrast to 1938 and the period after 1942, the first two years of the war saw relatively few civilian refugees entering Switzerland. At the same time there is documentary evidence that during the same period over 1,200 people were refused entry, of whom 900 tried to get into Switzerland in June 1940, mainly along the border with France.<sup>19</sup>

Meanwhile in June 1940, shortly before the fall of France, 42,600 soldiers – mainly French and Polish – were allowed in and during the few days before the cease-fire Switzerland hosted around 7,500 French civilians from along its borders, including a large number of children. Further waves of foreign military personnel were allowed into Switzerland in autumn 1943, when over 21,300 Italians crossed the border, and during the last few months of the war.<sup>20</sup> During the whole period of the war a total of 104,000 military refugees were accepted into Switzerland; the French soldiers returned to France as early as January 1941 while the Poles and military refugees from many other countries mostly stayed on in Switzerland until the war was over. Military personnel were treated according to the Hague Agreement of 1907 on the Rights and Duties of Neutral Powers in Wartime, i.e., most of them were interned in camps and became the responsibility of the Commission for Internment and Hospitalisation, which had been set up in June 1940 as part of the Federal Military Department. These military refugees included hospitalised soldiers, deserters, conscientious objectors and escaped prisoners of war. All deserters were allowed in and interned. The large number of young men who fled Italy in the second part of

the war in order to avoid military service were interned as military personnel. Escaped prisoners of war presented a special problem: according to the terms of the Hague Agreement a neutral country could take them in but was not obliged to do so. Switzerland left itself this room for discretion. Up until 1942, French prisoners of war who escaped from Germany to Switzerland were able to get back into the unoccupied part of France. Otherwise, the Federal Department of Justice and Police urged the authorities to exercise extreme reticence and «not to allow in undesirable elements (Jews, political extremists and those suspected of being spies)».<sup>21</sup> In practice it was extremely difficult to distinguish between military and civilian refugees, mainly in the case of groups of forced labourers from southern Germany which included both soldiers and civilians. Up until 1944, it was principally Polish and Soviet forced labourers that were regularly refused entry into Switzerland, a fact which often had dire consequences for them.<sup>22</sup>

#### **Interned Polish military personnel and the «concentration camp»**

##### **at Büren an der Aare<sup>23</sup>**

In June 1940, the 45<sup>th</sup> French Army Corps fled to Switzerland. After the Federal Council gave its approval, 42,600 soldiers entered the country across its western border. Apart from 29,000 French soldiers, the Corps included a division of 12,000 Poles, a Moroccan cavalry regiment (called Spahis) of 800 men, and several hundred Belgians and Englishmen. The Poles were met with great sympathy by the Swiss population – not only on account of the unexpectedly «proud» and «disciplined» impression they gave but also because, after the military defeat of their own country, they had volunteered to join the French army to defend their fatherland.

At first the Poles were billeted in various parts of the country, some with private families. In July 1940, however, the Head of General Staff decided to set up a detention camp at Büren an der Aare for 6,000 Polish refugees. This decision was taken in view of the fact that, in contrast to the French soldiers, the Poles could not be sent back to France and that, after the destruction of the Polish state by Germany and the Soviet Union, Switzerland could not count on ever receiving reparations for the cost of interning the Polish soldiers. The plan was therefore to provide suitable accommodation for winter conditions and to reduce the cost by concentrating the soldiers in one camp.

During the planning stages, the army referred to the camp as a «concentration camp». At this time, when extermination camps had not yet come into existence, the authorities considered this facility as a prison or work camp. In Switzerland, there was no precedent for such a camp, whose aim was

to supervise the internees, to meet their basic needs and to limit contact with the local population, as well as to provide cheap accommodation. The term «concentration» camp was soon replaced by «Polish», «detention» or «mass» camp, implying a desire to get away from the original, controversial term. Once the camp was finished, not only the inhabitants of Büren an der Aare but the Swiss government too were visibly proud of the efficiency with which it had been set up and the way in which the whole problem had been solved. Many of the internees had no work and were forced to sit around idly. They were also forbidden to have any contact with the local population as well as to marry Swiss women. After the enthusiastic welcome they had received from the Swiss population, this «prison» was a bitter pill for the Poles. The rumour quickly spread that the Swiss authorities were acting under pressure from the German authorities, which indicates the resentment felt by the Poles at being interned in a «concentration camp». The camp authorities dealt with the growing dissatisfaction by trying to increase discipline. At the end of December 1940, there were angry riots and the guards fired on the Polish soldiers, wounding some of them.

At the end of January 1941 army headquarters issued a ruling allowing the internees to work. This eased the situation insofar as they were not forced to sit around idly any longer. Under the intensive food production plan passed in November 1940, most of the Poles were put to work in the fields. In spring 1941, the Swiss authorities realised that the camp had been a mistake. With a maximum capacity of 3,500 internees it was overcrowded and, after March 1941, no more Poles were interned there. Many residents were then sent from Büren an der Aare to other cantons where they were employed in manufacturing, road construction, forestry, etc. In addition, some internees – in March 1945 around 500 – were allowed to enrol at universities. In March 1942, the facility ceased to be a military detention camp, although it was subsequently used to house Jewish refugees and later escaped Soviet convicts.

#### **Nazi extermination policy and closed borders in August 1942**

While anti-Jewish measures were intensified as early as 1938 in Germany and after 1940 in the territories it occupied, once the German army invaded the Soviet Union in summer 1941 the Nazi persecution of Jews developed into systematic extermination. In the occupied parts of the Soviet Union German troops, aided by Soviet volunteers, carried out mass murders of Jews and communists. October 1941 saw the start of the systematic deportation of Jews as well as Roma and Sinti from the territory of the Reich; at the same time Jews were forbidden to emigrate. In November 1941, any German Jews that were outside the country were deprived of their German citizenship and their assets

confiscated. The first mass murder using poison gas occurred in December in Chelmno; in January 1942, the «final solution to the Jewish question» was drawn up at the Wannsee Conference in Berlin. It was at the end of March 1942 that the first Jews were deported from France to Poland and at the beginning of July the French and German authorities agreed to deport all non-French Jews. In the following weeks there were round-ups all over France, and Jews from Western Europe as well as most of the other occupied countries were deported to extermination camps during the following months. The Jews in Western Europe were left with only two channels of escape: either via Spain to another continent, or to Switzerland.

The number of refugees who tried to enter Switzerland increased after spring 1942: in April of that year 55 people got across the border illegally and were detained by the police, by July the number had risen to 243. Since April 1942, a total of around 450 refugees had entered the country illegally, and Robert Jezler, Rothmund's deputy, noted in his report of 30 July 1942 that:

«The consistent and reliable reports about how the deportations are being carried out and the conditions in the Jewish quarters in the east are so awful that one cannot help but understand the desperate attempts made by the refugees to escape from such a fate. Refusing them entry is no longer an option».<sup>24</sup>

Nevertheless, he also emphasised that, under the present conditions of war when Switzerland too had to fight for its existence in a certain sense, one could not afford to be «squeamish» and recommended that the authorities exercised «extreme reticence» in accepting refugees in the future.<sup>25</sup> Rothmund sent the report to Federal Councillor Eduard von Steiger the same day and, in an accompanying letter, asked his superior, «What should we do?» Deserters, escaped prisoners of war – insofar as they could continue to a third country – and political refugees under the terms of the Federal Council's Decree of 1933 would be allowed to enter Switzerland. «This decision has become almost farcical today because every refugee is in danger of losing his life simply because he has fled. [...] Refuse only Jews? It looks as if that will have to be the answer». Rothmund wrote that contrary to the Federal Council's Decree of 17 October 1939, the Police Division had «been turning hardly any refugees back for some time now. Without asking you. I'm not afraid of taking responsibility for that. The Federal Council is hardly going to repudiate this practice once it read Dr. Jezler's report». He then went on to suggest that small mobile surveillance units be set up and deployed for a few days at a time at the various busier border crossing points to refuse all refugees entry. The aim was to

discourage refugee smugglers and thus to reduce the stream of refugees «to an acceptable number». Entry into Switzerland would continue to be allowed, however, at those crossing points where there was no additional surveillance. The contradictory character of this document illustrates the alarm and confusion of a senior official who asked his superior to «give him an appointment tomorrow evening or Saturday morning to discuss the matter».<sup>26</sup> We do not know whether the two men did meet to discuss the problem and, if they did, what Federal Councillor von Steiger said. On 4 August 1942, Rothmund drew up a presidential order which von Steiger and Philipp Etter, the Federal President, approved and which was only passed by the Federal Council in plenum retrospectively since it did not meet between 29 July and 14 August 1942. This order closed with the remark that «in the future more foreign civilian refugees must therefore be refused entry, even if this might result in serious consequences for them (threat to life and limb)».<sup>27</sup>

The circular letter dated 13 August 1942 and sent by the Police Division to civil and military authorities laid down the measures to be taken. It stated that the influx of refugees and «in particular of Jews of all nationalities» was reaching a level similar to that of the exodus of Jews in 1938. In view of the country's limited supply of food, of the need for internal and external security and of the impossible task of housing and supervising so many refugees, as well as finding them a third country to which they could emigrate, it was necessary to refuse them entry: «Refugees who have fled purely on racial grounds, e.g., Jews, cannot be considered political refugees». Such people should be refused entry without exception. The first time they tried to enter Switzerland they should be simply sent back across the border; if they tried again they should be handed over to the relevant authorities on the other side. In practice, stateless refugees were subject to these regulations without the possibility of recourse, while the authorities were prepared to show more consideration towards refugees from countries such as Belgium and the Netherlands, whose exiled governments took steps to help their citizens. Deserters, escaped prisoners of war and other military personnel, political refugees in the strict sense of the word and so-called hardship cases – old people, the sick, children and pregnant women – should not be refused entry.<sup>28</sup> Against their better judgement, the authorities thus kept to the strict definition of a political refugee. While Rothmund likened the situation to a farce, a note in the unofficial minutes of the Police Directors' Conference held on 28 August 1942, records von Steiger's remarks: «Political refugees. Theory is no good. Jews are also in a way political refugees».<sup>29</sup>

### **Admission and refusal of civilian refugees between 1942 and 1945**

There were two main reasons why, despite the order of 13 August 1942 and except for admission in hardship cases, several thousand refugees were allowed to enter Switzerland and were sent to detention camps over the following few months. Firstly, it was not possible to control the borders to the extent planned. Those who had reached the border zone, defined in December 1942 as a 10 to 12 km broad strip of land, by their own means or with the support of refugee helpers and reached interior Switzerland were normally not deported since the local population repeatedly protested against such deportation. Secondly, the closing of the borders in late summer 1942 led to a nation-wide public protest as well as direct intervention with the authorities by both the Swiss Federation of Jewish Communities and various well-known personalities. The protest resulted in the official measures being relaxed in practice. Once the public outcry had died down, control was once again tightened and surveillance along the Swiss borders was intensified. This can also be seen in the corresponding statistics: between 1 September and 31 December 1942, 7,372 refugees were granted admission, while 1,264 were refused entry. In comparison, between 1 January and 31 August 1942, 4,833 refugees were allowed to enter Switzerland and 2,243 were turned back.<sup>30</sup>

In September 1943 Italy capitulated; the northern and central regions of the country were occupied by the *Wehrmacht*. Jews started to be deported immediately afterwards. At this point thousands fled towards the Ticino: Jews, supporters of the political opposition, men who wanted to avoid military service and other civilians. Apart from over 20,000 soldiers, around 10,000 civilian refugees had been admitted and interned by the end of the year. At the same time the border guards recorded over 1,700 refusals between 21 and 23 September alone, a total of over 12,000 people being refused entry between September 1943 and March 1944.<sup>31</sup> The restrictive policy towards Jews was relaxed – for most of them much too late – from late autumn 1943 on; finally, during 1944, around 18,000 civilian refugees were allowed to enter Switzerland. It was not until 12 July 1944 that the EJPD issued an official order that civilians whose lives were threatened should be admitted. Despite this indirect recognition of Jews as refugees, some Jewish people were still refused entry, as were a number of forced labourers from Eastern Europe.<sup>32</sup>

### **The end of the war and the immediate post-war era**

By the end of the war, there were over 115,000 refuge-seeking people of all categories in Switzerland, representing the maximum number of refugees at any one time. Most of them left the country during the weeks and months following the armistice. Emigrants and civilian refugees who had been persecuted by the

Nazi regime were forced to leave as quickly as possible. The question arose as to whether they should go back to the country they had left or attempt to build a new life in a third country, be it in Europe, overseas or in Palestine. Even at this time only a few were granted a residence permit by the Swiss authorities. From 1947 on, refugees who could not be expected to leave for reasons of age or poor health were allowed to apply for asylum. Only 1,345 people took advantage of this opportunity – far fewer than had been expected. Since many former refugees could no longer support themselves, the Swiss parliament decided at the end of 1947 that they should receive financial support from the Federal coffers, cantonal authorities and aid agencies.<sup>33</sup>

#### **Statistics concerning the admission and refusal of civilian refugees**

In November 1947, a representative of the EJPD explained at a meeting of the Committee of Experts for Refugee Matters that Switzerland had admitted 300,000 refugees during the war, to which Paul Vogt, known as the «pastor of refugees», replied:

«It is not quite accurate to say that only a small fraction of the refugees had to be refused entry at the time; in all some 300,000 were admitted. What we were so concerned about at the time and really gave rise to pangs of remorse was that the Jews were not considered political refugees for such a long time and were therefore refused entry».<sup>34</sup>

The total of 300,000 refugees admitted that was quoted by the authorities was based on the sum of all possible categories of people who sought refuge in Switzerland, thereby drawing attention away from the central problem: the restrictive policy adopted with regard to Jewish refugees. In the report he published in 1957, Carl Ludwig based his claims on the same figures and arrived at a total of 295,381 refugees that Switzerland took in during the war for a shorter or a longer period. In addition to the military personnel, emigrants and interned civilian refugees, he added 60,000 children who were sent to Switzerland temporarily to recuperate and 66,000 border refugees who stayed in Switzerland only for a short time.<sup>35</sup> Such an overall total does not really mean a lot, neglecting as it does various phases of political and military developments as well as the gradual radicalisation of the Nazi policy of persecution. Too, it does not take into account the fact that it was for a great variety of reasons that those seeking refuge came to Switzerland, where they were treated differently on the basis of international and national law and, according to a practice that was in some respects problematic, were classified according to different administrative criteria by the authorities.

More significant are the numbers of civilian refugees admitted or refused, although there are also numerous difficulties attached to interpreting the figures. For one thing, the admission of refugees is well documented, while sources relating to those refused admission are very scanty. Secondly, it is extremely difficult to interpret the available number of refusals since many were only recorded anonymously. Thirdly, there is no record at all of those people who were so discouraged by the restrictive policy adopted by Switzerland that they never even tried to enter the country. Finally, the full import conveyed by these statistics is also limited for one further reason: each figure represents the fate of a human being – an administrative decision was in many cases a decision on life or death. Between 1 September 1939 and 8 May 1945, a total of 51,129 civilian refugees who had entered Switzerland without a valid visa were interned. Of these, just over 14,000 came from Italy, 10,400 held French passports, 8,000 were Poles, 3,250 were from the Soviet Union and 2,600 were German citizens. According to the records, a further 2,200 were stateless persons, although the real number of stateless persons was in fact higher. The total included 25,000 men, 15,000 women and over 10,000 children. The number of Jews was 19,495; another 1,809 refugees had been persecuted because of their Jewish origins.<sup>36</sup>

If one adds to the total of 51,000 civilian refugees the estimated 2,000 people who were issued a cantonal tolerance permit, Switzerland admitted a good 53,000 civilians who sought refuge during the war. If one takes into account the 7,000 to 8,000 mainly Jewish emigrants who were in Switzerland at the outbreak of the war, plus the small number of political refugees, it can be seen that during the Second World War Switzerland, offered around 60,000 civilians refuge from persecution by the Nazis for periods ranging from a few weeks to several years. Slightly less than half these people were Jewish.

It is extremely difficult, however, to calculate the number of refugees who were refused entry. The figures on refugees refused entry that we published in 1999 based upon earlier research in the Federal Archives, have since been called into question.<sup>37</sup> There is no uncertainty about the 9,703 refugees refused entry who are recorded by name. The register of people refused entry, which no longer exists today, was the basis for the figures published by Carl Ludwig in 1957, according to which Switzerland turned back a total of around 10,000 refugees. This figure represents an absolute minimum, which is accurately documented. The comprehensive research carried out over the past few years has shown, however, that there are statistics referring to some 24,500 people who were refused entry during the war. If one then deducts the 10,000 people who were recorded by name, this leaves a total of 14,500 anonymous refugees who were turned back. Some refugees made several attempts to get across the border and were perhaps finally admitted. Such people would then be included several

times in the statistics concerning refusals, and at the same time in those on refugees admitted. Others were handed over directly to the border guards, imprisoned and deported. Still others did not make a second attempt because they knew that if they failed again, they would be handed over to the authorities. Today it is impossible to ascertain how many people came into this category. It is precisely because many cases are recorded where refugees were handed back to the very people who had been persecuting them that it may be assumed that the number of refugees included more than once in the statistics is not very high. If one assumes that one in three refugees was refused entry twice, the number of 14,500 anonymous people refused entry corresponds roughly to around 10,000 further cases refused. Finally, it is a recognised fact that not all refusals were recorded. It must therefore be assumed that Switzerland turned back or deported over 20,000 refugees during the Second World War. Furthermore, between 1938 and November 1944, around 14,500 applications for entry visas submitted by hopeful emigrants to the Swiss diplomatic missions abroad were refused. It is not known how many of these people later tried to enter Switzerland just the same and are included in the statistics concerning refugees admitted or refused entry.<sup>38</sup>

The shortcomings associated with the statistics on anonymous refusals which have been discussed here can, however, also be used to yield the opposite effect. In this interpretation, a case file on refugee rejection recorded anonymously could theoretically imply the rejection of several persons, as in the case of a married couple or a family group. Then the figure of refugees rejected would certainly have to exceed the number of registered refusals. In any event, here too we are dealing with an assumption that, for lack of empirical certainty, remains a supposition.

Owing to the lack of source material, it is impossible to obtain precise figures concerning the number of refugees refused entry into Switzerland during the Second World War. The same applies to the refugees' reasons for fleeing, their religion, their political views, their age and their gender. The occasional rumour that Switzerland turned back 30,000 Jewish refugees is unfounded,<sup>39</sup> although there is no doubt that up until spring 1944 a large proportion of the refugees refused entry into Switzerland were Jewish. But it is also true that during the final few months of the war a number of people who had dubious motives for fleeing Nazi-controlled territory were also turned back.<sup>40</sup> Speculation about the exact number of refugees turned back frequently serves the purpose of political incrimination or exoneration. Far more important, in our opinion, is the question of how much the authorities knew about events in Eastern Europe when in summer 1942 they decided that «refugees solely for reasons of race» were to be refused entry on principle and what prompted their decision.

### **3.2 Awareness and Action**

The assumption that the Swiss authorities were inadequately informed and would have acted differently «if one had known what was happening in the Third Reich» is false.<sup>41</sup> Up until 1939, the Jews were publicly discriminated against, persecuted and driven out. The Swiss authorities and the population were well informed about the excesses that occurred in Austria after its annexation by Germany in March 1938 and about the nation-wide pogroms in November 1938. The Nazi regime of course tried to conceal the «final solution», introduced at the end of 1941, whose aim was the complete annihilation of the Jews. Nevertheless, the authorities knew at the beginning of August 1942 that the Jewish refugees were in extreme danger. Although at the time they did not have precise details about the industrially organised extermination camps, information about the mass killings had been reaching Switzerland through various channels since the end of 1941.

1. An important source of information was the Swiss diplomatic corps abroad. As early as the end of 1941, Swiss diplomats – in particular in Cologne, Rome and Bucharest – were sending reports about the deportation of Jews from Germany and occupied territories under terrible conditions and sent quite detailed information concerning the mass killings.<sup>42</sup> In May 1942, Franz-Rudolph von Weiss, the Swiss Consul in Cologne, sent photographs to Colonel Roger Masson, the head of the Military Information Service, which showed the bodies of suffocated Jews being unloaded from German goods wagons.<sup>43</sup>
2. The Swiss military authorities, who were keen to obtain as much information as possible concerning events across the border, gained information by the questioning of refugees. In February 1942, the Swiss Intelligence Service obtained detailed reports and sketches of mass shootings, through the interrogation of German deserters interned in Switzerland.<sup>44</sup>
3. At the end of 1941 and the beginning of 1942, members of the Swiss medical missions on the Eastern front witnessed so-called hostage shootings. In addition, they obtained reliable information concerning the mass slaughter of Jews. In the 1950s, Dr. Rudolf Bucher explained that he had informed Federal Councillor Karl Kobelt in March 1942 of what he had seen. Kobelt denied this. It was in May 1942 that Dr. Bucher first reported these events to the Swiss Medical Council and held additional speeches even though forbidden to do so by the highest authorities.<sup>45</sup>
4. Throughout the whole war, Switzerland maintained close economic, cultural and political relations with many other countries, so that a good

deal of information circulated through private contacts, particularly in business circles. It was in this way that Benjamin Sagalowitz, the Swiss Federation of Jewish Communities (SFJC) press officer, learnt about plans for the total extermination of the Jewish race from a German businessman. Sagalowitz approached Gerhart M. Riegner, the World Jewish Congress representative in Geneva, who passed this information on to the Allies beginning 8 August 1942.<sup>46</sup>

5. The political, religious and humanitarian organisations, whose members included both Swiss and foreigners, also represented a source of information.<sup>47</sup> Carl Jacob Burckhardt, Vice-President of the ICRC and President of the Association of Relief Organisations (*Vereinigtes Hilfswerk*),<sup>48</sup> had detailed information on the extermination of the Jews which, as he confirmed to Gerhart M. Riegner in November 1942, he had obtained from German sources.<sup>49</sup>
6. Radio and newspapers too played a role in spreading information. In his radio chronicle of February 1942, Prof. Jean Rodolphe von Salis pointed out that Hitler, true to his custom of issuing his direst threats on the anniversary of his taking power, had announced that «this war will not serve to destroy the Aryan race, but to exterminate the Jews».<sup>50</sup> From summer 1942 on, the press also frequently published articles about the systematic extermination of the Jews. As early as July 1942, Swiss newspapers reported that the Nazis had killed around one million Jews.<sup>51</sup>

In all fairness it should be said that there were grounds for being sceptical about the information received. On the one hand, from experience gained during the First World War, the tendency was to dismiss such information as atrocity propaganda. On the other hand, the reports received were so horrendous that even in Jewish circles not all details, for example the industrial use of the bodies of those killed, were necessarily considered to be true, even at the end of August 1942.<sup>52</sup> Nevertheless, when Switzerland's borders were closed in August 1942, the authorities had an accurate picture of what was happening. It is therefore imperative to ask why the Swiss authorities tightened up the criteria for admission at the end of 1942, now that it had become clear that the various reports were indeed true, and the systematic mass murder of Jews had been made public and condemned by the Allies on 17 December. Why, it can be asked, did they maintain their restrictive admission policy for months afterwards. In this respect a distinction should be made between longer-term factors and the immediate factors determined in the main by the war.

#### **Xenophobia and «over-foreignisation» («Überfremdung»)**

Xenophobia and fear of the foreign population becoming too large were not

consequences of the war but a long-term aspect of policy concerning foreigners. The origin was two-fold: on the one hand, it stemmed from the increasing importance accorded to the nation-state towards the end of the 19<sup>th</sup> century, which can be interpreted as a reaction to the modernisation of an industrial society; and on the other, it was a defensive reflex to the socio-political crisis at the end of the First World War. At the root of the increasing xenophobia was the fear of being «flooded» by «alien elements», revolutionary agitators, demobilised soldiers, deserters, Jewish emigrants from Eastern Europe and people looking for employment. In order to master this «threat», the Federal Council took advantage of the powers accorded to it by parliament at the beginning of the First World War and proceeded to centralise the country's policy on foreigners in 1917 by creating the Central Office of the Police for Foreigners (*Zentralstelle für Fremdenpolizei*). The resulting Federal Police for Foreigners (*Eidgenössische Fremdenpolizei*), which was headed by Heinrich Rothmund from 1919 on, subsequently developed into a highly dynamic organisation and became the main driving force of Swiss policy on foreigners.<sup>53</sup> The dislike of foreigners also concerned people of no fixed abode and Roma, Sinti and Jenisch, both of Swiss and of foreign origin.<sup>54</sup> The fear of being overrun by foreigners did not necessarily mean that refugees were not admitted for a short period if it was certain that they could continue to a third country very quickly. Since no one knew how long the war would last and the possibility of the refugees leaving Switzerland at a later date was not guaranteed, fears for the post-war time arose. People were afraid that once the war was over and things returned to normal, they would not be able to get rid of the unwelcome «aliens» as they would by then have firmly established themselves in the country. The fear of the foreign population becoming too large therefore had a strong socio-political element and, in this respect, the defensive attitude shown was particularly aggressive because it concerned something that was considered «vital» in the biologically determined conception of the nation. The authorities even refused to facilitate naturalisation procedures for Russian and Armenian refugees towards whom the Swiss population was quite sympathetic between the wars, because this «might severely disturb the ethnic balance of the population of Switzerland».<sup>55</sup> The general fear of being overrun by foreigners was in particular combined with widespread anti-Semitism.

#### Roma, Sinti and Jenisch

Already before the start of the persecution of Roma, Sinti and Jenisch by the Nazi authorities, the mobility of gypsies had been considerably restricted throughout Europe. On the basis of «pseudoscientific» findings, the various police authorities, which were cooperating internationally, built up a

defensive system that led to restrictive immigration regulations that were tightened in every country after the Nazis took power. This cut off the channel of escape for those being persecuted.

The policy of expelling foreign and stateless Roma and Sinti that was adopted by most European countries between the wars resulted in travelling families being permanently pushed back and forth between individual countries. The radicalisation of the deportation policy in the 1930s often led to serious border incidents with diplomatic consequences, since before the war it had been common practice for the police in various countries to illegally force «unwanted» foreigners across the border into a neighbouring country.

The systematic search for traces of Roma, Sinti and Jenisch in Swiss files on refugees soon encountered difficulties of methodical investigation; no quantitative information is available. It can be assumed, however, that sedentary Roma and Sinti with common family names were able to flee to Switzerland without being considered «unwanted gypsies».

The immigration ban for «gypsies» issued by the Swiss authorities as early as 1906, which also forbade their transport by train and steamboat, was probably respected also after the outbreak of the war. There is documentary evidence that between 1939 and 1944 four cases of admission were refused, involving at least 16 people. The refusal to allow Anton Reinhardt to enter Switzerland in September 1944 shows that Sinti who were clearly in danger were still being refused admission at a time when the restrictive regulations concerning asylum had been eased. Reinhardt was detained by the German authorities and shot after trying to escape.

There is evidence of several cases where it would have been easy for the Swiss authorities to protect Swiss gypsies from deportation to concentration or extermination camps, but either their citizenship was not recognised, or no steps were taken to approach the Nazi authorities to save them from danger.<sup>56</sup>

### **Anti-Semitism**

The terms «Jews» and «anti-Semitism» increasingly became the standard vocabulary of Hitler's National Socialist party from the 1920s on and, as time went by, of Nazi Germany. It was for this reason that in the period between the two world wars the word «over-foreignisation» («Überfremdung») became a synonym for anti-Semitism *à la suisse*.<sup>57</sup> For all sorts of economic, political and ideological parties the question of «over-foreignisation» or excessive foreign immigration remained open and cannot be equated with anti-Semitism; in most cases, however, the «fight against over-foreignisation» did in fact mean a «fighting Jewish influence in Switzerland». Isolated acts of violence motivated by anti-Semitism did occur. Anti-Semitic stereotypes were widespread,

however, and were applied to all Jews; they were combined with (more open) xenophobic and socio-cultural prejudice in the case of foreign and in particular Eastern-European Jews, with the result that anti-Semitism manifested itself most clearly in the case of «Eastern Jews». Rothmund, for example, liked to emphasise that he was on the side of Swiss Jews who had adopted Swiss customs and traditions. Innumerable blatant statements concerning foreign Jews that are full of anti-Semitic stereotyping can be found coming not only from Rothmund but throughout the context of refugee policy.<sup>58</sup> Rothmund explained his policy on refugees in an argument with a critical member of parliament, adding:

«You'll see – we're not such terrible people after all! But we won't let ourselves be led by the nose, and especially not by Eastern Jews who, as everyone knows, are always trying to do so, because they're always trying to wangle something; you'll see, our approach is totally in line with the attitude of the people of Switzerland».<sup>59</sup>

This distinction between Swiss and foreign Jews was also made by the authorities. It must be underlined that the Swiss authorities in no way tried to adopt Nazi theories nor to imitate their practices but rather stating that German racist policy was contrary to the basic principles of Swiss law and Swiss society. There were, however, opposing tendencies, notably those aiming at a legal discrimination of Jews and at the application of categories based on race. The least affected by these were Swiss Jews living in Switzerland, although even they were to suffer from the fact that people, at least in some circles, were prepared to call into question the equal rights that were guaranteed by the Constitution, e.g., in the form of the above-mentioned agreement regarding the marking of German Jews' passports.<sup>60</sup> The authorities were prepared to make greater concessions concerning Swiss Jews living abroad. However, they were motivated to a considerable degree by the anticipation of possible diplomatic complications with Germany. The best-known example in this respect is the attitude adopted by the Federal Council regarding diplomatic protection for Swiss Jews living in France. In April 1938 the issue of diplomatic protection for Swiss citizens residing abroad was raised in connection with the debate on the German order for Jews to register their assets. In answer to a question tabled by the Social Democrat National Councillor Ernest-Paul Gruber in 1941, the Federal Council replied that Swiss Jews living in France had neither the right to the same treatment as non-Jewish Swiss citizens living there, nor the right to be treated as exceptions in comparison with other Jews living in France. This represented a departure both from the Constitutional guarantee of equal rights – with potentially serious

consequences – as well as from the principle of minimum guarantees under international law that the Federal administration had long supported.<sup>61</sup>

Foreign Jews in Switzerland suffered most from discrimination. After the First World War, if not before, naturalisation procedures were systematically made more difficult for them in comparison with non-Jewish foreigners; from 1919 on, their files were specially marked, not systematically but in many cases, for internal administrative reasons, for example with the Star of David or the «J»-stamp.<sup>62</sup> With the introduction of compulsory visas for German «non-Aryans» in October 1938 the authorities finally based their immigration requirements on the categories laid down in the Nuremberg racial laws. In the administration, the categories «Aryan» and «non-Aryan» were frequently used, and «Aryan» identification papers were issued in the case of marriages with Germans or for work permits for Germany.<sup>63</sup>

### **Economic protectionism**

Unemployment and the fear of added competition on the labour market played a certain role, these motives being far more justified in the 1930s than during the war when unemployment was low and there was even an inadequate supply of labour in some sectors. The government took these fears into account insofar as, in principle, it forbade emigrants and refugees to take up gainful employment as early as 1933. The main aim of this step was to protect the internal labour market; a desired side-effect, however, was that this made it virtually impossible for refugees to integrate into Swiss social life and put added pressure on them to leave for a third country as quickly as possible. In practice, it was therefore more or less impossible for refugees to compete with Swiss workers, and in cases where this was contingently possible – for example, in connection with simplified admission procedures owing to the prestige of «famous authors» – professional bodies objected to foreign competition.<sup>64</sup>

The consideration for Swiss citizens living abroad was advanced time and again and, as things turned out, was only rarely or only to a limited extent respected. However, it was an additional argument for forbidding refugees to work. In November 1938, Rothmund explained:

«Under no circumstances can we allow emigrants to take up gainful employment of any kind on the Swiss labour market. The unemployed in this country, among whom there are many Swiss citizens who have come back from abroad, would rightly be up in arms.»<sup>65</sup>

It must be said, however, that there were also contrary economic interests. In the 1920s in particular, differences of opinion arose between the Federal Police

for Foreigners, which based its policy primarily on considerations relating to population policy, and representatives of the economic sector, who were demanding residence and work permits for the work force they needed. When a foreigner applied for a residence permit, the municipalities too were guided less by principles than by quite pragmatic considerations such as how much tax the newcomer could be expected to pay. This is illustrated for instance by the case of a German Jew living near the border who ran a company in Switzerland and submitted numerous applications for a residence permit as well as for a permit as a commercial traveller. He won the support of the municipality and the canton owing to the fact that he employed a number of Swiss people and by moving to Switzerland would have increased tax revenue. Rothmund, however, noted in an internal memorandum in 1935:

«I don't approve of this at all. I'm not keen on a Jew trading with used machinery, and visiting customers in rural areas. It is the presence of precisely these Jews, these «dealers», that creates hostility among the people. I can understand rival enterprises taking a dim view. I say his application should be refused.»<sup>66</sup>

Fear of «over-foreignisation» and anti-Semitism were thus combined with considerations related to the economic situation and employment. The EJPD, which since the depression was enjoying greater support from professional associations, also fought against the «economic over-foreignisation» («wirtschaftliche Überfremdung») of Switzerland.

Although refugees did not constitute competition owing to the ban on their taking up gainful employment, the same argument was put forward time and again, even during the war when they were under the greatest threat. There were fears of a massive economic crisis immediately after the war, similar to that after the First World War. In September 1943, the man who had led the national strike of 1918, Robert Grimm, underlined the concern among the Swiss workforce in relation to the stream of Italian refugees who might well upset the balance of the labor market and cause widespread unemployment.<sup>67</sup> Training for Jewish refugees also led to fears of competition. For this reason, the Young Liberals of Waadt, for example, urged in November 1943 that all refugees be refused higher schooling, using the motto «We don't owe the refugees anything». <sup>68</sup>

#### **The question of domestic supplies**

The difficulty of supplying the country with food and industrial goods was one of the most important factors arising from the war and was put forward

repeatedly as justification. At the meeting held on 30 August 1942, Federal Councillor Eduard von Steiger justified closing Switzerland's borders by comparing the country to a life-boat that was already full, at the same time referring to «limited supplies».<sup>69</sup> He voiced the same argument again in parliament in September 1942, saying: «Anyone who does not recognise this problem is ignoring the difficulties surrounding our economic negotiations and the seriousness of our situation.»<sup>70</sup> At the same meeting, however, pastor Walter Lüthi declared that it was extremely uncharitable to believe that a few tens of thousands of refugees could not be taken in and at the same time share the food available with perhaps 100,000 dogs.<sup>71</sup> Federal Councillor Marcel Pilet-Golaz, on the other hand, remarked in September 1942 in an internal note that «food supplies are not a problem at the moment» and declined the offer of an American aid organisation to provide food if Switzerland took in more refugees.<sup>72</sup> Thus, it turns out that the opinion on the question of food supplies differed and that its assessment depended less on the current supply situation and the future situation, which was difficult to foresee, than on basic attitudes concerning the refugee question. Naturally, the introduction of bread rationing on 16 October 1942 was sometimes linked to the presence of the refugees. At the same time the Federal Council emphasised that the sacrifices made by Switzerland «are nowhere near as great as those being made by other nations». Some people thought only about having enough to eat themselves, while others were at best prepared to make a small sacrifice in favour of those who had been persecuted. Due to the fact that food was rationed and the amount of land cultivated was increased, people living in Switzerland were comparatively well fed, with the result that a real emergency situation with regard to the supply of food, which would have justified the restrictive policy vis-à-vis refugees, never in fact arose.<sup>73</sup>

### **Concern about national security**

The issues of both internal and external security played a central role in Swiss policy on refugees. General Guisan showed concern about the presence of foreigners in the country since, if Switzerland went to war, they would constitute an additional risk factor.<sup>74</sup> In order to draw the government's attention to the dangers of espionage, sabotage and infiltration, Guisan submitted a long report to the Federal Council on 4 May 1940 in which he recommended a series of preventive and defensive measures. These were mainly directed at Germans living in Switzerland but also concerned refugees:

«A further category of internal enemies is to a certain extent emigrants. [...] Dutch and English reports indicate that large numbers of Jewish

emigrants who are granted asylum are becoming a not inconsiderable source of danger. On the basis of what has been experienced in Scandinavia, England and the Netherlands, this category of foreigners should not be ignored. Under the conditions prevailing in Switzerland at present there is no room for sympathy and leniency; only a hard line can be adopted.»<sup>75</sup>

Since the refugees were seen to represent an enormous security risk, efforts were made to keep their numbers as low as possible through a restrictive admission policy, and those already in the country were put under the strictest control. Apart from being included in police records, this control consisted of limited freedom of movement and surveillance and censorship of postal communication, as well as many other regulations that made their stay in Switzerland difficult. In the years leading up to the Second World War in particular, Switzerland was frequently calumniated in the German press because of its refugee policy. However, the Germans never put pressure on Switzerland through diplomatic intervention or even military threats because of its policy on refugees. It is believed that the German ambassador requested personal data on all German refugees in spring 1942, but was given nothing.<sup>76</sup> In summer 1942, Rothmund and Pilet-Golaz stated that the German threat was not an important factor in the decision to close Switzerland's borders. In August 1942, Rothmund wrote to the Swiss diplomatic mission in London that:

«It is of course extremely important that England not misunderstand us. I should therefore like to let you know in particular that we are not acting under any sort of outside pressure. I just need to keep things in order so as always to be in a position, to protest emphatically should our northern neighbour ever try to intervene in the Jewish issue or any other questions that are within my domain.»<sup>77</sup>

#### **The idea of a humanitarian mission**

The idea of Switzerland's humanitarian mission was one of the few arguments in favour of taking in refugees. What finally came to be described as the humanitarian tradition resulted from two circumstances: firstly, from a historical series of individual incidents in which specific groups of asylum seekers received support from a group of sympathisers within Switzerland, and secondly, from the need that arose in the second half of the 19<sup>th</sup> century to further legitimise the country's neutrality through a complementary doctrine – the humanitarian mission.<sup>78</sup> The principal aim was that a neutral country should help reduce the suffering caused by armed conflict. It would be wrong, however, to understand the «humanitarian mission» as a self-evident principle that was sacrificed or

even betrayed in the face of the German threat. It was first and foremost an assumption that, on the one hand, could be quoted insofar as any action was desirable; and on the other hand, it could be used as a justification for passivity.<sup>79</sup> As early as the 19<sup>th</sup> century, granting asylum was considered a prerogative of the state to strengthen its sovereignty (and exercised to demonstrate this prerogative), while the individual refugee had no legitimate claim to asylum. During the Second World War, soldiers especially benefited from the humanitarian actions of the Swiss authorities (e.g., soldiers wounded in action who were repatriated), as well as the civilian population affected by the war (e.g., admission of children), while many refugees who were being persecuted by the Nazis were turned back at the border. At the same time, however, the widespread awareness of a humanitarian tradition was an additional argument advanced by those who demanded a more open attitude towards Jewish refugees. This constituted a good argument in the face of the authorities' policy on emigrants and served to «interfere» in their work, causing Rothmund to voice the following with some criticism:

«The asylum tradition of our country is so well anchored that not only each Swiss citizen, but every Federal office too, that has to deal with an individual refugee tends to give him the benefit of the doubt and admits him refusing admission only if there are special reasons for so doing.»<sup>80</sup>

### 3.3 Players and Responsibility

Who was responsible for the policy on refugees of the time? For a long time, research and public debate focused on the role of the Federal Department of Justice and Police (*Eidgenössisches Justiz- und Polizeidepartement*, EJPD), which was an important player with regard to policy on refugees, and thus in particular on Federal Councillor Eduard von Steiger and the head of the Police Division Heinrich Rothmund. In 1970, however, the historian Edgar Bonjour alleged that the whole of Switzerland had failed:

«The whole generation of that time failed to do its duty and shares the blame. Because in a direct democracy such as that of Switzerland, the people, if they had really made an effort, would not have been forced to sit back and accept a governmental policy of which they did not approve for ten years. [...] The hidden egoist and potential anti-Semite in each citizen deliberately ignored the inhumanity of certain aspects of official policy on asylum.»<sup>81</sup>

Both explanations – the sole responsibility of the EJPD or the collective responsibility of the Swiss population – are too simple; when assessing the responsibility, the differing degrees of authority with regard to decision-making, the information available, and the social and political power enjoyed by the various players involved must all be taken into account, along with the way in which the Swiss political system functions.

### **The Federal Council and the Federal Department of Justice and Police**

Political responsibility for Swiss policy on refugees lay with the Federal Council as a collective body.<sup>82</sup> With few exceptions the Federal Council took all the relevant decisions itself or approved them retrospectively. It was the Federal Council which decided to close the borders on 18 August 1938, which signed the agreement with Germany concerning the «J»-stamp in Jewish passports on 29 September 1938 and which decided on the subsequent introduction of compulsory visas for German «non-Aryans» on 4 October 1938. Finally, it was also the Federal Council which retrospectively approved Federal President Etter's closure of the borders on 4 August 1942. In addition, on account of various decisions it took, the Federal Council laid down the legal framework for its policy on refugees. In this connection, the Federal Council's Decree of 17 October 1939, which was backed up by the powers granted to it, was of particular importance. This decree, together with the Law on Foreigners of 1931, constituted the most important legal basis for Swiss policy on civilian refugees. Article 9 required that the cantons deport all refugees who had entered illegally, while Art. 14 established the Federal legal instrument for interning those refugees who could not be deported. When the authorities closed the borders in August 1942, this did not in fact indicate a new policy, but rather a decision to apply Art. 9 of the Federal Council's Decree of 1939 to the letter, since the Police Division of the EJPD had not been consistently turning back refugees at the border during the months which had preceded. It is precisely because the Federal Council was granted unusually far-reaching powers of decision-making during the war that it must carry the prime responsibility. It used its authority not for the benefit of the refugees but to pursue a restrictive policy.

However, in view of the range of other tasks the Swiss government had to deal with at the time, the refugee issue was not high on the agenda and was only mentioned rarely and briefly in the minutes of the Federal Council. Even at the meeting held on 30 August 1938, when the Federal Council decided as a precautionary measure to abandon its agreement with Germany on passports in order to underline Swiss expectations concerning the resolution of the question of Jewish emigrants, far more time was spent discussing the Federal financial

situation.<sup>83</sup> As was customary, the Federal Council often approved proposals made by the head of a Federal department and his team of civil servants, including those concerning policy on refugees. For this reason the Federal Department of Justice and Police becomes the focus of attention.

The EJPD was more or less solely responsible for two crucial areas. Firstly, since the end of the First World War, it had drawn up the ideological and legal basis for Swiss population policy and between the wars it had implemented a policy on foreigners that had an anti-Semitic bias. As regards the theoretical underpinning of Swiss population policy, it was not so much Heinrich Rothmund as Max Ruth, a lawyer who was well known at the time but has since hardly been taken notice of, who played the main role.<sup>84</sup> Secondly, after the outbreak of the war, the EJPD was the principal body responsible for implementing policy on refugees, as between 1938 and 1942 responsibilities were shifted from the cantonal to the Federal authorities. With its numerous instructions and circular letters, the EJPD largely determined how policy on refugees was put into practice. Decisions – without further appeal – concerning whether (non-«political») refugees were to be admitted or turned back were taken by the Police Division, often in fact by Heinrich Rothmund personally. It is a known fact that there were strong xenophobic and anti-Semitic tendencies within the EJPD and that the Police Division concentrated its efforts on refusing admission to refugees. At the same time, the EJPD was not the only factor to influence Swiss policy on refugees. This policy was drawn up in consultation with other Federal departments, the Swiss parliament, the cantonal authorities and other interest groups. Economic interests, for example, were also taken into account, which is why the Federal Department of Economic Affairs was also often involved in the decision-making process. The border police, whose job it was to control Switzerland's borders, was responsible to the Federal Department of Finance and Customs (*Eidgenössisches Finanz- und Zolldepartement*, EFZD), which is why the latter was regularly consulted by the EJPD and tried to exert influence on its own initiative. In relation to policy on refugees the strongest player in the Federal administration, however, was the Political Department.

### **The Federal Political Department and the Delegate for International Relief Organisations**

The Federal Political Department (*Eidgenössisches Politisches Departement*, EPD) had little say in drawing up internal policy on refugees; it did, however, have a large degree of responsibility insofar as many questions concerning refugees touched on foreign policy. The EPD was particularly influential with regard to negotiations with other countries on the question of refugees. This was clearly the case, for example, in the agreement with Germany on the subject of the

«J»-stamp in passports, where the Swiss ambassador in Berlin Hans Frölicher had spoken out in favour of marking the passports of German «non-Aryans» and the head of the EPD, Giuseppe Motta, swept aside Rothmund's doubts on the matter. In addition to this type of direct responsibility, the EPD was continuously involved indirectly with questions of policy on refugees in that its representatives in other countries sent back information to Switzerland concerning the persecution of Jews, received visa applications from those being persecuted, made efforts to help Swiss citizens under the shield of their diplomatic protection, or represented the interests of citizens of other countries under the many protecting power mandates that had been confided to Switzerland. In this connection, individual diplomats on the spot had considerable room for manoeuvre; it can generally be said that the guidelines defined by the EPD in Bern were very restrained and many a diplomat who tried to help refugees violated the regulations in effect at that time and was disciplined accordingly. Finally, Switzerland's humanitarian policy, which was guided mainly by foreign interests focused principally on the position of Switzerland as a neutral country within the international context, also fell within the EPD's area of responsibility.

In January 1942, the Federal Council appointed career diplomat Edouard de Haller as the «Federal Council delegate to international relief organisations». De Haller was Director of Mandates at the League of Nations from 1938 to 1940, and in 1941 was member of the International Committee of the Red Cross (ICRC). Being appointed to a newly created position, his main task was one of co-ordination, and he saw himself more as an advocate of reason of state than of humanitarian principles. In September 1942, he informed Pilet-Golaz that the American Red Cross wanted to send food to increase the daily ration for children whom Switzerland had agreed to take in. This offer of aid did not please de Haller. As it came shortly after the borders had been closed in August 1942, he suspected that the Americans «wanted to undermine the Federal Council's official justification, i.e., the problem of food supplies».<sup>85</sup> Again in March 1943, he expressed his opposition, for reasons of foreign and economic policy, to an offer of clothing from the USA. De Haller realised that he was in a dilemma with regard to international offers of assistance. If Switzerland declined them, the problem of supplies could no longer be used to justify a restrictive policy. If, on the other hand, Switzerland accepted foreign aid, then there was the danger that the Allies might subsequently insist that it adopt a more generous policy on admitting refugees, and Switzerland's humanitarian policy would lose some of its prestige because it had not financed it on its own. The fate of the refugees played a very minor role in this type of strategic consideration.

The immense popularity of Swiss aid to children indicates how problematic the official humanitarian policy was. As far back as the Spanish civil war, private relief organisations were set up which arranged for children traumatised by the war to spend limited periods of time in Switzerland for rest and recuperation. In 1941, the Swiss Red Cross and the Swiss Coalition for Relief to Child War Victims (*Schweizerische Arbeitsgemeinschaft für kriegsgeschädigte Kinder*) merged to form the Swiss Red Cross – Children's Relief (*Schweizerisches Rotes Kreuz, Kinderhilfe*).<sup>86</sup> More than any other organisation, Children's Relief, which enabled over 60,000 children to stay and recuperate in Switzerland during the war thanks to the generosity and commitment of numerous Swiss families, served the authorities in advertising the Confederation's humanitarian commitment. It must be said, however, that as early as May 1941, Rothmund ordered that Jewish children be excluded from the convoys coming to Switzerland. In view of the public protest and critical newspaper articles that followed, the Organisation applied for permission to include 200 Jewish children in each convoy arriving for a 3-month stay in Switzerland. This proposal was refused, with the exception of Jewish children of French nationality, because in their case there was a guarantee that they could be sent back to France after 3 months. In August 1942, thousands of children whose parents had been deported were left alone in the unoccupied part of France. Shocked by the detention of children in the homes it ran in France, the Children's Relief executive board proposed bringing a number of these children to Switzerland, to which de Haller remarked disparagingly:

«The members of the executive board have clearly not escaped the wave of naive generosity that is sweeping our country at present. They simply want to *<save>* the children at all costs, i.e., to save them from [the threat of] deportation which they will face when they reach the age of 16, or earlier should the age-limit be reduced.»<sup>87</sup>

Finally, in September 1942 Federal Councillor Pilet-Golaz vetoed two projects submitted by the relief organisation. The first proposed that Switzerland admit 500 Jewish children for a long-term stay and the second involved taking in a few thousand children on a temporary basis to prevent their deportation and to enable them to continue on to the USA. All plans for saving the children were thus dashed. Thanks to the commitment of staff of the Red Cross Aid to Children and other organisations operating in France, some Jewish children were later able to enter into Switzerland illegally.<sup>88</sup>

Although the International Committee of the Red Cross (ICRC) was officially an independent international organisation its policies were in practice strongly

influenced by the Swiss authorities. The ICRC's stand on Nazi crimes and the Holocaust has already been set out in the results of a study published in 1988 and will not be dealt with in any more detail here.<sup>89</sup> A vivid example of the influence of Swiss foreign policy on the ICRC is the so-called «non-appeal» (*«nicht-Appell»*) of autumn 1942. A text submitted by ICRC members was meant to urge the warring parties to respect the international «rules of war» and – implicitly rather than explicitly – condemn the deportations being carried out by the Nazis. Pierre Bonna, Head of the Foreign Affairs Division, claimed that the text would be understood as a condemnation of the deportations, which «in view of the current shortage of labour, however, would seem to be inevitable», while in Britain and America it would be understood as a condemnation of the air raids which were the only way at that time of dealing the enemy a blow.<sup>90</sup> Federal Councillor Philipp Etter, Head of the Federal Department of Home Affairs and a member of the ICRC since 1940, made a point of attending the meeting held on 14 October 1942 because of the ICRC's planned appeal. It was finally rejected, whereupon de Haller informed the EPD:

«The meeting we held this afternoon went well, and the item was on the agenda despatched without the problems we feared and which we discussed last Friday arising.»<sup>91</sup>

The EPD apparently made no distinction between the systematic genocide being carried out by the Nazi dictatorship and any violations of international rules of war by the Western democracies. It excluded Jews from its concept of humanitarian aid and focused its aid efforts on the traditional victims of war. Finally, it considered that even the ICRC's main task – to supervise adherence to the Geneva Conventions – put Switzerland's neutrality in jeopardy. The EPD's attitude towards Jewish refugees thus hardly differed from that adopted by the EJPD, from which one can conclude that the two Departments confirmed and reinforced each other's stance with regard to implementing restrictive policy.

### **The army**

While in the 1930s policy on refugees was the concern of the civil authorities, the army took over a central role during the war as the representative of security policy. Shortly before the fall of France, General Henri Guisan opposed admitting refugees, justifying his objections on 16 June 1940 with various political and military risks. On 18 and 19 June 1940, the army High Command drew up various circular letters and instructions to cantonal authorities, customs posts and military units requiring them to oppose without mercy the

admission of illegal «French, Spanish and Polish refugees (the remains of the Popular Front [*Volksfront*])».<sup>92</sup> On several occasions the army urged that the admission of refugees be kept to a minimum, in particular in autumn 1942, September 1943, June 1944, and at the beginning of 1945.<sup>93</sup> On 16 July 1942, the army High Command's Intelligence and Security Service sent the following message to the EJPD Police Division:

«We have noticed that for some time now the number of Jewish, Dutch and Belgian civilian refugees, as well as that of Polish refugees living in these countries, has been increasing in an alarming manner. All of them leave their own country for the same reason: to avoid the work camps to which they are being sent by the occupying powers. [...] Urgent measures would seem to be needed to prevent whole groups of refugees from entering our country, as has been the case recently. [...] In our opinion certain elements should be turned back; the relevant organisations would then no doubt hear about the measures taken, and this would put a stop to their activities.»<sup>94</sup>

This message, sent in July 1942, assumed that the refugees were escaping from the prospect of «work camps» and focused on the deterrent effect of turning them back at the border, but by autumn 1942 the situation had become far more acute. After meeting with Rothmund, Lieutenant Colonel Jakob Müller of the Military Police suggested to him that a combination of police and military means should be used to cope with the difficult task of surveying Switzerland's borders in the vicinity of Geneva and in the Jura Mountains. By military means he meant «strict surveillance of the borders involving a large number of troops, plus the use of firearms, floodlights, and possibly gas. Wire entanglements to be set up the length of the border.» Rothmund passed on this suggestion to Federal Councillor von Steiger with a comment to the effect that he could not take the note from «the old war-horse» seriously. «Nevertheless it includes some good ideas for organising the policing of the borders in the future (without gas!)».<sup>95</sup> The idea of using gas to turn back refugees at the border is unquestionably shocking; it serves to illustrate, however, what sort of ideas the EJPD had to reckon with in its dealings with the Swiss army.

It was already obvious by the end of the war that the army was overtaxed by the tasks it was given in connection with implementing the policy on refugees, for example, border surveillance or managing reception camps. For a long time, however, it was not admitted that the army had at the same time exerted enormous pressure on the civilian authorities and was therefore one of the main elements responsible for the restrictive policy on refugees. Once the war was

over, the EJPD drew attention to the pressure that had been put on it by the army, but this was interpreted as an attempt to shift responsibility. The inglorious role played by important figures within the army who, if they had had their way, would have adopted a far more drastic policy towards refugees, was also not admitted for a long time, the army and General Guisan being symbols of Swiss resistance and therefore beyond reproach.

#### **Parliament, political parties and the press**

For many years, policy in relation to the refugee question was hardly discussed in parliament. In September 1942, an exploratory debate on the asylum question was held in the National Council for the first time since 1933. The discussions were aimed at confirming the policy laid down by Federal Councillor Eduard von Steiger. There was nevertheless criticism from every political camp, including the Liberals Ludwig Rittmeyer and Albert Oeri from St. Gallen and Basel respectively, and the Social Democrat Paul Gruber from Neuchâtel who enjoyed broad support from his faction.<sup>96</sup> Gruber adopted a particularly critical position, accusing the Federal administration of anti-Semitic comportment, while Albert Oeri countered von Steiger's notorious remark with:

«Our boat is not yet overcrowded, let alone full, and as long as it isn't full we would be committing a sin by not taking in those that we still have room for.»<sup>97</sup>

Despite such opinions, the Federal Council's policy gained the support of the bourgeois parliamentary majority, although no vote was held which would have revealed the exact pattern of opinion. Over the following years various bills with different slants were tabled.<sup>98</sup> Outside parliament too, many representatives used their connections to intervene on behalf of refugees. It is noticeable that, on the one hand, these parliamentarians often came from the cantons along Switzerland's borders which had to deal directly with this humanitarian problem and, on the other, they tended to be from the ranks of the Social Democrats which, out of all the main Swiss parties, was the one most in favour of a more open policy on asylum. This latter fact is confirmed by an analysis of the press which, at the time, was characterised by strong party loyalty.<sup>99</sup> The question arises as to the extent to which parliament was responsible for policy on refugees, particularly since at the beginning of the war it granted the Federal Council extraordinary powers, and a tendency prevailed towards a state governed by executive power. In this connection, however, it should be pointed out that parliament still retained the power to subsequently approve or reject

the decisions made. As far as refugee policy was concerned, the Federal Council's decisions were in fact never rejected; on the contrary, the parliamentary committees which assisted the government by emergency plenary powers were consulted in advance on important issues – for example the Federal Council's Decree of 12 March 1943 concerning accommodation for refugees – in order to avoid the Federal Council's being compromised at a later stage. The Swiss parliament therefore not only approved the basic elements of the Federal Council's policy on refugees but in fact helped to shape it.

### **The cantonal authorities**

Under the strongly federalist administrative system prevailing in Switzerland, the cantons enjoyed a good deal of authority in matters of policy on refugees up until 1938 in that they issued tolerance permits; between 1938 and 1942 these powers were gradually ceded to the Federal authorities. At the same time they had considerable room to manoeuvre in the way in which they implemented Federal policy. To a certain extent it was the cantonal police authorities who decided whether refugees should be admitted or turned back at the border, and they were also responsible for actually deporting refugees. In addition the cantonal authorities were empowered to issue their own regulations concerning the stay of refugees in Switzerland. The reduction of the cantonal authorities' powers was only partly due to Federal measures aimed at centralisation; it also resulted from the fact that the cantons were unable to agree on a common policy. This is illustrated by the fact that some cantons which adopted a particularly restrictive policy after the annexation of Austria, systematically expelled their refugees to other cantons. Finally in 1942, the majority refused to take in a greater number of refugees and reluctance to divide the financial burden fairly among the cantons as well as between the Federal and cantonal authorities was so strong, that the Federal Council withdrew its proposals in this respect and decided in March 1942 on the one hand to centralise all powers and, on the other, to relieve the cantons of all financial obligations.

To what extent did the cantonal authorities share joint responsibility for national policy on refugees? The minutes of the Conference of the Cantonal Police Directors provide a clear picture of the varying attitudes among the cantonal authorities and of the pressure exerted by the majority of them on the EJPD regarding a restrictive policy. It is true to say that the cantons often adopted a position only after decisions had been taken in Bern; but they almost always confirmed the policy adopted by the Federal authorities, which in turn had an influence on further Federal measures. For example, the cantons indicated their approval of the decision to close the borders taken on 18 August 1938; after all borders were closed on 13 August 1942, the cantons declared

that this measure took into account Switzerland's present and future possibilities.<sup>100</sup> Despite the fact that tension regularly arose between individual cantonal capitals and Bern, in principle the cantonal authorities did not oppose the EJPD's policy. On the contrary, apart from a few exceptions represented mainly by the border cantons, many cantons could not understand the emergency situation at all.<sup>101</sup> In view of the mood prevailing within the Conference of the Cantonal Police Directors, a policy on refugees approved by a majority of the cantons could in fact have been more restrictive. The extent of some measures proposed by the cantonal authorities is illustrated in a suggestion made by Aloys Bonzon: fearing that there might be sexual contact between Jews and Christians, the Secretary of the Vaud Cantonal Department of Justice proposed in 1942 that civilian internees should have a label sewn onto their clothing in order to single them out. Rothmund opposed this idea saying, «It would not be proper for Switzerland to follow the example of some other countries».<sup>102</sup>

### The economy

The question of whether and to what extent the Swiss economy – individual industrial and sectoral associations as well as trade unions – influenced the general thrust of policy on refugees has scarcely been investigated. There is naturally evidence of many individual interventions, e.g., the above-mentioned case where considerations of labour markets were the trade unions' reason for opposing the admission of Italian refugees in 1943. In contrast, in 1939 the semi state-run Office for Research into New Industries (*Office de recherches des industries nouvelles*) in Neuchâtel saw the admission of refugees as an opportunity: «Because of the regular political and religious persecution that is taking place in various countries, we have received many applications from industrialists who have had to give up their businesses and flee their countries. We see this as a unique opportunity for Switzerland to set up new industries». The Neuchâtel Office recalled the considerable contribution to Switzerland's economic development that Huguenot refugees from France had made, and went on to repeat the argument put forward by the Office for Industrial Diversification (*Amt für industrielle Diversifikation*) in St. Gallen, which had emphasised the role played by Italian refugees in the textile industry boom.<sup>103</sup> Here economic advantages were put forward that in fact concerned only a small proportion of the refugees, and it can be assumed that interventions on the part of the economic sector were probably made only for the sake of its own particular interests rather than in an attempt to influence the basic principles of policy on refugees.

Finally, there is evidence – in the form of applications which, as the case may be, were either approved or refused – that many Swiss businessmen intervened

with the authorities in individual cases. For example, in October 1938, a Zurich businessman denounced a Jewish refugee from Austria, claiming that during his time in Switzerland he had maintained business contacts despite the fact that he was forbidden to pursue any type of gainful employment. The businessman went on to accuse the refugee of trying to obtain an entry visa using written recommendations from Swiss businessmen. His presence in Switzerland was, however, «totally undesirable» since competition between Swiss firms was already keen enough.<sup>104</sup>

On the other hand, the authorities also received individual applications for entry visas which were sponsored by leading figures in the Swiss economic sector, be it because they considered taking on highly qualified specialists to be to the advantage of their company, or that they wanted to help business partners with whom they had had dealings for a long time and who had perhaps become personal friends. Such applications were often successful; most of the refugees, however, did not have contacts within the Swiss business community who might have improved their chances of being allowed to enter the country. It is therefore hardly possible to generalise about the degree of joint responsibility of the Swiss economy with regard to policy on refugees. It is certain, however, that there was no basic opposition to the official policy, from which it can be concluded that the policy enjoyed wide support. Still, in view of the fact that determining policy was not its area of competence and its interests were not the same, there is little justification for assuming a general co-responsibility of the Swiss business community.

### **The churches**

The various churches and their representatives did not take a uniform stand in relation to the issue of refugees. Their attitude, which changed over the years, was determined by denominational differences, differences in hierarchical functions (Confederation, cantons, bishoprics, parishes) as well as individual opinions.<sup>105</sup>

Attempts made by the various churches to be included in shaping the Federal and cantonal policy on refugees were modest. They accepted the official principle of transit, at times even expressing their explicit approval.<sup>106</sup> What was criticised, however, was that the refugees were not allowed to seek gainful employment, especially since this only aggravated the problem of their up-keep. In October 1939 and August 1942, the Protestant Church objected to refugees being turned back at the border. In 1939, it was the Zurich Reformed Church Council (*Zürcher Kirchenrat*) condemning the fact that Jewish refugees were being refused admission, which gave rise to sharp criticism from Robert Briner, Chief of Police in Zurich and Director of the Swiss Central Office for Refugee Relief

(*Schweizerische Zentralstelle für Flüchtlingshilfe*, SZF). In 1942 Alphons Koechlin, President of the Swiss Reformed Church Association (*Schweizerischer Kirchenbund*), demanded both at a personal meeting and in written form in a private letter and in a communiqué, that the authorities implement the restrictive regulations less severely, whereupon the Geneva «Vie Protestante» magazine reproached him for favoring Jewish refugees and encouraging crime in Switzerland.<sup>107</sup> At the general meeting («*Landsgemeinde*») of the Young Church («*Junge Kirche*») held on 30 August 1942, when Federal Councillor von Steiger compared Switzerland to a life-boat that was full, the Federal Council's policy on refugees was personally and strongly criticised by Chief Justice Max Wolff, President of the Reformed Zurich Synod (*Reformierte Zürcher Synode*), and Walter Lüthi, a protestant minister from Basel.<sup>108</sup> The Reformed Church pastor Paul Vogt, who dealt with refugees, and Gertrud Kurz-Hohl, Head of the Christian Peace Service (*Christlicher Friedensdienst*), also tried several times to bring pressure to bear upon the authorities to change their policy. On 23 August 1942, for example, Gertrud Kurz made a special trip to the place where Federal Councillor von Steiger was vacationing. And in July 1944, Paul Vogt put before the Federal Council proposals for concrete measures to save 10,000 Hungarian Jews. The Federal Council replied that the «attention necessary» had been paid to the question, but that the interests of the army had to be taken into account: «As you know, the large number of foreigners represents a heavy burden and a daily impediment for our national defence system. It is becoming increasingly difficult to find accommodation for them.»<sup>109</sup> Although the attempts at a political level mentioned above were made by individuals, they included upper-level representatives of the Reformed Church. On the Catholic side, among the bishops for example, no such initiatives were taken in favour of the refugees, as far as is known. Not least out of deliberate national loyalty, the episcopate never criticised official policy on refugees and at times even explicitly approved it. In October 1942, Bishop Marius Besson declared, «our authorities are quite right in not practising an unqualified open-door policy and in taking all the necessary measures to maintain the welfare of the country». At the same time, and this shows the utter contradiction of his stand, he urged his followers to offer the «mass of extremely friendly refugees» the traditional «generous hospitality».<sup>110</sup> The Lucerne moral theologian Alois Schenker, who was also President of the Caritas Refugee Committee (*Flüchtlingskommission der Caritas*), was one of the few exceptions. In October 1942, he criticised the stand adopted by the majority of the National Council, and indirectly that of Federal Councillor von Steiger as well, by describing the opinion which held that 9,000 immigrants were the maximum as «not commendable» and declaring that Switzerland would not stand the test of history.<sup>111</sup>

The main role played by the church was to provide material and moral support for asylum seekers through their relief organisations. In this respect the church had to meet the expectations of the authorities, which Rothmund described to members of the Swiss Church Relief Committee for Protestant Refugees (*Schweizerisches kirchliches Hilfskomitee für evangelische Flüchtlinge*, SKHEF) in March 1940 as follows: «The Confederation would never see the end of it if it started providing support. The people who have brought these newly impoverished refugees into the country must be responsible for their keep.»<sup>112</sup> In addition, the relief organisations tried to find safe havens overseas for their fellow believers. The disappointing results of these efforts, which as far as the Catholic church was concerned involved in particular Catholic countries in South America, show how comparatively more difficult and hopeless similar attempts on behalf of Jewish refugees must have been.

At first support from the church benefited exclusively members of the same religion. For example the Vaud National Church adopted a reticent attitude towards Jews that was marked by the anti-Semitic climate of the time, although it was the first church in Switzerland to set up, in 1939, an organisation for protestant refugees.<sup>113</sup> In 1940 Caritas distinguished between «Aryan», «semi-Aryan» and «non-Aryan» refugees when they were registered.<sup>114</sup> In 1942 the Protestant Church started providing support for Jewish refugees, too; the parishes contributed the «pennies for the refugees» (*«Flüchtlingsbatzen»*). The Catholic aid to refugees restricted its support to followers of its own belief, although it had to tread carefully because of constant reproaches of neglecting its «own» members (Swiss Catholics) in favour of «others» (non-Swiss Catholics).

In conclusion it can be said that the national churches, as well as many religious circles, were heavily involved in looking after and helping the refugees, although they at first applied the principle of helping their own kind and only later included Jewish refugees in their activities. As an institution, however, the church had the possibility, through its social role, of intervening at a political level, a possibility which the Catholic Church did not use at all and the Reformed churches only in the form of individual interventions on behalf of Jewish refugees. The introduction to a thesis written in 1943 under the supervision of Paul Vogt, which summarised experience to date and set out guidelines for future refugee work, emphasised the responsibility of the Church of Christ and declared: «They recognise the shortcomings of the Christian world in this area and admit their own guilt.» At times the phraseology used in Vogt's paper went too far for the leaders of the Swiss Federation of Churches (*Schweizerischer Kirchenbund*).<sup>115</sup>

### **The relief organisations**

There were numerous organisations in Switzerland which helped those persecuted by the Nazi regime. For the organisations and aid associations that operated internationally, Geneva was an especially important town, since it was a focal point for the exchange of information from different countries. Apart from the ICRC and the Ecumenical Council of Churches, the Relief Committee for Jewish War Victims (RELICO), which was associated with the World Jewish Congress (WJC) – represented by Gerhart M. Riegner – deserves special mention. RELICO organised the supply of food, clothing and medicines to the Jewish population in occupied Poland and in the internment camps in southern France. After the German entry into unoccupied France in November 1942, several international relief organisations retreated to Geneva, this town becoming the *de facto* centre for relief organisations. For instance, Geneva hosted the offices of the World Alliance of the Young Men's Christian Association (YMCA), which provided care for prisoners of war and internees; the Unitarian Service Committee and the American Friends Service Committee, both Christian relief organisations; and the Organisation for Reconstruction and Work (*Organisation, Reconstruction et Travail*, ORT) along with the Children's Relief Committee (*Oeuvre de secours aux enfants*, OSE), both founded in St. Petersburg around 1900 as Jewish relief organisations. In Switzerland, the ORT ran educational programmes for the refugees with a view to the post-war period. The OSE maintained escape routes from France to Switzerland, ran children's homes in the French-speaking part of Switzerland and looked after young survivors of the Buchenwald concentration camp. The international relief organisations had almost no influence on Swiss policy on refugees, although in autumn 1942 Marc Boegner, President of the Federation of Protestant Churches in France (*Fédération des Eglises protestantes de France*) and member of the Joint Committee on Behalf of Evacuees (*Comité inter-mouvements auprès des évacués*, CIMADE), managed to persuade the EJPD to admit certain people whose names were listed as so-called «*non-refoulables*» (literally, those who cannot be expelled).

The private Swiss relief organisations had no powers of decision in relation to the policy on refugees. They could, however, influence the form of the refugees' stay insofar as they were responsible – entirely until 1940 and later to a large degree – for looking after and funding immigrants and refugees, as well as helping them find a safe haven in a third country. In addition, they often intervened with the authorities on behalf of the refugees; they were mostly unsuccessful on basic issues, but in individual cases the representatives of these organisations quite often managed to persuade the authorities to admit refugees.

All these organisations differed with respect to their aims, their relationship

with Switzerland and other countries, as well as the size and political, social and religious composition of their membership. Many organisations had been set up immediately after the National Socialists came to power in Germany. Since it was members and sympathisers of the left-wing parties and Jews who were persecuted at first, the left-wing parties and the Jewish communities in Switzerland set up new structures for their aid to refugees. In March 1933, the Swiss Social Democratic Party (*Sozialdemokratische Partei der Schweiz*, SPS) and the Swiss Federation of Trade Unions (*Schweizerischer Gewerkschaftsbund*) founded the Swiss Refugee Relief (*Schweizerische Flüchtlingshilfe*, SFH), an organisation aimed at providing support for German Social Democrats and trade union members. The same year the Swiss Federation of Jewish Communities, SFJC (*Schweizerischer Israelitischer Gemeindebund*, SIG) appointed a committee for Jewish German refugees. In 1934, the Association of Swiss Jewish Poor Relief (*Verband Schweizerischer Israelitischer Armenpflegen*, VSIA) – (later to become the Association of Swiss Jewish Welfare and Refugee Relief (*Verband Schweizerischer Jüdischer Fürsorgen/Flüchtlingshilfen*, VSJF)<sup>116</sup> – took over total responsibility for organising aid for Jewish refugees and was subsequently to bear the greater burden of private refugee relief. Aid to refugees was based on the principle of solidarity groups, i.e., each relief organisation supported the refugees closely associated with it. This principle was applied so rigidly that for example the Swiss Social Democratic Party and the Swiss Federation of Trade Unions argued the question of whether the Party should also support persecuted union members (and vice versa), or even whether the individual trade unions within the Federation (e.g., the Railway Employees Union) should also help needy union members from other branches.<sup>117</sup> Several relief organisations concentrated on helping children.

In June 1936, the main relief organisations merged to form the Swiss Central Office for Refugee Relief (*Schweizerische Zentralstelle für Flüchtlingshilfe*, SZF) (later to be known as Swiss Refugee Relief) in order to pool their energies and co-ordinate their stand vis-à-vis the authorities. In November 1936, after tough negotiations with Rothmund, they signed an agreement which defined their collaboration with the police. They undertook to register each new arrival and to inform the refugees that they had neither the right to seek employment nor to stay in Switzerland in the long term. In exchange, the Confederation was prepared to contribute 20,000 francs per year towards the refugees' onward journey. In 1936 this agreement seemed feasible. In the wake of the more radical persecution and extermination policy adopted by the Nazis, the relief organisations came increasingly into conflict with the authorities, a situation which reached its climax in August 1942 when the government decided to close the Swiss borders.

In view of the collaboration between the authorities and the relief organisations, can the latter be considered partly responsible for the restrictive policy on refugees? They certainly acted as a corrective element in the direction of a more open policy on refugees. It must be said that statements made by relief organisation circles can frequently be found which, from today's standpoint, seem questionable in view of their closeness to the attitude of the authorities. In a historical interpretation, however, two aspects must definitely be taken into account. Firstly, there was little room for overtly dissident relief to refugees in the face of the socio-political rallying process taking place in the second half of the 1930s. Only the communists persisted in their opposition, in an undemocratic manner and increasingly taking their cue from Moscow. Their organisation Red Aid, banned in 1940 (together with the Party) refused to register illegal refugees with the authorities, which was one of the reasons why the Red Aid organisation was not included in the Swiss Central Office for Refugee Relief set up in 1936. Secondly, close collaboration often existed between the relief organisations and the political elite, who considered private charity activities to be part of their duties. This is true not only of the ICRC, in which the Federal Council personally had its representative, as described above, but also of the Swiss Refugee Relief and the relief organisations, which were funded mainly by contributions from bourgeois circles. A well-known example is the dual role played by Robert Briner, who was Chief of the Zurich Police Department and at the same time Director of the Swiss Central Office for Refugee Relief. At the Conference of the Cantonal Police Directors held on 17 August 1938, he asked: «Can't we keep our borders more tightly shut? We're having more of a job getting rid of the refugees than keeping them out.»<sup>118</sup> At the subsequent Police Conference of Cantonal Police Directors on 28 August 1942, he demanded that the borders be hermetically closed, declaring at the same time that his canton was prepared to set up and finance work camps for the refugees already here and to look for families willing to take in Jewish refugees. Federal Councillor von Steiger asked Briner to explain the outcome of the conference to the relief organisations.<sup>119</sup> A month later Briner announced to the police directors that:

«In order to solve the question of the refugees both sides must try to fully understand the other's point of view, because these extremely difficult tasks can only be fulfilled through joint effort. In order to facilitate such collaboration, I have accepted to take over as director of the Central Office.»<sup>120</sup>

The relief organisations were thus also political partners of the authorities, useful in fulfilling many of the tasks arising from the policy on refugees and, as a rule, co-operative. On the one hand, this fusion made them a stronger body

and resulted in improving in the flow of information between themselves and the authorities, and on the other, it led to their adopting a more moderate policy, the authorities' delegates to the relief organisations playing an important role in this connection. This became clear for example in March 1943, when the Association of Swiss Jewish Welfare and Refugee Relief (*Verband Schweizerischer Jüdischer Fürsorgen/Flüchtlingshilfen*, VSJF) once again protested against the EJPD's refusal to recognise racial persecution as a reason for granting asylum. Briner said he was prepared to intervene with the EJPD on behalf of the Jewish refugees, but at the same time he threatened to resign if the Swiss Central Office for Refugee Relief were to demand that the authorities stop turning people away at the border. In the ensuing vote, the relief organisations backed Briner by 22 votes to 2; the Association of Swiss Jewish Welfare and Refugee Relief (VSJF) was henceforth isolated from the other relief organisations.<sup>121</sup> By so doing the relief organisations accepted the framework laid down by the authorities as the legal basis for their work. It is true that in some cases they could have adopted a more courageous approach and backed the cause of the Jewish refugees with more determination, but they can hardly be considered, for this reason, as co-responsible for the policy of the time.

### **The Swiss Federation of Jewish Communities**

The Swiss Federation of Jewish Communities (SFJC) together with the Association of Swiss Jewish Welfare and Refugee Relief was among the central players insofar as it provided support for Jewish refugees, bore the main burden for private aid to refugees and was the authorities' official contact for issues which concerned Jewish refugees. From the authorities' point of view, the SFJC represented the 19,000 or so Jews living in Switzerland, of which only around half were Swiss citizens.

After the publication of the report on refugees in December 1999, an attempt was made to allot a degree of responsibility for the restrictive policy on refugees to the SFJC, using isolated quotations out of context.<sup>122</sup> Below we set out the SFJC's attitude to the official policy: three aspects are of major importance.<sup>123</sup> Firstly, the SFJC defended the legal status which had been achieved since emancipation and which it saw endangered by such singular standards as adhered to by anti-Semitism and National Socialism. This stand was marked by the fierce campaigns of self-defence which the SFJC had fought during the pre-war years, including for example the defamation case in Bern surrounding the «Protocols of the Learned Elders of Zion». At the time there was no adequate legal basis for effectively combating anti-Semitism and racism. In addition, the SFJC was concerned about the Federal Council's Decree of 4 October 1938 as well as administrative measures against refugees which were bound seriously to

affect the legal status even of Jews living in Switzerland. In June 1938, the authorities had refused to intervene on behalf of Swiss Jews in Nazi Germany, reminding the SFJC of the fact that the Federal Constitution of 1848 did not recognise equal rights for Jews.<sup>124</sup> When in 1941 the Federal Council officially abandoned the legal protection of Jewish Swiss citizens in France, the SFJC lodged an objection accompanied by an expert legal opinion invoking both the emancipation of 1866 and the bilateral residence agreement of 1882. The SFJC made a point of stressing that universal legal principles, in particular the principle of equality, were sacrosanct.

Secondly, the SFJC tried to muster its internal forces. This effort was not simply limited to collecting donations for needy Jews abroad and later on for the refugees in Switzerland. The SFJC was aware that, to be able to fulfil its humanitarian commitment, it depended to a large extent both on the authorities as well as on the sympathy of non-Jewish organisations which had been merged in the Swiss Central Office for Refugee Relief. From a political point of view, the SFJC did not want to be suspected of acting disloyally towards its own state, and tended to co-operate with the authorities in order to be able to help the refugees. With the aim of rallying its internal forces, the SFJC tried to achieve a high level of consistency and discipline, not least through fear of quickly becoming the victim of anti-Jewish and anti-refugee rhetoric. In this connection, numerous contradictions arose due to social conditions and origin as well as religion and politics. This could be seen for example in the varying attitudes to the immigration of foreign Jews, in particular since, in view of growing anti-Semitism and the authorities' defensive attitude towards foreign Jews, some feared for their own status as Swiss citizens. Different points of view also existed with regard to the possible repercussions of the emigration of Swiss Jews, and long-time Jewish residents. It is true that the publicly displayed goodwill, co-operation and discipline were a matter of controversy within the SFJC.<sup>125</sup>

Thirdly, the Swiss Jews supported a transit strategy in the policy on refugees since, from 1938 on, Switzerland appeared quite suitable for dispatching relief and deliverance to those in need in the Nazi sphere of influence. The SFJC assumed that those who had escaped persecution would enjoy greatest safety overseas and did not see much of a future for Jews in Europe. For this reason the SFJC and the VSJF sought closely to co-operate with British Jewish and American Jewish relief organisations from 1938 on, in order to cope with the tasks that had been placed on their shoulders by the authorities and to offer the refugees some prospects of a future in their new host countries. In 1938 and 1940, relief committees were set up in local Jewish communities to assist persecuted Jews abroad. Several Jewish relief organisations operated from Switzerland during the war, offering help to those being persecuted in Nazi-

occupied areas as well as taking initiatives in Switzerland itself. After 1940, Switzerland was represented in the American Jewish Joint Distribution Committee (JDC), which provided a large part of the necessary funds, by SFJC President Saly Mayer. After resigning as President of the SFJC, Mayer worked, after spring 1943, in an official capacity as European co-ordinator of the JDC on behalf of those in need in Nazi-occupied territory.

The SFJC and the Swiss Jews used various methods to urge the authorities to admit refugees, allow them to stay and provide accommodation, even if the refugees were strictly forbidden to seek gainful employment. In view of the possibility of aggression on the part of the Nazi state, the SFJC increasingly refrained from any public comments from 1938 on, and made its requests to the authorities orally. When in 1941 the persecution of Jews turned into their extermination, the SFJC's discretion, which until then had served the refugees well, became totally ineffective. From spring 1942 on, the SFJC's main activities no longer centred on finding temporary accommodation for refugees and helping them to continue to a third country, but increasingly on rescuing people whose lives were threatened. After August 1942, relations between the SFJC and the authorities deteriorated. This provided an incentive for individual Jewish representatives to pursue or at least to support clandestine relief activities. In March 1943, the VSJF once again protested against the EJPD's refusal to recognise racial persecution as well as political persecution as a reason for granting asylum, but came to realise that the various relief organisations operating under the Swiss Central Office for Refugee Relief umbrella organisation, were not willing to support its requests. From 1944, the SFJC advocated general permanent asylum for Nazi victims in Switzerland, and was finally successful in 1947, but even then only in part.

Under these circumstances, it is inappropriate to create the impression that the SFJC was partly responsible for the policy on refugees at the time on the basis of its co-operation with the authorities up until 1942. If one takes into account the fact that the legal and political position of Jews in Switzerland was by no means inviolable, the SFJC and the VSJF had even less room to manoeuvre than the relief organisations, which generally made an effort to co-operate. It remains to be said that, out of all the social forces, the SFJC was the most vociferous in demanding in 1942/43, although unsuccessfully, that the principles of Swiss policy on refugees be radically revised.

### **The population**

The attitude and role of the population as a whole is almost impossible to assess today. It must be said, though, that the many years of financial support for the relief organisations, the escape aid given at the border and people's willingness

to commit themselves to activities such as taking in children or the accommodation campaign (*Freiplatzaktion*) initiated by pastor Paul Vogt indicate that part of the population was very willing to help the refugees. Finally, it is interesting to note how the population was perceived by the authorities. The EJPD, for example, regularly claimed that taking in Jewish refugees would intensify anti-Semitism. It is known that Rothmund veiled the anti-Semitism that was rife among the authorities with the argument that keeping out Jewish emigrants and refugees served to protect Switzerland as well as Swiss Jews from an anti-Semitism that was «unworthy of our nation». Robert Briner declared on the other hand at the end of August 1942: «There is no danger of anti-Semitism. Our people are immune to it.»<sup>126</sup> Both of these contradictory statements by different representatives of the authorities refer to anti-Semitism in Germany: «immunity» presupposes «infection» from the outside; the anti-Semitism that was «unworthy of our nation» was a foreign one. In contrast to what is suggested here, anti-Semitic prejudice and Christian enmity towards Jews were also common among the Swiss population. It is doubtful, however, whether the generous admission of Jewish refugees whose lives were threatened would have resulted in a generalised anti-Semitic movement supported by the population, let alone a virulent «redemptive anti-Semitism» of a Nazi type. What is clear is that in summer 1942 the authorities' confidence in their policy was shaken by the population or at least by that part of the population which articulated their political opinions. Federal Councillor von Steiger did not fail to be impressed by the demonstrations against the closing of the borders; at the Conference of the Cantonal Police Directors he used the demonstrations to back his argument against the negative attitude of certain cantons:

«The cantons that say today that they can not help us should think hard about whether they can join us or not. They cannot remain aloof if the whole of Switzerland says it is prepared to take in [refugees].»<sup>127</sup>

The authorities' reply to those who referred to the tradition of granting asylum was that a realistic stand justified refusing asylum. The EPD explained that the task of the Federal authorities:

«is made all the more difficult by the fact that public opinion in Switzerland, regardless of political or social differences, often advocates, in passionate terms, a more far-reaching and more generous policy for granting asylum.»<sup>128</sup>

Naturally there were shifts in public opinion; over the final 18 months of the

war in particular, tension arose between the native population and both military and civilian refugees. It is also doubtful whether the objections voiced in autumn 1942 reflected the opinion of the majority of the population, or whether the majority was in fact not interested in, and indifferent to, the refugees and their plight in view of the many other worries they had. Nevertheless, there is little to indicate that the population would not have accepted a more open policy if the country's political leaders had not failed in their duty in autumn 1942 and had informed the population about the threat hanging over the Jews and had called for solidarity in a population spared by the war.

### **3.4     Financing**

In the case of civilian refugees being admitted, there were no regulations under international law which stipulated who should pay the cost of their keep. By contrast, it was stipulated under the terms of the Hague Agreement of 1907 that neutral states were to pay the cost of interning military personnel but would be reimbursed after the war by the countries in question.<sup>129</sup> The financial aspects of policy on people persecuted by the Nazi regime were thus of major importance.

Basically, during the 1930s the authorities and the relief organisations considered that covering the cost of the refugees' stay in Switzerland was a private matter and not that of the state. The refugees should pay their own way as far as possible; if necessary, the appropriate support groups should provide financial support for «their» people. After the persecution of Jews was intensified in 1938 and tens of thousands of people fled Austria and Germany, the Swiss relief organisations ran out of funds. The Federal authorities maintained their policy and continued to grant only meagre sums to refugees who left the country. From 1940 on, the financial burden on the relief organisations was somewhat alleviated by the fact that emigrants were interned in work camps; from 1943 on, the commitment of the Federal authorities became more substantial as thousands of refugees were sent to camps and homes. After the war, the Confederation continued to pay out considerable amounts in favour of the refugees. Over the entire period from 1933 until 1950, the Confederation and the various relief organisations – in addition to the refugees themselves – were thus the main sources of funding for Swiss refugee policy.

In our opinion, the global cost to the national economy generated by having taken in the civilian refugees, is impossible to calculate. Apart from direct costs for board and lodging plus medical care, any such calculations would have to include the economic benefit gained from the presence of the refugees. This

would encompass their manpower or, for example, what they spent on accommodation in boarding houses and with private families. The question also arises as to whether the amount the Confederation spent on supervising the refugees was really necessary and should be included in its entirety in such calculations. Finally, it is also impossible to estimate the amount of individual support provided by private households, insofar as such support was not in the form of donations to relief organisations and was therefore not included in their expenditure. For these reasons, it is not the overall cost, but rather expenditure by the main bodies involved which is described below.

The refugees helped to pay for their keep in three ways: firstly through individual spending, secondly through the deductions made from their assets which from 1942 on were being administered by the EJPD (see section 3.5), and thirdly through a special tax levied on wealthy emigrants – the so-called solidarity tax (*Solidaritätsabgabe*) – which was introduced with the Federal Decree of 18 March 1941. As early as June 1939, discussions were held within the Swiss Federation of Jewish Communities as to ways of encouraging wealthy emigrants to spend more money, in particular in view of the fact that the Jewish relief organisations were in dire straits financially. The legal basis for the special tax had already been put in place through the Federal Council's Decree of 17 October 1939.

American, Dutch and British refugees were not required to pay this special tax since it presented various problems in regard to legal aspects and foreign policy: it might well have constituted a violation of the clause concerning equal treatment of foreigners and Swiss citizens as was included in certain residence agreements.<sup>130</sup> In April 1941 Max Ruth, Deputy Head of the Police Division, declared that it was safe to impose the discriminatory tax on other refugees since their countries of origin (for example Germany) would hardly try to defend the rights of those citizens who had fled their own country. From November 1943 on, all refugees and emigrants who had entered Switzerland after 1 August 1942 were subject to the solidarity tax. At least two-thirds of those involved appealed against the assessment based on information provided by the refugees upon their entry into Switzerland and on the estimation made for them with respect to other types of taxes. The Federal Tax Office remarked that:

«Only limited funds are still available, since large amounts have been used up for the refugees' living costs, most of them being unemployed, for their preparations for emigration, for sacrifices made to other family members, for taxes, etc.»<sup>131</sup>

Some of the assets declared had never even existed, the refugees being forced to

claim they were wealthy in order to obtain an entry permit for Switzerland. Federal Councillor von Steiger recommended that «a policy of leniency» be adopted with respect to collecting the tax; in cases where «improper behaviour (e.g., a manoeuvre to evade payment) was encountered, or where the people concerned were not ready to help» strict application of the law was called for.<sup>132</sup> A total of around 500 emigrants and refugees who had assets of 20,000 francs and more paid the solidarity tax, a tax on assets which was introduced by the Federal authorities in March 1941. It is apparent from the tax lists, which distinguished between «Aryans» and «non-Aryans», that the amounts paid by Jewish emigrants were higher than the sums turned over to the Jewish relief organisations. Out of the total of 2.4 million francs which were distributed among the relief organisations in five instalments up to 1946, approximately 1.5 million francs were received by the Jewish refugee relief organisations.

Between 1933 and 1954 the various relief organisations which had joined to form the Swiss Central Office for Refugee Relief, spent around 102 million francs<sup>133</sup> of which the Association of Swiss Jewish Welfare and Refugee Relief (VSJF) accounted for 69 million francs. The Swiss Committee for Aid to Children of Emigres accounted for 8 million francs; the Swiss Churches Relief Committee for Protestant Refugees, for 10.1 million francs; the Catholic relief organisation «Caritas», for 7.5 million francs, and the social democratic Swiss Workers Relief (*Schweizerisches Arbeiterhilfswerk*, SAH), for 2.2 million francs. The remaining amount was spent by various smaller relief organisations. In general, the relief organisations obtained their funds through collections, contributions from organisations and institutions of which they were members, as well as from membership dues and donations from supporters. The relief funds which the VSJF had at its disposal came from various sources. While a good 15% was donated by the Jewish population of Switzerland, the Central Office for Refugee Relief and other organisations provided around 17% of the VSJF's income. Over half of the Association's total revenue came from the American Jewish Joint Distribution Committee (JDC).<sup>134</sup> Between 1933 and 1950, Jewish refugee relief organisations received 6.4 million francs from the Confederation, representing 10.5% of their total revenue. It must be said, however, that Federal contributions to the VSJF increased substantially only with the creation of permanent asylum in 1947. Until then, the Confederation had paid out less than 2 million francs (which moreover until 1941 could be used only for the emigration of refugees).<sup>135</sup>

At the outset the Confederation contributed funds (totalling 1.8 million francs up to 1950) mainly to finance the migration of refugees to a third country. Added to this were contributions towards the cost of running the Central Office for Refugee Relief which amounted to around 373,000 francs up to 1954.

Expenditure by the Central Directorate for Work Camps (*Zentralleitung der Arbeitslager*, ZLA) is difficult to assess, although it can be assumed that the net cost was 110 million francs. Apart from the work camps run by civilian authorities, other financial responsibilities also fell to the Confederation which assumed the costs for the army-run assembly camps, quarantine camps, and reception camps, from which people were allotted to work camps or refugee homes; for the expenses of the Police Division (around 30 million francs up to 1950); for reimbursements to the army territorial service amounting to 11 million francs; for expenditure on refugees who passed through Switzerland (namely in 1945) of around 1.7 million francs; and for the cost of running the EJPD Emigrants' Office and the Refugee Section (5 million francs).<sup>136</sup>

In conclusion, it can be stated that between 1939 and 1945 Federal expenditure stemming from its refugee policy amounted to between 100 and 103 million francs; up until 1954 expenditure rose to 136 or 165.5 million francs, depending on the statistics used. A massive rise in Federal expenditure is to be noticed from 1943 on. The question of cost, which in particular had been raised earlier, was principally an argument put forward to justify restrictive measures that were, in reality, based on other considerations. The contributions made by the cantons varied greatly and were voluntary; either individual refugees or relief organisations were the beneficiaries. The proposal of a contribution towards overall Federal expenditure in this field was rejected by a clear majority. After 1942, the general opinion was still that refugee relief was a private matter, or at least the responsibility of the Federal authorities. The attitude of Arnold Seematter, a member of the Bern Cantonal government who in February 1943 objected to the generous use of Federal funds, proved to be symptomatic: «The people of Switzerland should bear the consequences of its generosity on its own.»<sup>137</sup> As far as the cantonal authorities were concerned, the question of financial contributions was brought up again only after the war in connection with permanent asylum when they, along with the Confederation and the relief organisations, had to foot a third of the bill for supporting the refugees who remained in Switzerland.

### 3.5 Crossing over the Border and Staying in Switzerland

On 22 August 1942, Eduard Gros crossed the Swiss border near Geneva together with Hubert and Paul Kan. Shortly after entering the country illegally, the three stateless Jews were arrested by the Geneva military police and driven to the German customs post of La Plaine,<sup>138</sup> situated on Swiss territory, and then sent off on foot to the border with occupied France. When the refugees caught

sight of the German border police they jumped into the Rhone and swam back to the Swiss bank where they begged and pleaded to be admitted, but without success. One of the men tried to cut his wrists. Anticipating this suicide attempt, the Swiss border guards and soldiers dragged the three men, who were clinging firmly to each other, away from the river bank to hand them over to the German officials who were waiting nearby. This attempt to oust them, however, failed. Since there was a general desire to avoid scenes which might draw attention, Daniel Odier, a Geneva territorial police officer, arranged with the German border officials that the refugees would be officially handed over on the territory of occupied France. There the three Jews were arrested by the German border police and, as reported subsequently by other refugees, transferred to the prison in Gex. On 18 September 1942 Eduard Gros and Hubert and Paul Kan were deported to Auschwitz via Drancy.<sup>139</sup>

This example illustrates the difficulties and risks involved in trying to cross the border. Because the possibilities of crossing the border were limited since visas were compulsory and the borders were closed, the success of an attempt to escape depended on the help of a third party. To actually get across the border, refugees often had to rely on a person who was familiar with local conditions – a so-called *passeur* – and then had to entrust their lives to him or her for better or for worse. Their distress was no guarantee of safety for the refugees; it did not protect them from theft or blackmail, or from being abandoned or even denounced by the smuggler after payment had passed hands. And even once they had crossed the border, the refugees were not out of danger since the Swiss authorities had established a 12 km wide border zone in which refugees who were caught had to reckon on being turned away.

After successfully crossing the border into Switzerland themselves, many refugees tried to ensure that their relatives and friends followed so as to escape deportation. Mendel Willner, for example, helped young Belgian Jews to escape. When questioned by the authorities, he admitted telling his contacts in Brussels and Antwerp that «they should make sure that the young Zionists came to Switzerland because it was better for them to risk their lives trying to make it to the Swiss border rather than to be deported or shot by the Germans».<sup>140</sup> Escape assistance groups and other organisations provided refugees with false papers which they used not only for getting as far as the Swiss border but also for entering Switzerland. During the course of the war, escape-helpers such as Mendel Willner were instrumental in spreading knowledge back in the occupied territories on the Swiss practice of admitting refugees or turning them back. When it became known that, according to a rule concerning hardship cases, young people under the age of 16 or 18, families with small children, and pregnant women were to be admitted, the refugees organised

themselves into fictitious families in order to meet the requirements of the hardship case rule. Anyone who did not have a small child of their own took with them from Brussels a child whose parents had been deported, or temporarily borrowed one from another refugee family. Parents changed the date of birth on their children's papers and unmarried men got together with pregnant women to form a couple. An investigator reported that:

«A presumed mother was questioned by me and swore on the life of her child that the man who was with her was her husband and that the child was her son. When our investigation service discovered that their identities were false, the woman told me: ‹We are prepared to try anything to save our own lives. We would swear by anything if we had to, even on the lives of our children.›»<sup>141</sup>

#### **Billeting in camps and homes**

If the refugees were taken into charge after crossing the border, they began a long journey through numerous camps and other types of accommodation. The system of Swiss refugee camps, which was continuously expanded and adapted to changing conditions as the war progressed, is described below. We shall therefore refer here to the last two years of the war, when the system was fully developed. Before the refugees were billeted in civilian accommodation, they passed through various camps run by the military. The assembly centres near the border were followed by at least three weeks in a quarantine camp. The refugees had to wait in reception camps, also run by the military, until places were available in the civilian work camps and homes. Many waited several months, some even more than half a year. In many cases, living conditions in the reception camps did not even meet the simplest of standards: often there was no heating, the sanitary facilities were inadequate, and the diet was poor. Conditions in the camp at Büren an der Aare, which had originally been built for Polish military refugees and was converted into a reception camp in late autumn 1942, were particularly alarming. Furthermore, in the camps the refugees were subject to strict control: all mail was censored, no letters written in Hebrew characters could be mailed, and no postal communication with other countries was allowed. The decision to mandate the army to supervise newly arrived refugees was clearly a mistake on the part of the political authorities, as was concluded towards the end of the war, even in military circles. Not used to dealing with people who had a different kind of background, many officers insisted on the type of behaviour with which they were familiar as military leaders. The reputation of some camps was so bad that, during the second half

of the war, the Federal Political Department was concerned about Switzerland's international image.

After passing often several months in military camps, most of the refugees found the transfer to civilian accommodation a deliverance. Leave and trips to the nearest town allowed them to forget for a time the monotony of daily life in the camp. Manès Sperber wrote that in the charge of the civilian authorities they were no longer treated as «pariahs or escaped convicts».<sup>142</sup> The refugees seldom spent more than a year in the same place. Staying in camps and dormitories, the refugees had little opportunity to satisfy their personal needs or to develop individual skills. The activity report drawn up by the Central Directorate for Homes and Camps (*Zentralleitung für Heime und Lager*, ZL) later noted that «they did not have their own four walls within which they could find the peace they so desperately needed and gather new strength; they were forced to live for years in camps and homes with strangers with whom they often could not build up close relationships.»<sup>143</sup> At the time, the administration of the camps and homes system showed far less understanding for the refugees and the many burdens they had to bear. Efforts were concentrated far more on occupying the refugees, who were not allowed to take up gainful employment, supervising them more strictly, and keeping them away from the towns.<sup>144</sup> Discipline in the camps was maintained not only for reasons of necessity but more often out of an educational need that was tainted with an anti-Semitic prejudice. A report summed up the behaviour of various officers as follows:

«Only through strict military rules is it possible to maintain a certain level of discipline among the Jewish refugees. [...] A Jew has great respect for a uniform and does not dare to challenge anyone who wears one. With civilians he'll immediately try to make a deal. [...] Sexual problems, which play an important role in particular with Jews, should not be ignored.»<sup>145</sup>

From spring 1940 on, all interned emigrants as well as Swiss citizens were compelled to work. As a rule the manner in which labour was deployed bore no relation to individual skills and ability. Men were put to work principally on military building sites and in the fields. In autumn 1943, a total of 1,100 male refugees were working for farmers; a year later this figure rose to 1,780, and in August 1945 it was over 5,000. 630 female refugees were employed in Swiss households at the end of 1944. The women billeted in homes did housework, as well as sewing, darning, and knitting for the men in the camps and sometimes for the army as well. The authorities put a good deal of pressure on the female refugees in order to satisfy the demand for domestic employees.<sup>146</sup> No information is available as to the value of the work carried out by refugees

in work camps and homes. What Heinrich Rothmund noted in 1950, however, probably applies:

«In conclusion it can be said that during the war and in the first few post-war years, thousands of emigrants and refugees provided welcome and valuable help for the army and the civilian population during a difficult period. They fulfilled tasks which were often not of financial benefit to the Confederation, but served the purposes of national economic and military defence at the time.»<sup>147</sup>

#### **Private accommodation for refugees**

The camp structure and the obligation to work led to many refugee families being separated: while the women were admitted to homes and the men to work camps, the children were billeted with foster parents. At the beginning of 1944, more than 800 men and women were living at a great distance from their spouses and over 200 mothers were waiting to be reunited with their children. Desperate parents appealed to the relief organisations. One woman wrote as follows to pastor Paul Vogt:

«Today, Wednesday, we are allowed to be with our children from 2 to 5 p.m. but the thought of our imminent separation is depressing. We go for walks, we hold our children in our arms like tormented souls, we hug them because they will be taken away from us again shortly. [...] My husband is in the Andelfingen camp, my son is in Winterschwil (Aargau), my daughter and I are in Langenbruck – she is on the first floor and I'm on the second. At night I wake up wondering if my little one is sleeping.»<sup>148</sup>

The separation of parents and their children – which raised legal problems too<sup>149</sup> – was not due solely to regulations laid down by the authorities, but was also encouraged by the Swiss Committee for Aid to Children of Emigres (SHEK). In the SHEK's opinion for the sake of the development of the children, a «normal» family atmosphere was preferable to living with their mothers in refugee homes. Out of the 2,000 or so children and young people cared for by the SHEK in 1943, of whom many had made their way into Switzerland alone, over 1,300 were placed in Swiss foster homes. Two years later this figure had risen to almost 2,500. In most cases, the foster families paid for the children's board and lodging.<sup>150</sup> Over 90% of the refugee children were Jewish and the SHEK managed to find foster families among the small Jewish community in Switzerland for only a minority of them. Most of the children lived in Christian families, which understandably led many parents to worry that their children

would be estranged from their family traditions and their religious beliefs. In addition, during the rare and brief family holidays, the parents and children often had problems understanding each other since the children had quickly picked up their new language and were beginning to forget their mother tongue.

In the course of the war some adults also benefited from «free places» («*Freiplätze*») in private households. For many refugees, this brought welcome relief from the wearing daily routine in a home or a camp, and in some cases allowed them to participate in intellectual and cultural life. For many Swiss, the «accommodation campaign» (*Freiplatzaktion*) gave them the opportunity to express their solidarity with the refugees, while others charged rather steep prices for board and lodging. From autumn 1943 on, when it became more difficult to find further mass accommodation, the authorities too welcomed the private accommodation of refugees. The following figures for spring 1944, which are partly based on estimations, illustrate the variety of conditions in which the refugees lived. Out of the 25,000 or so civilian refugees living in Switzerland at that time, 9,300 were living in civilian camps and homes; 3,000 were waiting in reception camps to be admitted to civilian quarters; 5,300 were living with relatives or in boarding houses; 1,600 men and women were working on the land or as domestic staff and had private accommodation; 1,000 people had a «free place» in a Swiss household, and 2,500 children lived with foster families; 580 refugees had access to higher education.<sup>151</sup>

With regard to the demands made on the refugees, the same applies as has already been pointed out for military reception camps: during their stay in Switzerland the refugees were subject to far-reaching controls as well as being under a certain pressure to conform. Unfavorable findings such as dependence on welfare, and moral objections like «immoral conduct», «homosexuality», or «unruliness» could result in the residence permit being withdrawn and the person in question being deported. This illustrates that the authorities looked upon the decision to deport a refugee as being a matter of their own discretion, and how criteria of political advisability in the matter were decisive. «It may be necessary to deport a person as an *act of self-protection on the part of the state*; it may also be advisable if the foreigner is *unworthy of being granted asylum* for personal reasons» was Robert Jezler's opinion in 1944.<sup>152</sup>

At the end of 1943, a turning point was reached in the way the authorities dealt with the refugees: on the side of the authorities there was more willingness to meet the needs and wishes of refugees in homes and camps. The principle of separating families was abandoned. After 1943, students were allowed to continue their studies – which had been interrupted by their flight – at Swiss universities and thanks to private initiatives university camps were set up for

students, as well as a high-school camp for Italian teenagers.<sup>153</sup> These changes can be largely explained by the progress of the war: thanks to the Allied victories, the end of the refugees' stay in Switzerland could be foreseen. They began to appear more confident and demanded the right to have a say in their own future. As Switzerland's situation changed with regard to the international state of affairs, the authorities on their part seemed to increasingly perceive the refugees as those who would shape the future of Europe, and therefore set new priorities in asylum policy. It was against this background that a Joint Commission (*Commission mixte*) was set up in June 1945 which dealt with the many problems that arose in the post-war period, such as the issue of stateless persons. Unlike the Federal Commission of Experts for Refugee Matters (*Eidgenössische Sachverständigenkommission für Flüchtlingsfragen*) that was set up in February 1944 and which included representatives of the relief organisations but none from among the refugees themselves, the refugees were now allowed to appoint their own delegates to the Joint Committee.

Towards the end of the war, the question of the refugees' future took on an ever-increasing importance. In order to get an idea of the refugees' own thoughts, the Central Office for Refugee Relief and the Swiss section of the International Migration Service organised a survey among them to obtain information about their plans for the future. The results of this survey, which was carried out for the first time in 1944, revealed that only a minority of 25% of the 5,000 or so refugees questioned wished to return to their own country. Refugees from Poland and Germany in particular categorically refused to be repatriated. The reasons were plain: 80% of those questioned were Jewish and did not wish to return to the country where they had been persecuted. Germans, Austrians and Poles feared a revival of anti-Semitism in their home countries; in addition many eastern European Jews had emigrated to the West long before the war and had been driven out of the country where they were staying only when it had been occupied by the Germans. The majority of the refugees preferred to migrate to a European country, while Palestine, where the political situation was still unclear at the time of the survey, was given as a desired destination by only 9% of the refugees.<sup>154</sup>

Many people, however, simply did not have the strength to start a new life for the third, fourth or fifth time. For some time, the relief organisations had been demanding that they be given permanent residence in Switzerland. After the Federal Council's initial push for a quick departure of the refugees, it agreed in 1947 to issue permanent residence permits: with certain restrictions, the Federal Council Decree of 7 March 1947 provided permanent asylum for refugees who could not be expected to migrate to another country yet again.<sup>155</sup> In 1951, the obligation to leave Switzerland, to which those refugees still in the

country were subjected, was finally abolished. Gradually most of them were released from the internment camps and given cantonal residence permits which granted them the right to take on gainful employment. On the whole, the former refugees were grateful that they had survived the war in Switzerland. As to what had transpired beforehand, this can probably be summed up in a statement made by the Committee of Experts for Refugee Matters in March 1945:

«Over the past 4 years we have been able to give the refugees a roof over their heads, clothing and food [...] but we have not managed to make them feel happy in Switzerland.»<sup>156</sup>

### **Asset management**

The refugees' stay in Switzerland was characterised by supervision and the removal of personal responsibility. This clearly emerges from the fact that the authorities confiscated the refugees' valuables and cash once they crossed the border and their assets were handed over to the Federal Department of Justice and Police to be administered.

The legal basis for this policy was provided by the Federal Council's Decree of 12 March 1943, according to which cash exceeding 100 francs, securities, and valuables belonging to refugees who had entered Switzerland after 1 August 1942, were to be put under the control of the Federal authorities. Even before this date, however, asylum seekers had been forced to hand over their assets, with dubious legal justification;<sup>157</sup> in this sense, the Decree of March 1943 provided a legal basis for a procedure which was already being carried out in practice, but at the same time had proved to be problematic. On the one hand, confiscated assets disappeared, and on the other it can be shown from a list drawn up by the territorial command in Geneva, that in at least ten cases refugees whose modest assets had been confiscated in the reception camp were subsequently deported without their money having been handed back to them.<sup>158</sup>

Since the Decree of March 1943 applied only to those refugees who had entered Switzerland after August 1942, the Police Division attempted to obtain information about the assets of refugees and emigrants who had arrived earlier. The banks consistently applied the banking secrecy which, however, did not stop the Police Division from obtaining the information they wanted by citing the Federal Council's Decree of 17 October 1939. If refugees did not respect the regulations concerning the handing over of their assets, they ran the risk of being deported or interned in a correctional institution. The Swiss Volksbank (SVB), a bank with a nationwide network of branches, was charged with managing the confiscated assets.

With the introduction of the management of refugee assets, the authorities pursued several objectives. On the one hand, the measure provided security collateral for the payment of claims under public law and for the refugees' upkeep. During their stay in Switzerland, be it in camps, homes, hotels or with private families, the monthly cost of their livelihood was deducted from their accounts; medical expenses were also covered in this way. Further reasons given for this legal measure of asset management were that it would prevent theft and black marketeering. In addition, the fact that the authorities managed the refugees' assets gave them more control over the refugees and took away a good deal of the their independence with regard to material matters. «We only want to protect him [the refugee] from harm and to prevent him from managing his assets – be they large or small – to the disadvantage of the nation or the canton or himself» was Federal Councillor von Steiger's explanation.<sup>159</sup> It was thus the Police Division which decided whether the purchase of ordinary consumer goods (such as medicine or shoes), which were paid for by the refugees themselves, was justified or not.

The official management scheme involved cash, which was deposited on current accounts, as well as valuables, for which deposit facilities were created. At the end of September 1943, the SVB was already managing as many as 2,500 accounts containing an estimated total amount of 800,000 francs, as well as 800 deposit facilities. By December 1944, the number of accounts had increased considerably: there were «around 7,300 accounts [and] approximately 2,100 deposit facilities» as well as 250 accounts in frozen dollars. After the end of the war, the general director of the Bank told the Police Division at a meeting that the SVB was managing around 7,000 accounts, of which «only 625 show a balance of over 500 francs», and 2,700 deposit facilities which in many cases contained only modest assets.<sup>160</sup>

As a rule refugees were handed back their assets upon leaving Switzerland. It must be said, however, that in the meantime most of the balances had decreased considerably. Apart from the repayment for their keep, this can also be explained by the high administrative fees levied by the bank. In addition, the authorities had exonerated the bank from paying the refugees interest on their current accounts. A particularly severe measure from the refugees' point of view was that the Police Division was authorised to sell pieces of confiscated jewellery if necessary (including even family heirlooms) without obtaining the owner's permission. At the same time, foreign currency was immediately converted into Swiss francs, any losses on exchange being debited to the refugees' accounts. Despite these unfavorable conditions for the refugees, the SVB did not profit financially from managing their assets. At the beginning, the bank assumed that the mandate given it by the EJPD would be profitable and that – with

regard to the post-war period – favourable customer relations could be established. However, the business did not prove to be profitable: after the war, the SVB estimated its loss at around 50,000 francs.

When permanent asylum (*Daueraufenthalt*) was introduced in March 1947, compulsory management of refugee assets was abolished. Out of the over 1,600 remaining current accounts 340 were unfrozen; the credit balances on the other accounts were transferred to a collective account at the Federal Treasury and Accounting Office (*Eidgenössisches Kassen- und Rechnungswesen*) entitled «Internees' Deposit Account». Half of the approximately 450 remaining deposit accounts were unfrozen while the other half remained with the SVB. After the end of the war, some of the refugees left the country without reclaiming their assets from the EJPD or the SVB. In most cases, the balances were transferred to the deposit account mentioned above. According to their own records, the Police Division subsequently carried out intensive research to locate the owners of the accounts that had been closed, and in many cases was able to restore the assets to their rightful owners. After the last remaining accounts had been closed and the assets had been repaid wherever possible, the balance of the Deposit Account stood at 51,241 francs. In 1960, the Police Division transferred 5,500 francs of this money to the Central Repatriation Office (*Zentralstelle für Rückwanderhilfe*) in favor of Swiss citizens who had returned from abroad. The remaining funds were given to the Swiss Central Office for Refugee Relief, which undertook to reserve a sum of 5,000 francs to cover any later claims made by former refugees.

Dealing with the liquidation of the deposits of valuables, some of which had remained unclaimed even after compulsory asset management had been abolished, proved to be a tedious task. Following the Federal Decree of 20 December 1962 on Assets in Switzerland belonging to Foreign Nationals and Stateless Persons persecuted for Racial, Religious, or Political Reasons, the Police Division declared that it was holding fifty deposit assets of former refugees with a total value of 18,524 francs; in 1965 it passed 38 of these files over to the Registration Office. The latter refused to take responsibility, however, since it did not consider the owners as victims of National Socialism according to the terms of the Federal Decree of 1962. Instead, the authorities set up an interest-bearing account with the Federal Department of Finance entitled «Former Refugee-Assets Deposit Account», which was liquidated in 1978. In this case too, the credit balance was transferred to the Swiss Central Office for Refugee Relief, which credited 42,820 francs to the Special Assistance Fund (*Fonds für ausserordentliche Hilfeleistungen*).

### **3.6 Extortion and Ransom Demands**

Beginning with the summer of 1940, the Nazi authorities resorted to extorting money from Jews in order to cover the Third Reich's huge requirement for foreign currency. On the one hand, the Nazis tried to get hold of Jewish assets abroad, and on the other they used prisoners as objects to be negotiated in exchange for German citizens within the context of civilian prisoner exchange. Towards the end of the war, certain Nazis used the trade in human beings to gain the favor of the Allies or to ensure some financial security in case they later decided to flee the country. The ICE's investigations focused on the occupied Netherlands because trade in the so-called «Jew Swap» (*«Austauschjuden»*) was particularly intense in that country.<sup>161</sup> These are completed by a summary of the well-known ransom operations conducted at war's end to purchase the freedom of prisoners from the Bergen-Belsen and Theresienstadt concentration camps. Between 1940 and 1945, the German authorities in the «Reich Commissariat Netherlands» (*«Reichskommissariat Niederlande»*) extorted foreign currency and other assets from Jews who applied for an exit permit. Negotiations being conducted in most cases on the basis of the much sought after Swiss franc, it was logical for both those persecuted and their persecutors to use agents who could propose intermediaries – private individuals and banks – from neutral Switzerland. The sums negotiated were usually around 100,000 francs and, if the victim had no assets of his or her own abroad, they had to be raised by third parties, in particular friends and relatives in the USA. Negotiations mostly took months, sometimes even years, and often came to nothing because, at the decisive moment, the money could not be raised quickly enough. The result was that only a small number of such deals were successful and only a few Jews managed to buy their way to Switzerland. In most cases, the financial centre served merely as a «hub» for raising the necessary funds. The motives of the Swiss agents are in many cases obscure. Some acted for financial gain, some in order to help those being persecuted, while yet others acted for a combination of both reasons.

The Dutch government in exile as well as the British and American authorities refused such ransoms because they were a way for Germany to obtain foreign currency. In order to prevent further deals they threatened to include suspected agents on the «black-list».

At first the Swiss authorities were not concerned about these procedures as long as the prevailing regulations were not violated and in particular if it did not mean an additional number of refugees entering the country. After the Allies' official declaration on the subject on 24 November 1942, closer attention was paid to such activities. Swiss interests were given priority, i.e., the effort to limit

the export of foreign currency and to prevent that through the paying of ransoms – also called the «smuggling of emigrants» – additional refugees might enter the country. Both the cantonal and Federal authorities investigated those they suspected of being involved. Swiss foreign policy and refugee policy dealt only indirectly with the German authorities' ransom demands. As a protecting power for Germany, Great Britain and the United States, Switzerland negotiated between the warring parties and organised the exchange of civilian prisoners. This involved citizens of the Allied countries who were in German controlled territories as well as inhabitants of the British mandated territory of Palestine, who were exchanged for German citizens interned by the Allies. In many cases the people exchanged were Jews who had been detained in the Bergen-Belsen concentration camp and who had earlier been forced by the Germans to hand over foreign currency. There was therefore a close link between the ransom demands and the inclusion of Dutch Jews in the exchange of civilian prisoners between the Germans and the Allies.

The ICE examined 400 individual cases of extortion in the Netherlands which involved a total of at least 35 million francs in demands. Half of the cases revealed a connection to Switzerland, in that either Swiss people acted as middlemen or that the Swiss authorities or banks were involved. In about 40 cases negotiations proved successful insofar as the victims in question – at least 154 people – escaped their persecutors by paying the ransom. By the middle of 1943, some 20 people had thus entered Switzerland. In 1945 about the same number of people, who had been deported to either Bergen-Belsen or Theresienstadt, reached Switzerland as a result of exchanges or ransom negotiations. The fact that a larger number of Jews did not escape was due first and foremost to the behaviour of the Nazi authorities, who gave priority to exterminating Jews rather than «selling» them.

While the ransom operations mentioned here concerned individual cases, most of which were unsuccessful, two larger groups were bought free towards the end of the war and stayed in Switzerland temporarily. The first ransom campaign concerned around 1,700 Hungarian Jews who were first transferred to Bergen-Belsen and then allowed to enter Switzerland in August and December 1944. The negotiations were carried out by Saly Mayer and Ross McClelland on the one side, and *SS Obersturmbannführer* Kurt Becher and the hostage Reszoe Kasztner, who represented the Hungarian Jewish community, on the other. Following the second campaign around 1,200 German, Dutch and Czechoslovakian Jews were allowed to leave Theresienstadt for Switzerland in February 1945. This deal was negotiated by ex-Federal Councillor Jean-Marie Musy, relatives and friends of the orthodox Jewish Sternbuch family and, in part, *SS Reichsführer* Heinrich Himmler.<sup>162</sup> There were certain parallels between the two

operations. The financial means were provided by the Jewish side: in the first case, by the liberated Hungarians themselves (around 7 million francs) and in the second through a collection to which considerable sums were contributed from the USA (5 million francs). Influential SS officers played an active role in the negotiations. Finally, like many others, these deals did not involve the national government. The latter accepted the rescue actions, having even agreed in advance to the admission of 14,000 Hungarians; the February 1945 deal was accepted as a *fait accompli*.

In summer 1944 Musy, who enjoyed good relations with supporters of the Nazi regime, had been able to negotiate releases in two individual cases. In October of the same year, he was asked by the Swiss «Association for Relief to Jewish Refugees in Shanghai (later <Abroad>)» (*«Hilfsverein für jüdische Flüchtlinge in Shanghai (später <im Ausland>)*) to negotiate the release of a large number of detainees. This relief association, which was supported principally by orthodox organisations in the USA and Canada, made an uncompromising effort to rescue Jews under threat, paying any price and rejecting any kind of political-strategy consideration. In contrast, Saly Mayer, who represented the American Jewish Joint Distribution Committee (JDC) in Europe, adopted a strategy of using negotiations to delay deportation but handing over no funds to the other side that could have prolonged their activities. In this respect he collaborated with Ross McClelland, an American diplomat who represented the War Refugee Board (WRB) in Switzerland and supervised the use of American Jewish relief funds, since these private transfers were subject to American regulations on wartime economy. Although the Allies were basically against paying ransoms, the larger part of the 5 million francs from the JDC reached the Basel headquarters of the Fides Trust Company because McClelland looked favourably upon Mayer's activities. The reason behind Musy's negotiating role, however, was probably a combination of three motives. Firstly, compromised by his sympathies for the declining regime, he hoped to gain a better position in view of the post-war period; secondly, he wanted to improve the Nazi regime's initial position for negotiating a cease-fire or a peace treaty with the Western powers (or in any event, to the detriment of the old enemy to the east); thirdly, he no doubt appreciated the income in return for his services.

German interests, particularly those of SS *Reichsführer* Heinrich Himmler, SS *Brigadeführer* Walter Schellenberg, SS *Obersturmbannführer* Kurt Becher and other members of the SS, were decisive in negotiations taking place at all. In view of the imminent defeat of Germany, their intentions and illusionary expectations seem to have been to facilitate establishing contact with the Western Allies and possibly even reaching a separate peace agreement born of anti-Bolshevik sentiment, or otherwise to improve their personal prospects for the

post-war period through «humanitarian» campaigns. Despite rivalry and defection movements within the Nazi power structure, it can be assumed that the players on the Jewish and Swiss sides had very little room to manoeuvre, but nevertheless tried to use the opportunities they had to improve the lot of those under threat. The positive signals which emanated from these actions were paralleled in Sweden in the evacuation of Scandinavian concentration camp internees negotiated by Count Bernadotte, and ultimately resulted in the belated ICRC supply convoys as well as in ICRC delegates managing to negotiate the early release of some prisoners shortly before the war ended.<sup>163</sup>

### **3.7 Context and Comparison**

Swiss refugee policy cannot be understood or judged without taking into account worldwide developments at the time. In Europe as well as overseas, resistance to «all things foreign» and anti-Semitism had been widespread since the turn of the century, having a negative effect on attempts made between the wars to come to grips with the refugee problem at an international level.

The Evian Conference, organised in July 1938 before the outbreak of the Second World War on the initiative of President Roosevelt, was to have far-reaching consequences. The aim of the Conference was to set up a permanent organisation whose task would be to facilitate the emigration of refugees from Austria and Germany. The Conference was not a success, since the majority of the 32 governments represented seemed to be more concerned about «getting rid» of the refugees they had already taken in, than agreeing on raising the admission capacity of each individual state.<sup>164</sup> Switzerland had accepted to attend the Conference with scepticism. It was not keen on complying with the American suggestion, which was very complimentary to Switzerland's humanitarian reputation, of holding the Conference in a Swiss town. As the Swiss delegate, Heinrich Rothmund emphasised the role of the immigration countries, in particular the USA; they should take in large numbers of refugees, thus allowing the European nations to restrict their function to being transit countries. In July 1939, Switzerland participated in the activities of the «London Committee», which was set up in the wake of the Evian Conference, without, however, achieving its main aim of reducing the number of Jewish refugees already in the country.

Under international law, there were very few stipulations governing admission and rejection of refugees. Nevertheless, according to the provisional arrangement of 4 July 1936 concerning the legal status of refugees from Germany, Switzerland was obliged, from 1937 on, not to repatriate refugees to

Germany who were already in the country – legally or illegally – insofar as the refugees were attempting to continue to another country. Refusing people at the border itself, on which individual states took their own decisions, was not covered by the arrangement, however.<sup>165</sup> Switzerland violated this agreement in that before and during the war it repatriated, not systematically but in many individual cases, refugees from Germany (and from 1938 on, from Austria) who were arrested not at the border or in the immediate vicinity of the border, but well inland. The fact that on its western and southern borders Switzerland sent refugees back to the territories occupied by their persecutors did not technically violate the terms of the above-mentioned agreement although it did not correspond to the spirit of the arrangement which aimed at preventing people under threat from being sent back to the country in which they had been persecuted. Switzerland's actions therefore violated a conception of international law that began to unfold during the period between the wars, and became generally accepted after the Second World War.

Since the Swiss authorities continued to press for the refugees to continue to a third country, they used every opportunity to reduce the number of refugees in the country. The agents involved in negotiating contracts between Germany and Switzerland succeeded in arranging for trains carrying emigrants to pass through France on their way to the Iberian Peninsula.<sup>166</sup> The Federal authorities often approached the Allies in Bern and Washington in order to obtain visas for refugees to continue to third countries. Statistics concerning the destinations of refugees who left Switzerland in official convoys after October 1940 show that up until the end of 1940 170 people left Switzerland in this manner; in 1941, as many as 1,201; and after the beginning of 1942, a total of 148. Of these, 32 refugees reached the USA in 1940; 566 in 1941; and only 30 in 1942.<sup>167</sup>

After the turning point of the war, the authorities made an effort to establish closer contact with the Allies. At the same time the number of humanitarian campaigns and attempts to rescue people increased which, in the words of Jean-Claude Favez, seemed like a «humanitarian chase to catch up».<sup>168</sup> The Federal authorities became increasingly aware of the fact that subsequent criticism would focus on their behaviour during the second half of the war.<sup>169</sup> In any case, Switzerland's strictly interpreted neutrality excluded any participation in the United Nations Relief and Rehabilitation Administration (UNRRA) founded in November 1943. It should be noted, however, that even at the end of the war, Swiss humanitarian activities were strongly influenced by the principle of admitting as few refugees as possible. When, for example, the question arose of taking in 350 children from Buchenwald on a temporary basis in the summer of 1945, the authorities gave their consent only reluctantly because there was no guarantee that the children would later continue to a third country. The

Federal Council's delegate for international relief organisations, Edouard de Haller, remarked that the matter would be discussed at UNRRA headquarters in London in order to obtain «if not an assurance for the *resorption* of the children, then at least support for ridding ourselves of them».<sup>170</sup>

In the debate surrounding Swiss refugee policy it is repeatedly claimed – as a defence against criticism or for reasons of relativism – that the Swiss attitude should be compared with that of other countries. Such comparisons are fraught with problems, however, owing to the different temporal, geographic, and political conditions prevailing at the time.<sup>171</sup> In addition, the availability of source material and the degree of research already carried out vary enormously from country to country.

After France and Great Britain had admitted several thousand Jewish refugees during the months leading up to the outbreak of the war, it became more or less impossible to enter either country after September 1939, and naturally from June 1940 onward. While British policy was based on the transit principle, French pre-war policy did not oblige foreigners – Jewish or other – to continue to a third country, but subjected them to numerous controls of various types. At the outbreak of the war, thousands of Jews were interned in both countries as «enemy aliens», later leading up to the terrible fate which befell those in France. Between 1933 and 1945, there were around 20,000 refugees living in Great Britain on a temporary basis. These were joined by some 60,000 Jewish refugees who were able to take up residence there after the end of the war.<sup>172</sup> Approximately 70,000 Jewish refugees were taken in by France between 1933 and 1939.

Since Britain wanted to avoid at all costs a rapprochement between Arab nationalists or Arab governments and the Axis powers, it kept the doors to Palestine closed from the beginning of 1939 on, apart from the five-year fixed quota of 75,000 people. It was for this reason that Britain opposed most of the rescue projects, in particular in 1943 and 1944. A total of around 140,000 Jews emigrated to Palestine – legally or illegally – between 1933 and 1941. British policy on Palestine finally influenced decisions taken in Washington as well. The British Dominions played a negligible role in saving Jews; Canada was conspicuous by its almost total refusal to accept any Jewish immigrants, a policy which was largely due to the determined opposition of the Province of Quebec.<sup>173</sup> With their admission of around 40,000 Jews, mostly German, up to the beginning of the war, the Netherlands followed a comparatively liberal policy on immigration, although here too restrictions were toughened after the annexation of Austria. Spain kept its borders open for Jewish and other refugees in transit throughout the duration of the war, in particular during the months following the fall of France and from 1943 until the end of the war without,

however, issuing the refugees permanent residence permits. Thus over 100,000 Jewish refugees reached Spain during the war and most of them continued from there to a third country.<sup>174</sup> During the same period Portugal became not only one of the most important transit countries; Lisbon also proved to have adopted all in all a remarkably flexible policy by tolerating the stay of refugees for longer or shorter periods.

Sweden, which is often used for comparisons with Switzerland, was a special case. Until the autumn of 1942, Sweden's policy towards Jewish refugees was – similar to that pursued by Switzerland – one of the most restrictive, although owing to its geographic situation, far fewer refugees fled to Sweden. After the end of 1942, however, there was a fundamental change in the Swedish attitude due to the impact of the deportation of Jews from Norway. More than half the Jews living in Norway were admitted into Sweden and a large majority of the Jews in Denmark were saved from deportation in the autumn of 1943 through a covert evacuation plan.<sup>175</sup> Sweden pursued its active rescue policy until the end of the war although, apart from the protective passports issued by Raoul Wallenberg in Budapest, with limited success.

In the debate surrounding Swiss refugee policy, a popular comparison is that with U.S. immigration policy which, from the 1920s on, became very restrictive and, despite dramatic peaks in immigration reached in the 1930s and during the war, remained so. President Roosevelt was reproached for having called the Evian Conference as an empty gesture to conceal the fact that even a slight increase in immigration quotas would be refused by Congress. The quota laid down for immigrants from Germany and Austria being used to the full immediately before the outbreak of the war in order to admit Jewish refugees from these two countries, but any increase above the figures set was categorically refused. The Wagner-Rogers bill, which called for the admission of 20,000 Jewish children, was rejected by Congress at the beginning of 1939, and a few months later the unfortunate passengers of the «St. Louis» were refused permission to land, despite appeals to the Congress and the President himself. Once the war had started, and in particular after the German victories on the western front, the issuing of visas for Jewish refugees stranded in Europe became even more restrictive: after over 30,000 visas had been issued in 1939, the number dropped to around 4,000 in 1941. These draconian and, for those seeking asylum, drastic reductions do not appear to have been due to a sudden rise in anti-Semitism, but seem rather the result of a general fear of infiltration by foreign agents. This quite unjustified fear was also shared by those in Roosevelt's immediate entourage. Later, when detailed information on the «final solution» emerged, the USA took rather half-hearted rescue measures such as the conference organised in Bermuda in April 1943 which could not be

taken seriously. It was not until 1944 that a more determined refugee policy was adopted under pressure from public opinion, the Treasury Department, and in particular the newly created War Refugee Board. Between 1933 and 1945, the USA admitted a total of around 250,000 Jewish refugees.

If inspite of the specific conditions prevailing in the various countries of refuge, we attempt to make a comparison, the following is relevant:

In Switzerland as in other countries, the tightening of policies concerning foreigners and refugees in 1938 was basically an accentuation of attitudes adopted in the 1920s. In each case, the admission of foreigners was increasingly restricted for reasons of what was defined as the national interest. It must be noted that Switzerland (like Sweden until the end of 1942) seems to have been the only country to openly apply racist selection criteria according to the Nazi definition.

From 1940 on, Switzerland's restrictive admission policy proved to be especially dramatic because, due to its geographical position, it was the easiest country of refuge to reach on the continent, and several thousand refugees were turned back although the authorities knew that this might mean sending them to their death. In autumn 1942, influential circles publicly manifested their rejection of official refugee policy. This, however, only led to a temporary uncertainty of the Swiss authorities, who – unlike the Swedes – only decided at a very late stage to admit all refugees in mortal danger.

In conclusion it can be said that the refugee policy applied in Switzerland in the 1930s was comparable to that pursued by other countries. In 1942 and 1943, however, Switzerland found itself in a historically unique position which cannot be compared to that of other countries. The international community as a whole did far less than it might have done to save refugees. In this respect individual countries reacted in different ways to the challenges specific to their own position. Switzerland, and in particular its political leaders, failed when it came to generously offering protection to persecuted Jews. This is all the more serious in view of the fact that the authorities, who were quite aware of the possible consequences of their decision, not only closed the borders in August 1942, but continued to apply this restrictive policy for over a year. By adopting numerous measures making it more difficult for refugees to reach safety, and by handing over the refugees caught directly to their persecutors, the Swiss authorities were instrumental in helping the Nazi regime to attain its goals.

- <sup>1</sup> ICE, Refugees, 1999; UEK, Flüchtlinge, 2001 (Publications of the ICE). Closely linked to the report on refugees are the following publications of the ICE (some of which already appeared in 1999 as supplementary publications to the Refugee report): Forster, Transit, 2001; Huonker/Ludi, Roma, 2001; Imhof/Ettinger/Boller, Flüchtlings- und Aussenwirtschaftspolitik, 2001; Kälin, Aspekte, 2001; Zeugin/Sandkühler, Lösegelderpressungen, 2001 (all Publications of the ICE).
- <sup>2</sup> FA, E 4264 (-) 1985/196, vol. 255, border guard's record, 23 September 1942. Further documents in: FA, E 4264 (-) 1985/196, vol. 301.
- <sup>3</sup> FA, E 4264 (-) 1985/196, vol. 255, statement made by Elisabeth S. in an interview with the Swiss military police, 23 September 1942. FA, E 2200.42 (-) -/24, vol. 28, Johannes Huber to Walter Stucki, 15 September 1942.
- <sup>4</sup> Koller, Entscheidungen, 1996, pp. 22–24.
- <sup>5</sup> Ludwig, Flüchtlingspolitik, 1957, pp. 24–27. Koller, Entscheidungen, 1996, pp. 24f.
- <sup>6</sup> Wischnitzer, Juden, 1935, p. 177.
- <sup>7</sup> UEK, Flüchtlinge, 2001 (Publications of the ICE), section 3.1.
- <sup>8</sup> Hoerschelmann, Exiland, 1997, p. 12. UEK, Flüchtlinge, 2001 (Publications of the ICE), section 3.1.
- <sup>9</sup> Weingarten, Hilfeleistung, 1981. Adler-Rudel, Evian Conference, 1966, pp. 214–241, and 1968, pp. 235–273. Citrinbaum, Participation, 1977. See also section 3.7.
- <sup>10</sup> FA, E 2001 (E) 1970/217, vol. 206, Rothmund to Feldmann, 24 May 1954, and other documents on the question as to whether Ludwig should mention this note (original French) in his report. In accordance with a suggestion from Rothmund himself and a request from the EPD, Ludwig agreed not to publish the note for the sake of Motta's reputation.
- <sup>11</sup> Koller, Entscheidungen, 1996, pp. 65f. UEK, Flüchtlinge, 2001 (Publications of the ICE), section 4.3.3.
- <sup>12</sup> Keller, Grüninger, 1993. UEK, Flüchtlinge, 2001 (Publications of the ICE), Appendix 2: Biographische Angaben zu Paul Grüninger (1892–1972).
- <sup>13</sup> UEK, Flüchtlinge, 2001 (Publications of the ICE), chapter 4.1.2. See also Rothmund to Bonna, 23 November 1938, in: DDS, vol. 12, no. 454, pp. 1045–1047 (original German).
- <sup>14</sup> FA, E 2500 (-) 1990/6, vol. 141, record of E. Prodolliet's hearing, 20 February 1939. With regard to Prodolliet cf. Keller, Grüninger, 1993, pp. 77–82.
- <sup>15</sup> Stadelmann, Umgang, 1998, p. 64.
- <sup>16</sup> Ludwig, Flüchtlingspolitik, 1957, pp. 170f.
- <sup>17</sup> Ludwig, Flüchtlingspolitik, 1957, pp. 164 and 318.
- <sup>18</sup> Koller, Entscheidungen, 1996, p. 87. Koller states that 212 civilian refugees were interned between 1 September 1939 and 31 December 1941. Robert Jezler's report dated 30 July 1942 records a total of 308 foreigners interned by the Police Division on 1 January 1942; see DDS vol. 14, no. 222, p. 721 (original German).
- <sup>19</sup> Koller, Entscheidungen, 1996, p. 94.
- <sup>20</sup> Ludwig, Flüchtlingspolitik, 1957, pp. 184–185 and pp. 260–272. Stadelmann, Umgang, 1998, pp. 138–139 and pp. 143–149.
- <sup>21</sup> Undated guidelines issued by the Police Division of the EJPD, quotation from Ludwig, Flüchtlingspolitik, 1957, p. 192 (original German).
- <sup>22</sup> UEK, Flüchtlinge, 2001 (Publications of the ICE), chapters 1.4 and 4.3. Cf. also Ludwig, Flüchtlingspolitik, 1957, p. 191; Stadelmann, Umgang, 1998, pp. 125 and 131–132; Koller, Entscheidungen, 1996, p. 97.
- <sup>23</sup> Stadelmann/Krause, «Concentrationslager», 1999; Lasserre, Frontières, 1995, pp. 150–158; p. 353.
- <sup>24</sup> Cf. DDS, vol. 14, no. 222, p. 722 (original German).

- 25 Ludwig, Flüchtlingspolitik, 1957, p. 202.
- 26 Cf. DDS, vol. 14, no. 222, p. 725 (original German).
- 27 DDS, vol. 14, no. 222, p. 720 (original German). See also FA, E 4001 (C) 1, vol. 259.
- 28 FA, E 4001 (C) 1, vol. 259, circular letter from the Police Division dated 13 August 1942. Cf. Ludwig, Flüchtlingspolitik, 1957, p. 205.
- 29 No official minutes of the Conference of Police Directors held on 28 August 1942 exist. H. Rothmund's files, however, include a 5-page typed transcription of shorthand notes made by an unknown person who attended the conference. Cf. FA, E 4800.1 (-) 1967/111, vol. 53.
- 30 Koller, Entscheidungen, 1996, p. 94. In this context see also Tagebuch Wetter: On 9 March 1943 Wetter, Head of the EFZD, Kobelt, Head of the EMD and Gassmann, Director of the Customs Division, inspected the border in Geneva. Wetter noted: «Und doch kommen allmählich junge Franzosen, die nach Deutschland zur Arbeit sollten und immer noch Juden. Die meisten werden heute zurückgewiesen. Aber sie probieren es wieder. Nach dem zweiten Versuch werden sie der französischen Polizei übergeben. An der Stelle der deutschen Posten sind nun alles Italiener getreten. Das Regime derselben ist strenger, man erklärt die früher dagewesenen Deutschen als entgegenkommender und korrekter, haben auch mit der Bevölkerung freundlich verkehrt, während die Italiener sich abschliessen wollen.»
- 31 Koller, Entscheidungen, 1996, p. 95, note 223.
- 32 Koller, Entscheidungen, 1996, pp. 37f., 57 and 87.
- 33 Ludwig, Flüchtlingspolitik, 1957, pp. 330–347.
- 34 FA, E 4800.1 (-) 1967/111, ref. 1.011, file 483, minutes of the meeting of the Committee of Experts on Refugees Matters (*Sachverständigenkommission für Flüchtlingsfragen*), 12 November 1947.
- 35 Ludwig, Flüchtlingspolitik, 1957, p. 318; UEK, Flüchtlinge, 2001 (Publications of the ICE), section 6.6.2.
- 36 Koller, Entscheidungen, 1996, pp. 87–91.
- 37 Lambelet, Evaluation, 2000; See also Lambelet, Würdigung, 2000, pp. 7–15 and Jean-Christian Lambelet in *Neue Zürcher Zeitung*, no. 192, 19/20 August 2000. Reply from Guido Koller in *Die Weltwoche*, 31 August 2000. From 10 October 2000 on, a series of 14 articles on this subject appeared in *Le Temps*, including a reply from the ICE published on 20 October 2000. See also Flückiger/Bagnoud, Réfugiés, 2000. Concerning Geneva see also Fivaz-Silbermann, Refoulement, 2000. In the foreword to this publication, Serge Klarsfeld sets out his belief, which is not further justified, that no more than 5,000 Jewish refugees in all were refused entry. It would appear that he is taking into account only the situation on Switzerland's western border and not the events that occurred in late summer 1943 along the border with Italy.
- 38 Koller, Entscheidungen, 1996, pp. 91–101.
- 39 See for example the summary in French and Italian by Roschewski, Heinrich Rothmund, 1996, pp. 134 and 136. See also Battel, Schweiz, 2000, p. 147.
- 40 Spuhler, Liste, 2001.
- 41 In this connection see the comprehensive investigation carried out by Haas, Reich, 1997.
- 42 In this connection see DDS, vol. 14, documents published under the heading «7.2 Attitude de la Suisse face aux persécutions antisémites» as well as Bourgeois, Suisse, 1998, and Cerutti, Suisse, 1998.
- 43 FA, E 27 (-) 9564, Swiss Consul von Weiss to Masson, 14 May 1942. According to a letter dated 10 October 1994 from the Holocaust Memorial Museum to the Swiss Federal Archives this concerned victims of the Jassy pogrom in 1941, who were herded together and locked in goods wagons where they died of suffocation.
- 44 See Jean-Claude Favez and Ladislas Mysyrowicz: «La Suisse et la solution finale», *Journal de Genève*, 21 April 1979, and DDS, vol. 14, no. 296, p. 982, appendix 1 (original German).

- <sup>45</sup> Ludwig, Flüchtlingspolitik, 1957, pp. 232–234. Bucher, Verrat, 1967. In his memoirs Bucher does not maintain his claim that he informed Kobelt. See also a reader's letter from Paul Stauffer in the *Neue Zürcher Zeitung*, 16 June 2000 in this connection.
- <sup>46</sup> See Haas, Reich, 1994, pp. 183–185.
- <sup>47</sup> With reference to what the Allies knew see Wood/Janjowski, Karski, 1997; Breitmann, Staatsgeheimnisse, 1999.
- <sup>48</sup> The Association of Relief Organisations (*Vereinigtes Hilfswerk*) was founded in November 1940 by the ICRC and the Federation of Red Cross Organisations. Its main objective was to provide help for the civilian population.
- <sup>49</sup> Riegner, Années, 1998, pp. 73–75; Stauffer, Jahre, 1998, p. 231f.
- <sup>50</sup> Von Salis, Chronik, 1982, p. 223; see also Stadelmann, Umgang, 1998, p. 81.
- <sup>51</sup> See Ludwig, Flüchtlingspolitik, 1957, pp. 237–245; Kreis, Zensur, 1973, pp. 189–195 and Haas, Reich, 1997, pp. 229–249.
- <sup>52</sup> Ludwig, Flüchtlingspolitik, 1957, p. 235.
- <sup>53</sup> Gast, Kontrolle, 1997; Mächler, Kampf, 1998.
- <sup>54</sup> See in particular the Federal Council's Annual Report for 1919, in: Weill-Lévy, Essai, 1999, pp. 48–49.
- <sup>55</sup> FA E 2001 (C) -/5, vol. 61, answers given in questionnaires concerning Russian, Armenian, Assyrian, Assyrochaldean and Turkish refugees, in the appendix to a letter from Dinichert to the High Commissioner (original French) dated 24 April 1929; concerning the Russians who fled to Switzerland as a result of the Russian revolution see Hoerschelmann/Gast, Importance, 1993, pp. 191–205; Lasserre, Politique, 1993, pp. 207–224 and Lasserre, Frontières, 1995, pp. 48–61.
- <sup>56</sup> Huonker/Ludi, Roma, 2001 (Publications of the ICE); Meier/Wolfensberger, Heimat, 1998.
- <sup>57</sup> Concerning anti-Semitism in general in Switzerland see Mattioli, Antisemitismus, 1998; Kamis-Müller, Antisemitismus, 1990; EKR, Antisemitismus, 1998. With reference to «Überfremdung» and anti-Semitism see Arlettaz/Arlertaz, Ausländergesetzgebung, 1998; Mächler, Kampf, 1998 Lasserre, Politique vaudoise, 2000, p. 280. Concerning anti-Semitism «à la suisse», see Picard, Schweiz, 1994, pp. 34–40.
- <sup>58</sup> See UEK, Flüchtlinge, 2001 (Publications of the ICE). With reference to anti-Semitism in the Federal Police for Foreigners at the Police Division, see Mächler, Kampf, 1998.
- <sup>59</sup> FA, E 4800.1 (-) 1967/111, 1.17 [498/II: Persönliche Korrespondenz] 1938, Rothmund to States Councillor Ernst Löpfe-Benz, 15 January 1938. Concerning Rothmund's anti-Semitism see Roschewski, Rothmund, 1997. Concerning this parliamentarian's attitude towards Jews from Eastern Europe see Kury, Ostjudenmigration, 1998.
- <sup>60</sup> See also section 4.10 included herein, section on diplomatic protection.
- <sup>61</sup> See chapter 5 included herein. Cf. also Haldemann, Schutz, 2001 (Publications of the ICE); Picard, Schweiz, 1994, pp. 194–208.
- <sup>62</sup> UEK, Flüchtlinge, 2001 (Publications of the ICE), section 3.1.
- <sup>63</sup> It was only in 1941 that the Swiss diplomat in Bukarest, René de Weck, first distanced himself from this practice. DDS, vol. 14, no. 142, p. 427 (original French).
- <sup>64</sup> Mittenzwei, Exil, 1978, pp. 112–114; Hässler, Boot, 1967, pp. 275–286. See also Schütt, Germanistik, 1996.
- <sup>65</sup> FA E 4800.1 (-) 1967/111, ref. 1.17, file 498 [1938], Rothmund to Erwin Schachtler at Wegelin & Co., St. Gallen, 18 November 1938.
- <sup>66</sup> Note in files of the Federal Police for Foreigners signed M. Ruth (18 February 1935) and H. Rothmund (20 February 1935), private bequest H. See also UEK, Flüchtlinge, 2001 (Publications of the ICE), section 1.5.

- 67 See Hässler, Boot, 1971, pp. 275–276 and p. 335. It took more than a decade for the population to exorcise the ghost of the Depression. See Perrenoud, Politique, 1989, in particular pp. 117–130.
- 68 Lasserre, Politique vaudoise, 2000, p. 160 (original French).
- 69 On 30 August 1942 von Steiger made a speech in front of the «Young Church» in Zurich-Oerlikon which later became famous for his expression «*Das Boot ist voll*» (the boat is full). Ludwig, Flüchtlingspolitik, 1957, p. 394.
- 70 FA E 4001 (C) -/1, vol. 259, text and draft of speech.
- 71 See Kreis, Flüchtlingspolitik, 1997, p. 570.
- 72 FA E 2001 (D) 1968/74, vol. 10, hand-written remarks by Pilet-Golaz on a note he received from de Haller concerning the «*Projet de contribution américaine*», 20 September 1942 (original French). See also chapter 3.3 hereafter, as well as UEK, Flüchtlinge, 2001 (Publications of the ICE), chapter 6.2.3.
- 73 See Maurer, Anbauschlacht, 1985.
- 74 Concerning General Guisan's position in January 1939 on war risks and activism among Jews throughout Europe see DDS, vol. 13, no. 13, p. 26 (original German).
- 75 DDS, vol. 13, no. 294, Appendix p. 695 (original German).
- 76 Bonjour, Neutralität, vol. VI, 1970, p. 40 (see also translation of the abbreviated version Bonjour, Neutrality, 1952).
- 77 FA E 4800.1 (-) 1967/111, ref. 1.17, file 498 [1942], Rothmund to Thurnheer, 23 August 1942.
- 78 Frei, Neutralität, 1967, pp. 46ff.
- 79 See Leuenberger, Flüchtlinge, 1996; Kreis, Asylpolitik, 1995, pp. 264–279, Vuilleumier, Immigrés, 1987. The instrumentalisation or even the mystification of this tradition by both those responsible and critics of the policy adopted during the Second World War has so far not been systematically analysed. Clavien, Helvétistes, 1993; Arlettaz, Immigration, 1992, pp. 137–147; Arlettaz, Question, 1996, pp. 257–268; Arlettaz/Arlettaz, Ausländergesetzgebung, 1998, pp. 327–356; Busset, Accueil, 1994.
- 80 FA E 4001 (C) -/1, vol. 123, report from Rothmund to von Steiger dated 23 November 1941 concerning a letter from National Councillor Ludwig Rittmeyer. Cf. Kreis, Mission, 1998, pp. 121–139.
- 81 Bonjour, Neutralität, vol. VI, 1970, p. 41 (see also translation of the abbreviated version Bonjour, Neutrality, 1952).
- 82 With reference to what follows see Ludwig, Flüchtlingspolitik, 1957; Koller, Entscheidungen, 1996; FA, Flüchtlingsakten, 1999, pp. 18–23. As far as concerns the legal basis for policy on refugees see Kälin, Aspekte, 2001 (Publications of the ICE).
- 83 FA, E 1002 (-)/1, vol. 7, hand-written notes by the Federal Chancellor referring to the meeting held on 30 August 1938. The notes by Federal Chancellor Oskar Leimgruber are an accurate, detailed account of the debate in comparison with the official purged minutes of the Federal Council.
- 84 ICE, Flüchtlinge, 2001 (Publications of the ICE), Appendix 2: Biographische Aufgaben zu Max Ruth. See also Mächler, Kampf, 1998.
- 85 FA, E 2001 (D) 1968/74, vol. 10, de Haller to Pilet-Golaz, «*Projet de contribution américaine*», 20 September 1942 (original French).
- 86 With regard to relief to children see Schmidlin, Helferinnen, 1999. For media impact of relief to children see Imhof/Ettinger/Boller, Flüchtlings- und Aussenwirtschaftspolitik, 2001 (Publications of the ICE), section 5.3. See also Kreis, Georg: «Menschlichkeit – aber nicht in jedem Fall», *Die Weltwoche*, 11 March 1999.
- 87 DDS, vol. 14, no. 237, Appendix p. 777 (original French). Note of de Haller to Pilet-Golaz, 23 September 1942.

- <sup>88</sup> With reference to these activities see Bohny-Reiter, Journal, 1993; Im Hof-Piguet, Fluchtweg, 1987.
- <sup>89</sup> Favez, Red Cross, 1999.
- <sup>90</sup> DDS, vol. 14, no. 230, p. 751, Bonna to de Haller, 2 September 1942 (original French).
- <sup>91</sup> DDS, vol. 14, no. 230, p. 752, Appendix, note 5, information passed by telephone by de Haller to the EPD on 14 October 1942 (original French). The appendix is a note from de Haller to Etter and Pilet-Golaz dated 30 September 1942 from which it is apparent that the discussions surrounding the suitability of an appeal lasted from the end of August until mid-October 1942. See in this connection Favez, Red Cross, 1999, pp. 83–91.
- <sup>92</sup> DDS, vol. 13, no. 311, Appendix II, quoted from Pierre Bonna in his message of 18 June 1940 (original French).
- <sup>93</sup> See Bonjour, Neutralität, vol. VI, 1970, pp. 17f. (see also translation of the abbreviated version Bonjour, Neutrality, 1952); Ludwig, Flüchtlingspolitik, 1957, pp. 267f. and 291f.; Favez, Prochain, 1988, pp. 391–402.
- <sup>94</sup> FA, E 4260 (C) 1974/34, vol. 135, Galay to Jezler, 16 July 1942 (original French).
- <sup>95</sup> FA, E 4001 (C) -/1, vol. 257, Supreme Command, Military Police Central Command to Rothmund, 1 October 1942; Rothmund to von Steiger, 3 October 1942.
- <sup>96</sup> On the subject of P. Graber's speech see Perrenoud, Sentinelle, 1987, pp. 156–158 and Mächler, Abgrund, 1996, p. 150 and pp. 170–204.
- <sup>97</sup> FA, E 1301 (-) 1960/51, vol. 352 and FA, E 4800.1 (-) 1967/111, ref. 1.015, file 336. The minutes of this meeting were not published in the verbatim parliamentary reports for 1942. They were, however, published in 1979 by the Swiss Social Democratic Party. For an analysis of this debate see Lasserre, Raison d'Etat, 1996, pp. 349–380.
- <sup>98</sup> For a list of parliamentary bills on which the FA possess files see FA, Flüchtlingsakten, 1999, pp. 81–88.
- <sup>99</sup> Imhof/Ettinger/Boller, Flüchtlings- und Aussenwirtschaftspolitik, 2001 (Publications of the ICE), pp. 44f., 68f. and 82f.
- <sup>100</sup> FA, E 4001 (C) 1, vol. 259, message dated 29 August 1942. The minutes of the Conference of the Cantonal Police Directors can be found under FA, E 4260 (C) 1969/1946.
- <sup>101</sup> Ludwig, Flüchtlingspolitik, 1957, pp. 203–232 and pp. 258f. With reference to the position of the cantons see also Schürch, Flüchtlingswesen, 1951, pp. 61–66.
- <sup>102</sup> Quoted from Lasserre, Politique, 1997, p. 207 (original French).
- <sup>103</sup> FA, E 7170 (A) -/1, vol. 109, Annual Report of 1938, approved on 22 February 1939 (original French). See also Arlettaz, Guerre, 1990, pp. 319–337.
- <sup>104</sup> FA, E 2200.41 (-) -/11, vol. 104, H. Bolliger to the Swiss Embassy in Paris, 19 October 1938.
- <sup>105</sup> This is underlined by Kaba, Milieux, 1999, p. 129.
- <sup>106</sup> Arnold, Ausland- und Flüchtlingshilfe, 2001, pp. 499–525.
- <sup>107</sup> Kocher, Menschlichkeit, 1996, pp. 210ff.
- <sup>108</sup> Kocher, Menschlichkeit, 1996, pp. 220ff.
- <sup>109</sup> Quoted from Kocher, Menschlichkeit, 1996, p. 280.
- <sup>110</sup> In: *La Semaine catholique*, 15 October 1942, quoted from Bischof, Verkündung, 2001, p. 483 (original French).
- <sup>111</sup> Alois Schenker, Zur Flüchtlingsfrage, in: *Schweizerische Kirchenzeitung* 110 (1942), pp. 481/482. Quoted from Bischof, Verkündung, 2001, p. 482.
- <sup>112</sup> Minutes of the Swiss Church Relief Committee for Protestant Refugees (SKHEF) meeting held on 4 March 1940 (SEK Archives, SKHEF file for 1938–1950). Quoted from Kocher, Menschlichkeit, 1996, p. 171.

- <sup>113</sup> Narbel, Eglises, 2001. Study under the direction of André Lasserre on behalf of the Protestant church of the Canton Vaud.
- <sup>114</sup> Arnold, Ausland- und Flüchtlingshilfe, 2001, pp. 502 and 507.
- <sup>115</sup> Kocher, Menschlichkeit, 1996, pp. 317–322.
- <sup>116</sup> In 1943, its name was changed from the Association of Swiss Jewish Poor Relief (*Verband Schweizerischer Israelitischer Armenflegen*, VSIA) to the Association of Swiss Jewish Welfare and Refugee Relief (*Verband Schweizerischer Jüdischer Fürsorgen/Flüchtlingshilfen*, VSJF).
- <sup>117</sup> Lupp, Björn-Erik: Sozialdemokratie und Flüchtlinge 1933–1940. Internationale Solidarität – begrenzt und vorsichtig, in: *Neue Zürcher Zeitung*, 19 March 2001.
- <sup>118</sup> FA, E 4260 (C) 1969/1946, vol. 6, «Konferenz mit den Polizeidirektoren der Kantone zur Besprechung der Frage der Flüchtlinge aus Deutsch–Österreich», 17 August 1938 (original German).
- <sup>119</sup> FA, E 4800.1 (-), 1967/111, vol. 53, minutes of the Conference of the Cantonal Police Directors of 28 August 1942 (original German).
- <sup>120</sup> FA, E 4260 (C) 1969/1946, vol. 7, minutes of the Conference of the Cantonal Police Directors of 11 September 1942 (original German).
- <sup>121</sup> Picard, Schweiz, 1994, p. 421.
- <sup>122</sup> Rauber, Urs: Brisante Akten zur Schweizer Asylpolitik, in: *Schweizerischer Beobachter* no. 6, 17 March 2000; see also *Neue Zürcher Zeitung* of 15 March 2000. Hereto see also: Zweig, Hanna: Absolute Fakten – Relativität der Geschichte, and the commentary by Gisela Blau, both in the *Jüdische Rundschau* dated 16 March 2000. See also Stefan Mächler in the *Neue Zürcher Zeitung*, 11 April 2000. On the debate surrounding source quotations see *Moma*, monthly magazine 6/6, Zurich 2000. See also Picard, Antiuniversalismus, 2001, pp. 90f.; *tachles*, 30 November 2001, pp. 32ff.
- <sup>123</sup> With reference to what follows see Bauer, Jewry, 1981; Picard, Schweiz, 1994; Haas, Reich, 1997.
- <sup>124</sup> Cf. also section 4.10 and chapter 5 included herein.
- <sup>125</sup> The «*Motion Pestalozzi*» of Mai 1944 in the Zurich Cantonal Parliament is revealing in this context, see also Picard, Schweiz, 1994, pp. 85ff.
- <sup>126</sup> FA, E 4800.1 (-), 1967/111, vol. 53, minutes of the Conference of the Cantonal Police Directors of 28 August 1942 (original German).
- <sup>127</sup> FA, E 4800.1 (-), 1967/111, vol. 53, minutes of the Conference of the Cantonal Police Directors of 28 August 1942 (original German).
- <sup>128</sup> DDS, vol. 14, no. 267, p. 892f., circular letter sent by the EPD dated 17 November 1942 (original French).
- <sup>129</sup> SR 0.515.21., «The Hague Convention (V) respecting the Rights and Duties of Neutral Powers and Persons in Cases of War on Land», 18 October 1907, Art. 12. See also Kälin, Aspekte, 2001 (Publications of the ICE), Part 1, B.I., 2c and Part 2, B.II., 2a. With reference to military refugees see Stadelmann, Umgang, 1998, pp. 122–128 and Ludwig, Flüchtlingspolitik, 1957, pp. 27–28.
- <sup>130</sup> See also Kälin, Aspekte, 2001 (Publications of the ICE), Part 2, BIII, 3bb.
- <sup>131</sup> FA, E 4260 (C) 1974/34, vol. 87, undated report on the implementation to date of the Federal Council's Decree of 18 March 1941.
- <sup>132</sup> FA, E 4260 (C) 1974/34, vol. 87, note dated 7 April 1941 from von Steiger to F. Hahn, responsible for the solidarity tax.
- <sup>133</sup> With reference to what follows see UEK, Flüchtlinge, 2001 (Publications of the ICE), chapter 5.3.
- <sup>134</sup> With reference to the difficulties encountered in transferring money from the USA see UEK, Flüchtlinge, 2001 (Publications of the ICE), chapter 5.4. See Bauer, Jewry, 1982, pp. 217–234 and Picard, Schweiz, 1994, pp. 270–273 and 370 on the activities of the JDC.

- <sup>135</sup> Lasserre, *Frontières*, 1995, p. 105 provides a list which distinguishes between expenditure on support and expenditure on emigration by various relief organisations between 1933 and 1940.
- <sup>136</sup> Schürch, *Flüchtlingswesen*, 1951, p. 231; Ludwig, *Flüchtlingspolitik*, 1957, p. 367. According to Schürch, the figure of 5 million francs for the Emigrants' Office is based on «reliable calculations and estimations».
- <sup>137</sup> FA, E 4001 (C) -/1, vol. 259, minutes of the Conference of Police Directors, 8 February 1943.
- <sup>138</sup> Switzerland had undertaken to direct goods to be exported to France through La Plaine. A German customs post had been set up at La Plaine to handle customs formalities. DDS, vol. 13, no. 363 (original German); vol. 14, no. 78, appendix II (original German).
- <sup>139</sup> FA, E 5330 (-) 1975/95, 43/2254, «Report on the expulsion of three German Jews at the customs checkpoint at La Plaine» written by Daniel Odier, 23 August 1942. The names of the refugees have been spelled as in the original report. Klarsfeld, *Mémorial*, year not indicated, convoy no. 34.
- <sup>140</sup> FA, E 5330 (-) 1975/95, 43/5315, minutes of interrogation, 5 December 1943.
- <sup>141</sup> FA, E 5330 (-) 1975/95, 44/3427, «Concerne: Réfugiés avec fausse identité», 14 April 1944, report dated 21 July 1944 (original French).
- <sup>142</sup> Sperber, Scherben, 1977, p. 298.
- <sup>143</sup> ZL, Schlussbericht, 1950, p. 126.
- <sup>144</sup> Lasserre, Vie, 1998; Lasserre, *Frontières*, 1995, pp. 133–138; Ludwig, *Flüchtlingspolitik*, 1957, p. 178.
- <sup>145</sup> FA, E 4001 (C) -/1, vol. 258, «Report on the inspection of the refugee reception camps» by Lieutenant Colonel Hartmann of the Health Division, 11 December 1942 (original German). See also Lasserre, *Frontières*, 1995, p. 227.
- <sup>146</sup> Since May 1940 the Swiss too had been obliged to render work service. Jost, *Politik*, 1998, pp. 52 and 57.
- <sup>147</sup> FA, E 4260 (C), 1974/34, vol. 88, Rothmund to Mertens, 22 June 1950.
- <sup>148</sup> A woman's letter to pastor Paul Vogt, 16 November 1943, quoted from Kocher, *Zeit*, 1986, pp. 57f.
- <sup>149</sup> See Kälin, *Aspekte*, 2001, (Publications of the ICE) Part 2, B.III.5.b.aa.
- <sup>150</sup> Lasserre, *Frontières*, 1995, p. 324; Picard, *Schweiz*, 1994, p. 445.
- <sup>151</sup> Lasserre, *Frontières*, 1995, pp. 236–255, in particular p. 237.
- <sup>152</sup> FA, E 4800.1 (-) 1967/111, ref. 1.09, file 285, «Expulsion of refugees», assessment by Jezler, 26 April 1944 (emphasis in original; original German).
- <sup>153</sup> Lasserre, *Frontières*, 1995, pp. 290f.; Broggini, *Terra d'asilo*, 1993, pp. 362–367 and 493–527.
- <sup>154</sup> Hohermuth, *Bericht*, 1945, pp. 45–59; Picard, *Schweiz*, 1994, pp. 358–364.
- <sup>155</sup> Ludwig, *Flüchtlingspolitik*, 1957, pp. 340–346. 1,345 refugees were issued with normal residence permits and could for the first time take advantage of the state welfare system. With reference to the financial aspects of permanent asylum see also UEK, *Flüchtlinge*, 2001 (Publications of the ICE), section 5.3.
- <sup>156</sup> FA, E 4001 (C) -/1, vol. 260, minutes of the Working Group II of the Commission of Experts, 22 March 1945, opinion of Dr. med. Zanger.
- <sup>157</sup> See Kälin, *Aspekte*, 2001, UEK, *Flüchtlinge*, 2001 (Publications of the ICE), Part 2, B.III, 2.a
- <sup>158</sup> FA, E 4264 (-) 1985/196, vol. 349, «Etat des dépôts de réfugiés restés en souffrance à l'Arrondissement Territorial de Genève», undated.
- <sup>159</sup> FA, E 4260 (C), 1974/34, vol. 85, von Steiger to the Police Division, 14 May 1943.
- <sup>160</sup> FA, E 4260 (C), 1974/34, vol. 86, «minutes», 16 June 1945 (original German).
- <sup>161</sup> See Zeugin/Sandkühler, *Lösegelderpressungen*, 2001 (Publications of the ICE). This study includes a list of all the cases in the Netherlands that have links with Switzerland.

- <sup>162</sup> With reference to the first campaign see Bauer, Jews, 1994. Concerning Musy's negotiations see Dieckhoff, Rescapés, 1995. See also Ludwig, Flüchtlingspolitik, 1957, p. 300; Castella, Souvenir, 1960; Bonjour, Neutralität, vol. VI, 1970, p. 37 (see also translation of the abbreviated version Bonjour, Neutrality, 1952).
- <sup>163</sup> Favez, Red Cross, 1999, pp. 271/2.
- <sup>164</sup> With reference to the Evian Conference and the Inter-governmental Committee for Refugees see Ben Elissar, Diplomatie, 1969, pp. 240ff.; Weingarten, Hilfeleistung, 1981. Concerning Switzerland's role at Evian see Citrinbaum, Participation, 1977.
- <sup>165</sup> Kälin, Aspekte, 2001 (Publications of the ICE) Part 1, B.I and II.
- <sup>166</sup> On the subject of the «emigrant trains» or «Jewish trains» see FA, E 2200.42 (-) -/21, vol. 2, Trade Division to the Swiss embassy in Vichy, 17 October 1941.
- <sup>167</sup> Breitman/Kraut, Refugee Policy, 1987.
- <sup>168</sup> Favez, Don suisse, 1995, p. 335.
- <sup>169</sup> For an assessment of Switzerland's situation during the last years of conflict and at the end of the war see among others Spahni, Ausbruch, 1977; Kreis, Schweiz, 1996. On the ambiguity of its humanitarian activities see Kistler, Konzept, 1980; Herren, Internationalismus, 1997. See also Roulet/Surdez/Blättler, Petitpierre, 1980.
- <sup>170</sup> FA, E 2001 (E) -/1, vol. 155, NB letter from de Haller to Tyler, 22 June 1945 (original French). Concerning the children's stay in Switzerland, see Weber, Strom, 1994; DDS, vol. 16, pp. 18–20.
- <sup>171</sup> For quantitative data and overview tables see Charguéraud, Coupables, 1998; see also Albers-Schönberg, Schweiz, 2000, pp. 140ff.
- <sup>172</sup> Sherman, Island refuge, 1973 and 1994; London, Whitehall, 2000.
- <sup>173</sup> Irving/Troper, Canada, 1982.
- <sup>174</sup> Belot, Frontières, 1998; Haim, Jews, 1982.
- <sup>175</sup> Levine, Indifference, 1996.

## **4 Foreign Trade Relations and Asset Transactions**

### **4.1 Foreign Trade**

As regards international developments in the 1930s, Switzerland's economy, with its very heavy bias towards foreign trade, found itself in a difficult position which worsened abruptly when war broke out in the autumn of 1939. In an environment which was increasingly determined by protectionism and a striving for national self-sufficiency, there was demand for a new type of adaptability. The cessation of foreign trade contacts was never seriously a matter for debate. The Swiss «spirit of survival» during the war years also depended heavily on foreign trade to supply the country and to stabilise the labour market. Trade negotiators had to clear the way for goods to pass through the increasingly dense rings of blockades and counter-blockades erected by the warring powers. Maintaining trade and business traffic was an «essential precondition for conducting the wartime economy», as a leading representative, Jean Hotz, later said.<sup>1</sup>

With the armaments-based economy which became prevalent from 1936 onwards, Switzerland was able to use the strong franc, along with the increasingly comprehensive system of tied payments, to guarantee itself considerable scope for loans and gold transactions. The franc remained convertible even during the war years. In a Europe where foreign exchange controls and economic warfare prevailed, this foreign exchange became exceptional. Until the summer of 1941, the dollar had been the most important free currency for the Germans. When the USA and Germany froze one another's foreign-exchange assets, the Axis powers, suffering from a notorious shortage of currency, were left with only the franc as an international currency for armaments purchases on the European market. The Allies too showed a marked interest in the franc, which they needed for a wide variety of payments (diplomatic services, espionage, etc.).<sup>2</sup>

This section will give an overview of the foreign trade issues revealed by previous research, and now able to be differentiated and examined in more depth as a result of new materials from company and association archives.<sup>3</sup> This includes the way the war economy and the Swiss supply network were organised, negotiations with the Axis powers and the Allies, and also the interests of the warring parties in Switzerland during the war. Finally, we will look at the contemporary

approaches to a critical debate about Swiss foreign trade policy towards Nazi Germany, and will discuss the reasons why politics and business focused their relationships unilaterally on the Axis powers during the Second World War.

### **The war economy and the priority of national economic supply**

On 1 September 1939, the unleashing of hostilities by the Nazi regime changed not only the political and military situation but also foreign trade conditions, initially within Europe and then throughout the world. Switzerland was no exception. Preparations for a wartime «command economy» had been taking place since 1936,<sup>4</sup> resulting in repeated conflicts of interest. The Swiss Federation of Commerce and Industry (*Vorort*) in particular feared the increasing power of the State, and effectively linked its determination to put a stop to the «centralist tendencies of the Federal authorities» to a portrayal of the enemy abroad and to the semantics of dictatorship. «We must establish provisos to ensure that we do not come under the spell of Fascism or National Socialism», commented Hans Sulzer at a meeting of the *Vorort* in November 1937.<sup>5</sup> This criticism would eventually give rise to the characteristic mixed economy structure which contained many elements from the private business sector.

A few days after the beginning of the war, on 4 September, the Federal Council launched the war economy under its emergency plenary powers. A whole machinery of administration and organised interests took up the running of the system, and by the end of the year this wartime economic apparatus had been perfected in terms of both personnel and organisation. The aim was to prevent «a fragmented structure [...], such as was inevitable in 1914/18 due to a lack of experience and preparation», and to avoid a delayed and largely ineffective improvisational approach.<sup>6</sup> With the concept of «national economic supply» foreign trade could be used to serve the nation's collective survival and defence community. However, the reverse side of an economy subordinated to state interests was expressed in the way the nation was used as a tool to serve corporate interests. When the Federal Council declared that ensuring «national economic supply» was the first priority and also – in accordance with the motto «work before capital» – sought to stabilise the employment situation, it also worked in favour of the interests of the profit-oriented private companies. The fact that Swiss export activities were a necessary precondition for the continued supply of raw materials, semi-finished products and foodstuffs from abroad was a central argument for maintaining trade links with the warring powers even in extremely difficult conditions. «Doing business with the enemy» could be justified by pointing out that neutral Switzerland had many complex economic links with the warring powers and remained heavily dependent on this exchange if it was to achieve its domestic political objectives, in particular to

supply the population with food and purchasing power. From the point of view of neutrality, continued close economic co-operation was unproblematic as long as the so-called *courant normal* (normal course of business) was preserved, in other words, as long as Switzerland did not unilaterally exploit new business opportunities and market niches created by the war.

One central objective of the war economy was the control of foreign trade. The Federal Council – with the support of the private sector – did everything it could to prevent each of the two military camps from once again accusing the small neutral state of Switzerland of acting as a base for the efficient industrial operations of their opponent. Such foreign involvement in domestic economic affairs was to be met with a workable bundle of measures, and clear communication with the outside world. Thus foreign trade was now much more strongly anchored within the wartime economy as a whole than during the First World War.

This movement took place at several levels, and was managed by newly-created bodies. The small, high-calibre delegation for trade negotiations had been firmly in the saddle for some time. It conducted foreign trade policy during the war years, and – alongside Ernst Laur (Farmer's Union) – consisted of the «Triumvirate» of Jean Hotz (Trade Division – *Handelsabteilung*), Heinrich Homberger (*Vorort*) and Robert Kohli (Federal Political Department – *Eidgenössisches Politisches Departement*, EPD). The government had already issued export restrictions a few days before the outbreak of war; on 2 September 1939 these measures became generally applicable, and the requirement of authorisation was introduced. Three weeks after the beginning of the war, on 22 September, a 20-man committee was set up to oversee imports and exports, chaired by Hans Sulzer. Its job was to promote consensus-building between the often diverging economic interests. The control measures were based on a rapidly increasing number of war economy consortiums, and made a considerable contribution to the administrative merger of private business organisations and the state. The accumulation of functions on the part of the economic policy-making elite further strengthened the process. 24 October 1939 saw the founding of a central office to oversee foreign trade, affiliated to the Trade Division at the Department of Economic Affairs (*Eidgenössisches Volkswirtschaftsdepartement*, EVD). One week later, the Federal Council forbade Swiss firms to submit themselves to foreign controls. This meant that the import, utilisation and export of goods, co-ordinated by the «Section for Imports and Exports» («*Sektion für Ein- und Ausfuhr*»), were incorporated into a complete mechanism of supervision by the authorities and self-regulation by associations and the private sector. This step enabled Switzerland to make use of what little scope remained for national sovereignty and autonomy in negotiations, in an environment altered by military conflict and economic warfare.

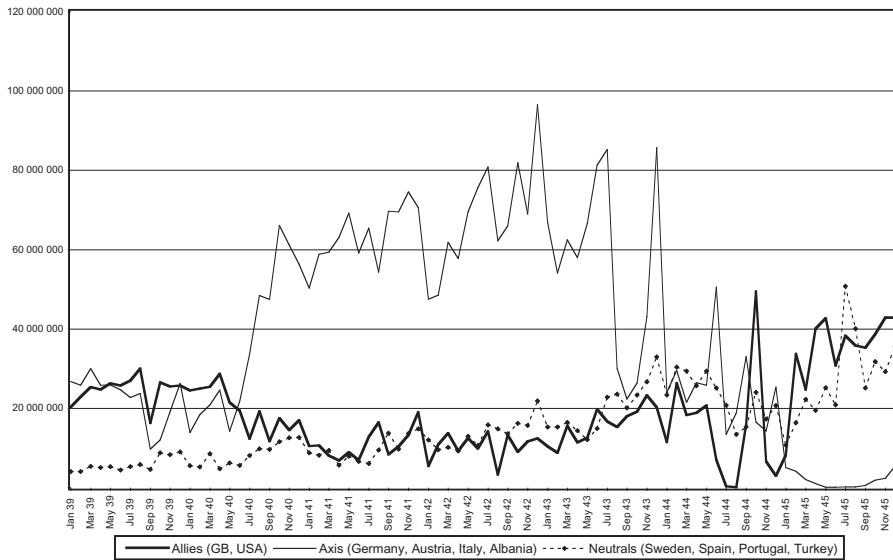
But there was more to Swiss objectives than the mere survival of the nation in dangerous times. Significant parts of the economic elite were instead thinking further ahead and focusing on longer-term post-war prospects. Irrespective of the outcome of the military trial of strength, these groups were working to keep the export economy competitive and to gear it towards promising markets and corporate structures. The Swiss aluminium industry supplied goods exclusively to the Axis powers after 1940. There was a high level of demand there, and a favourable pricing structure, so that it was not possible to meet the likewise growing demand from the Swiss army and domestic industry. The machine industry too, which exported goods important to the war effort, was able to offset the loss of Britain and the USA easily by supplying the countries ruled by the Axis. It was not a question of implementing a far-reaching transition aimed at serving the massive needs of the war economy. Even though many companies aligned their product range to new needs under the pull of demand from the foreign war economies, the internationally focused major companies stood by their existing recipe for success. A decisive factor was the continuation of successful activities and the focus on innovative technological developments which promised high added value and optimum employment opportunities for a well-qualified workforce. Thus, for instance, the leading companies in the chemical, metal and machine industries, as well as the electrical industry, concentrated on the nascent high-tech niches. The board of directors of the Brown Boveri Company (BBC) wrote in 1942 that the «most important preparation for the peacetime ahead is to uphold the technological status of our products».<sup>7</sup> As technology was a more important factor in the Second World War than in 1914/18, such products offered excellent sales opportunities and it was possible to reconcile dynamic and largely self-determined business growth with the supply of products not only to German markets, but also to others. In wartime conditions, commercial expansion strategies were ideally suited to embracing the state interest in supplying the nation and securing jobs. Part of the shortfall in exports – caused by the German counter-blockade – could also be temporarily offset by the domestic market. BBC made up for its loss of business with the Allies by producing almost half of its output for the domestic market as early as from 1942 on. This focus on the domestic market was made possible by the modernisation of the electricity companies, the electrification of private homes, and the greater demand for rolling stock from the Swiss Federal Railways.<sup>8</sup>

### **The course of Swiss trade negotiations**

After the beginning of the war, Switzerland tried to maintain its business links with all countries, as in the First World War. But the reality was different: there

**Figure 2:**

**Monthly values of exports to the different power blocs (in Swiss francs)**



Source: Swiss monthly foreign trade statistics, compiled from various volumes; Meier/Frech/Gees/Kropf, Aussenwirtschaftspolitik, 2002 (Publications of the ICE), chapter 2.2.

was a massive displacement of exports to the Axis powers, at the expense of France and Britain (the loss of trade with the USA was slightly less significant). Between July 1940 and July 1944, Germany (along with Italy until mid 1943) was by far the biggest consumer of Swiss goods. The neutral states (Sweden, Spain, Portugal and Turkey) also provided an attractive market from 1940 onwards. Spain and Portugal were popular suppliers, and foreign trade with Sweden was relatively balanced.

On-going negotiations with the Axis powers and the Western powers stipulated detailed conditions (export quotas and payment transactions) in a series of inter-state agreements. In terms of time passage, these trade negotiations can be divided into six phases, during which the Swiss saw their scope for action changing, with new constraints, difficulties and bottlenecks continually emerging. The progress and turning points of the military confrontations determined the discontinuities which were at the same time responsible for changes in expectations and for radical changes in the way people saw the future. The first phase began with the German invasion of Poland on 1 September 1939. During the *drôle de guerre* (phoney war) in 1939/40, Switzerland sought to realign itself, and made approaches in all possible directions. This phase saw the

transition to economic warfare as one aimed at weakening the opponent economically. From a Swiss point of view, this «blockade policy» represented «a system of power and arbitrariness»<sup>9</sup> which required determination and perceptiveness in negotiations.

The second phase lasted a year and started with the German-French armistice, the virtually total encircling of Switzerland by the Axis powers in the summer of 1940, and the successful conclusion of a trade agreement between Switzerland and Germany on 9 August 1940. At the same time an effective ban on exports to Great Britain was issued which called Switzerland's neutrality into question and was seen as a political concession to Germany. But as early as September 1940 it was possible to resume economic relations with Britain, albeit at a reduced level. At this time, Switzerland was also negotiating with fascist Italy, the long-time ally of the Third Reich, which entered the war in June 1940. Besides an increase in imports and exports, representatives of the Italian authorities initially pushed for foreign currency loans from the Swiss banks and – after Switzerland had made a corresponding concession to Germany – a state clearing loan. The services provided by the Swiss financial centre and the export activities of industry were important to the Italian economy and political set-up for various reasons: alongside the granting of credit, and gold purchases, we should also mention camouflage transactions and the transfer of flight capital. But at the heart of this relationship was the foreign currency loan granted to Istcambi in 1940 by a Swiss banking consortium led by Swiss Bank Corporation (SBC).<sup>10</sup>

The invasion of the Soviet Union in June 1941 marked the beginning of the third phase. It showed Germany at the height of its military powers and at its most arrogant in negotiations. It was during this phase that Switzerland made its biggest concessions, in particular a clearing loan amounting to 850 million francs. This phase continued until the major turning point of the war associated with Midway, El Alamein and Stalingrad. The period between November 1942 and January 1943 was characterised by the collapse of German hegemony, ushering in a fourth phase which began with a dangerous crisis in Switzerland's trade relations with Germany. The German sphere of control saw a transition to «total war», which had serious implications for the populations of the occupied and annexed territories. After new negotiations proved fruitless, a treaty-free situation began in January 1943 which led to some uncertainty in business circles and amongst the authorities: there was a slight decline in willingness to supply goods to Germany. The Federal Council and its trade negotiators were able to portray a more self-assured image towards the Reich from 1943 onwards following the turning point in the war: the Allies put pressure on the neutral countries, which thus gained moral support against Berlin. It is one of the

paradoxes of this economic war that Switzerland – for the first time since summer 1940 – regained more scope for negotiations with Germany thanks to increasing pressure from the Allies. After a very tense test of strength, a transitional agreement was concluded in June 1943, although this went hand-in-hand with a moderate reduction in Swiss engagement. The end of the German presence in France at the end of August 1944 marked the conclusion of this phase.

The fifth phase was marked by the Allied advance and by the increasingly pressing demand for a complete break with Germany. On 1 October 1944, a ban on the export of weapons was issued, while other foreign trade continued at a low level. By 1943, Switzerland had already become a target of the British and American joint economic war. The blacklisting of the Gebrüder Sulzer company in Winterthur in the autumn of that year hit Swiss business circles particularly hard. The company had been reluctant to sign an «undertaking» with the Allies; in other words, it was not prepared to suspend its deliveries to the Axis powers without being prompted. Whilst Federal President von Steiger responded politely to President Roosevelt's appeal to the «freedom-loving countries» to support the fight against Nazism at the beginning of 1945, breaking off trade relations was out of the question for the Federal Council even then, as a matter of principle. Not only were there (foreign) policy considerations to be taken into account, there was also the question of supply. The supply situation had worsened for Switzerland in the winter of 1944/45 as the Allies in the West and the South moved closer; the Allied commanders prevented the deliveries from overseas which had been agreed in long negotiations. There were therefore very good reasons, even in the last year of the war, to remain in contact with Germany.

Switzerland did not give way in this area until its negotiations with a US-British-French delegation. The arrival of this delegation, headed by the American Laughlin Currie in February 1945, marked the transition to post-war negotiations. This sixth phase leads into the post-war period. At the Currie negotiations in February and March 1945, the Swiss delegation backed down in an important area, meeting a central demand from the Allies by freezing German assets in Switzerland and promising to inventory them. On 16 February 1945 this was put into action by the Federal Council and all German assets were frozen. This action was in compliance with the «Safehaven»-policy imposed by the US Treasury, which was aimed at putting a stop to Germany's financial transactions in neutral foreign countries. In this troubled phase, it was possible to turn towards the Allies in this way without completely breaking off all economic relations with Germany. The attitude of leading Swiss businessmen in this connection is worth noting: they assumed

that this important economic potential would continue to exist even after the defeat, and attempts were therefore made to maintain business links with German companies «at least in a symbolical format» beyond the critical phase.<sup>11</sup> Heinrich Homberger, an experienced negotiator and *Vorort* director, explained to the Swiss Chamber of Commerce (*Schweizerische Handelskammer*) four days before the end of the war in Europe:

«The fact that everything happened as it did and when it did: the possibility of a reduction in, or cessation of, our dealings with Germany as an organic development in our bilateral relationship with that country, and this at a moment when it was imperative to normalise our relationship with the Allies, all this again comes under the heading of ‹Switzerland's good fortune in world history›».<sup>12</sup>

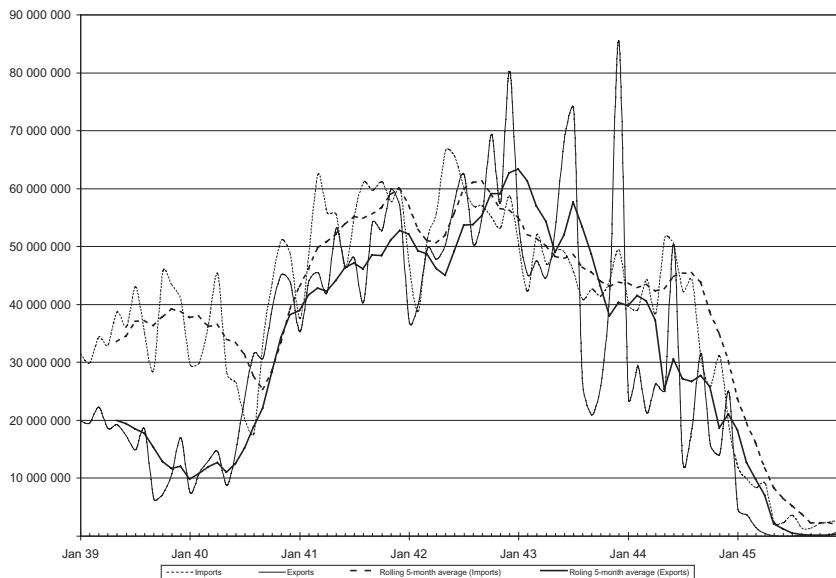
As regards foreign trade, the Swiss currency loan of 250 million francs granted at this stage to France was significant, sealing the transition – already long-since complete at a corporate level – to the areas liberated by the Allies (especially France, Belgium and the Netherlands). This caused the temporary importance of the neutral countries, which had compensated for lost markets, to decline again in the post-war period.

Seen as a whole, Switzerland's efforts to achieve close economic co-operation with Germany brought it dual advantages. Swiss businesses emerged from the war years both technologically and financially stronger. The state was able to realise the central objectives of its defence and economic policies. Government and business could not have guaranteed the population either «bread» or «work» without the help of foreign trade co-operation.<sup>13</sup> The military leaders would have been short of raw materials for armaments and for building defences. Furthermore, the continued existence of many banks on which Switzerland's sophisticated loan business depended was reliant on the safeguarding of foreign assets or, at the very least, an orderly withdrawal from asset holdings which had become critical.

### **Relationship with the Axis powers**

During the war, the German conquests resulted in a major expansion of clearing traffic and a concentration of Swiss foreign trade on Axis territory. The Axis powers used the clearing agreements to serve their power and armaments interests, by demanding so-called clearing loans from their contractual partners. The resulting debts amounted to a total of 33 billion reichsmarks towards the end of the war, with the Swiss government contributing around two percent of the total, at 1.121 billion francs.<sup>14</sup> This «clearing billion» (also called a «collab-

**Figure 3: Swiss foreign trade with the German Reich**  
**(Nominal monthly figures in absolute terms and on rolling average basis, in Swiss francs)**



Source: Swiss monthly foreign trade statistics (Monatsstatistik des Aussenhandels der Schweiz), compiled from various volumes; Meier/Frech/Gees/Kropf, Aussenwirtschaftspolitik, 2002, (Publications of the ICE), chapter 5.2.

oration billion» by the Allies after the end of the war) took the form of a state payment guarantee for Swiss exporters. The Swiss clearing loans made it possible for the German and Italian armies to fund their large-scale armaments purchases in Switzerland. Moreover, the Nazi authorities set up a «European central clearing system» (*«Europäisches Zentralclearing»*) which gave them control of Swiss foreign trade with the occupied states. Even in the first few months of the war, the Axis powers were already trying to obtain loans for supplies from Switzerland under the terms of the clearing agreement. This corresponded to a general strategy of tying trading partners into the German war economy. In summer 1940, after the fall of France, German pressure on Switzerland grew, as Switzerland found itself almost completely hemmed in by the Axis, and focused its export activities on Germany to a considerable extent. Light metals, weapons, machinery, textiles, and chemical and pharmaceutical products were among the most important sectors of the export economy. In return, Switzerland received large quantities of coal, raw materials for textiles, pig iron, non-ferrous metals, chemical products and machine components. The trend in exports to Germany is set out in figure 3. This shows how the German

market became much more important as a consumer market for Swiss industrial products in the period from 1941 to 1943. The capacity and readiness of Swiss exporters to supply Germany did decline in 1943 and especially in 1944, but trade relations between Switzerland and Germany remained at a comparatively high level right up to the end of the war.<sup>15</sup>

In general, imports exceeded exports. Switzerland's balance of trade with Germany tended to be negative (with the exception of 1943). Before 1942, and again in 1944, far more goods came into Switzerland than were exported. Economic relations with Germany went far beyond the relative levels of ordinary foreign trade structures and could no longer be described as *courant normal*. The above-mentioned clearing loans made it possible, despite the Reich's chronic shortage of foreign currency, for all economic relations – as well as the trade in goods, there were also large volumes of «invisible exports» favouring Swiss creditors in the service and financial sectors – to continue more or less without difficulty until the end of April 1945.

The economic exchanges also gave Switzerland the opportunity for an understanding with its powerful neighbour which minimised the risk of reactions from those parts of the Swiss population with an anti-German attitude. Thus Foreign Minister Marcel Pilet-Golaz explained at the end of July 1940 to Hans Frölicher, the politically flexible Swiss ambassador in Berlin:

«We are pleased to hope that the conclusion of the trade negotiations currently in progress will give us an opportunity to indicate our willingness to adapt to the new situation on the continent, and to collaborate with Germany in the field of business. Should this create the impression of a détente – as we expect it will – it will be easier to find ways of gaining sympathy in other areas without exposing ourselves to accusations of servility which could come just as easily from Germany as from Switzerland [...].»<sup>16</sup>

The rapid defeat of the French army by the German *Wehrmacht* had caused shock amongst the population at this time. Switzerland was surrounded. As early as the day of the French capitulation, 21 June 1940, the authorities had «moved heaven and earth» to «bring about the promotion of exports to Germany down the line». <sup>17</sup> The Swiss President, Pilet-Golaz, promised in his radio address on 25 June that the priority now was to create jobs «at all costs» («*coûte que coûte*»). The trade negotiators were working with notable determination to achieve an economic understanding with the Axis powers. Heinrich Homberger, a member of the negotiating team, wanted to avoid anything which might create tension with Germany. However, there was a desire not to

break off relations with Great Britain. Federal Councillor Minger for instance showed far-sightedness when he declared that the war could go on for a long time yet, and that Switzerland should not think of «begging Germany for mercy».<sup>18</sup> In the years that followed, both calculations proved right: it was possible to maintain, albeit minimal, trade with the Allied powers; at the same time, however, a strategy of understanding directed towards the Axis predominated. In the period after June 1940, various suggestions were also put forward to send a top-notch «reconnaissance mission» of business representatives to Berlin. These initiatives – originating both from the General and from circles friendly towards Germany – expressed a mood which also existed within the major exporting companies, that a concentration of Swiss efforts on the «large European economic area» under German rule was appropriate. In the summer of 1940, Germany sent out clear signals in this regard which were received positively by some Swiss business circles. The *Interessengemeinschaft der Basler Chemischen Industrie* (body representing the interests of the Basel chemical industry) declared at the end of August 1940 that it was imperative to act quickly and that

«first and foremost we must commence trade policy activity in these continental areas where new economic structures, based on quite different principles are emerging as a consequence of the course of the war to date, and try to influence them in time to protect our position.»<sup>19</sup>

#### **Bally and its relations with the Axis powers**

In some companies, the alignment with Nazi Germany involved a radical reorientation. The fact that this did not take place until summer 1940, and in response to pressure from the authorities, can be seen clearly from the example of the Bally Schuhfabriken AG in Schönenwerd. At the end of September 1939, its management discussed the risk arising from the «black lists published by Britain», and came to the conclusion that «all deliveries for Bally Wiener Schuh A.G. in Vienna must be suspended, as this company must be treated in the same way as a German company».<sup>20</sup> On 11 October 1939 however, a management member noted that «Bern» would «disapprove [...], if we suspend our deliveries to Germany». It should «not be forgotten that we could be legally obliged to supply our German customers, and that we would not be acting neutrally if we supplied the entente states without restriction on the one side whilst holding back German consignments on the other».<sup>21</sup>

However, this «neutrality policy» argument (used, as it were, to justify the Swiss in supplying all the warring parties) was not enough to convince the

members of the management. In any case, on 4 May 1940 the committee came to the conclusion «that deliveries to Germany are out of the question for us at the present time».<sup>22</sup> By 4 July 1940, things had changed. Iwan Bally now referred «in general to the urgent need to create jobs, and in particular the need to revive exports, paying special attention to the clearing surplus which currently exists in favour of Germany». This clearing surplus needed «to be paid off as quickly as possible through the supply of goods». In order to avoid breaching the blockade treaty with Britain, Bally continued, it was necessary to ensure «that our company operates within the bounds of the *courant normal*»; any larger quantities would require the involvement of the shoe industry as a whole, in order to put pressure on the Swiss-Allied *Commission mixte*.<sup>23</sup>

The clearing loans created the requirement for an export policy developed by sharp-minded negotiators, and one which most businesses went along with once Switzerland was encircled by the Axis powers. Within the Swiss negotiating delegation, the dominant impression was that Germany «[is] currently very close to us, and Britain [...] very far away».<sup>24</sup> In this phase, with Germany at the peak of its military power, it seemed possible to achieve an optimum reconciliation of corporate strategy, national interests, and policy towards Germany. Thus Homberger explained at a meeting of the Swiss Chamber of Commerce (*Schweizerische Handelskammer*) in May 1941 that one had to keep in mind the «future structure of Europe» and focus on «constructive co-operation». Switzerland's own «sacrifices» should «help to maintain the independence of our country».<sup>25</sup> Here we can see that foreign trade policy was identical with foreign policy and/or defence policy.

Germany's plans for using Switzerland as an extended «workbench», and integrating Switzerland's economic potential into Germany's own efforts to arm itself, did not, however, always work out.<sup>26</sup> Attempts by German ministerial bureaucracies, the *Wehrmacht*, and the newly created departments within the Nazi regime, to impose a buyer's market in Switzerland, achieved only initial success. Complaints from the German industrial commission (*Deutsche Industriekommission*), which had been based in Bern since spring 1941, from where it attempted to co-ordinate and strengthen the incoherent German ordering, purchasing and procurement process, continued unabated. However, the German decision-makers hoped that the economic incorporation of Switzerland into the «New Europe» would also produce an effect in terms of political ideals: together with the Scandinavian and south-eastern European nations, Switzerland was to be encouraged to play an active role in a wider European economy («*Europäische Grossraumwirtschaft*»). But the propaganda campaigns

were less and less able to mask the brutal reality of the occupation economy in large parts of Europe.

The fact that companies in this small neutral state were making efforts to do business with the new rulers of Europe must not be equated with a Nazi mindset. Parts of the Swiss economic elite showed ideological affinities to the love of order and the anti-Communist attitudes of Nazi Germany, but such sympathies were not expressed through the intensity of economic exchange. The ban imposed by the authorities on signing «undertakings» with the Allies, and thus explicitly refraining from further trade with the Axis powers, also makes it clear that any formal distancing from Germany entailed difficulties for Swiss businesses. Companies which were willing to supply the Axis powers could, on the other hand, feel that they were receiving political support. Conversely, it cannot be concluded out of context, from observing the increased presence of companies in the English-speaking countries, that there was an opposite tendency to disengage from the Axis powers. Important sectors and areas of the Swiss economy – the big banks and the chemical and pharmaceutical industry – moved the main emphasis of their business activities towards the English-speaking world during the war years. But this does not mean that they had lost interest in doing business in and with Germany.

#### **The warring parties' economic and political interests in Switzerland**

The warring parties' interest in neutral Switzerland concentrated on its economic potential as a manufacturing and financial location, on its role as an operations centre for the secret services, and on its diplomatic and humanitarian services. The Axis powers tended to be more interested in Switzerland's economic services than the Allies, who were able to access much greater resources in the arms race. The Allied blockade of the continent forced Germany and Italy to make the broadest possible use of the economic potential within Europe. When Switzerland was surrounded in the summer of 1940, and when a counter-blockade was imposed, they achieved this aim almost completely with regard to the economic potential of Switzerland. Over the next two years, the *Wehrmacht* was able to obtain large quantities of Swiss armaments at will and without difficulty, thanks to the clearing loans granted by the Federal Council. Military equipment (weapons, ammunition, detonators) was particularly sought after, along with aluminium and machine tools. As German armaments production stagnated in the first three years of the war, Swiss supplies of military equipment offered a welcome addition to stocks. However, in comparison with Nazi Germany's own production, the quantity of armaments supplied during the whole of the war was fairly small: Swiss military equipment accounted for just 1% of German armament end products, and in the case of

machine tools and aluminium the contribution was around 3%.<sup>27</sup> On the other hand, Swiss graphite electrodes, needed for the production of electrosteel, made up 10% of total German production, and a figure of more than 10% can be assumed for Swiss supplies of time-fuses and their components (for air defence weapons).

These relatively small quantities are inconsistent with the great importance stressed in numerous reports from the German ministries and *Wehrmacht* offices. But these statements often contradicted themselves, sometimes illustrating the rivalries between the authorities rather than the objective situation. The Nazi offices had a tendency, in their internal battle for resources, to claim that virtually every delivery was absolutely essential to the war effort and therefore indispensable. The significance of the oft-quoted statements from representatives of the authorities, which also appear in our studies, must therefore not be overestimated. In fact however, special dependencies of the German economy can also be identified: while it is true that most of the industrial sectors in Germany and the continental area under its control were well enough developed to get by without Swiss supplies, in the machinery sector and, above all, the watch industry (which includes the production of detonators) we find a high level of German dependency on the Swiss market. The German watch industry was less specialised, and Swiss industry in general also proved itself through its high quality products and its reliability – an advantage which the German armaments offices emphasised on many occasions. Swiss machine tools in particular were also characterised by this high quality: gear-wheel chamfering machines, for example, were essential for the construction of aircraft and tank engines in Germany. It can also be demonstrated that certain precision tools, transformers, aluminium and ball-bearings were very important. It is not possible today, however, to establish the extent to which German factories were actually dependent on Swiss supplies, or whether they could have found replacements elsewhere. Germany also obtained far greater quantities of more important goods from occupied and partner countries.

Swiss supplies generally became more important as a result of the «total war» declared by the Nazi regime at the beginning of 1943, in response to the defeats on the Eastern Front and in North Africa. The sharp increase in armament production in the next two years was accompanied by a rise in the need for deliveries from abroad, including Switzerland. In the first half of 1943 in particular, the German ministries and the *Wehrmacht* emphasised several times what they saw as the great importance of Swiss armaments supplies. Whilst Armaments Minister (*Rüstungsminister*) Albert Speer, and Wilhelm Keitel, Head of the *Wehrmacht* Supreme Command (*Chef des Oberkommandos der Wehrmacht*), wanted to use economic pressure (blocking raw materials) to force Switzerland to supply

more, Adolf Hitler sided with the more moderate ministries. He said something to the effect that

«he thought it desirable in principle to be tough towards Switzerland; but one must not go too far, as one had to assume that if we were to wage an open trade war, Switzerland would find alternatives in other countries via Italy. The *Führer* therefore considers it right that we do not block all further opportunities for negotiation, in case Switzerland does not give in to our demands.»<sup>28</sup>

This order continued to guide German foreign trade policy towards Switzerland until the end of the war. On the one hand, Hitler had no confidence in the willingness of Italy, an Axis partner, to co-operate, and on the other hand he wanted to avoid a complete stop of Swiss supplies. After summer 1943, the Swiss government restricted exports, especially as regards military equipment, and this made the Swiss supplies of goods less significant in the eyes of the Armaments Ministry.

«Whereas imports from Sweden, Spain etc. give a clear picture as a result of the large quantities of important raw materials, the structure of imports from Switzerland is completely different, since all kinds of goods are involved, and above all finished products. He must state with regard to these imports that all imports from Switzerland are mostly of no interest to Germany, especially when set against the export of important German goods to Switzerland.»<sup>29</sup>

After that, German interests were concentrated more strongly on Switzerland's other services, the transiting of goods through the country and, most importantly, currency trading. In this regard in particular, Switzerland appears to have played a more influential role for the German war economy. Its unrestricted capital market could be used for various transactions such as the sale of gold and securities, and the franc played a unique role in European trade in this connection after 1941. According to the Reichsbank, gold and currency transactions in Switzerland were «of vital importance to the war», since the franc was the only freely convertible currency both for Germany and for its partner countries.<sup>30</sup> Whilst it is true that fewer than 10% of German international payment transactions took place using foreign currency, after 1943 in particular, especially sought-after raw materials and goods could only be bought from the neutral and partner states in return for foreign currency, or had to be smuggled. Several examples show that without francs Nazi Germany would have been able

to obtain only limited supplies, if any, of certain highly important raw materials such as tungsten and oil. Germany's allies in particular demanded payment in francs so that they in turn could purchase military equipment and machinery from Switzerland. For instance, Romania made payment in Swiss francs a precondition for signing any economic agreements with Germany at all. Francs were also used in the neutral states such as Sweden (shipbuilding) or Spain and Portugal (tungsten). During the war, the Reichsbank had access to about two billion francs, half of which were used in Switzerland and half in international payment transactions.<sup>31</sup> Overall, therefore, the specific importance of Switzerland lies less in its supply of armaments than in its function as a «hub» for international trade. In the case of certain Swiss industrial products however (machine tools, detonators) we can assume that Switzerland also made an important contribution to German wartime production.

On the side of the Allies, motivations were different: here it was less a matter of taking control of the economic potential of the neutral countries than of preventing Germany from so doing. The granting of orders to Swiss companies was the result of an Allied strategy aimed at the systematic weakening of the Axis powers, by making every effort to put a stop to the support they were receiving from the neutral countries. As far as Switzerland was concerned, this strategy was not very successful, as can be seen from the continual warnings from the USA and Great Britain. The Allies used a wide range of measures to conduct their economic warfare, in particular the freezing of assets in the USA, and economic sanctions (black lists and denial of navicerts). The USA and Britain however, did more than simply exercise repressive pressure on Switzerland. The economic war was also aimed at absorption: the watchmakers' jewels which were smuggled into Britain and the USA by post on a large scale at the beginning of the war were used not only to arm the Allies (detonator and aircraft production), but also with the aim of limiting the enemy's supply opportunities.

If Switzerland was not subjected to greater pressure even in the difficult situation towards the end of the war, this was due to the fact that Allied economic warfare never pressured the neutral countries so efficiently or to such an unlimited extent as the war ministries in London and Washington would have liked. The black lists sometimes contained an element of happenstance. During the whole of the war, the Allies had to weigh up various interests in their policy towards the neutral countries. Important motives militated in favour of handling Switzerland with care. The Under Secretary of State in the US State Department, Joseph C. Grew, expressed this compromising attitude clearly:

«For political reasons and for reasons arising out of the benefit to us of Switzerland's neutral position and future potential usefulness in restructuring the economy of Europe, it is inadvisable to place too great a pressure upon the Swiss government at this time in order to attain purely economic warfare objectives.»<sup>32</sup>

The foreign ministries in Washington and London also repeatedly showed leniency because of Switzerland's significance as a communications centre, an espionage centre, and as host to the International Committee of the Red Cross which provided services for Allied prisoners of war in the Axis countries. Thus Switzerland always had a certain amount of leeway in its position between the warring parties.

#### **Scope for action and political legitimacy**

In these war and crisis conditions, foreign trade became essentially foreign trade *politics*, and foreign politics became foreign *trade* policy. Paradoxically, this crossover made it easier to separate business and politics in foreign relations. Within changing interest constellations and power situations, the Swiss authorities conducted negotiations during the war which were aimed primarily at ensuring that the country was adequately supplied. It was precisely this approach which also met German requirements and was able to take into account the profit calculations of Swiss companies. Supply bottlenecks and lost markets gave rise to a continuing process of negotiation on all sides, which appeared to be the key to urgently needed economic resources. Negotiations with the Axis powers, with the Allies, and also with the neutral countries, represented a system of communicating channels where multiple repercussions and interactions were discernible. Neutral Switzerland was positioned between the fronts, and at the same time took advantage of the fact that modern industrialised societies, such as underpinned the war on both sides, were in general barely compatible with the rigid separation of economic areas and self-sufficiency.

In foreign trade policy negotiations, a contribution was also made by mental, economic and political factors which were not addressed explicitly. Thus, for example, the question arises as to why Switzerland did not strive harder to achieve interdependency between gold purchases, Alpine transit and armament supplies on its side, and raw material and food supplies on the German side; and why, in turn, Germany did not make greater use of the interdependence of economic and political processes to exercise extortion on its neutral neighbours. This was dependent firstly on the fact that dividing the objects of the negotiations made it easier to resolve the problems which arose. The systematic linking

of the various areas of economic exchange would have necessitated complex balancing processes, placing excessive strain on negotiations and making compromise difficult. Secondly, we must not overestimate the cohesive nature of these interactions between states: the militarily successful Reich which ruled the European continent was, as a result of its polycratic structure, no more willing or able than Switzerland to develop an overall strategy which integrated the different authorities and institutions.

Trade negotiations with Germany took place in a power constellation which demanded great negotiating skill of the Swiss delegation. The discussions between these two unequal partners concentrated on two main points. Firstly, the Germans wanted to obtain favourable conditions within the existing bilateral clearing agreement. An opportunity for this was offered by the clearing rate (the relationship between currency values laid down by policies), the «free currency surplus» (*«freie Devisenspitze»*) available to the Reichsbank, and the credit margins. Secondly, there was a desire to tie Switzerland into a more complete system of Europe-wide multilateral clearing dominated by Germany. Switzerland's participation in the «European central clearing system» was particularly important to Germany. Despite several economic and political objections, Switzerland joined this system on 20 September 1940. Those responsible on the Swiss side were obliged to note that by taking this step they had indirectly approved the Reich's policy of annexation, conquest and occupation. This move aroused corresponding controversy within the economic, administrative and political elites. A representative of the Finance Administration spoke in January 1941 of multilateral clearing as a «mask» to conceal the «abandonment of our own trade policy and trade agreements». Switzerland, he said, should keep out of such a relationship for as long as possible. But at the end of the day, even this small neutral state preferred «employment within the country to dogmatically sticking to a system». <sup>33</sup> The Geneva banker Albert Pictet described participation in the clearing system as a decision with «powerful consequences» and asked: «Why do we in Switzerland act so rashly?» <sup>34</sup> On the other hand, textile industrialist Caspar Jenny stated, despite reservations: «If this is the worst we ever have to accept, we can be satisfied.» In any event, multilateral clearing was less successful than expected at producing an effective financial infrastructure in the German-ruled «new Europe». Because of the destructive logic of the war, it did not progress past the initial stages and degenerated into what was effectively a tool of economic exploitation of the occupied territories. Thus the bilateral approach became widespread over the longer term, and trade negotiations continued to concentrate on the on-going adaptation of the German-Swiss clearing treaty.

The trade agreements of 1940 and 1941 between Switzerland and Germany

were also discussed by the press and debated in parliamentary committees. However, during the negotiating phase from May 1940 onwards, the press published only official communiqués. Once it had been signed, the press welcomed the agreement, with the *Neue Zürcher Zeitung* seeing it as an organic development of German-Swiss economic relations. The *Tages-Anzeiger* in Zurich and the *Vaterland* in Lucerne praised the more elastic clearing loans; only the Social Democratic *Tagwacht* in Bern saw fit to criticise, but its criticism was concerned less with the fact that Switzerland had given way to German pressure than the Federal Council's having made an unilateral decision in favour of the «Swiss business world».<sup>35</sup> For reasons relating to the securing of supplies and jobs, all the organs of the press saw predominantly positive results issuing from the agreement of July 1941. The Social Democratic press – usually adopting an anti-fascist position – emphasised in particular the job-creation aspect resulting from large orders on credit.

In summer 1941, the public was initially unaware of the extent of the clearing loan which had been agreed in favour of Germany and the Swiss export industry. The members of the parliamentary finance delegation were informed by Minister of Economic Affairs Walther Stampfli that the clearing loan had been raised to 850 million francs, but it was important to the Federal Council that the actual amount of the clearing loan was not made public, partly out of consideration for the Allies. There were, however, rumours of amounts around 900 million francs, in response to which the Director of the Trade Division (*Handelsabteilung*), Jean Hotz, felt compelled to go before the parliamentary press and justify the agreement. Press censorship and an inadequate information policy amongst the authorities ensured that Swiss foreign trade policy was not discussed in more detail.<sup>36</sup>

In autumn 1941, rumours about the new clearing agreement in the press resulted in a rare but lively debate in the National Council on the occasion of the approval of the semi-annual foreign trade report of the Federal Council. Social Democrat National Councillor Hans Oprecht demanded information from the Federal Council about the clearing advances and multilateral clearing.

«Won't this ordering of our foreign trade mean that Switzerland is economically bound into the «new Europe» against our will, and in such a way that our absolute and integral neutrality appears to be at risk? [...] We fear that we are on a slippery slope, sliding more and more.»<sup>37</sup>

National Councillor Walter Muschg (National Ring of Independents – *Landesring der Unabhängigen*, LdU) took up the argument and openly expressed his unease with regard to the Federal Council's German-leaning economic policy:

«The nations which are today fighting to destroy each other will be little inclined after the war to show consideration for us, merely because we have been astonishingly successful in escaping the general fate. This moral viewpoint will one day be of vital importance, and we must take it into account right now. Our descendants too, will one day ask not whether we were cold and hungry during these years, but whether we had the strength, despite hunger and need, to preserve for the Swiss state the prestige which it deserves and needs.»<sup>38</sup>

The answer of the Federal Councillor responsible, the Minister of Economic Affairs Walther Stampfli, was short and to the point:

«Prof. Muschg has suggested that our descendants will not be particularly interested in whether we did enough freezing and starving. I am not interested in what our descendants will say. I am much more interested in what the present generation would say if it had no coal and nothing to eat. [...] I have not yet, in the brief period that I have shared some responsibility for supplying our country, remarked any inclination on the part of our compatriots to forgo essentials in a sudden attack of idealised heroism.»<sup>39</sup>

The trade policy agreed between the administration and the economic associations towards the German dictators enjoyed wide political support and also the support of the media. It is true that there was criticism within the *Vorort* of the occasional high-handed approach of the association director Mr. Homberger, and the National Bank also recognised a monetary policy risk in the Federal Council's loan campaign. But as the Federal Council and its negotiators were under pressure not only from the Germans but increasingly, from 1941 onwards, from business owners seeking to export, there was in retrospect little alternative. As an additional argument, the state clearing loans were seen as evidence that Switzerland had succeeded in reducing its expenditure on defence policy through comprehensive contractual arrangements with Nazi Germany. The director of the Trade Division, Jean Hotz, looking back on the agreement of 18 July 1941, explained: «In the absence of an agreement, the result would have been additional expenditure on mobilisation amounting to around 1 billion francs per year.»<sup>40</sup>

The pre-financing of Swiss exports to Germany allowed other Swiss interests to be served. What the Western powers called the compensation deal, which enabled Switzerland to send goods which were important to the war effort through German occupied territories to Great Britain and the USA, represented a significant German concession to Switzerland over the longer term. This «self-

financing» turned out to be an effective lever, opening up a commercial passage to the Allies through the German blockades. The breach of neutrality which was committed through the unilateral favouring of one warring party with the clearing loan, served to guarantee that «Switzerland could hold on to its sovereignty and neutrality even when hemmed in by the Axis».⁴¹ In this type of resistance against the potential enemy through economic adjustment, we see both a successful tactic and an ambivalence in the relationship with National Socialist Germany.

If we once again take a comparative look at the relationship with the Axis powers and with the Allies, we are struck by the asymmetry which predominated. Jean Hotz described it in the following manner:

«While there were comprehensive contractual rules governing war-related trade which applied to the Axis powers from 1940 (adapted to changing conditions, but admittedly also repeatedly disregarded in the absence of any treaty), economic relations with the Allies during the whole of the period when our country was surrounded by the Axis were in a state of permanent crisis.»⁴²

The overall impression is that Switzerland had agreed on a restrictive regime with the Axis powers, but that this left considerable scope for the exercise of German pressure, and for Swiss concessions. The Allies on the other hand conducted trade with Switzerland with an odd mixture of economic warfare and foreign trade liberalism, which offered little security to the Swiss side and rendered it crisis-prone.

<sup>1</sup> Hotz, Handelsabteilung, 1950, p. 54 (original German).

<sup>2</sup> The role of the franc during the war is examined in more detail in chapter 4.5 on gold transactions and looted gold.

<sup>3</sup> Unless otherwise stated, this section is based on Meier/Frech/Gees/Kropf, Aussenwirtschaftspolitik, 2002 (Publications of the ICE) and on Frech, Clearing, 2001 (Publications of the ICE).

<sup>4</sup> Schaffner, Zentralstelle, 1950, p. 21 (original German).

<sup>5</sup> AfZ, IB SHIV/Vorort, 1.5.3.10, minutes Vorort, 5 November 1937 (original German).

<sup>6</sup> FA, E 7800 (-) -/1, vol. 151, Report and proposal from the Federal Military Department to the Federal Council «Preparation and Organisation of the War Economy», 15 June 1936 (original German).

<sup>7</sup> ABB Archives (no reference), Report from BBC Board of Directors to General Meeting, 15 July 1942, p. 7 (original German).

<sup>8</sup> Catrina, BBC, 1991, p. 68.

<sup>9</sup> AfZ, IB SHIV/Vorort, 1.5.3.11, minutes Vorort, 26 March 1940, p. 3 (original German).

<sup>10</sup> Hauser, Netzwerke, 2001 (Publications of the ICE).

- <sup>11</sup> Vereinigung des Schweizerischen Import- und Grosshandels, «Grundsätzliche Bemerkungen zu unserem Handel mit Deutschland», reproduced from *Schweizerische Arbeitgeber-Zeitung*, No. 14, 6 April 1945.
- <sup>12</sup> Minutes of the Chamber of Commerce 4 May 1945, p. 25 (original German).
- <sup>13</sup> Hotz, Handelsabteilung, 1950, p. 85.
- <sup>14</sup> This is based on the official exchange rate (1 reichsmark = 1.7301 francs) fixed by the politicians; even if the two currencies are given equivalent treatment, the Swiss contribution to the German clearing debt comes to no more than 3.3%; the main burden of this debt was borne by the occupied countries.
- <sup>15</sup> For a comparison of the neutral countries, see Martin, Deutschland, 1985.
- <sup>16</sup> Pilet-Golaz to Frölicher, 24 July 1940, in: Bonjour, Neutralität (Documents vol. 8), 1975, pp. 48f. (original French).
- <sup>17</sup> Minutes of the meeting of the Financial Delegation of the Federal Council and the Permanent Delegation for Economic Negotiations with Germany, 21 June 1940, DDS, vol. 13, pp. 739–744, here p. 740 (original German).
- <sup>18</sup> Minutes of the meeting of the Financial Delegation of the Federal Council and the Permanent Delegation for Economic Negotiations with Germany, 21 June 1940, DDS, vol. 13, pp. 739–744, here p. 744 (original German).
- <sup>19</sup> FA, E 7800 -/1, vol. 163, Gesellschaft für chemische Industrie Basel (in the name of the Basel I.G.) to the Handelsabteilung, 27 August 1940 (original German).
- <sup>20</sup> Bally Archives, Schönenwerd (no reference), minutes of management meeting on 28 September 1939 (original German).
- <sup>21</sup> Bally Archives, Schönenwerd (no reference), minutes of management meeting on 11 October 1939 (original German).
- <sup>22</sup> Bally Archives Schönenwerd (no reference), minutes of management meeting on 4 May 1940 (original German).
- <sup>23</sup> Bally Archives, Schönenwerd (no reference), minutes of management meeting on 4 July 1940 and 6 September 1940 (original German).
- <sup>24</sup> Reported by Robert Kohli, Section Head in the Federal Political Department and member of the Permanent Delegation for Negotiations of the Federal Council, AfZ, Homberger records, IB SHIV/Vorort, 10.9.1.2.1.3., Homberger, stenographic note, «Intern[al Meeting]», 11 September 1940, (original German).
- <sup>25</sup> AfZ, NL Homberger, 4, Confidential unprinted minutes of agenda item 2 «Foreign Trade Relations» at the 146<sup>th</sup> meeting of the Swiss Chamber of Commerce on 9 May 1941 (draft), 17 May 1941, pp. 18f.
- <sup>26</sup> One example can be seen in electricity exports (dealt with in chapter 4.3 included herein).
- <sup>27</sup> In the case of aluminium, it was not the quantities supplied by Swiss companies which were significant so much as those produced by subsidiary companies in Germany, which were responsible for around 15% of total German production.
- <sup>28</sup> AfZ, RGVA 1458-11-86, MF 7, State Secretary [Landfried, *Reichswirtschaftsministerium*] to Seyboth (confidential), 12 March 1943 (original German). For the internal German discussions in the phase from January to June 1943, see also Frech, Kriegswirtschaft, 1998, pp. 53–64.
- <sup>29</sup> AfZ, RGVA, 1458-11-84, MF 7, Schaafhausen (*Reichswirtschaftsministerium*), note «7 January 1944 meeting with State Secretary Hayler on the Continuation of Negotiations with Switzerland», 9 January 1944 (original German).
- <sup>30</sup> Statement by Reichsbank vice-president Emil Puhl in: AfZ, RGVA, 1458-11-84, MF 7, Schaafhausen (*Reichswirtschaftsministerium*), note «7 January 1944 meeting with State Secretary Hayler on the Continuation of Negotiations with Switzerland», 9 January 1944 (original German).

- <sup>31</sup> FA, E 6100 (A) -/25, vol. 20, [Alfred Hirs, Director General SNB], «The Gold Transactions with the *Reichsbank*, 1939/45», [30/31 March 1946]. For the calculation, see Frech, Clearing, 2001 (Publications of the ICE), pp. 191–193.
- <sup>32</sup> State Department (Under Secretary of State Joseph C. Grew) to Foreign Economic Administration (Leo T. Crowley), 15 January 1945, in: FRUS, 1945 V, pp. 770f.
- <sup>33</sup> Eduard Kellenberger (Vice president of the Federal Finance Administration at a meeting of the Association for a sound currency, SNB Archives, 2.9, 2137, Head of the Bureau for statistics [of the SNB, Schwab]), «Vereinigung für gesunde Währung. Kommission für Clearingfragen, Meeting of 31 January 1941 (confidential) [January 1941] (original German).
- <sup>34</sup> AfZ, IB SHIV/Vorort, 1.5.3.11, minutes Vorort, 30 September 1940, pp. 7–18 (original German).
- <sup>35</sup> Imhof/Ettinger/Boller, Flüchtlings- und Aussenwirtschaftspolitik, 2001 (Publications of the ICE), chapter 8.1.4.1.
- <sup>36</sup> Kreis, Zensur und Handelspolitik, in: NZZ, No. 181, 8 August 2001; Eichenberger, Handelsbeziehungen, 1999.
- <sup>37</sup> FA, E 1301 1960/51, vol. 347, pp. 95–120, here pp. 100f., meeting of the National Council on 29 September 1941, «Restriction of Import 23<sup>rd</sup> report of the Federal Council» (original German).
- <sup>38</sup> FA, E 1301 1960/51, vol. 347, pp. 95–120, here pp. 107f., meeting of the National Council on 29 September 1941, «Restriction of Import 23<sup>rd</sup> report of the Federal Council» (original German).
- <sup>39</sup> FA, E 1301 1960/51, vol. 347, pp. 95–120, here p. 115, meeting of the National Council on 29 September 1941, «Restriction of Import 23<sup>rd</sup> report of the Federal Council» (original German).
- <sup>40</sup> FA, E 1050.15 (-) 1995/516, vol. 1, minutes of the Joint Customs Tariffs Committees, 11 May 1944 (original German).
- <sup>41</sup> Hotz, Handelsabteilung, 1950, p. 85.
- <sup>42</sup> Hotz, Handelsabteilung, 1950, p. 63.

## 4.2 The Armaments Industry and the Export of War Material

Between 1940 and 1944, Swiss industry exported arms and ammunition valued at 633 million francs to Axis countries such as Germany, Italy, Romania and Japan, and similar goods to (later) Allied countries including France, the UK, the Netherlands, Denmark and Norway before their occupation by the German army, for a value of 57.5 million francs, as well as exporting products for 60.9 million francs to neutral countries which were involved in arming Germany such as Sweden, Yugoslavia, Turkey, Spain and Finland. In addition, Swiss companies provided detonator fuses for some 177 million francs to Germany alone. Overall, Switzerland exported arms and weapon components to the value of 340 million francs, ammunition valued at 412 million francs and detonators for the value of at least 228 million francs between 1940 and 1944.

**Table 1: Export of arms, ammunition and fuses  
(Customs items 811–813, 1084, 948a\*), 1940–1944, by country (in 1,000 francs)**

	1940	1941	1942	1943	1944	1940–1944
Germany	34 618	153 778	174 382	200 250	43 221	606 249
Italy	34 713	62 016	35 787	15 636	32	148 183
Sweden	17 486	17 381	14 784	4 471	6 359	60 481
Romania	4 012	1 607	14 439	23 153	3 010	46 222
France	33 079	418	4 071	392	74	38 034
UK	28 156	198	0	0	42	28 396
Japan	675	1 594	14 319	609	0	17 198
Yugoslavia	8 051	0	0	5	0	8 056
Netherlands	6 643	99	131	70	57	7 000
Finland	3 776	35	35	20	10	3 876
Denmark	2 788	482	91	49	140	3 550
Turkey	511	25	566	1 922	59	3 083
Spain	72	285	238	1 004	575	2 173
Dutch East Indies	1 034	0	0	0	0	1 034
Hungary	36	95	265	396	229	1 021
Bulgaria	712	88	22	44	14	880
USA	469	206	32	64	9	780
Belgium	233	85	205	52	92	667
Norway	484	16	11	1	2	514
Others	773	562	331	480	392	2 538
<b>Total exports</b>	<b>178 321</b>	<b>238 972</b>	<b>259 709</b>	<b>248 617</b>	<b>54 316</b>	<b>979 935</b>
<b>Total imports</b>	<b>2 107</b>	<b>5 037</b>	<b>6 502</b>	<b>5 856</b>	<b>3 011</b>	<b>22 628</b>

\* Customs item 948a (fuses) also includes small quantities of gas-meters. These were more than compensated for by the export of fuse parts not included here which were booked under item 934a which also covered components for pocket watches. Between 1940 and 1944, item 934a showed total exports valued at 81.6 million francs, of which 26.3 million francs were for Germany.

Source: AfZ, Homberger records, file 10.8.6.3; Federal Customs Office, Foreign Trade Statistics.

During this period, the export of arms, ammunition and detonators represented around 980 million francs or 13.8% of all exports.<sup>1</sup> The range of products was extremely limited. The figures given above (see Table 1) include 20mm guns for ground targets, anti-aircraft defence and aircraft weaponry, 20mm ammunition and timer-detonators (mostly the S/30 type) components for the S/30, and Dixi GPA detonators.

Table 1 does not include further war material which (together with components) was covered by other customs items, e.g., military aircraft (914h), military telephone, telegraph and radio equipment (954/954a) or ball bearings and roller bearings (809a1/a3). These items were affected when the Federal Council approved the export of «war material» only to «neutral» countries such as Spain and Sweden and stopped such exports to Germany and the Allies on 29 September 1944. This Decree did not refer to military optical equipment, with the result that Kern in Aarau and Wild in Heerbrugg were able to continue supplying Germany with telescopic sights, range-finders, theodolites, etc., as they had been doing already on a grand scale up till then. From April 1940 up until the end of 1945, Wild (military) Lenses boasted exports amounting to 30.3 million francs, of which 13.3 million francs represented exports to Germany, 7.7 million francs to Sweden, and 4.3 million francs worth of merchandise to Romania for its campaign against the Soviet Union. These figures do not include goods supplied by Wild to Oerlikon Bührle, whose guns were fitted with Wild ring sights and other directional optical lenses from 1936 on.

The government resolution of 1938 also included cast iron and steel parts for armaments (customs item 809), aluminium parts for armaments (866/7), and time-fuses under customs item 934a. The War Office statistics concerning export permits issued (but not necessarily used to the full) for war material shown in Table 2 are based on this broad definition.

The quota system for strategically important products introduced in summer 1943 contained an even broader definition of exports relating to war material such as watchmakers' tools (customs item 747), precision tools for metal-working (753/756), dynamo-electric machinery (894/898-Mdy), tooling machinery (M6) and other machines such as those for metal-testing (M9), chronographs (935d, 936d), geodesic, physical and fine-mechanical equipment (937, 947) plus electrical measuring gauges and instruments (953 and 956a/f). Like arms, ammunition, and fuses, these goods could be exported to Germany without any particular restrictions from 1940 until summer 1943. When the quota system was introduced, it changed very little. It was easy for firms that were determined to continue exporting as before to circumvent the regulations by persuading the authorities to include their products under customs items where quotas were still available or which were not subject to quotas.

**Table 2: Export permits issued for war material destined for Germany and other countries, 1940–1944 (in million Swiss francs)**

Company	Germany	other countries	Total
Werkzeugmaschinenfabrik Oerlikon-Bührle & Co.	318.3	172.2	490.5
Tavaro SA, Geneva	72.7	32.9	105.6
Machines Dixi SA, Le Locle	93.4	5.2	98.6
Hispano-Suiza (Switzerland) SA, Geneva	9.1	53.9	63.0
Waffenfabrik Solothurn AG, Solothurn	0	41.7	41.7
Verkaufs-AG, Heinrich Wild Geodesic Instr. Heerbrugg	9.7	10.1	19.8
Helios fabrique de pignons, Arnold Charpiloz, Bévilard	14.7	0	14.7
Vereinigte Pignons-Fabriken AG, Grenchen	13.8	0	13.8
Aktiengesellschaft Adolph Saurer, Arbon	4.4	2.3	6.7
Autophon AG, Solothurn	6.4	0	6.4
Nova-Werke Junker & Ferber, Zurich	2.7	3.5	6.2
Cormoret Watch Co, La Chaux-de-Fonds	0	5.5	5.5
Xamax AG, Zurich	4.9	0	4.9
Sphinxwerke Müller & Co AG, Solothurn	3.8	0	3.8
Universal Motorradfabr. Dr.A.Vedova, Oberrieden	3.6	0	3.6
Nouvel Usinage SA, La Chaux-de-Fonds	3.5	0	3.5
Messinstrumente Mess-Union GmbH, Zurich	3.1	0	3.1
Cylindre SA, Le Locle	1.9	1.1	3.0
Dornier-Werke AG, Altenrhein	2.8	0	2.8
Louis Schwab SA, Moutier	2.4	0	2.4
Albiswerk Zürich AG, Zurich	2.3	0	2.3
Metallgiesserei & Armaturenfabrik, Lyss	2.0	0	2.0
Record-Watch Co. SA, Tramelan	1.9	0	1.9
Jean Schwab, Moutier	1.6	0	1.6
Scintilla AG, Soloturn	0	1.6	1.6
Ed. Dubied & Cie SA, Neuchâtel	1.4	0	1.4
Celestin Konrad, Décolletage, Moutier	1.4	0	1.4
Teleradio AG, Bern	1.3	0	1.3
Contraves AG, Zurich	0	1.2	1.2
Ebosa SA, Grenchen	1.2	0	1.2
Technica AG, Grenchen	1.2	0	1.2
Elemo Elektromotoren AG, Basle	1.2	0	1.2
Société Industrielle de Sonceboz SA, Sonceboz	1.1	0	1.1
Schweiz. Lokomotiv- & Maschinenfabrik, Winterthur	1.1	0	1.1
Schweizerische Industrie-Gesellschaft, Neuhausen	0	1.1	1.1
Soc. pour la fabrication de magnésium SA, Lausanne	0	1	1.0
Standard Telephon- & Radio AG, Zurich	1.0	0	1.0
Herfeld Aktienges. Metallwarenfabrik, Stein am Rhein	1.0	0	1.0
Various companies (<1 million francs)	18	4.2	22.2
<b>Total</b>	<b>608.9</b>	<b>337.5</b>	<b>946.4</b>

Source: FA, E27, 19408, KTA, Memorandum, 11 September 1946 (published in DDS, vol. 16, pp. 270ff.; see also [www.dodis.ch/index.htm](http://www.dodis.ch/index.htm), DoDis-157).

The importance of the Swiss armaments industry for the German war effort changed considerably with time, as did the products and services required. It is therefore essential to differentiate.<sup>2</sup> The broadly accepted supposition that there

was a continuously high level of demand for war material from Switzerland is false. Most of the Swiss manufacturers of arms, ammunition and detonators managed to obtain orders from Hitler's regime only after the end of 1940. Obstacles to this achievement had been the German rearmament policy, which was based on self-sufficiency, fierce competition in the bureaucracy of the procurement sector, over-capacity in the Nazi arms and ammunition industry, and an acute lack of foreign currency. Some of these restrictions regarding access to the market remained in place until the end of the war. The Schweizerische Industrie-Gesellschaft (SIG) in Neuhausen, an experienced manufacturer of small arms, thus never managed to supply arms or components to Germany itself, despite the enormous efforts it made throughout the war. When Otto Duthaler, engineer and head of exports at SIG, visited the Mauser-Werke AG in Oberndorf in July 1942 and offered to supply components, he was put off with empty promises. In summer 1943, even the Waffenfabrik Solothurn AG, which belonged to the German Hermann-Goering-Werke through Rheinmetall-Borsig, had to lay off the majority of its employees because it had never managed to obtain German orders for 20mm guns. Political factors prevented this, although in the meantime the demand for material at the front was way beyond that which German manufacturers were capable of supplying.

A distinction should be made between the political and the functional importance of supplies. In their internal strife concerning distribution, the German authorities and negotiating diplomats tended to insist that almost every delivery was of decisive importance for the course of the war and therefore essential. For example, in December 1944 a department of the Third Reich's Ministry of Economics described a piece of Swiss rock crystal as «essential to the war effort», thus putting it on an equal footing with arms and ammunition so as to ensure that it would be imported. A distinction should also be made between the term «war material» as a *factual* notion covering long-term research, development, construction, testing, launching and sale of military equipment destined for use in war, and «war material» as a *conceptual* notion which embraces products that are classified as such by third parties on the sole basis of a specific and frequently biased perception of those goods. The importance of Swiss foreign trade relations to the war effort is based on a third notion of the term «war material», namely *functional*. Under conditions of all-out war, it is common for almost all economic factors (technology, capital, goods, services, labour, land, property) to be deployed as part of the war effort. From a *functional* point of view, in a given situation most resources can suddenly take on enormous importance for the military strength of one side or the other. Arms or ammunition can thus in certain circumstances be of less significance than ball bearings or precision instruments which would in normal circumstances be used for purely non-military purposes.

### **International tolerance of and conditions for the covert rearmament of Germany**

In relation to war material as a *factual* notion, a distinction must be made between research and development (R&D), construction, testing, import, and the sale of arms, ammunition and detonators. Switzerland's main contribution to German rearmament consisted of actively promoting covert German rearmament through Swiss entrepreneurs and the tolerance of such activities by the Swiss authorities in the 1920s and early 1930s, rather than supplying the *Wehrmacht* with finished arms, ammunition and detonators. Switzerland thus made a considerable contribution towards the rearmament of Nazi Germany, which accomplished in a very short time. Three different periods, which are separated by clear turning points in the war, can be distinguished as this unfolded. The first period lasted from the early 1920s until 1932/34. In the wake of the Treaty of Versailles, valuable German arms technology was imported into Switzerland where it was further developed. From 1932/34 on, it was re-exported to Germany and the Swiss armaments industry had to compete against German rivals on the international market once again. This situation lasted until the turning point of summer 1940. The third period, which lasted until the end of the Second World War, is characterised by the fact that Germany gradually started importing arms, ammunition and detonators. It was much easier for the Swiss armaments industry to export its products due to the disappearance of competitors on third markets and the simple financing process via Federal clearing loans.

When the Treaty of Versailles with its stringent stipulations concerning rearmament control came into force on 10 January 1920, no one imagined that Germany would be in a position to spread war over the European continent again less than two decades later. On 14 October 1933, when it left the disarmament conference and the League of Nations, Germany was still one of the most heavily disarmed countries in Europe. Officially, Adolf Hitler's government respected the terms of the Treaty until 16 March 1935, when the «Führer» introduced compulsory military service. The German army would never have been in a position to invade Poland in September 1939 had it not secretly developed its most important weaponry and made full preparations for mass-production of weapons during the Weimar Republic.<sup>3</sup> It is true that the Third Reich was far less well armed in 1939 than Hitler led his people and the rest of the world to believe. This massive bluff contributed to the fact that the Western powers which guaranteed Poland's safety did not force Germany to wage war on two fronts. In April 1940, the German army invaded Denmark and Norway and in May the Netherlands, Belgium and France. It was only at this point that Germany reduced but did not completely halt its export of war material, which had been backed by the government since 1934. From 1934 to

1940, arms served as a valuable lever in negotiations and were exchanged for urgently needed strategic imports of raw materials and foreign currency, which is why potential enemy states were among Germany's trading partners.<sup>4</sup> It was not until summer 1940 that Germany started to leave international arms trading to other countries and concentrated on importing arms and ammunition. Suppliers, however, included only countries which granted Germany export credit. After its military defeats in winter 1942/43, the German demand for imported arms rose. The supply through blatant plundering of newly occupied areas began to falter and had to be replaced by more reliable supplies from a broad-based armaments industry.<sup>5</sup>

Germany's covert rearmament was successful because the leading members of the League of Nations considered that the stipulations concerning disarmament in the Treaty of Versailles were too stringent and wanted to maintain Germany as a Western bastion against the Soviet Union. There was also a degree of self-deception in that political circles underestimated the explosiveness of the readily available information concerning Germany's covert efforts with regard to industrial armaments technology. The chaotic disarmament of Germany resulted in the releasing of many «comrades» from the German army and the armaments industry, along with weapons manufacturers and armaments entrepreneurs. Their strong convictions and will to remain active in their field either at home or abroad had a radicalising effect. German military leaders encouraged this development and steered it along a more effective path. Up until 1932, covert rearmament activities involved research and development but not the production of arms and ammunition. The aim was to prepare the way for mass production of armaments for an army that, according to plans laid down in 1923, would number 102 divisions – as indeed the *Wehrmacht* disposed of in 1939. Much of the research, development and testing of new weaponry was carried out outside Germany. It is well known that the German authorities co-operated with the Red Army in their covert rearmament while implementing the Rapallo agreement signed in 1922.<sup>6</sup> Very little research has been done into the alternative production units set up on the initiative of the German armaments firms concerned and located in other countries – some of which were neutral – such as primarily the Netherlands, Sweden and Switzerland, but also Poland, Czechoslovakia, and Italy.<sup>7</sup>

#### **Switzerland as an alternative location for development and production of German armaments**

Until it started developing an arms and ammunition industry specifically aimed at supplying Germany, Switzerland had virtually no such industry with technology of its own and in a position to export its wares. The Swiss army

acquired what it needed from abroad and from the Federal military workshops and their subcontractors. During the First World War, the latter exported components for weapons and ammunition on a large scale, but had no models of its own.<sup>8</sup> For reasons of arms policy as well as foreign policy, the Swiss government welcomed German arms manufacturers with export potential to set up location within its borders. The sharp decline in production at state armaments factories at the end of the First World War had caused social problems. The Eidgenössische Militärwerkstätten were able to increase their productivity by supplying parts to German arms exporters. At the same time, the new manufacturers would help to balance out fluctuations in orders from elsewhere. In its post-1918 foreign policy, the Swiss government expressed its disapproval of too firm a line with Germany, favouring instead a system that would ensure an equilibrium. It considered that once Germany had been completely disarmed, the Western powers too should reduce their level of armament. Germany should enjoy equal rights as a member of the League of Nations and should be adequately equipped to meet an internal as well as an external challenge from the Bolsheviks. This stand went so far as to elicit tacit acceptance and even sympathy at Swiss Army Headquarters, the Federal Prosecutor's Office, and in diplomatic circles for the radical right-wing networks that were set up and became an international movement following the abortive Kapp putsch. It was in this milieu, to which the two organisers of the Kapp putsch Colonel Max Bauer and Major Waldemar Pabst belonged, that the personnel networks typical of the organisation of covert German rearmament were set up.<sup>9</sup> Switzerland was not the most important location. Krupp preferred Sweden with its highly efficient heavy industry for perfecting its artillery weapons and expanding its tank production. At first Rheinmetall manufactured its automatic guns and light weaponry in the Netherlands whose seaports facilitated trade with traditional markets in South America and China. The aircraft manufacturer Fokker based in Schwerin took the bold step of sending 350 railway wagons full of material to the Netherlands, while Siemens followed suit with its development of military communication technology.

The most important transfers to Switzerland in the wake of the rearmament restrictions laid down by the Treaty of Versailles concerned the production of light automatic weapons, military communication technology, military optical lenses, and aircraft. The 20mm automatic cannon made by Becker Steelworks in Willich near Krefeld should be mentioned first. In 1921, Emil Becker transferred the patent for this weapon to Maschinenbau AG Seebach (Semag), a company he owned near Zurich-Oerlikon. The Chairman of the Board, engineer Fritz Hirt, presented this weapon to the leaders of the German army and Soviet parties interested in Munich and Berlin in 1923. The following year Hirt

declared Semag bankrupt in order to take Emil Becker and his steelworks out of the running; he then transferred all rights concerning the automatic cannon to the Magdeburg Werkzeugmaschinenfabrik AG, whose managing director, Hans Lauf, signed a formal development agreement with the German army's Inspectorate for Weapons and Equipment. The latter undertook to support, with funding and materials, the further structural development of the Becker cannon. In return Lauf had access to the improved technology resulting from the covert German rearmament programme.<sup>10</sup> In 1924, in accordance with the restrictions laid down in the Treaty of Versailles, Lauf transferred development and production activities to his company Werkzeugmaschinenfabrik Oerlikon (WO) near Zurich-Oerlikon. This company's first managing director was Emil Georg Bührle who held this position from 1924 to 1956. After 1918 he had been a professional soldier for a short time and, before moving to Switzerland, had run a subsidiary of the Magdeburg Werkzeugmaschinenfabrik located in the Harz Mountains in central Germany. On 29 December 1930, Georg Thomas, Chief-of-Staff of the German Ordnance Office and later military economist, noted with satisfaction that Bührle had achieved the objectives agreed upon. Bührle's closest confidant, Major Waldemar von Vethacke, deposited duplicates of all the drawings of the latest version of the Becker automatic cannon with the firm Fritz Werner in Marienfelde near Berlin for the purpose of «initiating an Oerlikon-type production in an emergency situation».<sup>11</sup> Like most of the other weapons used in the war by the German army, the Becker cannon had been perfected to the stage at which Bührle exported it in large quantities to Germany from 1940 onwards. In addition, in 1931 Bührle acquiesced in the demands of the Ordnance Office that the 20mm automatic infantry cannon be deployable both in air defence and against tanks. Oerlikon developed the easily transportable, universal «JLa» artillery carriage which could be adapted for ground-to-air and ground-to-ground combat and, with its improved S cannon, permitted attacks on ground targets as well as low-flying aircraft (up to an altitude of around 2000 m). Oerlikon supplied this model as a single piece of artillery (JLaS) or in pairs («twins» or «2JLaS»). Furthermore, sometime around 1930, Oerlikon started working with the Ministry of Aviation in Rome on fitting the 20mm cannon to the wings of aircraft outside the arc of the propeller.<sup>12</sup> The wing-mounted cannon («FF») manufactured in collaboration with SA Armi Automatiche Scotti (Armiscotti) in Brescia was one of the most modern weapons in the Oerlikon catalogue at the time.

The Schweizerische Industrie-Gesellschaft (SIG) in Neuhausen, a traditional supplier to the Eidgenössische Militärwerkstätten in Bern, was an alternative production unit for automatic small weapons. As a result of drastic cuts in

military expenditure in Switzerland after the First World War, and since the budget for army horses was far higher than for weapons and ammunition, Neuhausen received no more orders from Bern. In 1921, SIG acquired a licence from the former leading German manufacturer of small arms, Mauser-Werke in Oberndorf, to produce its military arms for export. The same year SIG also bought the rights for the submachine gun manufactured by the German company Theodor Bergmann. In 1924, the Hungarian engineer Captain Paul von Kiraly undertook to develop his light machine gun in Neuhausen up to the production stage. Kiraly too came to Switzerland because the Treaty of Versailles restricted rearmament in Hungary. Between 1924 and 1934, retired Swiss Chief-of-Staff Emil Sonderegger signed a contract with SIG and consolidated contact with the covert German rearmament programme through Colonel Max Bauer.<sup>13</sup> Bauer acquired major contracts, mainly from China, for SIG and Bührle who also had Bauer to thank for «decisive suggestions» concerning the further development of the Becker cannon.<sup>14</sup> Without the contracts that Max Bauer acquired for them, SIG and Bührle would have been faced with serious economic problems during the construction phase of weapons-development.

Although major German armaments manufacturers were behind the technical preparations for mass production of arms which had been transferred to Switzerland, there continued to be a certain degree of rivalry with the parent company. SIG did not sell a single Mauser pistol manufactured under the licence that ran out in 1931. At the decisive moment, Mauser decided to have this model made by one of its own subsidiaries, the Metallwarenfabrik Kreuzlingen, set up in Switzerland in 1931. Neither did SIG manage to promote the sale of Mausers by collaborating in setting up a factory for producing the 7.92mm ammunition used by the Mauser. In this connection, SIG was involved in 1923 in founding the Patronenfabrik Solothurn AG in Zuchwil near Solothurn. The driving force behind this project was engineer Hans von Steiger, who had run the cartridge section of the Berlin-Karlsruhe Metallwarenfabrik AG during the First World War and had a good relationship with Fritz Werner's arms and ammunition factory in Berlin which supplied the necessary machinery for the cartridge factory in Solothurn.

Despite the support it received from the Federal Council, which allotted it a vastly overpriced contract as an initial booster, the Patronenfabrik had financial problems owing to fierce competition from the Hirtenberger Patronenfabrik owned by Austrian industrialist Fritz Mandl. In 1928/29 Mandl bought out the Solothurn factory, turned it into the Waffenfabrik Solothurn for the purposes of manufacturing Rheinmetall weapons, involved Rheinmetall financially, appointed a Rheinmetall director Hans Eltze to a key position and set up far-

reaching market agreements with. The chairman of the Board of Directors and Swiss figurehead was Hermann Obrecht, who later became a Federal Councillor. The Solothurn Waffenfabrik's most important task was to continue the development of Rheinmetall's automatic weapons and to sell them to countries which, according to international law or the League of Nations, were not to be supplied with arms. Solothurn thus defied the rearmament regulations of the time and supplied arms to Germany, Austria, and Hungary, as well as being involved in delicate business transactions with the Soviet Union and China. In 1933, the company directors in Düsseldorf considered that the Solothurn factory had served its purpose and decided to transfer the construction of the improved Rheinmetall weapons to Düsseldorf and Berlin. Hans Eltze, Fritz Mandl, and Waldemar Pabst managed to persuade them to maintain the factory as a front for Rheinmetall's foreign business and a safe haven for foreign currency.<sup>15</sup>

Siemens also shifted its production sites because of the stipulations of the Treaty of Versailles. Together with Albiswerk Zürich, Siemens ran a plant for manufacturing military radio equipment, which it further developed at its «Technical Bureau» founded in 1924 by Telefunken Berlin in Zurich. In 1921, the Dornier aircraft company in Friedrichshafen moved its assembly unit for military and civil aircraft, which «did not correspond to the construction restrictions concerning German aircraft laid down in the Treaty», to the other side of the border in Altenrhein.<sup>16</sup> From 1921 on, Heinrich Wild, who had joined Carl Zeiss in Jena in 1908 and as chief engineer had developed civil and military optical instruments up until the end of the First World War, established a factory for producing geodetic and military optical instruments in Heerbrugg in the St. Gallen Rhine valley. He was supported in this project by capital provided by Schmidheiny as well as by development contracts from the War Technology Division (*Kriegstechnische Abteilung*, KTA). Wild also speculated on the fact that «German companies are forbidden to manufacture war material under the terms of the peace treaty. The Heerbrugg factory can therefore take over from Zeiss to a certain degree».<sup>17</sup> In addition, in 1923 the Maschinenfabrik Augsburg-Nürnberg (MAN) transferred its production of submarine engines – now forbidden in Germany – to the Maschinenfabrik Rauschenbach Schaffhausen (MRS), which had merged with Georg Fischer AG two years earlier.<sup>18</sup>

The further development of the automatic weapons mentioned above in Oerlikon, Solothurn, and Kreuzlingen represented an important contribution to the construction of armaments that Germany would later deploy in the Second World War. These included the machine gun developed by «Mauser, in conjunction with the Metallwarenfabrik Kreuzlingen»,<sup>19</sup> which led to the LMG

32 light machine gun and the MG 34 machine gun and which Mauser subsequently further improved in collaboration with engineers at Rheinmetall. During the Second World War, the MG 34 was the weapon most commonly used by the German army. The efforts made to develop the German army's 20mm automatic gun should also be mentioned. It is true that in 1932 Bührle's sophisticated Becker gun lost out to Rheinmetall's 20mm weapon which, however, owed its major design improvements to the Solothurn factory. In addition, there was a reciprocal exchange of know-how in that prominent design engineers frequently travelled back and forth between Rheinmetall, Solothurn, and Bührle. One of the leading figures in this respect was Friedrich Herlach, who joined Bührle in 1930 from Rheinmetall – along with Theodor Rakula – staying on until 1932. He then returned to Solothurn, again with Rakula, where in 1949 he once again took over the construction department.

#### **Switzerland's allure: official support for sales and lack of political control**

It was not easy to sell the weapons produced. It was the Federal Military Department's policy for many years to refuse to buy arms manufactured by the factory in Solothurn. In 1937 it did, however, purchase a very small series of 36 anti-aircraft guns from Bührle, although this had not happened before and did not happen again. SIG weaponry mentioned above was also manufactured exclusively for export. From the beginning of the 1930s on, however, all the Swiss alternative production sites had to face fierce competition from the traditional German armaments manufacturers, who were nevertheless happy to take advantage of Swiss know-how and to develop their technology in this country. Yet they were not particularly keen on creating new competitors for themselves. Right from the start, the survival of the Swiss firms depended on active sales support from the Confederation. The Federal Military Department (*Eidgenössisches Militärdepartement*, EMD) issued official sales certificates to foreign authorities that bought Swiss arms, allowed potential buyers to test them at Swiss military bases, and always supplied ammunition, powder, and shells from Federal factories, even during the war itself. When many countries began to have foreign currency problems during the worldwide economic crisis, the Trade Division made sure that Bührle in particular was able to use a large part of the scarce clearing funds at the expense of other export-oriented firms. The diplomatic service also offered Bührle a range of supportive measures to help set up and implement arms deals. Alfred Zehnder, who was the Swiss Consul General in Sofia at the time and later became Head of the Division of Foreign Affairs (*Abteilung für Auswärtiges*), was particularly active in this respect.

The most important geographical advantage of Switzerland in comparison with other German «off-shore» armaments production units, apart from the avail-

ability of a well-qualified work force, was the lack of political control over the manufacture and sale of arms and ammunition. Up until 1938, there was neither a legal framework nor any bureaucratic procedure in place in Switzerland for monitoring the production and sale of war material. Nor did this situation change after 1938 when the electorate approved the inclusion of Article 41 in the Federal Constitution. This new article provided the Federal authorities with the first possibility of monitoring the private armaments industry. Not until 18 September 1939 was an office set up for issuing permits for the import and export of war material – which was extremely late in comparison with other countries. The head of this office was none other than Hans von Steiger, a leading representative of the international armaments industry. After the sale of the Patronenfabrik Solothurn, von Steiger had been appointed as managing director of the French Patronenfabrik Manurhin in the Alsace. When this firm was nationalised, he returned to Switzerland where he founded Machap SA using capital provided by Manurhin. Through Machap he manufactured Manurhin products for export, thus bypassing French legislation. Throughout the war he was the sole member of the Board of Directors authorised to sign on behalf of Machap while at the same time running the Swiss regulatory office for the import and export of war material. The Federal Military Department took no action in this respect, even after the British government had put Machap on its black list.

Even after the end of the war, Switzerland remained an attractive location for Mandl, Pabst, and others. Mandl used the services of Johann Wehrli & Co., a Zurich bank, to successfully negotiate with the Nazis for the transfer of his assets to Argentina.<sup>20</sup> After the war, Mandl resumed activity in Europe via Switzerland. After 1955, he managed to re-acquire the Hirtenberger Patronenfabrik with the help of Karl Obrecht, the son of former Federal Councillor Hermann Obrecht.<sup>21</sup> As for Pabst, he spent most of his time in Switzerland from 1943 onwards with the support of National Councillor Eugen Bircher. Public protests within Switzerland and abroad, including diplomatic notes from the French and British governments dated December 1946 demanding Pabst's deportation to Germany, fell on deaf ears. Pabst was accused of being involved in the Nazi relocation movement, in particular through his links with Gregori Messen-Jaschin and the latter's company Sfindex in Sarnen. Pabst died in Switzerland in 1970.<sup>22</sup>

#### **Licences for manufacturing armaments for Germany, Italy, France, the UK, Japan, and the USA**

From the beginning of the 1930s on, it was almost impossible to supply arms to Italy and Germany from production units located in Switzerland in view of

the disastrous situation with regard to foreign currency and the policy of self-sufficiency in armaments. For this reason, Bührle chose Brescia to manufacture the automatic guns he constructed in collaboration with Armiscotti and that were destined for sale to Italy. In return, Alfredo Scotti ceded all rights for supplying other markets to Brevetti-Scotti AG in Zurich, a letter-box company founded in partnership with Bührle which employed no one apart from Emil Bührle. Bührle also had the Brevetti-Scotti wing-mounted gun manufactured in Germany. For this purpose he founded, in collaboration with the Third Reich's military authorities, a subsidiary called Ikaria in Berlin in 1934. The driving force behind the founding of Ikaria was Georg Thomas. Later Ikaria was to become a major bone of contention when Bührle gradually eased the Werkzeugmaschinenfabrik Oerlikon out of its dependence on the Third Reich. He finally succeeded in 1939, after having given up his influence over Ikaria. Until the end of the war Ikaria regularly paid Bührle a licence fee. It is not known how many Oerlikon guns Ikaria had produced by then.

From 1935 onwards, Antoine Gazda, an arms dealer from Austria, negotiated several Oerlikon manufacturing licences, through Siber Hegner & Co. in Zurich, for the Japanese army and navy, and during the war for the USA. It must be said, however, that in February 1941 Swiss Minister for Foreign Affairs, Marcel Pilet-Golaz, refused Oerlikon a permit to expand the licensed manufacture of its weapons in the USA. Nevertheless, the Americans built around 300,000 20mm guns under licence but refused to pay the patent rights of some 5 million dollars. For its part, the Switzerland refused to intervene on behalf of Bührle since the licence transfer had not been officially approved.

Bührle was also rather unlucky with a licence he granted to the aircraft engine manufacturer Hispano Suiza in Paris in 1932. They fitted the Oerlikon «S» gun into the engine in such a way that it fired through the arc of the propeller. The two signatories to the agreement parted company in 1935. Hans Schmocke, who had directed weapons development in Italy for Bührle, left the Oerlikon factory in 1934 because of differences of opinion and, using Swiss-French capital and technology, founded Tavaro in Geneva, which produced fuses. From 1936 on, Tavaro supplied large quantities of goods to the Swiss army and at the same time granted licences for the manufacture of fuses to Italian companies. In addition, in 1937/38 Tavaro was involved in setting up a subsidiary of Hispano Suiza in Geneva. The purpose of the latter was to produce 20mm guns and ammunition and to export them to other countries free from the pressure towards nationalisation that was then being exerted by the French government. At first the company looked towards the Western powers, granting a licence for manufacturing its 20mm guns to a British company in 1939 and to an American firm the following year. During the Second World War, Hispano

Suiza's Geneva subsidiary supplied goods to Germany for a value of over 9 million francs. In the meantime there were four firms in Switzerland making 20mm guns: apart from Bührle, Hispano, and Solothurn, the Eidgenössische Militärwerkstätten in Bern had also developed an automatic 20mm gun. Nevertheless, in 1943 the Swiss army decided for reasons of federalism to order the Hispano product. At that time, Hispano was very much dependent on alternative contracts since the export trade was declining. From the point of view of national defence, the parallel development of four automatic 20mm guns was all the more absurd since private companies in the armaments sector had developed no other weapons systems apart from components for small arms, along with ammunition and fuses.

#### **The supply of armaments to the Allies and Finland from 1938 to 1940, and to the Axis Powers from 1940 on**

From 1938 until summer 1940, a large proportion of Swiss war material exports were destined firstly for France and later the UK. In winter 1939/40, the Federal Military Department also made every effort to supply weapons from state and private manufacturers to Finland whose resistance to the Soviet Union had aroused great sympathy among the Swiss public. This constituted a double violation of the neutrality clause. Article 6 of the Hague Neutrality Convention XIII of 1907 banned the export of arms produced in state-owned factories to belligerent countries. Article 9 of Convention V stipulated that belligerent countries must both be treated in the same way as regards restrictions on arms exports from privately owned factories.<sup>23</sup> Yet for as long as it existed, the Soviet Union never received imports of arms from Switzerland that were tolerated or approved by the authorities.

In 1939, it was France in particular insisting on placing orders for detonator components with Swiss firms in the Jura (Dixi, Omega, Marvin, Tavannes Watch) and for the supply of 20mm guns in Oerlikon. At the end of August and the beginning of September, Bern received several diplomatic messages from France demanding that the export ban on war material made in Switzerland imposed on 2 September 1939 at the outbreak of the war be eased. On 6 September 1939, the Federal Council revised the ban on the export of war material, as urged by the Political Department; according to the new version, export permits to warring countries were to be issued on the basis of equal treatment.<sup>24</sup> In effect, this concerned mainly the Western powers, since Germany was not yet interested in importing finished war material.<sup>25</sup> At the Swiss-German economic negotiations in May 1940, Karl Ritter from the Division of Foreign Affairs in Berlin emphasised that Switzerland was a «large armaments factory which was producing almost exclusively for the benefit of England and France.»<sup>26</sup>

In summer 1940, the Swiss diplomacy and the military authorities made every effort to encourage the armaments industry to use its full production capacity to supply war material to Germany. Bührle, who maintained very good relations with Berlin, got most of the contracts. At the end of 1939, Bührle won his first contract for 8 million francs. At the beginning of August 1940, the German Army Supreme Command (*Oberkommando des Heeres*) and the navy ordered arms and ammunition for a further 195 million francs. By January 1943, Rudolf Ruscheweyh, a German arms dealer and armaments specialist who had received 11 million francs in bribes from Bührle, had managed to acquire further contracts valued at 246 million francs from the army and navy. According to his internal accounts, Bührle supplied 20mm guns, ammunition and fuses worth around 400 million francs to Germany up until 1944. Oerlikon could not fulfil contracts worth a further 49 million francs. The authorities were aware of orders to the value of only 318.3 million francs (70%; see Table 2). Bührle relied on a large number of subcontractors: the cartridges were supplied by the Eidgenössische Munitionsfabrik in Altdorf and powder by the Eidgenössische Pulverfabrik in Wimmis, which constituted a violation of the neutrality-linked ban on state-owned companies exporting arms to belligerent powers.<sup>27</sup> SIG was also one of Bührle's main suppliers. Owing to its lack of contacts at the German procurement agencies, SIG did not manage to export its own war material to Germany, as mentioned above. An important product it did supply to Germany, however, was SIG track-laying machinery, which was not considered as war material by the Swiss Federal Council.

Between 1940 and 1943, the main customer of the Waffenfabrik Solothurn was Italy. In addition, thanks to the efforts of Rheinmetall Düsseldorf, it supplied Germany in April 1942 and in December 1943 with one tank gun and its newly developed universal automatic gun. Rheinmetall tested them at its own testing site in Unterlüß but did not manage to persuade the German procurement agencies to buy the 20mm guns from Solothurn.<sup>28</sup> This was even more surprising since Germany's need for 20mm guns was greater than ever at that time. In summer 1943, Solothurn was left with 450 of its 20mm automatic guns and 150 boxes of 20mm ammunition imported from Germany, weighing a total of 120 tons, that had already been paid for by Italy but could not be delivered after Mussolini's fall. After risky but unsuccessful efforts to sell them, the guns were destroyed in 1961. The Waffenfabrik Solothurn had more success with vehicles also manufactured for Italy which it was able to sell to the Swiss army in autumn 1943. Solothurn subsequently laid off the majority of its employees.

Before the war the products manufactured by the Waffenfabrik Solothurn were sold by Solo GmbH in Berlin; from 1 July 1939 on, they were sold by Solita in

Solothurn, which became a joint stock company in December 1941. Four-fifths of the shares were held by Fritz Mandl, who had been deprived of his Germany citizenship by the Nazis on the basis of the Nuremberg laws. After the annexation of Austria, Mandl sold half of his shares in the Waffenfabrik Solothurn to Rheinmetall.

#### **German fuse production rings in Switzerland**

Tavaro started exporting large numbers of detonators to Germany in autumn 1940. The two Jewish manufacturers Isaac and Maurice Schwob had resigned – at least pro forma – from the Board of Directors in October 1940 in order to enable the firm gain a faster foothold in the German market. After Major Seybold of the German Armaments Agency (*Heereswaffenamt*) visited Geneva, they were convinced «that under the present circumstances, their continued presence on the company's Board of Directors might be disadvantageous to the company».<sup>29</sup> They received a handsome reward for resigning.<sup>30</sup> Furthermore, the Schwob brothers supplied Tavaro, through the Tavannes Watch Co., with the movements it needed for manufacturing detonators for the German market.<sup>31</sup> At the same time, the Geneva Company stopped supplying the UK. Tavaro rejected British requests to smuggle fuses and fuse-manufacturing machinery to the UK through Italy, and the Swiss authorities refused to issue a permit for fuses to be supplied to the UK via unoccupied France. This constituted a further breach of the neutrality laws which forbade unilateral restrictions on the export of war material in times of war.<sup>32</sup> On 1 November 1940, Tavaro received its first order from Germany for 800,000 S/30 time fuses, which was followed in March 1941 by a further order for 1.2 million pieces. In a similarly rapid way, once the probable outcome of the war had changed, Tavaro, which had started manufacturing Elna sewing machines in spring 1940 and hoped to export them to the USA among other countries, started discussions with the Allies. It was one of the first companies to stop exporting fuses to Germany. It took this step in November 1943, by which time it had supplied around 1.7 million fuses. Between 1939 and 1945, Tavaro produced war material valued at around 176 million francs, of which 73 million francs comprised fuses for Germany. Apart from the Tavannes Watch Co., Tavaro's suppliers included Appareillage Gardy, Cuénod, Ed. Dubied, and Hispano-Suiza (Switzerland) in Geneva, and many others such as the Eidgenössische Munitionsfabrik in Thun, Deltavis in Solothurn, and Metallwerke Dornach. The German forces' procurement agencies referred to the organisation of fuse manufacturers in Switzerland as «production rings». This clearly implied that mechanical fuses based on watch movements were produced by a series of small companies but that the «rings» had a hierarchical structure. The most

important of these was the Dixi-Junghans fuse production ring<sup>33</sup> headed by the Junghans Brothers' Watch and Time-Fuse Factory in Schramberg in the Black Forest. The Swiss suppliers were Dixi SA in Le Locle, which was in turn fed by a vast network of suppliers. Other watchmaking firms provided pinion cogs direct to Junghans. These included Arnold Charpilloz's Fabriques Hélios in Bévilard, which sold around 165 million pinions valued at 14 million francs to Germany, and the Vereinigte Pignons-Fabriken in Grenchen, whose business with Germany was of a similar volume. Price Waterhouse noted that between 1 January 1942 and 31 July 1943 Dixi supplied Junghans with fuse components invoiced at 51.86 million francs. At the most, one fuse required 7 pinions. Thiel, a company based in Ruhla which had links with Krupp, was Junghans' main competitor and also obtained fuse parts from Switzerland, including from the Société Horlogère de Reconville Watch Factory, which also supplied Junghans.

In addition, Dixi SA had developed its own product, the Georges Perrenoud/Aragone fuse, referred to as the GPA. Georges Perrenoud was the owner of the Dixi empire, which comprised many smaller companies. Italian engineer Carlo Aragone had developed the GPA fuse for Perrenoud between 1933 and 1938. The first two orders for this product were placed in October 1939 by Belgium (130,000 pieces) and France (1 million) where the GPA fuse was later also manufactured under licence. At first Dixi had enormous problems with industrial mass production. By the time Germany occupied both countries, only part of the orders had been filled. For this reason Dixi supplied Germany only with parts for the German S730 time fuse in 1941. It was only from May 1942 on that Dixi also supplied the GPA. Along with Bührle, Dixi was one of the companies whose production was mainly concentrated on German requirements.

Apart from Dixi and Tavaro, Oerlikon-Bührle was the only Swiss firm to be in a position to supply large quantities of fuses to Germany. On 7 March 1941, the German army Supreme Command placed an order with Bührle for 2 million S/30 fuses for a value of 62 million francs. By October 1944, Bührle had supplied goods to a value of 60 million francs. On a visit to the factory in Oerlikon in September 1942, Colonel Neef of the German army noted that «setting up a so-called third production ring is proving very difficult».<sup>34</sup> At that time, only 250,000 fuses had been delivered. For Bührle it was not easy finding suppliers among the Ebauches group. During the war they were exporting enormous quantities of watches to the USA on whose business they depended. The blank problem was solved by founding Technica AG in Grenchen, which produced exclusively for Germany and became Bührle's main supplier. A fourth and far less important fuse production ring involved Nouvel Usinage, a firm set

up in August 1941 in La Chaux-de-Fonds. This company filled one single mini-contract for 100,000 S/30 fuses – also under technical difficulties – which it received directly from Germany.

#### **Vast entrepreneurial freedom – limited significance for national defence**

A comparison of the armaments companies mentioned here reveals that they enjoyed vast entrepreneurial freedom. Some firms concentrated their entire output on meeting German requirements while others supplied the British and American markets exclusively, and a third group sold – sometimes in various phases – to both sides. Almost any policy enjoyed the support of the authorities. For sales to Germany and Italy, the tax-payer financed Federal export payment guarantee in the form of a clearing credit for the export of arms, ammunition, and fuses was the decisive factor. Another important aspect was the supply of goods made in the Eidgenössische Militärwerkstätten. This violated the neutrality-linked ban on the export of such products from state-owned factories to belligerent countries,<sup>35</sup> as did the official control certificates and the use of Swiss military bases for presenting and testing arms, ammunition, and fuses destined for export. Oerlikon-Bührle, Tavaro, Dixi and others had a German purchasing officer stationed permanently on their premises. The German Industrial Commission (*Deutsche Industriekommission*, DIKO), hosted by the German diplomatic mission, made every effort to ensure that full Swiss production capacity was directed towards arming Germany. In the case of conflicting interests, exports took priority over the needs of the Swiss army. As the head of the War Technology Division emphasised after the war, it would have been a «mistake» to believe that

«the Swiss armaments industry means only the small group of arms manufacturers which, as far as arms and ammunition are concerned, is made up principally of Bührle, Hispano-Suiza, Tavaro, Dixi, SIG and the Waffenfabrik Solothurn. Between 1 September 1939 and 20 May 1945, this group of companies received contracts [from the Swiss procurement agencies] worth a total of 144 million francs, which constitutes only around 5.3% of total expenditure on armaments. The other contracts were allotted partly to the Eidgenössische Militärwerkstätten (between 10 and 15% approximately) and partly to private companies which, apart from a few minor exceptions, did not export any war material. [...] If one looks solely at the past, one can find only scanty support for the theory that the armaments industry is an extremely important factor in our military potential, and what one can find concerns only the particular sector of time fuses.»<sup>36</sup>

Whether the contribution of Swiss exports to German rearmament during the war is considered to have been more or less significant does not affect the principal findings of our investigation. Of greater importance was the role played by Switzerland in the years *leading up to* 1933, when – together with other European countries – it accommodated the covert rearmament of Germany. Without this opportunity, Germany would not have been able to start a pan-European war in so short a time. One additional aspect could not be dealt with here: from the point of view of domestic politics, the arms export sector which had grown dramatically, was to become an influential lobby in the post-war period, a phenomenon repeatedly justified by invoking the fact that the branch had supported national defence during the Second World War. This, simply was not true: the contribution which the strongly export-oriented arms industry made to equipping its own country's military, was minimal since it had but 20mm guns and ammunition to offer, and the Confederation obtained these items from other sources.

- <sup>1</sup> Unless otherwise indicated, all the information given in this section is based on Hug, Rüstungs-industrie, 2002 (Publications of the ICE).
- <sup>2</sup> An overall assessment can be found in Meier/Frech/Gees/Kropf, Aussenwirtschaftspolitik, 2002 (Publications of the ICE), section 6.1.
- <sup>3</sup> Whaley, Rearmament, 1984, pp. 3f.; Wohlfeil, Heer, 1972, pp. 188–194.
- <sup>4</sup> Volkmann, Aussenhandel, 1975, pp. 81–131.
- <sup>5</sup> Eichholtz, Kriegswirtschaft, vol. 2, 1985, pp. 136–139.
- <sup>6</sup> Zeidler, Reichswehr, 1994, pp. 20ff.
- <sup>7</sup> On the exodus of the German armaments industry see Hansen, Reichswehr, 1978, pp. 35f.
- <sup>8</sup> Ehrbar, Militärpolitik, 1976, pp. 157 and 166; Hug, Kriegsmaterialausfuhr, 1991, p. 28.
- <sup>9</sup> Kunz, Weltrevolution, 1981, pp. 274–299; Heller, Bircher, 1990, pp. 73f., pp. 110f. and pp. 256–259; see also Vogt, Bauer, 1974.
- <sup>10</sup> WO Archives, file «Übernahme Semag/Becker Patente», Weapons and Equipment Inspectorate (Division 3, Major Jungermann), «Agreement with the Magdeburger Werkzeugmaschinen-fabrik AG (Managing Director Hans Lauf) concerning 2cm guns, Becker system, latest model 25/28 November 1924».
- <sup>11</sup> BA/MA, RW 19, 1575, German Army Supreme Command, Armaments Office, Staff III to Armaments Office Staff W, 21 September 1937.
- <sup>12</sup> WO Archives, file «Von Oerlikon neuer Teil», WO (Bührle) to von Vethacke (Ankara), 25 January 1935.
- <sup>13</sup> Zeller, Sonderegger, 1999, pp. 115–121 and p. 182.
- <sup>14</sup> WO Archives, file «Oerlikon neu», Waldemaar von Vethacke (WO authorised signatory, Shanghai), «Brief description of the 2 cm ‘Oerlikon’ gun», end of December 1932.
- <sup>15</sup> See also Bill, Waffenfabrik, 2001.
- <sup>16</sup> FA, E 27, 18891, vol. 1, Federal Office of Aviation (Isler) to the Division of Foreign Affairs, 17 May 1924.

- <sup>17</sup> Wild at the Board of Directors' meeting of Verkaufs-Aktiengesellschaft Heinrich Wilds Geodesic Instruments, Heerbrugg, 21 February 1925, Wild Archives, file «Protokolle Geschäftsberichte».
- <sup>18</sup> Knoepfli, Fischer, 1998, pp. 111–160, here pp. 139f.
- <sup>19</sup> Hahn, Waffen, vol. 1, 1986, p. 57.
- <sup>20</sup> For the Bankhaus Johann Wehrli & Cie. AG see Uhlig/Barthelmess/König/Pfaffenroth/Zeugin, Tarnung, 2001 (Publications of the ICE), section 7.4.
- <sup>21</sup> Newton, Neutralization, 1986, vol. 3, p. 579.
- <sup>22</sup> See also Zumstein, Pabst, 1990, pp. 41–48.
- <sup>23</sup> Both agreements can be found in the Systematic Compilation of Federal Laws (*Systematische Rechtssammlung*, SR) 0.515.21 and 0.515.22; Cf. Dürst, Neutralität, 1983, pp. 69ff., pp. 89f. Schindler also noted a violation of the neutrality laws, Schindler, Neutralitätsrecht, 2001 (Publications of the ICE), pp. 101ff. and 105ff.
- <sup>24</sup> Minutes of the Federal Council, DDS, vol. 13, no. 156, pp. 348f.
- <sup>25</sup> War material contracts as per 20 March 1940 in francs for France: 143 million; for the UK: 121 million; as per 15 March 1940 for Germany: 0.15 million; Cf. Vogler, Wirtschaftsverhandlungen, 1997, p. 59. Between September 1939 and June 1940 arms, ammunition and detonators (customs items 811–813, 1084 and 948a) were exported to France and the UK for a value of 94,496,000 francs, and to Germany for 345,000 francs; see also DDS, vol. 15, no. 423, p. 1079.
- <sup>26</sup> Ritter, note, 30 May 1940, in: ADAP, D, IX, no. 329, pp. 365f.
- <sup>27</sup> Also Schindler, Neutralitätsrecht, 2001 (Publications of the ICE), pp. 101f. and p. 105.
- <sup>28</sup> DeTec Archives H 0476, Rheinmetall-Borsig AG to the people responsible for machine production at the Reichsstelle Maschinenbau (Berlin), 18 January 1945.
- <sup>29</sup> Tavaro Archives, Mefina S.A. (Binningen), «Annual Report for 1939. 6<sup>th</sup> Annual General Meeting», 31 October 1940; Tavaro Archives, Tavaro SA (Geneva), «Minutes of the Annual General Meeting», 31 October 1940.
- <sup>30</sup> The Schwob brothers each received 80,000 francs per year; normal Board members received 10,000 francs. See Tavaro Archives, Schweizerische Treuhandgesellschaft Basel: Mefina AG Binningen, «Report of 3 October 1942 concerning the auditing of the balance sheet as at 31 December 1941 and the profit and loss account for the business year 1940», p. 17. See also report on balance sheet as per 31 December 1942.
- <sup>31</sup> Compare the delivery of lathes with the operations mentioned above in: Picard, Swiss Made, 1993, pp. 85–105, here pp. 94ff.
- <sup>32</sup> See also Schindler, Neutralitätsrecht, 2001 (Publication of the ICE), pp. 105ff. This short-term violation of the neutrality laws was also noted by Urner, Neutralität, 1985, pp. 250–292, here p. 277.
- <sup>33</sup> German Wehrmacht, Colonel Neef's account of a journey, meeting with Arthur Junghans at Dixi in Le Locle, 24 September 1942, BA/MA Freiburg, RW 19/3235.
- <sup>34</sup> German Wehrmacht, Colonel Neef's account of a journey, inspection of the Werkzeugmaschinenfabrik Oerlikon, Bührle & Co, 21 September 1942, BA/MA Freiburg, RW 19/3235.
- <sup>35</sup> Schindler, Neutralitätsrecht, 2001 (Publications of the ICE), pp. 105f.
- <sup>36</sup> KTA (Oberstbrigadier René von Wattenwyl) to the EMD, 25 September 1948, FA E27/19344, vol. 8.

## 4.3 Electricity

The authorities of the Third Reich stated on frequent occasions that they regarded the Swiss electricity deliveries as very important for the wartime economy.<sup>1</sup> From their point of view, the electricity was as important as the financial services, the rail transit arrangements, and the supplies of war material – indeed, according to Albert Speer in 1944, electricity was even more important than the other services.<sup>2</sup> Yet until now, historians have not given the electricity supplies the attention they deserve.

Thanks to its plentiful water resources, Switzerland held a trump card with its electricity, which was the country's only «raw material». In the inter-war period and during the war, it sought to utilise this advantage to the maximum extent. Its total output of around 5 billion kWh in 1930/31 – already a remarkable figure – rose to 8 billion in 1939/40 and had virtually doubled to 9.6 billion by 1944/45. The most important objective was to cover domestic consumption which was stimulated by affordable prices in all sectors, i.e., in the transport sector (3/4 of the rail network was electrified), in industry, and also in household use (with the slogan «Swiss housewives cook with electricity»). The aim was to minimise dependence on imported coal and coal-generated gas as far as possible.<sup>3</sup> As a result, electricity consumption rose from 4 billion to 9 billion kWh between 1930 and 1945.

A large number of Swiss electric power plants and distribution companies of various sizes and importance were involved in this booming market. Some were private companies, notably ATEL (*Aare-Tessin AG für Elektrizität*, Olten) and NOK (*Nord-Ostschweizerische Kraftwerke AG*, Baden); they accounted for one-third of Swiss output and were the most important exporters. The other companies were publicly owned; in the EOS (*Electricité Ouest Suisse*, Lausanne) and BKW/FMB (*Berner Kraftwerke/Forces motrices bernoises*), shares were also held by the canton and the municipality. The hydroelectric power stations were located in Switzerland's interior as well as on the border rivers, i.e., on the Rhône (Chancy-Pougny, Geneva) and especially on the Rhine (Laufenburg, Reckingen, Rheinfelden, Ryburg-Schwörstadt, Augst-Wyhlen, Albbrück-Dogern, and Eglisau). Depending on their company location and majority shareholding, the bi-national hydroelectric power stations on the Rhine were subject partly to German and partly to Swiss law; their output was generally divided on a 50–50 basis, and their joint management usually functioned smoothly, even during the war.

The Swiss electric power industry had united to form a strong cartel within the powerful Federation of Swiss Electricity Companies (*Verband schweizerischer Elektrizitätswerke*, VSE) which was founded in 1895. Within the framework of

Swiss Federal legislation, the VSE organised and allocated the rational use of water resources and safeguarded the integration of the various networks. The Swiss Confederation had delegated responsibility for the granting of licences to the cantons and had no stake in the companies. However, it did have legislative competence; it regulated and controlled exports so as to avoid any adverse effects on domestic consumption. From 1930, the Federal Office for Electric Energy (*Bundesamt für Elektrizitätswirtschaft*) took over general supervision, headed by the engineer Florian Lusser from its foundation until 1960. The powerful electricity lobby wanted to avoid any dependence on the Social Democrat Robert Grimm, the head of the «Energy and Heating Section» (*«Sektion Kraft und Wärme»*), who focussed on energy-saving and not on energy consumption. In 1941, it was able to secure special status as an industry essential to the war economy, which meant that it was independent of this Section.

A key feature of the electricity industry was that it required major initial investment for the construction of plants (reservoir dams and turbines), but had relatively low operating costs thereafter. Such investments were potentially very profitable, but only over the long term. However, this required the support of a strong finance group, and the sale of all the electricity produced, i.e., including surplus output via exports. With minor fluctuations, exports totalled 20–24% of output during the period 1930–1943 (and peaked in 1936), compared with just 13% and 9% in 1944 and 1945.

The major companies financing the electric power generation plants were all established before the first World War, with shareholdings by the major banks and some industrial companies with close links to the electricity sector (such as the Swiss BBC, the German AEG and the Italian Pirelli); the most important finance companies were Elektrobank (Zurich), Motor Columbus (Baden), Indelec (Basel) and to a lesser extent two Geneva-based companies, Italo-Suisse and Société générale pour l'Industrie Electrique. They very rapidly extended their corporate activities to areas outside Switzerland too, i.e. Germany, Italy, France and the Americas. In 1939, three-quarters of their 400 million francs of investment were located abroad: more than a quarter in Italy, 17% in South America, 10% in France and just 5% in Germany.

Compared with the Swiss electric power industry, German electricity output – 85% of which was thermal in origin, more expensive, and less competitive – was relatively weak, totalling 25.6 billion kWh in 1933 and 74 billion kWh in 1942, the latter, however, within the expanded borders of 1942. Until the beginning of the war, Germany produced slightly more electricity than it consumed (coverage fell from 108% in 1933 to 100% in 1939). Nonetheless, Germany imported electricity from Switzerland because Swiss electricity was far cheaper, and customers in Waldshut, Singen and Konstanz were located far

closer to the Swiss electricity generation plants than to the coal-fired power stations in the Ruhr. In the pre-war period, Swiss exports reached their highest level in 1936, covering 2.1% of German consumption. In absolute terms, supplies to France (until 1940) and Italy (until 1943) remained relatively stable (500 million kWh and 200 million kWh respectively). On the other hand, supplies to Germany increased substantially: from 300 million kWh in 1933 and 500 million kWh in 1934, to 1.1 billion kWh in 1940. This increase was partly due to the coming on-stream of new hydroelectric power stations on the Rhine, but also to the electricity sector's advantageous position in the clearing system.

During the war – disregarding the fluctuations which were due more to the weather than to political or economic factors – deliveries to Germany remained more or less constant, with a slight downward trend. At the end of the war, they fell to around 100 million kWh. By contrast, supplies to France were resumed in autumn 1944 and reached their pre-war levels again over time. In statistical terms, the war therefore brought no major changes as regards the level of Swiss exports and Germany's share of this market. In qualitative terms, however, a change occurred primarily for two reasons: firstly, the nature of electric consumption on the German side, which focussed on the requirements of the war economy, and secondly, electricity's important role in Swiss economic policy.

Thanks to their good connections with the authorities – to no small degree owing to the accumulation of official powers – the representatives of the electricity industry had little difficulty in securing the necessary export licences and, in particular, making generous use of the clearing system. This proved possible despite opposition from the central body representing the interests of trade and industry, the Swiss Federation of Commerce and Industry (*Vorort*), which was reluctant to grant such a powerful status to this sector. At the end of the war, the *Vorort* promptly used the opportunity arising from the decrease in coal deliveries to limit the supplies of electricity and thus the use of the clearing system. *Vorort*'s director, Heinrich Homberger, stated in December 1944: «If coal delivery now collapses so disastrously, our electricity exports will acquire the character of proffering aid. This we cannot justify. We must therefore readjust our electricity exports.»<sup>4</sup>

For obvious technical reasons, the transport of electricity was only of interest over shorter and medium distances. The electricity industry therefore primarily supplied customers in the immediate vicinity: Lombardy and Piedmont from Ticino or Poschiavo (Brusio-Werk); Alsace and Lorraine as well as Baden (Germany) primarily from the power stations on the Rhine. The supplies from Chancy-Pougny (Geneva) to the Schneider company in Le Creusot (Saône-et-

Loire) 150 km away stretched the bounds of what was possible. The electricity which benefited Germany was thus supplied to southern Germany and, from 1940, to Alsace-Lorraine. While these supplies covered only a tiny proportion of Germany's massive electricity consumption, they were important for its war economy: in particular, they were the basis for the southern German aluminium industry which covered a major share of Germany's needs and was especially important for the aircraft industry.

It is impossible to precisely reconstruct how Swiss electricity was used because the electricity was supplied to regional companies which then distributed it to the customers. However, a significant share was supplied directly to several electrochemical companies, most of which were Swiss-owned: they included Lonza in Waldshut, which purchased 340 million kWh in 1940 and 490 million kWh in 1944 for carbide production. AIAG (*Aluminium-Industrie AG*) in Rheinfelden (Baden), which – as already noted – produced 10% of German aluminium, was an even larger «*Stromfresser*» («devourer» of electricity), requiring 445 million kWh in 1940 and 500 million kWh in 1941. According to Florian Lusser in early 1943, the major share of the energy exported to Germany was absorbed by the Swiss subsidiaries.<sup>5</sup> The rest – apart from limited civilian consumption – was supplied to other strategically significant regional companies, IG Farben, Degussa etc., so that although the amounts supplied were relatively small, they were still important for Germany's wartime industries.

This is also the reason why German negotiators attached such importance to electricity in all the trade negotiations; conversely, their Swiss partners never missed an opportunity to play this trump card in order to obtain valuable coal in exchange. In addition to the credit of 150 million francs, the electricity supplies were important as payment for the coal supplied under the trade agreement of 9 August 1940, which totalled 870,000 tons (140,000 tons more than originally offered).

Electricity and coal formed a material unit; there was no difficulty in converting amounts of coal to amounts of electricity for calculation purposes and demanding that corresponding amounts of the relevant product be supplied in exchange. An obvious option would thus have been to halt the supplies of electricity if the coal was not delivered on schedule. Although this was threatened on repeated occasions in 1942/43, these threats had little real impact; indeed, the representatives of the electric power industry made sure that they were not carried out. Nonetheless, in this area, the principle of give and take based on equal value was repeatedly raised as an issue, although this – astonishingly – was not the case in the area of transit, where a material unit also existed between coal transit and coal supplies. Unlike the other services

provided by Switzerland to the Axis powers, the electricity supplies – at least until 1944 – provoked very little interest among the Allies. Even towards the end of the war, there were no immediate attempts made to apply pressure in this area. It was not until the Currie negotiations of February 1945 that the prohibition of electricity exports was included in the Allies' catalogue of demands. The profitable electricity exports had already fallen off as a result of the increasing problems associated with the clearing system after autumn 1944 and Germany's growing inability to pay for supplies.

The supplies of Swiss electricity undoubtedly helped Germany's war economy. However, the representatives of Swiss interests skilfully avoided an electricity-«*Anschluss*» and retained their independent decision-making powers. A favourable balance was achieved in energy use and energy compensation between Alpine hydroelectric power and the German coal industry. After the war, Federal Councillor Enrico Celio underlined that Germany had supplied three times more coal to Switzerland than it saved through the Swiss electricity deliveries; conversely, if Switzerland had used the exported electricity itself, it would only have been able to compensate 8% of German coal deliveries.<sup>6</sup> What Switzerland exported was surplus electricity at the usual prices and without additional war-related profits.

<sup>1</sup> If not noted differently, this section is based on Kleisl, *Electricité*, 2001 (Publications of the ICE).

<sup>2</sup> PA/AA, R 108046, Speer's report to the Foreign Ministry of 28 August 1944. See also the well-known assessment put forward in the Clodius Memorandum of 3 June 1943, ADAP, vol. 6, p. 132.

<sup>3</sup> For a history of the Swiss electricity industry prior to 1939, see Paquier, *Histoire*, 1998; Gugerli, Redeströme, 1996.

<sup>4</sup> FA, E 8190 (A) -/3, vol. 36, Transfer negotiations with Germany 1934–1945.

<sup>5</sup> FA, E 2001 (D) -/3, vol. 444, Lusser to Federal Political Department, 22 January 1943.

<sup>6</sup> FA, E 8190 (A) 1981/11, vol 37, minutes of the 72<sup>nd</sup> meeting of the Federal Commission for the Export of Electricity on 27 June 1945, p. 5.

#### **4.4 Alpine Transit and Transport Services**

The Swiss Alpine crossings were very important for traffic travelling between the Axis partners Germany and Italy, and therefore also to Switzerland in establishing relationships with its two neighbours.<sup>1</sup> On the one hand, this transit route was commercially operated purely as a service; on the other hand, however, it was also seen – speculatively – as a *quid pro quo* business aimed at securing the import of vital goods (especially coal) to Switzerland. Our research has dealt primarily with the significance of rail transport for the Axis powers. Other means of transport, such as road, ship and air, were less important to these neighbours and are therefore considered only to a limited extent. With the exception of road traffic, they are, however, examined separately here in order to complete the picture.

The exchange of commodities between the countries north and south of the Alps has always played an important role in the history of Europe. The construction of the major Alpine tunnels further intensified it. The Gotthard line was the older of the two Alpine crossings, opened in 1882 and operated by Swiss Federal Railways (*Schweizerische Bundesbahnen*, SBB) since 1909. The newer line consists of a combination of the Simplon and Lötschberg lines, which became operational in 1906 and 1913 respectively, and were run by the Bern-Lötschberg-Simplon Railway Company (*Bern-Lötschberg-Simplon Bahngesellschaft*, BLS). Even before 1939, both lines were fully electrified; as regards tractive force and distance covered, they were superior to their non-Swiss rivals, the Mont-Cenis line between France and Italy, and the Brenner line or the line via Tarvisio between Austria and Italy. Moreover, virtually the entire stretch between Basel and Chiasso was double-tracked, giving rise to a corresponding increase in capacity. The Gotthard Agreement, entered into in 1907 between Switzerland and its neighbouring states Italy and Germany – who were also involved in the construction –, smoothed the way towards integrating this line into the national rail network. At the same time, it formalised certain transport rights granted to Germany and Italy in the Convention of 1869 whose only limitations were Switzerland's interests relating to security policy and obligations under neutrality law.

During the war years, there was a sharp increase in transit traffic: north-south traffic increased threefold between 1939 and 1941. The nature of the goods being shipped also changed, so that those responsible, the authorities and the SBB and BLS railway companies, were confronted with serious problems in terms of technology, trade policy, finance, and especially politics. Of course, the intensification of transit traffic did not go unnoticed by the public. It caused disquiet and encouraged rumours about the nature of the goods being transported. Popular myths developed which still have resonance today.

### **Passenger transport**

In recent years, the greatest public sensation has surrounded the question of any deportation trains which may have passed through Switzerland on their way to extermination camps. A BBC television production in 1997 broadcasted a statement from an eye-witness referred to as «Elisabeth», who said that she had seen such a train with her own eyes at Zurich station in November 1943. Our investigations brought us to the conclusion that this was not the case. All trains of this type coming from France travelled via Germany. Of the 43 convoys which came from Italy, 39 went via the Brenner or Tarvisio. One train went via Ventimiglia-Nice, and there is nothing to suggest that the other three passed through Switzerland. It is highly unlikely that such an unusual type of transport would have gone unnoticed by the railway workers and customs officials, the military, and the station police. Moreover, such a train would certainly have avoided Zurich central station which, in addition, was a terminus station. On the other hand, it is possible that the train could have been carrying people back from the concentration camps; these return transports started in 1944.

The question of whether, after the occupation of northern and central Italy by the Germans in the autumn of 1943, forcibly recruited workers were taken through Switzerland to Germany, can also be answered in the negative. Previously, however, when such recruitment was still voluntary, Switzerland had transported numerous Italian workers in both directions in closed convoys: more than 180,000 on their way to Germany between April 1941 and May 1943, and more than 131,000 travelling back to Italy during the same period. But Switzerland put an end to these transports in July 1943, after the fall of Mussolini and a few weeks before Italy was occupied by German troops.

As regards the transportation of troops, the Hague Convention of 1907 imposes rights and duties on neutral states, and clearly prohibits such transport in times of war. Sweden, for example, was confronted with a formal request allowing for transportation of German troops from Norway to Finland through its territory. Switzerland on the other hand was spared dealing with this issue. The Wehrmacht made do with other approach routes, especially through France and Austria, for moving reinforcements into the operational areas in North Africa and later, Italy. In August 1941, an Italian official in Berlin exaggeratedly honoured the Italian workers as «soldiers», and Switzerland feared that this would be misunderstood by the Western powers. Shortly before, the Federal Police for Foreigners (*Eidgenössische Fremdenpolizei*) claimed to have noticed around 200 Italians travelling through Switzerland to Germany to take part in parachute training. We cannot rule out the possibility that, of the 60,000 Italians involved in the attack on the Soviet Union, a few had previously travelled through Switzerland as civilians. Nor can we be sure that none of the

German soldiers deployed in Italy travelled home on leave through Switzerland individually in civilian clothing. Official transportation, however, was limited to the conveyance of severely injured soldiers.

#### **Coal transport (north-south)**

Coal transports accounted for the majority of the goods traffic between Germany and Italy. The amounts varied only little, between ten and twelve million tons per year in the period of the pre-war years until 1942; later they decreased significantly. Coal made up 90% of north-south traffic between 1938 and 1940, and later the figure was about 75%. The other goods carried were metals, machinery, and grains for bread-making. Whereas, in the years leading up to the war, the majority of, but not all, coal imports came from Germany, the Third Reich became almost the exclusive supplier during the war. A major change in the transport system also took place: whilst prior to summer 1940, three quarters of the deliveries reached Italy by sea, the British blockade forced everything to be diverted by land. Switzerland took over a large proportion of this land transport, and whilst the absolute quantities involved fell in the final years of the war, they increased as a proportion of totals which were falling even more rapidly. The figures in absolute terms, and as a proportion of total imports, were:

**Table 3: Coal transit, imports to Italy and transit through Switzerland, 1938–1944**

	Coal transit through Switzerland in 1,000 tons	Coal imports to Italy in 1,000 tons	Percentage of Italian coal imports through Switzerland
1938	1 397	11 895	11.7
1939	1 822	11 021	16.5
1940	4 788	13 552	35.3
1941	5 835	11 435	51.0
1942	5 122	10 686	47.9
1943	3 303	6 166	53.5
1944	2 479	4 000	61.9

Source: Forster, Transit, 2001 (Publications of the ICE), p. 59, Table 3.

Up to 1943, the coal supplied to Italy, which could satisfy only 20% of the demands with its own production, was used mainly for industry, transport and households, but from autumn 1943 onwards, the German occupying forces claimed almost all of the ever-shrinking supplies for themselves. The Swiss authorities, as well as the wider public, could not fail to notice the significance of these deliveries which over a longer period constituted more than half of all deliveries. Every day, about 40 trains crossed the Rhine at Basel, up to 30 trains

a day passed through the Gotthard Tunnel, and around 12 through the Simplon Tunnel. Right up to the final weeks of the war, when this traffic collapsed as a result of the destruction of the infrastructure in Germany, Switzerland did nothing to put an end to it. It is also worth noting that Switzerland refrained completely from using this service as a trump card in economic negotiations. The Swiss authorities never classified coal as «war material», not even when a certain degree of caution began to be exercised in 1943 in respect to «dual-use» goods (usable for military and civilian purposes). Of course, the transportation through Germany and Italy (from the port of Genoa) of raw materials, fuel and foodstuffs destined for Switzerland was the counterpart to transit through Switzerland. Tolerating coal transit also appeared to safeguard the delivery of coal destined for Switzerland. However, there was no direct link between the coal transit tolerated by Switzerland and the deliveries destined for Swiss use. The latter were constantly used as a means of applying pressure by Germany and often suffered major delays. On the Swiss side, it was considered inadvisable to exercise pressure by questioning the free transportation of coal and thus risk opening conflict with Switzerland's more powerful neighbour.

#### Rhine shipping and coal transportation

With its access to seaports and also to the various canal systems on both sides of the river, Rhine shipping made up a large proportion of Swiss foreign trade in the 1930s. In 1937/38, goods transported on the Rhine via Basel represented, with a handling of around 2.8 million tons, about a third of total foreign trade volumes, about 90% of which was upstream traffic (imports) and 10% downstream traffic (exports).<sup>2</sup> In 1937, the German government repealed the Mannheim Acts (Mannheimer Akte) of 1864 which had guaranteed free international travel by ship, but the new situation had no direct consequences for Swiss shipping. From September 1939 to March 1941, this traffic ceased completely as a result of the war. After March 1941, Switzerland was the only country apart from Germany which was able to resume free shipping movements. Peak volumes were reached in 1942/43 with imports of 1 million tons and exports still at about 10% (0.1 million t), representing a quarter of all Swiss foreign trade. Whilst the interruption of overseas traffic did result in a shortage of goods (especially grain), the waterways into Switzerland remained important because of coal imports: in 1941 (April onwards), 0.29 million tons of solid fuel were imported, and in 1942 the figure was 0.63 million tons, with 0.62 million tons in 1943, and 0.52 million tonnes in the period up to October 1944. Between January 1942 and October 1944, about 40% of coal imports entered Switzerland via the Rhine.<sup>3</sup> Hostilities halted this water traffic once again in October 1944. The

transportation of goods was not resumed until 1946, and then only to a limited extent. The Swiss Rhine fleet suffered considerable losses during the war years (out of 191 ships, 36 became temporarily unusable, and 21 were lost completely), but these losses were much smaller than those of the international Rhine fleet as a whole. As with the railway companies and the airline, an important strategic objective was to maintain or create good starting conditions for the period after the war.

In contrast to the Rhine shipping, the small Swiss deep-sea fleet, whose establishment from 1938 onwards was seen as an exotic and fascinating phenomenon for this small land-locked country, has already been the subject of several studies.<sup>4</sup> An important link between overseas traffic and the rail supply route was provided by the shuttle service between the ports of Lisbon and Genoa.

#### **Weapons transport (north-south)**

Is it true, as a persistent rumour still maintains to this day, that weapons were secretly transported through Switzerland during the war, concealed underneath coal or in sealed wagons? No such deliveries have been tracked down and divulged. Deliveries of weapons, munitions, and of all kinds of war equipment to the warring parties, could take place by way of neutral territory only if they were conducted by private operators. The Hague Convention of 1907 left it to the neutral state to decide for itself whether or not it wanted to prevent what was seen in the first instance as purely commercial trade. Switzerland initially decided not to demand any prior authorisation from the Germans, even though a German Africa corps under Rommel's command had been waging war in Libya with their Italian allies since February 1941, and transit heading south had therefore taken on a new significance. As late as 1942, an official from the Federal Political Department (*Eidgenössisches Politisches Departement*, EPD) was able to remark that consignments with military relevance «very rarely» passed through Switzerland, since the Germans preferred the Brenner route.<sup>5</sup> Nevertheless, the idea of introducing an authorization requirement was already being considered in the summer of 1941. This was introduced in October 1941, but the permits were easy to obtain. Even in summer 1942, Switzerland did not want to commit itself to a doctrine: «We have the honour of informing you that we prefer not to express an absolute theoretical view on the matter raised.»<sup>6</sup> These were the words of Pierre Bonna, Head of the Division for Foreign Affairs (*Abteilung für Auswärtige Angelegenheiten*) and therefore the highest-ranking Swiss diplomat, when asked whether the transportation of catapults to assist take-offs on aircraft carriers should be approved.

From summer 1942 on, however, officials began to be more careful, and permits

**Table 4: A few examples of transit permits for war materials**

<b>Permits issued by the Federal Customs Office (Oberzolldirektion) (with the agreement of the Division of Foreign Affairs)</b>	
March 1940	100 tons of cartridges from Germany to Italy, destined for Japan
June 1940	3 cases of aircraft materials weighing 560 kilos, from France to Yugoslavia
Nov. 1941	1,25 million cartridge cases without detonators, 145g each, from Germany to Italy
Jan. 1942	600 kg hunting powder from Sweden to Portugal
Feb. 1942	47 kg pistol cartridges from Germany to Italy
June 1942	1 vehicle containing 20 kegs of dynamite glycerine (11,645 tons) from Germany to Italy
June 1942	Aircraft engines for repair (6.3 tons) from Sweden to Italy

Source: FA, E 2001 (D) -/3, vol. 352. See also document 7, appendix 6 in: Forster, Transit, 2001 (Publications of the ICE) p. 199.

became increasingly difficult to obtain. With the fall of Mussolini and the occupation of Italy by the *Wehrmacht*, the list of goods for which a permit was required now expanded to include «dual use» goods, such as radios or truck engines.

The possibility of clandestine weapons consignments caused disquiet among the Allies, and also preoccupied the Swiss army command. Only serious controls would have been able to eliminate all doubt and put an end to any abuse of the freedom to transit goods. There could be little certainty if the coal wagons were merely to be examined from above at a checkpoint, or if the certificates accompanying sealed wagons were simply to be checked. It would of course have been impossible – and this was the excuse put forward – to carry out a detailed search of every wagon. Traffic would have come to a standstill, and the customs officials would have been unable to cope with such a task, even with reinforcements from the army. On the other hand, regular spot checks could have discovered possible hidden consignments and deterred the Germans. Only one systematic inspection was carried out – following a complaint from the British – in Muttenz in July 1941. Nothing was found, but this negative result did not prove anything. Nor can the current state of research offer any new findings on this point. However, it can be stated that lax controls were not in keeping with the duty of diligence imposed on neutral states by the neutrality law.<sup>7</sup>

#### **Transport from south to north**

The authorities paid considerably greater attention to the increasing south-north movements of the war years than they did to southbound transit. Consignments totalled 15,000–20,000 tons per month in the pre-war period and up to summer 1940. They increased to 30,000 tons per month in 1941 and to more than 60,000 tons per month in the spring of 1944. The goods involved

were much more diverse: before 1940, 80% of the volume was consumer goods (agricultural products, especially corn and rice, as well as silk, cotton, rope, shoes, vehicles, and machinery, plus a few mineral products and colonial goods from the Middle East). From the time when Italy entered the war in June 1940 to the summer of 1943, these consumer goods were joined by a considerable amount of chemical products, especially sulphur and mercury (Italy was the main supplier of these products to its alliance partner), and later metals (especially pig iron). The proportion of goods important to the war effort subsequently rose to about 36%.

With the fall of Mussolini, the landing of the Western powers in southern Italy, and the occupation of central and northern Italy by German troops, there was a fundamental change in conditions, since the Germans now dominated on both sides of the Alpine crossings. Despite attempts to camouflage it, the traffic lost its commercial appearance and now consisted largely of confiscated or plundered goods. With total disregard for international law, all available reserves of raw materials were transported to Germany. Italian factories were dismantled and their machinery and tools were removed and put to work for the German war effort. The plundering even extended to some of the already scarce food supplies.

The single-track Brenner rail-line was overloaded because of the troops and coal deliveries coming from the north, and was insufficient to carry the plundered goods in the opposite direction so that the transport options through Switzerland also had to be used. Between autumn 1943 and autumn 1944, these consignments made up approximately half of all goods moving northwards through Switzerland. The proportion would have been even higher if the authorities had not reacted across a broad spectrum (from the EPD to the Federal Customs Administration) in October 1943, when these movements began. The consignments were designated as contrary to international law, and allowing them to be shipped through Switzerland was seen as placing a great strain on relations with the Allies. Obviously, it proved difficult to distinguish between authorised and unauthorised consignments at the border control points. Still, a complete transit prohibition would, in the view of the authorities at the time, have gone against national interests just as much as an unlimited licence to transport goods would have. In November 1943, a somewhat arbitrary criterion was introduced, but one which could be implemented easily and without delay: all goods which had already been used were sent back, but new goods were allowed through. As Pierre Bonna wrote to the customs authorities, it would hardly be possible to arrive at any other solution without bringing «normal traffic» to a standstill.<sup>8</sup> This solution could not of course be applied to consignments of raw materials: in this case, care was taken

to ensure that the volume of suspicious goods did not sharply skyrocket. The method appears to have had some success, as transit volumes fell by about 20% during the winter of 1943/44. On the other hand, plundering could not go on forever to the same extent, and would peter out by itself with the passage of time.

The German National Railway (*Reichsbahn*) allowed some trains which had travelled south via the Brenner line to return via the Swiss Alpine lines in order to relieve the pressure on the single-track Brenner route. At the beginning of the war, Switzerland tried to find out whether these empty trains could be used to ship its imports. The *Reichsbahn* agreed, but also expected the Swiss Federal Railways (SBB) to make Swiss wagons available for north-south transit in exceptional cases. However, hardly any use was made of this agreement, and it thus remained insignificant. The empty wagons, which outnumbered the loaded wagons heading in the other direction (around 3,400 per month in the first half of 1943), were also subject to a tax which nevertheless brought in 870,000 francs over that period.

#### **Other transit restrictions**

In 1944, a restriction on transit was finally introduced. The Allies wanted to restrict transit in both directions, whereas the Germans wanted to make maximum use of the Swiss Alpine crossings for «civilian» goods so as to relieve the Brenner route, which was used primarily for military transport and was often subjected to bombing. In Switzerland, although there was a basic agreement to diminish transit, there yet remained a fear of falling victim to German countermeasures if the movements were reduced. In January and February 1944, discussions took place with both the warring parties. Two solutions were put forward: the imposition of quotas for transit traffic, or the prohibition of certain goods. The latter solution was preferred: an ordinance dated 20 March 1944 renewed the general prohibition of the carrying of war materials, with this category of goods now including for the first time the liquid fuels which had previously been carried to Italy in small quantities, as well as non-ferrous metals moving in the opposite direction (copper, lead, aluminium), rubber, and of course machinery and consumer goods. Quotas were imposed on a whole range of other categories of goods, in particular iron and ores, but coal remained unrestricted. This solution entailed noticeable changes for the German war economy. The compromise came closer to the expectations of the Allies than to the demands of the Germans, and further restrictions were introduced in the months that followed. The transit was stopped completely in March 1945.

### **The interests of the railway companies**

The task of the railway companies was to operate the Swiss rail network at a technical and commercial level, and to ensure both internal and transit traffic. Thus, not only the rails themselves, but also staff, electricity, rolling stock and locomotives were made available for transit use, since the Italian locomotives used a different electrical system and the German access lines had not yet been electrified. The majority of orders went to the SBB, operator of the Gotthard line, with a smaller proportion going to the Lötschberg-Simplon line, which was run by the private competitor company BLS, albeit subsidised by the canton of Bern. Both companies had gone through hard times in the crisis of the 1930s, and had accumulated deficits which had to be covered by the state. There was a general decline in the use of transport capacity, and a corresponding increase in competition from the non-Swiss Alpine crossings (Mont-Cenis in France; the Brenner and Tarvisio route in Austria). The war brought about major changes: there was a sharp reversal in the previous decline in passenger traffic. Whereas the SBB had carried only 166 million passengers in 1938, the figure rose to 279 million by 1944. In the same period, the volume of goods rose from 20.85 million to 33.47 million tons. Starting 1939, company accounts were back in the black. Transit played its part in these pleasing results and, although its contribution was not large, it was also not to be ignored. Before the war, transit accounted for 6%; in 1940 it rose to 13.5%, and in 1941 it peaked at 16%; the figure for 1942 was 15%, with 10% in 1943 and just 7.5% in 1944. The fact that profits remained contained is explained by the commitment to the principle of preferential rates set out in the Gotthard Agreement of 1907. These averaged only about half of domestic rates and were, in turn, kept stable by the government up until 1944 in order to combat inflation.

Throughout the war, the two railway companies, within their limited autonomy, pursued a decidedly aggressive profit policy based on the concept of international competitiveness. For one thing, the Swiss railway companies (despite state guarantees) worked as profit-oriented businesses and for that reason alone had an interest in providing services to the Axis powers. Secondly, the mere fact that these were companies (and this was even more clearly seen with the power stations) with all their operating costs and investments to be written off, meant that there was a certain pressure to exploit their full capacity for economic reasons. The aim, which had the agreement of the fundamentally anti-fascist railway workers' union, was to ship the greatest possible transit volumes on technically and commercially favourable terms on Switzerland's own lines, and to ensure a strong market position for the future. After the turning point of the war in 1943, the companies became aware that «policy» decisions were now inevitable. Added to this was the fact that their customers

– first Italy, then Germany – were falling behind in their payments. The Swiss Confederation had to help out with the outstanding debts, which ran to 89 million francs by the end of the war. Now the companies turned to the authorities with increasing frequency, but the answers they received were evasive or non-existent, so that the railways largely acted as they saw fit.

#### **Loan of rolling stock**

There was no disputing the fact that, in practice, a smooth-running international transport system required close co-operation between European railway companies. But transnational freedom of movement was severely restricted during the war years. Most of the wagons which Switzerland sent abroad (about 85% or 100,000 wagons per year) went to Germany and Italy, and were used exclusively to supply goods to Switzerland. However, only 22% to 32% of its imports could be transported in this way. Only an astonishingly small number of these internationally-deployed wagons got lost. In the summer of 1944, only 24 wagons had gone missing. Towards the end of the war however, more than 1,000 wagons were reported missing. Given the overall situation, we can conclude that Switzerland, with around 18,000 freight wagons, was unable to lend any assistance relevant to the war in terms of rolling stock to the German Reichsbahn, which had over 973,000 freight wagons. The 25 locomotives demanded by the Reichsbahn in February 1942, destined likewise to carry goods to Switzerland, were authorised by SBB with the consent of the Federal Council without further ado, but the request for a further 25 locomotives was not met, despite pressure exerted by the Germans through the temporary suspension of coal deliveries. Later, in October 1944, the SBB provided the French National Railways (*Société Nationale des Chemins de Fer*, SNCF) with 37 locomotives to facilitate imports from liberated France.

#### **Swissair**

The Swiss airline Swissair could have taken on an important role in view of the difficulties which the war had created for road and rail traffic, and the counter-blockade by the Axis powers. In reality however, it had to be satisfied mainly, and for a very long time, with flying a route which was totally dependent on the German regime, first to Munich and then, from the end of 1941, to Stuttgart-Berlin, keeping its business alive through the war years by taking on repair contracts. Orders were also placed with the Company first by the Swiss company Dornier-Werke, then at their instigation by the German Lufthansa company and peripherally for the German air force (*Luftwaffe*), and finally by the Swiss army and indirectly for the Western powers for safeguarding and dismantling aircrafts which had gone down over

Switzerland in the last months of the war. It was particularly important, with a view to operations after the war, for the airline to hold onto its own specialist personnel. The position adopted throughout the war corresponded to the efforts decided upon for the first weeks of the war. The Swissair representative in Britain emphasised in October 1939:

«Immediately after the outbreak of war, it became generally accepted that it was in the country's economic interest to make every effort to maintain normal business activities to the degree possible. After gaining further insight into the anticipated costs of the war, we were no longer satisfied with creating normal conditions, the prevailing desire then became to conduct *as much business as possible* [...]»<sup>9</sup>

Wherever possible, Swissair operated special flights in order to make better use of its generally underused capacity. The outbreak of war in September 1939 inflicted the first blow on the Company, its activities being almost completely paralysed by the extremely restrictive stands taken both by Swiss officialdom and the warring states. Until the beginning of German hegemony on the European continent in the summer of 1940, it was able – for a limited period – to operate a route through Italian airspace to Barcelona. The Swiss company's great dependency on German licensing bodies was seen above all in the sudden cessation of the route to Berlin in February 1943, and even before that, in the way priority was given to the interests of the *Wehrmacht* and in the requirement of «Aryan certification» (*«Ariernachweise»*) from airline staff. Work for Lufthansa was suspended at the end of 1943 in view of the likely post-war domination by the Western Allies, and the remaining scheduled flights to Stuttgart ceased in August 1944. Probably the most interest-provoking question – that of what people and what goods were carried by air – is difficult, if not impossible, to answer. While it is true that passenger statistics and freight volumes were recorded in terms of quantity, the sources say nothing about the individuals involved or the nature of the goods transported. A document which mentions a flight to Berlin taken by Ernst Feisst, Director of the Agricultural Division of the Federal Department of Economic Affairs (*Eidgenössisches Volkswirtschaftsdepartement*, EVD) in November 1940 is an exception. For the first phase of the war, up to summer 1940, we know that numerous emigrants left for Barcelona on scheduled flights, that special flights for the Swiss Bank Corporation (*Schweizerischer Bankverein*, SBV) carrying consignments of gold to and from Yugoslavia took place in May 1940, and that the Biel branch of Bulova Watch sent an unspecified consignment by air to Barcelona in June 1940.<sup>10</sup>

### **Closing remarks**

The aim of this section has been to portray the growing significance that Alpine railway transit via Switzerland had for the war economy of the Axis powers. Barring any rash judgment on our part, it has still clearly emerged that the authorities and the Swiss railway companies reacted to events. Their indecisive policy crystallized itself in their failure to conduct any type of serious controls of freight wagon transit and in their tolerance of coal transports to Italy right up to the last minute, i.e., February 1945. And when they finally did make up their minds to adopt somewhat more energetic measures to monitor and to limit north-bound rail convoys, it was certainly due to the fact that this type of transit was in glaring contradiction with the precepts of international law in force at the time. Yet it can also be supposed that the primary reason was that the Allies were applying no small amount of pressure.

Later on, those responsible for this policy attempted to justify it by invoking the dissuasive effect that it could have caused. By guaranteeing free transit, an attack on the Alpine rail links became unnecessary and hence any risk was reduced to a minimum. Nonetheless, any such deterrent also had to be made credible by intimating to the potential attacker that he should then not expect to find any bridges or tunnels left intact. However, groundwork preparations for their possible destruction proved to be technically difficult and dangerous for rail traffic, not to mention extremely costly. The project was slow in making progress since both the railway lobby and certain influential interest groups demonstrated a negative attitude to the undertaking. Only in summer 1942 were the tunnels partially mined, even though it appears that the Germans had been convinced from 1940 on that these structures had already been mined.

Be that as it may, one should not underestimate the deterrent effect even if other aspects of Swiss policy played a more significant role during the war. For one thing, it was necessary to keep up appearances and hence to observe the precepts of international law (the Gotthard Agreement and the Hague Conventions) scrupulously down to the letter. For another, keeping the country supplied and nourished was an unconditional priority. And fear indeed reigned high that this could be compromised if any restrictions were to be imposed on the freedom of transport. The authorities of the Third Reich were well aware of this and reiterated on several occasions the importance which they attached to this specific service provided by Switzerland. They deemed this to be more vital than the deliveries of weapons or electric power, and almost as important as the services of the Swiss financial centre. As a consequence, they were not above resorting to and exploiting the means available for exerting pressure (delaying their deliveries of coal, detaining certain goods destined for Switzerland at the port of Genoa, etc.).

Nevertheless, with regard to the transport of passengers, Switzerland consistently held true to its principles, and the measures which it applied to restrict freight transit – albeit deployed only belatedly – did hamper and obstruct the despoliation of Italy's industrial infrastructure.

- <sup>1</sup> The information contained in this section is based on Forster, *Transit*, 2001 (Publications of the ICE).
- <sup>2</sup> All quantities are taken from «Strom und Meer» 1945, H. 4, and «Schiffahrt und Weltverkehr», July 1948.
- <sup>3</sup> FA, E 8300 (A) 1999/71, vol. 31.
- <sup>4</sup> Cf. Bonjour, *Neutralität*, 1970; Bachmann, *Schiffahrt*, 1966.
- <sup>5</sup> FA, E 2001 (D) -/3, vol. 352, note Hohl, 27 June 1942 (original French).
- <sup>6</sup> FA, E 6351 (F) -/1, vol. 655, Bonna to the Federal Customs Administration, 23 July 1942 (original French).
- <sup>7</sup> Schindler, *Fragen*, 2001 (Publications of the ICE).
- <sup>8</sup> FA, E 2001 (D) -/3, vol. 349, Bonna to the Federal Customs Administration, 29 November 1943 (original French).
- <sup>9</sup> SR Archives 1.13, *Kriegsbetrieb*, impressions from England of Swissair representative Charles Messmer, 20 October 1939 (original German).
- <sup>10</sup> Matt, *Swissair*, 2000; Muser, *Swissair*, 1996.

## 4.5 Gold Transactions

During the Second World War, Switzerland was the most important market for gold from the territories controlled by the Third Reich.<sup>1</sup> Almost four-fifths of the Reichsbank's gold shipments abroad were arranged via Switzerland. Between 1940 and 1945, the Reichsbank sold gold for a value of 101.2 million francs to Swiss commercial banks and 1,231.1 million francs to the Swiss National Bank (SNB). Between September 1939 and February 1941, it facilitated the transfer of gold valued at 166.3 million francs, which had been sold by the Russian State Bank. Even before the war, the Third Reich had supplied gold obtained through coercive measures to the German monetary institute. After war broke out, looted gold was used to acquire foreign currency. These transactions were highly problematical for political and legal reasons. Accordingly, they are a focal point of the debate about Switzerland's role in the Second World War and the issue of economic collaboration with Nazi Germany.

### The chronology of gold transactions

After the outbreak of the Second World War, the SNB continued to treat gold from the Reichsbank in the same way as gold from any other central bank, exchanging it for francs and other foreign currency. The first of these wartime gold transactions took place between March and May 1940, with purchases totalling 27.3 million francs. In July, the SNB also sold a smaller amount (19.5 million francs) to the Reichsbank. These early transactions were relatively insignificant in numerical terms, but signalled that the SNB was willing to maintain the convertibility of the franc and thus safeguard the external value of the Swiss currency as well as confidence in the reliability of its monetary policy. In November 1940, the SNB considered establishing a «gold deposit account» in Berlin; according to Ernst Weber, Chairman of the SNB Governing Board, this would primarily have been «a gesture towards the Deutsche Reichsbank».<sup>2</sup> Although it ultimately refrained from taking this step, it accepted gold in ever-larger quantities in the years that followed.

During the first years of the war, most of the German gold was sold to Swiss commercial banks. The Russian gold (166.3 million francs), on the other hand, was the subject of a triangular transaction between the Soviet State Bank, the Reichsbank, and Swiss commercial banks. It went primarily to the Swiss Bank Corporation (*Schweizerischer Bankverein*, SBV) and was recast at its gold foundry at Le Locle. Two distinct phases can be identified here: Switzerland's role in the transactions at such an early stage in the war was prompted by the Soviet Union's efforts, during the first half of 1940, to conceal the origin of the precious metal in order to pay for imports of oil and other goods from the USA.

Gold with Russian markings was less easily marketable due to fears that it might be confiscated in order to settle longstanding claims on czarist Russia dating from the First World War and earlier. During a second phase, from June 1940 until the signing of the Swiss-Soviet Trade Agreement in February 1941, the gold purchases were a direct consequence of the Soviet Union's need to bankroll its trade deficit with Switzerland. They were largely profit-driven transactions in which there was little debate about any ideological affinity of the banks with the Soviet Union or with Nazi Germany.

In these and other transactions with Germany, the Swiss banks sold francs and, to a lesser extent, other currencies – especially escudos – in exchange for gold. The francs were then used by the German war economy to make payments to third parties. The Swiss francs entered the currency reserves held by foreign central banks – either via the Reichsbank or via the commercial banks as a means to obtain foreign exchange – and were then offered back to the SNB in exchange for gold. In this way, the gold – available to the Reichsbank in increasingly substantial quantities due to the vicissitudes of war and Germany's persecution policy – flowed via the Swiss «hub» to other central banks. The major net purchasers were Portugal, Spain, Romania and, to a lesser extent, Hungary, Slovakia and Turkey. As a result, the gold acquired unlawfully by the Third Reich entered the reserves of freely available monetary gold. This process became especially problematical after the United States imposed a general embargo on continental European transactions on 14 June 1941. The SNB had moved a substantial part of the Swiss reserves across the Atlantic in anticipation of the military conflict; as a result, from June 1941, almost two-thirds of its gold reserves were blocked, with this share rising steeply in the following years. Under the law establishing Swiss adherence to the gold standard, a gold reserve of at least 40 percent of the note issue had to be held within Switzerland. However, the Federal Council removed this requirement in a secret Decree of 17 May 1940, and gold held on deposit in Britain or the US could henceforth be counted as part of this minimum reserve. The total backing of the Swiss franc always lay significantly above 100% throughout the war years; however, the proportion held at domestic level declined from 40% to 31% between 1940 and 1945.

In order to prevent further losses of its domestic gold reserves, the SNB attempted to centralise the gold trade in October 1941. At this point, it considered imposing exchange controls, but then rejected this measure in favour of «gentlemen's agreements» with the banks. The Reichsbank was requested to deal with the SNB instead of the commercial banks as before. From then on, the commercial banks only engaged in smaller-scale gold transactions abroad. A further tightening of the regulations governing the Swiss gold trade occurred

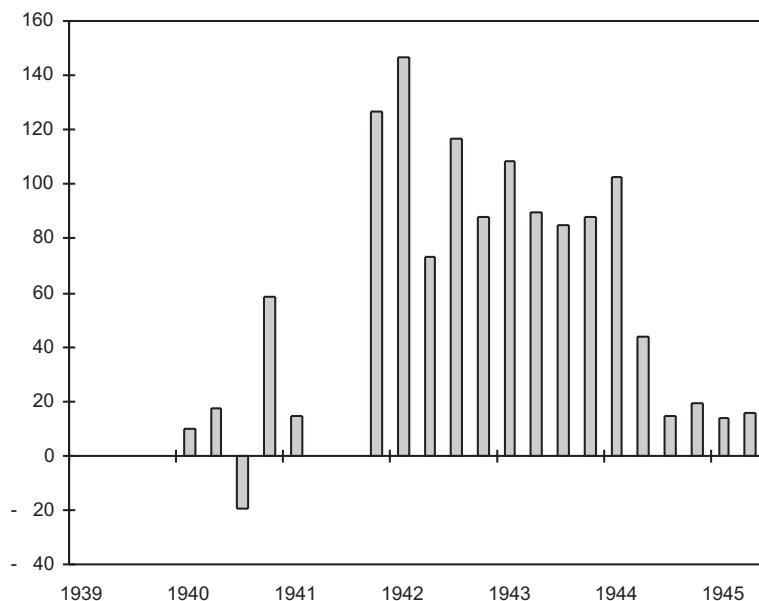
on 7 December 1942, when the Federal Council established maximum prices for gold coins and bars, thus restricting the opportunities for the banks to profit from the sharp rise in the price of gold. In addition, SNB permission was henceforth required for the import or export of gold. Credit Suisse (*Schweizerische Kreditanstalt*, SKA) was given a licence to import small amounts of gold; however, in September 1943 it was refused permission to accept the delivery of gold from the suspect operations of Deutsche Bank's Istanbul branch.<sup>3</sup>

The largest transactions in the context of the «escudo business» (*Escudo-Geschäft*) took place up until the summer of 1942. These transactions enabled the Reichsbank to sell gold to the SNB for francs or Portuguese escudos in order to pay for strategically important raw materials and other key imports for the German war economy. The Banco de Portugal then bought gold from the SNB with the francs accumulated in its foreign currency reserves. Such transactions with the Reichsbank reached their peak in the winter of 1941/42. From the summer of 1942, Germany began to sell gold directly to Portugal via the deposit account in Bern, and the escudo deals became less significant for the Swiss financial centre. Nonetheless, the associated gold shipments by the Reichsbank continued to be channelled through Switzerland.

The substantial purchases from Germany, including coins (mostly from the Latin Monetary Union which included Belgium, France, and Italy as well as Switzerland) continued for some time. It was later revealed that all these coins had come from the holdings of the Belgian Central Bank. At the same time, the SNB sold a large quantity of gold coins on the market, including those acquired from the Reichsbank. These transactions were an attractive source of revenue: the SNB earned 12.3 million francs from the purchase and sale of foreign-minted gold coins during the war. A significant proportion of these coins may eventually have been exported by private individuals, especially to France, where they are likely to have sustained an active underground or black market economy. The following graph illustrates the gold purchased by the SNB from the Reichsbank (per quarter).

In addition to these purchases, consignments from the Reichsbank to the SNB amounted to around 500 million francs. This gold went to the depositories maintained in Bern by other monetary institutes or by the Reichsbank itself. Switzerland thus became the centre of complex gold transactions, for in addition to the Reichsbank and the Bank for International Settlements, BIS (*Bank für Internationalen Zahlungsausgleich*, BIZ), more than a dozen other central banks availed themselves of the SNB's services. The gold sales by the Reichsbank to Switzerland began to assume unprecedented dimensions in the last quarter of 1941 and remained at a high level throughout 1942 and 1943. It was only in the second quarter of 1944 that the volume of these transactions

**Figure 4: Gold purchases by the SNB from the Reichsbank, 1939–1945, per quarter (in million francs)**



The descending bar refers to sales by the SNB to the Reichsbank in the third quarter of 1940.  
Source: SNB Archives, Gold transactions for its own account 1939–1945, 4 March 1997.

declined significantly, although they continued until the last month of the war in Europe.

From the beginning of 1943, Switzerland came under increasing pressure from the Allies to curtail the gold transactions with Germany. Due to the Allies' knowledge about the gold's origin, the British and Americans, in their declarations, raised the prospect of full restitution of the purchased gold after the end of the war. Although these warnings increasingly preoccupied the SNB Governing Board and prompted the adoption of various safeguards, it was not until the Agreement of 8 March 1945 with the Western Allies' mission, headed by Laughlin Currie, that the Swiss National Bank halted its purchases of gold from the Reichsbank, with the exception of consignments intended to cover German diplomatic expenses, payments for prisoners of war, and contributions for the International Committee of the Red Cross. Nevertheless, an agreement with the Reichsbank on 11 April 1945 – known as the «Puhl Agreement» established a far broader framework for German gold sales, partly as a result of pressure from the insurance industry which insisted on obtaining payment for insurance services to Germany. Reichsbank gold therefore continued to be

shipped to Switzerland even during the last weeks of the war in Europe, factually circumventing the Currie Agreement.

At the same time, the SNB also purchased substantial quantities of gold from the Allies: for 668.6 million francs from Great Britain and for 2,242.9 million francs from the USA (net balances 1,528.7 million) as well as for comparatively small sums from Canada. Part of this gold was subject to the American financial blockade. However, the purchases of gold from the Allies are not directly comparable to the purchases from Germany since the Allied gold constituted a lawfully acquired means of payment and currency reserves. More than half the gold transactions between Switzerland, the USA and Great Britain resulted from international capital movements and repatriation of assets which commenced in June 1940. On the Swiss side, they also financed exports and were used by the Allied powers for humanitarian purposes and as payment for services of importance to the war effort.

Table 5 provides an overview of the gold purchases and sales by the Swiss National Bank during the period running from 1 September 1939 through 30 June 1945. The net position shows where the most significant gold inflows came from and where gold flowed to. As is evident from the table, the SNB's gold holdings during this period increased from 2,860 to 4,623 million francs. From a monetary policy perspective, the purchases of gold – both from the Allies and the Axis powers – by increasing the volume of money in circulation, had an inflationary effect. Other aspects of the Swiss transactions with Germany – especially the clearing credits which had reached in excess of 1 billion francs by 1944 – also increased the pressure on domestic prices. At this time, however, analysts (including those working for the SNB) did not define inflation primarily as the over-rapid expansion of the money supply compared with available goods and services. Nonetheless, they recognised that the expansion of the money supply through the inflow of gold and foreign exchange was undesirable from a price policy perspective.

The inflationary effects of the SNB's gold purchases were also partly mitigated by the Swiss Confederation's gold sterilisation policies (*«Goldsterilisierungen»*). The Confederation issued public bonds, the sale of which reduced the money supply in Switzerland. With the francs acquired in this way, it then purchased gold from the National Bank, thus reabsorbing the currency created with the gold purchases. The SNB adopted additional measures to stem the rapid increase in the money supply. Above all, attempts were made to restrict the exchange of dollars into francs. The pre-war dollar exchange rate of 4.30 was retained, but for monetary policy reasons, the SNB was no longer prepared to accept all dollars flowing into its coffers at this price. This resulted in a dollar surplus, and a free foreign exchange market developed, mainly in New York

**Table 5: Gold purchases and sales by the SNB,  
1 September 1939–30 June 1945 (in million francs)**

<b>I. Initial balance</b>			2860.2
	Purchases	Sales	Net
<b>II. Axis powers</b>			
II/1. Germany	1231.1	19.5	1211.6
II/2. Italy	150.1	0.0	150.1
II/3. Japan	0.0	5.0	-5.0
<b>Total</b>	<b>1381.2</b>	<b>24.5</b>	<b>1356.8</b>
<b>III. Allies</b>			
III/1. USA	2242.9	714.3	1528.7
III/2. Great Britain	668.6	0.0	668.6
III/3. Canada	65.3	0.0	65.3
<b>Total</b>	<b>2976.8</b>	<b>714.3</b>	<b>2262.5</b>
<b>IV. Others – net purchasers</b>			
IV/1. Portugal	85.1	536.6	-451.5
IV/2. Spain	0.0	185.1	-185.1
IV/3. Romania	9.8	112.1	-102.3
IV/4. Hungary	0.0	16.3	-16.3
IV/5. Slovakia	0.0	11.3	-11.3
IV/6. Turkey	0.0	14.8	-14.8
<b>Total</b>	<b>94.9</b>	<b>876.2</b>	<b>-781.4</b>
<b>V. Others – net sellers</b>			
V/1. Argentina	32.7	0.0	32.7
V/2. France	193.2	0.0	193.2
V/3. Greece	0.5	0.0	0.5
V/4. Sweden	77.5	3.0	74.5
<b>Total</b>	<b>303.8</b>	<b>3.0</b>	<b>300.9</b>
<b>VI. Various</b>			
V/1. BIS	61.5	18.3	43.2
V/2. Market	71.6	667.8	-596.2
V/3. Confederation	269.3	1087.9	-818.6
V/4. Federal Mint	42.5	45.8	-3.3
<b>Total</b>	<b>444.9</b>	<b>1819.8</b>	<b>-1374.9</b>
<b>VII. Total Purchases/Sales</b>	<b>5201.6</b>	<b>3437.7</b>	<b>1763.9</b>
<b>VIII. Differences</b>			-1.2
<b>IX. Final balance</b>			4622.9

Source: ICE, Goldtransaktionen, 2002 (Publications of the ICE), p. 56

where the US currency was traded at a lower rate, sometimes producing marked dollar slumps. As Swiss exporters tended to transfer their dollar receipts through the SNB at the official exchange rate while importers generally exploited the weakness of the dollar in the unofficial market, price distortions arose in international trade. In order to avoid these problems, controlled management of dollar holdings was introduced in autumn 1941. This estab-

lished two different dollar categories: the «goods dollar» and the «financial dollar». Foreign trade was conducted entirely in «goods dollars», whereas «financial dollars» – resulting from the transfer of capital, interest, income on assets, licences, patent royalties, and the insurance business – could not be converted at the preferred official exchange rate. The gentlemen's agreement binding the banks to this dollar management system also stipulated that the banks must not trade financial dollars below a minimum exchange rate. However, the goods dollars also included the dollars which the SNB had converted to pay for diplomatic missions in Switzerland and support humanitarian and charitable services. From April 1942 to November 1943, however, it refused to purchase dollars which Jewish organisations in the USA wanted to use to provide assistance to refugees. This was a serious situation because after December 1942, the banks were generally no longer prepared to accept the increasingly substantial and more volatile financial dollar amounts at the fixed minimum exchange rate and – on the recommendation of the Swiss Bankers Association (SBA) (*Schweizerische Bankiervereinigung*, SBVg) – withdrew from this market.

### **Monetary stabilisation**

An argument often made in defence of the SNB's wartime gold purchases is that they formed a central part of an anti-inflationary, stability-oriented policy. This theory was put forward in the mid-1980s by Philippe Marguerat and has been developed since 1998 by Jean-Christian Lambelet as part of a polemic critique of the ICE's Interim Report on Gold.<sup>4</sup> These authors take the view that the ICE has focussed too much on the political motives underlying the SNB's conduct and paid insufficient attention to its efforts to achieve monetary stability.

The controversy centres on divergent assumptions about the way in which gold affected Swiss monetary policy as regards, firstly, the direct (inflationary) effects of gold purchases on the money supply; secondly, gold sales in the market and their impact on the price of gold; and thirdly, the way in which larger gold reserves might have influenced war-time and (perhaps more importantly) post-war monetary policy.

The danger of inflation could not be ignored. Switzerland had experienced substantial inflation during the First World War, leading to sharp decreases in real wages for workers/salaried employees and their families while producing substantial war profits for companies. This had contributed greatly to the ferment of social unrest which had shaken Switzerland at that time. During the Second World War, the SNB, Federal Council, and the authorities responsible for managing the wartime economy did their utmost

to avert this development. Nonetheless, there were obvious signs of new inflationary pressures. In their simplest form, monetary theories tell us that gold purchases by a central bank (or indeed any other increase in its assets: the purchase of securities would have the same effect) increase the money supply and exert inflationary pressure. The gold purchases may be sterilised through an equivalent sale of securities by the central bank, usually to the government (although this practice, which was commonly resorted to by central banks during the inter-war period, had been unknown in Switzerland). However, during the Second World War, the Swiss Confederation reverted to a stability-oriented sterilisation of gold holdings. Between 1943 and 1945, the Confederation's gold deposit rose from 12 million francs to more than 1 billion francs, with a corresponding decrease in the money supply.

Marguerat and Lambelet ignore these facts and assume that the SNB's gold purchases were necessary to counter the obvious increase in the gold price by releasing gold coins onto the market. This process is described in the ICE's report on gold. However, the ICE does not share the authors' assumption that regulating the price of gold in this way enables an effective stability policy to be pursued. Another argument is found in a report by Vincent Crettol and Patrick Halbeisen, published by the ICE in 1999.<sup>5</sup> The authors of this sound academic study argue that the gold purchases sent money abroad (i.e., to the *Reichsbank*) and thus had no inflationary effect on the Swiss domestic money supply. However, this ignores the fact that the Swiss francs constituted a claim with respect to Swiss goods and services, even if the initial holder of this currency had no intention of using them in this way. The Reichsbank frequently used Swiss francs to make payments in Portugal, and Portuguese claims could then either be used to buy Swiss products, or be held in Swiss banks (again adding to the Swiss money supply).

Gold purchases by a central bank are inflationary, and the argument that they are motivated by a concern to reduce inflation is inherently implausible.

### The debate about the gold transactions

The gold purchases were the subject of intense controversy during the war. The debate about their legality which erupted during the 1990s is therefore certainly not new. Even during the Second World War, the Allies as part of their economic war and their efforts to cut off German supplies of raw materials had condemned the gold transactions. The Allies demanded comprehensive restitution of looted gold, with «monetary gold» at the forefront. During the first post-war decades, the issue was largely neglected, however. After Peter Utz in 1980 and Hans Ulrich Jost in 1983 drew fresh attention to the scope and signif-

icance of these transactions on the basis of newly accessible sources, two major studies were published during the second half of the 1980s: one by Werner Rings, the other by Arthur L. Smith<sup>6</sup>. Yet there was very little public response to either study, even though both raised a number of key issues: the extent to which Swiss intermediaries gave a stamp of legality to otherwise unmarketable stolen assets; whether Switzerland consistently acted as «Hitler's banker»; and whether Swiss financial services prolonged the war (and thus led to higher death tolls, both of combatants and civilian victims of Nazi terror).

From the mid-1990s onwards, the debate about the SNB's gold transactions was revived, attracting far more attention since it now took place in parallel with the burgeoning debate about the Swiss banks' treatment of Holocaust victims' assets. This time, governments and official commissions produced the most important documents. The first report came from the British Foreign Office in 1996 and contained sensational – but incorrect – claims about the extent of the gold trade: the authors had confused dollars with Swiss francs, and thus obtained a figure almost five times as large as the true figure.<sup>7</sup> The US Department of State coordinated a far more extensive study which again placed Switzerland and other neutral countries at the centre of the history of the economic war<sup>8</sup>. In the preface, Under Secretary of State Stuart E. Eizenstat explicitly raised the issue of the prolongation of the war due to strategic imports paid from revenue from sales of gold to the SNB.<sup>9</sup> In 1997, the ICE produced a short introductory report for the London Conference organised by the British Foreign Office and the US Department of State; this was then expanded into a comprehensive study published in May 1998. Other national commissions published reports which in some cases aroused substantial controversy (notably the Portuguese report, whose polemic appeared to be exculpatory); on the other hand, the reports from Argentina, the Czech Republic, France, the Netherlands and Sweden played an important role in shedding light on the financial history of the Second World War. The major private German banks involved in the trade in Nazi gold, Deutsche Bank and Dresdner Bank also commissioned two reports<sup>10</sup>, while other enterprises (such as Degussa) also supported historical research into these complex events.<sup>11</sup> These reports focussed the debate on issues which were largely ignored by the Allies during and immediately after the war, and which had not been dealt with in the studies published in the 1980s. They included investigations into the origin of the gold and the related question of the extent to which the gold stolen by the Germans was the property of private individuals who fell victim to the Nazi regime. How much of this victim gold was sold in or via Switzerland? How much did the persons responsible for these gold purchases and transit transactions know about the policies of persecution and genocide being pursued by the Third Reich – and how did they justify their conduct in light of this knowledge?

Examining Switzerland's role in these gold transactions raises two sets of problems. The first – essentially political in nature – centres on the way in which the SNB and the private banks appeared to regard these transactions as «*business as usual*». Central banks adhering to the gold standard regularly bought and sold gold from other central banks; this was the basis of the international monetary system. However, the circumstances prevailing between 1939 and 1945 were exceptional. The gold transactions enabled Germany – whose national currency was no longer accepted as a means of payment in the international markets – to acquire foreign currency which could then be used to obtain essential goods for its war economy. The German armaments industry thus obtained strategically important raw materials and other key resources for the war effort – especially tungsten, manganese, and other ores from Spain, Portugal and South America, but also crude oil from Romania and bauxite from Yugoslavia. This fact alone would not constitute grounds to describe the gold trade as an illegal activity which violated Swiss or international law. But even if this were all that could be said about the impact of these gold transactions, political objections would – and do – still arise, since the trade served the interests of Nazi Germany and undermined the objectives of the Allies' economic war.

The SNB was well aware of the political dimension of this issue from the outset. As early as October 1940, the SNB's directors were aware of accusations in US newspapers that Switzerland was assisting the Axis powers. The directors raised this issue with the Swiss Government and approached the Federal Political Department to discuss the Swiss response to possible Allied counter-measures. At that time, the SNB argued that the US had not imposed a blockade on German or Italian accounts, so America could hardly object to Swiss transactions with the Reichsbank. At the same time, the transactions appeared to offer some protection against German attack. In November 1940, a letter from Per Jacobsson, chief economist of the Bank for International Settlements (BIS), was forwarded by the Chairman of the SNB's Governing Board, Ernst Weber, to the Federal Council. In this letter, Jacobsson refers to Reichsbank Vice-President Emil Puhl's view that the convertibility of the Swiss franc «constitutes a reason for leaving Switzerland free». <sup>12</sup> In his accompanying letter to Federal Councillors Wetter and Pilet-Golaz, however, Weber made no reference to this dissuasive aspect; instead, he emphasised «Switzerland's needs» and raised the prospect of wide-ranging opportunities: «Nonetheless, there is practically no doubt that the existence of a free currency, such as the Swiss franc whose status is unique in Europe, can be of benefit to other countries on our continent as well.» <sup>13</sup> It was only after the war – especially during preparations for the Washington negotiations of spring 1946 – that the SNB directors claimed that

their gold transactions and positive relations with Germany had prevented Germany from seriously considering the option of military operations against Switzerland. In other words, they argued that by providing financial services, Switzerland had – in effect – bought its freedom from German attack. This shifting of arguments retrospectively (for the purpose of self-justification) shows how important it is to differentiate analytically between intention and effect. It is quite possible that these economic relations and especially the provision of financial services had a «security effect» for Switzerland – but the argument that this outcome had been the chief motive for engaging in these transactions is based on twisted logic. One might just as well claim that with its «business as usual» approach, the SNB had effectively prevented Switzerland from using the convertibility of its currency as a trump card in the economic negotiations with Germany, thus neutralising the dissuasive potential.<sup>14</sup>

The second set of problems relates to the legality of the transactions; it thus concerns the Reichsbank's dubious legal claim to a large part of the gold. The Reichsbank claimed that it was using its pre-war reserves for its sales to Switzerland, but the quantity of gold sold exceeded these holdings substantially. The Reichsbank's published figure for its reserves on the eve of the war was just 124 million francs. However, informed observers pointed out that the actual holdings were much higher. There was an additional 358 million francs in «secret reserves» (*«stille Reserven»*), and the Reichsbank had also acquired the gold owned by the Austrian and Czech national banks either just before or in the immediate aftermath of Germany's annexation of these countries. A realistic estimate of the amount of gold held by the Reichsbank in September 1939 (including the stocks of Austrian and Czech origin) is around 1,100 million francs – in other words, less than the amount of 1.6 to 1.7 billion francs sold to Switzerland. Germany also bought gold during the war (mostly from the Soviet Union), but this was not the major source of supply. Based on simple arithmetic and without any detailed investigation into the route taken by specific amounts of the precious metal, it is clear that some of the gold sold by the Reichsbank during the war could only have been acquired through the expropriation of central bank reserves, especially from Belgium, the Netherlands, and Luxembourg (totalling 1,582 million francs). The Reichsbank also boosted its stocks of gold through looting and expropriation of individuals: the Four-Year Plan authorities, who supervised the draconian exchange and currency controls, acquired gold worth 311 million francs. Gold expropriated from Holocaust victims in Eastern Europe and transferred to the Reichsbank in the 76 so-called «Melmer» consignments totalled 2,577 kg fine weight (with a value of 12,549,442 francs).

### The Fate of Individual Gold Bars

The detailed entries in the Reichsbank gold ledgers allow a reconstruction of the path taken by individual gold bars. Immediately after the war, US researchers used these ledgers and the detailed weights they provided (which act as a kind of fingerprint for specific recast bars) to show that the consignments to the SNB came from recast gold belonging to the National Bank of Belgium, which had been taken via Paris to Berlin. The same process for the identification of bars also allows the reconstruction of the path taken by Holocaust victim gold, especially the consignments of gold labelled by the Reichsbank as «Melmer» – sealed boxes delivered from August 1942 by SS-*Hauptsturmführer* Bruno Melmer and containing foreign exchange, precious metals, coins, and jewellery. This included dental gold, which until mid-1942 had been reused by the SS medical office (*Sanitätsamt*) for dental treatment of the SS; however, the quantities became too large to continue this use. There were 76 of these consignments in all.

Three «Melmer» bars (numbered 36903, 36904 and 36905) with a total weight of 37.5411 kilograms of fine gold (kgf) came from the seventh «Melmer» delivery on 27 November 1942, and were shipped by the Reichsbank to the SNB in Bern on 5 January 1943. Other «Melmer» bars came to Switzerland by a more circuitous route. Bars 36873 and 36874 from the second consignment (18 October 1942) and bars 36902 and 36907 from the seventh consignment (27 November and 2 December 1942) were recast together with German coins; they formed part of the 762 bars which were sold to the SNB. Four bars (37192, 37193, 37194, 37195) which arrived at the Reichsbank on 1 November 1943 were recast at the Prussian mint with coins and bars from Belgium and the Netherlands, and sold to Switzerland between 23 February 1944 and 8 June 1944. Bar 37198 was brought to the Reichsbank on 11 November 1943, recast with Dutch coins, and delivered to the SNB on 23 February 1944. In total, just under 120 kg of «Melmer» gold, with a value of 581,899 francs, was sold by the Reichsbank to Switzerland. In fact, this is a surprisingly low proportion of the total quantity of «Melmer» gold, which amounted to at least 2,580 kgf, most of which was sold through Germany's two largest commercial banks, Deutsche Bank and Dresdner Bank.

In a sense, this provides the clearest material link between Swiss banking and Nazi genocide. Except for the first three bars, the bars were recast and mixed with gold from Western European sources – looted both from natural persons and from central bank reserves – at the Prussian mint, which could recast bars, but not refine them. The refining had been done previously, almost certainly by Degussa, which issued refined gold of an equivalent weight to

customers (such as the Reichsbank) who brought gold in an impure or unrefined state (such as dental or jewellery gold). It is therefore impossible to determine what happened to the physical atoms of gold extracted from the victims of Nazi genocide.

At the same time, in the second half of 1940, as Jacobsson, Weber and Wetter were contemplating the political implications of the gold transactions, the SNB received the first indications that gold was being taken from individuals as well as from the national banks in occupied countries. Evidence that German gold had been stolen was later presented in Swiss newspapers (in particular, in the *Neue Zürcher Zeitung* in August 1942).<sup>15</sup> In its report to the Federal Council on 16 May 1946, however, the SNB claimed that Allied warnings had only made it clear in January 1943 that gold sold by Germany to the neutral countries might have been stolen (a statement which was factually incorrect, since unofficial warning voices had been heard earlier on). The clearest indication, together with details of the long history of the Belgian National Bank's gold reserves, was presented by the Governor of the Banque de France, Yves de Boisanger, in the summer of 1943, when he provided information underpinning the suspicion that the stolen Belgian gold had been taken to Berlin and was being used in international transactions. In fact, De Boisanger played a key role in the transfer of the Belgian gold to Berlin: the gold – which had been entrusted to France at the outbreak of the war – was shipped from Bordeaux to Dakar, and then taken across the Sahara back to France. Pierre-Eugène Fournier, the former Governor of the Banque de France, had refused to release it to the Germans without Belgian consent; the Vichy Government dismissed him and the more compliant De Boisanger was appointed in his place.

The warnings in January 1943 prompted a new round of discussions between the SNB general directors and the political authorities, especially in the SNB's supervisory body, the Bank Committee (*Bankausschuss*) (meetings of 22/23 July and 26/27 August 1943). At these meetings, there was a difference of opinion between Chairman of the SNB Governing Board Ernst Weber and the President of the Bank Council and the Bank Committee, Gottlieb Bachmann, who had been Weber's predecessor as Chairman of the Governing Board from 1925–1939. Weber argued that adherence to the gold standard necessitated purchases of gold from other countries, whereas Bachmann emphasised the political dimension of this issue and explained that during the First World War, Sweden and the Netherlands had refused to purchase gold on the technical grounds that such purchases would lead to a surplus of credit money. During the course of the debate, SNB Director General Paul Rossy stated that the bank had not been informed that Germans had looted any gold, and that interna-

tional law permitted the authorities of occupying powers to seize gold reserves. The SNB's motives for engaging in these transactions were never entirely clear. Indeed, it could be argued that the bank was under no obligation – during the war – to explain its conduct to anyone (explanations given *after* the event tend to involve some measure of rationalisation *ex post facto*). Indeed, it would be misleading to assume that the bank's motives had remained the same throughout the course of the conflict.

In the summer of 1940, in view of the military threat posed by Germany and its apparent domination of the entire European continent, political factors (along the lines indicated in Jacobsson's letter) may well have been important, prompting the SNB to consult the political authorities at this time. As the volume of German business with the commercial banks increased and a significant proportion of Swiss reserves was frozen due to the US blockade, centralising the gold transactions offered a convenient source of gold, which seemed important in order to maintain the international stability and convertibility of the franc after the war. In the summer of 1943, when irrefutable evidence that the German gold had been looted made it clear that the SNB had already purchased gold which had been acquired unlawfully by Germany, a new type of reasoning emerged: putting a stop to the transactions or even simply demanding «an explicit statement» from Germany attesting to the lawful origins of the gold would cast doubt on the SNB's «good faith» and lay the bank open to post-war claims from parties who had lost their gold. It was also claimed that the continuing purchases of gold from Germany were justified by Switzerland's legal status as a neutral country obliging it to accept gold regardless of who was offering it. In any case, in January 1944, Weber argued that due to this obligation under international law, the purchase of Reichsbank gold could not be rejected.

The right of seizure, on which the SNB's Governing Board had apparently based its decision to accept the legality of German gold in the summer of 1943, was problematical. This had been made clear by legal opinions to both the SNB and the Reichsbank at the time.<sup>16</sup> Under Article 53 of the Hague Convention Respecting the Laws and Customs of War on Land of 1907, this right applied only to property of the State (although the Convention also permitted the seizure, during a conflict, of appliances for the transmission of news or the transport of persons even if these appliances belonged to private individuals, on condition that they were restored and compensation fixed when peace was made). Article 46 (1) of the Convention stated that private property had to be respected (as were to be the lives of civilians as well as their religious convictions and practice). Article 46 (2) explicitly stated that private property could not be confiscated. The expropriation of gold from private individuals or private

corporations could therefore not constitute lawful seizure under the international law in force at the time (and, indeed, ever since). At that time, however, many national banks (including the Belgian and Swiss national banks) were privately owned. Indeed, in the face of demands for greater political control over monetary policy, such private ownership of central banks was frequently justified on the grounds that it protected the bank's gold reserves in the event of war, invasion, or occupation. The principles underlying these Articles of the Hague Convention had been widely endorsed during the final three decades of the nineteenth century, and in a famous precedent, the Prussian armies of 1870/71 had left the gold held by the Banque de France untouched.

The most extensive discussions with the political authorities and within the SNB's supervisory bodies thus occurred in 1943, at a moment when neither the defence argument («deterrence» or «dissuasion») put forward in 1940, nor the debate about protecting the currency which had emerged during the second half of 1941, had much weight. At the same time, the legal basis was extremely tenuous. The SNB continued to purchase gold – regardless of its problematical origins – simply because its previous conduct had created a logic and momentum of its own. The bank was a prisoner of its earlier actions.

### **Postwar restitution**

The discussions of 1943, which were based on many false premises, influenced the SNB's position after the War when the problematical nature of the gold purchases was a major theme in Switzerland's dealings with the Allies, especially in the negotiations leading to the Washington Agreement in May 1946. Two possible lines of defence were put forward: firstly, it was claimed that the gold purchases were required as a result of Switzerland's neutrality (this is as unconvincing an argument as the opposite view, often put forward by the Allies, that the purchases violated Switzerland's neutrality). In fact, neutrality neither prohibited nor required such purchases: it merely permitted them. The second line of defence – that the SNB had no reason to believe that the gold was not part of Germany's pre-war reserves – was also tenuous and was contradicted by the Allies' interrogation of Reichsbank Vice-President Puhl, who stated that the SNB directors had been aware of the situation regarding the Belgian gold. Switzerland's position was further undermined by a bitter struggle among the SNB directors on the issue of who had been responsible for the wartime gold policy. In addition, during the Washington negotiations of 1946, internal documents came to light, to which the US had access as well, and which revealed the internal polemic which had taken place in Switzerland (including the anti-Semitic views and comments of SNB Director General Alfred Hirs).

The eventual outcome of the Washington Agreement – Switzerland's payment

of 250 million francs, half of which was contributed by the SNB, in exchange for the surrender of all claims relating to its role in the incriminating gold transactions during the war years – was based largely on Allied calculations which centred on the amount of Belgian gold which had reached Switzerland. Indeed, in May 1946, the fate of the gold from the Netherlands National Bank – some of which had also been sold by Germany to Switzerland – and gold owned by private individuals (such as the Melmer consignments to the Reichsbank) had not yet been clearly established by the Allies. The Dutch Government only became aware of this fact when it was already too late to amend the provisions of the Washington Agreement and the amount to be paid by Switzerland. As a result, the explosive issue of the gold from the Netherlands (which was presumed to include a substantial amount taken from victims of Nazi occupation) was never raised in Washington.

In a technical sense, i.e., in terms of its monetary policy, the SNB conducted itself with greater autonomy and competence than during the First World War. However, starting from 1942 in particular, it made a number of key decisions relating to the German gold transactions which had little to do with the technical aspects of currency management. Its analysis of the legal position after 1943 was fundamentally flawed. It was an affront to the Allies, who had repeatedly warned Switzerland about the gold purchases, as well as to its own advisors and the Swiss jurists whom it had consulted. It is hardly surprising that the SNB's decisions have – quite legitimately – been the subject of historical and moral assessment on frequent occasions, and that its decisions are judged as having been reprehensible.

<sup>1</sup> Unless otherwise stated, this section is based on UEK, Goldtransaktionen, 2002 (Publications of the ICE); Grossen, Transactions, 2001 (Publications of the ICE).

<sup>2</sup> SNB Archives, minutes of the Bank Committee, 21 November 1940, p. 692 (original German).

<sup>3</sup> Steinberg, Deutsche Bank, 1999, p. 56.

<sup>4</sup> Interview with Philippe Marguerat, *L'Hebdo*, 23 May 1985, p. 90; Jean-Christian Lambelet: Wo blieb der ökonomische Sachverständ der Bergier Kommission. Das Verhalten der Schweizerischen Nationalbank war besser als ihr Ruf, in: *Neue Zürcher Zeitung*, 31 June 1998. For other publications by Marguerat and Lambelet see ICE, Goldtransaktionen, 2002 (Publications of the ICE).

<sup>5</sup> See Crettol/Halbeisen, Hintergründe, 1999.

<sup>6</sup> See Rings, Raubgold, 1985; Smith, Hitler's Gold, 1989; Jost, Bedrohung, 1983.

<sup>7</sup> Nazi Gold: Information from the British Archives, History Notes No. 11, 1996. The mix-up was also an issue in the press, see *Neue Zürcher Zeitung*, 19 September 1996, and the British Foreign Ministry published a revised version of its report: Nazi Gold: Information from British Archives, Revised January 1997.

<sup>8</sup> Eizenstat, Efforts, 1997.

<sup>9</sup> Downplaying this statement in an interview with the *Cash* magazine, No. 17, 27 April 2001.

<sup>10</sup> Commission, Deutsche Bank, 1998; Bähr, Goldhandel, 1999.

- <sup>11</sup> Banken, Degussa, 1999.
- <sup>12</sup> SNB Archives, 2224, Jacobsson to Weber, 25 November 1940 (original German); see also Perrenoud, Banques, 1987/88, pp. 53–54; DDS, Vol. 13, No. 419; Marguerat, Suisse, 1991, p. 113; Fior, Schweiz, 1997, pp. 73–74.
- <sup>13</sup> Quoted in Perrenoud, Banques, 1987/88, p. 53 (original German). See also Basel University Library, Manuscript Department, NL Per Jacobsson, Diary, 27 November 1940.
- <sup>14</sup> This is the argument put forward by Maissen, Nationalbank, 1999, p. 539.
- <sup>15</sup> Salomon Wolff: Das Gold in der Kriegswirtschaft, in: *Neue Zürcher Zeitung*, No. 1291, 16 August 1942, p. 4.
- <sup>16</sup> SNB Legal Service, note of 5 April 1944; Schindler, expert opinion of 22 July 1944, which was commissioned by the SNB, and Sauser-Hall, expert opinion of 28 March 1946. Astonishingly, the Reichsbank lawyers in Berlin came to the same conclusion.

## 4.6 The Banking System and Financial Services

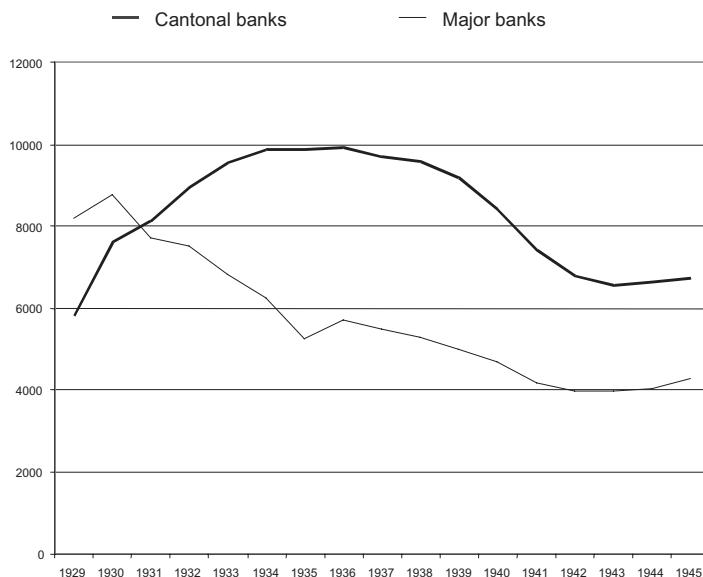
The question of how the Swiss banks dealt with the assets of victims of National Socialism and Nazi agents was the catalyst for the most recent debate surrounding Switzerland's relationship with Nazi Germany.<sup>1</sup> After the First World War, Switzerland had become an important international financial centre. Against the background of the world economic crisis two problematic developments emerged: firstly, Swiss banks had to face the fact that their business assets in Germany were blocked from 1931 on; and secondly, large amounts of flight capital were flowing into Switzerland, some of whose owners remained silent even before 1945, while others sent capital which became «dormant» in the post-war period. The following section provides an overview of some characteristics of the structure of the Swiss financial centre. It then addresses the relationship between Swiss banks and their business operations with Germany during the war, deals with the trade in securities, and finally examines the causes for later dormant accounts.

### Swiss banking in the inter-war period

The Swiss financial centre comprised a broad spectrum of banks, financial and holding companies, investment trusts and intermediaries (trustees, lawyers, and notaries). The bank sector was made up of the major banks, private, cantonal, and local banks. In 1939, there was a total of 363 banks in Switzerland whose balance-sheet totals together amounted to 17.7 billion francs. The *major banks* included (in order of size of the balance-sheet total) the Swiss Bank Corporation – SBC (*Schweizerischer Bankverein*, SBV), the Credit Suisse – CS (*Schweizerische Kreditanstalt*, SKA), the Swiss Volksbank (*Schweizerische Volksbank*, SVB), the Union Bank of Switzerland – UBS (*Schweizerische Bankgesellschaft*, SBG), the Federal Bank – FB (*Eidgenössische Bank*, EIBA), Leu & Co. AG and the Basel Commercial Bank – BCB (*Basler Handelsbank*, BHB). They financed international trading and long-term industrial investment, yet were also involved in short-term transactions. A second group comprises the cantonal banks which fundamentally differed from major and private banks in that they were public companies with a state guarantee. It must be said, however, that some of the cantonal banks acquired a highly international clientele. These included the Bernese Cantonal Bank, the Basel Cantonal Bank, and in particular the Zurich Cantonal Bank which, in 1939, had a higher balance-sheet total than the largest major bank. Together the cantonal banks held 44.4% of the sum of the balance-sheet totals of all the banks, while the major banks held only 24.2%. The Swiss National Bank's definition of local banks included 80 *Bodenkreditbanken* (over 60% of the balance-sheet total made up by Swiss mortgage loans), including

**Figure 5:**

**Balance-sheet totals of Swiss banks in million constant francs, 1929–1945**

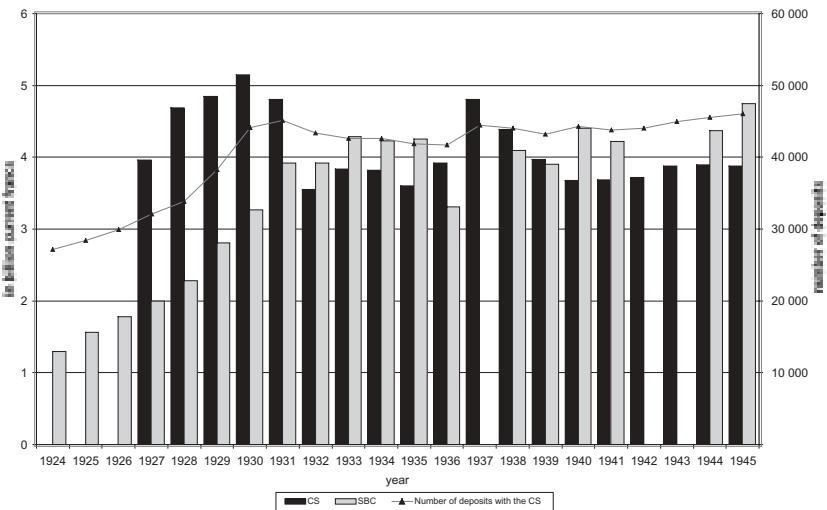


Source: SNB, *Das schweizerische Bankwesen im Jahre*, [various years].

some quite large institutions. The balance-sheet total of the Schweizerische Bodenkreditanstalt (SBKA) in Zurich, for example, exceeded that of 138 banks, including two major institutions. The Swiss National Bank's statistics also included 679 co-operative banks and 111 savings banks. Finally, there were also 86 private banks that dealt with a range of banking operations including trade financing, trading in securities, stock-exchange transactions, and in particular asset management.

In the five-year period between 1930 and 1935, the balance-sheet total of the major banks fell by more than half in contrast to the cantonal banks, whose balance-sheet totals remained generally stable. This drop reflected the susceptibility of the major banks to international financial crises. Once the balance-sheet totals had stabilised again during the second half of the 1930s, the banks enjoyed a modest rate of growth during the Second World War. An analysis of economic trends should not be based on balance sheets alone, however, since the Swiss banks also managed security deposits which did not appear on the balance sheet. The volume of the assets which were not included in the balance sheet was one of the banks' best-kept secrets. Estimates made so far lack the necessary basic data and have since been shown to be way below the real figures. On the basis of investigations carried out by the ICE and the ICEP in the archives of

**Figure 6: Customers security deposits held by the Credit Suisse and the Swiss Bank Corporation (in billion current francs)**



For the criteria used see Perrenoud/López/Adank/Baumann/Cortat/Peters, Place financière, 2002 (Publications of the ICE), Chapter 1.

Source: CSG Archives, SKA Fund, 13.116.201.301, «Statistik über die Entwicklung»; UBS AG Archives, SBV Fund, 1000023563.

the financial institutions in question, the total value of the accounts managed in 1945 that were not included in balance sheets can be estimated at over 20 billion francs.<sup>2</sup> This value was thus higher than the balance-sheet totals. Detailed information covering a longer period is only available for the Credit Suisse and the Swiss Bank Corporation.

The drop in balance-sheet totals in the first half of the 1930s was also partly due to the fact that foreign customers increasingly used deposit accounts, which were not included in the balance sheet, for the safe-keeping of their assets. Deposit management was encouraged by the banks since it offered them good and regular opportunities to turn a profit.

During the First World War, the Swiss financial centre had become a neutral trading centre and «hub» for capital.<sup>3</sup> In the subsequent years, the country, with its hard currency, appeared to be an island of stability in the middle of a stormy ocean of devaluation. For many European investors, an account with a Swiss bank represented provisions stored away for bad times. During the 1920s and in particular in the 1930s, the signs of political, economic and military unrest led to massive international movements of capital, with so-called «hot money» – short-term placement capital for speculative investment – being a new

phenomenon. Having such a well-established financial sector, Switzerland was bound to play a central role in numerous transactions, i.e., in the in- and out-flow of such funds.

The greatest influx of capital came from France. In particular after the Popular Front's election victory in 1936, many French people transferred their capital to Switzerland because they feared that taxes would increase at home and that the exchange rate would change. After the Swiss franc was devalued in September 1936, large amounts of foreign, in particular French, capital were once again deposited in Swiss accounts.

While short-term capital movements were based principally on foreign exchange speculation, long-term investment was in many cases either a method of tax evasion or a reaction to political instability. There were, however, reasons for movement of capital which did not involve a search for stability. The increasing persecution of, and discrimination against, certain population groups practised by the Nazis in Germany and in other areas of Central Europe led these people to attempt to protect their assets from usurpation by transferring them abroad, notably to Switzerland.

The huge capital flows and the movement of enormous amounts of hot money had a political aspect as well as an economic one. The strict control of capital movements by the German authorities inevitably entailed the usual consequences: flight of capital, lack of transparency, concealment, and corruption. These problems affected not only the capital movements between Germany and Switzerland, however, since in the second half of the 1930s the largest sums were transferred to the USA. Swiss investors in particular often adopted a strategy of regrouping capital and placing investments in the United States. In this way, the major Swiss banks too held an ever-growing amount of assets outside Switzerland and, increasingly, in the USA during the 1930s. According to information provided by the US Department of Trade, assets of Swiss origin constituted 4% of long-term investments in the USA in 1929, and as much as 8% in 1934.<sup>4</sup> This flow of capital principally represented a reaction to the economic crisis and to the general instability of currencies after 1931. Later, when the risk of war became the main driving force behind the redeployment of capital, the flow of funds in the direction of the USA increased even further. Between 1935 and 1937, the Swiss Bank Corporation placed almost half of its assets abroad, and in 1936 a Board member of Credit Suisse remarked, «The future of Swiss finance [...] is probably overseas and especially in the English-speaking world.»<sup>5</sup> The fact that in the second half of the 1930s Swiss banks focused on the New York market was also due to pressure from part of their clientele; in particular, a growing number of foreign customers (including many real and potential victims of racial and political persecution) were very

concerned about security and occasionally tried to ensure that the Swiss banks deposited their assets in a country they thought safe.

While currency instability in other countries caused capital to be transferred to Swiss banks, there was a justified fear that this capital flow (conditional upon speculation) could reverse its course. The Swiss National Bank, which was responsible for regulating the money supply, kept a close watch on the short-term flow of capital. Other countries had already fallen victim to such short-term movements of funds: between 1931 and 1933 banks in the USA lost foreign deposits when the gold standard was abandoned, and from April 1933 on, enormous sums were also withdrawn from French banks (at first much of this money was deposited in Switzerland). In 1935 there was indeed a lot of speculation against the Swiss franc, and the gold reserves held by the Swiss National Bank declined by 744 million francs in the first five months of 1935. The Swiss National Bank and the other banks reacted to this development in June 1935 by drawing up a gentlemen's agreement prohibiting gold trading with private customers as well as foreign currency time-deposits. And in June 1936, the Federal Council passed a Decree which made speculating against the Swiss franc a criminal offence. For various reasons, including the fact that these measures were – as could have been foreseen – not successful, the Swiss government joined the gold-bloc and devalued the Swiss franc in September 1936. Furthermore, an attempt was made to attenuate the destabilising influx of hot money through a new gentlemen's agreement in November 1937. This agreement between the banks and the Swiss National Bank underlined the desire to protect Switzerland's interests by «deterring an excessive influx of foreign funds and, as far as flight capital was concerned, to stimulate its exodus». Most of the banks agreed not to pay interest on foreign current accounts and to charge a 1% commission on time deposits.<sup>6</sup> This led to a drop of 917 million francs in 1937 and 709 million francs in 1939 in the total assets deposited by foreign customers with the major Swiss banks, although towards the end of the war the total amount was again over 900 million francs (1944: 902 million francs).<sup>7</sup> The high rate of fluctuation in international movement of capital had left the Swiss banks vulnerable, since funds deposited might be withdrawn at any time to speculate against the Swiss franc. They would thus have been better off had they invested «bad» or «hot» money with care and only lent a small proportion of it.<sup>8</sup> Nevertheless, not every bank had kept to this basic rule: the only major bank in the French-speaking part of Switzerland, the Geneva Comptoir d'Escompte, had considerable assets in Central Europe and was already having problems as early as 1931. Attempts to save the bank with the help of an underwriting consortium of other banks and later through a merger with the Union Financière were unsuccessful; in 1934,

the Geneva bank had to be liquidated. The Swiss Volksbank, which was also facing problems, survived only thanks to an injection of 100 million francs from state funds.<sup>9</sup> However, the smaller of the major Swiss banks were most vulnerable in Central Europe. The economic crises in this area had fatal consequences for some of them. In April 1931, the Basel Commercial Bank (BCB) began to reduce its open loans in Central Europe. In July of the same year, the Federal Bank (FB), whose assets in Germany constituted 46% of the balance-sheet total in 1930, began to call in its German loans. These two banks and Bank Leu & Co. were facing enormous losses and started to buy up their own shares in order to maintain the share price. These desperate measures were of no avail, however, and rates remained low. The BCB asked for and was granted support from public coffers. Despite these additional funds, its position remained precarious and in 1937 it even had to be granted a call-date extension. Later the financially weakened BCB and FB also came into political discredit because of their loan transactions in Germany. While the socialist press claimed that they had collaborated with «Nazi firms» the *Finanz-Revue* magazine described the banks in a more lenient way as «victims of excessive confidence in a peaceful economic upturn in Germany after the First World War».<sup>10</sup> They were never able to recover from the crisis they went through in 1931. The FB was taken over by the Union Bank of Switzerland on 9 September 1945, and only a few weeks later, on 30 October 1945, the Basel Commercial Bank was bought up by the Swiss Bank Corporation.

The banking crisis in Switzerland was the result of the world-wide economic depression. Although the negative repercussions were not the same for every bank, they all wanted to strengthen their reputation as reliable and discreet asset managers in order to be able to continue in their role as a channel for transferring capital to the USA. They managed to obtain financial assistance from the Swiss government and to ensure that a banking law was passed which prevented state interference in their business policy and their customer relations. In addition, as part of this first Federal Law on Banks and Savings Institutions, the introduction of banking secrecy was approved on 8 November 1934.<sup>11</sup> Article 47 (1b) of this Law contained the following clause:

«If any organ, official, or employee of a bank, any auditor or assistant auditor, any member of the bank commission, official or employee of its secretariat deliberately violates, is induced to violate or induces others to violate the professional secrecy clause, he or she shall be fined up to 20,000 francs or be liable to imprisonment of up to 6 months, with the possibility of the two sentences being combined; if the culprit is found to be guilty through negligence, he or she may be fined up to 10,000 francs.»

The threat of punishment was so high because the espionage activities of the French and German tax authorities had considerably increased during the previous few years and Swiss bank employees had on occasion provided them with names and other data concerning customers. Banking secrecy added protection by the penal code to long-standing professional secrecy; from then on, all breaches were considered as public crimes (state investigators were to act even if no charges had been filed). In 1934, the main concern of the Federal Council and the Swiss parliament was to ensure that an optimum legal framework existed for asset management in Switzerland and to limit the rampant foreign espionage in the banking sector, and not – as occasionally claimed later – to protect the assets of Jewish customers from confiscation by the Nazi regime. Yet the protection of customers' interests, which often coincided with the banks' own interests, was also of importance. The measures taken, however, did not suffice to completely prevent one or two spies from acquiring information about accounts held by German citizens, in particular those persecuted by the Nazi regime. An employee of Credit Suisse in Basel, for example, provided the German authorities with information about 74 customer relations. The violation of the law was revealed when the German account holders were forced by the tax authorities to transfer their deposits to Germany. The employee in question was sentenced to life imprisonment by a military court in September 1943.<sup>12</sup>

#### **The relationship between the Swiss banks and Germany, 1931–1939**

In the second half of the 1920s, the major Swiss banks had expanded rapidly. As already mentioned, they were considered reliable and stable financial institutions and attracted considerable investment from abroad, even if Swiss interest rates were generally lower than those offered in inflation-plagued Central Europe. The funds deposited in Swiss banks came from Germany among other countries. However, since ever stricter measures were taken there to stem the illegal flow of funds out of the country and penalties became particularly severe after 1933, the influx of capital from Germany decreased after the mid-1930s. Some German customers cashed in their securities deposits with Swiss banks and withdrew their assets. The majority, however, left their money in Switzerland regardless of the German laws. As a rule, these assets were concealed with the help of intermediaries, trustees, and holding companies set up specifically for this purpose.

The close relationship between the Swiss banks and Germany worked both ways, however. The banks placed a substantial part of their assets abroad, particularly in Germany – partly owing to the limited capacity of the Swiss capital market and partly because of higher returns. The added value represented by

the Swiss institutions was the guarantee of stability, real or imagined. When, however, the international financial system began to crumble in 1931, even this guarantee seemed less certain; many Swiss banks suddenly felt they were vulnerable. The collapse of the Austrian Creditanstalt in May 1931 and the German Darmstädter- und Nationalbank in July of the same year also affected Swiss banks. The problems faced by the Basel Commercial Bank and the Federal Bank have already been mentioned. Since at the same time a considerable proportion of the assets were frozen, i.e., immobilised by foreign exchange control, the liquidity of the Swiss banks suffered. In a few cases, the loss of foreign assets led to insolvency. In July 1931, after the start of the economic crisis in Germany, an estimated 16% of total short-term German liabilities fell to Switzerland.<sup>13</sup> At the end of 1931, loans to Germany constituted 23% of the balance-sheet total of the Credit Suisse; the corresponding figure for the Union Bank of Switzerland was 20% (September 1931), and for the Swiss Bank Corporation 19%.<sup>14</sup>

Throughout the 1930s, the volume of assets abroad remained a problem for the Swiss banks. Table 6 shows that in 1934 the blocked loans of the three largest major banks constituted between one eighth and one fifth of the balance-sheet totals, in contrast to those institutions where this proportion was as much as a quarter or even a third, and which (as in the case of the FB and the BCB) were taken over by competitors in 1945 or (as in the case of Bank Leu) had to take drastic measures to restore their financial stability. A comparatively high proportion of these immobilised assets were in Germany.

**Table 6: Foreign assets of major Swiss banks in 1934 (in Million francs)**

	SBC	CS	UBS	FB	BCB	Leu	SVB
1. Balance-sheet total	1199	1146	558	435	416	307	937
2. Foreign assets	-	-	190	172	224	102	176
3. Amount subject to foreign exchange transfer restrictions	150	200	115	143	153	84	144
4. No. 3 as % of no. 1	13	18	20	33	37	27	15
5. Assets subject to foreign exchange control in Germany	105	183	89	135	117	75	116
6. Capital and reserves	200	206	112	107	88	47	198

Source: Perrenoud/López/Adank/Baumann/Cortat/Peters, Place financière, 2002 (Publications of the ICE), Chapter 1.

For the British and American banks whose loans were more frequently for business transactions, the larger part of their short-term engagements in Germany (72.4%) consisted of reimbursement credits for trade in merchandise.

For the Swiss banking institutions, this sector represented only around one-third of their assets (32.5%), the most important part being cash credits (45.2%) which comprised mostly credits to German companies. These loans appeared *per se* to be more risky than trade in merchandise, since they had often been used for long-term investment and during the Depression many German firms had lost virtually all their liquid assets and were consequently insolvent. After 1931, the Swiss banks thus found themselves in an unfavourable situation: while they had to honour their liabilities towards German creditors in the normal way, their own assets in Germany remained frozen.

It is clear that, in this situation, the Swiss banks set great store by a rapid economic recovery in Germany so that outstanding debts could be paid off. They were therefore open to innovative solutions which were aimed at raising the marketability of these short-term loans that had in fact been used for long-term investment. In the negotiations on these liabilities, the claiming banks were represented by committees set up by the German States (*Länderkomitees*). The Swiss Banking Commission saw a possible solution in the reorganisation of outstanding German debts, i.e., converting the cash loans into long-term investments in Germany. This proposal was finally included as Article 10 in the so-called standstill agreement of 1932, which replaced the 6-month agreement signed in August 1931. On this basis, Swiss creditors had by 1933 converted loans totalling 23.3 million reichsmarks, representing three-quarters of all such transactions. Through the standstill agreements, they managed to continually reduce the volume of assets blocked in Germany. Still totalling 900 million francs in 1934, they had fallen to 250 million francs by the start of the war (1939) and to only 153 million francs by the time it was over (1946).

The credit agreements had their flaws, however. German-dominated companies with head offices in Switzerland could obtain funds in Switzerland and immediately lend them to firms in Germany without those loans appearing as German debts in the statistics. For example, in 1929, the Union Bank of Switzerland granted a loan to the firm Non Ferrum whose head office was in Zurich but which was controlled by a Silesian mining company belonging to Bergbau-gesellschaft Georg von Giesche's Erben. Non Ferrum lent the money to the German parent company. This massive loan, which was the UBS's largest single credit accorded in 1936, was included in the standstill agreement only in 1937. Hitler's seizure of power on 30 January 1933 marked the start of a new phase in German foreign exchange control. The situation of the Swiss banks, which had sizeable assets in Germany, became critical when on 8 June 1933 Germany proclaimed a moratorium on the transfer abroad of interest on long-term debts. Swiss financial institutions and investors had to accept the fact that a considerable proportion of their funds was blocked. Negotiations soon started on the

resumption of debt service and were pursued with great determination on both sides. Germany was able to put pressure on Switzerland and other creditors using as leverage the debts owed to them. It was at this time that John Maynard Keynes made his famous remark about the power of the debtor. According to Keynes, a person owing the bank £ 100 has a problem. If, however, that same person owes the bank £ 100,000, it is the bank which has a problem. Under the circumstances prevailing at the time, Switzerland was a banker with an enormous problem. The question arose as to the extent to which Switzerland was willing or in a position to withstand pressure from Germany. Since there was considerable interest on both sides in maintaining functional financial relations, Germany indicated that it was ready to negotiate and was also prepared to make concessions. The discussions on the resumption of debt service led to the conclusion of a first «special agreement» between the two countries in October 1933. This agreement was updated each year and guaranteed the transfer of a large part of the outstanding interest due to the Swiss banks. This solution satisfied the requirements of the banks, which were far more interested in regular interest payments than the availability of capital stock. After Germany extended the ban on transferring funds abroad on 14 June 1934, long-term capital interest was included in the first Germano-Swiss Clearing Agreement. An unequivocal consequence of German pressure and Swiss diplomacy in 1933/34 was the fact that Germany was in a position to breach the solid front of international creditor banks, a manoeuvre that suited the wishes of the major Swiss banks too.

In the 1930s, negotiations on frozen capital demands remained a central issue of financial diplomacy. Up until February 1938, total German debts abroad were continually reduced through gradual repayments, redemption on secondary markets (see below), and partly also as a result of the devaluation of all creditors' currencies (pound sterling in September 1931, the dollar in April 1933, and the franc in September 1936). Germany's total debts to Switzerland fell from 3.1 billion reichsmarks to 1.3 billion reichsmarks (a drop of 58%) between July 1931 and February 1938, while debts to the USA decreased by an even greater rate of 69% and those to Great Britain by 53% over the same period.<sup>15</sup>

Under the given conditions, the Swiss bankers achieved their aims in the negotiations. But how did they perceive their negotiating partners, i.e., the Nazi regime? The National Socialist movement had never made a secret of its animosity towards international financial capital so that a stricter attitude on the question of debt retirements was to be expected, and manifested itself in the negotiations held in 1933 and 1934, as well as in the partial moratoria. On the other hand, the government appeared to have become more stable and bankers

had the impression that they were dealing with a trustworthy partner. Many Swiss bankers tended to view the new regime in a positive light all in all. Like a large section of the German financial sector, they felt that the fact that the danger of a socialist form of National Socialism seemed to have been eliminated was especially important and that there was little likelihood of the German banks being destroyed or nationalised. The impression also prevailed that the authorities responsible for economic policy (in particular the Reichsbank) were successful in their efforts, evidently based on economic reasons, to repress anti-Semitic outbreaks. Nazi Germany was therefore considered a respectable negotiating partner by Swiss bankers. After returning from a trip to Berlin in April 1933 (shortly after the «boycott» of Jewish businesses on 1 April that year which was stopped by an official order), Rudolf Bindschedler, Managing Director of Credit Suisse, for example, reported to his colleagues that the basic tenets of Hitler's government were anchored in the Christian faith, family values, and respect for private property. Its merit lay in the fact that «communism has been put down once and for all, which means that Europe has perhaps been saved from Bolshevism and Western culture will remain intact.» At that time, «the Jewish question, in which there had been an easing of tension», seemed «to have been settled for the time being». <sup>16</sup> Although it was believed that there was political «detente», the economic prospects did not look any brighter. During these months German firms which were dependent on the state in one way or another, either because they relied on public contracts or needed public funding for reorganisation, were put under pressure to remove all Jews from senior management positions. In view of the «politicisation of the economy», the directors of Credit Suisse were no longer entirely confident about the future prospects of Jewish companies. They tended more to concern themselves with loans already granted to such firms, in particular with some of the department-stores which were being badly harassed by the Nazis, such as Leonhard Tietz AG and Rudolph Karstadt AG.

#### **Banking operations with Nazi Germany until the end of the war**

After the outbreak of the Second World War in September 1939, the British and American banks cancelled their participation in the German credit agreement. The Swiss banks, for their part, signed a further agreement with Germany on 18 September 1939 which formed an irrevocable basis for maintaining their mutual relationship and for this reason was also welcomed by the Germans. From 1942 on, the representatives of the Swiss banks demanded higher repayments and the cancellation of unused credit lines, no doubt as a reaction to the change in the military situation which appeared to strengthen their negotiating position. In order to maintain their special

position they were still prepared at this stage of the war to grant German customers new loans.

The contracts were also valid for the areas occupied and annexed by Germany. Thus, according to the terms of a further contract signed in October 1940, outstanding debts in occupied countries were also absorbed (17 million francs for the «Protectorate of Bohemia and Moravia», 28 million francs for the annexed areas of Poland, and 11 million francs for the «*Generalgouvernement*» (the Polish territory under German rule). In February 1942 further regions were added, namely Alsace, Lorraine and Luxembourg (despite the protests of the exiled governments). In connection with these agreements, the idea was considered of using deposits held in Swiss banks that had originated in Alsace and Lorraine to offset any claims in these areas on the part of Swiss banks. However, since the German foreign exchange authorities were aware of only a small part of these assets – which meant that the larger part of the assets was not available for use as compensation – the negotiations, which would undoubtedly have been against the interests of the account holders, were not successful. Nevertheless, in compliance with the rules and regulations, at the beginning of 1942, the Swiss provided the new occupying forces with information on Alsatian shares being held in Switzerland.

During the war, the Swiss banks granted loans to a large variety of German companies. In so doing, they were also involved in businesses connected with the armament of Germany and the Holocaust. Credit Suisse worked closely with Deutsche Bank, while the Swiss Bank Corporation had a close relationship with Dresdner Bank. In both cases, the result was close cooperation in some of the most questionable transactions of the wartime period: dealings with gold booty and/or looted gold.<sup>17</sup> As late as 1943, the Union Bank of Switzerland granted Deutsche Bank a new loan of over 500,000 francs. Relations were maintained until the end of the war and even later.

The three largest Swiss banks also courted business with the Bank der Deutschen Luftfahrt which had been founded in 1939 for the express purpose of expanding the *Luftwaffe's* capacity. Until 1942, it was the Swiss Bank Corporation which was the most involved in granting loans, after which the Union Bank of Switzerland attempted to advance dealings; as of 1943, Credit Suisse which provided most of the loans to the Bank der Deutschen Luftfahrt.

Loans were also granted to German industrial companies. In 1940, Credit Suisse converted a loan originally made to the Berliner Elektrizitätswerke into a 3-year loan to IG Farbenindustrie, primarily because the new credit seemed to have solid backing in the form of the company's assets held in Portugal. The same year the Swiss Bank Corporation granted a 2-year loan to IG Farben and the Union Bank of Switzerland did the same for its Slovakian subsidiary Dynamit

Nobel AG in Bratislava. The banks continued to lend money to IG Farben in 1941 and 1942. The SBC even helped the company out in enemy territory in 1943 when it granted IG Farben loans in pounds sterling for the purchase of Romanian oil shares. It is extremely difficult to determine today how these loans were in fact used and, in view of the interchangeable character of money, it is in many cases impossible. Basically, they offered the possibility of purchasing foreign exchange. It is not possible, however, to establish a direct link between these loans and, for example, the funding of the enormous IG Farben chemical plant in the vicinity of the Auschwitz concentration camp. The loans were probably used for importing raw materials that may well have been used in Auschwitz-Monowitz. For the Swiss banks the main purpose of these loans was to deconcentrate the open credit items and regroup them among financially strong debtors which, if Germany were to lose the war, would offer the most security.

In some cases, Swiss loans were used for constructing buildings which, forming an immediate part of the military infrastructure, were also connected to the Nazi genocide. In 1941 and 1942, for example, the Union Bank of Switzerland and the Swiss Bank Corporation tendered for the financing of a supply of wooden sheds from Switzerland to the *Wehrmacht* and the SS. The transaction was completed in an unusual and covert way; in addition, bribes were paid to a series of well-positioned middlemen including General Guisan's son, Henry Guisan, who received a commission of 13,000 francs.<sup>18</sup>

Other transactions, equally questionable, were carried out by less central institutions. For example the Schweizerische Bodenkreditanstalt (SBKA), a mortgage bank associated with Credit Suisse, gradually specialised in liquidating those non-transferable German liabilities (in so-called *Sperrmark*, i.e., blocked marks) towards Swiss banks which had originated with the debt moratoria of 1933 and 1934.<sup>19</sup> The Bodenkreditanstalt developed various methods of liquidating or indirectly transferring stocks of marks that were frozen in Germany. For this purpose it built up a network of personal contacts including Wilhelm Frick, a Zurich lawyer, and Wilhelm Oeding, a confidant of Hermann Goering. The SBKA would obtain a permit to pay for goods and raw materials imported from Germany in Sperrmark and to be credited the purchase price by the Swiss buyers in Swiss francs. These sorts of transactions always involved considerable bribes or commissions. During the war years, the transactions became more complicated and obtaining a permit to use Sperrmark involved ever more time-consuming conditions such as supplying strategically important goods to Germany. In this way, 3% of the total German demand for tungsten, which was essential for the production of special steel, was supplied to the Third Reich through the offices of the Bodenkreditanstalt.

The banks provided Germany with other financial services as well. They were involved in foreign currency dealings, the purchase and sale of banknotes, helped with gold transactions, financed business dealings, and facilitated three-way business with other countries.

A particularly problematic aspect of banking relations with Nazi Germany was the trade in securities. In the 1920s, the trade in securities played an important role for financial institutions which concentrated on international dealings. As a result of the crisis in the banking sector, this type of trade decreased so drastically between 1930 and 1935, even on the Swiss stock exchanges, that many small banks and brokers had to close. Other small banks and banking institutions (such as the Gesellschaft für Finanzgeschäfte AG in Zurich, Arbitrium AG in Zug and Winterstein & Co. in Zurich) sought a way out of their dilemma by specialising in the acquisition of German bonds (interest or dividend coupons). These were bought on the secondary market and transferred to Germany where they were redeemed. These special firms operated principally as collection points for small and therefore non-sellable packages of coupons. According to Friedrich von Tscharner, director of Discont-Credit AG in Zurich:

«The nature of this business implies that it is better carried out by a smaller firm because in this way the necessary concentration and control of the various sectors is guaranteed. At the same time you have to maintain contact with people with whom a major bank might not want to have regular dealings, although this doesn't necessarily mean dubious parties.»<sup>20</sup>

Another field in which the banks specialised was the redemption of German securities in Switzerland and, after the outbreak of the war, in the USA and other countries. These securities were redeemed directly for various German firms at first. From the middle of the 1930s on, they were sent in bundles to the Deutsche Golddiskontbank. In 1940 and 1941, the firm Otto Wolff redeemed large packages of German securities in Switzerland on behalf of Hermann Göring, who was responsible for the 4-year plan. The attraction of this type of business lay in the fact that German firms could buy back unredeemed bonds at very low prices (often 20% to 50% below their nominal value), while the vendors were happy to be able to limit their losses as rates were constantly dropping. Since Swiss securities were given preference according to the Germano-Swiss standstill agreement of 1933, they had to be accompanied by a certificate to confirm that they were Swiss and not foreign property. During the war the number of such affidavits, confirmations and guarantees of all sorts mushroomed. The Germans demanded declarations that the securities did not belong to citizens of «enemy states», while the Allies demanded «assurance»

that the securities in question were owned by Swiss or neutral parties. In some cases, bank employees and financiers issued false affidavits on behalf of foreign customers. This was not considered a problem since it was felt that nobody would be hurt. The Swiss firms involved, in any case, benefited from such coupon and redemption operations and the issuing of false affidavits. Such dealings also provided a channel through which Nazi agents could cash in their assets and often profited those persecuted by the Nazi regime too, since for many emigrants and refugees this was the only way they could sell their coupons and securities for foreign currency.

To prevent the Germans disposing of securities in Switzerland which they had looted in occupied areas, the stock exchanges introduced so-called declarations of Swiss ownership at the end of 1940. If the authorities discovered false documents they, and in particular the Federal Department of Economic Affairs (*Eidgenössisches Volkswirtschaftsdepartement*, EVD), were for the major part of the opinion that even in this sort of dubious trading, in the end a false affidavit would not harm anyone, and subsequently overlooked the misuse of such documents.<sup>21</sup> It was thus possible to conceal an extensive trade in looted securities in 1941 and the first few months of 1942 by using false affidavits. Stocks such as Royal Dutch or CHADE shares, which were easily traded on the international market, seemed to the German authorities to be attractive sources of foreign currency. This business was conducted in the main via Eisenhandelsgesellschaft Otto Wolff in Cologne and the small Sponholz Bank in Berlin, as well as their partners in Switzerland. Overall, the Federal Bank sold 27,000 Royal Dutch shares and 6,000 CHADE shares on behalf of Otto Wolff. Although the banks knew that a certain quantity of looted securities was involved other institutions too were not overly careful about securities trading with Germany. Bank Vontobel, for example, enjoyed close business relations with Bankhaus Sponholz, as did the Hofmann Bank with the Deutsche Golddiskontbank. Some banks (namely Credit Suisse) issued instructions to their staff as soon as the war broke out to systematically check securities from Germany and the occupied territories.

The largely unregulated character of the Swiss securities markets favoured dubious trading. Leading representatives of the banks did in fact discuss the risks involved in such transactions, but the vast majority were only in favour of self-regulation and were against legal state control.<sup>22</sup> This form of control retrospectively proved to be inadequate. After the Germans occupied Belgium and the Netherlands in 1940, i.e., when a German invasion of Switzerland seemed most imminent, the stock exchanges closed for two months. Trading in securities from the occupied territories was suspended for some time afterwards too, but was later revived. Some of the securities were traded with declarations

of Swiss ownership, others without (and at lower prices). Trade in Royal Dutch shares was taken up again towards the end of 1942, after having been suspended for some months. This sort of trading was the subject of the first warning issued by the Allies in January 1943, when they stated that the acquisition of assets looted by the Germans was inadmissible. In 1943, the major Swiss banks stopped trading in Royal Dutch shares and left it to smaller firms which were less in the public eye. In 1946, the value of securities of dubious provenance to find their way to Switzerland during the war was estimated by the Federal Department of Finance (*Eidgenössisches Finanzdepartement*, EFD) to be between 50 and 100 million francs.<sup>23</sup>

After the end of the war such trading in securities was included in the restitution lawsuits; however, it was never possible to discover the full extent of the channels and networks through which looted securities reached the Swiss market. Such transactions were able to flourish in the 1930s because a grey market for dubious but legal securities trading came into being in Switzerland, favoured by the foreign exchange control measures adopted by Germany and other Central European states. As a result of the international financial crisis, Germany became interested in covert transactions for redeeming German securities. Once the Swiss institutions had become involved in the grey market, they did not stop there: also during the Second World War securities markets were used for illegal transactions.

#### **Banking operations and financial relations with the USA, 1939–1945**

While the level of investment by Swiss banks in Germany fell during the war and their efforts were very much concentrated on repatriating funds, the volume of business with the United States continued to increase. As already mentioned, this trend had started in the 1930s. When after the occupation of Prague in March 1939 war in Europe seemed increasingly likely, the Swiss Bank Corporation decided to set up an agency in New York; it opened six weeks after the outbreak of the war. At the end of the 1930s, other Swiss banks also considered establishing a foothold in safer territory. After the panic on the British and Canadian markets following the political crisis in September 1938, the USA seemed the obvious choice. In December 1938, Credit Suisse examined the possibility of buying an overseas branch: the renowned Bank Speyer & Co. was up for sale. Credit Suisse saw a major obstacle, however, in that it was a «Jewish» bank with a «an odour not easily effaced [...] even if the non-Aryan partners could be eliminated». <sup>24</sup> In the same Nazi vein, a senior member of the management stated that «Today the firm is still considered to be Jewish, although the possibility exists of Aryanising it in a friendly way.» At the beginning of 1940, Credit Suisse opened its own New York agency on the basis

of the assets purchased from Speyer, also founding the Custodian Trust Company in Charlottetown.<sup>25</sup> Credit Suisse's hesitation in buying a Jewish bank may have been due to an ingrained anti-Semitism, but was no doubt chiefly motivated by the fear that purchasing such a firm might have had a negative effect on its relations with German firms and the German authorities. One participant in the discussions held in December 1938 remarked that the takeover of a Jewish bank would damage «our relations with Germany and Italy». The USA became increasingly important for investment by banks. Of Credit Suisse's total assets held abroad in 1940, 208.5 million francs or 66% were in the United States, while the corresponding figure for the Swiss Bank Corporation was 348.2 million francs (55%), and for the Union Bank of Switzerland, 61.6 million francs (54%). In comparison, assets held in Germany, which in view of the radical foreign exchange restrictions was becoming an increasingly problematic area for investment, comprised only 2%, 6% and 4% respectively.<sup>26</sup> Thus by transferring funds to the USA, the Swiss banks were acting in the interests of a broad range of customers who first and foremost sought financial, but also political security. They included both Nazi victims and party members, as well as tax evaders and people who wanted to get their capital out of Germany. During the war, the banks did not reveal the identity of such customers to the US authorities.

There is no doubt that connections with Germany played a role in the expansion of the dealings of the major banks with the USA. In January 1941, the Reichsbank asked the Union Bank of Switzerland whether it wanted to take over the dollar transactions for which it used middlemen. In its answer, the UBS remained true to its strategy of outsourcing questionable transactions and suggested using a third company, Lombardbank AG in Zurich, whose staff had been «Aryanised» with a view to such dealings. Although UBS offered the mandate at a highly attractive commission of only 0.5%,<sup>27</sup> Reichsbank finally rejected the offer and instead expanded its relations with the Swiss Bank Corporation. In March 1941, the Zurich branch of the Swiss Bank Corporation became the Reichsbank's official clearing office for its dollar transactions in Switzerland. In its transactions in the USA, the Swiss Bank Corporation had to conceal the involvement of the Reichsbank; it made a transfer of 294,000 dollars from several accounts at the Chase National Bank in New York to a Mexican bank in favour of the Banco Germánico de la América del Sur, a subsidiary of Dresden Bank. In June 1941, the Reichsbank's account with the Swiss Bank Corporation showed a balance of 721,565 dollars (= 3,102,729 francs). In summer 1944, the Swiss Bank Corporation estimated that it managed assets in the USA to the value of 821,000 dollars for Germans and German companies, and a further 120,000 dollars for non-German companies that were controlled

from Germany. The corresponding figures for Italy were much higher at 4,133,000 and 1,662,000 dollars, while for Japan they were 65,000 and 3,000 dollars.<sup>28</sup>

The New York branches were very careful not to reveal the names of their customers since they feared that, if the USA were to become involved in the war or Switzerland were to be invaded, the American authorities would block the corresponding assets. The banks justified this attitude by referring to the banking law which, among other things, had been drawn up for the protection of customers and accorded the banks the right «to protect the interests of its clients without their explicit authorisation».<sup>29</sup> On the other hand, the American authorities made special efforts to obtain such information. As early as April 1941, the American Department of Finance ordered the New York branch of the Swiss Bank Corporation to provide information about accounts and transactions.<sup>30</sup> In view of the lack of transparency of the transactions that Swiss banks carried out in the USA on behalf of German companies, the concern of the American authorities was well-founded. In 1937, the Swiss Bank Corporation had set up two companies, i.e., Chepha (Chemische Pharmazeutische Unternehmungen AG) and Forinvent (Foreign Investments and Invention Company), in order to protect the foreign investments of the German chemical company Schering if the USA were to declare war on Germany.<sup>31</sup> In this way the SBC's New York branch managed to carry out transactions on behalf of Schering. Chepha and Forinvent were already on the British black list in 1940, but were able to continue to play a role in the transfer of dollar assets of former Schering subsidiaries.

On 14 June 1941, the USA extended the freeze on assets to all countries on mainland Europe. A subsequent survey of foreign assets in the USA showed that Switzerland occupied second place among the countries included in the survey with total assets of 1.2 billion dollars (after the UK with a total of 3.2 billion dollars). The aim of freezing these funds was to prevent the Axis powers from having access to assets in the USA during and after the war. In order to release assets at the end of the war, proof had to be presented by the respective government that the assets in question did not include any capital from enemy states. In the case of Switzerland, this presented a problem since the Swiss financial institutions were unable to supply the required information owing to the banking secrecy law. This applied in particular to the so-called «omnibus» accounts, collective accounts and deposits which went under the name of the bank and contained assets owned by whole groups of customers who thus remained anonymous.

Once the USA had entered the war, the activities of the Swiss banks came under increasing criticism from the Allies. The sixth decision of the United

Nations Monetary and Financial Conference at Bretton Woods (July 1944) stated that

«enemy leaders, enemy nationals and their collaborators are transferring assets to and through neutral countries in order to conceal them and to perpetuate their influence, power, and ability to plan future aggrandisement and world domination».<sup>32</sup>

The Swiss Bankers Association – SBA (*Schweizerische Bankiervereinigung*, SBVg) did not react to this criticism until two months after the Bretton Woods Conference. In September, they agreed to send two circular letters to their members indicating in detail how Switzerland could avoid being used as a safe haven for flight capital and the spoils of war. The SBA declined to pass on the Allies' warning from July directly to the banks, however. A committee of the Bank's Board of Directors decided that «the warning will not be passed on to the banks and our answer to the Allies will be that the banks know nothing about the matter.»<sup>33</sup> An official announcement made by diplomat Walter Stucki on 9 February 1945 stating that an investigation would be carried out into the extent of foreign accounts, was badly received by the Swiss banks. Stucki said that Switzerland had become the most hated country in the whole world and was regarded as the «last refuge of plutocracy». On 12 February 1945, the Swiss Bankers Association stated that «the decision that has been taken severely curtails the freedom of action of the Swiss Bankers Association and creates a precedent to which the only reaction can be one of profound astonishment and serious concern.»<sup>34</sup> Despite these protests, the Federal Council decided in its Decree of 16 February 1945 to freeze German accounts in Switzerland.

Omnibus accounts constituted an important tool for managing foreign capital that could serve as a vehicle for exporting flight capital for both the Nazis and those persecuted by them. As a result of the problems mentioned above concerning certification, there was a delay in releasing Swiss assets in the USA compared to those of other countries. The question was finally resolved as a secondary matter at the negotiations preceding the Washington Agreement in May 1946. The regulation of the certification procedure was not settled until the end of the year, however, so that Swiss assets began to be released only in February 1947. It was a complicated and lengthy process lasting until 1952. In order to have assets certified, customers had to provide the banks with a declaration of ownership; after a careful check, the banks informed the US authorities via the Swiss Clearing Office (*Schweizerische Verrechnungsstelle*, SVSt) that the assets in question fulfilled the requirements for release. In its final report on the release of Swiss assets in the USA, the Clearing Office noted that the misuse of

the certification procedure had damaged Switzerland's reputation as a reliable partner as well as the reputation of certain Swiss banks. Investigations conducted in order to obtain certification could have been of use to trace unclaimed assets and to facilitate the search for their owners. No information on such proceedings was found in the Clearing Office files, nor in the bank archives which were made accessible to the ICE. According to a list of blocked assets dating from 1948 (immediately before responsibility for them was transferred from the Federal Department of Finance to the Office of Foreign Property), frozen Swiss assets still amounted to 164.5 million dollars. The larger part of this sum was linked to the Interhandel affair. It can be assumed, however, that the assets that had at that time still not been certified by their owners also included money belonging to Nazi victims with whom the bank had lost contact.<sup>35</sup>

#### **The banks and assets belonging to Nazi victims**

Among the customers who had confided their assets to Swiss banks in the 1920s, there were many who were to become victims of the Nazi policy of confiscation and extermination. In the 1930s too, many people who came under the threat of National Socialism or were already being persecuted, relied on the security of Swiss financial institutions. Many of these customers were later deported and killed.

In the 1930s various countries instituted ever more drastic measures to prevent the influx of flight capital and exerted pressure on the Swiss banks to stop them providing their facilities for such transactions. The banks thus faced the basic dilemma of either looking after the interests of their foreign customers or giving in to pressure from Germany and other countries. After the banking and currency crisis of 1931, German foreign exchange controls became even more draconian. Non-declaration of assets in foreign currencies was already being severely punished before the Nazis came to power. Afterwards, penalties were further increased. Under the Law on Treason against the German Economy (*Gesetz gegen den Verrat der Deutschen Volkswirtschaft*) passed on 12 June 1933, all German citizens as well as all foreigners living in Germany were obliged to register the foreign currencies and securities they held abroad. In 1934, a similar law was passed in Italy. In 1938, all Jewish property in Germany had to be registered. At the same time, many special taxes and levies were introduced such as the so-called «*Sühneleistung*» (atonement fine) instituted after the pogrom in November 1938 and the *Reichsfluchtsteuer* (emigration tax), which were extended and already levied on people who were likely to emigrate. To avoid the high penalties and meet the financial burden, many Jews and others who were persecuted had to withdraw their assets and securities from Switzerland.

The machinery of Nazi legislation also specifically targeted assets abroad. According to a law passed on 19 November 1936, all people resident in Germany had to deposit their foreign shares with a designated German foreign exchange bank. In order to ensure that this regulation was respected, a further law against economic sabotage was passed shortly afterwards, according to which flight of capital could entail the death penalty. At the same time, the Nazi authorities subjected their victims to physical and psychological pressure in order to force them to turn over their assets. The Swiss banks complied with the instructions of their German customers signed at times under duress, and transferred securities to the German banks indicated. Between 1933 and 1939 Credit Suisse, for example, transferred securities valued at around 8 million francs to Deutsche Bank<sup>36</sup>, while the Zurich office of the Swiss Bank Corporation transferred securities totalling over 6 million francs in value in accordance with the 1936 Law on Compulsory Deposits (*Depotzuangsgesetz*). Furthermore, the Swiss Bank Corporation sold shares quoted in Switzerland for a total market value of 8 million francs on behalf of German customers who probably had to transfer these proceeds too to banks designated by the Reichsbank. A considerable number of such transfers took place in 1936, but transactions of this sort also continued during the war.

Even though many of those persecuted had to withdraw their assets from the banks and despite the fact that Switzerland did not always prove to be an entirely safe haven, persecuted Jews were still well-advised to seek a safe destination for their assets if possible in or via Switzerland. Ever more frequently, they opened accounts which were then managed by bank employees or lawyers. Although the asset management mandates were seen as a problem by the banks, they did not take any effective measures against this development. The Swiss Bank Corporation drew up a list of such trustee accounts in November 1938 in an attempt to gain a clear view of the situation. Other banks later followed suit (in 1942).

After the «*Anschluss*» (annexation of Austria) in 1938 and the introduction of Nazi legislation, Austrian capital and securities started to be rapidly withdrawn from Swiss accounts.<sup>37</sup> The Jewish population, who was subjected to persecution and pressure, handed over considerable assets to the Reichsbank. Some were also forced by local authorities to declare the existence of accounts in Switzerland. The banks transferred the corresponding amounts directly to the Nazi Treasury. At the same time, the banks were confronted with requests from the provisional administrators (*kommissarische Verwalter*) of «Aryanised» Jewish firms who wanted to take possession of the assets of the corresponding companies. The banks agreed on a common procedure and complied with the requests of the Austrian administrators if they bore the signature of the Jewish company

owners. In cases where the company's owner was able to take legal action in Switzerland, the requests made by the provisional administrators were rejected by the judges and the blocked assets were deposited with the court.<sup>38</sup>

Assets of subsequent Nazi victims were also included in the flow of capital from France into Switzerland, in particular after the Popular Front's election victory in 1936. The assets held by the main Swiss banks (excluding the private banks) on behalf of French customers thus rose from 241.6 million francs to 520.4 million francs between 31 December 1935 and 31 December 1937. While assets were later transferred back to France or invested in the UK or the USA, many French customers deposited their assets in bank safes, invested them in Swiss property, or handed them over to be managed by lawyers and trustees. The flow of capital from Hungary into Switzerland also increased dramatically. The total capital held in Switzerland on behalf of Hungarian banks and individuals, also including subsequent victims of Nazi extermination policy, rose from 15.5 million francs in 1937 to 37.7 million francs in 1943, a year before Hungarian Jews started being deported to Auschwitz.

Poland was another country from which large sums belonging to later Nazi victims were transferred to Switzerland. After overrunning Poland in September 1939, the new ruling power endeavoured to acquire Polish assets deposited in Switzerland. As early as 20 November 1939, the Polish bank Lodzer Industrieller GmbH asked Credit Suisse to transfer assets deposited with it to an account at the German Reichsbank in Berlin. The bank saw a fundamental problem in this procedure and asked its legal affairs department to examine the matter. The latter recommended not complying with the request since the customer's signature had most likely been obtained under duress by the occupying authorities. A further reason for refusing the request was that it had come from Berlin and contained incorrect information about the amount deposited with Credit Suisse. The legal affairs department also pointed out that for Poland, German foreign exchange regulations represented a war measure taken by an occupying force and that Switzerland had not yet recognised the new political situation. Managing Director Peter Vieli subsequently discussed the issue with Rudolf Speich, his counterpart at the Swiss Bank Corporation. The latter contacted the Reichsbank, which agreed that in view of the unclear constitutional situation in Poland, Swiss banks were not obliged to comply with requests from German administrators (*Reichskommissäre*). Nevertheless, according to a file note «the directors of the Reichsbank and Dr. Speich were of the opinion that duly signed requests from customers for their assets held in Switzerland to be transferred to an account with the Reichsbank must be executed since absolutely no justification could be found for not doing so».<sup>39</sup> Although there were legal and moral objections to transferring the funds, the consideration that

they «still had important interests in Germany, and should avoid friction and unpleasantness whenever possible» prevailed at CS. They complied with the request and opted for the principle of carrying out legally signed orders even when they were not received directly from customers, but via the Reichsbank in Berlin. Their comportment in Poland was in this respect typical of how the banks dealt with the assets of Nazi victims: as a rule, they complied with transfer orders from foreign customers without properly checking whether the signatures they bore had been obtained under duress by the Nazi authorities and whether the orders were in fact in the customer's interest. On the other hand, the Swiss banks also took measures which were sometimes to the advantage of those subject to persecution. For instance, they instituted special security measures for assets that were not declared to the German foreign exchange authority, accepted deposits with special powers of attorney in case German troops invaded Switzerland, and sponsored applications to the Swiss authorities for residence permits lodged by those being persecuted by the Nazi regime.

Many foreign customers of Swiss financial institutions were killed by the Nazi regime. An unknown part of their assets was handed over directly or indirectly to the Nazi authorities; the rest remained with the Swiss banks. So-called «dormant» accounts arose from both measures in that descendants and heirs were either not aware of the existence of the accounts, or were not aware that the funds had been transferred to the Nazi regime. Thus, after the end of the war, the question of the fate of this capital and of these securities was by no means solved. The banks were able to use the amounts remaining in the accounts and to earn income from them. They showed little interest in actively seeking accounts of Nazi victims, justifying their inaction with the confidentiality desired by their customers. What the victims of National Socialism and their heirs thought to be the advantages of the Swiss banking system turned out to be disadvantageous for them. During the Third Reich, the principle of discretion – which characterised the Swiss banking system and which, together with the tradition of stability and security, had been exploited as a competitive advantage over foreign competitors – had made Switzerland particularly attractive as a financial centre for those persecuted by the Nazi regime. Later, the question of the whereabouts of assets of Nazi victims became a highly topical issue, but the banks – invoking this tradition – did little to resolve the problem. The unwillingness of the Swiss financial institutions in the immediate post-war period to find the legal owners of unclaimed assets or to support rightful claimants in their search, constitutes the main point of criticism of the banks' behaviour, behaviour already tainted by certain dubious decisions and questionable attitudes in the period between January 1933 and May 1945. These questions are comprehensively discussed in section 6.3.

- 1 This section is principally based on the following studies: Perrenoud/López/Adank/Baumann/Cortat/Peters, Place financière, 2002; Lussy/Bonhage/Horn, Wertpapiergeschäfte, 2001; Bonhage/Lussy/Perrenoud, Vermögen, 2001; Perrenoud/López, Aspects, 2002 (Publications of the ICE).
- 2 On the basis of the data available concerning individual banks, a highly precise estimation can be made for the year 1945 and confirms the figure of over 20 billion francs. ICEP, Report, 1999, p. 57.
- 3 Guex, Politique, 1993.
- 4 Guex, La Suisse, 1999, p. 116.
- 5 CSG Archives, SKA Fund, 02.105.201.302, minutes of a meeting of the Extended Finance Committee, 31 August 1936 (original German).
- 6 SNB Archives, file 2250, Gentlemen's Agreement concerning the «Verminderung des Übermasses der bei der Bank liegenden ausländischen Franken-Guthaben und Bekämpfung der Notenthalserierung», November 1937 (original German).
- 7 Perrenoud/López/Adank/Baumann/Cortat/Peters, Place financière, 2002 (Publications of the ICE), chapter 1.
- 8 Haberler, Prosperity, 1937, p. 336.
- 9 In 1933, total Federal expenditure amounted to 482.1 million francs (Perrenoud, Aspects, 2000, p. 99).
- 10 *Arbeiter-Zeitung*, 16 August 1945, *Finanz-Revue*, 8 August 1945 (original German).
- 11 Guex, Origins, 2000.
- 12 Jung, Kreditanstalt, 2000, p. 83. August Dörflinger was found guilty not only of the crime mentioned here but also of passing on military secrets and on several charges of military and economic espionage; see FA, E 5330 (-) 1982/1/5644/1942, vols. 82–84.
- 13 Wigging-Layton Report drawn up by the committee set up on the recommendation of the London Conference (Swiss National Bank Archives, 2105). Switzerland occupied third place after the USA and Great Britain, which is an indication of its importance.
- 14 As far as concerns the SBC, the only available figure concerns a random date in September 1931.
- 15 See Frech, Clearing, 2001 (Publications of the ICE), p. 51.
- 16 CSG Archives, SKA Fund, 02.102.201.302, minutes of a CS Board meeting held on 6 April 1933, p. 31 (original German).
- 17 With reference to gold trading by the Dresden Bank and Deutsche Bank see Bähr, Goldhandel, and Steinberg, Deutsche Bank, 1999.
- 18 Gautschi, General Guisan, 1989, p. 522.
- 19 See Bonhage, Bodenkreditanstalt, 2001 (Publications of the ICE), chapter 2.
- 20 CSG Archives, 08.105.203.303-1/2, reorganisation of Discont-Credit AG 1937–1948, von Tscharner to Blass, 4 August 1938 (original German). When Discont AG was reorganised in 1938, von Tscharner suggested to the Credit Suisse that it specialised in the coupon trade.
- 21 SB Archives, 02-00-0059, Zurich Cantonal Stock Exchange Commissioner's Office, meeting held on 16 January 1942.
- 22 When the chairman of the Zurich Stock Exchange Association, Walter J. Bär, proposed to his committee the introduction of a so-called declaration of Swiss ownership on 20 April 1940 following the German occupation of Denmark and Norway, and wanted to limit the trade in securities belonging to Swiss citizens domiciled in Switzerland, the private banker Emil Friedrich and the representatives of the major banks Graf (CS), Hoch (SBC) and Zehnder (UBS) expressed their opposition, because they thought that a regulation should be achieved not by imposing restrictions but through self-regulation among the stock exchange traders. Bär was one of the few Jewish bankers in Switzerland. Along with Peter Vieli (CS), Friedrich, who succeeded Bär as chairman of the Zurich Stock Exchange Association in 1940, was one of the signatories of the «Eingabe der 200» (Waeger, Südenböckle, 1971).

- <sup>23</sup> Lussy/Bonhage/Horn, Wertpapiergeschäfte, 2001 (Publications of the ICE), p. 315.
- <sup>24</sup> CSG Archives, SKA Fund, 02.105.201.302, minutes of a meeting of the Financial Commission held on 12 December 1938 (original German).
- <sup>25</sup> Jung, Kreditanstalt, 2000, p. 75.
- <sup>26</sup> SNB Archives, half-yearly balance-sheets of major and cantonal banks.
- <sup>27</sup> UBS Archives, SBG Fund, 120000002640, Stillhaltefragen 1933–1945, Communication from UBS to the *Reichsbank*, 29 January 1944.
- <sup>28</sup> UBS Archives, SBV Fund, 925 013 005, Golay to Caflisch, estimate of the proportion of Swiss assets in the USA belonging to the Axis powers, 23 August 1944.
- <sup>29</sup> UBS Archives, SBV Fund, 950 000 02 Special powers for America (undated) (original French).
- <sup>30</sup> UBS Archives, SBV Fund, Directors' conference, 13 May 1942.
- <sup>31</sup> UBS Archives, SBV Fund, SBC, 770 054 001; 106; 129 documents concerning Chepha from Dr. Samuel Schweitzer.
- <sup>32</sup> This resolution was notified by the diplomatic representations of Great Britain and the United States in Bern in October 1944. With regard to Swiss reactions see DDS, vol. 15, pp. 401–406, 604–606, 828, 937, 1017–1021.
- <sup>33</sup> Meeting of the SBA Committee of the Board of Directors, in: DDS, vol. 15, p. 625, (original German). See Perrenoud, Banques, 1988, pp. 85–87 (original German).
- <sup>34</sup> UBS Archives, SBV Fund, 925 013 000, negotiations with the Allies, elimination of Swiss assets in the United States, meeting held in Bern on 12 February 1945, note drawn up by Nussbaumer for his senior management colleagues at the SBC (original German).
- <sup>35</sup> See Jung, Bundeshaus, 2001, pp. 481 and 495.
- <sup>36</sup> Jung, Kreditanstalt, 2000, p. 83.
- <sup>37</sup> Following the «Foreign exchange law concerning Austria» («Devisengesetz für das Land Österreich») of 23 March 1938 securities valued at 4 million francs and capital amounting to 1.5 million francs belonging to Austrian customers of the SBC in Zurich were transferred to the Third Reich.
- <sup>38</sup> In this connection see also section 4.10 included herein.
- <sup>39</sup> CSG Archives, SKA Fund, 11.105.208.301-0165, Legal affairs department file note, 5 December 1939 (original German).

## **4.7 Swiss Insurance Companies in Germany**

Like the Swiss banks, the insurance companies also faced a conflict between their responsibility to their clients and compliance with restrictive and discriminatory laws and ordinances which conflicted sharply with Swiss notions of legality and ethics (*ordre public*). Like the banks, the insurance companies made compromises with the Nazi regime which ran counter to the interests of their clients.<sup>1</sup>

### **The problems of multinational companies**

The Swiss insurances had a far stronger direct international presence than the banks. Although the banks attracted cross-border capital flows, their close and confidential relations with foreign partner institutions meant that they were generally able to restrict their operations to the provision of banking services in Switzerland, whereas the Swiss insurance companies had developed even before the First World War into multinational companies with a significant presence in other countries. A number of companies had branches overseas; others were opened soon after the war. However, the Swiss insurance companies' main market was Central Europe.

After the end of the First World War, the insurance sector in Switzerland – in parallel to the banking sector – underwent rapid expansion. While the domestic market became far more important due to the collapse of the German companies, European business also boomed in the 1920s. This applied especially to reinsurance, which profited to an even greater extent than other sectors from the weakening of the German and Russian competitors and was able to move into strong positions in the British, US and German markets. In Central Europe in particular, where major inflationary and hyperinflationary trends were shaking client confidence, the Swiss prime insurers were also at a natural advantage thanks to their stable currency. This boosted confidence, particularly benefiting the life insurance companies, which were able to build up a rapidly expanding foreign currency business abroad. At the same time, the function of life insurance also changed to some extent; in addition to offering precautionary cover, it increasingly became a means of capital formation and thus became a diversified form of investment.<sup>2</sup>

These developments prompted a number of German companies to set up subsidiaries in Switzerland in order to take advantage of the domestic market's confidence in Swiss stability. Union Rück, for example, was set up by Münchener Rück, Germany's largest reinsurance company, in 1923, as German inflation was coming to an end; the intention was to give Münchener Rück greater stability during the difficult time of the post-inflationary period. For

this transaction, the company secured the support of the Union Bank of Switzerland which held 10% of the shares for Münchener Rück on a fiduciary basis. After 1933, Union Rück stood as guarantor for insurance contracts held by Münchener Rück clients in Czechoslovakia, the Netherlands and Portugal – whose confidence had been shaken by events – in case political developments prevented a German company from fulfilling its contractual obligations. In the late 1930s and during the war, Münchener Rück transferred well over 500 contracts directly to its subsidiary in Switzerland. Shortly before the outbreak of war in 1939, the shares were transferred via the Union Bank of Switzerland to Swiss fiduciaries in order to conceal the German ownership of Union Rück; after 1942, however, the Munich company started to buy back these titles. During the post-war negotiations, the Allies' representatives attempted to persuade the Joint Commission (*Commission mixte*) set up to regulate property claims that it should prevent the Union Bank of Switzerland from taking on a leading role in the new placing of Union Rück shares again. Business abroad grew between the two wars, thus making insurance companies one of the few business sectors which – even under the unfavourable conditions of those years – are an example for the successful activity of Swiss companies abroad. At the end of the 1930s, there was no other country in the world where the insurance and reinsurance sector's foreign business comprised such a major share of the market compared with domestic business. Foreign business accounted for around one-quarter of life insurance and 60% of the accident and property insurance business, with the largest company, Zürich Unfall, regularly achieving more than 85% of its premiums abroad. Swiss insurance companies also had a strong position in reinsurance – in the late 1930s, they were responsible for one-quarter of the global market and conducted 90% of their business abroad; the same applied to property and transport insurance. In 1939, foreign operations accounted for around 675 million francs (life insurance: 85 million; property and accident insurance: 275 million; reinsurance: 315 million) of total premium revenue, which amounted to 1.1 billion Swiss francs (including around 350 million francs in life insurance and reinsurance respectively, and in excess of 400 million in property and accident insurance). In contrast to the banks, for which the 1930s were a difficult and unprofitable decade, the Swiss insurance companies continued to expand.

In the field of life insurance, the German market became increasingly important after 1933. For the four Swiss life insurers operating in Germany – Basler Leben, Rentenanstalt, Vita and Winterthur Leben – reichsmark policies accounted for between 50 and 85% of the total foreign portfolio in 1939 and remained constant at this level throughout the war years. Swiss companies and shareholdings maintained a 4.4% share of the German life insurance market between

1934 and 1939, which decreased slightly during the war. This reflected an absolute increase in the number of policies taken out in Germany, from around 70,000 in 1933 to 206,000, with a total sum insured of 778 million reichsmarks at the end of 1944 (as the statistics only cover the number of insurance policies taken out and do not show the number of policyholders, the figure for multiple policies held by the same individuals could not be established). Some companies embarked on operations in new branches of insurance in Germany: in 1934, Rentenanstalt went into reinsurance; from 1936 on, Basler Leben offered liability insurance in Germany; in 1939 Helvetia Feuer introduced glass breakage insurance, and starting 1942, Winterthur Unfall sold insurances on contents in Germany. The (gross) premium revenue generated by all the Swiss insurance and reinsurance companies from their German business totalled at least 217 million francs at the end of 1943, with Schweizer Rück alone accounting for at least 81 million.<sup>3</sup>

After the start of the Second World War, relations between German and Swiss companies became more complex. After 1939, the German authorities became concerned that private companies might pass on sensitive military information, and in September 1939, restrictions were imposed on the exchange of insurance-related data with other countries. Swiss companies were also initially excluded from underwriting risks relating to institutions deemed to be «essential for the war effort», although this did not keep Swiss insurers from insuring armament factories. Despite more difficult working conditions, business in Germany carried on more or less normal until just before the end of the war. As described in more detail below, this was evident from the year-on-year increase in foreign exchange transfers relating to insurance payments from Germany to Switzerland. After the Western campaign in 1940, the German insurance companies' organisations in France were so overstretched that they could only take on a small proportion of the business previously operated by the British insurance companies, which had now been forced out of the market; as a result, there was a real shortage of insurance provision. This offered Swiss insurers the opportunity to take over British portfolios. Before this could happen, however, the Swiss negotiator, Hans Koenig – seeking to avoid giving offence to the German authorities – made the following statement to the German Reich Insurance Council (*Reichsversicherungsrat*) in November 1940:

«As regards the insurance portfolios of English or other foreign insurance companies operating in Germany, I will indicate to the Swiss companies that they must refrain from intervening in any way. Moreover, no portfolio held by a foreign insurance company operating in France should be transferred to a Swiss company.»<sup>4</sup>

Nonetheless, Schweizerische National, Neuchâteloise Générale and other Swiss companies underwrote fire and transport insurance – 90% of which had been covered by British insurers before the war – to the full extent of their capacities and took over portfolios previously held by British and American firms.

This major European commitment also prompted the insurance companies to participate in transcontinental efforts to overcome specific war-related insurance problems. As part of the plans to create a European «*Grossraumwirtschaft*» (integrated economic area), representatives of German, Italian, Hungarian and Swiss insurance companies met under the auspices of Kurt Schmitt, former German Minister of the Economy and chairman of the Münchener Rück board, in October 1941 to set up an Association for the Coverage of Major Risks («the Munich Pool» – «*Münchener Pool*»). The Association aimed at filling the gaps in cover which had resulted from the withdrawal of the British company Lloyds and which could not be absorbed by the national markets, and to improve the international compensation of risks. Schweizer Rück and Münchener Rück each took out a shareholding of 25%. Swiss prime insurers also participated in the pool, albeit to a lesser extent.

A new field of activity during the war years were war risk insurances. This dynamic field of business – which offered remarkable opportunities for profit-making but also involved a high level of risk – primarily related to transport and fire insurances. The greatest market potential for the Swiss companies proved to be in occupied France and to a lesser extent in Germany. As war risk insurers, the Swiss companies also had to cover claims arising as a result of acts of sabotage by resistance groups. Until 1943, however, they covered sabotage claims in full under normal policy cover as well (i.e., not running under war risk insurance), and after the official settlement of the question continued to do so to a lesser extent, whereas the Swedish companies refused to provide this cover. As foreign business increased, the Swiss insurance companies invested a proportionately larger percentage of their assets abroad, and here too, significant investments were made in Germany. From the second half of the 1930s, these resources increasingly had to be invested in German Treasury bonds as part of the state's measures to channel capital into the war industry. At the end of 1944, the German assets of the 16 Swiss insurance companies operating in Germany were estimated to stand at around 570 million reichsmarks (983 million Swiss francs).<sup>5</sup>

Traditionally, the insurance companies were among the largest mortgage lenders and also owned assets in the form of real estate. In some cases, Swiss companies were involved in the «Aryanisation» of property on which they had previously granted mortgages and which now had to be disposed of through forced auction: Basler Leben purchased this type of property in Mannheim in

1936 and in Frankfurt in 1939. Rentenanstalt and Vita also acquired real estate as a result of forced auctions, yet were exonerated of the charge of unjust enrichment during restitution proceedings after the end of the war. In other cases, the Swiss insurance companies' intention to purchase and «Aryanise» property was thwarted by their German competitors. When the Swiss insurance companies rented out properties in Germany, they terminated their Jewish tenants' leases voluntarily without coming under pressure to do so from the state; when the relevant legislation was passed in April 1939, they were thus able to report that these rented premises no longer had Jewish tenants.

### **Specific features of the German market**

In 1929, as part of their general campaign against the international economy and plutocracy, the NSDAP issued an appeal to the German people: «Don't take out insurance with international companies!» Despite such campaigns, a number of prominent members of the NSDAP held Swiss insurance policies until well into the 1930s. The prime example is probably Hermann Goering, who played a key role in the shaping of German economic policy in the 1930s. Goering took out a life insurance policy with Rentenanstalt in 1930 which was transferred to Allianz in 1935. Fritz Todt, founder of the «Organisation Todt» and Reich Minister for Armament and Munitions from 1940, took out two policies, one in 1929 and a second in 1935, which paid out death benefits following his aeroplane crash in 1942.

As a result of the Nazi's well-known policy programme, the Swiss companies expected to face additional difficulties in the German market after 1933. Indeed, payments to Swiss company employees were subject to very extensive tax investigations. From November 1934 on, branches of foreign insurance companies fell within the purview of currency regulations which had previously only applied to domestic German companies. These new measures and the general threat of nationalisation the insurance companies were probably the key factors which prompted the Swiss companies to adapt to the new policies and minimise any challenge which might be interpreted as intervention in Germany's economic and political sovereignty. Many of them took steps to hire NSDAP members and structured their branches in line with Nazi doctrine in order to demonstrate their adaptability to the «new Germany».

The German insurance sector – which was marked by intense competition (with political dimensions) between private and public companies – was reorganised after 1934 into a Reich Group for Insurance (*Reichsgruppe «Versicherungen»*) with subgroups for private and public insurance, which all companies subordinate to the Reich Supervisory Office for Private Insurance (*Reichsaufsichtsamt für Privatversicherungen*) – including the Swiss insurance companies – had to join.

### **Linked payment transactions and services during wartime**

Swiss insurance services were an important asset in Switzerland's balance of payments; trade in insurance policies generated a surplus for Switzerland amounting around 40 million francs per annum in the early 1930s (i.e., 2.3% of Swiss exports in 1930), rising to at least 60 million ten years later (4.5% of Swiss exports in 1940).<sup>6</sup> These payments were exempt from the clearing agreements concluded from 1934 on as German and Swiss private insurers were able to convince their authorities that for technical reasons, insurance payments had to be made immediately and without impediment and that insurance services could not easily be rationed – as was the case with foreign trade, for example – without creating major economic disadvantages.

During the war, insurance payment transactions between Germany and Switzerland increasingly developed in a way which favoured Switzerland and cost Germany valuable foreign exchange. In 1941, Germany made net payments totalling 6.7 million reichsmarks; in 1943, this figure had increased to 11.7 million reichsmarks, with more than 20 million calculated for 1944. The Swiss insurance companies continued to insist that their claims be met promptly outside the clearing system; they were thus able to secure preferential status within the financial sector. During the war, Germany paid a total of 156 million francs to Swiss financial creditors; this included 89.6 million francs to insurance companies. From Germany's point of view, this high level of foreign exchange expenditure was justified by the important contribution made by Swiss insurance services to the wartime economy. This included insurance for ammunition factories during the war – in 1941, Zürich Unfall insured around 50 enterprises which were classed as ammunition factories. Basler Transport insured IG Farben-Werke; for this purpose, it successfully applied (together with other Swiss companies) for admission to the German War Insurance Association (*Kriegsversicherungsgemeinschaft*) during the war in order to pool the additional risks arising from the military conflict. When the Scandinavian reinsurers terminated their cover in 1943 due to the poor progress of the policies, Basler Transport significantly reduced its contribution to the insurance of IG Farben-Werke. Schweizer Rück had also taken on a share of this risk as a reinsurer; via its subsidiaries, it provided health insurance and reinsurance for the Hitler Youth as well.

On the other hand, the Swiss negotiators appear to have recognised the danger of becoming overly dependent, in political terms, on Germany. Nazi party organisations were particularly hostile to the provision of public services, such as insurance protection, by private and especially by Swiss companies. During the first years of the war, they exerted pressure on Swiss companies to sell their German subsidiaries and shareholdings. However, the Swiss insurers – unlike the Austrian companies after the «*Anschluss*» (annexation) in 1938, for example

– were able to withstand this «*Germanisation*» pressure to a substantial extent: the major German shareholding group of Schweizer Rück remained intact, except for Central Kranken, which had to be surrendered for party purposes in 1941 at the request of the Reich Supervisory Office; in spring 1942, the shareholding issue had become «dormant» and Germany's attitude towards Switzerland had «become more conciliatory». The sell-off of Wiener Anker in 1943 took place for financial reasons and had been contemplated by Schweizer Rück since the mid 1930s. This sale of a company which was traditionally well established in the East European market proved very profitable at a time when German insurers were keen to enter, via existing companies, what was perceived to be a growth market.

Switzerland's representative in the German-Swiss insurance negotiations, Hans Koenig, never made any secret of his ideological aversion to National Socialism, but continued to do business with Nazi Germany. In 1943, when the Allies issued warnings against trade with Germany for the first time, he approached the insurance companies and provided a vivid description of the trap which awaited them in the event of Germany's collapse: «If what we ultimately face is ruin, it is better not to give in and face ruin than to give in [to Germany's demands] and face certain ruin».⁷ Yet, he too was unable to resolve the dilemma which he had outlined so clearly. In early 1945, when Germany's defeat was inevitable and the freezing of German assets in Switzerland became an increasingly likely prospect, the Swiss insurance companies demanded payment of the 13 million francs which they had negotiated with Germany in an agreement signed on 1 February. At this point, German exports had virtually collapsed, and Koenig attempted, in intensive negotiations, to secure payment in the form of Reichsbank gold – despite the fact that the freezing of German gold sales was one of the Allies' most unbending demands and the gold was known to have been acquired through illegal expropriations. In mid February 1945, Koenig stated: «Relations with Germany must not be broken off; our authorities also share this view».⁸ Indirectly, the Swiss insurance companies secured at least a share of Germany's final gold delivery on 13 April 1945. In its efforts to «grab as much as possible»⁹ of what could still be squeezed out of Germany, the insurers did not balk even at looted gold.

How did the general developments in the pre-war and war years affect the future of the Swiss insurance companies? The remarkable success of the Swiss insurers is measured by comparison to the massive setbacks suffered by multinational companies from virtually all the major insurance nations during these years, or at least towards the end of the war; it does not reflect any additional war-related profits but the ongoing stability and continued existence of largely intact business structures and markets.

### **The impact of the Nazi regime on insurance companies**

Beginning 1933, one of the most striking developments was the variety of ways in which companies implemented the Nazis' increasingly harsh anti-Semitic demands. Some Swiss insurers (such as Vereinigte Krankenversicherungs AG, a subsidiary of Schweizer Rück) dismissed their Jewish employees as early as 1933, although there was no legal requirement for such a move at that time. In 1936, Basler Feuer declared itself to be «free from Jewish influence», adding that this also applied to its management in Basel. Winterthur Unfall, on the other hand, retained its Jewish employees until after the pogrom in November 1938, although it too had carried out politically motivated personnel changes as early as 1935 and appointed a card-carrying Nazi as its main representative in Germany as late as 1944.

At the end of 1937, the persecution of the Jews increased in pace. As a result, there was also greater pressure on the Swiss companies operating in Germany to supply proof of their «Aryan» status, not only for their German branches but also for their head offices and shareholders in Switzerland. With one exception, Swiss insurers supported the furnishing of such proof, thus endorsing discrimination against the Jews and extending the scope of Germany's racial laws to Switzerland as well.<sup>10</sup>

In Austria and Czechoslovakia, Jewish employees fell victim to the «purges» far more quickly than in Germany, where a great many threats were issued in 1933 but systematic, state-sponsored initiatives aimed at the dismissal of Jewish personnel in private industry were not launched until 1937–1938. A few days after the annexation in March 1938, Schweizer Rück despatched an executive director to its subsidiary Anker in Vienna to remove the managing director and other board members from their posts. He told the Jewish directors, who were greatly shaken by the turn of events, «that these measures are not taking place as a result of pressure from the [National Socialist operational] cell» and that it «would be inappropriate [...] to oppose the new appointment, which would probably have taken place at a later date anyway by virtue of the law.»<sup>11</sup> Between March and September 1938, Anker dismissed 72 employees, refusing to honour their legal entitlements to pension rights and severance pay in full, or indeed, at all. The broad scope for action available to the Swiss insurance companies in their dealings with their Jewish employees can be illustrated by the example of two companies' general agencies in Prague. Whereas Schweizerische National dismissed its representative prior to the adoption of Nazi racial laws governing the status of Jews (which did not forbid the employment of Jews), Helvetia Allgemeine still claimed as late as September 1941 – eight months after the imposition of a ban on the employment of Jews – «that the immediate departure» of its general agent «is not necessary at the present time».«<sup>12</sup>

Did this anti-Semitism spill across the Swiss border too? In Switzerland, there seem to have been at least several cases of discrimination: as early as 1939, for example, two Jewish members of the board of administration of the Geneva-based Union Suisse lost their seats soon after being forced to give up their posts in Germany. Schweiz Allgemeine issued a directive stating that «in future, restraint should be exercised» when selling shares to Jews. And in 1941, it demanded special additional sureties from Agentur Winkler on the grounds that being a Jew, Winkler might envisage leaving Switzerland. The documents also show little understanding for Jewish claims during and after the war: among other things, the Jews were accused of lodging illegal claims and seeking to enrich themselves at the expense of Swiss insurance assets.<sup>13</sup>

The pogroms of 8/9 November 1938 and the damage caused during the general unrest (quite apart from the 91 deaths) posed a significant insurance problem. Who should cover the losses? Most property insurance policies contained exclusion clauses limiting the insurer's liability for damage caused by civil unrest – although it was doubtful whether state-sponsored violence could be classed as «civil unrest». At a meeting to discuss the consequences of these riots, which was convened on 12 November at the Reich Air Ministry (*Luftfahrtministerium*) by Hermann Goering, responsible for the Implementation of the Four-Year Plan (*Beauftragter für den Vierjahresplan*), the representatives of the German insurance industry made no reference to this exclusion clause. An ordinance issued the same day stated that the damage resulting from «the people's indignation at Jewish international agitation» should be paid for by the Jews themselves, and that any payments made by the insurance companies in respect of the losses should go to the Nazi state, not to the Jews. Goering later imposed a collective penalty («atonement payment» – «*Sühneleistung*»). The German insurers protested against these ordinances, pointing out that the exclusion clause had been ignored; it also warned of the consequences if foreign insurance companies resorted to legal measures and raised the issue of the involvement of German police and fire officers in «*Kristallnacht*». Some German government representatives endorsed these objections, and finally a compromise was agreed: as a gesture of good will, the members of the Reich Group for Insurance would make payments for damage sustained by «Aryan» Germans and by foreigners (including foreign Jews) and would also cover 50% of the losses suffered by German and stateless Jews, but these latter sums would be paid directly to the state. Swiss insurance companies also received claims and paid out on the losses in accordance with the arrangements negotiated by the German firms.

In general, the Swiss companies reacted with remarkable passivity to the Nazi's flouting of established legal tradition. Whereas a number of foreign companies

(e.g., London Phoenix) challenged Goering's ordinances on the basis of the «civil unrest» exclusion clause, no Swiss insurer deviated from the German companies' line. In one case, Helvetia Feuer – which had sold a number of special policies specifically providing for liability in the event of «unrest» – denied that the pogroms constituted «unrest». In this way, the Swiss insurers helped to cover up events which would have cast the completely illegal and immoral methods of the German state and party organisation in November 1938 into sharp relief.

#### **The confiscation of Jewish-owned insurance policies in Germany**

A substantial proportion of the life insurance policies taken out by German clients at branches of Swiss companies in Germany (to buy policies directly at the Swiss headquarters was not permitted due to the «territoriality principle») were expressed in foreign currencies, usually Swiss francs or US dollars. At the end of 1932, the four Swiss companies held 35,363 reichsmark policies, as well as 7,955 dollar policies and 28,304 franc policies. The average value of a foreign currency policy was equivalent to 16,600 francs and was thus three times higher than that of a reichsmark policy. In the 1930s, which were dominated by foreign exchange controls, these foreign currency policies posed an acute problem.

After the introduction of foreign exchange controls in 1931, all policyholders required permission from the German foreign exchange control authorities to continue payment of their premiums. The practice governing the issuing of the relevant permits became increasingly restrictive and, from 10 September 1934, a general ban was introduced. Even in advance of the ban, the issuing of permits for foreign exchange payments was discriminatory; for example, the former Chancellor, Heinrich Brüning (a Catholic politician who was loathed by the Nazis) encountered difficulties in paying the premiums for his life insurance policy with Rentenanstalt in foreign currency. On 12 September 1934, the Reich Supervisory Office for Private Insurance (*Reichsaufsichtsamt für Privatversicherungen*) issued a circular stipulating that such policies be converted into reichsmarks. Future premiums had to be paid in reichsmarks, while previous payments went into a foreign exchange reserve. At this stage, clients could choose whether to redeem (and therefore cancel) the policy, to maintain the existing foreign currency and make new payments in reichsmarks, or to suspend further premium payment. The advantage of this latter option was that the share of foreign currency grew, due to continuing earn of interest. In the conflict between self-interest and protecting their clients, the insurance companies nonetheless succeeded in misleading most of their clientele, persuading them to convert their policies under terms which were more favourable to the companies but disadvantageous to the policyholders.

In cases where foreign exchange policies were supposed to be paid out outside Germany following their expiration date or redemption, the German currency authorities demanded assurances that the company would not demand foreign exchange from the Reichsbank, so that Germany's foreign exchange and gold reserves would not be overstretched. In general, the Swiss insurance companies gave such assurances to the German authorities, although there were exceptions. Despite a clear and comprehensible legal basis, from 1937 on, one Swiss company – Basler Leben, whose clientele included many German Jews with foreign exchange policies – attempted to halt the payment of cancelled policies in Swiss francs as they would have had to import funds from Switzerland to Germany for this purpose. It considered such transfers to be irresponsible, as the «emigration of German Jews was thus financed on the back of the Swiss economy».<sup>14</sup>

In accordance with a law which came into force on 26 August 1938, all hard currency policies held by policyholders living in Germany had to be fully converted into reichsmarks. This step made it far more difficult for people who were contemplating emigration to acquire the necessary hard currency. Overall, the Swiss companies had to convert around 25,000 policies. One company, Basler Leben, welcomed the measure, as it was already concerned that it would have to resort to using Swiss reserves to settle German policies. The rest of the insurance sector initially protested against the measure, however. Koenig asked the Federal Political Department (*Eidgenössisches Politisches Departement*, EPD) whether such an approach, which he described as «the rape not only of the policyholders but also the companies», was legal;<sup>15</sup> The Department answered that these contracts were subjected to German law. Once the Swiss companies realised that they could not prevent the conversion, they successfully lobbied for a legal requirement for full conversion, which henceforth denied policy-holders their freedom of choice; the advantage for the insurance companies was that they could now convert their covering funds to reichsmarks as well.

Another controversial area was the willingness of Swiss insurance companies to pay out on German Jews' confiscated policies. The companies were offered a declaration stating that in the event of later repayment claims by the policy-holders concerned, the German state would indemnify the companies. Some Swiss insurance companies were satisfied with this assurance; one company, Rentenanstalt, initially rejected the German offer on the grounds that the policies contained an ownership clause (and would therefore have to be settled again on production of the policy in future); after mid 1940, however, it too paid out on confiscated policies in exchange for the appropriate renunciation declaration.

The enactment of the 11<sup>th</sup> Ordinance of the Law on German Citizenship

(11. Verordnung zum Reichsbürgergesetz) of 25 November 1941 mandated the complete expropriation of the German Jews. All property owned by Jews who were expelled from Germany as part of the mass deportations now under way, automatically devolved upon the German state. This included all life insurance policy claims. It is notable that the German authorities only claimed the payment of the redemption value and not the (generally far higher) endowment or death value, probably because the latter would have been a clear indication of the systematic murder of the deported Jews. Banks and insurance companies were required to register the names of such clients with the authorities; in practice, however, it was not an easy task to distinguish between Jewish and non-Jewish policyholders or determine the nationality of Jews who had already fled. All the companies protested against the requirement to register Jewish policies; however, their complaints focussed not on the flagrant violation of the law, but on the organisational problems and costs associated with this measure. Precisely for these practical reasons, however, the interpretation of the Ordinance left some scope for discretion: Rentenanstalt does not appear to have registered any clients (but it registered 306 policies under the Registration of Enemy Assets Order («Feindvermögensanmeldung») of 15 January 1940), whereas other companies (Basler Leben, Vita and Winterthur Leben) complied with the German request relatively promptly. By the end of the war, at least 846 policies with a total repurchase value of 6.8 million Swiss francs had been surrendered to the German fiscal authorities. The substantial differences between the individual companies confirm that there was some freedom of action: about 90% of the confiscations carried out involved policies with Basler Leben, which confiscated and paid out on the same number of policies – but not necessarily the same policies – which it had registered. At the other end of the spectrum was Rentenanstalt, which surrendered just 15% of the registered policies; the figure for Winterthur Leben is 30%, and 40% for Vita.

Did the policyholders have any further claims on the insurance companies which had paid out their policies to the German authorities? The USA was the only country to examine this issue during the war years. In 1943, in the case of Kleve and Warisch vs. Basler Leben, the New York Supreme Court concluded that the insurance company was not responsible for the settlement of the claim if it had paid out the policy in accordance with German law. The Court held that it was immaterial that the German laws could be viewed as immoral:

«As for the very obnoxious and offensive character of the German ordinances, the court is obliged to hold that governing law no less applies because it is bad law [...] we cannot undo or set to naught what has been done by the German Government with the assets of the parties in Germany».<sup>16</sup>

In Switzerland, insurance policies confiscated by the German state were not restituted. Post-war rulings confirmed the unjust nature of Nazi legislation, but in the final instance gave precedence to the interests of the insurance companies over the claims of the aggrieved policyholders who, despite the opportunity to obtain restitution from Germany, nonetheless bore the brunt of the losses.<sup>17</sup>

- 1 For accounts of the insurance industry's role under National Socialism, see Botur, *Privatversicherung*, 1995; Böhle, *Volksfürsorge*, 2000; Feldman, *Private Insurers*, 1998; Feldman, *Unternehmensgeschichte*, 1999; Feldman, Allianz, 2001; Stiefel, *Lebensversicherungen*, 2001; and, in part, Jung, Winterthur, 2000.
- 2 Unless otherwise stated, all information contained in this section is based on the research report on the insurance industry Karlen/Chocomeli/D'haemer/Laube/Schmid, *Versicherungsgesellschaften*, 2002 (Publications of the ICE).
- 3 SVV Archives, Dossier 52A, Federal Insurance Office: «Verteilungsplan der Kostenersatzteile pro 2. Halbjahr 1944 für die am direkten deutschen Geschäft beteiligten Gesellschaften», Bern 26 February 1945; Archives of Schweizer Rück, Annual Report of 1943 for the attention of the Board of Directors, 1 June 1944, pp. 6f.
- 4 SVV Archives, Box 26, Dossier 122, Koenig to Reich Insurance Council (Vice-President Schmidt), 12 November 1940.
- 5 SVV Archives, Dossier 52A, Association of Concessioned Swiss Insurance Companies: submission to the Federal Council, 5 December 1945; see also FA, E 6100 (A) 25, vol. 2331; Rentenanstalt Archives, 234.1/I, Association of Concessioned Swiss Insurance Companies, Annex 1 of Exposé concerning the situation of the Swiss Insurance Companies in Germany, Winterthur, 2 April 1946, p. 1.
- 6 Koenig, Beitrag der Privatassekuranz, 1947.
- 7 Rentenanstalt Archives, Administrative Committee papers 1943 I, Koenig's report to the meeting on 11 February 1943, pp. 3f.
- 8 Archives of the Swiss Bankers Association, minutes of the 58<sup>th</sup> meeting of the Germany Committee, 14 February 1945, p. 2.
- 9 Rentenanstalt Archives, 234.71/1, considerations on the question of use of *Reichsbank* credit balances in Switzerland, Dr. Max Karrer, 24 March 1945.
- 10 On this point, see section 4.10 included herein.
- 11 Archives of Schweizer Rück, Berichtssammlung Verwaltungsrat/Verwaltungsratsausschuss, vol. III, file note: «Der Anker: Wien, Besuch vom 16. und 17. März 1938 der Herren Generaldirektor Bebler und Doktor Froelich», 21 March 1938, p. 10.
- 12 Archives of Helvetia-Patria (Helvetia Allgemeine), records of the Board of Administration/minutes of Committee meeting, 17 September 1941.
- 13 On this point, see in particular Archives of Basler (Leben), 05 000 069, Dossier 43, Exposé of Basler Leben (Gaugler): «Betrifft Judengesetzgebung in Deutschland» (transcript), 30 June 1945, annex to the letter from Basler Leben (Renfer) to Koenig, 30 June 1945.
- 14 Archives of Basler (Leben) 000 060, Dossier 28, Memorandum, «Die deutschen Fremdwährungsversicherungen», undated (approx. 1936), passed to the EVA (noted by hand), pp. 7f.
- 15 FA, E 2001 (D) 1, vol. 226, Koenig to the Federal Political Department's legal office, 10 April 1937.
- 16 Ruling of the Supreme Court of New York *in re Anna Kleve and Kaethe Warisch vs. Basler Leben*, 24 December 1943.
- 17 On this point, see section 6.4 included herein.

## **4.8 Industrial Companies and their Subsidiaries in Germany: Strategies and Management**

From the second half of the 19<sup>th</sup> century on, the limits of the internal market, the problem of obtaining raw materials and recruiting labour, as well as customs barriers pushed many Swiss entrepreneurs to enter other markets by manufacturing on the spot.<sup>1</sup> This industrial diaspora concerned first and foremost Switzerland's neighbours – France, Germany, Italy and the Austro-Hungarian Empire – and in particular the regions bordering the country such as Alsace, Baden-Württemberg, Vorarlberg, Lombardy and Piedmont. Around the turn of the century this phenomenon spread to include England, the United States, Russia, Scandinavia, Turkey, and even Argentina and Japan. We shall limit ourselves here to considering the subsidiaries in Germany, but it should not be forgotten that several of the parent companies were doing business in other parts of the world, notably in the Allied countries. Georg Fischer had a plant in Singen (Baden-Württemberg), only a few miles away from its head office in Schaffhausen, but also in Bedford (UK), while Hoffmann-La Roche had subsidiaries in Berlin as well as Welwyn Garden City (UK) and Nutley (New Jersey, USA). Nestlé meanwhile was established in Berlin but also under the name of Unilac in Stanford (New York). It is not known how many Swiss companies had subsidiaries in Germany because no lists were made at the time. All branches of industry and commerce were involved, however, and all sizes of business were represented, from small workshops or hotels such as the Insel in Konstanz with only a few employees to large-scale set-ups such as Brown Boveri in Mannheim, which employed over 15,000 workers. It is not surprising that a large majority of these subsidiaries were located in Baden-Württemberg and often just across the border.<sup>2</sup>

### **Swiss subsidiaries as part of the economy of the Third Reich**

The behaviour of the parent companies in Switzerland towards their subsidiaries varied considerably, just as did their management of the subsidiaries. This held true even though the same legal and regulatory restrictions applied to all companies operating in Nazi Germany and in the territories it later occupied or controlled. This equality of treatment was ensured under the terms of the trade agreement between Germany and Switzerland signed in 1926.

The Nazi economy was always based on the principle of private enterprise, which differentiated it from the state-run economy favoured by the Soviet regime. Business circles in Switzerland, and in the West in general, were misled by this and in the 1930s failed to recognise, at first, that the Nazi economy concealed a type of totalitarianism. In effect, under Hitler the organisation of

the German economy was to an ever-increasing degree planned by the state and the Party. Hastily restructured after 1933, it was constantly adapted to the Nazis' needs of the moment. At the same time, rivalry between various Nazi authorities reflecting the system's polycracy often occasioned paralysis. This shaky structure had two objectives which were closely linked. The first was to ensure that Germany was as economically self-sufficient as possible. The Nazi notion of «expansion of living space» (*Lebensraumerweiterung*) – territorial expansion towards the East and the exploitation, in reality the pillaging, of countries invaded after 1939 – implemented to this programme. Poland and the Ukraine were to feed the German population at the cost of calculated famine in the areas stripped of their resources and the enslavement or extermination of the local population. The second objective was to prepare for and wage war. The whole of the economy was expected to participate either directly, by producing the goods needed, or indirectly, by meeting the basic needs of the population so that it would back the war effort and accept sacrifices. Hitler and his entourage had reckoned with a short war and a rapid victory; Germany was ill-prepared for a war of attrition. The first setbacks it suffered (1941/42) forced Germany to adopt a reorganisation programme aimed at achieving greater efficiency; this programme was headed by Albert Speer's ministry, which was accorded extended powers. In this «total war», production of supplies for the armed forces prevailed over that of goods for civilian consumption. Swiss subsidiaries were also urged to modify their production: Schiesser manufactured cartridges instead of underwear; Sarotti (Nestlé) offered one of its chocolate and biscuits factories (Hattersheim) along with its entire staff, to an armaments manufacturer (1942). The other factory, in Berlin, continued its normal operations, but produced for the armed forces.

These objectives primarily meant privileges granted to sectors of industry deemed to be crucial for the war: armaments, metallurgy, electrical engineering, synthetic products (as substitutes for imported crude oil, rubber, and textile fibres), certain chemicals and pharmaceutical products, as well as foodstuffs needed by the *Wehrmacht* or the Germany navy. These sectors were given priority orders by the state and the armed forces; they were allotted quotas of raw materials, energy, labour (forced) and, if necessary, locations for factories that were specially equipped and protected. These resources were distributed by interprofessional committees and networks («*Ringe*») under Speer, and supervised by the state or the Party. The other sectors had to make do as best they could, either by convincing the authorities of their usefulness in the war effort thanks to new products (e.g., Nescafé, pain relievers, or vitamin supplements), or by switching to the production of armaments. Many factories had to close owing to lack of orders, raw materials, and skilled labour, while others closed

down because their profitability was severely reduced due to restrictions imposed by the state, price controls, and tax levies. However, entrepreneurs were not free to cease manufacturing if the regime considered their products useful to the war effort. This was something that the manufacturer of optical instruments Wild in Heerbrugg (an offshoot of Zeiss in Jena) learned the hard way when, shortly after the «*Anschluss*» (annexation of Austria), it decided to close its plant in Lustenau, in Vorarlberg region. The Nazi authorities threatened the firm with drastic sanctions and formally forbade all cessation or reduction of activities. Some time later, Wild was able to sell its Lustenau plant. It therefore appears that not all businesses were in the same boat; all, however, including both German firms and subsidiaries of foreign companies, were forced to adhere to the strict terms of the demands of the regime and its vast bureaucracy. If they did not, they risked closure or confiscation. In practice, however, there was certain room for manoeuvring for those who were perceptive and clever enough to exploit it. In October 1936, the the Four-Year Plan office, under the authority of Hermann Goering (who was already Supreme Commander (*Oberbefehlshaber*) of the air force), was set up in addition to the regular ministries and government services. This organ, made up of Party bureaucrats and military and industrial figures, was in principle responsible for production and distribution of resources, for allocating labour, for managing foreign exchange, and for price controls. Although its powers were vast, internal rivalries and ill-defined procedural practices caused conflict with the already existing civilian and military administrative bureaucracies. It was a labyrinth in which it was possible, though not easy, to finagle one's way and obtain advantages: procuring orders, obtaining certificates of public utility, recruiting resources and labour. The directors of some Swiss subsidiaries (in the chemical sector and Nestlé) managed to exploit this situation to the advantage of their companies without running too great a risk. Others, such as Maggi, were not so successful, despite the efforts they made and their open devotion to the authorities.

Special manoeuvring leeway, narrow but profitable, was available to subsidiaries in the Baden area. Walter Köhler, the governor of this German State, was also in charge of economic and financial affairs. Although naturally a member of the Party, he was not a fanatical Nazi, unlike the regional *Gauleiter* Robert Wagner. An excellent manager, Köhler had been noticed by the ministries in Berlin; he was even considered as a successor to Hjalmar Schacht in 1937. In Karlsruhe, he followed a policy which was oriented less towards Goering's objectives than to developing his relatively poor State, which suffered from being far from Berlin and close to France. Köhler made every effort to benefit the many Swiss companies that had set up subsidiaries in the region along the Rhine and the

Swiss-German border, and these firms found that he was often willing to listen to their requests. In March 1945, Köhler opposed the «Nero» order, according to which all industrial plants were to be destroyed.<sup>3</sup>

Thus in the Nazis' authoritarian system of economic fiat, there existed ways of escaping some of its constraints. And indeed they were available for use by those Swiss firms which chose to remain operational in Germany and to make the best of it, maintaining, despite being «foreign» in a country that was fiercely nationalist and ideological, a certain degree of freedom of action and choice of policy. Everything depended on a series of factors, some of which were objective, e.g., legal status of the firm, share capital structure, geographical location, size, type of production; while others were more subjective, e.g., attitude of the senior management of both the subsidiaries and the parent company, level and frequency of communication between them, importance to the Swiss head office of what was happening in Germany in relation to other parts of the world, network of political contacts, and competition between Swiss subsidiaries and German firms in the same sector. Dye manufacturers were thus able to gain favour with the German Superintendent of the Chemical Sector (*«Reichsbeauftragter für Chemie»*) because, to his mind, they represented a counterweight to the powerful industrial giant IG Farben.

All the Swiss companies operating in Germany between 1933 and 1945 had set up their subsidiaries long before that time. The chronic instability prevailing in Germany after 1918 and the worldwide depression had not encouraged investment of any importance. And no one, except perhaps very small, local companies, would have considered setting up a plant in Germany after Hitler came to power, in view of the constraints mentioned above as well as discouraging tax laws. Almost all the companies that were already operating in Germany, however, preferred to remain in place. There were very few exceptions. We have already mentioned Wild Heerbrugg, which was brought to a standstill owing to low profitability. More significant is the case of the conglomerate Gebrüder Sulzer in Winterthur, where political and personal considerations were combined with economic reasons. Until the outbreak of the war, Sulzer sold the majority of the diesel machinery and engines that were the basis of its success (patented in 1893) to the UK, South and North America, France, the Netherlands, South Africa and Egypt; barely 3% of its production was supplied to Italy and Germany. Sulzer had two subsidiaries in Germany, however, one in Stuttgart (heating systems) and the other in Ludwigshafen (diesel engines). It decided to sell them in 1939 at the outbreak of war.

The companies maintaining a presence in Germany had made investments that were now expected to produce a return. They had conquered a market and won over a certain clientele. They had taken on, and sometimes specially trained,

staff. They had every reason for remaining operational. None of the parent companies in Switzerland that we looked at was guided by ideological motives or by an approbation of Hitler's regime that was anything more than formal. No doubt some were closely attached to Germany, its population, and its culture. This may at first have blinded them to the real intentions of the Nazi regime and the risk it represented for the civilised world. Many, if not all, saw a strong and disciplined Germany as a bulwark against Bolshevism, which was seen as the main threat at the time.

Some Swiss companies complied readily with the measures taken by the Nazis against the Jews, and in some cases even anticipated them. After 1933/34 Carl Köchlin, member of the Board of Directors at Geigy, hastened to assure the German authorities that the company's capital was in purely «Aryan» hands and that his senior managers were all of «Aryan descent». Others followed suit, either spontaneously or on request. Jewish staff were gradually dismissed, starting with the most senior executives. This «cleansing» process was delicate, even painful: skilled staff had to go and personal relationships were destroyed. Sandoz had taken on the famous chemist Richard Willstätter – a Jew who was awarded the Nobel Prize in 1915 – to head the supervisory board of its subsidiary in Nuremberg, set up in 1926. The head of Sandoz, Arthur Stoll, who had studied under Willstätter, thought it preferable to ask the latter to resign; this happened as early as 1933. The friendship between the two chemists suffered as a result, until Stoll helped Willstätter emigrate to Switzerland in March 1939. There were also companies, however, that resisted as strongly and as long as they could. Hoffmann-La Roche managed to keep on its Jewish senior managers in Germany until 1938 by agreeing to modify their tasks to a certain extent; the firm did its best to find jobs outside Germany for some of them.

The Nazi authorities were uncompromising towards companies they suspected of not being purely «Aryan». The Danzas Company experienced this first-hand at the end of 1941, when rivals informed the authorities that it was in «Jewish and freemasonic hands» and was working for the British Secret Services. In this manner, some Jewish firms were «Aryanised», particularly in Austria after the «Anschluss». Bally, Nestlé, and Geigy played along, while Roche refused.<sup>4</sup>

Most of the senior managers of Swiss subsidiaries were German and made no attempt to hide their German-nationalist feelings. Up until the war, and even after it had begun, they spoke out publicly, especially in front of their employees, in favour of National Socialism, whose symbols and rituals they had adopted. Few were active Party members, however, which in any case was not a condition for being appointed to senior management. Even the members of the supervisory boards, who were officially running the subsidiaries, were chosen more and more frequently on the basis of their skills or their connections with

leading figures in the Nazi regime rather than for being Party members. At Brown Boveri in Mannheim, for example, only three out of the nine members of the Board were Nazis. With the war and the considerable economic difficulties facing Germany, the explicit pro-Hitler line adopted by the companies became less marked, especially since it was understood that the Nazi leadership was keener on seeing performance than ideological alignment. This implies that their previous attitude had mainly been opportunist: they had to deal with competition from other companies and had to secure the authorities' favour in order to win government contracts and obtain the resources necessary to fill the orders places. Two of the largest Swiss companies pursued this strategy to the extreme by appointing senior managers to their subsidiaries who, although they were admirably qualified for the job, were particularly well connected within the networks of the Nazi Party. In 1936 Lonza, appointed a new sales director in the person of the lawyer Alfred Müller «in order to have someone who will ensure good relations with the authorities in place since 1933».<sup>5</sup> A man with a similar character profile, Achim Tobler, was managing director of the Rheinfelden Aluminium Works (Aluminium Industrie AG, AIAG) from 1938 on. Maggi did not need to replace any senior managers at its factory in Singen: they all immediately became ardent supporters of the new regime and made a show of it. Other firms kept a certain distance, as can be seen in the attitude adopted by senior managers at Brown Boveri in Mannheim for instance. This was a large company which had several production sites, each with a number of subsidiaries of its own. The products it specialised in – electro-technical equipment, transformers, motors, and turbines – were particularly important for the war effort, especially for the German navy (submarines). Brown Boveri Mannheim had become virtually independent of all control by the parent company in Baden. The general director of Brown Boveri in Mannheim, an engineer called Karl Schnetzler, and his assistant, a lawyer by the name of Hans-Leonhard Hammerbacher who was head of finance and the company's strong man, gave every expected outward sign of toeing the Party line; but they were not members and tried as hard as possible to shield their company from any political or ideological influence. Both men had married women of Jewish origin, which might well explain their reserve. On the other hand, they were fervent nationalists and shrewd businessmen. They had no scruples aligning the company, even against the wishes of the head office in Baden, with the war effort. It was only towards the end of the war, in the wake of the damage done to the manufacturing sites by the bombing raids, that a certain hesitation was first noticeable. Hammerbacher was even occasionally in contact with members of the German resistance, for example with Elisabeth von Thadden who was arrested and executed following the assassination attempt of 20 July 1944.

Swiss business operations in Germany were thus purely industrial in character. In the face of the Nazi regime, the attitude adopted by the companies in question came to be known as «accommodation»<sup>6</sup> or «forced adaptation» (*«adaptation contrainte»*)<sup>7</sup> in the history of the German occupation of France. This accommodation or adaptation was achieved in very different ways. In a text that was ambiguous, like the character of its author, and that was published in 1942 as a preface to AIAG's jubilee brochure, Max Huber (who was head of the supervisory board at AIAG as well as chairman of the ICRC) stated that «it is evident that a company which operates in a country where it is accepted and whose laws guarantee its protection has to be loyal to that country and has to conscientiously comply with its wishes».<sup>8</sup> While it would be a trite statement under normal circumstances, this appeal was unusual in the context of the period. Its general and timeless scope was at odds with the reality of the moment, the ambiguity of which it involuntarily underscores.

### **Business strategies**

Amid all the different structural conditions, changing circumstances, and strategies chosen, it is possible to identify three clear issues which preoccupied the companies. In the short term, there was the problem of achieving the best possible turnover and the highest profit levels, despite a constant but contradictory situation. On the one hand, they were confronted with instructions from the regime to maximise all production of benefit to the war effort (and almost every type of production could be turned to the war effort in one way or another); and on the other hand, they had to face the fact that the materials and human resources needed to achieve their goal were growing more and more difficult to obtain. This situation led to a potential – and sometimes real – conflict between the German management of the subsidiary and the parent company in Switzerland which owned the subsidiary. Before the war, just as during its latter phases, the parent company was in general not in favour of too great an involvement in Germany, since one could not foresee what would happen once the war was over. AIAG and Lonza, which manufactured calcium carbonate (fertiliser) and various synthetic products (abrasives, glues, acetylene) were immediately considered by the German authorities to be indispensable. They were included in the cartel system and enjoyed its protection, although it left them little freedom. They were obliged to expand production capacity. Their Swiss head offices had to resign themselves to this fact, and they generally did so without any great enthusiasm and on the condition that they would not have to invest Swiss francs in the process since, rationally, they could only be expected to use reichsmarks blocked in German accounts to expand their business. From the Swiss point of view, there was a fear of over-investment

which, once peace returned, would be superfluous and therefore entail losses. Furthermore, from 1942/43 on, a marked involvement in Germany was likely to compromise a company's chances of regaining its market share in the Allied countries or those which were soon to be liberated (black lists). Only firms such as Maggi or Schiesser (textiles), which outside Switzerland had concentrated solely on the German market, were forced to cling to this line whatever happened. In addition, there was the difficulty of transferring money owed to the parent company in Switzerland, of paying out dividends to shareholders (most of whom were Swiss), of licences, and of contributions towards corporate administrative costs. The German fiscal authorities took a large cut: on average, at least one-third. Still the situation varied considerably according to the legal structure of the subsidiaries and their share capital which was often increased in order to ensure a higher dividend. What was then left was subject to restrictions on the transfer of foreign exchange and the workings of the clearing system. The amounts that finally reached Switzerland were definitely not negligible, but were still well below what would normally be obtained on a free capital market. From a financial point of view, motivation among the Swiss companies to expand their German subsidiaries was restricted, with the exception of those such as Maggi which became totally dependent on the German market.

The second strategic concern of the companies was one of medium or long-term: to maintain or acquire market share for the future. Until 1940, attempts to achieve this aim consisted in the strategy of ensuring a presence, through subsidiaries or holdings. This was often done by buying up local firms on the largest possible number of markets in neighbouring countries (France, Germany, and Italy) and, for those who were in a position to do so, in other parts of the world. The latter included first and foremost the United States which, during the inter-war years, became the world's leading economy but was not yet familiar to most Swiss companies. Nestlé and Hoffmann-La Roche established a solid foothold in the American market. Nestlé transferred its central administration across the Atlantic on the eve of the outbreak of the war (1939), and in spring 1940 the general director of Hoffmann-La Roche, Emil Barrell (who had already moved the head office from Basel to Lausanne) took up residency in the United States. In this way he ensured the future of the company, although there were also personal reasons for emigrating in that his wife was Jewish. During the war, Nestlé generated over three-quarters of its turnover out of reach of German influence under the name of Unilac. The firm's European business continued, managed from Vevey, but the two branches were legally separated. This move had been prepared by Nestlé as early as 1936 by the creation of a holding company. As mentioned above, Lonza and AIAG hesitated to invest, as did Brown Boveri: its head office in Baden refused to approve what it judged to

be excessive investment, but the Mannheim subsidiary went ahead anyway. To many people such cautiousness seemed misplaced after the *Blitzkrieg* in 1940. On the assumption that the German army's victories would lead to a new order in the economy of continental Europe, the conclusion could be drawn that it was important to ensure a good market position. With this aim in mind, several Swiss companies more or less left it up to their German subsidiaries in annexed (Austria, Bohemia and Moravia, and the Alsace) or occupied countries, to integrate into the German market and comply with its requirements. These manoeuvres even led to Brown Boveri in Baden losing part of its own market share to its subsidiary in Mannheim. German expansion also meant the opportunity of constructing production units in new territories, taking advantage of local labour and other resources. Accordingly, Nestlé set up a company in Prague in 1940, of which 93% of the share capital was held by its subsidiary Deutsche Aktiengesellschaft Nestlé (DAN), and built a factory in the «protectorate». It was deemed important not to neglect any chance of expansion when the occasion arose and the funds necessary were available on the spot.

Things soon began to change, however. The attacks on the Soviet Union in June 1941 and the US entering the war in December of the same year implied that the war would last longer than originally thought. At the beginning of 1943, it looked as if the outcome would not be in favour of the Axis powers. From then on the Swiss firms were faced with a dilemma. Apart from Sulzer, none seemed to have considered withdrawing from Germany, which would have meant losing absolutely everything they had invested there. The new situation put an end to expansion plans however. Production plants were at risk either by the Allies taking over the territory they were located in, or by destruction in bombing raids. Serious bomb damage was suffered by Brown Boveri in Mannheim, but by few other Swiss subsidiaries. Most of them were located in Baden, away from the main urban centres and industrial areas and were therefore not targeted by Allied air raids. Orders in connection with the war effort poured in and, since demand exceeded offer, there was no competition. As long as it was supplied with what it desired, the state asked no questions. Speer, who was now responsible for the war effort, did reorganise planning, but accorded companies more confidence and allowed them more independence. Profits rose. On the other hand, the parent companies in Switzerland foresaw that they risked upsetting the Allies and being blacklisted, which would mean being forbidden to carry on any manufacturing and commercial activities within the Allied countries. Paradoxically, the British blacklisting system was stricter with regard to companies which exported from Switzerland than with those that manufactured in Germany, as can be seen in the case of Sulzer. The parent companies protected their own interests by giving the impression that their subsidiaries operated

independently. They backed this up by invoking communication difficulties, inadequate information, and consequently the impossibility of maintaining proper control over their subsidiaries. This was, however, far from the truth in most cases. In reality, the firms gambled on the time factor, some more skilfully than others. They intended to be ready to play their role in the post-war economy centred around the reconstruction of a Europe that had been devastated, that was hungry, and that lacked most consumer goods. And they were largely successful.

A third concern shaped the policy adopted by the firms: their position in the face of competitors. This problem was not equally serious for every company. Those such as AIAG and Lonza, whose production was particularly indispensable, were included in cartels which eliminated the effects of competition. Nestlé and the pharmaceutical companies supplied specialised products for which competition was negligible. The dye manufacturers in Basel had to compete with IG Farben, but they managed to take advantage of the fact that the upper echelons of the Party distrusted the strong Frankfurt firm. Brown Boveri in Mannheim did not have a similar advantage. Despite its industrial prestige, it still lagged behind Siemens and AEG, which not only enjoyed larger market shares in the electro-technology sector (Brown Boveri held only 19% of the market in 1939) but also held most of the key positions in professional organisations which had been set up by the state and which were responsible for allotting markets and resources (Brown Boveri was given only 5 of those positions out of 244). Of all companies we investigated it was Maggi (renamed Alimentana SA in 1934) in Kemptthal which suffered most. The subsidiary it had set up in Singen in 1897 (with a sales office and an administrative office in Berlin) came under tremendous pressure from competitors who were more or less just as large: Knorr in Heilbronn, Liebig & Co. in Cologne and Gräbener in Karlsruhe. From the end of the 19<sup>th</sup> century on, these companies fought a fierce battle, making every effort to obtain the others' manufacturing secrets. The 1930s depression had a considerable effect on the food industry, which only aggravated the atmosphere of hostile competition. Maggi-Singen was accused of being run by foreigners; for a long time it had been the victim of defamation campaigns and calls for boycotts, as was the pharmaceutical Hoffmann-La Roche. This attitude was not to change when the Nazis, with their fanatically nationalist programme, came to power; but at least the change promised an economic revival. It was for this reason that Maggi-Singen (as opposed to Hoffmann-La Roche in this respect) gave every sign of enthusiastically even obsequiously complying with the new regime and in addition never missed an opportunity to emphasise its German, «Aryan» character. The firm complied fully with the new ideology with all the consequences this entailed (discipline,

internal propaganda, exclusion of Jewish employees, appointing Party members to the board, etc.). In turn it was rewarded with advantageous production conditions – a head office in Berlin (1938) and a plant in Singen (1940) – and with being granted the title of «exemplary Nazi firm» which it shared with the likewise Swiss company Schiesser in 1940. It was the desire to survive rather than any ideological convictions which forced these subsidiaries into the arms of Nazism. As far as Maggi's parent company in Kemptthal is concerned, it depended to too great an extent on the success of its German subsidiary not to support this policy, whether it wanted to or not.

### **The means and the players**

The way in which these strategies were implemented depended on many factors. Among them, the legal structure of the companies, i.e., the degree of formal autonomy that the subsidiaries enjoyed, does not seem to have been a determining factor. Most of these subsidiaries were joint-stock or limited liability companies for which the parent company held all or the majority of the shares. Some of the subsidiaries, such as Brown Boveri in Mannheim, even had their own subsidiaries. In a few cases, the Swiss firm had several subsidiaries that were legally distinct entities. This was the case with Nestlé and DAN (milk products and later Nescafé as well) and Sarotti SA (chocolate and biscuits) taken over through share purchase in 1928/29, or AIAG, which held the share capital of several companies. In autumn 1939, these companies joined to form a sort of consortium called ALIG (*Aluminium-Industrie Gemeinschaft*) with its head office in Konstanz. It was managed by Hans-Constantin Paulssen, who was already a director of the main subsidiary, Aluminium-Werk Singen. This unique combination considerably restricted AIAG's control of its German business affairs. To the Allies, AIAG appeared not to be responsible for its German business and could therefore hope to avoid having an administrator imposed and being put on the black lists. Furthermore, ALIG drew up a profit and loss account together with its affiliated companies, which made it easier to transfer what it owed to AIAG in foreign currency. Conversely, it was in Switzerland that three large chemical companies – Ciba, Sandoz and Geigy – had joined to form an alliance under the name of «Basler IG» (1918–1951), which operated like a cartel and enjoyed common leverage on the world market. At the other end of the range of formal structures, the factory that Geigy ran in Grenzach was not a subsidiary but depended directly on the Basel company. It was situated only a few hundred metres away, like an enclave in German territory. The frontier separated the two, however, and became an increasingly important barrier during the period we are dealing with. Production activities and the market for its products were subject to German legislation, and to the economic demands of the Nazi

regime. The same was the case for the Georg Fischer factory in Singen. Hoffmann-La Roche had a factory in Grenzach, next to the Geigy plant, which was a joint-stock company.

These different legal structures had an impact on business which was nevertheless less decisive than the real relations between the parent companies and their subsidiaries based on personal relations between the directors on each side of the border and the information, instructions, and recommendations which passed between them. After the fact, many Swiss companies tried to justify their passive or even accommodating attitude towards their subsidiaries' joining in the Nazi war effort by claiming that they had not been fully informed. It is true to say that communication was hindered, especially during the war. Travel was difficult and postal and telephone communications were monitored. The German authorities made sure that what they considered secret information about the economy, production, and technology did not cross the border. Companies had to be discreet about details of their production activities. Sources indicate that some parent companies were indeed inadequately informed about the situation, for example AIAG, as already mentioned, and Georg Fischer AG in Schaffhausen. These two examples show that the quality of information passed on did not depend on the distance it had to travel: Konstanz, the site of ALIG's head office, is on the German-Swiss border, and Singen is a stone's throw away, which meant that the German director of the Georg Fischer subsidiary was able to go home each evening to Schaffhausen.

On the whole, though, the information was sufficient, even comprehensive; and it flowed without interruption. It sometimes also went beyond purely business information: Ciba had precise details about the fate of Jews in Poland, and in 1942 Sandoz was fully informed about the «euthanasia» programme, i.e., the murder of handicapped people. In Vevey, Nestlé under the management of the French chief executive officer Maurice Paternot, maintained close contact with Edouard Müller, Chairman of the Board of Directors at the international head quarters in Stanford, USA. Nestlé attached «great importance to continuous contact between the central administration and the senior management of the various branches»,<sup>9</sup> with its twin head offices (Stanford and Vevey), the company managed to achieve this aim throughout the world. They were kept up to date with all the details of business affairs in Germany by Hans Rigggenbach, a Swiss citizen who managed all Nestlé's German business from Berlin, for the duration of the war and beyond. Rigggenbach regularly travelled to Vevey, sometimes accompanied by the German chairman of the supervisory board, to report and to receive instructions. Ambitious, rather arrogant in the opinion of his seniors in Vevey, but tireless and gifted, Rigggenbach displayed faultless loyalty to the company he represented. In this sense, he embodied

Nestlé's own corporate culture. There is no doubt that he influenced the expansion policy that Nestlé pursued without respite at the time, even at the cost of a number of short-term sacrifices.

The same cannot be said of all his colleagues who ran Swiss subsidiaries in Germany. The senior management of Brown Boveri in Mannheim did not fail to inform its head office in Baden; however, it pursued its own expansion policy contrary to the opinion of the parent company's Board of Directors which felt more vulnerable and was concerned about long-term unproductive investment. A firm which manufactures capital goods cannot be run like one which produces consumer goods. This example shows that even if the parent company was informed, it did not always manage to keep control of its subsidiary. Paulssen, head of the Aluminium-Werk in Singen and of the ALIG, not only passed little information on to his head office but also acted in accordance with his own particular brand of corporate politics which was based on the principles of German-nationalist conservatism adhered to by the older generation and which was thus alien both to National Socialism and to the liberalism prevailing among the larger Swiss businesses. It should also be pointed out that it was even more difficult to keep a check on subsidiaries in the UK and overseas. Sulzer, for example, lost all contact with its British company. The only exceptions were those firms which had two head offices (in the USA and in Switzerland), i.e., Nestlé and Hoffmann-La Roche.

After September 1939, two subsidiaries operating in Poland were within the German economic and political sphere of influence. One had been founded jointly with a local firm by Ciba as early as 1899 in the suburbs of Lodz. This was the Pabianicer Chemical Industry Ltd. (*Pabianicer Aktiengesellschaft für Chemische Industrie*, PCI), which manufactured dyes (21% of total Polish production in 1938) as well as medicines. The managing director, Hermann Thommen, was Swiss. The other was a small Hoffmann-La Roche subsidiary in Warsaw, which represented only 1% of Roche's worldwide turnover. This firm managed to keep up its production of Roche specialities until the Warsaw uprising (August/September 1944). It was run from Basel by the vice-director, Dr. Louis Delachaux, who travelled as often as possible to Warsaw, plus skilled and reputable Polish senior managers on the spot. Despite extremely difficult circumstances and pressure from the occupying powers as well as the German directors of Ciba and Roche, the two companies managed to maintain their independence vis-à-vis Berlin and to keep in close touch with their head offices in Basel. Both Thommen and Delachaux kept an eye open and reacted to the situation with loyalty and a rare perspicacity. They displayed firmness and undoubtedly courage. Delachaux, who experienced the fighting in September 1939 first-hand, summed up Poland's future a few months later in three

options: either the «*Generalgouvernement*» (occupied but not annexed part of the country, including Warsaw) would fall to the Soviets (which did in fact happen, although who could foresee that in May 1940?); or the Third Reich would finally lose the war and Poland be restored; or it would win the war and Poland would become a long-term German dependency. Delachaux himself favoured the second option. He foresaw that the Polish state would be restored and therefore recommended maintaining the subsidiary in its pre-war form. Like Thommen in Lodz, he did his best to keep Nazi agents out of the company, protected the Polish factory workers, and even allowed the names of young Warsawers who were under threat of deportation (but were not really employed by the firm) to appear on the payroll. Thommen was aware of the situation of the large Jewish population of Lodz and informed Basel accordingly; nothing could be done, however, except to note the loss of several clients and a number of employees. Thommen was replaced in 1942. The senior management of PCI remained Swiss but fell under the influence of the prevailing German environment. They did, however, resist IG Farben's attempts to eliminate its Polish rival. The firm could not avoid Polish employees being excluded from its pension fund, without any compensation nor repayment of contributions. The examples given above illustrate the complexity of circumstances and the difficulty of overcoming the obstacles, with each firm seeking and finding its own solutions, always on the basis of its long-term – and more rarely its short-term – interests. It can also be seen that the same parent company – as in the case of Ciba or Roche – adopted different behavioural patterns with regard to its subsidiaries according to their location, the more or less positive stance of Nazi authorities, the personnel in place, and the changing contact networks. Some anticipated developments and kept to their policies at the cost of making concessions, while others showed neither the same intuition nor resolve. This confirms that, beyond all economic and political constraints which included the desire – sometimes expressed in our source material – to help maintain Switzerland's integrity and food supplies, Swiss companies nevertheless enjoyed a degree of manoeuvring leeway greater than we had initially been given to believe.

#### **The outcome: for the German war effort ...**

It remains for us to assess the company strategies, i.e., to evaluate the way in which they contributed to the Third Reich's war effort, what profits they made, and what became of them once the war was over. A global assessment is difficult to make, however. On the one hand, there is too much information missing despite our extensive research; on the other, the elements that we have been able to extract are not suitable for comparison and definitely not for a summary.

Moreover, quantitative data do not provide a full picture. A minor service may in fact have had far-reaching consequences, while the effect of an apparently more important service may have been negligible or less profitable.

In any case, it cannot be denied that industrial production by Swiss companies in Germany actively contributed towards the country's economy between 1933 and 1945, and therefore towards the German war effort. It would clearly be an exaggeration to consider this contribution as decisive, but at the same time it was not negligible. Among the few neutral countries, Switzerland made the greatest contribution towards the German war effort since it was Switzerland which had the greatest presence in both Germany itself and the countries it occupied. This can be explained by their relationship as neighbours, by the fact that the two cultures were similar, that good business relations had existed for a long time, and that it was normal for a small but highly developed country such as Switzerland to expand its production beyond its own borders into neighbouring regions (Baden-Württemberg, Alsace) or even further afield.

Not a single factory supplied arms or ready-to-use war material. These were either produced in Switzerland or under licence by German as well as English, American, French, and other companies. On the other hand, several Swiss subsidiaries supplied materials (aluminium, glue, synthetic products) or mechanical or electrical components (turbines, motors, etc.) which were essential to the production of arms, especially for the navy and the air force. These companies (Brown Boveri in Mannheim, AIAG, Lonza, and Georg Fischer to a lesser extent) were immediately integrated into the war material programmes. AIAG and its factories at Rheinfelden and Lend (Austria) achieved a maximum annual production of nearly 35,000 tons in 1944, which represented 14% of the German total aluminium production that year (1939: 24,000 tons or 12%).

The major part of what was produced by the Swiss companies concerned goods for civilian use, however. The Treaty of Versailles (1919) stipulated the disarmament of Germany. There had therefore been no reason to set up arms factories there, in fact the opposite occurred: German manufacturers set up companies in Switzerland.<sup>10</sup> On the other hand, there were enormous possibilities for electrical equipment for civilian use, textiles and textile dyes, pharmaceutical products, and foodstuffs. The economic crisis at the beginning of the 1930s had dire effects on these sectors. But the revival after Hitler came to power provided a boost which was not limited uniquely to the production of goods relevant for the war. All consumer goods were affected. It was only with the outbreak of the war itself and in particular after 1941 that these economic branches were also commandeered to supply the armed forces. This shift from civilian to state consumption served to strengthen the production of a number of Swiss special-

ties such as synthetic silks (Lonzona, a subsidiary of Lonza) used for making parachutes, vitamin supplements (Roche), Coramine and Cibazol (bactericides produced by Ciba and its subsidiary PCI), opiates (Ciba, Sandoz, Roche) used in treating the wounded, and powdered milk (DAN) or concentrated soup sold in tins or cubes (Maggi). An interesting case is that of Nescafé produced by Nestlé and launched on the markets from 1938 on, which was universally successful, especially in the United States. In Germany, however, the authorities were reticent. In order to manufacture this miraculous powder, coffee had to be bought in, which meant using foreign currency; and the import of coffee became more complicated and more expensive owing to the Allied blockade of shipping routes. Coffee was not a priority for Berlin. It was the *Wehrmacht*, in the context of the Russian campaign, which understood the importance of this invention and authorised its manufacture from 1942 on for its sole use. Production remained small, however, for the reasons indicated above.

#### **... and for the Swiss companies**

It is not possible to assess the overall gains for the companies concerned and in any case such an estimate would be of little significance. It would be necessary to isolate the turnover of each firm for each product, the profits generated in Germany, the amounts transferred to Switzerland in the form of dividends, general expenditure, licences and investment, and to compare them whenever applicable with the results obtained by the same firms on other markets. In the cases where we have been able to obtain such information, it is included in our analyses of Swiss companies in the Third Reich.

All in all, and allowing for the peculiarities of each company, business appears to have flourished in the 1930s after the economic crisis and up until the outbreak of war. Turnover and profits rose considerably so that, despite taxes levied by the German authorities and the already heavy restrictions on transferring foreign exchange to Switzerland, it was still possible to generate profits and pay out considerable dividends. For many companies, this situation continued at the beginning of the war; however, from 1940 on, in particular in 1941, trade was less stable. Orders from the state and from the *Wehrmacht* flowed in, but they did not compensate for the marked drop in civilian demand in every sector. The problem of raw materials remained or was resolved only belatedly. Staff, especially skilled labour, were called up or moved to sectors which were given priority and forced labour only partly filled the gap.<sup>11</sup> Income stagnated or even fell. Some factories, such as Geigy's plant in Grenzach, ran at a loss. Problems concerning the transfer of money owed to Switzerland increased.

Swiss companies drew benefits from their presence in Germany, as well as in

other countries, before the war. But during the war, this advantage decreased on the German market more than elsewhere. In comparison with the efforts made, which were considerable, the immediate financial result was modest. On the other hand, it was possible to invest part of the capital accumulated and blocked in Germany in order to foster a policy of expansion, to meet demand, and to increase production in the medium term. The effects of this investment policy were seen only later and therefore represented only a minor contribution towards the war effort. They strengthened production potential for the period after the war, a period for which everyone was preparing. Not a single entrepreneur entertained doubts about the prospects he would enjoy once the war had come to an end.

In effect from 1945/46 on, the same companies were able to continue or revive their activities without any major problems. They did, however, lose subsidiaries or factories which fell into the hands of the USSR or the puppet regimes they set up in Eastern Europe. Sarotti (Nestlé) was dissolved; PCI (Ciba) came under public control and was later nationalised; Nestlé Prague disappeared in 1948. In all other locations, Swiss ownership was respected. In the French occupied zone (Baden-Württemberg), there were threats of forced closure or seizure which, however, were not carried out. In general, the factories suffered very little from bombing raids (except in Mannheim) or fighting on the ground. Production equipment remained virtually intact – in a country which was devastated. Swiss senior managers were hardly alarmed. Several German directors who had severely compromised themselves and had been put through a «denazification» procedure, were dismissed. Only one of the larger Swiss companies paid the price of adopting the unfortunate strategy of depending too heavily on the Nazi market and complying with the Nazi regime's wishes. Along with the Third Reich, Maggi too lost the war. It recovered only further to having accepted the merger proposed by Nestlé in 1947.

<sup>1</sup> Unless otherwise indicated, this section is based on the results of the following reports: Ruch/Rais-Liechti/Peter, *Geschäfte*, 2001; Straumann/Wildmann, *Chemieunternehmen*, 2001 (Publications of the ICE).

<sup>2</sup> Around 87% of the general expenses reimbursed by Swiss companies to their parent companies during the war came from Baden. FA, E 7160-11 1968/31, vol. 569, Licensing Office, «Regiespesen», 9 February 1949.

<sup>3</sup> For a more detailed description of the ambiguous character of Köhler see Bräunche, *Nationalsozialist*, 1997.

<sup>4</sup> See also section 4.10, included herein.

<sup>5</sup> UBS Archives, SBV Fund, Lonza file, no. 6, letter from Schenker to Golay dated 8 September 1945 (original German).

- 6 Burrin, France, 1995, pp. 468f.
- 7 Marcot, Occupation, 2000, p. 283. Care must be taken when applying these concepts to Swiss companies, however, owing to the fact that they were not in the same situation as France.
- 8 Cited in Huber's Preface to the History of the AIAG Neuhausen, vol. 1, 1942, p. 18.
- 9 Nestlé, Historical Archives, Report of the Board of Directors to the General Meeting dated 24 April 1940 (original French).
- 10 Cf. section 4.2, included herein, as well as Hug, Rüstungsindustrie, 2002 (Publications of the ICE).
- 11 Cf. section 4.9, included herein.

#### **4.9 The Use of Prisoners of War and Forced Labour in Swiss Subsidiaries**

Switzerland was affected in two ways by the forced labour of people declared «alien to the own ethnic group» (*«fremdvölkisch»*) who were relocated to Germany: firstly, the practice of forced labour was also used in the German subsidiaries of Swiss companies,<sup>1</sup> and secondly, many of the prisoners of war and forced labourers working in Southern Germany attempted to escape what were often inhuman living and working conditions by fleeing to Switzerland. In this section we therefore intend to look primarily at Swiss subsidiary companies close to the border.

By using the forced labour of foreign civilians, prisoners of war and concentration camp prisoners, the Nazi regime breached several international treaties: Article 52 of the Hague Land Warfare Convention of 1907 stipulated that services provided by the communities or inhabitants of an occupied region could be called upon only to meet the needs of the occupying forces.<sup>2</sup> As regards soldiers who had been taken prisoner, the «Convention on the treatment of prisoners of war» of 1929,<sup>3</sup> signed by both Germany and Switzerland, contained an agreement that prisoners of war could in principle be called upon to work (Art. 27), but stipulated that they must not be used for hard or dangerous work, or work to serve the war effort (Art. 29, 31 and 32). In August 1945, the Allies classified «deportation to slave labour»<sup>4</sup> as a war crime.

However, criminal proceedings were limited almost exclusively to the immediate post-war period, in other words under the regime of the occupying powers. After the establishment of the Federal Republic of Germany, the main question was that of compensation for former forced labourers to be paid by the companies concerned or by the German state. Although Swiss subsidiaries had also used forced labour, this was only raised as a charge in the class action suit against the major Swiss banks, insurance companies and industrial enterprises in connection with the assets of Holocaust victims, so that the settlement agreed between the major Swiss banks and the plaintiffs also treated former forced labourers working for Swiss subsidiaries as being entitled to claim.<sup>5</sup> The extent to which forced labourers working for Swiss subsidiaries are to receive compensation out of the settlement figure of 1.25 billion US dollars had, however, not yet been established at the time this text was written. At the level of international law, the Swiss subsidiaries cannot be held responsible since they, as private companies, cannot as a matter of principle be the subjects of injustice under international law. Nor can Switzerland be held liable under international law, since the forced labourers were employed only within the German Reich and the territories governed by it.

### **Phases and extent of the use of forced labour and prisoners of war**

The «phenomenon of slave labour on a massive scale»<sup>6</sup> was an unforeseen consequence of military and economic developments during the course of the war. According to Nazi ideology it was actually unthinkable and therefore by no means the intention for the «Aryan race» to be dependent on the labour and services of allegedly «inferior» peoples. As late as 1942, the German authorities still assumed

«that the mainstay of our armaments industry is and must remain the highly skilled German worker. Foreign auxiliary workers are merely filling material which collapses when the structure supporting it fails.»<sup>7</sup>

But without the foreign workers, the German economy would have ceased to function long before then.

At the beginning of the war, the conscription into the *Wehrmacht* intensified the major shortage of labour which already existed. However, the attack on Poland opened up the possibility of «work as booty» (Ulrich Herbert)<sup>8</sup>: Polish prisoners of war were deported to Germany to work in agriculture and mining. At that time, their use in industry was neither anticipated nor desired, especially as it was assumed that the war, and the associated shortage of labour, would soon be at an end.<sup>9</sup> But this hope was not realised, so that industry too turned to the employment of prisoners of war. In particular, these were French soldiers, who ranked above the Poles in the Nazi racial ideology scale, and who were seen as more capable workers with regard to industrial production. The Swiss companies whose German factories were allotted prisoners of war relatively early included the AIAG subsidiary Aluminium GmbH in Rheinfelden, Baden, and the Lonza-Werke in Waldshut. Both businesses saw the arrival of their first prisoners of war immediately after the defeat of France in 1940.

The attack on the Soviet Union and the failure to achieve a quick victory over the Red Army intensified the labour shortage once again so that Hitler, despite all ideological reservations and fear of sabotage, ordered the «large-scale deployment» of Russian prisoners of war on 31 October 1941 «for the needs of the war economy».<sup>10</sup> Although atrocious nutrition and a widespread lack of specialist expertise meant that only «fairly poor performance»<sup>11</sup> could be expected at first, companies were willing to take on the Soviet prisoners of war. Lonza-Werke, for example, announced a need for a further 400 workers in the autumn of 1941, and provided accommodation for 200 Soviet prisoners of war. However, the deportation of Soviet prisoners of war represented only the prelude to what was effectively the enslavement of large parts of the Soviet population. In February 1942, the «Eastern workers decrees» («Ostarbeiter-Erlasse») marked

the decision to order Soviet civilians into forced labour as well. Voluntary enlisting took place only in the beginning and to a very limited extent. It was far outweighed by forced conscription, with the German occupying forces regularly resorting to terror in order to round up sufficient «Eastern workers» («Ostarbeiter»).<sup>12</sup> The Nazi regime also began to use compulsion against Western Europeans, not allowing workers who had signed up voluntarily to return home, or sending the population of occupied areas to work in Germany. In France, the Vichy Regime introduced two years of compulsory service, the «Service de Travail obligatoire» (STO). The last group of forced workers to be conscripted were Italian «military internees», who were deported to Germany after Italy's capitulation and about-face in September 1943. At that time, many Italian civilian workers who had gone to Germany as volunteers also became *de facto* forced labourers, as they were no longer permitted to leave the country. In August 1944, German was home to 7.6 million foreign workers – men, women and also children – consisting of 5.7 million civilian workers and 1.9 million prisoners of war. This total corresponded to 26.5% of all those employed by industry.<sup>13</sup>

It is impossible to say how many forced labourers and prisoners of war were employed in Swiss subsidiary companies. On the one hand, the number of subsidiaries based in Germany is not known, on the other, quantitative information is only useful in respect of certain cut-off dates, since the number of foreigners fluctuated widely in terms of time, business sector and area.<sup>14</sup> As far as the Swiss subsidiaries are concerned, if we base our assumptions on the fact that in July 1944 the four largest companies in Baden (today Baden-Württemberg) alone – Aluminium-Walzwerke Singen, Aluminium GmbH in Rheinfelden, Georg Fischer in Singen, and BBC Mannheim – employed far in excess of 4,000 foreign workers,<sup>15</sup> we can probably conclude with a clear conscience that the figure quoted in the media – a total of over 11,000 forced labourers and prisoners of war employed in Swiss subsidiary companies throughout the Reich – is likely to be on the low side.<sup>16</sup>

In armaments companies and their suppliers in particular, the proportion of forced labourers and prisoners of war was well above the average number of forced labourers employed in the German Reich as a whole, and this also applies to Swiss branches:

**Table 7: Proportion of foreign workers in the Swiss subsidiary companies investigated and seen as «important to the war effort» in March/April 1943**

Company	Total workforce	Foreign workers	Share in (%)
AG d. Eisen- u. Stahlwerke (Georg Fischer), Singen	2 127	704	33,1
Vereinigte Aluminium-Giessereien, Villingen	349	118	33,8
Aluminium-Walzwerke Singen (AWS)	2 256	664	29,4
Brown, Boveri & Cie. (BBC), Mannheim	5 714	1 693	29,6
Aluminium GmbH Rheinfelden	1 658	622	37,5
Lonza-Werke Waldshut	1 496	623	41,6
Comparative figure: Total of workers in the upper Rhine armaments inspection district (Baden and Alsace)	158 690	26 876	16,9

Sources: BA-MA, RW 20-5/39, information for Georg Fischer, Vereinigte Aluminium-Giessereien, AWS, BBC and the upper Rhine armaments inspection district taken from a list of the Freiburg and Mannheim armaments command, situation as at 30 April 1943; GLA, 237/24389; information for the other companies taken from a letter from Schopfheim Chamber of Commerce to the Baden Ministry of Finance and Economic Affairs, 10 March 1943.

One thing is sure: companies did not have to be coerced into taking forced labourers. On the contrary, the dramatic shortage of labour meant that companies – including Swiss subsidiaries – made active efforts to take on some of the forced labourers. It is true that a few businesses rejected the «Eastern workers» allocated to them on the grounds of «health problems and skills shortages, and because of their young age», but in most such cases there were no substitutes. The companies therefore had to accept the workers allocated to them whether they liked it or not, even if, as in the case of BBC, the forced labourers were seen as only a «somewhat doubtful replacement»<sup>17</sup> for the specialist workers who had been called up to serve in the *Wehrmacht*.

This «process of habituation» and «workforce opportunism» also allowed concentration camp inmates to be used as workers. Within the companies studied in more detail by the ICE however, this appears not to have been the case, with the exception of BBC. It is true that we do not know of any concentration camp inmates being employed in the main BBC works in Mannheim and Heidelberg, unlike Daimler-Benz, but there is evidence of the use of slave workers in at least one case and it is highly likely that they were used for another project: the BBC subsidiary Stotz-Kontakt employed prisoners from the Buchenwald concentration camp over several months, and it is also highly likely that concentration camp inmates were used during the construction of the power station built by BBC for the IG Farben plant in Auschwitz.

### **The accommodation, care and treatment of forced labourers and prisoners of war**

Prisoners and civilian foreign workers were allocated to companies only if their accommodation and board were guaranteed. Prisoners of war were usually accommodated in camps guarded by the *Wehrmacht* outside the company premises, but the company had to contribute towards the costs of board and lodging. For the «Eastern workers», the company provided its own enclosed barracks. These were to be surrounded by «appropriate fencing, with barbed wire if possible», and could «only be left to carry out the work allocated to them [the forced labourers] in the businesses». The official occupation quotas in themselves prevented forced labourers and prisoners of war from living in conditions fit for human habitation. A barracks room of 48 square metres was supposed to house 18 male or 12 female «Eastern workers», or as many as 36 Russian prisoners of war. At the Nestlé plant in Kappeln for example, 38 people were packed together in an area of 59.4 square metres, and at Lonza in Waldshut in the summer of 1944, nearly 800 foreigners lived in 17 barracks with a total of 64 rooms. In addition, the barracks had to be constructed as quickly and cheaply as possible, so that sound building techniques and adequate sanitary facilities were dispensed with. Unlike the «Eastern workers» and prisoners of war, Western European civilian workers enjoyed comparatively good living conditions. They were often put up in guesthouses or private quarters, and were free to leave their rooms at will when they were not working.<sup>18</sup>

In general, forced labourers and prisoners of war complained much more vociferously about their food than about their accommodation. It was evident right from the start that these often under-nourished people were scarcely able to make the desired contribution to the efficiency of the war and armaments economy. This was particularly true of the Soviet prisoners of war. The fact that the Soviet Union had not ratified the agreement on the treatment of prisoners of war was used by the Nazi regime as a pretext for not granting Soviet soldiers «food corresponding to this agreement as regards quantity and quality»,<sup>19</sup> even though the *Wehrmacht* Supreme Command saw «adequate nourishment» as a precondition for the effective use of Soviet prisoners of war.<sup>20</sup> As the treatment of «Eastern workers» had to be equivalent to that of the Soviet prisoners of war, they too suffered in many cases from terrible under-nourishment and malnutrition. One Ukrainian forced labourer recalled Maggi GmbH in Singen:

«The work was hard and the food was pitiful: there was soup swimming with maggots. Begging for more bread or better food resulted in merciless beating from the camp commander.»<sup>21</sup>

The food must also have been very poor at the Singen-based plant of Georg

Fischer, the Aluminium-Walzwerke Singen, and the Aluminium GmbH in Rheinfelden.<sup>22</sup> Responsibility for these conditions lay in the first instance with the works management on site. Although the authorities determined the size of the rations, the procurement, preparation and distribution of food was left to the companies concerned. In fact, many businesses demanded an increase in food rations or made their own attempts to obtain additional food for the forced labourers. This appears to have been the case for example at the BBC subsidiary Stotz-Kontakt, at Aluminium-Walzwerke Singen, and at Georg Fischer. But there was little difference as regards discrimination and the under-nourishment of Soviet workers: whilst workers from Western Europe ate together with the German workforce and received the same rations, the Soviet forced labourers were given separate and significantly worse meals.

Whilst the living and working conditions of forced labourers were heavily dependent on the company in question, their pay was governed by standard rules and rates throughout the Reich. The calculation was based on «rates of pay for equivalent German workers»,<sup>23</sup> but there were no social benefits, and earnings were taxed so heavily that *de facto* the amount paid did not even come close to what the German workers received. Even the German authorities were aware that this system of payment did not provide any incentive to work hard, and must even «give the impression of dreadful exploitation of workers».<sup>24</sup> In June 1942, new rules were introduced to govern the system of payment for «Eastern workers». The aim was to create incentives, but under no circumstances to pay «Eastern workers» as much as German workers. In order to prevent the latter from losing their jobs to the cheaper foreign labourers, companies had to pay an «Eastern worker tax» to offset the difference between the wages of the «Eastern workers» and those of German workers. Considerable lump sums for food and other costs were deducted from the relatively low wages. Allowances, bonuses and sick pay were still denied to the forced labourers, and in many cases their wages were paid only in the form of «camp money» (*Lagergeld*), valid only on the factory and camp premises of the company concerned. Prisoners of war also generally received only «camp money», with their actual wages going to their «camp of origin» (*Stamm-lager*).

The practice of employing forced labourers and prisoners of war was subject to a complex set of contradictory regulations, which rather than remove the underlying conflict between the needs of the war economy and ideological premises, tended instead to be a reflection of it. In the absence of more detailed rules of behaviour from the company management, it was basically left largely to the discretion of the foremen, «works stewards» (*Betriebsobmänner*) and works security teams to decide how to deal with the foreigners. In many German

companies, maltreatment was part of everyday life for forced labourers and prisoners of war, and the Swiss subsidiaries were no exception. For instance, the Lonza-Werke in Waldshut was «notorious [...] for the maltreatment taking place in the plant».<sup>25</sup> A Ukrainian woman working in Singen spoke of a physically violent camp commander at Aluminium-Walzwerke, and forced labourers were also beaten in the Maggi Singen camp. At Aluminium GmbH in Rheinfelden, the factory manager Mr. Tobler issued instructions in October 1942 that the unauthorised punishment of forced labourers, for instance by beating, would have to stop. However, he and seven of his colleagues were charged with that very offence in 1949, especially since a Russian had died as a result of ill-treatment. There were of course also men like the personnel manager at the Georg Fischer works in Singen, Hermann Ammann, of whom former forced labourers testified that he had always treated them humanely.<sup>26</sup> Similarly, Hans Rigganbach, the Swiss head of the German Nestlé company, appears to have shown some interest in humane living and working conditions – even if perhaps only so for economic reasons. But many accounts give the impression that numerous «works managers» (*Betriebsführer*) and «works spokesperson» at least turned a blind eye to maltreatment, or even ordered it. Obviously, in many cases there was no awareness of wrongdoing at management level. According to the assessment of Ulrich Herbert, it could therefore «by no means be said that the bad working conditions of workers from the East were attributable solely to binding regulations from the authorities».<sup>27</sup> Furthermore, it was often the case that the Gestapo were called in for the slightest transgression. At Maggi GmbH in Singen, for example, a female «Eastern worker» aged only 16 was reported to the Gestapo and taken into custody because she «repeatedly stole from her workmates» and «snatched a German compatriot's sandwiches in the workplace».<sup>28</sup> It was also possible for workers to be referred to a concentration camp or to one of the notorious «Work Educational Camps» (*«Arbeits-erziehungslager»*, AEL). Use of this option was also made in Swiss subsidiary companies.

#### **Knowledge and influence of Swiss company managers**

What was generally known within the Swiss parent companies about the use of forced labourers and prisoners of war in their German subsidiaries? It was known that an increasing number of foreign workers was being employed instead of Germans. In December 1943 for example, the Board of Directors of AIAG was informed:

«The workforce in the [Rheinfelden] factory now consists of a large percentage of prisoners of war, foreign workers and female workers.»<sup>29</sup>

At Lonza, the Board Committee knew about the use of foreign workers by November 1941 at the latest, and Alimentana, the parent company of Maggi in Singen, must also have known that foreigners were being used. At Nestlé, the Board of Directors learnt of the construction of a «wooden hangar for use as accommodation for Eastern workers»<sup>30</sup> and «barracks to accommodate Eastern workers».<sup>31</sup> But knowledge about the use of forced labour was not limited to the management of companies which had subsidiaries in the area of the Third Reich. When a group of Swiss industrialists – including Ernst Bally and Emil G. Bührle – visited companies in the Württemberg region in October 1942, they reported:

«We were struck by the number of *Russian female workers* e.g., in the Mercedes shoe factories. Wieland-Werke AG in Ulm has just completed premises for 500 Russian workers who are being expected. In the Schoch'sche Werke, the visitors were able to see about 20 to 30 Russian women who had just arrived.»<sup>32</sup>

Whilst it can hardly be assumed that many Swiss people knew of the dreadful circumstances under which many of these people had come to Germany, it had become public knowledge in Switzerland by 1944 at the latest that forced labourers and prisoners of war had to live and work in inhuman conditions. In the edition of «*Die Nation*» dated 23 March 1944, the Schaffhausen anti-fascist Carlo Daeschle reported in revealing detail on the situation of foreign workers in Germany, addressing both the exploitation of the forced labourers and their often inhuman treatment.<sup>33</sup> The question still arises, however, as to whether the situation of the foreign workers attracted any notice at all on the Swiss side. For all the companies examined in more detail by the ICE, it appears that they were informed about the fact that foreigners were used, but did not think of getting involved in the detailed arrangements, provided that they were even interested at all in the living and working conditions of the forced labourers and prisoners of war. Thus for example, the management of Georg Fischer AG indicated to the German Labour Front (*Deutsche Arbeitsfront*, DAF) its «willingness [...] not to interfere with the management [of the Singen works] as regards personnel management according to National Socialist ideology. Nor has it done so to date.»<sup>34</sup> Most companies did not have to deal with the complex question of forced labourers and prisoners of war – if at all – until after the end of the war when their German managers had to submit to denazification and plant members were called to account for the maltreatment of foreign workers.

### **Forced labourers and prisoners of war who fled to Switzerland**

The inhuman living and working conditions in many camps and factories drove numerous forced labourers and prisoners of war to flee. Swiss subsidiary companies in southern Baden were particularly affected by these escape attempts of course, due to their proximity to the border: Aluminium GmbH in Rheinfelden and Lonza-Werke in Waldshut, for example, were right next to the Rhine and therefore on the Swiss border. Escapees often risked their lives: the Rhine current dragged several to their deaths. Furthermore, an order was given in March/April 1942 that escaping Western European prisoners of war and forced labourers were to be shot after a warning cry, whereas Soviets were to be shot immediately. But even if the fleeing forced labourers were able to reach Switzerland, they were still not safe. They too were subject to the rulings contained in the restrictive Swiss policy on refugees, and Polish and Soviet forced labourers in particular were turned back until as late as mid 1944.<sup>35</sup> It was not until August 1944 that Heinrich Rothmund, head of the Police Division at the Federal Department of Justice and Police (*Chef der Polizeiabteilung des Eidgenössischen Justiz- und Polizeidepartements*, EJPD), gave instructions that «those fleeing work in Germany» were also to be treated as being in «serious physical danger» and should therefore be admitted.<sup>36</sup> Shortly before the entry of the French forces, forced labourers and prisoners of war at a few companies near the border were even deported to Switzerland deliberately by the local German authorities.

<sup>1</sup> On the German side, there is in particular regional and local historical research into the southern Baden region, with its particularly high number of Swiss branches. Here, work on the history of the use of forced labour in Swiss companies began earlier than in Switzerland itself. For Singen see: Waibel, Schatten, 1997; Zang, Gesichter, 1995; Meier, Singen, 1992; for Rheinfelden/Baden: Bocks/Bosch, Fremd und nicht freiwillig, 1992; for Baden generally: Peter, Rüstungspolitik, 1995, for Aluminium-Walzwerke Singen: Rauh-Kühne, Paulsen, 1999; for Maggi GmbH: Buschak, Maggi-Arbeiterschaft, 1989; for the Schiesser textiles company: Ludwig-Bühler, Höchstleistung, 1984, and NS-Musterbetrieb, 1985; for Aluminium GmbH Rheinfelden and Lonza-Werke Waldshut: Ruch, Schweizer Industriebetriebe, 2000.

<sup>2</sup> Quoted from the text of the judgement at the Nuremberg Trials, 1989, Vol. 1, p. 272.

<sup>3</sup> AS, 1931, 30.

<sup>4</sup> Randelzofer/Dörr, Entschädigung, 1994, p. 22.

<sup>5</sup> See *Neue Zürcher Zeitung*, 30 June 1999.

<sup>6</sup> Wallach, Probleme, 1977, p. 479.

<sup>7</sup> BA-MA, RW 20-5/5, History of the inspection of armaments V, booklet 2: 1 October 1940 – 31 May 1942, p. 13 of the 2<sup>nd</sup> report.

<sup>8</sup> Herbert, Fremdarbeiter, 1985, p. 67.

<sup>9</sup> Herbert, Fremdarbeiter, 1985, pp. 88f.

- <sup>10</sup> Quoted from Herbert, Fremdarbeiter, 1985, p. 141.
- <sup>11</sup> GLA, 237/28847, minutes of meeting with the Military District Official V, 26 August 1941.
- <sup>12</sup> See Herbert, Fremdarbeiter, 1985, pp. 157ff., and contemporary witness statements in Waibel, Schatten, 1997, pp. 38–47.
- <sup>13</sup> Figures from Herbert, Fremdarbeiter, 1985, p. 270, Table 41.
- <sup>14</sup> Spoerer, Berechnung, 1999/2000, pp. 5f.
- <sup>15</sup> See Peter, Rüstungspolitik, 1995, p. 337, Table 27.
- <sup>16</sup> The figure is based on research carried out by sda editor Roderick von Kauffungen: Kauffungen, Firmen, 2000.
- <sup>17</sup> BArch, R8119 F, minutes of BBC Supervisory Board meeting, 2 December 1942, p. 2.
- <sup>18</sup> For the Singen example, see Zang, Gesichter, 1995, p. 354.
- <sup>19</sup> StaF, A 96/1, no. 1350, circular letter of the Army High Command, 6 August 1941.
- <sup>20</sup> BA-MA, RW 6/ v. 278, *Wehrmacht* Supreme Command order, 24 December 1941 (transcript).
- <sup>21</sup> Quoted from Waibel, Schatten, 1997, p. 57.
- <sup>22</sup> For Georg Fischer and AWS see Waibel, Schatten, 1997, pp. 57f.
- <sup>23</sup> Reichsarbeitsblatt I/1942, p. 75.
- <sup>24</sup> According to an official at the «Reich Ministry for the Occupied Eastern Regions», quoted from Herbert, Fremdarbeiter, 1985, p. 172 (original in German).
- <sup>25</sup> StaF, D 180/2, no. 7/182, Judgement in the Denazification Proceedings against Gunnar Alfthan, 3 March no year. (1947).
- <sup>26</sup> Wipf, Georg Fischer AG, 2001, pp. 351ff.
- <sup>27</sup> Herbert, Europa, 1991, p. 12.
- <sup>28</sup> MAS, No. 75/1, works spokesman to Singen Gestapo, 14 September 1942.
- <sup>29</sup> AL, AIAG Business Report for the meeting of the Board of Directors on 21 December 1943, p. 13.
- <sup>30</sup> AHN, report from General Management to the Board of Directors on the meeting of 14 October 1943/document 2746 (original French).
- <sup>31</sup> AHN, report from General Management to the Board of Directors on the meeting of 21 March 1944/document 2766 (original French).
- <sup>32</sup> SAR, A 346.45, report on trip to Stuttgart by Swiss industrialists, 19–23 October 1942, p. 7 (original emphasis, original German).
- <sup>33</sup> *Die Nation*, 23 March 1944, p. 10.
- <sup>34</sup> +GF+-HFA 01-05-0056, note by Julius Bührer about the visit of DAF District Head, Zipf, 19 March 1942.
- <sup>35</sup> See UEK, Flüchtlinge, 2001 (Publications of the ICE), section 4.3.
- <sup>36</sup> Rothmund, head of the Police Division, to Furrer, Director General of the Federal Customs Directorate, 12 August 1944, DDS, vol. 15, no. 197, pp. 536f.

## 4.10 «Aryanisation»

The Swiss public first became aware of the involvement of Swiss firms in the «Aryanisation» of Jewish companies in 1989 when three radio journalists discovered that the tobacco company Villiger, based in Lucerne, had taken over the Gebrüder Strauss cigar factory in Bad Cannstatt, Württemberg, in 1935. The broadcast in which this was mentioned had serious repercussions, not least because a descendant of the family and former co-owner of the company, Kaspar Villiger, had just been elected to the Federal Council.<sup>1</sup> The debate surrounding this issue at the time gave rise to the only in-depth investigation of the subject so far in Switzerland – Urs Thaler's monograph on the history of Swiss cigar factories in the Third Reich. Thaler, who describes the «Aryanisation» of over 100 cigar factories, shows how four of the twelve Swiss tobacco companies operating in Germany between 1933 and 1938 took over Jewish firms. It must be said, however, that the examination results of this particular sector cannot be applied in a broader way, since the cigar industry – which had been considerably shaken by the economic crisis – consisted mainly of small and medium-sized companies and was strongly focused on Baden at the Swiss border. Furthermore, it was subject to state protection measures aimed at maintaining the current structure, including the restricted use of machinery and processing quotas for tobacco, which the Nazis had put in place shortly after taking power. In the first of his two volume work, Thaler uses the examples of Hediger (Reinach, Aargau), which took over Feibelmann (Mannheim), and Burger (Burg, Aargau), which took over Günzburger (Emmendingen), to reveal the manoeuvring leeway and the different approaches possible for Swiss companies that were involved in the – conceptually rather vague – «Aryanisation» process.<sup>2</sup>

### Definitions and Questions

The term «Aryanisation» arose from the «*völkisch*» anti-Semitic trend of the 1920s, entered the official jargon when the National Socialists came to power and, finally, the language. Its meaning differed depending on the time, the geographic area, and the branch of the economy involved. Broadly speaking, it is used to denote the exclusion of Jews from business circles by means of banning them from certain professions, as well as by applying boycotts, expropriation, forced liquidation, and take-overs; in this connection, the Nazis used the term «de-Semitisation» (*«Entjudung»*). In a narrower sense it denotes the transfer of Jewish property, in particular companies and real estate, to «Aryan» ownership.<sup>3</sup>

According to the Third Ordinance of the German Law on Citizenship (*Dritte Verordnung zum Reichsbürgergesetz*) of 14 June 1938, firms were considered Jewish

if the owner or the personally liable associate responsible for the company was Jewish under the terms of the Nuremberg Laws. Limited companies were «Jewish» if they had a Jewish person on the board of directors or if Jews held at least 25% of the share capital.<sup>4</sup> «Aryanisation» therefore affected both ownership of property and staff policy. This was all the more applicable when the Nazis tried to replace the term «Aryanisation» with «de-Semiticisation» (*«Entjudung»*) from 1939 on, thus shifting the emphasis of their policy from the transfer of property to ethnic cleansing.<sup>5</sup> However, the legal definition must not be allowed to obscure the fact that the stigma of being termed a «Jewish» firm and the consequences this brought with it were based on neither legal nor «objective» guidelines.<sup>6</sup> It was drawn up only in 1938 after a 5-year phase of economic boycotting, banning from certain professions and legal discrimination that began as soon as the Nazis came to power.

As early as 1933, Jewish businessmen were being made to sell their companies. During the first few years, however, the firms were mostly left in peace by the authorities. The owners were free to decide to whom they would sell and the selling price was agreed between the two parties. Even if they were based at the time on the agreement of both parties, such take-overs cannot be termed «fair deals» without closer investigation. The contracts were not drawn up on a legal basis and under free-market conditions. Instead, the situation was one in which the Jewish businessmen were under great pressure to sell. Furthermore, in view of the currency and tax restrictions it was difficult to use the income from the sale. The behaviour of the purchasers in this situation is the decisive factor in evaluating the events. Such behaviour ranged from those unscrupulous profiteers who exploited the situation by denouncing or intimidating Jewish businessmen, e.g., by involving Nazi lawyers in negotiations, to those so-called «silent associates» who grabbed the opportunity for a purchase below market value and often included long-standing business partners of the Jewish owners who were in difficulty, and to those purchasers who attempted to ensure that the vendor received a fair sum and were even prepared, under certain circumstances, to circumvent the regulations.<sup>7</sup>

From the middle of 1936 on, sales contracts had to be submitted to the NSDAP regional economic advisors (*Gauwirtschaftsberater*). Towards the end of 1937, pressure on large firms in particular increased, and from 1938 on take-overs had to be approved by the authorities. At this stage it was possible to sell a firm only at a price well below its real value. Economic persecution turned a new corner after the annexation of Austria (*«Anschluss»*) in March 1938, when within a few weeks thousands of Austrian companies were «Aryanised» or liquidated. This «uncontrolled Aryanisation» was followed by state regulation and an organised «Aryanisation» which manifested the state's economic interest. The authorities

imposed an «Aryanisation tax» (*«Arisiserungsauflage»*) and tried to ensure as great a margin as possible between the amount paid to the vendor and the actual sale price, the difference being paid into the state coffers. This policy can be clearly seen for example in the acquisition of the majority of the share capital of the Austrian company Tragösser Forstindustrie by Eduard Stürm, a businessman in the timber sector in St. Gallen who already owned 49% of the company. After lengthy negotiations with the authorities, who wanted to put the firm into liquidation, Stürm finally managed, at the end of 1940, to acquire the remaining 51% of the shares from his Jewish business partner Sigmund Glesinger, who had left Austria. Glesinger sold his shares to the (Österreichische Kontrollbank) – the bank that was charged with «Aryanisation» – for 20 000 reichsmarks, while Stürm paid the bank 55 000 reichsmarks to buy them.<sup>8</sup>

The «Ordinance on the Exclusion of Jews from the German Economy» (*«Verordnung zur Ausschaltung der Juden aus dem deutschen Wirtschaftsleben»*) of 12 November 1938 and the «Ordinance on the Disposal of Jewish Assets» (*«Verordnung über den Einsatz des jüdischen Vermögens»*) of 3 December 1938 provided the legal basis for the official dispossession of the Jews and signalled the end of their economic viability. From then on, their «business activities» were limited to signing sales contracts, the signature often being obtained under duress owing to the fact that the firm's owners or members of their family had been imprisoned. The authorities did, however, admit some exceptions to the rule in the case of companies that they considered important to the national economy and if the owner of such a company had a certain negotiating leverage, for example, if the owner's entrepreneurial ability could be replaced only with difficulty or if a foreign company owned shares in the German firm.<sup>9</sup> In the wake of the policy of expansion and occupation that Germany adopted in autumn 1938, the «Aryanisation» process continued throughout Nazi-controlled territory as part of the comprehensive expropriation of European Jews.

The ICE's investigations have been concerned with the question of the extent to which Swiss players were involved in this «Aryanisation» process. We define Swiss players, apart from the authorities, as natural persons resident in Switzerland as well as legal entities based in Switzerland or abroad insofar as Swiss citizens, in the latter case, were financially involved in a substantial way. The «classic» case, i.e. the take-over of a Jewish company in Nazi-controlled territory by a Swiss firm, as discussed in the Villiger case, was only one of various ways in which the Swiss were involved in the «Aryanisation» of the Germany economy. We shall therefore attempt to provide a systematic overview of the whole issue. First we shall deal with Swiss firms that claimed to be «Aryan» without any official pressure and principally with a view to maintaining or

improving their position in the German market. From 1938 on, however, Swiss subsidiaries within Nazi-occupied territory were forced by law to declare whether they were Jewish or not, although they had considerable room to manoeuvre with regard to the implementation of anti-Jewish measures. We shall then give some examples to illustrate how Swiss companies acquired Jewish property. This will be followed by an investigation into how Switzerland reacted to claims made by so-called provisional administrators (*Kommissarische Verwalter*) regarding assets held in Switzerland belonging to the original owners of the companies. We shall conclude by dealing with diplomatic protection for property owned by Swiss Jews outside Switzerland.

The case studies which we have chosen for our purpose come from the ICE's investigations into the Basel chemical industry, certain Swiss industrial firms in the Third Reich, and the insurance and banking sectors.<sup>10</sup> Structural connections between the «Aryanisation» process and Switzerland have been investigated on the basis of events in Austria, since the archives of the relevant authorities in Vienna are kept centrally and are therefore easily accessible and, furthermore, since this offered the opportunity of working with the Austrian Historians' Commission.<sup>11</sup> Finally, a contribution representing historical legal research focuses in particular on the theoretical and practical aspects of diplomatic protection for Swiss property within Nazi-occupied territory.<sup>12</sup> The results of our research presented here provide an outline of the basic problems and some illustrative examples. It is possible to make generalisations in those areas where Swiss players were required to adopt a more or less consistent policy and where a predominant pattern emerges; this applies to Swiss subsidiaries' staff policy on Jews, the attitude towards the property claims made by the provisional administrators and diplomatic protection of Swiss property. Only a limited number of generalisations can be made, however, concerning the recognition of Swiss companies as «Aryan» and none with reference to «Aryanisation» in the strictest sense, i.e., take-overs of Jewish firms, shares or property by Swiss citizens. From the Swiss point of view, the acquisition of Jewish property was an affair of civil law which did not involve the state at all, with the result that there are no sources that could provide a systematic and complete picture of Swiss involvement in the transfer of property. It is thus not possible to provide a complete list of Swiss acquisitions; moreover, there would not be much point in doing so since the character of each take-over needs to be examined individually. Too, the Swiss were involved not only as purchasers but also as vendors, creditors, debtors, and agents;<sup>13</sup> the documentary evidence, abundant or sparse, attests that purchasers and vendors acted as they did out of a variety of motives.

### **«Aryan» Swiss companies**

Only months after the National Socialists took power, Swiss companies endeavoured to obtain recognition from the German authorities as being «Aryan». In December 1933, Werk Grenzach, a German subsidiary of the Basel chemical company J. R. Geigy, applied for a permit to produce dyes for NSDAP clothing.<sup>14</sup> According to an NSDAP decree, such «symbols of the nationalist movement» could not be manufactured and sold by Jewish companies. This is why Carl Köchlin, a member of the Board of Directors and sales manager at Geigy, made a statutory declaration to the Nazi Central Procurement Agency (*«Reichszeugmeisterei»*) that «the shareholders in our company are of purely Aryan stock and include no Jews».<sup>15</sup> Negotiations being slow, Köchlin turned to his contact in the politico-military office (*Wehrpolitisches Amt*) of the NSDAP in Berlin and informed him as follows:

«You are acquainted with our management; I do not need to tell you more. With regard to the other gentlemen, whom you do not know, I believe that I can quite rightfully say that every single one down to the last employee is in order as far as this matter is concerned; at any rate, none of them is Jewish. If someone's grandmother somewhere along the line was not purely Aryan, I cannot tell of course. The same can be said of our labour pool».<sup>16</sup>

In November 1934, the Grenzach factory was granted an official permit to «supply dyes for textiles and fabrics expressly approved by the Party», and was therefore allowed to supply dyes for the «symbols of the Nationalist movement». This meant that until the beginning of the Second World War, the Geigy-owned factory in Grenzach, along with IG Farben, was the only officially recognised source of dyes in the Third Reich. It is obvious that Geigy sought to obtain recognition as an «Aryan» company in order to acquire contracts from the Party, and excluded Jews at a time when other chemical firms were retaining their Jewish staff. This applied not only to the factory in Grenzach, but also to the firm's headquarters in Basel; an internal survey carried out in 1937 revealed that there were no Jews among the 287 employees. As late as 1940 Geigy insisted that, as far as both the staff and the shareholders were concerned, «the purely Swiss and Aryan character of the company could be proved at any time».<sup>17</sup>

Swiss companies that strove for recognition as «Aryan» often provided information about the name and «race» of their Board members and directors. They were more reticent with regard to shareholders, although they confirmed at the same time that the vast majority of the shares were in «Aryan» possession. They could also have claimed that they did not have the necessary knowledge about

their shareholders; according to a directive from the Third Reich's Ministry of Economic Affairs (*Reichswirtschaftsministerium*), the German authorities were not allowed, at least temporarily, to investigate whether any of the capital of foreign firms was in Jewish possession.<sup>18</sup> The Basler Feuer insurance company declared to the Swiss Federation of Insurance Companies (SFIC) in July 1938, however, that it might be detrimental to the interests of most of the insurance companies to «conceal the fact that all the members of their board of directors and their company management were Aryan and Swiss citizens». Basler Feuer then supplied all the information requested on a questionnaire issued by the Berlin Chamber of Trade and Industry. Regarding the names and addresses of known shareholders, however, the company pointed out that, according to Swiss law, it could not demand any proof of racial origin from its shareholders, but solemnly declared that «Jewish capital is *not* put to use in our company, even if the odd non-Aryan might hold a very small number of shares».<sup>19</sup> The Committee of the Board of Directors of the Schweiz Allgemeine insurance company was guided by the same line of thought, i.e., that restraint should be exercised in the future when transferring shares to «non-Aryan shareholders».<sup>20</sup>

It appears that the practice of certifying «Aryan origin» in the form of so-called «Aryan certification» (*«Ariernachweis»*) was widespread among owners and senior managers of Swiss companies operating within Nazi-controlled territory. This has been shown not only by the ICE's investigations, but also e.g., by research carried out by Daniel Bourgeois concerning Nestlé.<sup>21</sup> As a precondition for being allowed to fly to Munich, Swissair agreed to prove that its crews were «Aryan».<sup>22</sup> «Aryan certification» would also seem to have been an advantage when applying for permission to cross the border to work. In 1941, the tobacco manufacturers Hans and Max Villiger wrote on their forms, perhaps with a touch of irony, that they had been «Aryan» «for the past 400 years».<sup>23</sup> «Aryan certification» was issued not only for the business sector but also in connection with civil matters, such as for marriages.

While during the early years of National Socialist government it was in no way necessary to declare one's company «Aryan», from 1937 on foreign firms that wanted to maintain business relations with Germany felt a growing pressure to do so. There were more frequent requests from the German authorities, for information about the «racial» origins of firms' managers, board of directors, and shareholders, for example in the case of Swiss insurance companies.<sup>24</sup> The Federal Insurance Company (*Eidgenössische Versicherungs-AG*, EVAG) was of the opinion that Austrian and German company representatives could be forced by the authorities to provide information about themselves; a Swiss firm, however, should not provide any personal details about people living outside Germany. The EVAG proposed that all Swiss insurance companies join forces and refuse

any such request, but both the SFIC and all other companies that were consulted refused to do so. In July 1938, however, the Legal Office of the Federal Political Department (FPD) stated that requests concerning racial origin should not be complied with. When the SFIC informed the FPD that the insurance companies wished to use their discretion in this respect and that several insurance firms had already informed the German authorities about the «racial» origin of their employees, the FPD rescinded their stipulation and declared that:

«The way in which such requests from the German authorities should be answered is not so much a legal question as a question of commercial expediency [...] Each company must decide for itself how it wishes to deal with the question of commercial expediency».<sup>25</sup>

When the EVAG maintained its position, the FPD offered its support in March 1939. As the FPD suspected that this firm was refusing to attest its «Aryan» character because one of its board members was Jewish, the Department considered the possibility of the firm claiming that the Board member in question was «of mixed race according to the terms of Art. 2 (2) of the first ordinance of the German Law on Citizenship of 14 November 1935», which meant that in Germany the company would not be considered Jewish.<sup>26</sup> This suggestion to apply German legislation concerning «race» to Swiss companies, thereby obtaining recognition as «Aryan», clearly shows that the FPD, as well as most of the insurance firms, either completely misjudged the legal, political and ethical implications of doing so, or ignored any misgivings they might have had for the sake of commercial interests. On the one hand, the undue hast in replying to requests for proof of «Aryan» status implied factual recognition of discrimination against Jews in Germany, and abetted the implementation of such a policy. On the other, it led to discrimination against Jews within the Swiss companies claiming to be «Aryan».

#### **«Aryan» Swiss subsidiaries within Nazi-controlled territory**

Several Swiss companies in Germany adapted to the new conditions soon after the Nazis took power. The chemical firm Sandoz AG, for example, reorganised its subsidiary in Nuremberg in April and May 1933: the share capital was raised in order to reduce the proportion of Swiss capital and to lend the subsidiary a more «German» character. In addition, the supervisory board was restructured, its Jewish chairman, Nobel prize winner Richard Willstätter, resigning from his position. This resignation was indirectly encouraged by Sandoz director and later Chairman of the Board Arthur Stoll, although the latter was a personal friend of his former teacher Willstätter. Despite the fact that Stoll later helped

Willstätter to emigrate to Switzerland, the relationship between the two men was permanently affected by the Sandoz Board manoeuvres. It was only too clear that the firm's immediate accommodation was based purely on commercial interests and that humanitarian considerations and the political implications of the company's personnel policy were not of great importance.<sup>27</sup> After a trip to Berlin to discuss the consequences for the firm of the persecution of Jews and what measures should be taken in personnel policy, Emil Barell, then director general and later chairman of the Board of the pharmaceutical company Hoffmann-La Roche, declared in June 1933 that:

«Before a decision can be taken concerning individual people, the undersigned would like to stress the serious humanitarian responsibility involved in such a decision».<sup>28</sup>

At Hoffmann-La Roche too, areas of responsibility were redefined and posts were filled with new people. It is to the firm's credit, however, that it did its utmost to find solutions for its own staff that combined commercial interests within the given political framework with social responsibility towards its Jewish employees. When from the end of 1937 on, accusations that Roche was a «Jewish» firm became more frequent, while anti-Jewish legal measures were simultaneously being intensified, the two Jewish members of the supervisory board of the Roche subsidiary in Berlin were urged to resign, which they did in April 1938. During this period most of the Jewish Board members of the major German companies resigned from their posts. When, according to the Third Ordinance of the German Law on Citizenship (*Dritte Verordnung zum Reichsbürgergesetz*) dated 14 June 1938, all Jewish firms had to be registered, Roche Berlin claimed «non-Jewish» status.<sup>29</sup>

Such declarations had to be made by all subsidiaries of Swiss companies in Germany and Austria, which had been annexed by that time. Some firms, including Maggi GmbH in Singen for example, had in fact already done so earlier. As early as spring 1933, Maggi declared, «Not a single share of our company capital is in Jewish hands».<sup>30</sup> In 1935, a statutory declaration was made concerning the «Aryan» character of the firm and in 1936 the Board assured the authorities that only 3 people out of a total staff of 3200 were not «Aryans». This step was prompted by, on the one hand, the economic difficulties that the firm was having at the time, difficulties which it thought it could overcome by claiming «Aryan status», and, on the other, the public stigmatisation of being a «Jewish» enterprise.<sup>31</sup> This stigmatisation was in fact a popular strategy adopted by jealous competitors, in particular among medium-size firms and in those branches that were finding it difficult to recover

from the depression, or in sectors such as the food industry, where competition was particularly fierce.<sup>32</sup> Swiss firms were frequently vilified by their competitors as being foreign or Jewish. Lest it too came in for such attacks, Lonza AG, for example, whose Board of Directors included one Jew up until 1941, decided in October 1938 to make its German subsidiary Lonza Werke GmbH largely independent, at least on paper, so that it would be considered German and «Aryan».<sup>33</sup>

After the «*Anschluss*», the shoe manufacturer Bally, which had a factory and eight sales points in Vienna, became a target for attacks. As a result, Iwan Bally, member of the Federal Council of States (*Ständerat*) for Solothurn and chairman of the Board of Directors of both Bally's Vienna subsidiary and the Swiss parent company, published the following declaration for the attention of the firm's customers:

«In order to counter the flow of rumors and claims, the undersigned would like to state that the entire share capital of the Bally Wiener Schuh AG factory is held by the parent company, C. F. Bally AG in Zurich. Until recently the latter held 75% of the shares. Official approval has been sought for the now effected transfer of the remaining shares. The non-Aryan members of the Board of Directors and the management have resigned from their posts and all the remaining members of the Board are of purely Aryan descent. The management is now headed by Mr. Wildbolz and Mr. Gustav Busch, both of whom are Aryan. C. F. Bally AG in Zurich is first and foremost a family corporation. The family members, the Board of Directors and all senior managers are purely Aryan».<sup>34</sup>

Only a few days earlier, on 19 March 1938, Iwan Bally had informed a Board meeting that the Austrian Jew Hugo Gängler, who had until then held 25% of the shares of Bally Wiener Schuh AG, had offered them on 13 March to C. F. Bally AG, which had accepted his offer. With its reorganisation of staff and its acquisition of the Austrian shareholder's stocks the company had «Aryanised» its Vienna factory only a few days after the «*Anschluss*».<sup>35</sup>

The Schweizer Rück insurance (Swiss Re) company also acted quickly. On 17 March 1938 the managing director, Emil Bebler, made a special trip to Vienna to relieve the entire management of the firm's Austrian subsidiary, Der Anker, of its functions.<sup>36</sup> Bebler asked the four men in question «to no longer consider themselves members of the management, to accept the situation, and to have no objections to their suspension».<sup>37</sup> Two directors were given notice, while two were redeployed elsewhere in the company for a time because their experience was needed. Subsequently, the remaining Jewish employees, 73 out

of 193, not including «half-Jews», had to leave the firm. The Jewish workers having been given notice before the corresponding coercive legal measures came into force, they could claim compensation. Fully aware, however, that such claims had little chance of being brought before a court of law, the company paid out merely a fraction of what was due:

«Since the political changes were introduced, we have given notice to 72 employees, including management staff, in accordance with the general guidelines. In addition, 3 other workers have resigned. [...] We have paid or at least offered compensation of 42,000 reichsmarks to the employees that we dismissed. (According to the labour laws, compensation should be in the order of 135,500 reichsmarks; and according to established company practice a good deal more)».<sup>38</sup>

Despite the meagre prospects of success, a number of employees who had been dismissed took their former employers to court to try to obtain the compensation they were entitled to, a settlement subsequently being negotiated. The compensation offered, which was paid out on condition that no further claims would be made, represented a little over one third of the amounts stipulated under labour laws. Furthermore, like all the others, the company stopped paying pensions to its former Jewish employees. While the compensation paid to Anker staff by Schweizer Rück in January 1939 was not a cause of concern for the latter, the situation changed with the turn of events in summer 1943:

«Depending on the outcome of the war, it is to be expected that Jewish staff that have been fired [...] will make claims against Anker. Endless difficulties may arise from this issue in the future».<sup>39</sup>

From 1938 on, it was thus impossible for Swiss subsidiaries within Nazi-controlled territory to avoid «Aryanisation» unless they were willing to cease commercial operations. In many cases this involved buying back shares held by Jews and in practically all cases it meant dismissing Jews at every level of the company hierarchy. As regards the repurchase of Jewish-owned shares, there are several examples of Jewish shareholders approaching their Swiss partners and making them corresponding offers. This was an obvious solution for both sides: a shareholder who was forced to sell his shares preferred to pass them on to a business partner he knew rather than to an unknown person with dubious motives and of doubtful competence. Some no doubt acted in the hope – false as a rule – that by selling their shares in Switzerland they might be able to save part of their assets, or at least that, in case of emigration, the former shareholder

might receive assistance through his Swiss contact. For their part, the Swiss subsidiaries were able to declare that they were not Jewish and thus continue to operate. The fact that assistance and profit were not mutually exclusive on the Swiss side can be seen in the repurchase made by Bally as mentioned above. Shareholder Hugo Gänslер left Austria on 17 March 1938 heading for Switzerland and later emigrated to the United States, where he worked for a few years for the American subsidiary of Bally. In 1946, he brought a compensation claim before the American courts against both Bally's Austrian lawyer Engelbert Zinsler and C. F. Bally AG in Zurich. In order to «free Bally from the stigma of Aryanisation», Gänslер was awarded 32,500 US dollars as part of a settlement for the 1938 sale of his shares. In exchange, he undertook to renounce all further claims against C. F. Bally AG and its subsidiaries.<sup>40</sup>

We have examined the question of repurchased shares; the crucial factor in assessing the behaviour of Swiss subsidiaries within Nazi-controlled territory is staff policy. In almost every case, Jewish Board members, directors and in the end, however, all Jewish employees had to be dismissed. There was considerable room to manoeuvre, however, as regards the timing of the dismissals and the way in which people were fired. Some firms kept their Jewish employees, who often possessed specific knowledge that was important to the company, as long as possible. Some firms made a point of seeing to it that their Jewish employees received suitable severance pay and in several cases members of the parent company's management helped Jewish Board members, directors or senior managers from their subsidiaries to emigrate. In most cases, however, personnel policy was characterised by undue hurry to implement anti-Jewish measures at a time when there was in fact no official pressure to do so, but pressure of a social and indeed commercial character. Most of the statements made by Swiss companies stress that one had to adapt to the new situation as quickly as possible. Systematic endeavours to use the existing manoeuvring leeway for the benefit of Jewish employees were rare.

#### **Take-overs and attempted take-overs of Jewish companies and real property by Swiss firms: three examples**

The Annual Report of the Swiss Consulate General in Vienna for the year 1938 states that «numerous letters from people in Switzerland enquiring about the possibility of taking over Jewish businesses in Austria had to be answered».<sup>41</sup> It would appear that the plight of one group kindled the interest of the other. Unfortunately, the relevant documents from the Consulate General are no longer available so that it is possible to comment neither on the number nor on the character of such enquiries. On the basis of our investigations, however, it is possible to give more details about this interest in Austrian businesses.<sup>42</sup>

As a major manufacturer, Bally Wiener Schuh AG supplied many shoe shops, in particular in Vienna. Many of these shops owed money either to the Vienna factory or to the Austrian marketing company Bally Schuhverkaufs-Gesellschaft, such as Richard Reschovsky & Co. in Vienna, which owed 90,000 shillings. Since after the «*Anschluss*» Reschovsky could not meet its debts, Bally's lawyer in Vienna, Engelbert Zinsler, stated that «in order to cover the above-mentioned outstanding claims, it is absolutely essential that Bally Schuhverkaufs-Gesellschaft take over Richard Reschovsky & Co., which it has managed until now, as a subsidiary and rid itself of the present owner. This measure would result in the transfer of a Jewish company into Aryan hands».<sup>43</sup> Bally thus tried to cover outstanding claims against (at least) four shoe shops by taking them over. These attempts met with fierce opposition, especially on the part of retailers, who claimed that Bally was Jewish and a foreign firm trying to create a monopoly. Wholesalers such as Delka, on the other hand, did their best to prevent their major competitor from expanding. At the beginning of May 1938, Bally took the offensive and applied for «approval for the acquisition of a limited number of Jewish-owned shoe shops» which was necessary since financial claims against these debtors could be considered at risk:

«A large number of these businesses have recently been offered to us for sale and we have started negotiations with some of the owners in order to cover our demands. We were warned against carrying out such negotiations, however, in a letter dated 27 April from the Shoe Manufacturers Association which referred to the Austrian interdiction law (*Untersagungsgesetz*)».<sup>44</sup>

Bally contacted the relevant higher authorities several times and claimed debts totalling 436,000 shillings against the businesses that were to be taken over. In the middle of July 1938, the firm was given permission to take over three shoe shops on a temporary trust basis with the stipulation that Bally not be allowed to acquire any of the businesses and that each would be sold separately. In the case of the Paulus shoe shop, Bally submitted an official application to buy the business and drew up a preliminary contract with the owner. The authorities, however, failed to give their approval. Some time later, Bally signed a contract with the successful purchaser. The latter settled the outstanding debts and guaranteed that the stock of shoes would remain the property of Bally. In addition, Bally was allowed to «continually monitor and supervise» the purchaser's business activities.<sup>45</sup>

As regards Richard Reschovsky & Co., Bally Schuhverkaufs-Gesellschaft was finally granted permission to acquire this business in January 1939. When it

transpired that the premises, which were located in one of Vienna's most expensive shopping streets, could not be bought, however, Bally backed out of the contract and took over only Reschovsky's stocks. After a good deal of resistance, Bally attempted to recover its losses from the debtor's real estate. Accordingly, in September 1938 Bally's lawyer Zinsler applied to the Austrian Secret Police to put a lien on a debtor's house.<sup>46</sup>

From a financial point of view covering debts by taking over Jewish businesses seems logical, and for large foreign companies this was a valid argument vis-à-vis the Nazi authorities, in view of the considerable number of Austrian competitors they faced. The intense efforts made, however, can also be seen as an attempt to gain a better foothold and a larger share in a booming market, especially as Bally was enjoying a high turnover – between March and October 1938 the turnover for the Bally sales points in Vienna had doubled and production until the end of 1938 was already assured by orders received up to October. Naturally, the directors at the Bally factories in Switzerland were kept informed and followed the political events relevant to their business very closely.<sup>47</sup> This included the possibility of taking over Jewish firms. In Germany such a tactic was of interest insofar as until 1938 Bally had only one wholesale company but no retail outlets there. Accordingly, the imminent sale of the Schuhhaus Joseph in Cologne was discussed at Bally's head office in Schönenwerd (Solothurn), but in June 1938 Max Bally pointed out possible complications «since there was also the question of taking over businesses in Bonn, Koblenz and Cologne». With regard to the take-over of companies in which Bally already had a share, «the risk that a property levy will be imposed sooner or later is a counter-argument, as is the fact that it would be impossible to pay out dividends. On the other hand, the shops will one day regain their full value. So in conclusion it is perhaps better to keep a low profile for the moment».<sup>48</sup> Finally, however, C. F. Bally Holding's annual report for 1940/41 stated that the formerly Jewish firm of Arthur Jacoby GmbH «which runs its own retail outlets in Berlin and other towns in the Altreich (the German Reich before the annexation of Austria in 1938) and in which our company has a holding [...] produced a satisfactory result for the year under review».<sup>49</sup> Unlike Bally, the food manufacturer Nestlé did not appear as a prospective purchaser itself in Vienna, but tried instead to acquire the public commercial enterprise Altmann & Kühne, which ran three flourishing confectionery shops, employed a staff of 24, and realised a turnover of 500,000 shillings in 1937 through a front man. At the end of May 1938, Hans Schenk, a long-time employee at Nestlé in Vienna, signed an agreement with the owners Emil Altmann and Ernst Kühne to acquire the three businesses for 190,000 reichsmarks. The authorities did not give their approval, however. On the one hand,

their intention was to sell the three businesses separately since they «could provide a living for *three* German compatriots («*Volksgenossen*»).<sup>50</sup> The decisive factor, however, was that Schenk's offer was suspected to be a front for an attempted take-over by either Nestlé or Sarotti Berlin, which was a subsidiary of the Swiss company. The provisional administrator of Altmann & Kühne wrote to the authorities that, at the discussions held with Schenk, he had had the impression that «the prospective buyer, party member Schenk, was not acting for himself but on behalf of a firm from the «*Altreich*». As we Vienna confectioners had no interest in Altmann being taken over by a firm from the «*Altreich*», I have made enquiries about party member Schenk». For many years Schenk «was employed by the subsidiary of the Swiss Nestlé-Gesellschaft AG», which has advanced him the sum of 170,000 reichsmarks to purchase Altmann & Kühne. «As early as the beginning of April, I was aware that Sarotti Berlin, which also belongs to Nestlé, was showing a good deal of interest in the Altmann business. Under the present circumstances it would appear that party member Schenk wants to buy Altmann on behalf of Nestlé».<sup>51</sup>

At the end of August, the «Aryanisation Committee» («*Arisierungskommission*») decided to close one of the businesses and to sell the other two. Prospective purchasers for one of the businesses were rejected because they did not have the required know-how; the decision concerning Schenk was postponed since his links with Nestlé were still considered unacceptable. Nestlé's head office in Switzerland was informed accordingly. At the beginning of September 1938, the managing director told the board of directors that Altmann & Kühne's most favourably located salespoint should be bought for 100,000 reichsmarks, which was considered a good price at the head office in Vevey.<sup>52</sup> Shortly afterwards, however, the authorities decided to liquidate the whole company. It was only when Schenk went to see them personally with his lawyer and explained that he would not use Nestlé money but find funds elsewhere that he was granted permission to acquire the business in November 1938.

Shortly after the end of the war, Hans Schenk wrote to Nestlé's head office in Switzerland with the intention of re-establishing the contact that had been lost. In Vevey this caused consternation, especially since Hans Rigggenbach, manager of Sarotti Berlin, had been instrumental in 1938 in Schenk obtaining the funds needed for the transaction from the Austrian Länderbank. Nestlé therefore had not provided the funding itself, which would not have been acceptable, but had helped Schenk obtain the necessary loan. At the same time, it was remembered that, on his way to the USA in 1938, Emil Altmann had visited Nestlé in Vevey and offered to sell his business for 30,000 francs. At the time, Nestlé refused his offer with the excuse that the Nazi authorities would never approve a transaction carried out in Switzerland and that any amount paid directly to Altmann

could be written off by the company. And so after the war, it was hoped in Vevey that «neither Sarotti nor Nestlé in Vevey was mixed up in this business». An internal note laid down the defensive strategy to be adopted in case Altmann demanded compensation, assuming that Schenk had no written proof of what had been agreed in 1938. It was stressed that Schenk had never behaved as a representative of Nestlé but as the owner of Altmann & Kühne and had pursued his own interests. For this reason, he should not be offered any assistance and no correspondence should be entered into with him. The whole business had nothing to do with Nestlé; attention should be focused on the German firm Sarotti, which was an independent concern. And, although it was not exactly a satisfactory solution, one could explain to the outside world that:

«When, after the «*Anschluss*», Jews were also persecuted in Austria and their businesses liquidated, it was in Sarotti's interests that the flourishing firm of Altmann & Kühne not fall into the hands of some Nazi who would no doubt have ruined it».<sup>53</sup>

Both Bally and Nestlé made great efforts to acquire Jewish businesses or to integrate them into the activities of their own companies. In Austria, they had to face fierce competition as large foreign firms, and the authorities tended to favour the local retail trade. There is no evidence, however, of a well-defined policy against Swiss companies. Between 1938 and 1940, Wander Wien GmbH, which belonged to the Bernese firm Dr. A. Wander AG, was involved in three acquisitions in Austria. Wander had no problem taking over two smaller Austrian firms; in the case of the Viennese pharmaceutical firm Syngala GmbH, Wander was successful, as part of a Germano-Austrian four-sided consortium, in the face of competitors with good connections to the National Socialist Party. As far as the authorities were concerned, the specific knowledge of the branch and the commercial potential of Wander and its three partners were decisive.<sup>54</sup>

In view of the restrictions surrounding bank transfers and the difficulty of transferring profits – for example in the form of dividends – to Switzerland, many Swiss companies must have thought twice before investing in Germany by taking over a Jewish business. At the same time, however, the existence of Swiss assets in Germany that could not be transferred to Switzerland – or only with considerable loss – and that risked losing in value was a good reason for investing in tangibles.<sup>55</sup> This was the case of «*Haus der Schweiz*» in Berlin.<sup>56</sup> As early as November 1932 Swiss Federal Railways (*Schweizerische Bundesbahnen*, SBB), which rented premises on «*Unter den Linden*» in Berlin, was offered a property nearby. The SBB subsequently contacted various Swiss banks and in

December 1933 started negotiations with the backing of Credit Suisse and its mortgage bank, Schweizerische Bodenkreditanstalt, SBKA. It soon became clear that for technical reasons it would be desirable to purchase an adjacent property in addition to the one under discussion. Having been mandated to complete the transaction as quickly as possible, three German front men founded a limited company in February 1934 under the name of «*Haus der Schweiz*», which subsequently acquired both properties in November 1934. Meanwhile, Credit Suisse had withdrawn and was replaced by Bank Leu. The latter foresaw the possibility of converting its blocked assets in Germany into real estate. The success of the transaction was conditional upon the issue of a permit by the Reich Foreign Exchange Control Office (*Reichsstelle für Devisenbewirtschaftung*) to use «register marks» in the amount of 1.8 million to purchase the properties.

Both buildings belonged to Jews who had been forced to leave Berlin in spring 1933, one to Heinrich Mendelssohn, who had a 40% holding in the Baugesellschaft Berlin Innenstadt, the other to Dr. Königsberger. While in the first case the price paid corresponded roughly to the property's true value at the time – the tax value of the property in 1931 was 803,000 reichsmarks and the purchase price was 830,000 reichsmarks – the Swiss investors exploited of the vendor's situation in the second case. Here the tax value in 1925/26 was in the order of 700,000 reichsmarks, which was retroactively reduced to 468,000 reichsmarks by the authorities in 1933, but only 337,000 reichsmarks were paid for the building. When Mendelssohn demanded compensation in 1951, Bank Leu mandated a lawyer to investigate the case. He later rejected Mendelssohn's claim and threatened to take him to court if he did not withdraw it. The bank did not in fact take such steps, especially as the lawyer discovered that, in the case of the second property, a so-called fiscal «wanted» warrant (*Steuersteckbrief*) had been issued against Dr. Königsberger, which was one of the most severe property law measures that could be taken. This had considerably restricted the vendor's ability to conduct financial transactions. The lawyer hoped that the discussions would not extend to the second property and alerted the bank to the danger of possible claims for compensation, although none had ever been asserted. Since the property was located in the eastern part of Berlin, such claims became topical once again after 1989.

These examples show that Swiss firms played an active role in the «Aryanisation» process. Not only were their head offices in Switzerland aware of what was happening – often because their subsidiaries within Nazi-controlled territory were involved in the acquisition of Jewish businesses – but they approved of or even encouraged the process. Their motives and strategies varied considerably. After the war they took measures against any claims for compen-

sation in full knowledge of the wrong that had been done. In the sources which document the reasoning of Swiss firms with regard to the acquisition of Jewish property there is hardly any evidence of ethical considerations. This applies even to Hoffmann-La Roche, a firm which refused five different offers of take-overs between 1933 and 1938 and withdrew from the purchase of a building in 1940 after the original owner lodged an objection: only economic, political and legal considerations are documented.<sup>57</sup> In contrast to the issue of personnel policy in the subsidiaries, there are very few indications that anti-Semitism played a role in the acquisition of Jewish property. The overriding element was commercial advantage, the «extremely favourable» conditions which attracted many firms, as for example the arms manufacturer Emil Bührle.<sup>58</sup> In summer 1941 the Union Bank of Switzerland (*Schweizerische Bankgesellschaft*, SBG), acting on behalf of Wilhelm von Gutmann, an Austrian banker who lived in Chur (Switzerland), offered Bührle von Gutmann's shares in the Czech firm Witkowitz Bergbau- und Eisenhüttenwerksgesellschaft. The bank was acting on the assumption that, from the point of view of setting a price, «a Swiss purchaser should not be in a worse position than a German purchaser and that the basic price as indicated corresponds roughly to present-day German calculations».<sup>59</sup> The value of the Witkowitz business was at the time between 75 and 80 million US dollars; the purchase price was set at 20 million US dollars. Shortly afterwards the managing director, Alfred Schaefer, approached Bührle again on behalf of the Union Bank and told him that the vendors were reckoning on a valuation at 30 million US dollars, but that he thought that this could be brought down to 25 million US dollars. In October 1941, Bührle replied that «if one knows what the Witkowitz Co. represents, and I have a pretty good idea from visiting the plant myself, one can only say that this is a real bargain». Bührle did not in fact go ahead with the transaction, mainly since, although the amount asked was low compared with the real value of the business, in absolute terms it was a high price; «the enormous risk involved in this investment has nothing to do with the company itself but is purely a question of current politics».<sup>60</sup>

#### **Swiss debtors of Jewish business partners within Nazi-controlled territory**

Some Jewish business partners within Nazi-controlled territory possessed bank assets in Switzerland or could call in debts arising from deliveries to Swiss firms. When so-called provisional administrators were appointed to run their companies the question arose as to whether the claims made by the former owners or those of the provisional administrators were valid.

With regard to the liquidation of bank assets, the Swiss banks agreed in May 1938, after the «*Anschluss*», on a common future strategy. Some of the banks

were of the opinion that the administrators' regulations contravened Swiss *ordre public*. This reservation, which could be lodged under international private law, stated that the application of a foreign law and the implementation of a foreign verdict could be refused «if the country's sense of justice were thereby to suffer outrage beyond measure».<sup>61</sup> It must be said, however, that this reservation was not sharply defined, as the Federal Council's argumentation relating to discrimination against Jews in France will show below. In contrast to some of its individual members, the Association of Zurich Loan Institutions (*Verband Zürcherischer Kreditinstitute*) and the Swiss Bankers Association (*Schweizerische Bankiervereinigung*, SBVg) refused to urge its members to completely ignore the instructions of the administrators imposed. Since the banks in the German Reich and Austria had to defend eminent interests, they were afraid that the Nazi regime would take retaliatory measures. In order to defend the interests of former Austrian owners of businesses as best they could, the Swiss Bankers Association obliged its members to follow the administrators' instructions concerning the assets of individual firms, limited companies and limited partnerships only if the owner or a single authorised signatory of the firm was in agreement. The provisional administrator could access the assets of a limited company only if he could prove, through an extract from the commercial register, that he was authorised to act on behalf of that company. In case of dispute the bank was to block the customer's account and apply to the court. Since Swiss courts defended the original owners, the Third Reich's Ministry of Economic Affairs (*Reichswirtschaftsministerium*) complained at the beginning of 1939 that the Swiss banks, together with American and English financial institutions, had adopted a negative attitude towards the demands of the provisional administrators concerning cashing in assets outside Germany.<sup>62</sup>

The Swiss Clearing Office (*Schweizerische Verrechnungsstelle*, SVSt) played the principal role as regards Swiss trade debts, especially as trade debts had to be settled through the clearing system. Many Jewish company owners had meanwhile emigrated and subsequently asked the Swiss Clearing Office to exempt their debtors from having to go through the clearing system. This would have enabled Swiss debtors to transfer the outstanding amounts directly to the original owners of the companies that had supplied them. The authorities normally refused such requests, however, with the result that the amount owed was paid into a blocked account within Nazi-controlled territory and was thus lost as far as the creditor was concerned. Exceptions were made only in the case of creditors who had fled to Switzerland and might need support. In 1939, the German Clearing House (*Deutsche Verrechnungskasse*) complained about these exemptions, whereupon the Swiss Clearing Office decided to «deal with the imminent disputes in a rather dilatory and vague manner».<sup>63</sup>

Neither the number of debts nor the total amount owed can be quantified. It must be assumed that the amounts due were often paid into the SVSt without any hesitation and that only in those cases where the former owner came forward or the debtors refused to pay up – knowing the situation and despite demands from the Clearing Office – were these debts actually recorded.<sup>64</sup>

When the demands of the provisional administrators were not in line with those of the original owner and the two sides could not agree on a settlement, the only solution was to take the matter to court. Swiss courts were normally in sympathy with the original owners and referred to the *ordre public* reservation. The German authorities also realised that the Swiss courts consistently defended the interests of the dispossessed businessmen. The German Ministry of Economic Affairs (*Reichswirtschaftsministerium*), the German Clearing House (*Deutsche Verrechnungskasse*), the Ministry of Finance (*Reichsfinanzministerium*) and the Ministry of Foreign Affairs (*Auswärtiges Amt*) followed the activities of foreign institutions, in particular the courts and the banks, very closely and attached great importance to their decisions. There is documentation relating to several discussions and a large correspondence between February and June 1939, in particular between the Ministry of Economic Affairs (*Reichswirtschaftsministerium*) and the Regional Offices of Economic Affairs (*Gauwirtschaftsbehörden*) concerning this question. At the end of February 1939, the Ministry of Economic Affairs realised that a provisional administrator would invariably lose any case that went to a Swiss court. For this reason it was thought better to avoid further court cases for the time being in order to prevent a negative impression. From that point on provisional administrators could take a matter to court only after consulting the Ministry of Economic Affairs; basically it was preferable to try to reach a private settlement out of court.<sup>65</sup> In October 1942 the issue was discussed once again. The judiciary in the neutral countries, namely Switzerland and Sweden, reacted more unfavourably towards the provisional administrators than ever.<sup>66</sup> At the same time this strengthened the position of the rightful owners provided they had access to a Swiss court of law and their persecutors did not resort to other types of pressure – for example by imprisoning relatives – in order to force a settlement out of court.

#### **«Aryanisations» and the diplomatic protection of Swiss property**

Foreign nationals were also affected by the anti-Jewish measures taken. A distinction should be made between social discrimination and official discrimination, i.e., obligatory measures that were based on legislation. Like all other Jews, Swiss Jews suffered from the effects of boycotts and regular harassment. As foreigners, they were, however, at least theoretically protected against breaches of their property rights by the state through bilateral residence agree-

ments and common international laws concerning the treatment of foreigners.<sup>67</sup> These differences become clear in the case of Swiss Jews living in Austria: anyone running a business in Vienna liquidated or sold it within a matter of months; several owners of businesses found it difficult to sell their products as a result of boycotts; the income realised from officially monitored sales was considerably lower than the real value. On the other hand, real estate which should have been expropriated by the state remained in Swiss hands in at least half of the cases investigated. The case of Albert Gerngross, a businessman who had obtained Swiss nationality in the 1920s, shows the different ways in which assets were dealt with. Gerngross and his brother, who was Austrian, owned a house in Vienna. While the brother's half of the house was expropriated without compensation, Albert Gerngross was allowed to keep his half of the property. He was, however, forced to sell the 34,153 shares he held in A. Gerngross AG, one of the city's leading department stores, to the Creditanstalt.<sup>68</sup>

What efforts did the Swiss diplomatic service make to protect the property of its citizens abroad? The authorities' official line was most ambiguous from both a legal and a political point of view. After the First World War, when the focus concentrated on Swiss citizens in the Soviet Union whose property had been repossessed without compensation, a «minimum standard under international law» (*«völkerrechtlicher Mindeststandard»*) had been advocated as a legal principle, whereby certain rights, in particular property guarantees (*Eigentumsgarantie*), were considered absolute. During the rule of the Nazis, however, the Swiss authorities increasingly favoured the so-called theory of equal treatment, i.e., that if Germany was discriminating against its own Jewish citizens it was hardly possible to legally contest its equally harsh treatment of foreign Jews living in Germany. After the Second World War, the lawyers attached to the Federal administration once again advocated the «minimum standard under international law», again in connection with events in Eastern Europe. The Federal administration adapted its interpretation of international law, i.e., its political interests, to the situation prevailing at the time – in this case, to the detriment of the Jews.<sup>69</sup>

This became clear in the debate on the «Reich Ordinance» (*Reichsverordnung*) of 26 April 1938 under which Jews with German citizenship had to declare their total assets and foreign Jews living in Germany had to declare all the assets they held in that country.<sup>70</sup> Federal judge Robert Fazy was mandated by the Swiss Federation of Jewish Communities (SFJC) (*Schweizerischer Israelitischer Gemeindebund*, SIG) to draw up a legal report on the consequences of this order for Swiss Jews in Germany.<sup>71</sup> He concluded that the order constituted an unacceptable breach of the legal rights of Swiss Jews as guaranteed under international law. He stated that such a breach would justify diplomatic intervention, which

would stand a good chance of success. If the dispute could not be settled by negotiation, Switzerland could then apply to the International Tribunal in The Hague, which would very probably decide in Switzerland's favour.

The report encouraged the SFJC in its search for a solution through legal channels. A meeting was subsequently organised with the Federal Political Department (FPD) on 22 June 1938.<sup>72</sup> According to the SFJC's records its President, Saly Mayer, emphasised the loyalty of Swiss Jews towards Switzerland and the services provided by the Jewish welfare fund with regard to refugee policy. At the same time he insisted that the Constitutional principle of equality for all Swiss citizens should «under no circumstances be modified». The SFJC therefore urged Switzerland to «insist on rule of law vis-à-vis Germany». It demanded measures similar to those taken by the British government. The FPD gave the SFJC to understand, however, that on no account would it be part of an international «united front» against the German order. At that point Germany was insisting only on an inventory of assets; it was not certain whether in fact the property of Swiss Jews would be confiscated, which would indeed be a breach of the residence agreement between the two countries. Besides, it was noted that the most favourable outcomes had been seen in cases that had been dealt with individually – a policy that should be pursued in the future. It was not to be considered «inopportune, but rather damaging to propagate any basic rules or to join other countries in a front». For the SFJC, this position was most unsatisfactory. Walter Hofer, who represented the FPD along with Robert Kohli, even remarked that «incidentally, according to the Federal Constitution of 1848, Jews did not have equal rights and would not have been free to acquire property.»

In 1938 the Federal authorities thus showed willingness to abandon basic rights, as they indeed did that same year by signing an agreement concerning the marking of passports held by German Jews with a «J», which in principle made it possible to mark the passports of Swiss Jews as well.<sup>73</sup> This position was confirmed in summer 1941 when Ernest-Paul Graber, a Social Democrat representing Neuchâtel, raised the question in a parliamentary session as to the situation of Swiss Jews living in France. On 29 September 1941, the Federal Council explained that in many countries Jews were subject to special legal conditions. These conditions were at the same time part of the respective country's *ordre public* and thus also applied to foreign nationals. For this reason Swiss Jews could not claim any privileges compared with Jewish nationals of the countries where they were resident. Switzerland's diplomatic representatives were making every effort, however, within the limits of current legislation and administrative regulations, to assist their compatriots in their efforts to safeguard their interests.<sup>74</sup>

The Swiss authorities were prepared to go to almost any lengths to avoid a confrontation with the German Reich over basic principles of (international) law, and opted for a more low-key approach of intervening in individual cases. This approach indeed offered a certain freedom for manoeuvring. For example, the Swiss Consul General in Vienna, Walter von Burg, was able to improve the lot of some of his Jewish compatriots in 1938 and 1939 by persistently approaching the «Aryanisation authorities». It would be wrong, however, to conclude from this that the Swiss diplomatic service had a definite strategy in this respect. Mr. von Burg, for example, had to operate alone and with no official backing: he threatened to involve the Swiss Embassy in Berlin, knowing very well that his superior, Hans Frölicher, would never consider intervening. This threat, which was a bluff from the Swiss perspective, did have the effect desired. This is in fact not surprising since for a long time the German authorities had been afraid of receiving bad publicity with respect to their treatment of foreigners as well as regarding their relations with other countries, and thus tended to back down as soon as they met with any opposition.<sup>75</sup> A somewhat bolder policy on the part of the authorities in Bern, if only a determined adherence to the Constitutional principle of equal rights, would therefore at least have provided some support for those diplomats who were prepared to help their compatriots. Contrary to the strategy propagated, however, Bern opposed any effective intervention, even in a number of individual cases. In the case of Oscar Porges, a book and newspaper retailer, the reasons given were typical. In 1935/36, Porges was forbidden to carry on his business, and the Swiss envoy Paul Dinichert wanted to object to this ban. Bern declared that since Porges was a naturalised former foreigner, since his customers were mostly of the same faith, and as neither he as an individual nor his business was of special interest to Switzerland, it was not worth «taking basic steps or countermeasures which would jeopardise the important interests of the Swiss book trade in this rather hopeless and unimportant case».<sup>76</sup> The interests of «a few Jews» were regularly weighed up against those of «Switzerland» and from such a point of view each individual case tended to appear unimportant.<sup>77</sup> While the extent of the assistance offered was normally very limited even in individual cases, this was because Switzerland did not want to get involved in any conflict over basic principles. In view of the fact that the opponent was a dictatorial «state of injustice» («Unrechtsregime»), each individual case could potentially give rise to basic questions of international law and politics.

- <sup>1</sup> The broadcast was devised in connection with the political debate surrounding the impending «Diamond Jubilee» celebrations to mark the 50<sup>th</sup> anniversary of the general mobilisation of the Swiss army. It was presented by the Swiss Broadcasting Corporation on 23 March 1989. The journalists involved were Rita Schwarzer, Peter Métraux and Toni Ladner.
- <sup>2</sup> Thaler, *Geschäfte*, 1998. The second volume, which according to information received from U. Thaler on 31 May 2001 is due to be published at the end of 2002, will cover the Villiger/Strauss case and a so far unknown take-over in 1938 where «brute force» was applied.
- <sup>3</sup> Bajohr, «Arisierung», 2000, pp. 15f.
- <sup>4</sup> Fiedler, «Arisierung», 2000, pp. 62f.
- <sup>5</sup> Bajohr, «Arisierung», 2000, pp. 15f.
- <sup>6</sup> Fiedler, «Arisierung», 2000, p. 63.
- <sup>7</sup> With reference to this and the following two paragraphs see Bajohr's overview in «Arisierung», 2000, pp. 17–19.
- <sup>8</sup> Spuhler/Jud/Melichar/Wildmann, «Arisierungen», 2002 (Publications of the ICE).
- <sup>9</sup> This is at least true for Austria; see Spuhler/Jud/Melichar/Wildmann, «Arisierungen», 2002 (Publications of the ICE).
- <sup>10</sup> See Straumann/Wildmann, *Chemieunternehmen*, 2001 (Publications of the ICE); Ruch/Rais-Liechti/Peter, *Geschäfte*, 2001 (Publications of the ICE); Karlen/Chocomeli/D'haemer/Laube/Schmid, *Versicherungsgesellschaften*, 2002 (Publications of the ICE); Perrenoud/López/Adank/Baumann/Cortat/Peter, *Place financière*, 2002 (Publications of the ICE); Lussy/Bonhage/Horn, *Wertpapiergeschäfte*, 2001 (Publications of the ICE).
- <sup>11</sup> Spuhler/Jud/Melichar/Wildmann, «Arisierungen», 2002 (Publications of the ICE).
- <sup>12</sup> Haldemann, *Schutz*, 2001 (Publications of the ICE).
- <sup>13</sup> There were an estimated 33,000 Jewish businesses in Austria alone, of which three-quarters were liquidated and one quarter was «aryanised». The different roles played by the Swiss – as purchasers, vendors, creditors, debtors and agents – in the Aryanisation process can be seen from documents concerning around 20 cases. See Spuhler/Jud/Melichar/Wildmann, «Arisierungen», 2002 (Publications of the ICE).
- <sup>14</sup> With reference to the what follows see Straumann/Wildmann, *Chemieunternehmen*, 2001 (Publications of the ICE), chapter 3.
- <sup>15</sup> Geigy Archives, BG 6, J. R. Geigy A.G. to the Nazi Central Procurement Agency, undated copy (original German).
- <sup>16</sup> Geigy Archives, BG 6, Köchlin to Sichting, 11 July 1934 (original German).
- <sup>17</sup> Geigy Archives, VR 4/10, note (probably from the Chairman of the Board of Directors, Albert Mylius) to C. Geigy-Hagenbach, 26 October 1940 (original German).
- <sup>18</sup> Austrian State Archives, Archives of the Republic, Assets Trading Office (*Vermögensverkehrsstelle*), file 361 (Perlmooser), vol. I, f. 48; note from Dr. Eder to the Central Technical Office of the NSDAP headquarters for the attention of Dr. Link (Munich), undated.
- <sup>19</sup> Archives of the Swiss Federation of Insurance Companies (SFIC), box 11, file «Deutschland, Ariergesetzgebung», Basler Feuer to the SFIC, 19 July 1938 and 18 August 1938 (emphasis in the original; original German).
- <sup>20</sup> Archives of the Schweizer Rück, Fund on Schweiz Allgemeine, proceedings of the executive committee of the board of directors, 29 July 1938.
- <sup>21</sup> Bourgeois, *Nestlé*, 1998.
- <sup>22</sup> Muser, *Swissair*, 1996, p. 84.
- <sup>23</sup> FA, E 2001 (D) 2, vol. 38, Application for a visa by the two brothers, H. und M. Villiger, 20 February 1941 (original German).

- <sup>24</sup> With reference to what follows, see Karlen/Chocomeli/D'haemer/Laube/Schmid, Versicherungsgesellschaften, 2002 (Publications of the ICE), section 4.3.
- <sup>25</sup> SFIC Archives, box 11, file «Deutschland, Ariergesetzgebung», FPD, FPD Office for Foreign Matters to SFIC, 22 November 1938 (original German).
- <sup>26</sup> FA, E 2001 (D) -/2, vol. 100, FPD to Eidgenössische Versicherungs-AG, 10 March 1939; undated note: «Eidgenössische Versicherungs A.-G. in Zürich» (original German).
- <sup>27</sup> Straumann/Wildmann, Chemieunternehmen, 2001, (Publications of the ICE), chapter 5.
- <sup>28</sup> Roche Archives, PE.2.BAE-101053b, report no. 810 by Dr. E. Barell concerning his trip to Berlin on 2 June 1933, p. 3 (original German).
- <sup>29</sup> Straumann/Wildmann, Chemieunternehmen, 2001 (Publications of the ICE), chapter 6.
- <sup>30</sup> MAK, 1529a/20, Table 3, decisions, circular letters, 4 April 1933
- <sup>31</sup> Ruch/Rais-Liechti/Peter, Geschäfte, 2001 (Publications of the ICE), chapter 3.
- <sup>32</sup> Bajohr, «Arisierung», 2000, pp. 23–25.
- <sup>33</sup> Ruch/Rais-Liechti/Peter, Geschäfte, 2001 (Publications of the ICE), chapter 3.
- <sup>34</sup> Austrian State Archives, Archives of the Republic, Assets Trading Office, box 626, stat. 3540, f. 4 (original German).
- <sup>35</sup> Spuhler/Jud/Melichar/Wildmann, «Arisierungen», 2002 (Publications of the ICE).
- <sup>36</sup> With reference to what follows see Karlen/Chocomeli/D'haemer/Laube/Schmid, Versicherungsgesellschaften, 2002, section 5.1.2; Perrenoud/López, Aspects, 2002, both (Publications of the ICE); see also section 4.7 included herein.
- <sup>37</sup> Schweizer Rück Archives, vol. III of the reports of the Board of Directors and the executive committee, file note «Der Anker: Vienna, visit to Vienna by director general Bebler and Dr. Froelich», 16/17 March 1938, 21 March 1938, p. 10 (original German).
- <sup>38</sup> Der Anker Archives, management report on the 3<sup>rd</sup> quarter of 1938, p. 2 (original German).
- <sup>39</sup> Schweizer Rück Archives, minutes of the Committee of the Board of Directors meeting of 29 March 1938, p. 23; see also Team History of the Schweizer Rück: «Report on Germany: Schweizer Rück business in Nazi Germany», October 1999, p. 44 (original German).
- <sup>40</sup> Austrian State Archives, Archives of the Republic, Assets Trading Office, collection A, files 164–199 («Meldungen Handel»), no. 199, renunciation signed by Hugo Gänslер on 29 March 1947. See also Spuhler/Jud/Melichar/Wildmann, «Arisierungen», 2002 (Publications of the ICE).
- <sup>41</sup> FA, E 2400, Vienna, vol. 361, Annual Report by the Swiss Consulate General in Vienna for the year 1938, p. 34 (original German).
- <sup>42</sup> See Spuhler/Jud/Melichar/Wildmann, «Arisierungen», 2002 (Publications of the ICE), with reference to the cases of Bally and Nestlé described here, as well as various other cases in Austria.
- <sup>43</sup> Austrian State Archives, Archives of the Republic, Assets Trading Office, box 626, stat. 3540, f. 7, letter from Zinsler to the Austrian regional governor (Austrian provincial government), Price Setting Office, 22 April 1938 (original German).
- <sup>44</sup> Austrian State Archives, Archives of the Republic, Assets Trading Office, box 626, stat. 3540, f. 2, letter from Bally Wiener Schuh AG signed Wildbolz to District Office IV of the N.S.B.O. (National Socialist Workers' Organisation), Vienna, 4 May 1938 (original German).
- <sup>45</sup> Austrian State Archives, Archives of the Republic, Assets Trading Office, box 624, stat. 3409, f. 16, memorandum dated 8 September 1938 concerning an agreement between Roman Schombacher and Bally Wiener Schuh AG (original German).
- <sup>46</sup> Dr. Engelbert Zinsler, lawyer, Operngasse 11, Vienna 4 to the Austrian Secret Police, Department II H, 13 September 1938.

- <sup>47</sup> Interesting references to this can be found in the so-called war diary; analyses of risks per country are also very revealing; a distinction is made in these analyses between war risks (i.e., losses through war damage, etc.) and economic risks (irrecoverability of outstanding debts due to stoppage of payments, etc.), as well as a quantification of these risks.
- <sup>48</sup> Bally Archives, minutes of the Board of Directors, no. 295 of 20 June 1938 and no. 341 of 29 September 1938 (original German).
- <sup>49</sup> Bally Archives, Annual Report for 1940/41.
- <sup>50</sup> Austrian State Archives, Archives of the Republic, Assets Trading Office, Ha 503/a, box 251, f. 61f, «Concerns: Aryanisation of Altmann & Kühne, confectionery trade», undated, signed Strobl (emphasis in the original; original German).
- <sup>51</sup> Austrian State Archives, Archives of the Republic, Assets Trading Office, Ha 503/a, box 251, f. 73, Wolfgang Mühr, provisional administrator of Altmann & Kühne, to Comrade Eduard Strobl, 16 August 1938.
- <sup>52</sup> Nestlé Historical Archives, report from the managing director to the board of directors, meeting held on 8 September 1938, document no. 2511 (original French).
- <sup>53</sup> Nestlé Historical Archives, SG-A 108 Ofx, undated note, 3 pages, referring to three letters received from H. Schenck all dated 12 June 1945 (original French).
- <sup>54</sup> Spuhler/Jud/Melichar/Wildmann, «Arisierungen», 2002 (Publications of the ICE).
- <sup>55</sup> See Karlen/Chocomeli/D'haemer/Laube/Schmid, Versicherungsgesellschaften, 2002 (Publications of the ICE) with regard to investment policy of insurance companies.
- <sup>56</sup> With regard to what follows, see Perrenoud/López/Adank/Baumann/Cortat/Peters, Place financière, 2002 (Publications of the ICE), chapter 5.
- <sup>57</sup> Straumann/Wildmann, Chemieunternehmen, 2001 (Publications of the ICE), chapter 6.
- <sup>58</sup> With regard to what follows, see Perrenoud/López/Adank/Baumann/Cortat/Peters, Place financière, 2002 (Publications of the ICE), chapter 5.
- <sup>59</sup> UBS Archives, SBG Fund, 12000002601, file 35, XVI M 144a. Note dated 4 June 1941 (original German).
- <sup>60</sup> UBS Archives, SBG Fund, 12000002601, file 35, XVI M 144a. Note from Bührle to Schäfer dated 3 October 1941 (original German).
- <sup>61</sup> BGE 64 II 88 (original German); Lüchinger, Rechtssprechung, 2001 (Publications of the ICE).
- <sup>62</sup> FA, E 2001 (D) -/2, vol. 207, circular letters from the Association of Zurich Loan Institutions dated 13 May 1938 and 14 July 1938. See also Lussy/Bonhage/Horn, Wertpapiergeschäfte, 2001, (Publications of the ICE), section 6.1. The French, Hungarian and Czech banks, however, were much more cooperative according to the German Ministry of Economics. See Austrian State Archives, Archives of the Republic, 04 (Bürckel material), box 89, 2160/00 vol. II, Ministry of Economic Affairs to Ministry of Foreign Affairs among others, dated 11 February 1939.
- <sup>63</sup> FA, E 7160-01 (-) 1968/223, vol. 349, Annual Report of the SVSt for 1939, pp. 38f. (original German).
- <sup>64</sup> FA, E 7160-06 (-) 1976/68, vol. 409.
- <sup>65</sup> Austrian State Archives, Archives of the Republic, 04 (Bürckel material), box 89, 2160/00 vol. II, Ministry of Economic Affairs to the Commissioner for the Reunification of Austria with the German Reich, dated 23 February 1939.
- <sup>66</sup> BArch, R 87, 92. Civil court cases in neutral foreign countries, notes concerning a discussion at the Ministry for Foreign Affairs, 7 October 1942.
- <sup>67</sup> Haldemann, Schutz, 2001 (Publications of the ICE).
- <sup>68</sup> Spuhler/Jud/Melichar/Wildmann, «Arisierungen», 2002 (Publications of the ICE).
- <sup>69</sup> Haldemann, Schutz, 2001 (Publications of the ICE).

- <sup>70</sup> After the «*Anschluss*», Austria became subject to the German legislation on foreign currencies. The «Foreign Currency Law for Austria» of 23 March 1938 thus forced all residents (so-called currency residents) to declare the assets and shares they held outside the country. Subsequently all Austrian clients, including many Jews as well, had to transfer the assets they owned that were managed by Swiss banks to German or former Austrian banks. See also Bonhage/Lussy/Perrenoud, Nachrichtenlose Vermögen, 2001 (Publications of the ICE), section 3.3.
- <sup>71</sup> With reference to what follows, see Haldemann, Schutz, 2001 (Publications of the ICE).
- <sup>72</sup> The quotations given in the following paragraph are from the notes on the meeting written by S. Mayer and P. Guggenheim. AfZ, SFJC, collection of files on legal protection afforded to Swiss Jews, file on the order for German Jews to declare their assets, respectively its validity for Swiss Jews living abroad, fascicle «Besprechung im Bundeshaus». See also Haldemann, Schutz, 2001 (Publications of the ICE).
- <sup>73</sup> UEK, Flüchtlinge, 2001 (Publications of the ICE), section 3.1; see also chapter 3 included herein.
- <sup>74</sup> FA, E 1004.1 (-) 413, minutes of the Federal Council of 29 September 1941, no. 1502; see also Haldemann, Schutz, 2001 (Publications of the ICE).
- <sup>75</sup> Spuhler/Jud/Melichar/Wildmann, «Arisierungen», 2002 (Publications of the ICE).
- <sup>76</sup> FA, E 2001 (C) -/4, vol. 130, Bonna to the Swiss Embassy in Berlin, 4 December 1935 (original German). With reference to the Porges case see Haldemann, Schutz, 2001 (Publications of the ICE).
- <sup>77</sup> A first basic investigation on the repatriation of Swiss people living abroad was made by Winiger, Auslandschweizer, 1991. For analyses of individual cases see Perrenoud, La Chaux-de-Fonds, 1999; Speck, Entrechtungsschäden, 1998. See also Ludi/Speck, Victims, 2001.

## 4.11 Cultural Assets: Flight, Dealing and Looting

Shortly after the start of the debate on unclaimed assets and the trade in Nazi gold, the issue of the whereabouts of art looted by the National Socialists was also raised. The question of looted art had already been part of the Swiss debate in the aftermath of war. Paintings by famous artists represent within the sphere of art treasures, what gold, with its mythological qualities, is to finance. The Swiss Federal Council's Decree of 19 December 1996 which set forth the details of the ICE's mandate, identified «dealings in works of art and jewellery, the scope and relation of such trade to looted goods, and the degree of awareness as to the origin of these assets» as a special area of investigation.

However, the initial studies of Switzerland's significance as an international art-dealing centre during the Nazi period had a very narrow focus and examined just one very specific event: the well-known auction of «degenerate art» which was organised in June 1939 by Galerie Fischer in Lucerne.<sup>1</sup> Subsequent individual transactions by its proprietor, Theodor Fischer, involving paintings from Paul Rosenberg's Paris collection, and the ensuing lawsuits after 1945 were central themes in Thomas Buomberger's book, which was published in 1998 in response to this issue's increasing topicality. This publication, which also highlighted a number of other cases, was an important basis for the present study.<sup>2</sup>

### **Problems of definition: what are cultural assets, what is looting?**

Whereas the majority of studies focus primarily on classical *objets d'art*, the most recent publications on Holocaust victims' assets in Switzerland treat art merely as one variety of asset, entirely in line with the Federal Council's Decree on Looted Assets of 1945, which was eventually to lead to obtaining the return of securities rather than to retrieving art *per se*.<sup>3</sup> Our investigations are based on a broad definition of the term «cultural asset» which also includes, for example, precious carpets and valuable household objects, coin and stamp collections, diamonds etc. However, in light of the available records, we were forced to restrict our research primarily to the better-documented incidents involving paintings and graphic works. Jewellery – a fairly easily tradable looted asset due to its high value compared with its mass/weight – should also be counted as «looted art» (unlike mere precious stones) but, due to the poor sources available, it too could be included only peripherally in our research.<sup>4</sup> Another important category which, however, could not be dealt with here is musical instruments and musical artefacts in the broadest sense (from sheets of music to gramophone records).<sup>5</sup> Nonetheless, it was possible to include individual events relating to looted books and original manuscripts. Many items of «looted art» are unique

and irreplaceable; they are artefacts which not only have a quantifiable monetary value, but also are of emotional and personal significance for their owner.

The concept of culture or art is quite easy to describe compared with the definition of «looting». What is looting? What constitutes exploitation of distress? What is coercion? What constitutes overreaching? Depending on country, language, and time, different terms have been and are in use. The «London Declaration» of January 1943 warned of transfers or dealings regardless of whether they «have taken the form of open looting or plunder, or of transactions apparently legal in form, even when they purport to be voluntarily effected».<sup>6</sup> The «Comité Interallié pour l'Etude de l'Armistice» had the greatest difficulty in supplying a precise definition of the French term «spolié».<sup>7</sup> In 2000, the Mattéoli Mission defined «spoliation» as referring to German unlawful confiscations, opposing the term to «pillage» which, although being inspired by the Germans, was executed by the French.<sup>8</sup> In 1945, the Swiss legislation used the respective expressions for assets taken away, i.e., «weggenommene Vermögenswerte» and «biens enlevés».<sup>9</sup> The Swiss Federal Court, however, which in 1945/46 set up the «Kammer zur Beurteilung von Raubgutklagen» (Chamber for the Evaluation of Suits for Looted Assets, later to become known as «Raubgutkammer» (Chamber of Looted Assets)) used the term «Raubgut», i.e., «looted assets» which since then has come into use also in the public. The terms noted here refer in part to the same phenomena, and partly denote different ones. In English one distinguishes between «transactions under duress», «confiscations» (with or without compensation) and actual «looting». As it is often unclear which of these subcategories should be used to define a particular event, «expropriation» is a convenient term for general use. Its focus is not restricted to the period of 1939–1945, but is meant to include the occurrences of «expropriation» as they emerged as early as 1933/35.<sup>10</sup> During the Nazi regime's early years and in particular until the outbreak of war, indirect and pseudo-legal expropriations (such as sales under duress and emigration taxes) seem to have been predominant. In later years and during the war, confiscations by Nazi organisations such as the task force set up by *Einsatzstab Reichsleiter Alfred Rosenberg* (ERR) and the *Devisenschutzkommando*, that is to say, the overt and direct phenomenon of looting as well as cases of plundering, became predominant.<sup>11</sup> The difficulty in working with the term «looting» is illustrated by the acquisitions for the art collections which are rightly associated most directly with the injustices of the Nazi regime – the «Führermuseum» in Linz and Goering's Carinhall. Both institutions acquired most of their paintings by entirely legal means, at least in a formal sense, but used funds whose origins were suspect. The transactions were also based on previous changes of ownership which in some cases were illegal.

An analytical and descriptive examination of individual cases may reveal under what conditions specific types of transactions occurred in the art market. Using these individual cases, it is possible to reconstruct «the market» or – if we wish to emphasise the transit dimension – Switzerland's role as a «hub» in the transfer of art. The documented cases are cited primarily as examples. The aim is to suggest possibilities, not to present or, indeed, directly evaluate the cases *per se*. There is a legitimate need on the part of the interested public for some indication of quantities. We therefore also offer quantified assessments whenever possible. However, it must be emphasised that the reality can only be expressed and conveyed in figures to a limited extent.

### **The primary actors: dealers and collectors**

In many cases, no clear distinction can be drawn between dealers and collectors, as dealers also collected, and collectors also dealt in art. Fiduciaries acting on behalf of third parties were a separate category, as were banks keeping artefacts in safe custody or in some cases sold them on commission. The operators of duty-free storage facilities did not constitute a separate category as they merely provided the infrastructure for the other actors. A special (and particularly well documented) category was the state museums: they purchased and collected art, but also accepted deposits and acted as agents for third parties in exceptional cases.

It is impossible to make generalised statements about the various categories of actors, especially as not only their role, but also their individual attitudes were decisive. Standards of professional practice and conduct in art dealing were generally objective in that they focussed solely on the object in question, i.e., on the available artefact and its position in the market. Unlike what is assumed today, there was rarely any discussion of the seller's predicament as a basis for negotiation. Thus, rather the outcome than the intention of this conduct entailed either a concession or a rebuff to persecuted persons. So far, historians have focussed much of their attention on the Lucerne art dealer and gallery-owner Theodor Fischer. Despite our original willingness to reappraise and strongly downplay what appears to be a personalised over-emphasis on a prominent individual case, we must conclude that Theodor Fischer actually played an even more central role than previously assumed. More than 90% of Swiss acquisitions by the «Führermuseum» in Linz came from Galerie Fischer, i.e., 148 paintings and drawings with a total value of 569,545 francs. The majority of works were originally Jewish-owned. Of the 76 paintings and drawings, tapestries, items of furniture and sculptures acquired by the Goering collection via Swiss art dealers, Fischer arranged the transactions in 36 cases. Fischer therefore also played an equally important role for owners seeking to sell their property as a result of persecution.

Another channel for the transfer of expropriated *objets d'art* to Switzerland was when *non-persecuted* German art dealers acquired works at these auctions and sold them further along, directly or indirectly, to Swiss art dealers. Overall, art dealing remained the main route for the transfer of expropriated Jewish art collections to Switzerland.

#### **Unwelcome emigrant dealers – welcome market effects**

One of the reasons why Switzerland increasingly emerged as an international art-dealing centre was that many dealers who had emigrated from Germany settled here. The employment bans imposed on Jewish art collectors and art dealers forced them to sell off their collections in whole or in part. However, restrictions were also introduced in Switzerland in order to protect domestic dealers. In November 1935, speaking about a current case, the Lucerne gallery owner Theodor Fischer generally objected to the settlement of German emigrants in Switzerland, justifying his opinion as follows:

«The issue of demand must be rejected absolutely, especially in the present crisis. [...] This individual case would set a dangerous precedent for future applications from German emigrants who are all in the same situation as Nathan, who is currently approaching numerous families in Switzerland.»<sup>12</sup>

Before the war, around 85% out of 250 art historians emigrated abroad, but only 17 of them – roughly 8% – went to Switzerland. Numerically, this figure would appear to be negligible, but the newcomers had a disproportionately significant impact. Around a dozen art dealers set up in business, on a short- or long-term basis, in Switzerland (Flechtheim, Feilchenfeldt, Rosenthal, Nathan, Kallir-Nierenstein, Blumka, Katz, etc.). The specialised knowledge accrued in Switzerland is difficult to measure and quantify. Among these emigrant art dealers, Fritz Nathan was probably the most important supplier of art to the major private collections, such as those established by Oskar Reinhart and Emil G. Bührle.

Looking back, Willi Raeber, the former President of the Swiss Art Dealers Association, made the following comments about the impact of emigration on art dealing:

«We know and have witnessed the dynamic impact a number of newly established art dealers had on Swiss art dealing and Swiss collecting over the last thirty years. On the other hand, we also see – better than

elsewhere – what enormous damage has been caused by the unscrupulous machinations of certain foreign «art dealers»».<sup>13</sup>

The recognition of the positive «side-effects» of immigration was thus restrained by the observation that in recent years, a large number of outsiders had unfortunately entered the world of art dealing, namely:

«all those people who abandoned the most devious occupations in order to turn to the «milk cow» of art dealing and who are actually succeeding – despite their complete lack of expertise – in doing business purely as a result of their lack of scruples».<sup>14</sup>

From 1933, part of the Jewish collections came onto the market before a single work of art had been confiscated. Inevitably, the art dealers who had emigrated to Switzerland played a key role in the transfer of Jewish-owned art. As a result of their own personal experiences, they were ideally placed to act as intermediaries between the German and the Swiss art markets. The persecution of this group of people – and thus their problematical situation – should not obscure the fact that the art dealers concerned often travelled to Germany, at least until 1938, to visit their families who remained there and in order to maintain contacts with art collectors who wanted to sell their collections. This is well documented for a number of art dealers, such as Fritz Nathan, Walter Feilchenfeldt, and Alfred Flechtheim.

#### **Fiduciaries and banks**

The banks and fiduciary companies initially were mere service providers for other actors such as dealers and collectors; still, on some occasions – out of pure financial interest – they also developed their own initiative in the business and purchased art themselves. A notable example is the Zurich-based «Fides Treuhand-Vereinigung», which had been a subsidiary of Credit Suisse (*Schweizerische Kreditanstalt*, SKA) since 1928. Although any individual responsibility is routinely denied today on the grounds that the company always acted only on behalf of third parties, Fides played an active role in art dealing from 1934 to around 1943 by offering its services unsolicited and thus adding fresh impetus to the sale of Jewish property and «degenerate art». The company aimed both to reinvest a blocked German credit asset of 8 million reichsmarks within Germany and to gradually reduce it via export purchases on behalf of third parties. Bodenkreditanstalt, also a SKA subsidiary,<sup>15</sup> took steps similar to the ones taken by Fides in art dealing, in that it bought up iron and sheet metal for Switzerland in co-operation with German and Swiss industrial companies.

In the case of Fides, five sub-categories of activity can be analytically identified:

1. Attempts to monopolise the sale of already confiscated, so-called «degenerate art» to generate foreign exchange for the German Reich;
2. Attempts to divert French Impressionists away from German museums;
3. Facilitating German art dealers' sales to dealers abroad;
4. Acquisition of cultural assets on behalf of third parties at the «Jew auctions» (*«Judenauktionen»*); and
5. Arranging the transfer of cultural assets from the German Reich to cultural institutions in Switzerland.

There is documentary evidence of these individual initiatives, such as the advertisements placed in the journal *«Weltkunst»* in 1938/39 in which Fides offered its services to «foreign buyers for the export of all types of *objets d'art* from Germany», or the approaches of its Art Department director, Franz Seiler, to the Berlin Nationalgalerie in 1935, with impudent proposals as to which paintings the Gallery should dispose of. In a report dated November 1935, Eberhard Hanfstängl, Director of Berlin's Nationalgalerie, noted, *inter alia*: «Dr. Seiler listed all the works by these artists in the National-Galerie, in other words, the most precious and irreplaceable foreign art possessions in the Gallery».<sup>16</sup>

How much looted art was deposited in banks could not be ascertained, due to the poor sources available. There are virtually no files which might provide information on the content of the locked safes. The forced opening of «unclaimed» safes and deposit boxes under notarial supervision, both in the immediate post-war period and in recent years, have brought very few pictures to light. The ICE has not been able to carry out its own research on art collections banks have begun to invest in, particularly in the 1960s and 1970s. The banks' internal investigations in their own art collections did not reveal any «looted paintings»: no «unclaimed paintings» were identified, however, some artefacts previously held on deposit or on the basis of credit arrangements have turned up.<sup>17</sup>

### **The market and prices**

Like any other market, the art market facilitated an exchange of ownership under competitive conditions. The market could be a real or, in many cases, simply a virtual territory in which sellers and buyers could meet and as well, it was a place of exchange in kind. Given that some of the goods were of dubious origin, the art market took on the character of a black market; however, respectability could be achieved through resale, as only the intermediary had to be stated as provenance thereafter. As in other markets, the art market of 1933–1945 had an ambivalent character: on the one hand, it enabled persons to acquire the funds they needed; on the other hand, the price was set by the ones who had the money, rather than by those exposed to persecution and offering the goods. The

exchanges were subject to the additional condition and/or opportunity of doing business with sums of money in different currencies and in line with various convertibility rules. The clearing conditions or exemptions therefrom were an important element of trade.<sup>18</sup> Whereas in normal cases the payments resulted from a change of ownership, in a remarkable number of cases, as the activities of Fides show, this change of ownership could have merely been the outcome of an effort to dispose of existing assets. Changes of ownership can be assumed to have occurred very frequently in the art market at this time; the number of sellers increased, whereas the number of purchasers declined, not only after 1933 but also before this date as a result of the crisis. However, the increase of supply did not have to be significant in order to have a great effect. The prices were generally low. The best indicator of price is the revenue from auctions, which were an open market and thus generated maximum levels of interest.

In a number of cases, we noted that the fairly low prices were further forced down by the purchasers (including museums), a procedure which was considered normal. The trade in works of art that were questionable in many respects, represented a substantial part of ordinary art dealing and was generally regarded as unproblematic. It was part of the contemporary art market in a way which it should not have been, had the conventional norms governing the protection of private property and the more recent human rights standards which were gaining ground during the war been taken into account. Perhaps even at the time, but certainly in retrospect, it is astonishing to what extent the conduct of certain dealers and art owners lacked insight and understanding – even during the restitution period from 1946 to 1952 – and to see what decisions were taken in a number of Supreme Court rulings.

### **State and law**

Of course, the persons operating on behalf of the state were also actors albeit, perhaps, in secondary roles. Although distinctions must be made regarding state responsibility, a subject especially interesting to us, it is easier to make generalised statements here than in the complex field of private art dealing. Cross-border art dealing took place largely under the watchful eyes of the authorities, and involved a relatively high level of red tape. The Swiss Clearing Office (*Schweizerische Verrechnungsstelle*, SVSt) dealt with numerous purchases and sales and often granted exemptions, i.e., clearance, both for Jewish emigrants and Nazi collections.

The civil servants acting on behalf of the state operated in accordance with the law, but also in the country's economic interests. The importance attached to the economy is evident from the Clearing Commission's discussion of this issue in May 1935:

«Switzerland plays a significant role in international art trade as a transit country, with a highly developed tourist sector. The auctions arranged by Swiss art-dealing companies therefore always attract a large number of dealers and art-lovers, with the main contingent coming from Germany. Since the coming into force of the German-Swiss Clearing Agreement and the difficulties which this has created in terms of the payment options for products of non-Swiss origin, the German buyers are almost entirely absent [from these events].»<sup>19</sup>

Within the administration, the well-known Lucerne auction of June 1939 was regarded as interesting from an economic point of view; after the close of business, it was noted:

«that from a general economic perspective, facilitating this auction through its exemption from clearing obligations has brought nothing but benefits to Switzerland, both directly and indirectly».<sup>20</sup>

The Federal authorities – the Federal Political Department (EPD), the Federal Department of Home Affairs (EDI), the Federal Department of Justice and Police (EJPD), and the Swiss Clearing Office (SVSt) – and the courts at various levels must have noticed that the regulations governing the problems linked with the art trade were unsatisfactory or worse, inadequate. However, the state saw no reason to introduce amendments to the law. As a result of external pressure and after a long period of inactivity, it merely adopted a provisional Emergency Decree, with a two-year validity time-limit, very suddenly in December 1945. It had turned out that over 70 pictures or drawings, confiscated by Nazi organisations in France and the Netherlands, had been sold or exchanged for «respectable art» in Switzerland. According to the Federal Council's Decree on Looted Assets, the so-called *«Raubgutbeschluss»*, these artefacts – provided that they were object of a law suit – had to be returned to the former owner, despite the *good faith* of a Swiss purchaser.<sup>21</sup>

Between 1933 and 1945, three measures were adopted to regulate the import and export of cultural assets: the Federal Council's Decree of 23 April 1935, the act of disposal of 17 March 1938 and the Communiqué of 25 May 1944. All three must be viewed as measures to protect Switzerland's own community of people engaged in the arts and culture sector. Only the very last makes reference to the import of looted art. Provenance had not been an issue until 25 May 1944 when it was pointed out that «in light of the present circumstances, the greatest caution should be exercised, for various reasons, when acquiring works of art of foreign origin».<sup>22</sup> However, this did not mean that the expropriations by the

Nazi regime were now considered illegal. It was only towards and after the end of the Second World War that, in light of the knowledge of the expropriations by the Nazi regime on the one hand and, more importantly, as a response to pressure exerted by the Allies on the other, it was recognised by government bodies that the regulations contained in the Civil Code did not do justice to the legitimate interests of the victims of the Nazi looting policy. The protection afforded to acquisition in good faith in the Swiss Civil Code was therefore suspended for a limited period, against the opposition put up by the art trade and the Swiss Bankers Association (SBVg). On 10 December 1945, the Federal Council adopted the «Decree on Looted Assets concerning Claims for the Return of Assets seized in War-Occupied Territories».

### **The international parameters**

The Swiss art-dealing centre had close exchange relations with the occupied territories – especially France – for incoming goods, and with Germany (since 1937) in particular for outgoing goods. Swiss involvement in the Nazi regime's looting and cultural policy was considerable and diverse; as a result, Hitler's and Goering's collections were boosted by the acquisition of major works by the Old Masters and the school of German Romanticism). As a commodity, «works of art and cultural assets» entered Switzerland by a variety of routes: as flight assets brought in by emigrants; then as a result of forced sales which took place in Germany as early as 1933/35; and finally as looted assets, where a distinction must be made between the «legal» looted assets from confiscations in German museums in 1938 («degenerate art»), and illegal looted assets, which spanned the entire spectrum from state and state-sanctioned plundering in the occupied territories to purloining by private individuals. The ICE makes the following distinction between flight assets and looted assets: flight assets are those cultural assets that were brought into exile to Switzerland or via Switzerland and were perhaps sold by the (Jewish) owners themselves. Looted assets, on the other hand, are those cultural assets that were expropriated or confiscated by German institutions in the «*Altreich*» (the German Reich before the annexation of Austria) or in the «annexed» and occupied territories and that were commercialised in Switzerland. Both categories are derived from the situation of the seller who did not sell voluntarily, be it in the German Reich or during flight in Switzerland. Whereas the categories of flight assets and looted assets can be considered as owner-oriented, the third category, which is referred to as «degenerate art», is content-oriented. The cause of the transfer of all three categories of cultural assets was the same, i.e., the Nazi policy of persecution, expropriation, and looting.

The outflow of works of art via the German Reich market in the early 1930s

was merely the first phase leading to the complete break-up of the German Jewish collections. In 1938, a second phase began in which the German authorities and party units systematically confiscated and resold Jewish art collections – or what was left of them. In 1939, the «*Führermuseum*» was founded in Linz. With the attack on France, Belgium and the Netherlands in summer 1940, other notorious art looting organisations were established, such as the «ERR» Task Force (*Einsatzstab Reichsleiter Rosenberg*) set up by Operations Headquarters Reichsleiter Alfred Rosenberg and the Künsberg Special Commando Unit (*Sonderkommando Künsberg*), which was answerable to the Foreign Office. These looting teams were closely linked, both causally and chronologically, with Germany's policy of expansion; they therefore operated mainly in the occupied countries.

For the «expropriation phase» on the whole, no evidence was found of direct links between German Reich authorities/museums and Swiss authorities or other public institutions. However, until the outbreak of war in 1939, Swiss museums, collectors and dealers acquired Jewish-owned works of art, in some cases directly from «Jew auctions» (*Judenauktionen*). For example, the art dealer and gallery-owner Theodor Fischer purchased a number of porcelain artefacts from the Emma Budge collection. Otto Fischer, the director of the Basler Kunstmuseum, also bought graphic works locally between 1933 and 1937, either through direct purchase arrangements or via middlemen.

Trade probably expanded during the years when transactions intensified as a result of persecution; the same applies to non-professional opportunist dealing, which is difficult to investigate and quantify. Contrary to expectations, in the category of high-quality and therefore well-documented cultural assets, far more cases involving flight assets than looted assets were noted.

### **The trade in flight assets**

It also happened that legal owners, as a result of persecution by the National Socialists, brought collections to Switzerland themselves. The transfer of flight assets took place on a substantial scale, especially during the early 1930s. These flight assets, mainly owned by wealthy and cultured people among the Jews, found their way to countries all over Europe and also overseas. The «looting taxes» levied on emigration and the foreign exchange transfer regulations were tightened up only gradually, and initially the obstacles to exporting assets were even less of a hurdle. Some Jewish collectors decided to emigrate to Switzerland primarily because of the contacts they had established with Swiss museums or collectors prior to 1933. Swiss museums were in a position to offer collectors a very attractive opportunity to transfer their assets, as they were able to arrange the import of artworks from the Reich with «free passage» into Switzerland

while reassuring to the collector that the works in question would be on loan to the Swiss museum concerned. When a painting was sold, the import duties were generally charged to the purchaser, thus relieving the burden on Jewish owners who were usually short of foreign exchange. By declaring that the item was a loan, the German collector was exempt not only from import duty but also from emigration tax or other compulsory taxes and levies as, in formal terms, the transaction did not constitute a permanent transfer of an asset or a sale abroad. This made the Swiss museums an extremely attractive option.

In return, the museums – as a result of the influx of flight goods during the 1930s, but especially during the Second World War – had access to a wealth of exhibition material which was made available to them free of charge. During the Second World War, when the movement of loaned artefacts became virtually impossible in Europe, this opportunity to organise exhibitions gained tremendously in importance. The Kunstmuseum Basel, the Kunsthaus Zurich, and the Kunstmuseum Winterthur alone obtained at least 1,000 paintings and drawings in this way. Compared with the large number of Jewish-owned deposits, very few non-Jewish collections were available. These included, for example, the collection owned by the banker Baron von der Heydt, who had relocated to Ascona as early as 1930. The figure of around 1,000 deposits is doubled if the deposits by German artists and collectors who were persecuted in the purge of «degenerate art» (*«Aktion Entartete Kunst»*) are included. On average, from each of the larger collections (flight assets) deposited in museums, one to two works were purchased for the museum concerned.

For the Jewish owners who wanted or were forced to sell off their works of art item by item, the various exhibitions served as useful publicity. By being displayed in public, the works of art were rated «museum worthy», which encouraged sales, and they could be promoted to a wider public at the same time. Often, the exhibitions were followed very quickly by the auctions held by the Lucerne dealer and gallery-owner Theodor Fischer, who sold a substantial proportion of these flight assets at his auctions. Between 1933 and 1947, Fischer organised 47 auctions in total; most of the «emigrant auctions» took place between 1939 and 1942. By the time the auction took place, most emigrants had already left Switzerland. Often, the goods had to be offered at follow-up actions with higher deductions for the auctioneer. Fischer also purchased art at these auctions; indeed, he was the main buyer. Some of the cultural assets disposed of through auction, direct resale or exchange found their way back to Germany; there is documentary evidence of an exchange occurring after the Lucerne auction of the Julius Freund collection in March 1942.

**Case study: Curt Glaser – «I put the fate of the paintings into your hands.»**

Curt Glaser, Director of the State Art Library (*Staatliche Kunstsbibliothek*) in Berlin from 1924–1933, emigrated to Switzerland as early as 1933 and deposited eight works by Edvard Munch, Erich Heckel and Paul Klemischmidt with the Kunsthaus Zurich between 1935 and 1938. Glaser's choice of the Kunsthaus Zurich as the place of exile for his paintings was due to the fact that it had already organised major Munch exhibitions between 1922 and 1932. When Glaser wanted to arrange for a further Munch, «Music on the Street» (*«Musik auf der Strasse»*) (1899), to be brought from Berlin to Zurich in 1939, the German foreign exchange authority (*deutsche Devisenbehörde*) blocked the transfer.<sup>23</sup> Glaser therefore appealed to the Kunsthaus director Wartmann for support, beseeching him, to purchase the painting:

«For how am I supposed to get the picture out of the country now that all the borders are closed? [...] What should I do? Shouldn't it be possible to show some tolerance for a painting, as well as for the people who can no longer get out? I really have no other options if you have no interest in the painting and decide not to make me an offer, which I would look at in quite a different light today than before the war which has turned every possession into a cause for worry. It remains to be seen whether I myself will be able to leave Europe. I very much doubt that this will be possible. However, the pictures will have to stay here – one way or another. In one of your letters, you expressed regret that Europe might lose them. I now put the fate of the pictures into your hands.»<sup>24</sup>

The letter vividly reveals Glaser's difficulties. The Kunsthaus Zurich, which already owned six pictures by Munch, acquired the oil painting in March 1941 for 12,000 francs. Originally, Glaser had demanded 15,000 francs, which he claimed was already a drastic price reduction. On the other hand, this was an enormous sum of money for the museum, equivalent to the normal acquisitions budget for two years. Glaser needed the money for his onward journey to the USA. In 1943 and 1946, the Kunsthaus purchased three more paintings by Munch from Glaser's collection: «Portrait of Albert Kollmann» (*«Bildnis von Albert Kollmann»*) for 7,000 francs, as well as «Portrait of a Lady» (*«Damenbildnis»*) and «Lübeck Harbour» (*«Hafen von Lübeck»*) for a total of 14,000 francs.

### **The trade in looted assets**

The term «looted assets» is used here to denote Jewish-owned cultural assets which were either confiscated in the Reich or had to be sold by their owners in

Germany, either through auction or private sale. A special category of the goods sold to Switzerland were the artworks which had originated in Switzerland. Every German art dealer sought to sell these works – either directly or through a middleman – in Switzerland, as this ensured the best price for this type of work. These sales are not necessarily an indication of regular and intensive business contacts between the German and Swiss art markets, but were the dealers' response to the market. The art market pursued this strategy at all times, not only during the period from 1933 to 1945. Moreover, as long as there was a market for them in Switzerland, works from Jewish collections were sold on in Switzerland. The agents between the German Jewish collections and the Swiss art market were often German Jewish art dealers who acted as «intermediaries» prior to their emigration or during their stay in Switzerland. This type of transfer was based in particular on the expertise of these intermediaries and on the favourable prices which resulted from the over-supply of Jewish collections in the German Reich market. This opportunity to purchase (and resell) on favourable terms was also exploited by Swiss art dealers, especially the Galerie Fischer in Lucerne. Therefore only the second category was time-specific; however, both categories were based on the violent break-up of Jewish art collections in the Third Reich. It is easier to find evidence of Switzerland's role as a «hub» for flight assets, whereas the transit of looted goods through Switzerland can only be proved in individual cases. A well-known example is the fate of the painting «Landscape with chimneys» («*Landschaft mit Schornsteinen*») by Edgar Degas, dating from 1890/93: it was purchased at an auction in Paris in 1919 for the Max Silberberg collection in Breslau – in 1932, it went back to auction in Paris – from there it passed to the Dutch collector Fritz Gutmann, who gave the painting for safekeeping or resale to Paul Graupe in 1939, who lived in Paris from 1937/1938 – later it was transferred to Switzerland by Hans Wendland and Fritz Fankhauser – and sold to the New York collector Emile Wolf in 1951 – 1987 acquisition by Daniel C. Searle – 1998 presented to the Art Institute of Chicago.<sup>25</sup> It is by no means surprising that a painting of such «problematic» provenance did not reappear on the art market until many years after the end of the war. As a result of «Aryanisations» or «liquidations of looted art», at least 14 pictures are proved to have been transferred from occupied France to Switzerland. It is possible that investigations in other «Aryanised» galleries will bring to light further examples of «Aryanised» cultural assets which were transferred to Switzerland.

#### **Silberberg and the paintings «Stockhornkette» and «Nähschule»**

Max Silberberg, a wealthy industrialist from Breslau, was forced to sell a large part of his art collection at auctions in 1935 in order to finance his survival.

His art collection and art library were put up for compulsory sale by auction five times, arranged by the Berlin auctioneer Paul Graupe in 1935/36. A smaller remnant of the collection remained in Silberberg's possession until 1940; it was then «Aryanised» by the Breslau Museum of Fine Arts (*Museum der bildenden Künste*) in collaboration with the financial authorities. In 1942, Max Silberberg and his wife were sent to the transit camp at Kloster Grüssau, from where they were deported on 3 May 1942, probably to Terezín (*Theresienstadt*), and later murdered. According to auction reports, Swiss art dealers attended Paul Graupe's first auction in March 1935. It is likely that Fritz Nathan was also present. He was interested in the only work by a Swiss artist at the auction, the painting «Stockhorn Chain by Lake Thun» («*Stockhornkette am Thuner See*») by Ferdinand Hodler. This painting must have been deposited with Fritz Nathan for some time; a painting bearing the same title was listed by Nathan in 1946 as being in his storerooms.<sup>26</sup>

This purchase of «*Stockhornkette am Thuner See*» from the Silberberg collection illustrates how easy it is to be misled as to provenance by relying on apparently unobjectionable credentials. Although Hodler painted various views of Lake Thun, this version is fairly easy to identify, as it shows the lake with clouds painted with broad horizontal strokes. Painted between 1910 and 1912, the picture was sold by Hodler in 1913 to the Galerie Wolfsberg in Zurich. In 1921, it reappeared at the Galerie Wolfsberg and was sold in 1923 to the A. Sutter collection in Oberhofen. In 1985, the painting turned up again at an auction arranged by the Galerie Kornfeld in Bern.<sup>27</sup> There, the most recent provenance was cited as being the Sutter collection, thus implying that the painting had been held in private ownership in Bern ever since. The Swiss Institute for Art (*Schweizer Institut für Kunsthistorische Forschung*, SIK) in Zurich, which constantly monitors the movements of Hodler's works, accepted the information supplied by the Galerie Kornfeld. In fact, the painting had been sold to Max Silberberg in Breslau in the 1920s and sent to auction when his collection was broken up in 1935. As there was a great demand for Swiss works of art in Switzerland, this painting returned to Switzerland through art trade.

A further work from Max Silberberg's collection was Max Liebermann's «Sewing School – The Workroom of the Amsterdam Orphanage» («*Nähschule-Arbeitsaal im Amsterdamer Waisenhaus*») (1876), which was on display until recently in the Bündner Kunstmuseum in Chur. Until 1923, the painting had been part of the collection owned by Privy Counsellor Robert Friedberg and is documented as being part of the Silberberg collection from 1927 at the latest. This painting was not offered on auction, but was sold by Silberberg in 1934, via middleman Bruno Cassirer, to Adolf Jöhr. It was

exhibited in 1937 in art galleries in Bern and Basel.<sup>28</sup> On her death in 1962, Jöhr's heir, Marianne Krüger-Jöhr, left it to the Bündner Kunstmuseum in Chur.<sup>29</sup> In the late 1990s, Silberberg's daughter-in-law and sole heir, Gerta Silberberg, applied for the painting to be returned to her, and this was done in 2000. The painting was later sent to auction and now has a new owner.

#### The trade in «degenerate art»

From the outset, the National Socialists were hostile to modern art. However, the category of «degenerate art», which was singled out for repression and elimination, was not devised by the Nazis. National Socialism was «merely» an enthusiastic advocate of a pre-existing anti-modernist concept of art – albeit displaying a recklessness and zeal which matched its brutal nature, combined with a rapacious greed for classical and Romantic works. In 1937, around 20,000 works of art were seized in 101 public collections in museums and art galleries throughout Germany. Works by Jewish artists naturally fell victim to the purge; most of the German Expressionists were also regarded as «degenerate», but so too was all abstract art such as that of the Cubist and Constructivist schools, and to some extent even the French Impressionists, which were classed, at the very least, as «decadent». The confiscated works were mainly public or semi-public possessions owned by the local municipalities. In cases where the confiscations also included loans, they thus involved private property – a fact which has rarely been considered up to now.

The Nazi regime's prime concern was to remove the Expressionists, Cubists, etc., from circulation and withdraw them from public view and individual attention. A secondary issue which arose was what to do with this confiscated art. National Socialist artistic policy identified three possible uses for these «degenerates»: exploitation for political propaganda purposes, financial use through sale abroad, and destruction.

The *first option* is well-known as a result of the «Degenerate Art» (*«Entartete Kunst»*) exhibition in Munich from July to November 1937. This was intended to show the public that «irresponsible» museum directors in the period before the National Socialists seized power had squandered millions of marks – the «hard-earned savings of the German people» – on art which was «the enemy of the people». It was also intended to be a negative contrast to the parallel «Great German Art Exhibition», which was supposed to reflect the «healthy» artistic tastes of the German people and their true representatives and leaders.<sup>30</sup> The spectacular event of 1937 was preceded by local exhibitions, beginning immediately after the Nazis' seizure of power in 1933, which featured «chambers of horrors».<sup>31</sup>

The *second option* – commercial use – was implemented in a number of ways. One

well-known event is the «official» auction which took place in the Galerie Fischer, Lucerne, in June 1939. In addition, four German art dealers (Bernhard A. Böhmer, Karl Buchholz, Hildebrand Gurlitt and Ferdinand Möller) were accredited by the «*Verwertungskommission*», a marketing committee set up by the Reich Propaganda Ministry and commissioned to find buyers for the confiscated works; to this end, they were supplied with sales permits and stocks of art. However, individual members of this committee (such as the art dealer Karl Haberstock) were also involved in dealing. A substantial part of this trade took place via Switzerland, using a wide variety of forms of payment or exchange. Modern art buffs and supporters of the persecuted works faced a dilemma: should they boycott and thus sabotage the plans for commercial use and do nothing to save the works, or should they purchase the paintings to ensure their safety – thus enabling the Reich to acquire the sought-after foreign exchange? Georg Schmidt, Director of the Basler Kunstmuseum, recognised this dilemma and risk; however, he maintained the view – which history has borne out – that exchanging «eternal cultural assets for rapidly outdated canons» is justified in every case.<sup>32</sup> According to official statements made by the German side, the foreign exchange would be used to purchase good German art from abroad. There is indeed evidence that through the commercial exploitation (i.e., sale or exchange) of some items of «degenerate art», a number of classical works were acquired. Swiss agencies – such as the Swiss Clearing Office (SVSt) – accepted the German declarations uncritically;<sup>33</sup> in reality, however, most of the revenue was used for the wartime economy. The artists directly affected clearly expected – as Oskar Kokoschka demanded in no uncertain terms – an act of solidarity from abroad, i.e., the purchase of the paintings.<sup>34</sup>

The *third option* – destruction – was born of the deliberate and, at the outset very determined, intention to destroy the works of art. However, it lost some of its momentum in light of the opportunities to sell the paintings. Secondly, it emerged from the efforts to liquidate the unsellable remainder of the collections. Dr. Franz Hofmann, who was responsible for the «degenerate artefacts» at the Reich Propaganda Ministry, proposed in November 1938 that this «unsellable rest» be burned in a symbolic act, and offered himself to give an appropriately impassioned «funeral speech». The Nazi regime's campaign against modern culture was directed not only against the artefacts themselves but also against people: against artists, curators, art historians, and art-lovers. Even the language used showed that these were simply two manifestations of the same massive persecution campaign: systematic identification, discrimination through emergency laws, arrest and deportation, sale or destruction. What was done to «degenerate art» was later to be the fate of people who were considered «alien to the Aryan race» («*artfremd*»).<sup>35</sup>

### The fate of the «Rabbi»

Marc Chagall's painting «The Rabbi or The Pinch of Snuff» (*«Rabbiner»* or *«Die Prise»*) (1926), is a particularly good example due to the combination of genre and motif. On 4 September 1933, Kunsthalle Basel approached Kunsthalle Mannheim asking it for the loan of Chagall's painting. It promptly received a reply stating that this would not be possible, but that the Kunsthalle could buy the painting. Finally, the painting was displayed in the Basel exhibition. However, the Kunsthalle Basel was committed to displaying the painting with an explanatory note stating: «This painting was shown in the Exhibition of Artistic Bolshevism in spring 1933». This condition was complied with.

The initial refusal to make the painting available can be explained by the events preceding the request: after the National Socialists came to power, the City of Mannheim authorities and therefore the Kunsthalle underwent the process of *«Gleichschaltung»* – the complete coordination of all political and other activities by the Nazi regime. Soon afterwards, an exhibition was held in which *«Cultural-Bolshevik Paintings»* (*«Kulturbolschewistische Bilder»*) were displayed and set up in contrast to *«exemplary»* art. In order to draw attention to the event, the organisers staged a theatrical spectacle centred around Chagall's *«Rabbi»*. The painting was dragged around in a procession leading to the home of the suspended Kunsthalle director before being put on display – unframed, of course – in various Mannheim shop windows, next to a sign reading: «Tax payers, you should know how your money is spent!». What is remarkable is that the painting was offered for sale as early as 1933, long before in 1938/39. In the interim – i.e., before its definitive confiscation by the Reich Agency in 1937 – it was put up for sale but failed to find a purchaser. For example, in June 1936 and May 1937, it was offered twice to Oskar Reinhart, Winterthur, once by Hildebrand Gurlitt, Hamburg, for 6,000 reichsmarks and once by the Cologne-based Galerie Abels for 7,500 reichsmarks. In 1928, it was purchased in Mannheim for 4,500 reichsmarks. Reinhart declined to buy it on both occasions; his reasons for refusing the painting are not known.

In 1937, Chagall's *«Rabbi»* was displayed at the Munich exhibition of *«Degenerate Art»*, again as an object of ridicule. It was then offered for sale again, this time at the Lucerne auction in June 1939, where Georg Schmidt bought it for the Basler Kunstmuseum for just 1,600 francs (plus 240 francs commission), which amounted to around 850 reichsmarks at the time. Thus Chagall's *«Rabbi»* finally found a permanent home in Basel, which it had visited on loan as early as 1933.

Out of a total of around 20,000 confiscated works, 125 went to the auction in Lucerne. 99 works can be classed as German art, and 26 as foreign items. Of the 99 works, just 57 were sold; however, all the foreign works were sold, except for Picasso's «Absinthe Drinker» («Absinthtrinkerin»). In total, 82 works were sold. 23 of them remained in Switzerland; 18 initially acquired Swiss ownership but then went abroad. With regard to the paintings' departure from Europe, we found that 93 remained in Europe, 21 went to the USA, and 11 remained unsold. A number of works later returned to Europe from the USA.

### **The problem of provenance**

In the notable case of Chagall's «Rabbi», we have a complete record of the various stages in its eventful «life». In many other cases, however, there was a tendency – or, indeed, a well-established practice – of determining provenance or origin purely on the basis of the last seller's statements. If the last seller, or a donor, appeared to be credible, honest and reliable, further questions as to provenance or, indeed, a complete record of the changes of ownership were felt to be unnecessary. The almost tangible impression arises time and again that the persons interested in purchasing the artefact – if, indeed, they asked about provenance at all – were content to accept vague and cursory answers. Our investigations revealed that in some cases, even catalogues of museums, of collections, and other catalogues which show the provenance of the objects of art, either ignore the gaps from the 1930s and 1940s or gloss them over with extraneous information. Given the current state of knowledge, academic catalogues and studies in the field of art history should no longer ignore the historical upheavals – especially the forced break-up of Jewish collections. Private collectors were more likely to purchase looted art than public collections. However, many of the private collections which were established during the period in question were later bequeathed to museums or transferred to public ownership in some other way. As a result, flight assets and looted art, or «degenerate art» purchased at the time, can be found in these public collections as well. The primary objective of the ICE's work was not to resolve individual cases, but to reveal structures and actors and supply typologies and categories for the transactions which took place in the art market so that individual cases – even those which have yet to come to light – can be placed within a clearly defined context in the future. Quantitative details will undoubtedly have to be supplemented on an ongoing basis in the coming years. What remains valid, however, are the ICE's statements on structures, mechanisms and motives for the transfer of cultural assets during the period under review.

Apart from the already well-known cases, our investigations have not brought any significant new cases of trade in looted art to light. This does not mean that

such cases do not exist; it merely proves that no traces could be found to date. As outlined above, Switzerland was a suitable «hub» particularly for the transfer of flight assets compared with other non-occupied countries. However, the notion that the trade in looted art – compared with the occupied territories of Western Europe – took place on a particularly large scale could not be confirmed. Conversely, one could argue that it is astonishing that this trade assumed such dimensions in Switzerland, a non-occupied country, which continued to function in accordance with the rule of law.

The ICE has made an analytical distinction between flight assets, looted assets and «degenerate art» and, thereby, has revealed mechanisms and typologies as well as variations of procedure and attitude prevailing in the art market during the period in question. Other countries, on the other hand, have mainly initiated and carried out «research on provenance». These investigations will undoubtedly lead to new discoveries and a clearer general picture. In conjunction with the Washington Conference on Holocaust-Era Assets in December 1998, the Swiss museums published a declaration in which they pledged to exercise the greatest care in dealing with «looted art»; the Federal Office of Cultural Affairs established a «Looted Art Liaison Office» in 1999.<sup>36</sup> However, «research on provenance» *per se*, whose results are usually made available to the public, has to date not constituted a field of research in Switzerland. In various other countries, too, government agencies or museums associations have now initiated investigations, and findings have already been published in some cases. These are «gaplists» – lists of artefacts of dubious or incomplete provenance – which can usually be accessed via Internet.<sup>37</sup> For example, the Association of Art Museum Directors, which represents the directors of 175 museums in the USA, Canada and Mexico, began investigations into the holdings of the associated museums in June 1998.<sup>38</sup> In July 1998, the board of management of London's Victoria & Albert Museum, in conjunction with the British Department of Culture, devised guidelines to identify «looted art». Provenance research was initiated at the same time; this may bring to light paintings which reached Britain and America via the «hub» Switzerland.<sup>39</sup> Such research constantly reveals new information on the extent of expropriation and confiscation, and the persons affected by these events.

<sup>1</sup> Best documented in Barron, «Degenerate Art», 1991 and Frey, Auktion, 1999. A special study of the purchases of «degenerate art» can be found in Kreis, «Entartete» Kunst, 1990. Important general overviews are: Nicholas, Raub, 1995; Feliciano, Musée, 1995; Petropoulos, Art, 1996; by the same author Bargain, 2000; Heuss, Kunst- und Kulturrab, 2000.

<sup>2</sup> Buomberger, Raubkunst, 1998.

<sup>3</sup> For example, Balzli, Treuhänder, 1997.

- <sup>4</sup> The following comments are based on Tisa/Heuss/Kreis, *Fluchtgut*, 2001 (Publications of the ICE), without separate acknowledgement of each individual reference.
- <sup>5</sup> Cf., for example, Vries, *Sonderstab Musik*, 1998.
- <sup>6</sup> Quoted from Simpson, *Spoils*, 1997, p. 287 (reproduction of the London Declaration).
- <sup>7</sup> Nicholas, *Raub*, 1995, p 285.
- <sup>8</sup> Mission Mattéoli, *Rapport*, 2000, p. 23.
- <sup>9</sup> AS, 61 (1945), pp. 1052–1056: «Federal Council's Decree on Lawsuits for the Restitution of Assets taken away in the Occupied Territories during the War» (original German). For the French version of this Federal Council's Decree of 10 December 1945 see FA, E 2001 (E) 1967/113, vol. 443, «Arrêté du Conseil fédéral relatif aux actions en revendication de biens enlevés dans les territoires occupés pendant la guerre».
- <sup>10</sup> Hilberg uses the general term «expropriations» also to include dismissals, «Aryanisation measures», property taxes and, finally, confiscations. Cf. Hilberg, *Vernichtung*, 1999, vol. 1, part 1. The term «confiscation» denotes the acquisition of an object or right without payment of fair compensation to the former owner. Cf. Haldemann, Schutz, 2001 (Publications of the ICE), p. 524. «Aryanisation», confiscation and looting are not legally defined terms.
- <sup>11</sup> Plundering carried out by the occupational forces of the victorious armies was unable to be investigated here and represents a separate field of research unto itself.
- <sup>12</sup> FA, J.I.114 (-), Ludwig Friedrich Meyer bequest, Fischer to Meyer-Rahn, 26 November 1935 (cit.) and 30 November 1935 (original German). Nathan obtained his residence and work permits in 1936, the year he entered Switzerland. In 1937, he joined the Swiss Art Dealers Association (Kunsthandelsverband – KHVS). The German-Jewish emigrant Walter Feilchenfeldt did not obtain his permit until after the war; the same applies to Nathan Katz, who set up in Switzerland in 1942.
- <sup>13</sup> Archives of Galerie Vallotton, Dossier on Swiss Art Dealers Association (Kunsthandelsverband), Raeber to Federal Employment Office (BIGA), 24 August 1948 (original German).
- <sup>14</sup> ibid.
- <sup>15</sup> Cf. Bonhage, *Bodenkreditanstalt*, 2001 (Publications of the ICE).
- <sup>16</sup> Central Archives of the Prussian Cultural Heritage Foundation [Stiftung Preussischer Kulturbesitz], Journal no. 2006, note on a meeting with Seiler/Fides, 22 November 1935 (original German).
- <sup>17</sup> These questions have been clarified for the two major banks Credit Suisse Group (CSG) and UBS AG: CSG closely investigated on nine paintings, three of which stemmed from the collection of the former Swiss Volksbank (SVB), one from the estate of the former Chairman of the Board of Directors, Adolf Jöhr, and one from the collection of the former Fides. Even though it was not possible to clarify the provenance of the latter completely, no evidence of expropriation or confiscation could be found for any of the above mentioned pieces of art (see Jung, *Bundeshaus*, 2001, pp. 396–398). UBS carried out closer investigation on eight paintings, where of one stemmed from the «Goering collection». This painting (Melchior Feschen, Judith and Holofernes) came into the collection of Heinz Kisters, Kreuzlingen, and from there – together with three other paintings – into the possession of UBS AG as decoration for the Wolfsberg castle (Ermatingen). Two objects stem from former credit relations, for two other objects no evidence of «looted art» could be found either (Memorandum UBS AG concerning the «Art Project», 12 April 2001 and the corresponding files; information given by Dr. Bruno Wettenchwiler and Dominik Saam, 5 December 2001).
- <sup>18</sup> Cf. Frech, *Clearing*, 2001 (Publications of the ICE).
- <sup>19</sup> FA, E 7160-01 (-) 1968/223, vol. 11, minutes of the Clearing Commission, 2 May 1935, p. 51 (original German).
- <sup>20</sup> FA, E 7160-08 (-) 1968/28, vol. 6, Swiss Clearing Office to Department of Trade, 25 July 1939 (original German).
- <sup>21</sup> As for the good faith purchase and an analysis of the dealing with looted cultural assets from a private-law point of view, see section 5.2 included herein.

- <sup>22</sup> FA, E 2001 (E) 1967/113, vol. 437, Communiqué of the Federal Department of Home Affairs, «The import of works of art from abroad», 25 May 1944 (original German).
- <sup>23</sup> Until 1938, the picture was exhibited in the Kronprinzenpalais in Berlin following Glaser's donation of the painting to this institution in 1932 on his wife's death. A condition of the gift was that a plaque should be attached in her memory. Under the Nazi regime, the plaque was removed, which prompted Glaser to loan this painting in turn to Zurich, thus ensuring its safety.
- <sup>24</sup> Kunsthaus Zurich, correspondence between exhibition/owner, 1939/1940, Glaser to Wartmann, December 9, 1940.
- <sup>25</sup> For a comprehensive study, see Tisa Francini/Heuss/Kreis, *Fluchtgut*, 2001 (Publications of the ICE), pp. 311–314. After claims for the painting's return were registered in 1987 by the heirs of the painting's owner, who was murdered in Terezín in 1943, a model solution was found: the present «good faith» owner would donate the painting to a public museum which would pay out half of the value of the painting to the heirs.
- <sup>26</sup> FA, E 7160-07 (-) 1968/54, vol. 1087, Nathan to Swiss Clearing Office (SVSt), 27 August 1946, storage no. 378.
- <sup>27</sup> Auction catalogue no. 188, Galerie Kornfeld, Bern, 19/20 June 1985. The picture is listed in the catalogue of works compiled by C.A. Loosli. Cf. Loosli, Hodler, 1924, no. 1942. The picture's dimensions are 63.5 x 85. Today, the picture is in St. Gallen in the possession of former cantonal government member Simon Frick.
- <sup>28</sup> These are the findings of the research carried out by the Bündner Kunstmuseum in Chur, based on the files of Adolf Jöhr's descendants. Cf. letter by Beat Stutzer, 21 December 2000.
- <sup>29</sup> For a history of its provenance, cf. Eberle, Liebermann, vol. 1, 1995, 1876/30. At issue is the first version of this painting (oil on canvas, 57.5 x 83). It was previously assumed, according to the catalogue of works, that Fritz Nathan was the intermediary between Max Silberberg and Adolf Jöhr.
- <sup>30</sup> Schuster, «Kunststadt», Munich, 1987.
- <sup>31</sup> Zuschlag, «Entartete Kunst», 1995.
- <sup>32</sup> Schmidt to Council of Government Fritz Hauser, 19 May 1939. Cf. Kreis, «Entartete» Kunst, 1990, p. 38 (original German).
- <sup>33</sup> The Swiss Clearing Office (SVSt) spoke to the Trade Division about the exchange of «undesirable artefacts for other works of art». FA, E 7160-08 (-) 1968/28, vol. 6, Swiss Clearing Office to the Trade Division, 25 July 1939 (original German).
- <sup>34</sup> Kokoschka, Briefe, 1986, vol. III, p. 91. Kurt Schwitters, living in exile in Norway, made similar comments, although not in relation to the Lucerne auction; cf. Schaub, Schwitters, 1998.
- <sup>35</sup> Schmidt also equated paintings and people and, in May 1939, compared the pictures removed from the transport chests with «people who had safely crossed the border». (Georg Schmidt to Paul Westheim, 15 July 1939 (original German)). Cf. Kreis, «Entartete» Kunst, 1990, pp. 21 and 79.
- <sup>36</sup> [www.kultur-schweiz.admin.ch/arkgt/](http://www.kultur-schweiz.admin.ch/arkgt/). The «Looted Art Liaison Office» («Anlaufstelle Raubkunst») is a competence centre which deals with enquiries about Federal collections and institutions, as well as other institutions and private persons. At the same time, it promotes the exchange of key information at international level. Of the numerous enquiries received by the Office since 1999, very few have developed into «cases» resulting in the return of the artefact or an amicable agreement, as envisaged by the Washington Principles 1998; see Tisa Francini/Heuss/Kreis, *Fluchtgut*, 2001 (Publications of the ICE), pp. 191f. and 302f. Overall, only around a dozen cases have culminated in the actual identification of the artefact; this illustrates the difficulties associated with the search for «lost» assets.
- <sup>37</sup> On the provenance research carried out by individual museums (primarily US and British), whose findings can be accessed on the Internet, see the web addresses in the Bibliography of Tisa Francini/Heuss/Kreis, *Fluchtgut*, 2001 (Publications of the ICE), pp. 546f.
- <sup>38</sup> Association of Art Museum Directors (AAMD) on this issue: Some Museums Decline to Search for Plundered Loot, in: *Washington Post*, 21 June 2000.
- <sup>39</sup> Cf. in particular [www.nationalmuseums.org.uk/spoliation/reports.html](http://www.nationalmuseums.org.uk/spoliation/reports.html).

## **4.12 German Camouflage and Relocation Operations in Switzerland**

Shortly after the end of the war, in 1945/46, the Swiss Clearing Office (*Schweizerische Verrechnungsstelle*, SVSt) conducted a wide-range investigation into German assets in Switzerland in response to pressure from the Allies.<sup>1</sup> Up to that point, very little systematic information about foreign money deposited in Switzerland had existed, so this enquiry broke new ground.<sup>2</sup> Despite all its shortcomings, the results were highly informative. The assets recorded were considerable, worth more than one billion francs and well in excess of pre-war estimates.<sup>3</sup> Perhaps the most important individual finding, however, was the fact that around two-thirds of the German assets discovered had not been brought to Switzerland until *after* the outbreak of war. So this was not, for the most part, a portfolio of old assets and investments possibly dating back to the days of the Weimar Republic, as was widely assumed in Switzerland at the time. In contravention of all the German rules which rigorously restricted such transactions, large amounts of money had been brought into Switzerland during the war. This could have raised the question of how these transfers of assets were related to the German economy of the period which was based on looting and plundering. However, no in-depth investigations took place, given the international political changes which occurred from 1946 onwards. The beginning of the Cold War took up all the energies of the Western Allies and turned attention away from Switzerland; moreover, the Washington Agreement signed in May 1946 seemed to present a practicable approach to the handling of German assets in Switzerland.

### **Research problems**

How and when these German assets reached Switzerland was unimportant in the view of the Swiss authorities of the immediate post-war period; all that mattered was whether they had been there on the cut-off date of 16 February 1945 when German assets invested in Switzerland were frozen. Representatives of the Swiss financial sector already believed that the enquiries carried out had gone much too far. In the circumstances, the Clearing Office's remarkable findings fell into a void; they were withheld from the Allies and the Swiss public, and have received little coverage in research literature to date.<sup>4</sup> For domestic political reasons, and as a result of dealing with the demands and claims made by the Allies, an attitude of defensiveness and trivialisation became widespread after the war. The inadequate explanation of events left the Swiss with a clear conscience, set against the totally unrelated, blanket suspicions which cropped up from time to time.

The questions which should have been clarified in detail as soon as the war had ended are easy to identify: did Switzerland really serve as an operational base for German camouflage activities and transfers of assets? Where this was the case, what form did these operations take, how extensive were they, and what was the value of the assets brought into Switzerland or transferred to other countries via the Swiss financial centre? When German defeat was looming in 1944/45, did Switzerland serve as a springboard for the transfer of assets or for attempts by Nazis suspected of crimes to leave the country?

All these questions received lively attention at the end of the war and were covered in the discussions between the Swiss authorities and the Western Allies. In 1944 the United States, in view of the approaching end of the war, launched Operation «Safehaven» to find or neutralise escaping Nazi perpetrators, or to uncover suspected transfers of assets abroad. In more recent debates about Switzerland and Nazi rule, the Safehaven documents, which had received insufficient attention until then, or which had only just been released, played a significant role and raised several unanswered questions. Individual companies and events which were particularly controversial at the time, have since become legendary. They have appeared from time to time in academic research literature, but much more frequently in popular journalism, as they are surrounded by an aura of uncertainty and mystery. This applies for example to the Swiss holding company of the IG Farben Group, IG Chemie in Basel, which is better known by its later name of Interhandel;<sup>5</sup> it also applies to the small Zurich bank Johann Wehrli & Cie. AG, which the Allies accused in the final phase of the war of playing a key role in the transfer of German capital overseas, an accusation which has been taken up again many times since then.<sup>6</sup>

These questions call for an answer; but it is virtually impossible to provide precise answers today. The role of the Swiss financial centre as a base for the handling of concealed German operations, which was already suspected – or resolutely denied – by contemporaries, is in many cases impossible to establish precisely due to the clandestine nature of these services. This gives rise to major problems with regard to documentation, although these are not totally insurmountable. The often highly bureaucratic nature of procedures in the export and financial businesses in the thirties and forties, based on the division of responsibilities, meant that even top-secret operations were recorded in writing to some extent. This was particularly true of the Nazi system with its rigorous controls and deep-rooted mistrust of internationalism and foreign contacts. In Switzerland too, where liberal economic mechanisms based on self-regulation and openness remained in force across wide areas, exchange restrictions were introduced in transactions with Germany which forced the companies concerned to deal with a growing mound of paperwork. Additional sources of

documentation developed out of the management and control needs of the war economy, as well as monitoring by intelligence services in various countries. Finally, pressure from the Allies, along with the unconditional capitulation and occupation of Germany, triggered a wave of enquiries shortly after the end of the war, as already mentioned at the beginning of this section. Telephone and postal monitoring, as well as the questioning of suspects, produced extensive material, albeit by no means easy to interpret, and this also provides some information in cases where the archives of the companies concerned no longer hold any information. The ICE was able to acquire extensive source material of this type; this was used as the basis for several studies.<sup>7</sup> Much of it could have been available long ago; some, such as the German booty records which went to Moscow, or the archives of the former German Democratic Republic (GDR), did not become accessible until the 1990s.

The following commentary begins by referring back to the 1920s, and then focuses first on the economic camouflage activities, then the transfer of German assets into Switzerland, taking into account the question of «perpetrator accounts», and thirdly the movement into or through Switzerland of Germans charged with political offences.

#### **Exodus of capital, tax evasion, and special services in wartime and in peace**

The events in which we are interested did not occur in a vacuum, nor did they emerge out of nowhere after 1933. They were linked to a much wider time frame, and should be seen against the backdrop of Swiss-German economic relations in the first half of the 20<sup>th</sup> century, embedded in the dense network of cultural and social relationships between these unequal neighbours.<sup>8</sup>

The First World War and the years immediately afterwards represent a central point of reference as regards the perceptions and behaviour of the Swiss and German players on either side of a border which was very open in economic terms. Not only had the Swiss financial centre become considerably more powerful during those years; Germany, cut off from world markets, was beginning to benefit from those specific functions provided by the neutral nations which were already criticised at the time by the Western powers. These ranged from a multitude of services for the war economy under a neutral flag, through to the feigned transfer of German assets held abroad to neutral owners. The Netherlands and Switzerland were the most important providers of such services. This situation could have been repeated in the Second World War if the Netherlands had not dropped out of the picture following the German occupation in May 1940. Post-war experiences after 1919 were also critical, demonstrating to German companies the value of outsourced production or neutral intermediaries abroad.<sup>9</sup> The re-establishment of German export and

financial relations on the world markets benefited considerably from the intermediary and bridging role played by neutral locations, not to mention the fact that, in view of the battered German currency, the stable franc was a useful medium for transactions. More problematic, especially as regards the long-term effect, was the fact that the interests of the armaments industry were also able to lie dormant through outsourcing to neutral countries (Krupp in Sweden, Fokker in the Netherlands, Bührle in Switzerland), where willing helpers encouraged the subversion of the League of Nations requirements for German disarmament.<sup>10</sup> It was not without reason that two banks set up in 1920 with majority German ownership, Bankhaus Johann Wehrli & Cie. AG in Zurich and Eduard Greutert & Cie. in Basel, later came into serious conflict with the Allies.

Another important aspect concerns taxation factors. Germany, burdened with reparations payments, was unable to compete with the favourable conditions offered by Switzerland as a place for business operations. The flight of capital from German businesses was one effect of this situation which was much discussed in the late 1920s and early 1930s. During the short period of favourable economic conditions at the end of the 1920s, numerous finance and holding companies sprang up in Switzerland for this purpose and were often also used to procure capital. They were closely linked to the controversial phenomenon of the «front man», where business representation was undertaken by lawyers in many cases. A classic example of this type of establishment, which was to become the subject of long-running political and legal conflict during the Second World War and for a considerable period afterwards, was IG Chemie, set up in Basel by the IG Farben Group in 1928/29 as a finance and holding company for the German chemical giant's international possessions. It was endowed with massive amounts of capital, making it much bigger than any of the Swiss stock corporations of its day. This also aroused opposition from the outset, focusing on the potential risk to the independence of the domestic chemical industry.

The German start-ups of the 1920s were, and occasionally still are, described as camouflage activities.<sup>11</sup> This is an inappropriate use of language, and unsatisfactory in terms of the facts, since it arises out of a retrospective attribution of meaning which is shaped by the developments of the 1930s and the experiences of the Second World War. IG Chemie made no secret of its close links to the German IG Farben Group, tending instead to emphasise them in order to enhance the market attractiveness of its shares. Yet what had been, in the late 1920s, part of a perfectly peaceful process of German integration into the world market, took on a new role just a few years later as conditions radically changed. With the introduction of foreign exchange controls in Germany after the major

bank collapses in the summer of 1931, the freedom of financial movement came to an end. We have no precise data on cross-border movements of capital for any of the periods covered here however, since the banks were always successful in resisting requests from various sides for statistical records of capital movements.<sup>12</sup> After state control passed to the National Socialists in 1933, the course of events in Germany was determined by stricter controls and punitive sanctions on foreign ownership which became increasingly forced into illegality. Growing German currency shortages before the beginning of the war led to increased pressure on businesses and individuals to register their foreign assets, and to bring them back to Germany if possible. The end result of all these movements can only be seen to a limited extent, but there is a great deal to suggest that, after the volume of German foreign assets in Switzerland peaked around 1931, the holdings then declined – with minor fluctuations – up to the beginning of the war.

#### **Preparations for war and camouflage activities**

1937 marked a turning point. From then on, the many reasons for transferring German assets or setting up companies abroad were compounded by the threat of war. The large chemical and pharmaceutical groups, and the electrical engineering industry – with their strong concentration on exports and extensive international interests especially in the Americas or within the British Empire – were the first to act. From the end of 1937, for example, the IG Farben Group made efforts to transfer ownership of its Indian distribution companies – British India was at that time the biggest consumer of synthetic dyes – to Dutch and Swiss shareholders. «Objective: obviously camouflage under a neutral flag in order to achieve greater security», according to an observation made in August 1938 by Hans Sturzenegger, future owner of the bank of the same name which was heavily criticised by the Allies during and after the war.<sup>13</sup> «*Tarnung*» («camouflage») was the newly-coined German expression added to political and economic vocabulary by the Nazis. Defensive moves in the eyes of German companies, such measures were in fact preparations for war, intended to enable the Germans to deal as successfully as possible with the measures anticipated from their prospective enemies in the war – blockade and confiscation. From 1937 on, the key words «war risk» and «camouflage», and the prospect of a potential conflict with the United States and Britain, also figure in the documented views of the Swiss partners in such plannings.<sup>14</sup>

Genuine panic was triggered by the September crisis of 1938, when the war of nerves over the fate of Czechoslovakia resulted in an acute risk of war before Britain and France backed down. There is fragmentary documentary evidence of the attempts by German capital owners or wealthy private individuals to

move some of their assets to what they believed to be safe neutral foreign countries. At the same time, a department was set up at the German Reich Ministry of Economic Affairs (*Reichswirtschaftsministerium*), which transferred the organisation of camouflage activities into state hands. Under the leadership of ministry official Gustav von Schlotterer, a complex approval procedure characterised by strict bureaucratic regulation was established over the next few months in collaboration with the offices responsible at the Reichsbank and at the trade associations. When war broke out in September 1939, businesses immediately received guidelines which pointed out the necessity of protecting export credit balances, foreign branches, and patents registered abroad. Neutral middlemen were to play a central role. At the same time, active conglomerates in particular, such as IG Farben, had already developed their own plans without waiting for instructions from the state which tended to reflect a high level of bureaucratic «nannying» and manifest mistrust of the business owners. The agencies responsible were very well aware that any «concealment» of German property abroad – under nominally neutral auspices – might also be directed against the aspirations of the regime. Those initiating such camouflage activities were trying to evade the clutches and control of the Reich authorities and party bodies; convinced Nazis viewed these activities with great mistrust.

From September 1939 onwards, hundreds of German businesses registered with the competent regional Foreign Exchange Control Offices (*Devisenstellen*), in order to obtain permission for a planned camouflage operation or to find out what they were or were not permitted to do. Every measure which resulted in more than minimal currency requirements – for example, the establishment of a company in Switzerland, even one with only modest financial resources – met with decisive resistance. Company transformation was to cost as little as possible. In other words, such operations were to use existing relationships and structures and extend beyond mere trusteeships so that the new neutral owners could demonstrate to foreign agencies that they genuinely owned the transferred assets.

Fragmentary records from the German Foreign Exchange Control Offices provide information about this major wave of camouflage activities triggered off by the war economy in 1939/40. Verbal agreements, buy-back options, and the like were also to be reported here. In many cases, the decisions taken involved more improvisation than long-term strategic planning. Among those German business leaders who were given no information whatsoever about the regime's immediate military plans, there was understandable uncertainty as to which way to turn, but Switzerland was seen as a particularly safe location along with, and to an even greater extent than, the Netherlands. At the Parfümerie-waren Eau de cologne «4711» for instance, which wanted to move shares in its

British branch out of the Netherlands in autumn 1939, the view was expressed «that Holland's geographical position is less favourable for the protection of shares than that of Switzerland». <sup>15</sup> Sweden was also seen by German clients as having disadvantages. A report commenting on the possibility of concealed stock exchange operations stated: «The Swedish market is confined and even more conservative than the Swiss one». As regards the establishment of holding companies, it was said that «Swedish laws virtually rule out trust companies of this type». <sup>16</sup> The camouflage company mentioned in this case – Rodopia – was eventually set up in Geneva.

The German guidelines for camouflage activities of September 1939 recommended «dispensing with any formal legal association with the existing German parent companies etc., as long as another method is used to ensure that their actual influence remains strong enough to protect their interests». <sup>17</sup> The model most frequently used to achieve this aim consisted in organising a group of neutral shareholders who held stakes in the companies concerned. In order to establish ownership, it was often necessary to provide the new shareholders with credit, but this resulted in problematic costs on the German side. Overcoming this problem without encountering resistance from the German agencies due to a need for foreign currency, required some degree of financial skill. An ideal solution was to procure the necessary funds in neutral foreign countries. An example is the case of a Swiss shareholder being given a loan by a Dutch bank with close German links. In the particularly demanding field of investments, a last resort was to conceal German interested parties behind a smokescreen of obscure cross-over holdings which possibly involved links in several neutral countries and middlemen from a variety of fictitious companies. After the occupation of the Netherlands, Sweden increasingly stepped into the breach, with the Enskilda Bank run by the Wallenberg Brothers willingly taking on such a role. <sup>18</sup> Behind such arrangements, there were always buy-back options at some key point. These could take a variety of forms: from a clear contractual agreement to a simple verbal understanding which required a particularly high degree of trust between the parties. Trust thus became the decisive factor upon which the camouflage structures depended.

#### A Schaffhausen Camouflage Company

«If the circles in question, who were generally well informed on political and economic matters, had seriously expected European, or even world, war in spring 1939, they would of course not have concluded a sale [...] at all.» <sup>19</sup> This was how, hardly three weeks after the outbreak of war, the well-known Zurich lawyer Carl A. Spahn (1888–1962) defended the takeover of the majority of shares in a Schaffhausen holding company by a Swiss consortium. Orion

Industrie- und Verwaltungs AG had been founded in 1930, and was originally wholly owned by Theodor Kaiser, a former confectioner in Waiblingen near Stuttgart, whose discoveries in the field of caramel production and the elimination of insects had made him wealthy, enabling him to build up an international business with branches in Europe and overseas.

Kaiser sold «Orion» in 1939, which by then controlled branches in France, Belgium, Switzerland and Canada, to a Swiss consortium which paid much less than its true value. This decision was made under pressure from the Reich authorities, who were pressing for the liquidation of these foreign holdings so that the currency proceeds could be returned to Germany, but it was also linked to the political situation of the time. The statement from the Waiblingen owners' appointed lawyer quoted above represented a flagrant untruth: apart from the fact that no special understanding of the situation would have been needed in May 1939 to realise that a European war was imminent, the sale did not take place in May, as stated in the predicated document, but shortly *after* the beginning of war. Spahn still had to pay back the capital lent on an interest-free basis. According to a receipt produced after the end of the war, he did not pay the outstanding 320,000 francs until December 1941. The Clearing Office investigating the case at the time was, however, able to establish that this document too had been predicated: the transaction had not taken place until March 1945, in other words *after* German assets were frozen on 16 February. The transactions should be considered as camouflage, and «Orion» subjected to the freeze, especially as the former owner Theodor Kaiser declared that there had been a verbal agreement between himself and Spahn that the shares would be returned after the end of the war, or that a further payment would be made to represent the balance of the purchase price which had been far too low. Spahn, a notorious friend of the Germans, regularly did favours of this type: 13 of the 23 companies on whose Boards he sat were added to the Allies' blacklists during the war, and eight were blocked after the end of the war because of covert German involvement.

How could the matter be resolved? Strictly speaking, the purchase price of 320,000 francs paid by Spahn should have been paid back, whereupon «Orion» would have been declared a German company, and its holdings in various countries confiscated. On the other hand, if the sale of 1939/45 was deemed legally valid, «Orion», along with its foreign holdings, would be a Swiss company. But in this case Spahn would have to make a considerable additional payment to the former German owner. The sum in question would not be given to Kaiser himself, but would be allocated to the pool of German assets in Switzerland waiting to be liquidated. And this is what happened – in the

interests of Switzerland. However, a few years later, as a result of the tenacious and skilful defence of German assets in Switzerland against claims made by the Allies, the former German owner received the major part of his money back.

Camouflage was seen by the Germans as an expedient in a brief, non-global conflict affording plenty of loopholes. Until the invasion of the Soviet Union and the entry of the USA into the war, the trick worked, since it was possible, despite British dominance of the Atlantic, to maintain access to the American markets via the Soviet Union and Japan. IG Farben expressed its satisfaction in this regard as late as March 1941. For one thing, the successful maintenance of trading links was in this case based on camouflaged German branches in Latin America which had been handed over to confidential local agents. Mail was sent via another Zurich lawyer, Dr. Jakob Auer, who was one of the confidential agents working for IG Chemie and the Sturzenegger Bank. The conflict with France, which ended with its occupation in June 1940, also allowed some scope for camouflage activities. Thus, a German branch posing as neutral managed to escape detection until June 1940, when it dropped its mask.<sup>20</sup>

On the other hand, in the face of a long drawn-out, worldwide conflict, camouflage operations were just as inadequate as the potential of the German economy. Growing isolation from world markets limited Germany's prospects in both respects. Countless camouflage companies found their way onto the Allies' blacklists. German agencies which were still recommending camouflage in 1939/40 became increasingly sceptical in the second half of the war, and refused such measures. In the last phase of the war, they totally forbade the granting of any new approvals. Many camouflage operations ended up as meaningless organisational shells; some continued to play a role in the trafficking and relocation of looted goods, as in the case of Rodopia in Geneva for instance, which began by secretly buying back German securities held abroad, but later became an intermediary for the sale of stolen securities from the occupied regions.<sup>21</sup> In the end, the German defeat put a temporary stop to all conceivable options for preserving German interests abroad. In Germany, the Allies captured an impressive amount of documents shedding light on the existence of further camouflage operations which had until then remained undiscovered. The total occupation of Germany created a very different situation from that which had existed in 1918, and frustrated – as defeat became ever more inevitable – the plans of all those business owners who had hoped to see the circumstances of that first post-war period repeated. There is no documentary evidence to prove that camouflage companies which remained undiscovered in neutral states concealed extensive German resources from the Allies in the hope of returning them into German hands at a later date.

Camouflage was ambivalent in theory as in practice. The Nazis' reservations about a practice to which they had given a name, and actively encouraged and propagated on and off, were not unfounded. On the one hand it aided the war economy; on the other it facilitated insubordination in the form of the withdrawal of funds which business owners and private individuals sought to move abroad mainly because, in view of Germany's risky policies, they wanted to limit their losses. It was very easy to feign one activity in order to engage in another, and the tyrannical Nazi system cleared the way for such ambiguity. Numerous German businessmen no doubt transferred money abroad primarily as a security cushion for a future they considered highly uncertain. It is impossible to tell how often this happened, but the people involved must have put forward reasons acceptable to the regime, lest their applications be refused. Funds taken abroad in this way would in some circumstances remain in Switzerland throughout the war, without being of any great benefit to the German war economy. Not only cautious sceptics availed themselves of camouflage; the same was true of persons opposed to the regime. Robert Bosch AG, for example, made its links with Sweden and within Switzerland available for the purpose.<sup>22</sup> Representatives of the Third Reich or of the Party responsible for shaping foreign exchange policy and the strict controls of investments abroad were able to break their own rules when it was in their interest to do so.

Camouflage activities were devised because of an uncertain future, and were aimed at keeping the situation open and at delaying – or preventing where possible – the developments feared: loss of control and seizure of property. They acquired their definitive meaning only as events progressed. What would, in the event of a German victory, have looked like a successful move in the economic war, could very easily in the totally different situation after 1945, be portrayed as insubordination against the regime.

The purpose of the camouflage activities is most obvious in those paradoxical cases where all such measures were expressly avoided, and ownership was passed unconditionally to neutral persons of trust. Thus, in June 1940, after the contractual arrangement with IG Farben had been cancelled, IG Chemie was transferred to the Swiss administrators of the complex, who thus also assumed responsibility for the US factories threatened with seizure.<sup>23</sup> This took place in the hope that after the war a new arrangement could be found making it possible for both the Swiss and the American partners to rejoin IG Farben. The war put paid to this assumption and left the Swiss – on paper – as owners of one of the largest complexes of chemical factories in the USA. In this case, however, the policy of non-camouflage failed because of the extensive mistrust of all steps taken by the Germans. In Switzerland, as in the USA, leading groups assumed during the war that the apparently simple, neat separation of IG Farben from

its former Swiss holding company must conceal a plot, a tacit exclusion, or a secret arrangement. Following their entry into the war, the Americans seized the much coveted factories in spring 1942, giving rise to a prolonged legal conflict with the Swiss parties involved. This quarrel was resolved only in the 1960s, when a compromise was reached and the disputed assets divided up.<sup>24</sup>

#### **Transfer of German assets into Switzerland**

The magnitude of German asset-relocation movements is clearly documented by the Clearing Office findings mentioned earlier: around two thirds of the German assets registered in Switzerland in 1945/46 were not brought into the country until after 1939. On the other hand, reports presented as fact, describing the systematic and planned nature of these endeavours, for example the alleged conference of leading German industrial and Party representatives in a Strasbourg hotel in 1944 (Red House), often turn out to be barely verifiable speculation.<sup>25</sup> Investigations by the Americans and the British into the Bankhaus Johann Wehrli & Cie. AG in Zurich also ended in 1945 without any proof of the supposedly important role of the bank in moving German assets. Initially, the Swiss Clearing Office also intended to look into the question of which assets flowed into Switzerland in the first half of the war, and which after the turning point of the war in 1943, but in the end this was never clarified. The mass of documentary evidence available to the SVSt suggest, movements of assets may have increased in the latter phase of the war. Information held by the Allied and Swiss authorities – often from unverifiable secret service sources – and information provided by the Swiss National Bank and other agencies, pointed in this direction. During the late summer of 1944, the Swiss press took up the subject, sure enough following merely the press in the Allied countries. In the last phase of the war, the wish to save anything which could be saved appears obvious. The absence of similar reports from the first half of the war must not, however, be taken as conclusive evidence that transactions during that period were less numerous. From a German point of view, the first part of the war in 1939/40 was also associated with high levels of uncertainty about the future course of events. Pressure from the Allies and the imminent German defeat provide a perfectly adequate explanation of why these reports – where previously silence had reigned – began to pile up in 1944.

The aim of asset-relocation movements in the final phase of the war may have been to prepare German businesses for the post-war period transferring financial reserves and stocks to Switzerland, or relocating licences and patents there, with a view to regaining access to the world markets as quickly as possible. It was equally conceivable, however, that the political elite of the Nazi regime and their followers, threatened with ruin, were attempting to ensure their personal

survival by building up material reserves and rallying positions. Accordingly, suspicion as to the criminal origin of the funds concerned was particularly great. There is a wealth of evidence to suggest that numerous initiatives of this kind were in fact undertaken by German companies, even though the official policy of the regime was to reject such defeatist plans out of hand.<sup>26</sup> There is evidence of a great variety of methods for moving assets into Switzerland, one of the most popular being invoicing too little or too much for traded goods, as this was difficult to verify. The Swiss trade associations had to deal with the relocation of licences; no consistent policy ever materialising people pursued a policy of maximising the benefit to themselves. Nevertheless, the construction of German production facilities in Switzerland and the camouflaging of German products as Swiss were clearly viewed negatively. This was seen as a threat to Switzerland's own export opportunities, which were dependent primarily on the goodwill of the victorious Allies.

Today, it is relatively easy to identify the motivation for these operations by German companies along with the procedures and means used, even if the same cannot be said for the actual figures involved. Furthermore, it is certainly true that in the second half of the war, far more dubious and obscure transactions came to pass. In these cases it was virtually impossible to identify the transferred assets, their origin was often totally unclear or obviously illegal, and the same applies to the routes by which they entered the country and the people responsible for the movements. Large quantities also evaded the Swiss Clearing Office's investigations. Small goods which were easy to hide and smuggle across the border predominated here. These were securities often stolen or diamonds likewise often stolen or obtained by extortion, originating especially from Belgium and the Netherlands, but mainly, and most importantly, banknotes, which could be converted into hard currency in Switzerland. The extent of this trade can be seen from the total collapse of the prices for various types of assets as a result of over-supply. Diamond prices in Switzerland fell so sharply during the course of 1944 that some planned transactions did not take place, the German vendors taking their goods back despite considerable risk – or placing them elsewhere in unidentified locations. The over-supply of banknotes, particularly reichsmarks and French francs, caused these currencies to fall considerably in value against the Swiss franc. Since the German occupation of France, large quantities of banknotes held by the occupying forces had continually been entering Switzerland.<sup>27</sup> According to a Swiss National Bank report in July 1943, the «members of the Wehrmacht in France» were «allegedly loaded with French banknotes», some of which were brought to Switzerland and exchanged there.<sup>28</sup> Since then, was frequently made reference to the questionable nature of this trade. Even the Swiss National Bank spoke out in favour of banning it in

spring 1944, as had already happened in Sweden in the summer of 1943. In Switzerland, dogged resistance from the banks delayed introducing a ban until March 1945, and even then, being implemented with extreme reluctance.<sup>29</sup>

#### **«Nazi accounts» in Switzerland?**

In recent years, public attention has been aroused on several occasions by the question of whether prominent Nazis had deposited assets in Switzerland. If, as described, stolen assets and looted goods (banknotes, diamonds, securities etc.) were brought to Switzerland in unknown quantities to be sold or deposited, it also appears likely that bank accounts existed which were used for the temporary or long-term storage of such assets. In November 1999, the media reported that the Independent Committee of Eminent Persons (ICEP), known also as «Volcker Committee», had found what were assumed to be 1,600 «Nazi accounts» in Switzerland during its systematic search for dormant accounts. The Committee's final report published in 1999 contained a statement which could be interpreted in this way.<sup>30</sup> The press reports, however, were far from accurate.

How did the auditing companies appointed by the «Volcker Committee» go about their work, and what was the outcome? The investigation methods were based on *name matching*, in other words, comparing the available names of those who held accounts at that time, around 4.1 million in number, with various lists of known Nazis, amounting to 1,934 people in all. This procedure unearthed a relatively large number of names which corresponded; but this merely proved that the names which are widespread in German-speaking Switzerland are also common in Germany. The next step, checking the extent to which identical names referred to one and the same person, was not taken since this was not part of the auditors' job. The ICEP expected the ICE to continue processing the material.

It was not possible to follow up these results fully, but some checking was carried out and revealed that nearly all of the «matches» found were the result of names which happened to be the same, and did not indicate the accounts of Nazi perpetrators. In certain exceptional cases – such as that of Zurich Cantonal Bank (*Zürcher Kantonalbank*, ZKB) – whilst no prominent Nazis came to light, highly relevant connections with representatives of the Nazi economy were found. Several banks, the major banks in fact, also carried out their own similar investigations in the wake of the ICEP study. UBS, which compared the accounts operated by its predecessor banks with a list containing tens of thousands of names, found virtually nothing of relevance, apart from a bank account held by the former president of the Reichsbank, Hjalmar Schacht. There was also an account opened decades after the end of the war by the widow

of a dead SS man. Credit Suisse Group (CSG), on the other hand, carried out a more limited search, using a list of 460 known Nazis or persons accused in the Nuremberg trials, and managed to find fourteen matches with suspicious accounts managed by its predecessor banks, something the bank has already indicated in one of its own publications.<sup>31</sup> This striking discrepancy in the results could raise the question as to whether the predecessors of UBS, namely Swiss Bank Corporation (*Schweizerischer Bankverein*, SBV) and Union Bank of Switzerland (*Schweizerische Bankgesellschaft*, SBG), deliberately got rid of certain records after the war. At Credit Suisse (*Schweizerische Kreditanstalt*, SKA) in fact, there is some indication that documents were destroyed, since there can be no doubt that the bank engaged in business transactions with the SS in 1944/45 arranged by the Swiss representative of Deutsche Bank, Alfred Kurzmeyer, as we know from German records.<sup>32</sup>

Who were the small number of holders of Swiss accounts who could be reliably identified? In the case mentioned above – along with Alfred Kurzmeyer – three members of the SS economic administration had authority to sign, including Oswald Pohl, who was sentenced to death in Nuremberg in 1947 and executed in 1951. We also find the Reich governor of the occupied Netherlands, Arthur Seyss-Inquart, who was similarly sentenced to death in Nuremberg. He, however, had only held an account for an insignificantly short period in 1935 when he was active in the Nazi underground in Austria. The aforementioned account-holders also include a few more people who stood trial in Nuremberg, but they were all less important defendants, the majority of whom were acquitted. These were compromised members of the conservative elite who had worked with the Nazis and at times held prominent positions in politics and business. This category includes Franz von Papen, a conservative who helped the Nazis to seize power in 1933; Ernst von Weizsäcker, the German envoy to Switzerland from 1934–1938; and Hjalmar Schacht as already mentioned, Minister of Economic Affairs and President of the Reichsbank, who fell out of favour with Hitler at the beginning of 1939 and at that very time opened an account with the London branch of Swiss Bank Corporation.<sup>33</sup> It should come as no surprise that such people – like many members of the prosperous bourgeoisie – maintained accounts in Switzerland. The largest proven amount of money – more than 800,000 francs – was found in the accounts belonging to Franz von Papen, who was ambassador to Istanbul during the war years. As this embassy was also a centre for dubious German financial operations, we cannot rule out the possibility that the assets were other than mere personal property.<sup>34</sup> Regarding this precise point however, we do not have any further information, and it must also be emphasised that there are virtually no records whatsoever of the account movements. The better documented case of the businessman and

SS member Helmuth Maurer and the Zurich Cantonal Bank illustrates that in some circumstances such bank accounts were used to move millions in gold and currency; yet Maurer does not appear on any of the Nazi lists used. The account was discovered because it was reported by the bank when the obligation to register German assets was implemented in 1945.<sup>35</sup>

The more prominent and exposed a person was in Nazi Germany, the less likely it is that an openly declared bank account existed, as this would have been tantamount to committing an offence against the various foreign exchange laws under the threat of severe punishment. In the run-up to the Nuremberg trials, the Americans had every opportunity to put pressure on the «principal war criminals» who were later convicted, and to undertake appropriate follow-up investigations. In none of these cases was anything found. Even a man like Hermann Goering, whose grasping business acumen is legendary and who regularly sent emissaries to Switzerland, left no identifiable bank account.<sup>36</sup> It would, however, be wrong to conclude that no significant assets from convicted Nazis were moved into or through Switzerland. The American operation «Safehaven» assumed – justifiably – that such a situation could arise, just as it had happened after World War I. Nevertheless, all the evidence suggests that such movements of assets did not take the form of ordinary bank accounts. It is much more likely that assets were held by confidential agents such as trustees, lawyers, or businessmen of various kinds.

Even in those cases where an account existed for a time, it made sense to ensure that it disappeared well before the end of the war.<sup>37</sup> The freezing of German assets had been discussed for several months before it took place on 16 February 1945. When again months later, from autumn 1945 onwards, the safe deposit boxes rented by Germans were systematically opened, around ten per cent were completely empty. For various people who maintained intensive contacts in Switzerland throughout the war, such as the staff of Hermann Goering's Four Year Plan Authority (*Vierjahresplanbehörde*), no account was ever found. These particularly well-informed groups with multiple connections in Switzerland had access, by virtue of their official functions, to other ways of making transfers of their own money as well in the final phase of the war, and thus providing for their post-war lives. This raises the question of whether and to what extent Switzerland became a refuge or stopping off point for fleeing Nazis.

#### **Transit: Switzerland as a temporary place of asylum and stopping-off point**

Carl Ludwig's report on Swiss refugee policy, published in 1957, sums up the situation as follows: «Occasional reports in the foreign press that asylum had been granted to war criminals were pure invention. But Switzerland did not issue any denial.»<sup>38</sup> Although there have been no systematic investigations, it

must be emphasised that this assertion is not true. Germans accused of crimes did come to Switzerland although forbidden to do so by official guidelines. They were protected and taken in, and were even able to calmly prepare for their onward journey if the Allied authorities demanded their extradition for suspected war crimes. The recorded cases are most informative, as they shed light on the Swiss-German network of contacts during those years, and on what motivated each side.<sup>39</sup> People who travelled through Switzerland using false identities must be distinguished from those whose identity was well known but did not appear to cause any problems.

In order to be admitted into Switzerland, one had to be useful to the country; gratitude for past services also played a part from time to time. The deciding criteria tended to be derived from a narrow definition of economic, military or diplomatic usefulness. German engineers with special knowledge of the armaments industry, travelling through on their way to Argentina, could expect to be greeted with friendly interest by the Military Department; this was also the case for the German armaments industrialist Bernhard Berghaus, in whose factories forced labourers were made to suffer under an especially brutal regime. At the same time, however, he had performed favours during the war for the Swiss Embassy in Berlin, so he had no difficulty in obtaining favourable references. Chemists who had once worked for IG Farben came to Switzerland in dozens in the early post-war period, and were offered attractive professional futures. Some were taken on by Holzverzuckerungs AG (Hovag), where their expertise was valuable in the transition to a peacetime economy and the establishment of a Swiss synthetic fibres industry. Many of these Germans settled permanently in Switzerland; others stayed only for a few years, until «denazification» was suspended and the German «economic miracle» offered them new professional opportunities. Then they returned home and took up respected positions in the West German economy, as in the case of former IG-Farben employee, military-industrial leader and SS man, Ernst Rudolf Fischer, who helped countless chemists into Switzerland during his ten year stay here. Others moved on, as they evidently had good reason to avoid being seen in Germany again. This applies in particular to some representatives of the Four Year Plan Authority deserving closer attention.

The Four Year Plan Authority had been a gigantic conglomerate created by the Nazis, with some members active in the armaments industry, some in the supply of raw materials, and some in foreign exchange procurement. The above-mentioned E. R. Fischer and the ministry officials Friedrich Kadgien and Ludwig Haupt, had worked for this authority and travelled to Switzerland in mid-April 1945. During the war, they had contributed to ensuring that the Swiss were supplied with oil and petrol. They had worked closely with a war

economy syndicate in Switzerland, Petrola AG, under the control of the «Energy and Heating Section» (*«Sektion Kraft und Wärme»*), which in turn was headed by the prominent Socialist Robert Grimm. But now the war was over, Germany was occupied, and the Allies were demanding the extradition of Switzerland's guests for suspected war crimes. However, the Swiss showed remarkably little interest in the political background of these characters. They believed they knew who they were dealing with, i.e., fundamentally «decent» Germans. In the circumstances, the extradition requests from the Allies fell on deaf ears.

A certain Friedrich Kadgien had been heavily involved in criminal methods for acquiring currency, securities and diamonds stolen from Jewish victims playing a major role. Jewellery, too, and even stamp collections could potentially be converted into currency, and were especially easy to smuggle across borders. Kadgien and his colleagues had certainly put aside assets, and were able as early as 1947/48 to set up a company using Swiss middlemen, thus preparing the way for their departure to South America soon afterwards. Imhauka AG, whose name records the initials of its three founders – Imfeld, Haupt, Kadgien – set up its domicile in Sarnen in central Switzerland, and a second company with the same name was established in Tangiers in North Africa and opened branches in South America soon afterwards. A Zurich lawyer, Dr. Ernst Imfeld, who had worked for Petrola during the war, ran the businesses from Zurich, while the Germans involved moved to Bogotá and Rio de Janeiro, where they vanished without trace. As far as we can discern, Imhauka acquired industrial holdings and acted as an intermediary for movements of industrial equipment to Latin America. It currently operates from Buenos Aires.<sup>40</sup>

Other Germans were provided with identity papers by the International Committee of the Red Cross (ICRC), but passed through Switzerland only fleetingly or not at all as they went on their way. These included some major criminals such as Adolf Eichmann and the former SS doctor at Auschwitz, Josef Mengele, who relocated to Latin America. Soon after the war, the ICRC issued a large number of provisional identity cards to people who had lost their papers; the Germans in question had registered under a false identity, and slipped unnoticed into the stream of hundreds of thousands of displaced persons seeking to leave Europe after 1945. At the most, the ICRC could be criticised for not carrying out sufficient checks, but there was a great deal of demand for quick and relatively non-bureaucratic assistance. It is striking that these Germans did not leave until a few years after the end of the war, after lying low in Germany itself until then. From 1948/49 onwards, as the worst chaos of the immediate post-war situation gradually came to an end, the opportunities for travel improved. In addition, the attention and interest of the Western Allies had waned considerably, except for cases in which they themselves took on notorious

Nazis and used them in the Cold War against the Soviet Union. In a few cases where the false names used came to be known, the identities of prominent Nazi perpetrators were revealed. On the other hand, an unknown number escaped notice. Mengele repeatedly visited Switzerland and was not arrested even when the German authorities provided the appropriate tips.

### **Figures and estimates**

The results presented appear somewhat more down-to-earth than much of the speculation either then or now. It was not possible to identify massive quantities of displaced assets in camouflage operations that had never been discovered, nor can Switzerland be described as a hiding place or staging post for countless escaping Nazis. Nevertheless, the findings are not insignificant – if they had been, the questions and investigations of the immediate post-war period would not have met with such heavy resistance. Resistance was also great where the transactions in danger of being inventoried were comparatively modest, since the investigations impinged on the privileges of powerful interest groups. Thus the findings of that time – to the extent that the public was even informed about them – were soon placed under lock and key.

As to our queries on the scope of the phenomena described, it is possible to state the following:

The number of economic camouflage operations could be defined very precisely if more of the quarterly statistical reports prepared by the German Foreign Exchange Control Offices (*Devisenstellen*) at the time were available. However, on the basis of fragmentary information, we can estimate that during the first phase of the war a total of over 500, but certainly less than a thousand, such arrangements came into being. It is not possible to determine exactly how these were distributed among the neutral countries. However, the number of German camouflage operations in Switzerland alone could be estimated at several hundred. This is also confirmed by the large number of entries in the Allies' blacklists.<sup>41</sup>

As regards German assets in Switzerland, the Swiss Clearing Office recorded something in excess of a billion francs in May 1946. This figure is clearly too low. After various additions, some of which are based on estimates, we arrive at almost twice the figure; in other words, more than two billion francs. By way of comparison Switzerland's net national product in 1945 was 13.8 billion francs.<sup>42</sup> It is not possible to determine the exact number of Nazis who took refuge in Switzerland at the end of the war, or who travelled through Switzerland to other countries in order to avoid criminal proceedings instituted by the Allies. We must content ourselves with stating that there were such cases, and that they stand in stark contrast to the way the nation portrayed itself at the end of the war.

### **Figures and Legends**

As a result of its investigations, the Swiss Clearing Office found in spring 1946 that there were German assets in Switzerland valued at 1,043 million francs. We must add to this figure all the assets discovered after that time, including the contents of the opened safes, assets belonging to the Deutsche Reichsbahn (German Railways), goods inventories and outstanding payments due to German companies in Switzerland. Furthermore, it is not possible to put a value on the 10,000 to 15,000 German patents registered in Switzerland. All told, this yields a total value for German assets of two billion francs. This does not take into account the value of assets which cannot be estimated as they were never registered or recorded, having been smuggled across the border.

Several foreign estimates at the time were much higher, ranging as high as three or four billion, and these figures curiously correspond with attitudes towards Switzerland. Allied bodies which were relatively well-disposed towards Switzerland, such as the British Foreign Ministry, gave estimates lower than those instances which were more critical. But by far the highest figure was quoted by the former Head of the Foreign Exchange Department at the Reich Ministry of Economic Affairs, Hermann Landwehr. When asked in 1947, he deemed that assets valued at 15 billion reichsmarks had flowed into or through Switzerland during the war which, at the exchange rate effective at the time, was equivalent to 26 billion francs. These statements are still cause for speculation today. Landwehr was an enigmatic character. Referred to by those familiar with the scene as the «Devisenpapst» (high priest of foreign currency), the Head of the Foreign Exchange Department was also friendly with Carl Goerdeler, the key figure in the conservative opposition behind the failed coup attempt on 20 July 1944.<sup>43</sup> Taken into custody in August 1944, he only barely escaped the revenge campaign waged upon the conspirators and those close to them. Can there be any truth in his figure? Firstly, we need to take into account a considerable sum in inactive assets which were never registered, for example those held in safes. There were also assets which were devalued to a large extent – albeit only temporarily – as a result of the outcome of the war: after the war, German shares were worth only one-tenth of their pre-war value. However, even taking this into account, we cannot expect to find any undiscovered billions. Landwehr's statement may merely have been an attempt to impress the Allies. But it could also be interpreted as veiled mockery of the victors, implying the superiority of the German camouflage methods.

It should be stressed, however, that the German assets in Switzerland could have amounted to as much as three billion francs. German post-war estimates

from 1949 assumed in fact that the total German funds held abroad were about double the registered figure. Whilst savings held in Germany were largely devalued as a result of the currency reform in June 1948, assets in Switzerland retained their value. Even though the amounts involved in individual cases were modest, these funds represented a high value for their German owners following the German impoverishment caused by the outcome of the war. These Germans stated their gratitude to the loyal Swiss who had kept and protected their assets, and made them available to them once again to a large extent during the 1950s, despite claims made on them by the Allies.

### Motives and interests

Switzerland provided a wide range of covert services to Nazi Germany, services which even today can only be partly brought to light. This much can also be established from a conservative assessment of the material available. The camouflage activities organised from 1937/38 onwards told clear-sighted contemporaries that Germany's foreign policy calculations had reckoned with a European war; they represented the taking of sides in the conflict which was to come. This was even more true once that conflict had begun. The state's unwillingness to intervene created a framework without which such activities would not have been possible. By protecting German assets and giving shelter to fleeing Nazis after the German defeat, the Swiss authorities became actively involved in the debate, going against the post-war strategies of the victorious Allies.

What were the reasons for this behaviour? Only in a very few cases was it motivated by sympathy for Nazism. In the business community, there often existed long-standing relationships, some of which dated back to well before 1933. Insufficient account was taken of the changes in Switzerland's neighbour which came into effect from 1933 onwards; it was commonly felt that German business partners were still «decent», even long after doubts should have arisen. Meanwhile, the political will to put a stop to dubious business activities was very weak. It should be emphasised here that this had little to do with the survival of the Swiss economy in the difficult wartime situation, and more to do with opportunities for fairly small groups to make profits. The identification of the Zurich lawyers who were deeply involved in German business revealed, for example, that only a small but extremely influential minority of the legal profession was involved here. Its unified front against state intervention in the strictly maintained area of professional secrecy ensured that the minority group was protected by the other members of the profession. It was only with considerable difficulty that it was possible in 1945 to oblige the legal profession to

comply with the duty, established by the politicians, to report German assets in Switzerland, and even then the reports were far from complete.

With respect to the authorities, a range of poorly co-ordinated activities had been introduced towards the end of the war, under internal political pressure as well as external pressure from the Allies, to uncover or prevent the transfer of German capital to Switzerland. Once this pressure subsided and the international situation altered, there was also a decline in the political will to implement unpopular measures in the face of resistance from firmly established interest groups. The large-scale audit carried out by the Swiss Clearing Office at IG Chemie in the winter of 1945/46 to discover whether this company still had any German ties was the last investigation to use such high levels of resources. Then the pendulum swung back the other way, and traditional views asserted themselves again. In assessing past business transactions, the majority of which were not illegal under Swiss law, the decisive factor was still the fact that procedures which had «benefited Switzerland» could not really be called into question. A reliably-informed American report on German business interests in Switzerland stated at the beginning of 1946 that all in all only about a dozen lawyers had been strongly committed to German business. «These firms and individuals render considerable aid in the protection and eventual re-establishment of German power since their family and business connections involve practically the whole of the Swiss economy. As their activities cannot be branded as anti-Swiss, inasmuch as in most cases the Swiss economy profited from their business organisations and from the products manufactured in their plants, it is practically impossible to hamper their activities to any considerable extent.»<sup>44</sup> Explaining the interests of such small groups in a sweeping generalisation was an expression of the socio-political «power of definition». Criteria of a superior order, i.e., going beyond economic nationalism and group egoism, did not exist. And for the near future, one pragmatically expected that Germany – despite being on its knees at that time – would become an important economic partner again in the future.

<sup>1</sup> All information in this section, unless indicated otherwise, is based on Uhlig/Barthelmess/König/Pfaffenroth/Zeugin, Tarnung, 2001 (Publications of the ICE).

<sup>2</sup> Much can be learnt from the 1935–1946 publications on foreign investments in: Bonhage/Lussy/Perrenoud, Vermögen, 2001 (Publications of the ICE), chapter 2, pp. 56ff.

<sup>3</sup> Durrer, Finanzbeziehungen, 1984, p. 246, published extracts from the data; also Perrenoud, Banques, 1988, p. 50; for a discussion of these results see Uhlig/Barthelmess/König/Pfaffenroth/Zeugin, Tarnung, 2001 (Publications of the ICE), section 10.1; a German pre-war estimate can be found in Bourgeois, Geschäft, 2000, p. 69; also Swiss information for 1935 in DDS, vol. 11, p. 330.

- <sup>4</sup> Leuzinger, Vermögenswerte, 1960, pp. 115ff.; Durrer, Finanzbeziehungen, 1984, and also Castelmus, Finanzbeziehungen, 1992, ignored this result, but it can be found in Perrenoud, Banques, 1988, p. 50.
- <sup>5</sup> See in particular the contributions from Elam, Schweiz, 1998, pp. 61–91; Borkin, Unheilige Allianz, 1978; now covered in detail in König, Interhandel, 2001 (Publications of the ICE); 2002 will also see the publication of O'Reilly, IG Farben – a work which sets out in detail the US side of this conflict.
- <sup>6</sup> On Wehrli, see Speich, Schweiz, 1997; see also Uhlig/Barthelmess/König/Pfaffenroth/Zeugin, Tarnung, 2001 (Publications of the ICE), section 7.4.
- <sup>7</sup> See the Publications of the ICE: Lussy/Bonhage/Horn, Wertpapiergeschäfte, 2001; König, Interhandel, 2001; Perrenoud/López/Adank/Baumann/Cortat/Peters, Place financière, 2002; Karlen/Chocomeli/D'haemer/Laube/Schmid, Versicherungsgesellschaften, 2002; Bonhage, Bodenkreditanstalt, 2001.
- <sup>8</sup> These background circumstances, barely researched up until now, can only be hinted at in the context of this work; a partial view of the period before 1914 is singled out for attention in Urner, Die Deutschen, 1976; there is no follow-up work for the 20<sup>th</sup> century.
- <sup>9</sup> For the role played by the Netherlands, see Frey, Weltkrieg, 1998; there is no similar study for Switzerland, but see Ochsenbein, Wirtschaftsfreiheit, 1971.
- <sup>10</sup> See Hug, Kriegsmaterialexporte, 2002 (Publications of the ICE); see also section 4.2 included herein.
- <sup>11</sup> See Borkin, Unheilige Allianz, 1978; Aalders & Wiebe, Cloaking, 1996.
- <sup>12</sup> See Guex, La Suisse, 1999, p. 11.
- <sup>13</sup> Quoted from FA, E 7160-07 (-) 1968/54, vol. 1064, audit report on IG Chemie and Bankhaus H. Sturzenegger, Memo note Hans Sturzenegger, 12 August 1938, p. 482. For an in-depth study of the development of this bank: König, Interhandel, 2001 (Publications of the ICE).
- <sup>14</sup> Much information can be gleaned from the case of Chepha, the camouflage company for the Schering pharmaceutical group; see Perrenoud/López/Adank/Baumann/Cortat/Peters, Place financière, 2002 (Publications of the ICE), section 5.2.
- <sup>15</sup> BArch, R 3101, 3056, Eau de Cologne; Ferdinand Mülhens to RWM, 11 November 1939.
- <sup>16</sup> Both quotations come from the correspondence of the Otto Wolff company, the first from Moscow RGVA, 700-1-29, Rudolf Siedersleben to State Secretary Erich Neumann, 2 September 1939, p. 3; and the second from RWWA, Abt. 72, No. 265, Fasz. 10, Siedersleben to Max Doerner, 8 October 1939.
- <sup>17</sup> FA, E 7160-07 (-) 1968/54, vol. 1066, Decree from the Reich Ministry of Economic Affairs, 9 September 1939.
- <sup>18</sup> See Aalders & Wiebe, Cloaking, 1996, with the examples of Robert Bosch and IG Farben.
- <sup>19</sup> Price Waterhouse & Co., Zurich; Carl A. Spahn to Price Waterhouse, 18 September 1939, p. 16. For the «Orion» case, see Uhlig/Barthelmess/König/Pfaffenroth/Zeugin, Tarnung, 2001 (Publications of the ICE), section 3.5.
- <sup>20</sup> An example is given in O'Reilly, IG Farben, 1998.
- <sup>21</sup> Information about these securities transactions can be found in Lussy/Bonhage/Horn, Wertpapiergeschäfte, 2001; also Uhlig/Barthelmess/König/Pfaffenroth/Zeugin, Tarnung, 2001 (Publications of the ICE).
- <sup>22</sup> Presented in Scholtyseck, Robert Bosch, 1999. Bosch employee Carl Goerdeler was able to use his trips abroad for this purpose.
- <sup>23</sup> This case is analysed in detail in König, Interhandel, 2001 (Publications of the ICE).
- <sup>24</sup> Further details on this can be found in section 6.7 included herein.

- <sup>25</sup> On the «Red House» conference, which was mentioned primarily in GDR literature, see Eichholtz, Reichsministerium, 1975; early scepticism in: Schumann, Überlebensstrategie, 1979; a convincing interpretation in Roth, Vorbereitung, 1996, p. 656 and note 189.
- <sup>26</sup> A fertile German source on post-war planning by German businesses is Roth, Vorbereitung, 1996.
- <sup>27</sup> Some systematic data on the extent of the trade in banknotes can be found in Perrenoud/López/Adank/Baumann/Cortat/Peters, Place financière, 2002 (Publications of the ICE), section 4.2.
- <sup>28</sup> Quoted from DDS, vol. 14, p. 1226; see also Perrenoud, Diplomatique, 1999, pp. 422f.
- <sup>29</sup> On the situation in March 1945, when a report records that the trade increased sharply following the ban, see Perrenoud, Diplomatique, 1999, p. 423.
- <sup>30</sup> ICEP, Report, 1999, pp. 103f.
- <sup>31</sup> See Jung, Kreditanstalt, 2000, pp. 84f.; this gives details of thirteen suspicious accounts, but since then the bank has been able to confirm the identity of another account-holder (a defendant in the Flick trial). This account was opened after the war, and so has little effect on the picture painted in the publication.
- <sup>32</sup> For details see Uhlig/Barthelmess/König/Pfaffenroth/Zeugin, Tarnung, 2001 (Publications of the ICE), section 4.4.
- <sup>33</sup> Reference had already been made to the Swiss bank accounts held by these two people in Durrer, Finanzbeziehungen, 1984, p. 247.
- <sup>34</sup> On the role of the embassy in Istanbul as a centre for the German gold trade, see Steinberg, Deutsche Bank, 2000, pp. 46ff.
- <sup>35</sup> Balzli, Treuhänder, 1997, p. 236, already referred to this case.
- <sup>36</sup> But there was a life insurance policy which had been annulled back in the early 1930s; see section 4.6 included herein.
- <sup>37</sup> See Bonhage/Lussy/Perrenoud, Vermögen, 2001 (Publications of the ICE), p. 59, which records a reduction of around 40% in the account monies identified, in 1943–1945. A single case, namely the withdrawal of money belonging to Oeding, and its transfer to the lawyer Wilhelm Frick, is documented in Bonhage, Bodenkreditanstalt, 2001 (Publications of the ICE).
- <sup>38</sup> Ludwig, Flüchtlingspolitik, 1957, p. 315.
- <sup>39</sup> It was not possible to work on all interesting cases; the career of Paul Dickopf, who arrived in Switzerland in 1942, is notable. He claimed to be an opponent of Nazism but was more likely a Nazi agent; Cf. Huonker/Ludi, Roma, 2001 (Publications of the ICE), p. 96.
- <sup>40</sup> There still is a company of the same name in Switzerland, now based in Zug, but this does not have any connection with the original establishment. Imfeld, who founded this company, must have separated from his German partners before 1960; in 1980 he sold the company shell to a foreign industrial group; for more details, see Uhlig/Barthelmess/König/Pfaffenroth/Zeugin, Tarnung, 2001 (Publications of the ICE), section 11.4.
- <sup>41</sup> See the list in the Annex to Inglin, Krieg, 1991, pp. 323ff.
- <sup>42</sup> Ritzmann, Statistik, 1996, p. 871.
- <sup>43</sup> See the statements made by Kurt von Krüger of IG Farben, Nuremberg Affidavit, July 1947, printed in König, Interhandel, 2001 (Publications of the ICE), Annex 3, Document No. 15a.
- <sup>44</sup> NARA, RG 239, Roberts Commission, Entry 10, Box 24, 350/77/1/02, Folder German economic penetration in Switzerland, undated report by Nicholas Milroy, Department of State, p. 27.

## 5 Law and Legal Practice

During the National Socialist era, Switzerland was not an isolated legal area with no reference to the outside world: on the contrary, from 1933, a legal confrontation with the Nazi state began here which was apparent in all fields of legal activity – legislation, administration, and the judiciary. At the heart of this conflict lay one fundamental question: how should a democratic and liberal state under the rule of law respond to the power-political challenge posed by the Axis powers now progressively encircling Switzerland and to a regime based on the deprivation of rights and the systematic flouting of the rule of law as a constitutional principle?

At *international level*, the Nazi dictatorship raised fundamental issues of international law. In many areas of life, «classic» international law, with its traditional structures rooted in the 19<sup>th</sup> century, afforded poor protection against the flagrant injustice of the Nazi state. What was to prove particularly fateful was the absence of an international system of human rights protection, which only came into being after 1945. Nonetheless, legal instruments limiting the state's powers were already in existence during this period. In particular, they included the international laws governing the status of foreigners, which, in relations between states, guaranteed a «minimum standard» of rights to foreign nationals. The laws of war also established limits which the Nazi regime was obliged to observe. The seizure of private property in occupied territories without payment of compensation was a particularly striking example of its violation of international law.

The issue of how to respond to Nazi injustice also arose in the field of private international law. From 1933, the Swiss judiciary was required to rule on the application and/or enforcement of Nazi law in Switzerland. Public order or Swiss *ordre public* as a «defence clause» in the system of international civil procedure and private international law was particularly significant in this context. According to case law, this was applicable if «domestic notions of justice would otherwise be violated intolerably».<sup>1</sup>

At *domestic level*, Switzerland's state and constitutional system underwent a radical transformation between 1933 and 1945: in 1939, in response to the foreign policy crisis, the Federal Council was equipped with wide-ranging emergency powers (known as the *Vollmachtenregime*, i.e. government by

emergency plenary powers). This «emergency legislation» did not apply to all areas of life with equal intensity, however. For example, key areas of private law remained virtually intact even during the war years: there was no break with continuity here until the post-war era.

This chapter examines Swiss law and legal practice and its response to Nazi injustice, highlighting specific problem areas of relevance to the ICE's research.<sup>2</sup> A distinction is made between public law (5.1) which regulates the legal relationship between individuals and the state, and private law (5.2), which governs legal relationships between individuals.

## 5.1 Public law

In the field of *domestic public law*, the Swiss legal system underwent a radical transformation during the period 1933–1945. This discontinuity in public and administrative law was reflected, above all, in the system of government by emergency plenary powers (*Vollmachtenregime*) which was introduced in 1939 by Parliamentary Decree. By contrast, there was broad continuity in public international law: it was only towards the end of the war that a reform of international law took place in response to the atrocities committed by the Nazi regime.

### **Government by emergency plenary powers as «emergency law»**

In legal terms, the establishment of government by emergency plenary powers in 1939 was a turning point. With its Emergency Plenary Powers Decree (*Vollmachtenbeschluss*) of 30 August 1939,<sup>3</sup> parliament empowered the government to take all «measures necessary to maintain Switzerland's security, independence and neutrality» – including those which violated current constitutional law.<sup>4</sup> The Federal Assembly thus transferred wide-ranging legislative powers to the Federal Council, also derogating from the Federal Constitution. Parliament's competencies were restricted to specific rights of control, which it exercised within the framework of the Parliamentary Committees that granted emergency plenary powers (*Vollmachtenkommissionen*).<sup>5</sup> This intervention in the existing state and constitutional order signified a break with democratic and liberal legal tradition: the comprehensive suspension of the constitutionally-guaranteed political rights and the concentration of legislative power at Federal level and in the hands of the executive were symptomatic of a system which henceforth displayed increasingly centralist, authoritarian and anti-liberal traits.

Government by emergency plenary powers was not without precedent, however.

The Federal Assembly had granted the Federal Council extraordinary powers at the start of the First World War. Moreover, in the 1930s, the two chambers of parliament regularly issued Emergency Federal Decrees which ruled out the option of a referendum and granted comprehensive powers to the Federal Council. In 1931, for example, the Federal Assembly empowered the Federal Council to restrict the import of goods and payment transactions.<sup>6</sup> The Emergency Federal Decrees differed from the Plenary Powers Decree in several respects, however: they did not generally preclude the option of a referendum, they could not serve as a basis for unconstitutional ordinances, and they were explicitly enshrined in the Federal Constitution.

Although government by executive authority from 1939 encroached massively on the Swiss constitutional order,<sup>7</sup> its fundamental admissibility went largely unchallenged in legal doctrine<sup>8</sup> between 1939 and 1950. Contemporary positive constitutional law<sup>9</sup> or principles generally accepted as legal but not affirmed in the text of the Constitution<sup>10</sup> were cited in justification. Only one minority opinion held that government by emergency plenary powers was unconstitutional and lamented the absence of any formal anchoring of the Emergency Plenary Powers Decree in the Federal Constitution. According to this legal opinion, «extra-constitutional emergency legislation» was justified solely by political necessity. A key proponent of this academic opinion was the Zurich professor of constitutional law, Zaccaria Giacometti, who strongly criticised government by emergency plenary powers during and after the war: «This undemocratic and anti-liberal system of government by emergency plenary powers under which we live today is a politically expedient, provisional state of affairs; it is thus an illegal bridgehead connecting liberal Switzerland with an authoritarian and totalitarian country which is alien to her. This bridgehead can either lead us back to the Federal Constitution – or it can take us towards a monistic, totalitarian executive state».<sup>11</sup>

#### **Controversy over the Government by Emergency Plenary Powers**

An interesting controversy arose between the Zurich-based professors of constitutional law, Zaccaria Giacometti and Dietrich Schindler, on the wartime emergency laws. This was initially conducted via the press and attracted considerable attention in academic circles and at political level. Giacometti took the view that since the emergency legislation was not based on any relevant article in the Constitution, it «hung in the air» in constitutional terms – in other words, it had no constitutional basis. To Giacometti, this meant that the «normative will and thus the sense of legality were lost, signifying the collapse of the state under the rule of law and the introduction of an arbitrary regime».<sup>12</sup> As the Federal Constitution did not specifically

provide for emergency powers for the Federal Assembly, Giacometti described the emergency legislation based on plenary powers as illegal. However, he viewed it as legitimate, since public opinion accepted it as a political necessity. In this context, Giacometti attested that in practice, there had been «no obvious abuse of the emergency powers»<sup>13</sup> on the whole.

By contrast, Schindler welcomed the emergency laws against the broader background of the legal system and the values which it was intended to materialise. He took the view that the Constitution, in light of its calculated article (Article 2 BV), did not impede the adoption of emergency powers by the supreme institutions of state. «For it cannot intend the destruction of the very conditions which safeguard its own existence; in this sense, there is no conflict between the emergency legislation and the Constitution».<sup>14</sup> And there was more: «No one would claim that it is the purpose of the Constitution to be applied in every detail if the state, by which the Constitution and all laws created by it stand and fall, faces its demise».<sup>15</sup>

Even assuming that the Emergency Plenary Powers Decree of 1939 was essentially admissible in light of the emergency situation, this does not mean that all the measures adopted by the executive on this basis were legally unproblematic. In its report of 3 April 1939 on the Referendum on Emergency Law and the State of Emergency,<sup>16</sup> the Federal Council itself defined the preconditions for the imposition of emergency law. In line with these preconditions, emergency legislation was admissible only if (1) an emergency, defined as a grave danger to the community, existed; (2) the danger could not be dealt with adequately through ordinary law; (3) the need to resort to emergency legislation appeared to outweigh the interest in upholding the current legal system; (4) the measure was restricted, in substantive terms, to what was necessary; in other words, it went no further than was necessary to ward off the danger, and (5) the measure was restricted, *in temporal terms*, to what was necessary, i.e., it did not last longer than was necessary to overcome the danger.<sup>17</sup>

The question which arises is whether the Federal Council abided by these criteria in exercising its emergency powers. For example, under government by emergency plenary powers, freedom of political opinion was massively restricted through bans on individual parties and by press censorship. These measures, which aimed to protect the state, did not always comply with the criterion of necessity and proportionality.<sup>18</sup> It is also questionable to what extent, in the exercise of emergency powers, the constitutional principle of equality (Article 4 of the Federal Constitution) was observed, i.e., to what extent, in the application of emergency powers to protect the state, the same standards genuinely applied to everyone. A particular problem in this context

was the unequal treatment of communists and the extreme-right fronts: although the Federal Council dissolved both the National Movement of Switzerland (*Nationale Bewegung der Schweiz*) and the Swiss Communist Party in November 1940, organisations such as the «Federal Collection» («*Eidgenössische Sammlung*»), which made no secret of their loyalty to the Third Reich, were permitted to remain in existence.<sup>19</sup> The frequency with which the Federal Council invoked its emergency powers also seems broadly questionable. In accordance with the subsidiarity principle, it could – as has been stated – only exercise its emergency powers if, for reasons of time, a matter could not be dealt with through normal legislative channels.

It was not until autumn 1949 that the Campaign for a Return to Direct Democracy (Volksinitiative «*Rückkehr zur direkten Demokratie*»)<sup>20</sup> – which demanded the restriction of emergency law and the repeal of the Emergency Decrees within a year – set in train the complete abolition of government by emergency plenary powers. Against the will of the Federal Council and parliament, this initiative, which was launched by the rightist *Ligue Vaudoise*, was adopted by around 280,000 to 272,000 votes.

### **Refugee law and refugee policy**

Government by emergency plenary powers had an impact on Swiss refugee policy as well. One specific item of legislation which was based on emergency law was the Federal Council's Decree of 17 October 1939 altering the police regulation for foreigners which, together with the Federal Law on the Residence and Settlement of Foreigners of 26 March 1931 (*Bundesgesetz über Aufenthalt und Niederlassung der Ausländer*, ANAG),<sup>21</sup> formed the legal basis for Switzerland's policy towards civilian refugees during the war.<sup>22</sup>

Switzerland's refugee law during the Nazi period did not guarantee full asylum protection to persons suffering persecution on grounds of their race, religion, nationality or political convictions and whose lives and physical integrity were at risk. Under Article 21 ANAG,<sup>23</sup> only refugees who were politically active and therefore were personally at risk from the authorities in their home countries («political refugees») could be granted asylum in Switzerland; all other refugees seeking shelter in Switzerland were excluded, on principle, from asylum protection.<sup>24</sup> Countless victims of Nazi persecution – such as Jews, Eastern Europeans, Roma and Sinti – were therefore not deemed to be «refugees» in the legal sense. Switzerland continued to abide by this narrow definition until July 1944; it was not considered necessary to expand the legal definition of refugees on the basis of the 1939 Emergency Plenary Powers Decree, although the authorities recognised by summer 1942 that the concept of «political refugees» had become obsolete.

In terms of international law, Switzerland was not obliged to apply a definition of refugees which went beyond Article 21 ANAG. Indeed, during the period in question, it was not bound by any international convention which would have obliged it to grant asylum to refugees. It was only after 1945 that universally binding norms on the legal status of refugees were established in international law. As part of the League of Nations' legislative activities, however, a broader definition of «refugee» had begun to develop in the 1930s which also encompassed the victims of the Nazis' racist and anti-Semitic persecution. It should be noted that while Switzerland played an active role at international level in the development of international refugee law, its own restrictive interpretations were becoming entrenched at domestic level.<sup>25</sup>

The crucial factor for the protection of refugees is the principle of non-refoulement, i.e. the refugees' right to be protected from expulsion or return to the persecuting state. This principle, however, only became accepted after the Second World War.<sup>26</sup> In practice, the Swiss authorities' restrictive interpretation of the term «refugee» meant that before and during the Second World War, only political refugees whose life and physical integrity were at risk were protected from expulsion to the country of origin. Under domestic law, all other civilian refugees could be returned, on principle, to their country of origin. This option of expulsion was restricted solely by a provision in international law which Switzerland was obliged to uphold as a result of its ratification of a provisional arrangement of 4 July 1936 concerning the status of refugees coming from Germany: Switzerland violated this agreement by handing refugees<sup>27</sup> from Germany, whose lives were at risk and who had crossed the border (legally or illegally) and were not apprehended immediately in the border's vicinity, over to the German authorities on the borders with Austria or France.<sup>28</sup> The expulsions to Nazi territory which were carried out by the military authorities in the 1940s, often as a result of minor infractions of discipline, therefore breached international law if they were targeted against refugees from Germany.<sup>29</sup>

Among the refugees who hoped to gain entry to Switzerland were women who had previously held Swiss citizenship but who had lost it through marriage to a foreign national. During the period in question, the customary principle which applied in the administration and legal system was that a Swiss woman who married a foreigner forfeited her Swiss citizenship. However, this principle was ameliorated in practice by the rulings of the Swiss Federal Supreme Court. The Court took the view that a Swiss woman retained her Swiss citizenship if, following her marriage to a foreigner, she did not automatically acquire his citizenship and thus risked becoming a stateless person through the loss of her own Swiss citizenship rights. Based on the Emergency Plenary Powers Decree, however, the Federal Council withdrew the Supreme Court's competencies in

respect of these civil rights cases and transferred them to the Federal Department of Justice and Police (*Eidgenössisches Justiz- und Polizeidepartement*, EJPD).<sup>30</sup> With this incursion on the separation of powers, the Federal Council intended to curb the «humane practice»<sup>31</sup> of the Swiss Federal Supreme Court. With the Decree of 11 November 1941 amending the provisions on the acquisition and loss of citizenship rights,<sup>32</sup> the Federal Council ordered that a Swiss woman who married a foreign national «would only retain Swiss citizenship in exceptional cases, i.e., if she would otherwise unavoidably become stateless».<sup>33</sup> The authorities wanted to prevent large numbers of such Swiss women from claiming diplomatic and consular protection or, indeed, being able to return to Switzerland without impediment. The EJPD acknowledged that the Swiss women who had «married out» «often had a very tough time under current wartime conditions»,<sup>34</sup> but emphasised that it would be «quite inappropriate to consider retaining or re-conferring Swiss citizenship» in such cases.<sup>35</sup> The Swiss women concerned were therefore subject, on principle, to the same conditions of entry as every other foreign national.<sup>36</sup>

Even refugees who were admitted to Switzerland generally enjoyed little protection under contemporary law. At international level, human rights guarantees simply did not exist. Although it was a general provision of international law that interned military and civilian refugees should be treated humanely as regards the provision of accommodation, food and care, this obligation and other principles regarding the «minimum standard under the legislation relating to foreigners» were no substitute for the human rights perspective, for they were rudimentary and granted rights and obligations solely to states, not to individuals. In domestic law, too, the protection of refugees' basic rights was poorly developed. For example, personal freedom and the property guarantee were not yet recognised as unwritten fundamental rights; little real protection was therefore afforded by the legal equality which was enshrined explicitly in Article 4 of the Federal Constitution, and was reduced to a mere ban on arbitrary treatment. The protection afforded to refugees' fundamental rights was also restricted as a result of government by emergency plenary powers and the concept of the so-called special legal status. This meant that refugees' fundamental rights were breached only in instances when the authorities resorted to harassment measures (*schikanöse Massnahmen*). It was harassment, for example, if interned refugees were permitted to use any European language in their correspondence yet Hebrew script was banned. Other indignities in some camps which also violated the law included an absolute ban on contact with the local population, a make-up ban for women, the enforcement of orders at the point of a gun, or severe disciplinary penalties for minor infractions of discipline.<sup>37</sup> Due to the great hardship it entailed for

those concerned, the rigorous separation of parents and children until 1943 was also problematical, to say the least.<sup>38</sup>

Switzerland's refugee policy also appears highly questionable in terms of the *ordre public* (public order) in private international law. From 1935, the Swiss Federal Supreme Court made it quite clear in numerous decisions that Nazi racial laws conflicted with the fundamental values of Swiss law and therefore Switzerland's *ordre public*.<sup>39</sup> This was disregarded by the Swiss authorities, which adopted measures that directly followed on from the German racial laws: in particular, the introduction of visas for German «non-Aryans» in October 1938, by which Switzerland «made the German system of categorisation the basis for its own restrictive immigration practice»,<sup>40</sup> and the withdrawal of residence permits, in November 1941, from German Jews who had been deprived of their citizenship.<sup>41</sup> This conformism with anti-Semitic Nazi legislation in administrative practice conflicted with the spirit of the Swiss *ordre public* as an expression of liberal rule-of-law principles.<sup>42</sup>

#### **Diplomatic protection**

Whereas under «classic» international law, nationals and stateless persons had no defence whatsoever against the authority of their home state or state of residence, this did not apply to foreign nationals. The provisions governing the status of foreigners in international law, which were anchored both in international common law and international treaty law, greatly restricted states' powers over foreign nationals. During the inter-war period, the legal view that foreign nationals should certainly be guaranteed a core of fundamental rights and freedoms (e.g., legal capacity, protection of life and physical integrity, rights pertaining to liberty, protection of private property rights, the right to fair trial, etc.) in accordance with the principle of the rule of law gradually gained ground.<sup>43</sup> If a state violated this minimum standard of rights, customary international law established an obligation to stop this violation and restore the situation as required by international law. This right to restitution under international law could be enforced by the home state<sup>44</sup> of the individual concerned under specific conditions.<sup>45</sup> However, the person whose treatment violated international law had no direct claim to restitution under international law (principle of mediation of individuals through their home states). If the violating state refused to fulfil its obligation to provide restitution, the home state concerned could apply various sanctions<sup>46</sup> in response to the wrongful act committed. The home state could decide, at its own discretion, whether and how it would guarantee diplomatic protection: under international law, the home state had – and still has – no obligation to protect its nationals from treatment in other countries which violates international law.<sup>47</sup>

In view of the acute threat to Swiss Jews in Nazi territory, the authorities were confronted with the issue of diplomatic protection. Research into the practices in Germany and the occupied countries paint a dubious picture of diplomacy in its response to Nazi persecution.<sup>48</sup> A key feature of the authorities' conduct was the heightened «politicisation» of diplomatic protection. It was not the Jewish citizens whose lives were in danger but foreign policy interests which increasingly became the benchmark for diplomatic action. The authorities had no qualms about abandoning tried and trusted legal principles – such as the constitutional principle of equality before the law, and the principle of a minimum standard pertaining to the legal status of foreigners under international law – and diplomatic practice increasingly came into line with the ethnic «*völkisch*» criteria adopted by the Nazi state, an approach which sharply conflicted with the constitutional equality enjoyed by Jews in Switzerland since 1874.<sup>49</sup>

The debate about the German Ordinance on the Registration of Jewish Assets of 26 April 1938 revealed the «political individual-case strategy» (*politische Einzelfallstrategie*) adopted by Swiss diplomacy.<sup>50</sup> The authorities failed to respond with diplomatic countermeasures to this anti-Semitic ordinance which also affected Swiss Jews in Germany. Even the legal opinion commissioned by the Swiss Federation of Jewish Communities (SFJC) from the Federal Judge Robert Fazy, which highlighted the obvious incompatibility of the registration requirement for foreign Jews with international law, failed to prompt the Swiss authorities to intervene on behalf of Swiss Jews in Germany.<sup>51</sup>

This attitude was confirmed in summer 1941 by the parliamentary question from the Neuchâtel Social Democrat Ernest-Paul Gruber regarding the situation of Swiss Jews living in France: on 29 September 1941, the Federal Council claimed that in many states, Jews were subject to special legal provisions which formed part of the relevant country's *ordre public*<sup>52</sup> and therefore applied to foreign nationals as well. For this reason, Swiss Jews could not claim any privileges not enjoyed by Jewish citizens of the state of residence.<sup>53</sup> The Federal Council's response was extremely problematical from a legal point of view. It was highly questionable, in terms of constitutional law, that the Federal Council, in relation to the exercise of diplomatic protection of Swiss interests in France, accepted the «special status» of Swiss Jews compared with other Swiss nationals resident in France. The Swiss Government, in a public statement, thus called into question the civil and political equality of its Jewish citizens. What was problematical in terms of international law was the Federal Council's view that Swiss Jews in France had no legal entitlement to «special treatment» compared with French Jews, who were being systematically expelled from French economic life. This public statement of the Federal Council – as Paul Guggenheim, professor of international law, made abundantly clear in his legal

opinion which had been commissioned by the SFJC – obviously conflicted with the Franco-Swiss residency treaty of 23 February 1882, as well as the minimum standard pertaining to the legal status of foreigners under international law then in force.<sup>54</sup>

Thus on the issue of diplomatic protection, the Federal authorities were also prepared to abandon fundamental legal principles. The signing of the German-Swiss agreement on the introduction of the «J»-stamp in 1938 was symptomatic of this: it gave Germany the opportunity to also mark the passports of the Swiss Jews who had entered German territory.<sup>55</sup> This flouting of legal and ethical principles in favour of opportunism and convenience was clearly expressed by Walter Stucki, Swiss Minister in Vichy, in a personal letter dated 20 December 1941, to the professor of law, Arthur Homberger, on the issue of diplomatic protection in France:

«Your completely logical, legally correct, and convincing presentation reminds me of those wonderful times when I was able to sit at my desk and, as a quiet legal expert, take a position on life's many questions. Today, unfortunately, things are completely different: the law has lost a great deal of its power and power dominates law.»<sup>56</sup>

### **Neutrality law and neutrality policy**

As a neutral state, Switzerland was subject to neutrality law during the Second World War. Neutrality law had developed as a key element of international customary law in the 19<sup>th</sup> century and was later codified in the Hague Conventions of 1907 (Hague V<sup>57</sup> and Hague XIII<sup>58</sup>). These Conventions must be seen in the context of traditional warfare in the 19<sup>th</sup> century: they failed to provide a solution to many of the problems of modern warfare, which – in addition to their armed forces – mobilised the belligerent countries' entire economic and social resources. In general terms, neutrality law therefore only played a relatively modest role in the Second World War, especially as the belligerent countries flouted their obligations towards the neutral powers to a very considerable extent. Nonetheless, these violations of neutrality did not result in the abolition or amendment of neutrality law.<sup>59</sup>

Under general international law, neutral status creates rights and duties for the neutral power. The rights set forth in the Hague Conventions are generally limited to a prohibition on assisting the belligerents in the conduct of war (duty of abstention), and the duty to prevent the belligerents from using the neutral powers' territory for military purposes (duty of prevention or defence). A general duty pertaining to economic neutrality does not exist, however: in principle, the

neutral power has a right to trade with all belligerents. Similarly, the neutral power is not obliged to restrict press freedom or, indeed, its citizens' freedom to express their opinions, out of consideration for the belligerents; there is no duty to uphold neutrality of opinion.<sup>60</sup>

An important aspect of neutral status is neutrality policy. This is understood as «the principle that a permanently neutral state should do everything, and omit nothing, at its political discretion in order to avoid being drawn into future wars».<sup>61</sup> Like neutrality law, neutrality policy serves to preserve neutral status.<sup>62</sup> In this respect, neutrality policy has particular significance as it addresses those areas which are legally disputed or difficult to define and which can therefore be described as «grey areas» of neutrality law. This applies especially to the period of the Second World War: «total war» and the Holocaust created a new reality of warfare which was not encompassed adequately or at all by the Hague Conventions of 1907. This created new scope for discretion in the interpretation of neutrality law.

The question as to whether, during the Second World War, Switzerland discharged its duties under neutrality law arises especially in connection with the export and transit of war material. Under the Hague Conventions, the export of war material<sup>63</sup> by a neutral power to a belligerent is prohibited, as is the transit of war material by a belligerent across neutral territory.<sup>64</sup> What is permitted, however, are the export and transit of war material to belligerents by private suppliers. The distinction between state and private export and transit is therefore crucial. It is clear that a supply of weapons must be attributed to the state if it is «commissioned» by state institutions. This was the case, for example, when the Eidgenössische Pulverfabrik in Wimmis and the Eidgenössische Munitionsfabrik in Altdorf supplied powder and cartridge cases – needed in the manufacture of war material for delivery to Finland and Germany – to the Werkzeugmaschinenfabrik Oerlikon throughout the war. The War Technology Division of the Federal Military Department (*Kriegstechnische Abteilung des Eidgenössischen Militärdepartements*) was the driving force in both cases. As these weapons supplies were commissioned by the military administration, they can be attributed to the Federal Government and thus constitute a violation of neutrality.<sup>65</sup> The «state» character of war material exports is also undisputed if a neutral state commissions a private weapons manufacturer to supply a belligerent with arms. This occurred in summer 1940, when the Head of the War Technology Division called upon Oerlikon to supply war material «as a matter of urgency», «in the greatest possible amount» and «as quickly as possible» to Germany.<sup>66</sup>

On principle, a duty of equal treatment applied in respect of all the restrictions and prohibitions imposed by the neutral power on the export and transit of war

material. This duty of equal treatment has a formal character, i.e., the same provisions must apply to both belligerents, and they must be implemented in an even-handed way. Switzerland violated this obligation on several occasions during the Second World War: for example, when the Federal authorities, following the Soviet Union's attack on Finland on 30 November 1939, actively encouraged the private export of war material to Finland while prohibiting the supply of material to the Soviet Union at the same time. A further violation of neutrality occurred between June and August 1940, when Switzerland prohibited the supply of war material to Great Britain without treating Germany in the same way.<sup>67</sup>

A further issue which arose in connection with the transit of war material were the neutral power's control duties. The obligation imposed on a neutral power to prevent belligerents from using its territory for military purposes requires appropriate control mechanisms to be in place. In this respect, a violation of neutrality arose because the Swiss authorities failed to implement effective controls on rail freight<sup>68</sup> throughout the Second World War. In practice, it would have been impossible to subject the 1,200 wagons passing through each day to stringent controls. However, irregular but frequent random checks would have established with certainty whether war material was being transported via Switzerland.<sup>69</sup>

Finally, the granting of credits for supplying war material also raises the issue of possible violations of neutrality. Neutrality law prohibits the granting of loans by neutral powers to belligerents to support their war efforts. The neutral power may permit private persons to grant such loans, but may not encourage them to do so. With the signing of the Swiss-German agreement of 9 August 1940, the Federal Council granted clearing credits which flowed into Germany's war chest. Italy also received substantial credits for Swiss supplies of war material in 1940 and 1942. These credits violated neutrality law in force at the time.<sup>70</sup>

As the cases outlined above show, for foreign policy reasons, Switzerland violated neutrality law in various ways. It is a moot point whether the authorities could have justified their conduct as a response to the belligerents' violation of the law or as an act of self-preservation. On the other hand, throughout the entire wartime period, Switzerland made reference to its neutral status in order to reject demands by the belligerents. For example, in March 1945, its authorities continued to insist that trade with Germany should not cease completely, claiming that such a move would have violated neutrality law.<sup>71</sup>

### **Looted gold and international law**

As described above, the neutrality law in force during the Second World War did not impose any fundamental obligation on the neutral powers to sever their

economic links with the belligerent states. According to prevailing theory and practice, there was no general duty to uphold economic neutrality. The gold transactions between the Swiss National Bank (SNB) and Germany's Reichsbank thus did not violate neutrality law in force at the time.<sup>72</sup> On the other hand, Switzerland's neutrality in no way justified the acquisition of gold which had been expropriated in violation of international law, and certainly did not impose any obligation on Switzerland to purchase this gold. Rather, the standards by which these transactions must be judged are the provisions governing the protection of property in the Hague Convention Respecting the Laws and Customs of War on Land of 1907 and other principles of international law.

The gold transactions between the Reichsbank and the SNB during the Second World War are legally problematical in that they included gold which had been expropriated by the German authorities in violation of international law.<sup>73</sup> In particular, the gold supplies included looted gold, i.e. confiscated and plundered gold, as well as gold which had been stolen from the murdered and surviving victims of Nazi persecution.<sup>74</sup>

The Swiss Civil Code (*Schweizerisches Zivilgesetzbuch*, ZGB), which governed the legal relations between the Reichsbank and the SNB, recognises good-faith acquisition of movables by non-entitled persons. This means that the good-faith purchaser of movables (such as gold) may, under certain circumstances, acquire such articles lawfully even if the seller was not entitled to transfer ownership (as in the case of confiscations which violate international law, for example). In line with this principle, which is set out in Article 934 of the Swiss Civil Code, the SNB was thus able to claim ownership of the gold supplied by the Reichsbank provided that it could show that it had acted in good faith when purchasing the gold. Under Article 3 (2) of the Swiss Civil Code, this applied only if the SNB's Governing Board, despite exercising the increased vigilance as required, was unable to establish any unlawful origin of the gold under international law.<sup>75</sup> The claim put forward by the SNB's management after 1943 that it had purchased the gold from Germany in good faith based on its genuine belief in the gold's lawful origin, is extremely dubious, however. In its report on the gold transactions during the Second World War, the ICE points out that the SNB governors were aware as early as 1941 that Germany was in possession of looted gold.<sup>76</sup> No Swiss court ruled on this issue.

Can any Swiss responsibility under international law be derived from the SNB's gold purchases? For liability under international law, at least two preconditions must be met: the existence of an internationally wrongful act, and its attributability to Switzerland. Many of the gold purchases by the SNB were undoubtedly based on wrongful actions under international law<sup>77</sup> – i.e.,

the systematic plundering of privately-owned gold in occupied territories. From a legal perspective, however, the attributability of these actions is problematic. The confiscations in the Nazi-occupied territory which were unlawful under international law were directly attributable to Germany,<sup>78</sup> not Switzerland. For Switzerland's responsibility to be recognised under international law, one would have to resort to offences such as complicity or receiving stolen goods, which – during the period in question – were enshrined in criminal, not in international law. It is therefore unlikely that an international tribunal after the war would have recognised Switzerland's responsibility under international law. However, this question is only null and void to the extent that the Washington Agreement of 25 May 1946 regulated the problem of compensation for stolen gold under international law in a binding and conclusive way.<sup>79</sup>

During the period in question, the legal notion of *ordre public* was largely unknown in the theory and practice of international law: it is only very recently that the concept of *ius cogens*<sup>80</sup> has developed. The SNB Governing Board, however, could not simply disregard the *ordre public* case law of the Federal Supreme Court in the field of private international law.<sup>81</sup>

## 5.2 Private law

Whereas the Swiss state and constitutional order underwent profound changes during the Nazi era, this did not apply in the same way to the field of private law.<sup>82</sup> There were no major structural changes in this area until the end of the war: in general, (private) law scarcely reacted to Nazi looting policy. A «break» with Swiss private law tradition did not occur until the legislation on restitution was introduced during the post-war period. This inactivity on the part of the legislator sharply conflicted with the dynamism of the Swiss courts in the field of jurisprudence: through their consistent recourse to the *ordre public* clause, they succeeded in preventing the application and execution of Nazi racial laws in Switzerland after 1933.

### The trade in looted cultural assets

From a private-law perspective, the trade in «looted art» raises one key question: to what extent could the cultural assets which had been expropriated by the Nazi state in violation of international law be acquired in good faith and therefore lawfully in Switzerland?<sup>83</sup> This must be answered against the background of the legal principles governing good-faith acquisition of movable property as set forth in the Swiss Civil Code (ZGB) since 1912.

Under Swiss civil law, movables (*in casu*: art and cultural assets) can be acquired through transfer if three cumulative preconditions are met: a valid legal ground (e.g., sale, exchange, disposition of a will), the transfer of possession to the acquirer (*traditio*), and the power of disposal (right of alienation).<sup>84</sup> However, this principle is qualified in the Civil Code in that under certain circumstances, an item can be acquired in good faith even if the vendor was not entitled to transfer ownership. In this context, a distinction must be made between two situations:<sup>85</sup> if the rightful owner had entrusted the item to another person (voluntary renunciation of the property, e.g., through contractual transfer of possession to a borrower or lessee) and the said person then sells the item to a good-faith purchaser, the right of ownership is transferred directly to the acquirer (Article 933 ZGB). However, if the rightful owner forfeited possession of the item involuntarily (through theft, loss, confiscation, etc.), the good-faith purchaser only acquires ownership after a time limit of five years (Article 934 (1) ZGB). Special provisions apply to the acquisition of items entrusted at public auction (e.g., art auctions), in a market, or from a dealer trading in similar products: this type of acquisition is privileged in that the possessor is only required to hand over the item to the rightful owner before the expiry of the five-year time limit if he is reimbursed the price he has paid (Article 934 (2) ZGB). Other special provisions are set out in Article 935 ZGB: under this Article, money and bearer-shares can be acquired in good faith with immediate effect even if their former owner forfeited them against his will.

The principle of trust, in particular, is often cited in justification of the Civil Code's legal provisions on good-faith acquisition. It centres on the notion that «the owner who entrusts his object to a third party gives the acquirer cause for misplaced trust; in other words, he himself creates the impression of legality».<sup>86</sup> In international terms, the Swiss legal principles on good-faith acquisition are not unusual. Very similar rules apply, for example, in Belgium, Germany, France, the Netherlands, Austria and Spain. Indeed, Italian law goes even further, permitting good-faith acquisition immediately, even in respect of stolen goods. Good-faith acquisition is largely unknown, on the other hand, in the USA and Great Britain. In these countries, ownership is lost only with the passage of time.<sup>87</sup> A conflict between these different interpretations of law occurred in the post-war period when the issue of restitution of assets looted by the Nazis arose.<sup>88</sup>

Article 3 (2) ZGB<sup>89</sup> defines the good-faith purchaser as one who cannot be accused of being grossly negligent in not knowing about the illegal provenance of the looted asset.<sup>90</sup> Logically, a bad-faith purchaser is one who, at the time of the transfer of ownership, was aware of the vendor's non-entitlement, or – had he exercised due care – could have detected this non-entitlement. It must be

borne in mind in this context that in accordance with the Civil Code, the good faith of the acquirer is presumed to exist: the plaintiff who disputes this good faith must therefore provide evidence to prove the receiver's bad faith. The question whether someone has acted in good or bad faith is then a legal question which must be decided by the judge in accordance with generally recognised legal criteria.<sup>91</sup>

On the basis of these provisions in civil law, a good-faith purchaser could thus lawfully acquire «looted art» in Switzerland, either immediately or after a five-year time limit. By definition, good faith presupposed reasonable care; however, although a work of art may be unique with variable market value, contemporary legal theory and case law did not assume any increased duty of diligence on the part of the art dealer.<sup>92</sup> It is only very recently that the view that, in the art trade, more stringent criteria must be applied in respect of the due care to be exercised by the parties, has come to prevail in the legal practice of the supreme courts.<sup>93</sup> The provisions of the Civil Code failed to do justice to the legitimate interests of the victims of Nazi looting policy. On 10 December 1945, under strong pressure from the Allies, the Federal Council adopted the Decree on Looted Assets (*Raubgutbeschluss*) concerning Claims for the Return of Assets seized in War-Occupied Territories. This emergency Decree under public law was adopted on the basis of the Emergency Plenary Powers Decree of 1939<sup>94</sup> and granted dispossessed true owners the opportunity – until 31 December 1947 – to demand the return of cultural assets looted by the Nazi state, irrespective of the good or bad faith of the present owner. The protection afforded to good faith acquisition in the Swiss Civil Code was therefore suspended for a limited period.

### **The trade in foreign securities**

Domestic provisions governing the trade in foreign securities during the Second World War were also shaped by the same continuity in private law. The Federal Council failed to adopt emergency provisions in civil law, on the basis of government by emergency plenary powers, to cover the trade in stolen or confiscated securities. As described above, until the adoption of the Federal Council's Decree on 10 December 1945 (Decree on Looted Assets – *Raubgutbeschluss*), it was the property law provisions of the Civil Code regulating good- and bad-faith acquisition of movables, money and bearer-shares which continued to apply (Article 933–936 ZGB).<sup>95</sup>

During the period in question, the right to trade on the Swiss stock exchanges was not regulated at Federal level. The banks and stock exchanges preferred a system of self-regulation for the stock market, which was based on individual responsibility with control mechanisms.<sup>96</sup> This meant that the Federal Government had no opportunity to intervene in and regulate the securities

trade, and it was therefore unable – even during the Second World War – to regulate the trade in securities from occupied areas. Based on its emergency powers, however, the Federal Council could have adopted special provisions to protect the owners of securities expropriated by the German occupying powers – yet it failed to take this step primarily, one assumes, for foreign policy reasons, but also due to the opposition to such a move from the banks and stock exchanges.<sup>97</sup>

At the level of private (autonomous) stock exchange rules (e.g., commercial practices, regulations, etc.), the absence of legal precautionary and preventive measures was partially offset by the introduction of the «affidavit». From December 1940, official stock exchange trade in Dutch, French, Polish, Danish and Norwegian titles was only permitted for securities accompanied by an affidavit testifying that since 2 September 1939, they had been owned continuously by Swiss citizens domiciled in Switzerland or by legal persons or companies based in Switzerland.<sup>98</sup> An affidavit was only required for trade on the stock exchange, however: outside the stock exchange, titles could also change hands without the affidavit confirming Swiss ownership. Later, securities were also traded on the stock exchange with «Affidavit L1», which merely confirmed Swiss ownership from 1 June 1944. Furthermore, from 1943, shares in Royal Dutch could be traded on the stock market without an affidavit confirming their origin.<sup>99</sup> By acquiring these shares, the purchaser accepted a particularly substantial risk, for in view of the considerable difference in price between titles with and without an affidavit, he could not be acting in good faith and therefore had to reckon with the restitution of the title to its rightful owner.<sup>100</sup>

The widespread forgery of affidavits carried out in 1941 by Swiss companies was problematical in terms of criminal law.<sup>101</sup> Under the Federal Criminal Code which came into force on 1 January 1942 and replaced the cantonal criminal codes, this was deemed to constitute the forgery of certificates or false certification (Article 251) and even fraud (Article 148). However, when the Criminal Code was introduced, theory and practice had not yet been fully developed.<sup>102</sup> It was only with the Decree on Looted Assets of 10 December 1945 that intervention in the private-law framework for the trade in securities started taking place: this time-limited emergency legislation created the legal basis for the restitution of stolen and confiscated securities which had found their way to Switzerland during the Second World War.<sup>103</sup>

#### **«Unclaimed assets»**

The legal treatment of «unclaimed assets» owned by Nazi victims shows clear parallels with the legal practice applied in respect of looted cultural assets and

securities described above.<sup>104</sup> Here too, there was continuity in private law which was broken only temporarily with the Registration Decree of 20 December 1962. In this sense, 1946 and 1962 are key moments in the private-law debate about National Socialism.

Prior to the entry into force of the Registration Decree (1 September 1963), the legal treatment of «unclaimed assets» was governed by the ordinary provisions of the Civil Code and the Code of Obligations (*Obligationenrecht*, OR). As a result of the Registration Decree, these rules were suspended, albeit temporarily: after the expiry of the Decree's ten-year term, the normal principles of Swiss private law applied once again. The following paragraphs highlight some of the fundamental problems which arise when evaluating the legal status of «unclaimed assets»:<sup>105</sup>

- Even today, the legal status of the agreements concluded in the 1930s and 1940s to open accounts with Swiss banks or fiduciaries is problematical. Assuming that at the time, foreign clients were primarily interested in a safe deposit for their money rather than a return on their investment, the circumstances surrounding these deposits – often known as «flight funds» – suggest that they were accepted as a *depositum irregulare* (Article 481 OR), combined with a generally implicit mandate to undertake the usual administrative actions.<sup>106</sup>
- On principle, claims for the return of deposited assets, including «unclaimed assets», are subject to prescription. Under Swiss law, the time limitation for their return is ten years; claims for interest payments expire after five years (Articles 127 and 128 (1) OR). The question which arises in this context is whether the time limitation begins with the deposit of the funds, or only from the end of the contract – either on expiry of the agreed term or as a result of termination of the contract. Since 1965, the Federal Supreme Court has assumed that the time limitation does not begin until the contract ends. In accordance with legal practice until the 1965 judgement, however, the time limitation was suspended if it was impossible for the plaintiff to assert his claim before the Swiss courts (Article 134 (6) OR). Some legal theorists go further and demand that in general, at least with regard to the «unclaimed assets» of Holocaust victims, the «time limitation» argument should not be a valid defence.<sup>107</sup>
- A further aspect, closely linked with the issue of time limitation, is the obligation to hold files. Under Article 962 OR, all persons and companies which are required to keep accounts are obliged to safekeep documents for ten years. The question whether the ten-year time limitation also applies to files relating to «unclaimed assets» was not debated until recently, however. In legal theory, some authors argue that at the very least, files relating to the open-

ing and closing of the account or deposit and the client's basic personal data should be kept for an unlimited period.<sup>108</sup>

- A further question which arises is how the banks carried out their administrative duties in respect of «unclaimed accounts». Here, it is important to distinguish between arrangements in which the client commissioned the bank to manage the assets (i.e., by granting an asset management mandate), or whether the securities were deposited without such a mandate. In the first case, the bank's duty to manage the deposit in the interests of the client is undisputed. However, as regards what may be termed the «open» deposit, it must be assumed that the bank also had an obligation to carry out the proper administration of the account without being specifically charged to do so: it was thus required to collect dividends and interest for credit to the client's current account, and also to assert the client's interests in respect of cancellations, conversions and depreciation of securities, etc. The proper administration of «unclaimed assets» also included the obligation – in cases where urgent action was required – to take appropriate measures in the client's interest.<sup>109</sup>
- Finally, the purpose of Swiss banking secrecy arises as an issue: can banks invoke their duty to maintain confidentiality when non-authorised third parties (e.g., the heirs of the entitled person) make claims against them? Banking secrecy is based on the need to protect privacy: the banks' duty to maintain confidentiality can therefore only be presumed to exist if the disclosure of information would violate the client's legitimate interests.<sup>110</sup> In this sense, Swiss banking secrecy does not generally preclude the possibility of the banks actively searching for clients (or their heirs).<sup>111</sup>

The Federal Council's Decree of 20 December 1962 concerning the assets located in Switzerland of foreign nationals or stateless persons persecuted on racial, religious or political grounds (Registration Decree) imposed an obligation on all asset managers in Switzerland to register assets about which there had been no reliable information since 9 May 1945 and whose last known owners were assumed to be the victims of racial, religious or political persecution.<sup>112</sup> This «exceedingly legalist» Federal Decree<sup>113</sup> was not entirely successful, and the issue of «unclaimed assets» thus remained unresolved.

#### **Ordre Public as a «defence clause» in private international law**

*Ordre public* is a general exemption clause in private international law<sup>114</sup> which Swiss judges can invoke in a disputed case in order to refuse the application of a foreign law and the recognition or execution of a foreign judgement. According to the established legal practice of the Federal Supreme Court, this «emergency clause» in the system of international civil procedure and private

international law is applicable if «domestic notions of justice would otherwise be violated intolerably».<sup>115</sup> The *ordre public* clause thus protects the «fundamental core of legal and ethical values»<sup>116</sup> which form the basis of the national legal system.<sup>117</sup>

From 1933, the Swiss courts were directly confronted with Nazi injustice. The issue of the application of Nazi law and/or the recognition and execution of German judgements in Switzerland therefore arose for the Swiss courts. Here, the Federal Supreme Court and the cantonal courts regularly referred to the *ordre public* clause in order to deny Nazi legislation and arbitrary justice any application in Switzerland.

The courts were thus able to prevent the enforcement of Nazi judicial injustice in Switzerland. In the case of «UFA vs. Thevag», for example, which came before the Federal Supreme Court in 1936, the Court refused to recognise that Universum-Film-Aktiengesellschaft (UFA) had the right to withdraw from a contract<sup>118</sup> on the grounds of the «race» of the film director Erich Löwenberger: the Court held that such an interpretation of the disputed clause of the contract conflicted with the equality of all citizens before the law which was a basic principle of the Swiss legal order (Article 4 of the Federal Constitution), and thus clearly violated Swiss *ordre public*.<sup>119</sup> Similarly, with its ruling of 17 September 1937 in the case of Gustav Hartung vs. Volksstaat Hessen,<sup>120</sup> the Federal Supreme Court refused to allow the enforcement of the Nazi's arbitrary justice system in Switzerland: it viewed the denial of compensation to the director of the State Theatre (*Staatliche Bühne*) in Darmstadt, who had been summarily dismissed as a result of the Nazi regime, as a violation of *ordre public* as defined in the German-Swiss Enforcement Treaty.

Swiss courts also refused to recognise the legality of Nazi forced administration of Jewish companies in respect of assets in Switzerland.<sup>121</sup> In the case of Thorsch,<sup>122</sup> Zurich Cantonal Court held that the establishment of forced administration violated *ordre public*, as its effects were comparable with expropriation without compensation. The view that the Nazi policy of forced administration violated Swiss public order was expressed very clearly in the Federal Supreme Court's judgment of 22 December 1942 in the case of Böhmishe Union-bank vs. Heynau:<sup>123</sup> the Court found that the measure grossly violated the principles of equality and the protection of property which were fundamental elements of the Swiss legal order.

The courts showed similar consistency in their decisions on Jewish persons' legal incapacity to inherit in the Third Reich. The case of the J. estate,<sup>124</sup> which came before Zurich Cantonal Court on 25 September 1942, centred on the enforcement of inheritance claims in Switzerland by the London-based heirs of a Jewish testator who had died in Germany. The heirs had put the assets

belonging to the estate in Switzerland under seizure and sued the descendants in Berlin for the transfer of their share of estate. The latter – probably under pressure from the Nazi authorities<sup>125</sup> – invoked the 11<sup>th</sup> Ordinance of the Law on German Citizenship (11. Verordnung zum Reichsbürgergesetz) of 25 November 1941, which mandated the expropriation of assets and inheritance claims from expatriated Jews and the transfer of such assets and claims to the Third Reich. Zurich Cantonal Court granted the suit on the grounds that this Ordinance violated the principle of equality as a «fundamental element» of the Swiss legal order (*ordre public*) and was thus irrelevant for the Swiss judiciary.<sup>126</sup>

In the practice described here, the courts therefore consistently took the view that Nazi anti-Semitic legislation must be deemed to constitute injustice which violated all legal principles and should therefore not be applied in practice. The demand for elementary justice, which is an essential element of the *ordre public* in private international law, was thus asserted to a significant extent in Swiss judicial practice.<sup>127</sup>

#### An Example of Legal Practice

The case of «Otto Erich Heynau vs. Böhmische Unionbank» can be described as a «leading case» in the judicial practice outlined here. This case started after the occupation of Moravia, when provisional forced administration was imposed on Malzfabrik Ed. Hamburger in Olmütz. When Moravia came under military occupation (15 March 1939), the company's sole proprietor, Otto Erich Heynau, was on a business trip in Switzerland and, as a «non-Aryan», did not return to Olmütz. On 3 October 1938, i.e., prior to the occupation of Moravia, Heynau – in his capacity as the sole proprietor of the Ed. Hamburger company – had concluded a contract to supply malt to Brauerei Stadtbühl (Stadtbühl Brewery) in Gossau (St. Gallen). On 18 August 1939, the receiver appointed on the basis of the Government Ordinance of 10 June 1939<sup>128</sup> – one of Heynau's former employees, by the name of Swrschek, whose primary tasks including preventing Heynau from drawing on his foreign assets – instructed, on behalf of the Ed. Hamburger company, that the malt sold should be delivered to the brewery. The same day, the receiver «assigned» the purchase price demand to Böhmische Unionbank, Olmütz branch, in Olmütz.

Both the plaintiff, Otto Erich Heynau, and the respondent, Böhmische Unionbank, Olmütz branch, demanded that Brauerei Stadtbühl pay the purchase price of 4,273 Swiss francs. The brewery duly deposited the sum, in accordance with Article 96 OR, with the Gossau local administration (*Gemeindeamt*).

The II. Civil Chamber of St. Gallen Cantonal Court granted Otto Erich

Heynau's petition against the Olmütz branch of Böhmische Unionbank and instructed Gossau's local administration to transfer the 4,273 francs deposited by the brewery to the plaintiff. The bank was also ordered to pay the Court's costs. In its judgment, the Court invoked, *inter alia*, Swiss *ordre public* in order to deny the application of the Government Ordinance in Switzerland. The Court held that the Ordinance «violated intolerably» the principle of the inviolability of property enshrined in Swiss law and therefore conflicted with Swiss *ordre public*. St. Gallen Cantonal Court concluded that the assignment of the funds to Böhmische Unionbank was not relevant for the Swiss judiciary.

The I. Civil Department of the Federal Supreme Court confirmed St Gallen Cantonal Court's judgement in its decision of 22 December 1942. The Court left no doubt that the forced administration which formed the basis for the assignment of the funds to Böhmische Unionbank constituted a grave violation of Swiss public order. The Court found that the measure grossly violated the principles of equality and the protection of property, which were fundamental elements of the Swiss legal order.

«This ordinance constitutes such a flagrant disregard for the plaintiff's property rights that it blatantly conflicts with the fundamental bases of Swiss law. It conflicts with the principle of recognition of private ownership, which precludes expropriation by the state without compensation, as well as the principle of legal equality, which does not permit any intervention in an individual's proprietary rights *solely on grounds of race.*»<sup>129</sup>

In judicial practice, however, the view that Nazi racial laws constituted injustice caused problems when its application by the German authorities had created a *fait accompli*. This is reflected in the practice of the Federal Supreme Court after the war, especially in cases concerning the expatriation of German Jews<sup>130</sup> and various insurance-related cases.<sup>131</sup>

Administrative practice did not always accord with the jurisprudence of the Swiss courts which is described here. In this respect, the authorities' approach to the Nazi prohibition on «marriage between Jews and nationals of German or related blood» is instructive: having adopted the categories «Aryan» and «non-Aryan» without question,<sup>132</sup> the Federal Office of Civil Status (*Eidgenössisches Amt für Zivilstandsdienst*, EAZD) took the view that, based on the Hague Convention concerning marriage of 12 June 1902,<sup>133</sup> German Jews could not be granted permission to marry in Switzerland as they were subject to the «marital impediment of mixed race» in Germany.<sup>134</sup> The granting of permission

to marry on the basis of Swiss *ordre public* was not discussed. A different view was upheld by Basel City's cantonal government member Adolf Imhof: he regarded the anti-Semitic ban on marriage as incompatible with Swiss public order and granted permission to marry without proof that the marriage would be recognised in Germany. He justified this attitude to the authorities in Bern as follows:

«We granted E.K.'s bride, a German national, dispensation from the requirement to produce a certificate testifying suitability to marry as it was clear from the outset that this certificate would not be issued by the German authorities to a German woman wishing to marry an Israelite. From the personal documents submitted, it was clear there was no impediment to the bride's marriage under Swiss law. We regard the dispensation as appropriate, for on the grounds of *ordre public*, religious or political impediments to marriage have never been regarded as relevant in the practice of Federal law. Our Constitution guarantees equality before the law and protects freedom of belief and conscience. Our laws therefore do not permit any distinction to be made on grounds of race.»<sup>135</sup>

This did not prevent the EAZD from immediately writing to the Swiss Legation in Berlin, pointing out that while such marriages would not be approved in light of the 1902 Hague Convention, the cantons had the final say on such issues.<sup>136</sup> Two years later, the EAZD expressed the view that reference to Swiss *ordre public* was only possible in theory if one of the two prospective marital partners was Swiss; under no circumstances should the *ordre public* be invoked with respect to marriage between two German emigrants, however.<sup>137</sup> The EAZD took an even harder line in another similar case: it was not the canton's task «to judge, approve or reject the grounds for the prohibition»; its legal standpoint must simply be that «foreigners could not marry if their home country did not recognise the marriage as valid».<sup>138</sup> It apparently upheld this view until the end of the war: even as late as September 1944, the EAZD stated: «The fiancé is non-Aryan and the bride is Aryan. We therefore think it would be advisable if the engaged couple could be patient for a little longer [...].»<sup>139</sup> Law and ethics (morality) do not necessarily coincide.<sup>140</sup> However, this does not imply that law is an «ethics-free area»; on the contrary, in a state under the rule of law, the law claims to guarantee justice.<sup>141</sup> This ethical component genuinely existed in the Swiss legal system before 1945 (e.g., fundamental rights, loyalty and good faith, prohibition on the misuse of rights, etc.). This is illustrated especially clearly through the practice of the Swiss courts described above, which consistently invoked «the Swiss notion of law» in order to deny the appli-

cation of Nazi injustice. This feeling for what is right and proper in law was absent in the conduct of the authorities when they resorted to practices which were incompatible with the «supra-legal» principles of humanity.<sup>142</sup> Chapter 6, which follows, examines the issue of «reparations». This theme is closely linked with the legal problems described above. This applies especially to the field of private law: the Decree on Looted Assets of 1945, for example, can therefore be seen as a (public law) reaction to the continuity in the system of property law between 1933 and 1945. A breach with this continuity also occurred with the Registration Decree of 1962, which – by setting out provisions governing the legal treatment of «unclaimed assets» – temporarily suspended the «normality of private law» in Switzerland. However, a major change was taking place in international law as well: the Allies' establishment of the Nuremberg International Military Tribunal after the war heralded a new order in international law which, through the San Francisco Conference which led to the founding of the UN, resulted in the adoption of the Universal Declaration of Human Rights in 1948 and other international human rights treaties (European Convention on Human Rights in 1950, the UN Covenants in 1966 etc.). «Reparation» therefore also entails the process of examining Nazi injustice from a legal perspective; the economic, political, social and psychological background to this process is discussed in the following chapter.

<sup>1</sup> See for instance BGE 64 II 88 E. 5, p. 97.

<sup>2</sup> The ICE has commissioned various legal opinions from external experts which deal with issues in the field of public law (Publications of the ICE, vol. 18) and private law (Publications of the ICE, vol. 19). However, there are still some gaps in the research, e.g., with regard to the role of military justice during the Second World War.

<sup>3</sup> Federal Decree on measures for the protection of the country and the maintenance of neutrality, 30 August 1939, text in BBl, 1939/II, 216.

<sup>4</sup> On the historical background, see section 2.2; see also Kreis, Parlamentarismus, 1991, pp. 301–320.

<sup>5</sup> Article 6 of the Emergency Plenary Powers Decree stated that important measures should be submitted, if possible, to the Parliamentary Committee that granted plenary powers (*Vollmacht- enkommissionen*) for consideration prior to their adoption. In political practice, these Committees were extremely active, and their influence on the decisions of the executive can be noted time and again. On this point, see Kreis, Parlamentarismus, 1991, pp. 310ff.

<sup>6</sup> Federal Decree on the restriction of imports, AS 47, 785. On emergency policies in the field of foreign trade, see Meier/Frech/Gees/Kropf, Ausenwirtschaftspolitik, 2002 (Publications of the ICE), section 3.3. See also Hug/Kloter, Aufstieg, 1999, p. 51.

- <sup>7</sup> Examples of unconstitutional ordinances included the following: the Ordinance of 2 September 1939 (AS 55, 837) created obligatory labour service and clearly violated the freedom of the individual, especially his right to engage in trade and establish a business (Article 31 of the Federal Constitution – *Bundesverfassung*, hereafter BV) and personal freedom. The Ordinance of 22 September 1939 (AS 55, 1082) abolished secrecy of posts and telecommunications and was incompatible with Article 36 IV BV. The Decree of 15 October 1941 (AS 57, 1148) required sound reasons to be stated for residence in a community (other than the home community) where there was a shortage of housing, and therefore clearly violated Article 45 BV. It was not only individuals who had to tolerate the excesses of the state: the cantons' responsibilities were also significantly curtailed. This is especially apparent in the field of taxation. The majority of new Federal Decrees had no constitutional basis; see Aubert, *Bundesstaatsrecht*, 1995, pp. 734ff.
- <sup>8</sup> On the position of Swiss legal theory towards Nazi legal ideology, see Aubert, *Science juridique*, 2001 (Publications of the ICE).
- <sup>9</sup> Such as the foreign and neutrality policy competencies and the security and economic policy powers of the Federal Assembly and Federal Council set forth in Articles 85 and 102 BV, the purpose clause (Article 2 BV) and Article 71 BV on the Federal Assembly's responsibility as the supreme institution of state.
- <sup>10</sup> This legal opinion proceeds on the assumption that there is a genuine gap in written law which must be filled through recourse to extra-constitutional legal principles such as common law, natural law, the effectiveness principle in international law, or the reasons justifying the state of emergency and/or the state's self-preservation.
- <sup>11</sup> Giacometti, *Verfassungslage*, 1942, p. 148.
- <sup>12</sup> Giacometti, *Verfassungslage*, 1942, p. 9.
- <sup>13</sup> Giacometti, *Verfassungslage*, 1942, p. 8.
- <sup>14</sup> Schindler, *Notrecht*, 1942, p. 34.
- <sup>15</sup> Schindler, *Notrecht*, 1942, p. 7.
- <sup>16</sup> BBI, 1939/I, 542.
- <sup>17</sup> Kälin, *Aspekte*, 2001 (Publications of the ICE), pp. 410ff.
- <sup>18</sup> Cf. Zellweger, *Beschränkungen*, 1975, p. 82; the author argues that the emergency powers targeted against the Communist Party during the period 1933–1945 exceeded the constitutional limits of the Emergency Plenary Powers Decree.
- <sup>19</sup> Lasserre, *Schweiz*, 1992, pp. 264ff; cf. also Engeler, *Bruder*, 1990, p. 65; Jost, *Politik*, 1998, pp. 89ff. On the jurisprudence of the Swiss courts in respect of the front movements, see Haeflinger, *Rechtsprechung*, 2001 (Publications of the ICE).
- <sup>20</sup> BBI, 1948/I, 1054.
- <sup>21</sup> BS 1, 121ff.
- <sup>22</sup> On the practice relating to military refugees, see Kälin, *Aspekte*, 2001 (Publications of the ICE), pp. 335ff.
- <sup>23</sup> «The Federal Council may, by obliging a canton to tolerance, grant asylum to a foreign national who is able to make a credible case that he is seeking refuge from political persecution and who has been denied approval. The Federal Council will first obtain a statement from the canton in question».
- <sup>24</sup> Kälin, *Aspekte*, 2001 (Publications of the ICE), pp. 283ff.
- <sup>25</sup> Kälin, *Aspekte*, 2001 (Publications of the ICE), pp. 319ff.
- <sup>26</sup> The principle of non-refoulement was codified for the first time in Article 33 of the Convention Relating to the Status of Refugees of 28 July 1951 (SR 0.412.30).

- <sup>27</sup> This included not only «political refugees» but also all persons from Germany who had lived there and who had German citizenship, but who had lost the protection of the German state, i.e., including Jewish refugees from Germany. On this point, see Kälin, Aspekte, 2001 (Publications of the ICE), p. 357.
- <sup>28</sup> Kälin, Aspekte, 2001 (Publications of the ICE), pp. 352ff. and p. 374.
- <sup>29</sup> On this point, see UEK, Flüchtlinge, 2001 (Publications of the ICE), pp. 197ff.
- <sup>30</sup> Federal Council's Decree, 20 December 1940 (AS 56, 2027).
- <sup>31</sup> Bigler-Eggenberger, Bürgerrechtsverlust, 1999, p. 36.
- <sup>32</sup> AS 57, 1257.
- <sup>33</sup> Bigler-Eggenberger, Bürgerrechtsverlust, 1999, p. 36. In this context, statelessness was regarded as «not unavoidable» «if the husband's domestic law gives the wife the opportunity to acquire his citizenship through marriage by submitting a declaration or making an application and if she fails to submit such a declaration or make such an application».
- <sup>34</sup> FA, E 4260 (C) 1974/34, vol. 53; FA, E 4260 (C) 1974/34, vol. 55.
- <sup>35</sup> FA, E 4260 (C) 1974/34, vol. 55.
- <sup>36</sup> From various circular letters issued by the EJPD, however, it is possible to detect the «benevolent» attitude of Swiss officialdom towards the women who had formerly held Swiss citizenship. For example, if found crossing the border illegally, they were to be treated as «hardship cases» and were not to be refused. On this point, see FA, E 4001 (C) -/1, vol. 253, 254.
- <sup>37</sup> On this point, see UEK, Flüchtlinge, 2001 (Publications of the ICE), pp. 204ff. See also section 3.5 included herein.
- <sup>38</sup> Kälin, Aspekte, 2001 (Publications of the ICE), pp. 489ff. On the conditions in camps and homes, see UEK, Flüchtlinge, 2001 (Publications of the ICE), pp. 201ff. See also section 3.5 included herein.
- <sup>39</sup> On the case law, see section 5.2 included herein.
- <sup>40</sup> Kälin, Aspekte, 2001 (Publications of the ICE), p. 482.
- <sup>41</sup> On this point, see UEK, Flüchtlinge, 2001 (Publications of the ICE), p. 378.
- <sup>42</sup> Cf. Kälin, Aspekte, pp. 481f. and p. 504.
- <sup>43</sup> On this point, see Haldemann, Schutz, 2001 (Publications of the ICE), pp. 533ff. with further references.
- <sup>44</sup> A state, on principle, can only afford diplomatic protection to its own citizens. This rule is broken only if a state acts as a *protective power* for the home state of the persons requiring protection.
- <sup>45</sup> In particular, the exhaustion of domestic recourse possibilities and the absence of prescription on reparations claims.
- <sup>46</sup> Specifically, retorsion and reprisals.
- <sup>47</sup> On the preconditions for diplomatic protection in international law, see Borchard, Protection, 1925, pp. 349ff; Oppenheim/Lauterpacht, International Law, 1947, pp. 304ff.; Ress, Schutz, 1992, pp. 57ff.; Verdross, Völkerrecht, 1937, pp. 178ff.; cf. also St.I.G., Case of the Mavromantis Palestine Concessions, judgment of 30 August 1924, Publications of the Permanent Court of International Justice, Series A - No. 2, p. 12.
- <sup>48</sup> From the more recent literature, cf. Ludi/Speck, Victims, 2001, pp. 907ff.; Picard, Schweiz, 1997, pp. 169ff. See also Thürer, Völkerrecht, 2000, pp. 564f. See also Haldemann, Schutz, 2001 (Publications of the ICE), pp. 562ff.
- <sup>49</sup> Under the 1848 Federal Constitution, Jews living in Switzerland were still excluded from important fundamental freedoms (cultural freedom, freedom to choose a place of residence, right to equal treatment before the law). It was not until the constitutional revision of 1866 and the entry into force of the 1874 Federal Constitution that Jews were granted the same civil and political rights as other citizens. On Jewish emancipation in Switzerland, see Külling, Antisemitismus, 1977; Mattioli, Schweiz, 1998, pp. 61–82.

- <sup>50</sup> On this debate, see section 4.10 included herein.
- <sup>51</sup> On this point, see Haldemann, Schutz, 2001 (Publications of the ICE), pp. 562ff.
- <sup>52</sup> The use of the term «*ordre public*» in the Federal Council's response is extremely dubious. On the one hand, the impression is created that the anti-Semitic laws in France were adopted to maintain the public order of the French state and thus protect public safety, health, peace, morality, etc. On the other hand, the recourse to the concept of the *ordre public* is also dubious from a legal perspective, as this concept is derived, in essence, from private international law, not public international law. On this point, see the comments on the *ordre public* in section 5.2 included herein.
- <sup>53</sup> FA, E 1004.1 (-) 413, minutes of the Federal Council, 29 September 1941, no. 1502. On this point, see Picard, Schweiz, 1994, pp. 194ff.
- <sup>54</sup> On this point, see Haldemann, Schutz, 2001 (Publications of the ICE), pp. 570ff. See also section 4.10.
- <sup>55</sup> UEK, Flüchtlinge, 2001 (Publications of the ICE), pp. 91ff. See also section 3.1. included herein.
- <sup>56</sup> Stucki to Homberger, 20 December 1941; FA, E 2200.42 (-) -/23, vol. 1. Stucki's letter was a response to the legal opinion on the status of Swiss Jews in France which had been compiled by Arthur Homberger on 21 November 1941 on behalf of Felix Iselin & Tobisa Christ, Solicitors, in Basel. Homberger had concluded that the new «Jewish legislation» in France was incompatible with the Franco-Swiss residency treaty of 1933 and therefore could not be applied to Swiss Jews living in France. Arthur Homberger, Legal opinion of 21 November 1941, p. 15, FA, E 2200.42 (-) -/23, vol. 1. On this point, see Picard, Schweiz, 1994, pp. 201–203. See also Haldemann, Schutz, 2001 (Publications of the ICE), pp. 573f.
- <sup>57</sup> Hague Convention V: The Rights and Duties of Neutral Powers and Persons in Case of War on Land, SR 0.515.21.
- <sup>58</sup> Hague Convention XIII: The Rights and Duties of Neutral Powers in Naval War, SR 0.515.22.
- <sup>59</sup> On this point, see Schindler, Fragen, 2001 (Publications of the ICE), p. 90. On Swiss neutrality in the Second World War, see also Thürer, Schweiz, 2000, pp. 413–443.
- <sup>60</sup> Riklin, Neutralität, 1992, p. 196 (pp. 191ff.).
- <sup>61</sup> Thürer, Perspektive, 1998, p. 139.
- <sup>62</sup> Thus the Federal Council, with its Ordinance on the Treatment of Neutrality of 14 April 1939, prohibited the private export of war material to belligerents, which is permitted on principle under neutrality law. «This self-restriction, motivated by neutrality law», which aimed to achieve a «morally indisputable neutrality policy», was abolished by the executive just a few days after the start of the war, however. See Schindler, Fragen, 2001 (Publications of the ICE), p. 92. The arms companies based in Switzerland continued to enjoy considerable entrepreneurial freedom throughout the Second World War; see Hug, Rüstungsindustrie, 2002 (Publications of the ICE), section 4.2.
- <sup>63</sup> Hague Convention V does not provide a clear definition of which goods are covered by the prohibition on military export and transit. Until summer 1942, Switzerland upheld a narrow definition of war material: only goods which could be used directly for military purposes were deemed to war material. This restrictive interpretation did not conflict with neutrality law: on the contrary, it was a neutrality policy decision which was based on Switzerland's broad powers of discretion. On this point, see Schindler, Fragen, 2001 (Publications of the ICE), pp. 96ff. On the historical background, see Forster, Transit, 2001 (Publications of the ICE), pp. 96ff.
- <sup>64</sup> Schindler, Fragen, 2001 (Publications of the ICE), pp. 94ff.
- <sup>65</sup> Schindler, Fragen, 2001 (Publications of the ICE), pp. 101f. On the historical background, see Hug, Rüstungsindustrie, 2002 (Publications of the ICE), sections 5.4, 6.2 and 6.6. See also section 4.2 included herein.

- <sup>66</sup> Schindler, Fragen, 2001 (Publications of the ICE), pp. 103f. See also section 4.2 included herein. On the historical background, see Hug, Rüstungsindustrie, 2001 (Publications of the ICE), section 5.4.
- <sup>67</sup> For other cases, see Schindler, Fragen, 2001 (Publications of the ICE), pp. 105f.
- <sup>68</sup> Between 1941 and 1945, more than 130,000 tons of goods were transported through Switzerland in sealed or inadequately declared railway wagons. On this point, see the table in Forster, Transit, 2001 (Publications of the ICE), p. 85.
- <sup>69</sup> On this point, see Forster, Transit, 2001 (Publications of the ICE), pp. 80ff. and pp. 85f. See also section 4.4 included herein.
- <sup>70</sup> Schindler, Fragen, 2001 (Publications of the ICE), pp. 111f. On the historical background, see Frech, Clearing, 2001 (Publications of the ICE), pp. 119ff. and pp. 195ff.
- <sup>71</sup> Schindler, Fragen, 2001 (Publications of the ICE), pp. 85f.
- <sup>72</sup> Whether a complete stop to the gold trade with Nazi Germany would have been permissible is questionable in terms of the non-partisan principle. See Grossen, Transactions, 2001 (Publications of the ICE), pp. 152ff. and p. 201.
- <sup>73</sup> In particular, the expropriation of private gold in the occupied territories violated international law (Article 46 of the Hague Convention Respecting the Laws and Customs of War on Land of 1907). On the other cases of expropriation which violated international law, see Grossen, Transactions, 2001 (Publications of the ICE), pp. 154ff. See also Mráz, Raubgold, 1998, pp. 212ff.
- <sup>74</sup> The value of the victim gold which can be proved to have been supplied by the *Reichsbank* to Switzerland amounts to 7.2 million reichsmarks: UEK, Goldtransaktionen, 2002 (Publications of the ICE), section 1.5.
- <sup>75</sup> Cf. Grossen, Transactions, 2001 (Publications of the ICE), pp. 180ff.
- <sup>76</sup> UEK, Goldtransaktionen, 2002 (Publications of the ICE), section 3.4. See also Grossen, Transactions, 2001 (Publications of the ICE), p. 183: «[...] si le directoire de la BNS n'a pas su c'est qu'il préférait ne pas savoir et s'il a cru ce que lui disait le vice-président de la Reichsbank, c'est qu'il voulait le croire.».
- <sup>77</sup> Grossen, Transactions, 2001 (Publications of the ICE), pp. 183ff., raises the issue of whether Switzerland could make reference to the state of emergency in order to justify the SNB's gold purchases.
- <sup>78</sup> After the war, the German state was obliged, as part of its reparation payments, to make restitution of or pay the victims compensation for the stolen gold. On this point, see Grossen, Transactions, 2001 (Publications of the ICE), pp. 183ff.
- <sup>79</sup> Grossen, Transactions, 2001 (Publications of the ICE), pp. 198ff. However, the Swiss Government did not recognise the legal basis of the Washington Agreement. It regarded the payment of 250 million francs to its Treaty partners as the Swiss contribution to the reconstruction of Europe. See Vischer, Aspekte, 1998, p. 54. On the issue of the binding character of the Washington Agreement under international law, see section 6.2 included herein.
- <sup>80</sup> Today, rules of international law which are directly applicable due to their significance for the international legal order (e.g. bases of international humanitarian law, prohibition of torture and genocide, etc.) are deemed to be binding international law (*ius cogens*).
- <sup>81</sup> On this case law, see the following section 5.2.
- <sup>82</sup> On the impact of the Emergency Plenary Powers Decree on private law, cf. Giacometti, Vollmacht-enregime, 1945, p. 70.
- <sup>83</sup> On the transfer of cultural assets in and via Switzerland, see Tisa Francini/Heuss/Kreis, Fluchtgut, 2001 (Publications of the ICE), especially chapters 4 and 5. See also section 4.11 included herein.
- <sup>84</sup> Cf. Siehr, Rechtsfragen, 2001 (Publications of the ICE), pp. 132ff. See also Tuor, Zivilgesetzbuch, 1940, pp. 496–497.

- <sup>85</sup> For basic principles, see Stark, Besitz, 1984, pp. 66–82; see also Siehr, Rechtsfragen, 2001 (Publications of the ICE), pp. 134ff.
- <sup>86</sup> Haab/Simonius, Zürcher Kommentar, 1977, Article 714 Rz.. 62. See also Siehr, Rechtsfragen, 2001 (Publications of the ICE), p. 138; Tuor, Zivilgesetzbuch, 1940, pp. 419f.
- <sup>87</sup> Siehr, Rechtsfragen, 2001 (Publications of the ICE), pp. 138f.
- <sup>88</sup> On this point, see section 6.2 included herein.
- <sup>89</sup> «Anyone who, having exercised the due care expected of him under the circumstances, could not be in good faith is not entitled to claim good faith.»
- <sup>90</sup> On this point, see the definition in Hurst-Wechsler, Herkunft, 2000, p. 69: «[...] good faith exists when there can be no accusation of gross negligence in not knowing about a breach of the law. Good faith does not exist if there is actual knowledge of the said breach, or if it is reasonable to expect such actual knowledge to exist.»; see also Tuor/Schnyder/Schmidt., Zivilgesetzbuch, 1995, pp. 63ff.
- <sup>91</sup> Siehr, Rechtsfragen, 2001 (Publications of the ICE), pp. 135f. See also Haab/Simonius, Zürcher Kommentar, 1977, Article 714 Rz. 52ff.
- <sup>92</sup> It follows from this, for example, that a discrepancy between the value of a cultural asset and the low purchase price charged did not necessarily have to awaken the suspicions of the acquirer. This point is made by Siehr, Rechtsfragen, 2001 (Publications of the ICE), p. 144.
- <sup>93</sup> For basic principles, BGE 122 III 4f. (Insurance Company X vs. A.M.). On the development of judicial practice, see Siehr, Rechtsfragen, 2001 (Publications of the ICE), pp. 139ff. (with further references).
- <sup>94</sup> In the Currie Agreement of 8 March 1945, Switzerland had pledged – even before the war's end – to adopt measures for the return of looted assets to their rightful owners. Rappard to Currie, Charguéraud and Foot, 8 March 1945 (DDS vol. 15, no. 391, pp. 986ff.).
- <sup>95</sup> Vischer, Handel, 2001 (Publications of the ICE), pp. 19f. See also Meier-Hayoz/von der Crone, Wertpapierrecht, 2000, especially § 2 Rz. 159ff./200ff.
- <sup>96</sup> On the institutional framework see Lussy/Bonhage/Horn, Wertpapiergeschäfte, 2001 (Publications of the ICE), pp. 47f.; cf. also Vischer, Handel, 2001 (Publications of the ICE), p. 27. On self-regulation from a present-day perspective, see Nobel, Finanzmarktrecht, 1997, especially § 1 Rz. 89ff.
- <sup>97</sup> Vischer, Handel, 2001 (Publications of the ICE), p. 27. On the background, see Lussy/Bonhage/Horn, Wertpapiergeschäfte, 2001 (Publications of the ICE), pp. 185ff.
- <sup>98</sup> Vischer, Handel, 2001 (Publications of the ICE), pp. 27f.; cf. also Hunold, Effektenbörsen, 1949, pp. 121ff.
- <sup>99</sup> Lussy/Bonhage/Horn, Wertpapiergeschäfte, 2001 (Publications of the ICE), p. 220. See also Vischer, Handel, 2001 (Publications of the ICE), p. 28.
- <sup>100</sup> For basic principles, see the decision of the Federal Supreme Court of 2 February 1954 *in re Ammon v. Royal Dutch Co.* (BGE 80 II 53). On this point, see the detailed discussion in Vischer, Handel, 2001 (Publications of the ICE), pp. 34ff.
- <sup>101</sup> For an overview, see Lussy/Bonhage/Horn, Wertpapiergeschäfte, 2001 (Publications of the ICE), section 6.1.2.
- <sup>102</sup> Vischer, Handel, 2001 (Publications of the ICE), p. 28.
- <sup>103</sup> Vischer, Handel, 2001 (Publications of the ICE), pp. 29f.
- <sup>104</sup> On the historical background, see Bonhage/Lussy/Bonhage, Vermögen, 2001 (Publications of the ICE). See also chapter 4.6 included herein.
- <sup>105</sup> On the legal issues relating to «unclaimed assets», see also Aubert/Haissly/Terracina, Responsabilité, 1996, pp. 137ff.; Walder, Fragen, 1997, pp. 130ff.

- <sup>106</sup> Vischer, Handel, 2001 (Publications of the ICE), pp. 48f. On the restitution of looted securities, see section 6.5 included herein.
- <sup>107</sup> See Girsberg, Internationales Privatrecht, 1997, pp. 14ff.; Vischer, Handel, 2001 (Publications of the ICE), pp. 49–51. In this context, the Swiss Bankers Association issued a directive on 8 September 1995 obliging members not to invoke the time limitation.
- <sup>108</sup> Vischer, Handel, 2001 (Publications of the ICE), p. 52.
- <sup>109</sup> Vischer, Handel, 2001 (Publications of the ICE), pp. 53f. (with further references).
- <sup>110</sup> After the Second World War, clients from East European states which had introduced a system of foreign exchange controls had a particular interest in maintaining secrecy. On this point, Vischer, Handel, 2001 (Publications of the ICE), Chapter C.I.6. On the role of banking secrecy, see also Girsberg, Internationales Privatrecht, 1997, pp. 18ff.; Mueller, Wegleitung, 1998, pp. 110ff.
- <sup>111</sup> Cf. Vischer, Handel, 2001 (Publications of the ICE), pp. 54f. and p. 63.
- <sup>112</sup> On this point, cf. Hug/Perrenoud, Schweiz, 1997, pp. 66ff.
- <sup>113</sup> Vischer, Handel, 2001 (Publications of the ICE), p. 58. See also section 6.3 included herein.
- <sup>114</sup> Private international law may be defined as «the body of legal principles which determine which of the various national legal systems shall be applied in respect of cases involving a foreign element» (Schwander, Einführung, 2000, Rz. 55). During the Nazi period, Switzerland's system of private international law was governed primarily by the Federal Law concerning the Civil-Law Relations of Residents and Non-Resident Persons in Switzerland, of 25 June 1891 (NAG), as well as judge-made law. In the broad sense, private international law also encompasses international civil procedure which governs the recognition and enforcement of foreign judgments in Switzerland. The rules of Swiss international civil procedure in the period under review were set forth in numerous bilateral treaties.
- <sup>115</sup> For example, BGE 84 I 119 E. 2, p. 121; BGE 64 II 88 E. 5, pp. 97f.
- <sup>116</sup> Schwander, Einführung, 2000, Rz. 471.
- <sup>117</sup> In detail, Lüchinger, Rechtsprechung, 2001 (Publications of the ICE), p. 72ff. For the activities of Swiss life insurance companies in Nazi territories, see Dreifuss, Geschäftstätigkeit, 2001 (Publications of the ICE), pp. 288ff.
- <sup>118</sup> In a contract of 24 February 1933, Thevag (*Theater- und Verlags-AG*, Zürich) transferred to UFA (*Universum-Film-Aktiengesellschaft*, Berlin), in particular, the film rights to the work «*Die Heimkehr des Odysseus*» (The Homecoming of Odysseus) by Eric Charell. Paragraph 6 of the contract stated that UFA could withdraw from the contract if the director's contract between UFA and Charell could not be fulfilled if Charell was unable to perform his director's work due to illness, death or for some other similar reason.
- <sup>119</sup> Lüchinger, Rechtsprechung, 2001 (Publications of the ICE), pp. 78ff.
- <sup>120</sup> For details see Lüchinger, Rechtsprechung, 2001 (Publications of the ICE), pp. 77f.
- <sup>121</sup> Lüchinger, Rechtsprechung, 2001 (Publications of the ICE), pp. 86ff. For an evaluation of the somewhat ambivalent judgment of St Gallen Cantonal Court *in re Firma Julius Klein & Co. vs. Felix Levy*, see Lüchinger, Rechtsprechung, 2001 (Publications of the ICE), pp. 90ff.
- <sup>122</sup> ZR 39 (1940) no. 95, pp. 193ff.
- <sup>123</sup> Lüchinger, Rechtsprechung, 2001 (Publications of the ICE), pp. 87f.
- <sup>124</sup> This unpublished decision has been entirely reproduced in: *Schweizerische Juristen-Zeitung*, vol. 39 (1942/1943), pp. 301f. For an evaluation, see Lüchinger, Rechtsprechung, 2001 (Publications of the ICE), pp. 91ff.
- <sup>125</sup> Vischer, Recht, 1998, p. 458.

- <sup>126</sup> «The inapplicability arises in particular by virtue of the fact that the Decree – to the extent that it displays a private-law content – violates Swiss *ordre public* in the harshest way». In accordance with Article 11 ZGB, «everyone [has] legal capacity [...]. Legal capacity is one of the most important elements of the personality, and it is enjoyed by the individual in his capacity as a person. This means that all persons shall, on principle, have the same capacity to enjoy rights and perform duties, and that everyone must recognise the other person's legal personality on the basis of equality.».
- <sup>127</sup> On this point, see also Picard, Schweiz, 1997, pp. 173ff.
- <sup>128</sup> § 1 (1) of the Government Ordinance of 21 March 1939 on the Administration and Supervision of Economic Undertakings.
- <sup>129</sup> BGE 68 II 377 E. 3, p. 381 (author's emphasis).
- <sup>130</sup> The decision of the Federal Supreme Court of 14 June 1946 *in re Madeleine Levita-Mühlstein v. Dépt. de justice de police* (BGE 72 I 407) is particularly informative. On this point see Lüchinger, Rechtsprechung, 2001 (Publications of the ICE), pp. 109ff.
- <sup>131</sup> An impressive example is the decision of the Federal Supreme Court *in re Schweizerische Lebensversicherungs- und Rentanstalt vs. Elkan* of 26 March 1953 (BGE 79 II 193). On this point, see section 6.4 included herein.
- <sup>132</sup> For example, even in neutral texts, Swiss officials added the note «Aryan» or «non-Aryan» by hand after individuals' names. See, for example, letter from T.K. to EAZD, 27 September 1944, FA, E 4160 (B) 2001/201. Compiled here and in the following dossier from the EAZW Archives in September 1999 and passed by the Federal Office of Justice to the Federal Archives.
- <sup>133</sup> BS 11, 795ff. Article 1 of this Convention states that in respect of the marriage of foreign nationals, each party's right to enter into marriage is governed, on principle, by the law in force in their home state. A possible loophole arose on the basis of Article 7e (2) NAG, which stated that permission to marry could also be granted without a declaration by the authorities of the home state that the marriage would be recognised. On this point see Lüchinger, Rechtsprechung, 2001 (Publications of the ICE), pp. 105ff.
- <sup>134</sup> FA, E 4160 (B) 2001/201, EAZD to the Swiss Legation in Berlin, 16 February 1938.
- <sup>135</sup> Head of the Justice Department of the canton of Basel City to the EAZD, 15 February 1938, FA, E 4160 (B) 2001/201. The question at issue was whether the German spouse could be prosecuted in Germany for violating the racial laws.
- <sup>136</sup> EAZD to the Swiss Legation in Berlin, 16 February 1938, FA, E 4160 (B) 2001/201.
- <sup>137</sup> EAZD to the Justice Department, Fribourg, 15 February 1940, FA, E 4160 (B) 2001/201. Fribourg refused to approve the marriage, even though the prospective marital partners were able to show that this was necessary for their emigration to Argentina. The Justice Department in Fribourg claimed that they could marry in England instead.
- <sup>138</sup> EAZD to Church Refugee Relief (*Landeskirchliche Flüchtlingshilfe*) in Meilen, 16 February 1940, FA, E 4160 (B) 2001/201. Here too, emigration to Brazil was dependent on marriage. The Church had pledged to cover the travel costs.
- <sup>139</sup> EAZD to Dr. A. Teobaldi, 29 September 1944, FA, E 4160 (B) 2001/201.
- <sup>140</sup> See for example, Forstmoser/Schluep, Einführung in das Recht, 1998, § 9 Rz. 46. On the legal term, see, for example, Dreier, Recht, 1991, pp. 95–116.
- <sup>141</sup> Mayer-Maly is apposite: Rechtsphilosophie, 2001, p. 9: «A legal system cannot dispense with its claim to guarantee justice unless it wishes to create the legal framework for inhuman barbarism». Among many references, see, for example, Dreier, Recht, 1991, p. 8; Hofmann, Einführung, 2000, pp. 25ff.

<sup>142</sup> After the war, the German criminal law expert and legal philosopher, Gustav Radbruch, put forward the natural law thesis that «[...] wherever there is no attempt even to strive for justice, wherever equality, which is the core of justice, is deliberately denied in the making of positive law, the law is not only ‹false law›, it has no legal character whatsoever». Radbruch concluded that in light of its intolerable conflict with justice, Nazi legal injustice should be denied any validity *ex tunc*. On this point, see Radbruch, Unrecht, 1946, p. 346.

## **6 Issues of Property Rights in the Post-War Period**

It was first and foremost the outstanding property rights issues which, by raising the subject of «dormant accounts», rekindled the debate in 1996 about Switzerland's role during the Second World War. As an international centre for asset management, Switzerland had also, since the First World War, been attracting the savings of people who would subsequently become victims of the Nazi regime. At the same time, this financial centre also served a wide variety of German interests. The previous chapter presented some legal aspects of the issues involved and highlighted the tensions arising from the unwavering continuity of (international) private law while far-reaching changes were taking place in Swiss public law. This chapter addresses the post-war period. At the centre are the questions of the way Swiss banks and insurance companies dealt with the property entrusted to them by private individuals and how they interpreted these property rights. What was the attitude of other players in the financial market towards claims for reparations and restitution after 1945 and what measures did the authorities decide to take? How did authority, law, and the economy interact as regards «*Wiedergutmachung*» for the victims of Nazi persecution?

### **6.1 Reparations, Restitution, «Wiedergutmachung»: Concepts and Premises**

Efforts to return looted property and to make individual restitution can be traced back to the wartime period.<sup>1</sup> Already in 1939, shortly after war broke out, plans to this effect were made by Jews in Britain and Palestine. Until this time, the demand for compensation was confined to «small circles», although voices raised with reference to the problem of individual compensation payments were not entirely absent.<sup>2</sup> In 1944 the World Jewish Congress (WJC) published a study by Nehemiah Robinson, who addressed this topic and, among other things, estimated Jewish property in the countries and territories occupied by the Third Reich to be worth 6–8.6 billion dollars.<sup>3</sup> In the same year, an interdepartmental committee established by the US government (the Interdivisional Committee on Reparations, Restitution and Property Rights) published its final report.<sup>4</sup> As far as individual restitution rights were

concerned, it was stated that «individual claimants should look for satisfaction of their claims solely to their national governments». The committee stated its conviction that the governments of liberated countries would «undoubtedly take the necessary steps for invalidating transfers made under duress». Likewise, on the subject of stolen property moved to neutral countries, it stated:

«Every effort must be made to prevent the neutral States from defeating the restitution programme by permitting their territory to be used, in effect, as a refuge for stolen goods».

In the London Declaration of 5 January 1943 on the initiative of the British, the Allies addressed the neutral states and claimed for themselves the general right to declare property transfers invalid. The wording of the warning was as follows:

«The Governments making this Declaration and the French National Committee reserve all their rights to declare invalid any transfers of, or dealings with, property, rights and interests of any description whatsoever which are, or have been, situated in the territories which have come under the occupation or control, direct or indirect, of the Governments with which they are at war, or which belong, or have belonged, to persons (including juridical persons) resident in such territories. This warning applies whether such transfers or dealings have taken the form of open looting or plunder, or of transactions apparently legal in form, even when they purport to be voluntarily effected.»<sup>5</sup>

The Declaration encompassed all transfers of property, irrespective of whether they were the result of obvious spoiling or were carried out within a systematic occupation economy. From the Allied point of view, even the «voluntary nature» of the transfer of assets or the fact that a fair price had been paid for objects of value was not enough to remove the obligation to make restitution. Switzerland must have felt itself all the more targeted by this Declaration as the Swiss National Bank (SNB) had been criticised since 1942 on account of its gold transactions with the Reichsbank. It was easy to see that the Allies primarily had these transactions in mind. When Switzerland continued to purchase large amounts of stolen gold from the German Reichsbank in 1943 and when such transactions were also conducted with other neutral states – with Portugal in particular – the Allies issued a renewed warning in unequivocal language in February 1944.<sup>6</sup> To increase the efficiency of its economic war effort, the USA began to systematically collect economic data. This activity was later supplemented by the

Safehaven Programme, whose aim was to prevent the Nazi elite from moving major assets abroad and reviving the National Socialist Party. Switzerland played a key role here since it was suspected that the Swiss financial centre could be used as a refuge or a «hub» for such transactions. This point was addressed by Commission III (Sub-Committee on Enemy Assets, Looted Assets and Related Matters) at the UN Monetary and Financial Conference held in Bretton Woods in July 1944. The resulting Resolution VI was intended to clarify that accepting looted gold and concealing enemy assets would not go unpunished.<sup>7</sup> Although the British were not as preoccupied by this issue as the US, the Resolution received broad support. It obliged the United Nations «to do their utmost to defeat the methods of dispossession»<sup>8</sup>, and it concentrated increasingly on Switzerland – also in connection with the debate surrounding the Basel-based Bank for International Settlements – BIS (*Bank für Internationalen Zahlungsausgleich*, BIZ) whose dissolution was demanded by Norway – as the most important neutral country from a financial point of view. It was decided to send an Allied delegation to Switzerland to conduct direct negotiations on freezing German assets and on the issue of looted gold. The «Currie Mission», named after its head, Laughlin Currie, arrived in Bern in early 1945.<sup>9</sup> Following intense negotiations, the agreement that emerged on 8 March provided for the restitution of all assets looted under the Nazi regime and moved to neutral territory. Nevertheless, relations between Switzerland and the Western powers remained tense. The counter-demand to abolish the black lists of Swiss companies which had closely co-operated with the Third Reich failed to materialise, as did the unblocking of assets frozen in the US since June 1941.

At the end of 1945, the Paris Conference on Reparations, at the urging of the United States, took up the issue of the extent and way in which victims of the Nazis who had become stateless were to receive reparations. Article 8 of the Paris Reparations Agreement of 21 December 1945 then stated that all non-monetary gold found by the Allied armies in Germany «shall be placed at the disposal of the Inter-Governmental Committee on Refugees (IGCR) [...] for the rehabilitation and settling of victims of German actions who could not be repatriated», and that this should be done as quickly as possible.<sup>10</sup> German assets in neutral countries, i.e., in Switzerland, Sweden and Portugal, were also to be tapped for the same purpose to provide a source of funding for reparation payments. A part of these funds, 25 million dollars, was to be made available to the IGCR. In dealing with these questions, the issue of dormant accounts was also addressed; the concluding passage of the Conference stated:

«Governments of neutral countries shall be requested to make available for [the rehabilitation and resettlement of non-repatriable victims of German

actions] assets in such countries of victims of Nazi action who have since died and left no heirs.»<sup>11</sup>

In this regard, the Washington Agreement between Switzerland and the Western Allies in spring 1946 elicited nothing more than a non-binding pledge from the Swiss negotiators. At that time, the representatives of the Allies appeared to be satisfied with an empty diplomatic phrase, as the return of the looted gold which had been accepted by the Swiss National Bank was uppermost in their minds.<sup>12</sup> However, only six months later the topic again appeared on the agenda. The French-led group of five countries which was charged with implementing the Final Act of the Paris Conference, called on France to continue the efforts aimed at releasing heirless assets for the benefit of the Nazi victims. Jewish restitution organisations followed up the matter in subsequent years. None of these efforts was successful, however, as the attention of the Western Allies was increasingly taken up by the Cold War. Furthermore, the other main objective of the Washington negotiations, the transfer of the German assets deposited in Switzerland to the reparations pool established by the Western Allies, was not achieved despite basic agreement. In this key area for the banks, the Swiss negotiators played for time; the more strongly the Cold War dominated international relations, the more it was possible to revert to the tried and true strategy of bilateral solutions. Nevertheless, the successor to the IGCR, the International Refugee Organization (IRO), received an advance payment of the 25 million dollars promised from the liquidation proceeds of German assets in Switzerland; however, this occurred only after repeated urging and after Sweden had paid in its entire portion. As regards the banks, the replacement of the Washington Agreement as part of the London Agreement in 1952 allowed them to honour the pledge they had always made that German assets could not be liquidated without compensating the owners.

The restitution practice of the US occupation authorities was laid down in 1945 and codified in the Military Government Law 59 of 10 November 1947 which demanded restitution.<sup>13</sup> This formed the basis for the subsequent restitution laws passed in the Federal Republic of Germany. In addition, in October 1945, the WJC together with the Jewish Agency and the American Jewish Conference made restitution claims for the property of deceased Jewish victims who had left no heirs. The Jewish Restitution Successor Organization, established for this purpose, was appointed the official legal heir in the US occupied zone and later acted in the same capacity together with the national Jewish organisations in the British and French occupied zones.

In the context of these post-war developments, we have a wide range of concepts and meanings to deal with. Reparations, restitution, compensation, refund,

«Wiedergutmachung».<sup>14</sup> «Reparations» relates to war and the intergovernmental level. It concerns the victors' claim, backed by international law, for payment of the costs of the war by the losing countries, either in money or in assets.<sup>15</sup> The term «restitution» is used in different ways. In its narrow, precise sense, it means a natural restitution, a *restitutio in integrum* by returning the property (be it a dwelling, a painting or another object of value). After the First World War and especially after the Second World War, restitution based on the protection of private property became an important concept sanctioned by international law. Unlike reparations, a claim for restitution is based on the existing property of any persons whose possessions and valuables of all kinds have been «expropriated», i.e., taken away, stolen or looted. These are generally referred to as «transactions under duress».

The London Declaration of 5 January 1943 confined itself to what is known as «external restitution», i.e., the return of all assets appropriated by representatives of the Nazi regime in occupied territories. Only later did the Western Allies begin to focus their attention on «internal restitution», i.e., the property expropriated within the Reich.<sup>16</sup> The German term «Rückerstattung» was usually used to describe the return of these assets. In all those many cases where a *restitutio in integrum* was not possible, financial recompense had to be paid. In this case, the question arose as to how compensation should be calculated. Was the amount of compensation to be derived from the value of an asset or a work of art when it was expropriated or looted? Or was the relevant market value or the capitalisation value at the time of restitution to be the deciding factor and, if so, how was it to be calculated?

Terminology is rarely innocent; it often reflects the contrast between national and cultural sentiments and sensitivities. French, English and other languages speak of «restitution» when physical objects (for example, a building or a painting) are returned to their rightful owner; «reparation» refers to the compensation of the costs of war or losses of the victors by the defeated, whereby the reparations may be paid either with money or goods. The term «reparations» or «compensation» is also used when it is a question of righting an intangible wrong such as forced labour: the corresponding vocabulary in these languages is quite clear. In German, by contrast, it becomes more complicated. The concept of «reparations» was applied by the Treaty of Versailles in 1919 to the huge amount of financial compensation which the victors of the First World War demanded from Germany as «reparations» for the damage and losses caused by the war. The word formed a nucleus for German efforts at revenge, contributing considerable material for nationalist agitation and resulting in the disastrous consequences of which we are all aware. In the post-war period, «reparations» was therefore a highly emotionally charged word: German usage

replaced it with «*Wiedergutmachung*» (making amends for something; literally «making good again»), which was almost the exact equivalent in meaning but erased the negative memory of an unjust obligation in favour of a positive and legitimate duty. However, this semantic transfer did not go unchallenged. The lawyer Hans Keilson considered this concept of «*Wiedergutmachung*» «fateful» as it tended to substitute material debt for moral guilt. Moreover, other authors, including Norbert Frei observed that former Nazi officials also felt they were «victims» and accordingly claimed «*Wiedergutmachung*» which they in fact received in the early days of the Federal Republic. Conversely, Germans opposed to any form of compensation protested for many years against the contractual arrangements entered into «within the framework of the so-called ‹*Wiedergutmachung*›».<sup>17</sup> Criticism of the term was therefore used against the principle that it defined. The term did not therefore satisfy everyone but it eventually entered the vocabulary of science and politics and has become a fixed element of the German language.<sup>18</sup>

Still, caution is called for: neither «*Wiedergutmachung*» (in German) nor «reparations» or its equivalent in other languages can or should be regarded as a monetary settlement of the past: paying one's debt is neither a substitute for remembering nor for reviewing and probing the past. Today, «making amends» for material injustice and «restoring» of memory are equally important to the kind of justice that is required.

#### **Switzerland in the process of «*Wiedergutmachung*»**

In Switzerland, there were strong objections to the use of the term «*Wiedergutmachung*» after 1945. This became apparent during the discussions of 1962 concerning the «Registration Decree» («*Meldebeschluss*»), the resolution to identify dormant accounts in Swiss banks. Addressing a National Council committee meeting, Federal Councillor Ludwig von Moos (Catholic Conservative People's Party) denied that there was any moral obligation on Switzerland in the sense of «*Wiedergutmachung*». He stated that:

«reference was made here and there in this connection to ‹*Wiedergutmachung*›. This expression is also misleading. Switzerland has nothing to make amends for [*wiedergutzumachen*] either to the victims of Nazi persecution or to Jewish or other organizations and certainly not to the State of Israel. This observation must be stated unequivocally.»<sup>19</sup>

Social Democrat National Councillor Harald Huber, who had proposed the Registration Decree in 1957, took a quite similar tone: «Actually, Switzerland has nothing to make amends for and countries are not entitled to make any

claims.»<sup>20</sup> This indicates that the rejection of a claim for «*Wiedergutmachung*» enjoyed a broad consensus.

From the fact that Switzerland had not been occupied and remained outside the Nazi sphere of control, not a few people deduced that the country had nothing to do with the issue and, even if it had, it would also be entitled to claim compensation for property lost in the war. From this point of view, claims for «*Wiedergumachung*» were to be addressed strictly to the Federal Republic of Germany (as the constitutional successor to the German Reich), which in turn should seek recourse from Swiss judicial entities where the claims could be legally processed.

After 1945, the perception of injustice was only slight in Switzerland. Restitution was provided – as was the case with the Washington Agreement – partially and in response to external pressure. However, people wanted nothing to do with «*Wiedergutmachung*». This rejection also implicitly involved the repression of the close economic ties at all levels between Switzerland and Germany. Criticism of compensation and restitution payments all too readily gave way to anti-Semitic stereotypes: «Jews are only interested in money» is a frequently heard cliché which anew inflicts injury upon the victims and their descendants who are seeking justice. In 1952, Jakob Diggelmann, then president of the legal commission of the Swiss Bankers Association, stated that demands for a Registration Decree on unclaimed (also referred to as «heirless») assets had entered «an acute stage»:

«The Federation of Jewish Communities is not concerned with transferring heirless assets to possible claimants but is endeavouring to establish such heirless property in a special procedure so as to benefit by taking possession of it. The actions of the opposing party therefore constitute a veritable raid on assets lying in Switzerland.»<sup>21</sup>

Yet Switzerland's efforts – for instance in the context of the Federal Council's Decrees on Looted Assets («*Raubgutbeschlüsse*») of December 1945 and February 1946 – are part of the international process of «*Wiedergutmachung*» which commenced in almost all European countries after the war, in which significant time-lags and disparities occurred – as again shown precisely in the case of Switzerland.

#### **From the primacy of reparations to the repayment of pre-war and post-war debts**

Reparations involve the «unilateral transfer of economic assets from the defeated country to the victorious country after a war». <sup>22</sup> Reparations claims are therefore claims from government to government and do not concern the

individual.<sup>23</sup> Reparations do not include the spoils of war (i.e. property won in battle) or restitutions. The concept of restitution in international law relates to «the return of items illegally removed by defeated countries from occupied territories».<sup>24</sup> Restitution as practised by the Allies was governed by Military Government Law 52, issued by the US in the wake of the military advance on 18 September 1944. In its first version, it stipulated that the Military Government would be responsible for examining restitutable property. Article 2 stated that:

«Property which has been the subject of duress, wrongful acts of confiscation, dispossession or spoliation from territories outside GERMANY, whether pursuant to legislation or by procedures purporting to follow forms of law or otherwise, is hereby declared to be equally subject to seizure of possession or title, direction, management, supervision or otherwise being taken into control by Military Government.»<sup>25</sup>

After the end of the war, machinery, ships, railway rolling stock, motor vehicles, holdings in companies, stocks and shares, works of art, looted gold and even livestock, wines and spirits were restituted. The interests of the Allies diverged. Whereas at Potsdam the Soviet Union had proposed a broad definition of the term in order to gain additional opportunities to appropriate and exhaust Germany's economic potential as well as reparations, the USA and Britain were trying to contain restitutions within a certain limit – the former, because they were interested in building up the German economy again, and the latter because they were interested in procuring the greatest possible reparations. All in all, what this shows is that it was difficult (and still is difficult for historical research) to draw a clear demarcation line between reparations and restitutions.<sup>26</sup>

The Allies' demands for restitution and reparations, combined with the establishment of the International Military Tribunal in Nuremberg, were an expression of the same attempt to end the war with the just punishment of the guilty parties. It was the Americans in particular who pushed for the establishment of an international military tribunal to pass sentence on the principal German war criminals in order to call them to account as quickly as possible. This tribunal was established under the London Agreement (by the USA, Great Britain, the USSR, and France). The first of what became known as the Nuremberg trials began on 20 November 1945 and lasted until 31 August 1946. Unlike what happened after the First World War, a deliberate decision was made to accuse individuals rather than states. The trials, which took place in the international spotlight, served not only to punish war criminals but also to shed light on the extent to which the Nazi economy was based on robbery

and looting, and to thereby obtain further evidence for a fair restitution and reparations policy.

Because in the early post-war years the questions of restitution and reparations were predominantly dealt with on an intergovernmental level according to international law, there was a lack of sensitivity towards the position of the individuals who had become victims. During the war years, the question of compensating the victims of Nazi persecution individually was discussed only tentatively between the United States and its Allies in connection with the issue of reparations.<sup>27</sup> In fact, an initiative to assist non-repatriable refugees displaced by the Nazi regime was undertaken shortly after the war ended. Otherwise, however, it was government claims that took centre stage. Whether gold or bank accounts were involved, it was all about «restitution to nations», while «restitution to victims» was only of marginal importance.

After 1946, the Western Allies' interest in reparations abated as they began to provide aid for the people of Europe. They initiated an economic reconstruction programme which was subsequently formalised in the Marshall Plan. In the hardening confrontation with the Soviet Union, the connection between a healthy economy and stable democracy was stressed. For instance, when the Federal Republic of Germany was founded in 1949, there was no more discussion of a reparations agreement. Now, only claims which had existed before 1939 or which had arisen after 1945 in the context of reconstruction projects were the subject of negotiations. Whereas in the former case it was a question of Germany's pre-war debts, the latter mainly concerned the partial repayment of the generous Marshall Plan aid (of which a little over one-third was eventually to be repaid). This shift was connected to the fact that the heading under which Germany made payments did not matter to the Allies. At the same time, having learned a lesson from the First World War, they did not want to impose an excessive burden on the German economy. Instead, they wanted to match the payments to the losers' level of economic performance.

This approach, which was also marked by the intensification of the Cold War, was – as Jörg Fisch observed – accompanied by «discrimination towards the victims to the benefit of the funders». «West-German economic efficiency» was «used to benefit the creditors rather than the war victims».<sup>28</sup> Fund-holders and funders therefore were given privileged status. Friedrich Jerchow pointed out that countries like Switzerland, which had not participated in the reparations debate at all, also benefited from this process. He observed that «ultimately, German reparations from current production were dispensed with in order to satisfy Germany's pre-war creditors, most of whom were domiciled in the US, the Netherlands, and Switzerland».<sup>29</sup> Switzerland's part in Germany's pre-war debts represented 15% of the total.

## **6.2 Restitution Claims in Switzerland: Negotiations and Legal Moves**

Since early 1943 the Allies had repeatedly warned of their intention to undertake the restitution of all looted assets after victory had been achieved over the Third Reich. From this resulted the above-quoted London Declaration of 5 January 1943, the Declaration on Gold Purchases of 22 February 1944, Resolution VI of Bretton Woods in July 1944, and finally the Currie Mission of February 1945. Although repeatedly requested by the Allies to do so, Switzerland's Federal Council had done nothing up to this point in time to bring the trade in stolen or confiscated assets under control. Furthermore, the emergency plenary powers competencies (*Vollmachtenkompetenzen*) which it appealed to extensively in matters of refugee policy, were not used in this area. Although the Swiss National Bank barricaded itself behind its own justifications and regarded the restitution demands of the Allies merely as a demonstration of power by the victors, the authorities now became active in a major problem area, namely that of looted art treasures and stolen securities. These political initiatives, which had come about under enormous external pressure, were impeded by private-sector interest groups, in particular the Swiss Bankers Association.

### **The Currie negotiations: 18 February–8 March 1945**

A report of the Federal Political Department dated 20 February 1945 on financial relations with the US stated that the main purpose of the American blockade, initially limited to the countries occupied by the Axis powers and extended on 14 June 1941 to the remaining countries of continental Europe including Switzerland, was to protect assets whose owners lived in the occupied territories or countries. Now, however, «the focus is on intensification of the economic war against Germany», and «yet another shift in emphasis towards the problem of stolen property from occupied countries seems to be imminent».<sup>30</sup> This supposition was stated at a point in time when the above-mentioned Currie Delegation had already been in Bern for two days to implement Resolution VI of the Bretton Woods Conference and the aims of the Allies' economic warfare and restitution policy. On 7 March, the day before the Currie Agreement was signed, Minister Stucki declared before the Legal Affairs Committee of the National Council:

«The question of Switzerland's co-operation in the fight against handling stolen goods has also been raised. It is required to exercise care to ensure that it does not become a financial centre for future wars.» To Stucki it was

clear that Switzerland had nothing to reproach itself for in this regard: «We have adopted a clean and irreproachable position. It is not our mission to accept and protect war criminals and plunder. Rather, Switzerland will do everything in its power to ensure that property obtained illegally is returned to its rightful owners.»<sup>31</sup>

This statement was in line with the agreement signed on the following day, 8 March, in which the Federal Council stated that it was prepared to freeze and certify German assets in Switzerland:

«The Swiss Government, acting both on its own behalf and on behalf of the Principality of Liechtenstein, affirms its decision to oppose that the territory of Switzerland and the Principality of Liechtenstein be used for the concealment or the receiving of assets taken illegally or under duress during the war. It further declares that every opportunity will be given to dispossessed owners to claim in Switzerland and in the Principality any property found there, within the framework of Swiss legislation as it exists today or as it may be amended in future.»<sup>32</sup>

However, barely three weeks later, the promises made by Switzerland in this agreement were repudiated by an internal circular from the Federal Political Department (*Eidgenössisches Politisches Departement*, EPD), which declared this «veritable plan for economic warfare»<sup>33</sup> by the Allies against Switzerland unacceptable in terms of its neutrality policy. By this time Switzerland was already pursuing a dual strategy which consisted on the one hand of seeking rapid agreement with the Allies, and on the other hand playing for time when implementing practical measures.

#### **Legislation on looted assets, 1945/1946**

In the last few months before the end of the war, the Allied demands on Switzerland – particularly in relation to legislation on the return of looted cultural assets – took on such proportions that the government set about establishing a general legal basis for the restitution of looted assets. However, the legislative process proceeded slowly. On 20 August 1945, an initial step was taken to create a procedure for impounding looted assets. But, instead of establishing effective import and export controls, particularly for works of art, the Federal Council finally decided to introduce no more than an informal reporting procedure. The enquiry into stolen securities and works of art held in safes which was initiated by the Federal Political Department (EPD) as a result encountered resistance from the Swiss Bankers Association, whose legal

commission concluded that investigations should take place exclusively on the basis of concrete information supplied by the Allies. This meant that the promise made as part of the Currie negotiations to take measures to trace looted property was externalised: Swiss institutions would only take action inside the country if watertight information could be supplied from without. To the extent that the concept of acquisition «in good faith» was enshrined in the Swiss Civil Code, they also wanted to forgo any enquiries. An obligation to return looted assets acquired in good faith initially seemed inconceivable. The ultimate effect of this was to prevent any interference by the government in existing private law. Arguments of legal certainty and constitutional legality served to keep appropriate measures from being taken. In July 1945, the Swiss Bankers Association assumed that «anyone receiving money and bearer-securities in good faith may rest assured that he or she will in no way be penalised at a later date».<sup>34</sup> Representatives of the banks expected that securities would, on principle, not be included as looted assets in the special legislation. Adolf Jann, Secretary of the Swiss Bankers Association from 1939 to 1944, realised that the issue of compensation could also lead to a political row within the country. He therefore wondered:

«whether Switzerland should not simply categorically refuse to do anything where securities have been acquired in good faith. After all, people from the former occupied countries who have been looted know exactly who stole or misappropriated their securities and the only right way to proceed would be to take action against the «looters» and include any compensation or return within the framework of reparations claims.»<sup>35</sup>

On 11 August 1945, the official responsible at the Federal Political Department, Etienne Junod, commented on the Swiss Bankers Association in a memo: «The solution that it proposes seems to me to be a typical manifestation of passivity. A wait-and-see policy is the wrong one.»<sup>36</sup> The obstructive attitude of the banks was a problem for the authorities. In the run-up to the Decree on Looted Assets (*«Raubgutbeschluss»*), the Swiss Art Dealers Association (*Kunsthandelsverband der Schweiz*, KHVS) also opposed any extraordinary measures to restitution illegally acquired cultural assets. The art dealers invoked current law, which reflected the «normal» state of affairs. The Association also added that it would have to «forgo the protection of Switzerland as a state of law» if it were to follow the line taken by the authorities.<sup>37</sup> The Association considered there was no justification for sacrificing tried and tested private law on account of «looted art» valued at half a million Swiss francs. In this case, the question of value seems to be a phony one.<sup>38</sup> The Association was more

concerned with preventing any damage to Switzerland's reputation as an art-dealing centre.

The need for the Federal administration to take action increased in the second half of 1945. In the autumn of that year, the Political Department received a list of 77 looted paintings from the Allies;<sup>39</sup> two days later a note was received calling on Switzerland, in no uncertain terms, to establish a special tribunal to hear cases involving looted property. The Federal Council now commissioned Geneva-based international law expert Georges Sauser-Hall to prepare an official report as a draft for special legislation. The authorities also felt they were being put in an even tighter spot by Sweden's speedier action in this regard. In the end, they followed suit with the Decree on Looted Assets, thus facilitating both the restitution of cultural assets and the return of looted securities.<sup>40</sup> On 10 December 1945 the Federal Council put into effect – for the last time on the basis of the expiring right to use emergency plenary powers – the «Decree on Looted Assets concerning Legal Actions raised for the Return of Assets seized in Occupied Territories», which substantially encroached upon the property law aspects of the Civil Code, thereby marking a temporary break in the development of Swiss private law.<sup>41</sup> For the time being, they deliberately refrained from creating an agency which could itself have commissioned investigations. Only with the supplementary decree of 22 February 1946 was the Swiss Clearing Office (*Schweizerische Verrechnungsstelle*, SVSt) tasked with investigating looted assets cases. The legislation which was drawn out until after 1945, illustrates the massive opposition that was ranged against such a step. Frank Vischer wrote in his legal opinion for the ICE of a «reluctance to enact legislation to protect victims of the Nazi regime that would impinge on the codification of private law». The positive side could be seen in the «determination of the courts» during the preceding years «to prevent Nazi legislation from affecting assets located in Switzerland».<sup>42</sup>

The duty of restitution, which applied not only to looted cultural assets but also to securities looted in territories under German control and traded on Swiss stock exchanges and by banks during the war years, now existed irrespective of the good or bad faith of those acquiring them. The Federal Department of Finance (*Eidgenössisches Finanzdepartement*, EFD), which had proposed a general duty of compensation for the government, was disavowed by an administrative working group which restricted the government's involvement to those cases in which a person who had acquired property in good faith was unable to claim compensation from the previous owner. The Decree on Looted Assets created a Chamber of Looted Assets (*Raubgutkammer*) in the Federal Supreme Court (*Bundesgericht*) for the final settlement of disputed cases. The time limit for submitting a claim was set at two years, i.e., until the end of 1947 (originally as little as one year had been considered). This relatively tight time limit

prevented numerous claimants from making claims to the Federal Supreme Court in Switzerland. In addition, anything that could have made the looted assets legislation known world-wide was omitted. The deadline also gave precedence to interests of absolute ownership in Switzerland and to the dictum of «legal certainty» over the claims of the victims of National Socialism. Obviously, this broke the promise made on the occasion of the Currie Agreement of 8 March 1945 that the dispossessed owners would be offered every facility to enable them to regain possession of their assets.<sup>43</sup> The Swiss authorities also failed to comply with the wish expressed by the Allies on the occasion of the negotiations in Washington in the spring of 1946 to find a «simple and economical solution» to this problem which would take account of the «poverty and frailty of these victims».<sup>44</sup>

In addition to a mixture of lack of issue-awareness and of interest on the part of the Swiss involved, the Decree on Looted Assets was also characterised by three additional restrictions. First, there was no right to claim with respect to events that occurred in the years prior to the outbreak of war (i.e., the period of Nazi rule from 1933 to 1939). Second, events which had transpired in Germany, Austria (annexed in 1938), and in the parts of Czechoslovakia annexed in 1938/39 were outside the scope of the Decree. Third, the disputed property had to be in Switzerland. The fact that the pre-war years should have been included was obvious to the Swiss authorities as early as the beginning of January 1946, without this prompting them to rectify the Decree accordingly.<sup>45</sup> In March 1946, the Clearing Office also drew the attention of the authorities to the fact that the restriction to territories occupied during the war would result in injustices, as dispossessed persons in Germany in particular were not entitled to claim. And the restriction to «Switzerland as a refuge» meant that the country's role as a «hub» was neglected.

#### The Decree on Looted Assets

The Decree on Looted Assets (*Raubgutbeschluss*, RGB) constituted a break with the tradition of Swiss private law in that it gave those who had been robbed the opportunity to demand restitution of their property in Switzerland, regardless of the good or bad faith of the current owners (Article 1–3 RGB). The ratification of the Decree on Looted Assets thus temporarily lifted the protection on acquisition in good faith (as established in the Swiss Civil Code). A person entitled to claim was a person who had been robbed or who had surrendered his property as a result of fraud or threat, whereby the loss of property had to have taken place between 1 September 1939 and 8 May 1945 in an occupied («*kriegsbesetzt*», i.e., occupied by the German army) territory or, by way of exception, in Switzerland.<sup>46</sup>

If the current owner (who was obliged to return the property) had acted in good faith, he was, according to Article 4 RGB, entitled to reimbursement of the purchase price from the seller who, if he had also acted in good faith, was likewise entitled to recourse against the seller in question. This chain of recourse only ended with the person who had acquired the looted property in bad faith. The implementation of this system was likely to fail in that the vendor was insolvent or could not be prosecuted in Switzerland. In this case, the court could award the person who had acquired the property in good faith appropriate compensation at the expense of the Confederation, provided he had acquired the confiscated property from a vendor acting in bad faith (Article 4, (3) RGB).<sup>47</sup>

For the two categories of looted assets, works of art and securities, a total of 800 claims from Belgium, France, Greece, Italy, Luxembourg, the Netherlands, Poland, Czechoslovakia and Yugoslavia, for a total of 3.4 million francs, were submitted to the Chamber of Looted Assets. The court hearings lingered on after the time limit for the submission of claims expired at the end of 1947. Most of the individual claims for securities were settled in 1949; the Dutch claims – which had been submitted as a class action – were finally resolved in a settlement, but the negotiations lasted until 1951.

#### **The Washington Agreement and the lump-sum agreement of 1952**

Besides the legislation on looted assets, the negotiations held in Washington between Switzerland and the victorious Western Allies in the spring of 1946 were a direct consequence of the Currie Agreement. The delegation, headed by Walter Stucki, did not include any bank representatives; they assumed that their interests would be protected by the official Swiss delegation and were to have this confirmed in full in the medium term.

The Washington Agreement of 25 May 1946 contained provisions on the two most important issues on the agenda concerning the reparations payments demanded by the Allies: the Gold transferred to the Swiss National Bank by the German Reichsbank and the German assets in Switzerland which had been frozen since February 1945. The Allies' demands for the restitution of looted gold, which at 250 million francs constituted only a sixth of the total gold transactions and a fifth of the total gold purchases by the Swiss National Bank, were settled speedily (see section 4.5). The fact must again be stressed that Switzerland declared this payment to be neither a restitution nor a reparations payment but a «voluntary» contribution to the reconstruction of war-ravaged Europe, a view not shared by the Allies.

As to the far more complex question of the liquidation of German assets, the

advantage for Switzerland was that the Washington Agreement did not lay down any time limits. A play for time now began, which was affected by the Cold War from 1947 and by the newly founded Federal Republic of Germany (FRG) from 1949. Switzerland was fortunate in that even the US soon lost interest in a speedy implementation of the Agreement's provisions. When a new agreement was eventually concluded in 1952, the Federal Republic of Germany played the key role. Switzerland, which a year later had to pay a sum of 121.5 million francs in settlement of Allied claims for the corresponding assets (and paid a further 50 million francs contribution by 1954 in connection with disputes over sequestration), was able to achieve two important objectives. First, the FRG paid 650 million francs for the clearing billion which Switzerland had made available to the Third Reich mainly for the purchase of arms in the years after 1941, and which had long since been written off by most of the Swiss protagonists. Second – and much more important from the Swiss point of view – German assets in Switzerland remained exempt from reparations claims. More than four-fifths of all German owners of assets valued below 10,000 francs were repaid two-thirds of the value of their assets and this – even though tax was deducted – was felt to be a very generous solution.<sup>48</sup> In this way, Switzerland had salvaged the principles of international private law throughout the war years and provided a striking example of liability of Swiss law, and not just with regard to West Germany. In view of society's return to normalcy, which unfolded in the Federal Republic of Germany against a background of rapid economic growth, hardly anyone paid attention to the fact that Nazi perpetrators also began to benefit from their assets again with impunity.

This generous repayment operation for German asset holders was linked to the fact that people, while distancing themselves emotionally and politically from the Nazi regime, did not break off personal relationships with major exponents of the Third Reich and its war economy. In Switzerland, the argument that surfaced immediately after the end of the war was that most of the country's German partners during the war years had been at least «respectable» individuals. Even members of the SS were able to enjoy such a personal attestation of their honour. However, even if the assertion was true in individual cases, it represented a shift of perspective, as those involved had in fact acted not as individuals, but as representatives of corporations or parts of the apparatus of government that served a criminal system. Personal innocence could be presumed only where the person in question could prove that he had refused to comply with orders from the Nazi system. Shortly after the end of the war, it was also clear to the Germans that their conduct would obviously be measured by this standard. Accordingly, they presented themselves as secret opponents of the defeated Nazi system, boasted of their personal contacts with representa-

tives of the resistance, and emphasised the danger they had been in. This applied even to a man like Friedrich Kadgien, who for years had been in a position of the highest trust and charged by the Office of the Four-Year Plan (*Vierjahresplanbehörde*) with moving looted assets into Switzerland.<sup>49</sup> The Swiss authorities went along with this, protected him from the Allies' requests for extradition, and allowed him to leave for Latin America early in 1951 without batting an eyelid. By then interest in the past of these people had declined considerably both in the case of the victorious Allied powers and in Switzerland. Even leading Swiss bankers were making declarations in support of their incriminated German colleagues at this time. In the case of Dresdner Bank, it was not only the relatively harmless and apolitical Hans Pilder who was provided with such a declaration – even Karl Rasche, the bank's extremely militant and nationalistic director, found an advocate in Alfred Schaefer of Union Bank of Switzerland: «On the basis of my personal experience, I consider Dr. Rasche to be an absolutely respectable person for whom I have a very high regard.»<sup>50</sup> These declarations were a kind of dual exoneration as they also stopped any further questions from being raised about Switzerland's role in these types of contacts.

#### **Ordre public and the restitution of victims' assets**

The solution chosen, however, was blind to the fate of the victims. Contemporaries realised as early as 1945 that the extent of the crimes committed by the Nazi regime had called for special legislation that would have impinged on relations governed by private law in order to enable restitution to be made. In this situation, «business as usual» was an attitude that allowed companies and individuals to profit from past injustice and the crimes committed in the name of National Socialism.

In this context, the way the (international private law) *ordre public* clause was handled in judicial practice after 1945 was symptomatic. Although the Swiss courts had consistently invoked it in the years 1933–1945 to deny the Nazi confiscation policy legal recognition in Switzerland, in judicial practice after the end of the war any protective effect of the public order clause – in the interests of the victims of Nazi persecution – was largely blotted out. This applies in particular to the practice of the Swiss Federal Supreme Court in relation to the expropriation of insurance claims in the Nazi sphere of influence. This issue is discussed in further detail below.

In parallel with this, it was the practice of the authorities after 1945 to increasingly reduce the meaning of the Swiss concept of *ordre public* to liability of the law. Whereas the above-mentioned – albeit unsatisfactory – emergency plenary powers decrees were drawn up when looted assets were concerned, there was, for the time being, no similar legislation covering unclaimed assets. This attitude

was also justified by the argument that an unbridgeable gulf existed between the Swiss understanding of the law and that of the victorious English-speaking powers. For example, a report by the Political Department on the Currie negotiations of March 1945 contains the following:

«For minds fashioned by the Latin and Germanic cultures that determine the way we think, and for jurists steeped in the sources of Roman law, texts as imprecise as the Allied declarations of 5 January 1943 and 22 February 1944 or Resolution VI of Bretton Woods – which reflect an infinitely fluctuating legal conception compared with the Cartesian rigour and clarity to which we are accustomed – are extremely dangerous because of the opportunity they offer to make all kinds of interpretations which, if applied to the letter, would impose onerous obligations on anyone who signed them.»<sup>51</sup>

The aim of all these defensive arguments was to prevent special legislation for the restitution of victims' assets. Paradoxically, protection of property was used as a pretext to block a special regulation which would at least have aspired to find a solution to the difficult problem of dormant accounts. The banks assumed that such a special regulation was a «stupid measure» which had to be prevented.<sup>52</sup> In February 1952, Max Oetterli, Secretary of the Swiss Bankers Association, stated that:

«The authorities must realise that stability – particularly in lawmaking, i.e., legal certainty – is vitally important for the development of the Swiss banking industry. Special laws such as the Washington Agreement, legislation on looted assets, the obligation to register, and the freezing of German assets, etc., put this stability at risk. The so-called «invisibles», however, which play such an important part in Swiss trade and monetary transactions, depend to a large extent on the reputation that Switzerland and its governmental and private institutions enjoy at international level.»<sup>53</sup>

Two months later, Jakob Diggelmann informed the Board of Directors of the Swiss Bankers Association that:

«The banks and insurance companies have pointed out that these holdings and deposits are assets that have been deposited in Switzerland on the basis of private contracts and a special relationship of trust. It was not right for the state to interfere in these private contracts. An end should now, finally,

be put to special laws, such as those which were passed in the post-war period, each time damaging our legal system. Otherwise, the economy will never receive the legal certainty it needs.»<sup>54</sup>

In December of the same year, he stated at the working group of the Legal Commission of the Swiss Bankers Association which he chaired that studying the annual report of the Swiss Federation of Jewish Communities (*Schweizerischer Israelitischer Gemeindebund*, SIG) (which presented the restitution project of international law expert Paul Guggenheim) had given him the impression:

«that by way of ethically moralistic tergiversation, a haul on private assets is to be made in gross contempt of our system of public order, the concept of ownership, the ANAG [Federal Law of 1891 on the Residence and Settlement of Foreigners], the standards of international agreements, and the foreign legal provisions until now respected by Switzerland. Such special legislation would therefore be even worse in its legal and practical effects than the legislation on looted assets and the Washington Agreement.»<sup>55</sup>

Statements from banking circles generally show how much the measures that Switzerland was forced to take in the years 1945/46 under pressure, particularly from the Americans, were regarded as a sign of Swiss powerlessness and of how little willingness there was to come to grips with the matter of property law without massive external pressure.

#### **Protection of victims and «Wiedergutmachung» in favour of Swiss victims of persecution**

Failure to act in the area of victim protection concerned not only refugees but also Swiss citizens. Since 1933, in the Nazi area of control, numerous Swiss had fallen victim to the policies of racial persecution, political repression, and forcible medical intervention justified on grounds of eugenics. It is a matter of historical fact that the Nazis generally had little regard for the nationality of the threatened victim groups in carrying out their policy of persecution and elimination as soon as it became clear that a foreign country was not going to persist in intervening on behalf of its endangered citizens.<sup>56</sup> Nazi policy violated principles of international law in force at the time (principle of the «foreign law's minimum standard») and contractual obligations (such as those arising from bilateral agreements regarding residence). The home countries concerned were therefore entitled to claim «Wiedergutmachung» under international law. Switzerland could thus have legitimately reacted to deeds in contra-

vention of international law carried out against its citizens in the Nazi sphere of influence with diplomatic counter-measures, but refrained from intervening on behalf of Jewish and other Swiss living abroad or on behalf of their assets held abroad.<sup>57</sup> It is difficult, however, to obtain a coherent picture of the Swiss government's policy towards Swiss citizens abroad owing to the current state of research.<sup>58</sup>

In terms of the restitution and compensation laws in force in the German occupied zones and later in the Federal Republic of Germany, it was relevant for surviving Swiss victims of the Nazis that the compensation legislation of the 1950s limited the circle of those entitled to claim to a narrow group. Foreigners who did not live on West German territory were exempt from benefits. Thus there was no body to which Swiss citizens could have turned. Although the cantonal and Federal authorities, parliament, and the public discussed the issue of «Swiss living abroad» («Auslandschweizerfrage») intensively in the post-war period, this was primarily understood to mean the sustenance, repatriation, and integration of Swiss living abroad or former Swiss citizens who had married a foreigner if they had lost their means of making a living abroad as a result of the war or had fled to escape the advancing Red Army. This perception distorted the view of differences in the fate of various groups persecuted, and particularly of the racist nature of Nazi persecution. These victims were forgotten and, as a highly heterogeneous group, were edged out in the struggle for aid by the significantly stronger groups of war victims. It was only in 1957 that a law was passed charging the Confederation with compensating the victims of the Nazi regime. This was seen within Switzerland as a measure to contain the damage resulting from the scandal that arose in 1954 when the «J»-stamp became public knowledge. At the same time the passing of this law was also enhanced by the consent of the Federal Republic of Germany to conclude global agreements to compensate the victims of persecution in the formerly occupied Western European and in several neutral countries. For the Swiss government there was therefore no risk of having to provide funds for restitution payments. Even now, no governmental responsibility has been recognised for the lack of diplomatic protection during the Nazi period.

### **6.3 Banking Sector, Dormant Accounts and Frustrated Restitutions**

As regards the banks, the public has focused almost exclusively on the issue of restitution claims and violations of property rights in connection with «unclaimed assets» and «dormant accounts». Dormancy is a term commonly

used by Swiss banks, as many customers sent their money to Switzerland to keep it anonymous. Therefore they did not want any contact that was not initiated by themselves. In the Nazi era, however, dormancy took on a totally different dimension. The assets of customers who belonged to the groups persecuted in territories controlled by the Third Reich became dormant because their owners were deported and murdered. The post-war phenomenon of unclaimed money was a result of genocide. The persecution and despoliation of, for the most part, Jewish people by the Nazis in Germany, and also in the annexed and occupied territories after 1938, involved the forcible closure of foreign bank accounts held by the victims. For this purpose the laws limiting foreign exchange were applied particularly rigorously. The Nazi authorities forced account holders to sign forms requesting the transfer of assets deposited abroad to the foreign exchange banks controlled by them. Often customers were not informed for what purpose and by whom their assets were being used nor did they usually know where they were transferred to. For example, it took the investigations undertaken by survivors or victims' heirs in Switzerland immediately after the war to reveal that the assets they were looking for were no longer available in the banks. However, the rightful claimants would have had to rely on the banks to track down their property and estimate its value.

Although assets transferred to the Third Reich were left out of the inventory of unclaimed assets of Nazi victims in Swiss banks, they were nevertheless part of the restitution claims. Investigators filed some of these claims against Swiss banks while others were supposed to be filed in Germany under reparations legislation (*Wiedergutmachungsgesetzgebung*). However, they were always dependent on receiving information from the banks about the way accounts were surrendered. Some banks gave a factually correct but misleading answer, namely that there was no longer any contact between the bank and the person in question. Others in addition referred to the statutory duty to keep files for ten years and stated that they were unable to provide information on the assets being sought – although relevant documents are still available in the archives today. Although in some cases the banks did inform claimants that the assets had been paid out, they neglected to provide key details, i.e., who gave the instruction and who received the payment.<sup>59</sup> At the end of the 1960s, the Zurich Head Office of Swiss Bank Corporation portrayed the attitude that prevailed among Swiss banks in a «highly confidential» letter, as follows:

«In our experience, there was a very great risk that the requests for information at that time only seemed to be made in connection with German reparations procedures, but were actually to be used to hold us liable for any transfer performed back then. It was asserted time and again that

transfer instructions received from Jewish customers at that time had been issued under duress and were therefore noncommittal for the customers or their legal successors.»<sup>60</sup>

After 1945, the sharp rise in dormant accounts must have made it obvious that an unknown number of people, the majority of them Jews who had deposited assets with Swiss banks, had become victims of the Holocaust. What was to be done with the accounts, deposits and safe-deposit boxes belonging to the people who had been murdered? Who had claims to these assets and under what conditions? Moreover, what happened to assets belonging to survivors of Nazi persecution who, a few years after the war, were living in the «Eastern Bloc», and for whom it was impossible to contact banks in Switzerland? These problems were and are discussed under the notion of «unclaimed assets» and «dormant accounts». The discussion on «unclaimed assets» persisted throughout the post-war period due to claims for restitution by survivors and heirs of the murdered victims, or restitution organisations acting on their behalf. Added to these claims were the restitution efforts initiated under the Five-Power Agreement and supported by France.

#### **Asset dormancy and disappearance**

As already mentioned, the Allies had called on the neutral countries at the Paris Conference on Reparations at the end of 1945 to release assets of victims of the Nazi regime who had died without leaving any heirs. These sums were to be paid out to so-called «non-repatriable victims» in addition to the restitution sums provided by the Conference participants. In spring 1946, at the request of the three leaders of the Western Allies' delegations, Switzerland stated in an exchange of correspondence in the course of the Washington negotiations that it was prepared in principle to assist these efforts.<sup>61</sup> Walter Stucki had initially stated, on a completely non-binding basis, as is usual in diplomatic circles: «Although I am of the opinion that the legislation in force in Switzerland will not be found wanting, I shall not fail to convey your wish to my Government.» This was, however, eventually followed by Stucki's binding commitment to the US, British and French delegations, as set out below:

«On signature of the Agreement of today's date concerning German assets in Switzerland, I confirm that my Government will favourably consider the question of taking the measures necessary to place at the disposal of the three Allied Governments, for the purpose of providing aid, the value of any assets in Switzerland belonging to victims of acts of violence perpetrated by the former German Government, who died without heirs.»<sup>62</sup>

However, the Swiss government failed to inform either the banks or the parliamentary committees of the existence of this document. The banks likewise ignored the problem. The fact that banking secrecy was enshrined in the Law on Banks and Saving Institutions of 1934/35 reinforced the tradition of using private law to protect property in Switzerland. This combination of guaranteed ownership and legally backed discretion (breaches of banking secrecy were punishable under criminal law as an offence requiring public prosecution) was a major impetus for the expansion and the self-confidence of Switzerland as a centre for asset management. The banking system had committed itself – as shown in the chapter on gold transactions – to forming a quasi-autonomous organisation free from government intervention. In the years after 1945, it became apparent how successful the banks were in keeping the state out of regulating the unblocking of victims' assets as time and again it succeeded in putting the government, which ought to have seized the initiative in this matter, in its place.

In February 1947, the Legal Division of the Federal Political Department presented for the first time the draft of a Federal Council's Decree providing for the registration of unclaimed assets in Switzerland. However, six months later, under pressure from the Swiss Bankers Association, the government abandoned the draft law.<sup>63</sup> In a counter-move, the Association conducted its own survey of its members to determine the total value of «unclaimed victims' assets». The voluntary declaration and the assumption by the banks that by playing down the problem (quantitatively) they could prevent the planned Registration Decree in the long term, resulted in only the paltry sum of less than half a million Swiss francs in total coming to light.<sup>64</sup> This poor result can also be explained by the fact that in the early post-war years, the banks totally failed to declare many assets since – depending on the bank's internal definition – an account was considered to be dormant only five, ten, or twenty years after the last contact with the customer. Basically, however, it was the aim of many banks to find as few unclaimed assets as possible. Some banks found it quite in order to give false information. The Union Bank of Switzerland (*Schweizerische Bankgesellschaft*, SBG), for example, reported that it had found no assets at all belonging to victims of mass extermination. However, it can be proved even now that in the course of freezing and reporting German assets in Switzerland in 1945, it had come across customers whom it knew to have been deported by the Nazis and who would therefore also have fallen into the category of assets sought in 1947.<sup>65</sup> During these early post-war years, there was considerable reluctance on the part of the banks to admit that there was any problem. Adolf Jann, General Director of Union Bank of Switzerland and former Secretary of the Swiss Bankers Association, stated in 1950 that «the best solution» would

be «never to mention the entire affair again», but that it was impossible to maintain complete silence in the face of the accusations circulating.<sup>66</sup> This silence was interrupted on the one hand because many survivors of the Nazis' policy of persecution and extermination wanted to find out what had happened to their bank accounts. On the other hand, there were many occasions on which Jewish organisations approached the banks or the Swiss authorities directly to demand the surrender of unclaimed victims' assets.

In May 1954, the legal representatives of the big banks co-ordinated their response to heirs so that the banks would have at their disposal a concerted mechanism for deflecting any kind of enquiry. They agreed not to provide further information on transactions dating back more than ten years under any circumstances, and to refer to the statutory obligation to keep files for only ten years, even if their records would have allowed them to provide the information. However, the subject never disappeared entirely from public discussion.

Throughout the post-war period the banks relied on a combination of discreetly playing down the problem and erecting barriers to investigation: time and again they would bring banking secrecy into play in order to legitimise their reluctance to provide information while at the same time charging high search fees for conducting investigations. Examples show that claimants had to pay 25 francs in the 1950s and as much as 250 francs in the 1960s. Twenty years later a search could cost as much as 750 francs.<sup>67</sup> Because dormant accounts often contained small amounts, these fees frequently exceeded the value of the assets being sought and, together with the routinely charged administrative or other costs, reduced them substantially so that 50% of balances outstanding up to 1999 amounted to less than 100 francs, and as many as 70% of the accounts contained less than 1,000 francs.<sup>68</sup>

Due to the deduction of such fees, unclaimed accounts, deposits and safe-deposit boxes could also disappear in the space of a few decades. The assets found by the ICEP in 1999, whose owners had not come forward by the time the ICE and the ICEP began their investigations, therefore constitute only part of the total. When presenting its findings, the ICEP stated that no information was available on 2,758,000 of the total of 6,858,100 holdings (usually bank accounts) that existed between 1933 and 1945.<sup>69</sup> This means that no assets were listed for more than ten years, either because the balances had been paid out (on the instructions of the customers) or because they had been cancelled by the bank without any instructions from the customer as a result of the erosion of their value. It was the small unclaimed balances that most often disappeared. This usually happened because of a combination of non-payment of interest and the accumulation of bank charges over a prolonged period. If the account had shrunk to a minimal amount, it was cashed in. After ten years the records could

also be destroyed. At the Zurich Cantonal Bank (*Zürcher Kantonalbank*), documents show how, before and during the war, accounts on which no information had been received from customers for a decade were cancelled and cashed in to pay bank charges.

In this process, the banks took account of their customers' legal claims in quite different ways. In the case of minimal amounts (with less than 20 francs and subsequently with less than 100 francs), which usually involved Swiss creditors, payment could be made at any time if the claimant unexpectedly came forward after the liquidation. As recently as the 1980s, the Union Bank of Switzerland issued the following instructions on closing accounts (which subsequently, however, were not carried out):

«The closure is to be effected by charging as many fees, expenses, etc. for different services to the accounts as to wipe out any balances they contain. The fees and expenses to be charged are to be credited to the internal account <SV inheritances>.»<sup>70</sup>

Repeatedly, banks considered transferring all unclaimed assets into their general reserves, but legal considerations usually prevented them from taking such a step. However, evidence exists to prove that this account closure and transfer to reserves actually did take place in certain cases. More frequently, dormant accounts would be transferred to collective (control) accounts and smaller accounts closed out. This meant that all traces of individual accounts disappeared because banks could destroy all records relating to customers whose accounts had been closed out after a ten-year archiving period. This practice only came to an end in December 1996 with the Federal Decree establishing the ICE, which also contained the obligation to conserve files.<sup>71</sup>

There were some cases – the most recent in the 1990s – in which bank employees stole unclaimed assets. Out of fear that such incidents could cause a public outcry, offenders were often not subjected to criminal prosecution. In an actual case in 1990 the Federal Banking Commission (*Eidgenössische Bankenkommission*) went so far as to back the decision by the Swiss Bank Corporation (*Schweizerischer Bankverein*, SBV) to refrain from bringing criminal charges as «the offender was willing and able to fulfil his duty of loyalty within the time required». <sup>72</sup> The vice-director in question had agreed to repay the misappropriated 225,000 francs to the bank.<sup>73</sup> The disappearance of all traces of assets from the Nazi era created a kind of higher level of dormancy: the «dormant account» itself became «dormant». In other words, not only did the banks not have any information on the customers concerned, but researchers were also no longer able to obtain documents on these accounts at the bank during the period

in question. Often, therefore, investigations get nowhere, so that summary sources or sample cases are the sole sources of information on what happened. The conduct of the banks regarding the release of assets of victims of persecution during the Nazi regime was anything but uniform; it is equally difficult to generalise about «the Swiss banks» in terms of «dormant accounts». Despite unifying factors including the powerful tradition of private law, national legislation (banking secrecy), the international convertibility of the Swiss franc, and joint representation by the Swiss Bankers Association, there were also differences in the way the banks dealt with the assets of victims of the Nazi regime. Basically speaking, two characteristics of dormant (and also «used up») accounts become apparent: firstly, the attribute «dormant» refers to a situation in which, although the account existed at the bank, the depositor failed to come forward or was unable to come forward. This means that the relationship between the bank and the customer was interrupted or discontinued. It was no longer possible to ascertain the customer's wishes.

To take account of the exceptional situation of mass extermination by the Nazis, the banks would have had to depart from the requirements they usually made before paying out an account. Only a specific response to the Holocaust, i.e. interpreting the existing legal situation in favour of the victims, would have allowed the assets to be surrendered to legitimate heirs or authorised Jewish successor organisations. However, the banks merely noted that many customers no longer turned up. But assuming as they did that these customers were still virtually in existence, there was no need to take any action. It was the fiction that the missing customers would perhaps turn up again some day and lay claim to the bank's promise to pay that created the problem of dormancy within the historical context of the Holocaust. It is possible to speak of a deliberate classification of assets as «unclaimed» and accounts as «dormant» insofar as banks failed to co-operate actively after the Holocaust in surrendering the accounts, deposits or safe-deposit boxes they held and to assist relatives of murdered customers or restitution organisations.

Invoking private law also enabled the banks to counter any practicable solutions suggested by citing «legal considerations». Legal principles were exploited for corporate objectives in the name of a blind adherence to the letter of the law. The banks' rhetorical efforts to uphold the existing «legal system», guarantee the liability of the law and protect «property rights» on the basis of banking secrecy resulted in depriving owners (as well as heirs and successor organisations) of their rights. This gave rise to the paradoxical situation that both banks and claimants were using the same argument: those who represented the victims of the Nazi regime or, as survivors, were trying to file claims, based their case on property rights – the banks used the same legal basis to support their claim

that they wanted to represent their customers' interests in an optimal manner. In this dispute, however, the banks had an advantage as they alone held all the necessary information on the assets being sought which were not dormant at all, but were securely being retained and administered. By contrast, the claimants usually lacked information as to the location and the nature of the items deposited. This unequal constellation allowed the banks to entrench themselves behind banking secrecy and refuse to give out information if claimants were unable to document their legal entitlement satisfactorily and could not provide sufficient details. A situation was reached where even death certificates were being demanded for people who had been killed in the camps, but in Auschwitz such documents were not issued.

The second characteristic of unclaimed assets and dormant accounts is that the (fictitious) safeguarding of property rights always paid off for the banks in any event. Quite unlike the situation where the bank was the creditor and where – as in the context of the crisis of the 1930s – vigorous efforts were made to save endangered capital assets at home and, above all, abroad, a wait-and-see policy paid off in cases where the banks were debtors, deposit holders or safe-deposit box renters. Often, in the case of dormant accounts, banks would never have to honour their promise to pay. Unclaimed safe-deposit boxes and safeguard deposits generated income from the fees charged and – in the case of interest-bearing assets – commission earnings. The banks lost nothing if the dormancy persisted; on the contrary, the monies entrusted to them that affected the balance sheet continued to improve their interest balance – particularly as the banks usually stopped paying interest on dormant accounts. The two aspects of unclaimed assets and dormant accounts were discussed time and again by the banks themselves. One year after the war ended, Union Bank of Switzerland put the following on record:

«We may be sure that neither the Swiss Government nor the Swiss banks or trust companies are in any way eager to appropriate the heirless or non-disposable Jewish assets being administered or held in safekeeping in Switzerland and thereby enrich themselves by virtue of conditions created by the war. Properly speaking, any move would be welcomed if it allowed an appropriate and humanitarian use to be found for heirless and non-disposable assets. However, this would be subject to the condition that this occur without any legal objections and, more importantly, not infringe upon any property rights. The concept of guaranteed ownership is expressly enshrined in our legal system and the problem can only be solved by fully respecting ownership.»<sup>74</sup>

### **The Cold War and agreements with Poland and Hungary**

With the start of the Cold War and the sealing of the borders between the power blocs, the last recorded home address of many presumed Holocaust victims now lay behind the so-called Iron Curtain. It was reasonable to assume that neither the victims nor their heirs, if they were still living there, would have appreciated investigations by Swiss banks. If the authorities in these countries had known of the accounts, their owners would quickly have been faced with difficulties and confiscation. However, in the case of banks with a large clientele in Eastern European countries, unwillingness and inability now entered into a perfect symbiosis. In particular, the anti-Communist feelings of the banking community should not be underestimated. Many banks suffered heavy losses in their loan business after the Second World War in the course of the expropriation policy practised by these states. Where banks had already had to undertake major write-offs, they were unwilling to make any concessions when it came to accounts, deposits, and safe-deposit boxes. The reticence of the banks was made possible thanks mainly to banking secrecy, under which they were not allowed to provide generous amounts of information. The banks' lawyers were actually quite happy to have their hands tied as this meant that legal issues could be circumvented, categorised as inherent political necessity, and expressed in anti-Communist rhetoric.

A few years after the war, however, something had to be done in relation to customers living in Poland or Hungary. An international agreement required the banks to proceed to expropriation, which created a prerequisite for transferring assets whose owners no longer had any contact with the bank to the political authorities in their former country of residence. Surprisingly, it was now apparently possible to conduct an internal investigation so that a list of dormant accounts relating to these countries could be drawn up. Subsequently, a political deal was concluded, the primary aim of which was to favour Swiss interests in the wake of nationalisation of assets in Poland and Hungary.<sup>75</sup> The agreement with Poland was concluded in 1949 and came into force on 17 May 1950. It dealt with assets

«of Polish nationals who had been domiciled in Poland on 1 September 1939, had given no signs of life since 9 May 1945 and concerning whom the bank had no evidence to suppose that they had survived the war or, if not, had left heirs.»<sup>76</sup>

Some representatives of Jewish organisations in the US described the text of the agreement as «immoral» and the prominent Swiss international law expert and lawyer Paul Guggenheim suggested using such assets to set up a general

humanitarian fund. In 1950, the Swiss Bankers Association discovered dormant Polish accounts worth 598,000 francs in Switzerland. In the 1960s, however, the banks and insurance companies transferred only the small sum of 15,498 francs (of which only 849 francs came from the insurance companies). In 1975, the somewhat more substantial sum of 463,955 francs was paid as a result of the Registration Decree, which had prompted the Polish government to file more wide-ranging claims. A similar agreement was concluded with Hungary in 1950. Of the total amount of 460,500 francs estimated in 1965 to be held in dormant accounts belonging to persons resident in Hungary, the sum of 325,000 francs was finally transferred to the Hungarian government in 1976. The agreement got no or only very little publicity. It was therefore virtually impossible even for heirs living abroad to assert their claims. Neither private property rights nor banking secrecy had been a barrier to the release of these assets.

### **The Registration Decree of 1962**

The Registration Decree, adopted in 1962 thanks to massive external pressure, was meant to provide a genuine solution of the problem that had remained unresolved throughout the 1950s. In its message, the Federal Council stated that such a measure was mandatory because Switzerland «(should) give no cause for suspicion that it intended to enrich itself from the assets of the victims of contemptible events».<sup>77</sup>

As already outlined, the history of this measure did not generate a great deal of hope. Two earlier attempts to settle the problem in 1947 and 1956 had foundered on the concerted resistance of the banks who then conducted their own survey, which produced meagre results. For instance, Swiss Bank Corporation (*Schweizerischer Bankverein*, SBV) indicated in 1956 that it could not state «with certainty» that it had such accounts but there were 13 cases (with a total value of 82,000 francs) where this was probable.<sup>78</sup> Faced with this situation, the Swiss Federation of Jewish Communities proposed that a trustee company be set up to administer unclaimed assets. This the Swiss Bankers Association rejected, arguing that this would breach banking and professional secrecy.<sup>79</sup> The extent to which this concern for discretion was being used as a pretext, however, is evident from the fact that by 1959 Swiss Bank Corporation had quite warmed to the idea of such a project. On the suggestion of Paul Guggenheim, the bank proposed the setting up of a trustee company to the Swiss Bankers Association, but this initiative too was unsuccessful.

The Federal Decree of 20 December 1962 on the Law relating to the Registration of Dormant Accounts followed a motion submitted on 20 March 1957 by the Socialist National Councillor Harald Huber who called for a com-

hensive survey to be carried out and for all «heirless assets» found to be collected in a «fund for humanitarian purposes».<sup>80</sup> Huber repeated the suspicion voiced time and again by critics of the financial centre that, since the early 1930s, on account of increasing exchange control regulations «significant amounts of capital had fled – not only from Germany but also from the countries occupied and threatened by the Axis powers during the Second World War – and had been entrusted to Swiss banks, insurance companies, fiduciaries, lawyers and notaries as well as other people, e.g., business friends».<sup>81</sup> The fact that Huber's motion met with general approval and was successful was also the result of a changed international scene. In 1962, the Eichmann trial in Jerusalem drew international attention to the Shoah; questions about the legitimate claims of survivors, relatives, and restitution organisations could now no longer be passed over in silence.

### **The Registration Decree of 1962**

The Federal Decree of 20 December 1962 obliged all natural and juridical persons, commercial companies, and associations to report any assets whose last-known owners were foreign nationals or stateless persons of whom nothing had been heard since 9 May 1945 and who were known or presumed to have been victims of racial, religious, or political persecution.<sup>82</sup> The definition did not confine itself to the clearly ascertainable concept of dormancy but, in a second part, focused on mere presumption, thereby allowing asset managers a great deal of leeway as regards interpretation. Doubtful cases were to be submitted for verification to the Justice Division of the Federal Department of Justice and Police, which was to be used as a registration office (*Meldestelle*).

If no rightful claimant could be found, an asset adviser as specified in Article 393 of the Civil Code was to be appointed by the guardianship authority in the place where the main asset was located. One year after the adviser was appointed, a presumptive death procedure could be carried out (Article 7). If the procedure found that the entitled person was dead, the succession process had to take place in Switzerland. The succession process had to be confined to the assets located in Switzerland (Article 8).

Any assets whose rightful claimants could not be traced were included in the «fund for heirless assets». The Federal Decree of 3 March 1975 stipulated that two-thirds of the money in this fund was to be transferred to the Swiss Federation of Jewish Communities and one-third to the Swiss Central Office for Refugee Relief (*Schweizerische Zentralstelle für Flüchtlingshilfe*).

In addition to the banks, the Registration Decree of 1962 included insurance companies, fiduciaries, government agencies, and private individuals. The weakness inherent in its implementation was the fact that the key operation for implementing it effectively – i.e., the reporting of unclaimed assets – had been delegated to the banks. Once again the principle of corporate self-organisation was not abandoned; independence, self-reliance and executive autonomy of the banking system remained intact.

This created substantial room for manoeuvre with regard to implementation. Not having to contend seriously with punitive sanctions, the banks were at liberty to choose a wide variety of strategies to solve the problem. The Federal Department of Justice and Police had assured the Swiss Bankers Association as early as January 1950 that «punitive sanctions [would be] avoided» if the matter were settled under Federal law. Rather, it was

«the intention of the authorities to establish a duty to register and eventually, after a prolonged period, also to transfer assets to a government agency but without adding punitive sanctions».<sup>83</sup>

Although such «punitive sanctions» did find their way into the Registration Decree of 1962, these could be avoided through the banks' self-organisation and autonomy in definition of terms. The issue of establishing a minimum sum, above which an account was to be reportable, was disputed: Credit Suisse (*Schweizerische Kreditanstalt*, SKA), Volksbank and Bank Leu were of the opinion that accounts containing amounts below 100 francs should not be reported. Swiss Bank Corporation wanted a minimum limit of 200 francs and Union Bank of Switzerland 500 francs. In the end, the registration office issued a directive that accounts containing over 100 francs were to be reported. However, the low limit meant not only that small assets now had to be reported; rather, it also meant that the disappearance of accounts could be accelerated. For example, in the process of registering accounts covered by the Registration Decree, fees were again charged which, in some cases, were very high (over 500 francs). What is more, small accounts could still be closed out and transferred to collective accounts during this phase.

#### **Auto-supervision and resistance by the Banks**

How restrictively the Registration Decree was implemented by the banks can be gauged by the fact that they ordered a total of 14,186 blank forms but submitted only 1,184 completed forms to the Federal authorities. Credit Suisse only disclosed one-fifth of the assets originally identified as problematic. A total of 46 banks reported 739 accounts containing a sum total of 6,194,000 francs,

of which 1.7 million francs came from private banks. 50 accounts had become worthless by the time they were reported. In 200 cases the banks were able to trace heirs. In short, a whole raft of measures was adopted with the aim of deliberately minimising the results of the investigations. Some accounts had been excluded from reporting by the banks because there was uncertainty about the owner's place of residence or because the bank did not know whether the customer was Jewish or not. In one case, a Jewish customer who was known to have been a victim of Nazi persecution did not fit into the legal categories because he was a Swiss citizen. Customers who died in hospital were excluded because they died a natural and not a violent death. People who died after 9 May 1945 were excluded even if they had been victims of violence and died as a consequence of Nazi mistreatment. One customer who died on 13 May 1945 – i.e., just four days after the cut-off date – in the Dachau concentration camp was likewise excluded.<sup>84</sup> Other assets were not considered because they had been held in the name of a trustee. In general, the banks were unable to identify the beneficial owner of the assets held in the trustee's name.<sup>85</sup> Where trustees did not report of their own accord assets entrusted to them by people who subsequently became victims of National Socialism, these assets probably continued to be managed by the banks in the name and on the instructions of the trustee. Some banks employed experts to ascertain whether or not names were Jewish. However, customers' names were an inadequate indication of possible Nazi persecution.

Theoretically, one method of reducing the number of unclaimed assets consisted of transferring assets to institutions outside Switzerland and consequently not subject to the provisions of the Decree. There is no firm evidence of any such operations having taken place, but sources show that arrangements for the transfer of assets to other countries were indeed considered. In 1950, the managing director of Union Bank of Switzerland, Adolf Jann, suggested transferring unclaimed assets to any institution that was not a bank, as any duty to report assets was originally expected to apply only to banks. The bank had a suitable company in Panama-based Ronac Inc. Ronac was founded in 1939 by the Federal Bank with the aim of providing itself with a transatlantic support structure to enable it to continue its banking business in the event that Switzerland was occupied. The object of the company was «so broadly defined [...], that it could transact practically any kind of business». After the war it had fulfilled its function and was set new goals. From 1952 onwards, Union Bank of Switzerland transferred unclaimed deposits to Ronac as ownerless property. Customers' deposit numbers were preserved so that assets could be identified at all times by the depositor.<sup>86</sup> Union Bank of Switzerland had been gathering dormant accounts into a collective account under the name «Crédit industriel»

as long as 1949. Between 1952 and 1968, UBS used the designation «Ronac» for 144 deposits by customers with whom it had had no contact for more than ten years. However, it included the Ronac deposits in its reports when the Federal Decree of 1962 came into force. Nevertheless, in 1969 the amount of 2,815,912 francs appeared as an «unclaimed asset» transferred to Ronac.<sup>87</sup> From the documents still available today, it is difficult to ascertain for a fact whether the transfer was made to Ronac in order to avoid reporting assets. From a historical perspective, however, it was a mechanism that afforded the bank such options.

Customers who lived in Central and Eastern Europe were disadvantaged by the implementation of the Registration Decree to the extent that the Swiss Bankers Association recommended that for the reasons cited above no attempt be made to locate them.

As far preserving the value of deposits, the banks interpreted it as their fiduciary duty to convert bank accounts into security deposits in certain cases involving wealthy customers with substantial sums. In 1957, Swiss Bank Corporation in Zurich stated that these newly created deposits would be «managed in the interest of the client». The idea was to manage the assets in the interest of customers about whom no further information was available, naturally. As a result of profit-oriented management, these assets increased in value. Here too it was evident that security deposits tended to increase in value, whereas accounts and safe-deposit boxes were prone to disappear through the non-payment of interest and constant charging of fees. In 1949, Union Bank of Switzerland decided to stop paying interest on accounts if it had had no contact with the account holder for more than ten years (however, other foreign customers too stopped receiving interest at that time). In 1957, the Basel Cantonal Bank (*Basler Kantonalbank*) decided to adopt the same procedure for accounts for which no holder's address was known. However, as always, foreign accounts, compared with other accounts in this category, received a low interest rate of one percent. Between 1945 and 1999, Swiss Bank Corporation cancelled a total of 735 dormant accounts because they had been eroded by fees. When the fees for renting a safe-deposit box from the bank could no longer be paid from another account, the safe-deposit boxes would be opened under supervision and the assets sold and used up over several decades. Ten years after discontinuing the worthless safe-deposit boxes, the documents contained therein could also be destroyed.

To summarise, it is apparent that the claims of surviving Holocaust victims were usually rejected under the pretext of banking secrecy and a clear preference for continuity in private law. Over the many years of such rejections, a large number of accounts were reduced to zero or almost.

### **Learning processes of the 1990s**

In the 1990s, the treatment of Jewish (and other) Holocaust victims by the banks again became a controversial issue. In 1999, based on the results of its extensive investigations, the «Volcker Committee» (ICEP), which had been established in 1996, found that of the total of 6,858,100 accounts which the banks had assumed to exist between 1933 and 1945, information was still available on 4,100,000 accounts. Of these, 53,886, or according to the latest estimates 36,132, accounts, possibly belonged to victims of Nazi persecution; 417 of these had been paid out to the Nazi authorities at the time. The lion's share of these accounts were with the big commercial banks (89.8%) while cantonal banks held 8.9% and private banks only an insignificant percentage (1.3%). Of these accounts, 2,726 were «open and dormant», 983 were «closed for dividends» and 1322 «closed for fees». 30,692 accounts were investigated only on the basis of circumstantial evidence, the reasons leading to their closure remain «unknown».<sup>88</sup>

All in all, the investigations by the ICE, which are borne out by the findings of the «Volcker Committee», have made two things clear: first, the volume of the assets of Holocaust victims was much larger than the banks maintained or believed immediately after the war and after the Registration Decree of 1962. The ICEP process also led to a change of view on the part of the Swiss. The banks began to take a critical look at their own actions in the 50 years after the war ended. For example, in 1997 one of the major banks stated that:

«Viewed from today's perspective, our institution's behaviour towards your mother must clearly be described as untenable. Although the refusal to provide any information on the account held by the late Mr. Felix L. may have been in line with the legal view and practice prevailing in Switzerland at the time, the fact that your family's case was proved to be justified was completely ignored. We should like to apologise unreservedly to you and your family and assure you that the attitude manifested in this case in no way reflects our approach today.»<sup>89</sup>

The higher figures that came to light during the investigations in the 1990s, make it clear once again that the Swiss banks had made but token efforts to contact their customers after 1945. This is true even when taking account of the fact that it was very difficult in the years prior to 1989 or 1991 to safeguard the interests of customers whose last known place of residence was in the Eastern Bloc. The banks also consistently attempted to play down the extent of the problem in public.

Second, however, it should also be stated that the pace of growth in the Swiss

financial sector was in no way dependent on the unclaimed assets that it retained. The amounts involved were too small for this. The image of a banking system that built its wealth on assets expropriated from victims of the Nazi regime is not based on the facts. Had the banks proceeded in a proper manner and settled generously all the claims filed by survivors and heirs by taking restitution measures, neither the real capital nor the operational structure required for rapid expansion would have been adversely affected. The improvement in the country's image that might have resulted from introducing special legislation appropriate to the adverse circumstances of the time would probably have increased confidence in Switzerland as a centre for asset management after 1945 still further. Top executives in the banks, however, assumed that they would enhance their appeal to new customer segments by a resolute defence of banking secrecy.

The banking system and the authorities therefore proved incapable of solving the problem of unclaimed assets for five decades after the war. This failure now represented a challenge for a new generation of senior bank executives who tackled it with a view to providing a definitive solution that would be acceptable to all involved. This also came about because the restoration of private property in the countries of Eastern Europe and the former Soviet Union in the course of the 1990s amplified awareness of property rights in general and because the increasing globalization of the financial and capital markets included the Swiss banks. In the course of the past five years the heated debate on the issue resulted – within the framework of an arbitral procedure – in the surrender of assets to heirs who had previously been ignored. The restitution of accounts which had been closed during the Nazi era or in the years thereafter, or the payment of a reasonable amount in compensation, is still in progress.

#### **6.4 Restitution Questions in Relation to Insurance Companies**

The problem of restitution in the insurance sector has been the subject of much less research than the parallel issue of dormant bank accounts. 1998 saw the emergence of the International Commission on Holocaust Era Insurance Claims (ICHEIC or «Eagleburger Commission»), supported by the US insurance supervisory authority, European insurance companies, Jewish organizations, and the State of Israel, which identified a substantial number of insurance policies that had been paid out by Swiss companies to the German authorities. However, the ICE's investigations have taken place independently of the ICHEIC, whose mandate to track down and estimate the number of potential individual claims did not coincide with the objectives of the ICE.

**Table 8: Restitution proceedings against Swiss insurance companies**

Company	Property/circumstances	Complainant	Chamber of Restitution/Judgment	Date
Basler Leben	Mannheim, P 1 3a Acquisition through compulsory auction	JRSO	Mannheim Regional Court Judicial Settlement	23.4.1952
Basler Leben	Frankfurt/M., Mainzer Landstr. 59/63 Acquisition through compulsory auction	Former owner	Frankfurt/M. Regional Court Judicial Settlement	22.12.1952
Rentenanstalt	Cologne, Lindenstr. 52 Acquisition through compulsory auction	URO	Cologne Regional Court Application rejected	16.12.1953
Rentenanstalt	Düsseldorf, Kölnerstr. 44 Acquisition through compulsory auction	Former owner	Düsseldorf Regional Court Application rejected	10.4.1951
Rentenanstalt	Hannover, Engelbostelerdamm 47 Acquired on liquidation	Former owner	Hannover Regional Court Application withdrawn	19.5.1953
Vita	Berlin, Innsbruckerstr. 22 Acquisition through compulsory auction	JRSO	Berlin-Schöneberg Compensation Office Application withdrawn	7.8.1952
Vita	Frankfurt/M., Haus zum Braufels Acquisition through compulsory auction	Former owner	Federal Supreme Court Application rejected (appeal)	28.10.1953

Source: Basler (Leben) Archives 01 000 667, File 32; Rentenanstalt Archives, 2 Files «Rückerstattungsverfahren»; Zürich (Unfall) Archives E 104 208: 25952; Zürich (Leben) Archives Q 105 207:29198:2.

Other claims resulting from the activities of insurance companies had already become the subject of restitution proceedings immediately after the war. First to be dealt with was the return of «aryanised» property and real estate which had been acquired by Swiss insurers as part of their investment strategy. Without exception, this property was situated in the Federal Republic of Germany or West Berlin; these cases were thus subject to the corresponding legislation imposed by the Western Allies, in particular US Military Government Law No. 59. The assets thus dealt with in the early fifties were all cases where the Swiss company held a mortgage on the «aryanised» property. The ICE did not undertake any systematic efforts to uncover similar cases in East Berlin (where the Jewish Restitution Successor Organization claimed three buildings from the Rentenanstalt),<sup>90</sup> in the former German Democratic Republic, in the German Eastern territories within the 1937 borders, or in the occupied countries.

Evidence has been found that already during the war at least one Swiss insurance company was thinking about possible future claims from former employees who had lost their jobs and were in many cases deprived of their pension rights. As already quoted in section 4.10, Swiss Re noted in 1943 with regard to withheld compensation and pension benefits: «These matters may give rise to endless

difficulties in the future.»<sup>91</sup> Such losses of legitimate entitlements must have been frequent, yet no evidence has been found of court proceedings or subsequent payments in the post-war era. Future research could shed further light. There is also the question of whether outstanding claims exist against Swiss companies which insured Jewish property that was destroyed in the pogrom of 9 November 1938, or in other incidents of persecution-related vandalism. Claims of this type raise a host of complex legal questions. The vast majority of the policies affected contained a clause to the effect that losses resulting from «internal unrest» were not insured. Nevertheless, insurance companies – Swiss included – had paid for losses by «Aryan» and foreign policyholders, whereas claims from Jewish policyholders were paid not to the policyholders themselves, but rather in the form of a lump sum to the Nazi fiscal authorities. On 23 April 1952, a decision was taken by the (West German) Federal Supreme Court regarding a pogrom loss. A decisive factor for the outcome of the proceedings was whether the payment to the Nazi authorities was seen as waiving the application of the clause which excluded internal unrest. The Federal Supreme Court found that this was not the case. It found that this payment had been made only «under pressure from the instruments of power»,<sup>92</sup> and that the victims of the pogroms must therefore lodge their claims not with the insurance companies, but with the West German state under the reparations laws.

The most problematic cases involving restitution liabilities are connected with insurance benefits which were paid in full to the Nazi authorities, and with policies where there were no heirs, or where the benefits have remained unclaimed.

#### **Policies paid out to the Nazi authorities**

As already discussed (see section 4.7), a considerable number of insurance policies were paid out prematurely (surrendered) in the second half of the 1930s, mainly at the request of the policyholders, in order to pay taxes or meet legal constraints. Where these payments took on the status of confiscation, they represented a form of «legalised expropriation». In the majority of cases, the policyholders' requests were in fact made under pressure, either of a very direct nature, or in a more general sense as a result of economic necessity brought about by the National Socialists' exclusion policies. The behaviour of the insurance companies varied considerably in the face of this situation. Many of them evidently paid out large numbers of the policies affected without objection, whereas others went further to protect the interests of their clients. From November 1941, all assets – including insurance policies – belonging to German citizens who as victims of persecution were either living outside

Germany at that time, or were deported to be murdered, were confiscated. It was difficult for the companies to judge which of their policies were subject to the provisions. Here, too, the individual companies pursued different policies, and their behaviour varied.

Immediately after the war, on 27 June 1945, representatives of the four Swiss companies which had issued life insurance policies in the Reich discussed in Zurich how they might avoid claims from «Jewish emigrants» for restitution of such confiscated policies. A large part of the discussion was characterised by a decidedly aggressive tone. In a subsequent memorandum, one of the companies concerned, Basler Leben, stated: «Jewish insurance holders aimed to compensate their despoliation by the Third Reich by despoliating Switzerland of its national wealth.»<sup>93</sup>

The value of the insurance assets confiscated by the Nazi authorities and paid out to those authorities directly by Swiss insurance companies formed the theoretical ceiling for the claims for reparations in this area. As regards the extent of these assets, we have at our disposal an internal investigation carried out by the companies in November 1944: this revealed 846 policies, worth 4 million reichsmarks (6.8 million francs). The Basler Leben alone held a share of 744 policies with a total value of 3.7 million reichsmarks.<sup>94</sup>

As assets which could not be physically identified, insurance claims were not registered under the Federal Council's Decree on Looted Assets. The insurance companies, for their part, rejected claims from most of their Jewish clients who were demanding payment of the contractually agreed benefits on the grounds that they had already had to pay out these amounts to the German authorities. There were several court cases, of which the case of Elkan vs. the Schweizerische Rentenanstalt – which came before the Swiss Federal Court – is a typical example.

#### **Elkan: a leading case**

In 1933, Julius Elkan, a practising physician in Munich, had taken out a life insurance policy for 75,000 francs with Schweizerische Lebensversicherungs- und Rentenanstalt. In June 1942, Elkan was taken to the Theresienstadt concentration camp, and his policy was then confiscated by the Director of the Central Finance Office in Munich. In return for a general release declaration, Rentenanstalt paid the surrender value of 21,747 reichsmarks to the German authorities in June 1943. Elkan survived persecution, and lodged a claim in Switzerland to establish that Schweizerische Lebensversicherungs- und Rentenanstalt had not met its obligations under the insurance contract and that the policy was therefore still legally in force.

In a judgement dated 27 May 1952, the Upper Court of the canton of Zurich

approved the claim. However, the Swiss Federal Supreme Court was of a different opinion, ruling in favour of Rentenanstalt and against Elkan in the appeal. In both judgements, attention focused on two aspects in particular. First, there was the question of where the insurance claim was made: which legal system – the Swiss or the German – did Elkan's claim fall under? Second, the courts had to decide how to assess the discharge of the claim under Nazi law from the point of view of the Swiss *ordre public*. The courts came to opposite conclusions on both points.

In its judgement approving the claim,<sup>95</sup> the Zurich Upper Court expressed the opinion that Elkan's claim against Rentenanstalt arose not in Germany but in Switzerland, since the Munich branch of Rentenanstalt was not a legal entity in its own right. According to the «principles of international private law», the German state therefore had no right to confiscate Elkan's policy. Furthermore, the 11<sup>th</sup> Ordinance of the Law on German Citizenship, on which the confiscation was based, was a clear breach of the Swiss *ordre public*, and as such should receive no recognition in Switzerland: «No further justification is needed to show that such a deprivation of rights is totally incompatible with Swiss legal concepts. The legal basis for expropriating the claimant's property cannot therefore be used as the basis for a decision by the Swiss judge.» The court concluded from this that it was appropriate for the – all too compliant – insurance company to be obliged to make two payments.

In its judgement of 26 March 1953,<sup>96</sup> the Swiss Federal Supreme Court approved the appeal by Rentenanstalt. The Court found that making the insurance claim in question subject to German territorial sovereignty did not go against Swiss law; instead, it should be taken into account that the German authorities had in fact brought Elkan's right to claim under their power and thus created sufficient geographical connection to justify the confiscation. On the question of whether the insurance contract should be seen as not having been discharged on the basis of Swiss *ordre public*, the Federal Court also contradicted the Zurich Upper Court. The Federal Supreme Court emphasised the fact that Nazi racial laws were irreconcilable with Swiss *ordre public*. Once the Nazi state had appropriated the Claimant's entitlement, however, it was not reasonable «to ignore the intervention which has taken place and impose on Rentenanstalt an obligation to pay which does not exist, seeing that it had duly complied with its contractual obligations under German law by paying the German Reich in the place of the Claimant». Any other solution would amount to a «deprivation of rights» which «cannot be justified by the fact that the deprivation of rights which the Claimant suffered at the hands of the National Socialist state is unworthy of a constitutional state as understood by the Swiss, and by present-day Germans».

Judges at that time also had problems with the fact that insurance claims were difficult to classify. There was already a dispute over the question of where such a claim was located – in Germany or in Switzerland (the «Question of the *lex rei sitae*»). The answer would be decisive for the conduct of the proceedings since if the Nazi state had appropriated assets which did not fall within its domain this would mean that Swiss insurers had made payments to a third party who was not entitled to them, and would now have to pay the Plaintiff policyholder. The Zurich Upper Court assumed that the claim was located at the company's main head office since the branch had issued the policies «in the name and for the account of, the principal office». The Federal Supreme Court on the other hand thought the deciding factor was the question of which supervisory authority oversaw the branch, and found it «reasonable to accept that the same state should see the claims concerned as falling within its domain, regardless of where the creditors live».<sup>97</sup> This position, which assumes that the Third Reich only confiscated assets within its own domain, now is criticised by lawyers today. Frank Vischer, for example, sees it as «capitulation to the effectively asserted foreign claim to power».<sup>98</sup> Lawyers (then and now) have also criticised the Swiss Federal Supreme Court's view that given the German confiscation did indeed go against Swiss *ordre public*, it was nonetheless inadvisable to «ignore the intervention which has taken place [in other words the confiscation]», because to do so would create an injustice by making the insurance company liable to make a further payment.<sup>99</sup> This has since also been the gist of decisions by the German Federal Supreme Court and the Supreme Court of New York, whilst courts in Belgium (and Luxembourg) and the Ministry of Justice in the Netherlands obliged the Swiss insurance companies to pay out the policy anew.

In the face of judgements which largely went against them, the insured who had been deprived of their rights had to resort to seeking «reparations» in Germany. The West German legislation, based on US Military Government Law No. 59, provided for the reimbursement of «establishable» assets, but did not define exactly what this meant. The courts therefore placed insurance claims in different categories. It was not until the Federal Restitution Law of 1957 that insurance assets were clearly defined as refundable. Alongside the claim for reimbursement, it was also possible to claim compensation from the state. As long as insurance claims were not infrequently categorised as not «refundable», victims were granted, at most, modest personal benefits under the compensation process. Reparations were handled differently in the states which had formerly been under German domination. Whilst in Austria for instance, the practice was more restrictive than in Germany (among other things because liability was shifted to the predominantly German parent companies/head

offices), insurance companies in the Netherlands were obliged to pay the insured, and were then able to recover their outlay from the state.

#### **Non-paid-out life insurance policies («dormant» policies)**

Might insurance companies be holding on to «dormant» policies? Unlike the banks where dormancy became the central problem, there were no anonymous insurance policies and, in all probability, hardly any policies held in trust. The search for insurance policies was therefore much simpler, and this brought both advantages and disadvantages for the victims of persecution. It was easier for the Nazi authorities to seize insurance claims in Germany than to identify bank accounts abroad. In this way, the number of policies could be reduced, but even at the time there were disputes over whether this meant that they had «expired». Moreover, the latest research shows that a significant majority of policies held by potential Holocaust victims were surrendered or given as security even before the beginning of the war.<sup>100</sup> But many of these surrenders were directly related to the persecution of the policyholders: as shown already, many policyholders were forced to fall back on these assets owing to discriminatory economic and taxation measures. Moreover, the monetary value of the policies paid out also found its way into frozen accounts which were later confiscated. It must furthermore be emphasised that, in the last years of the war, many policies were not paid out on maturity.

The precise scale of such insurance policy transactions can no longer be established, but some of the data available today gives an idea of the problem. Research carried out by ICHEIC into German archives came to the conclusion that, out of the 32,300 policies identified to date as the property of victims of persecution, 2,955, or a little over 9%, were issued by Swiss companies. We can assume in general that these were paid out under pressure. As already mentioned, some Swiss companies reported that they had paid the proceeds of 846 policies belonging to Jews in Germany direct to the Nazi authorities. Such figures are merely illustrative, however, since the available documentation remains incomplete, and it is also difficult to tell from a policy whether the Nazis categorised the former policyholder as «non-Aryan». There are good grounds for assuming that members of the Jewish community, who belonged predominantly to the middle classes, invested more in insurance than the national average. In the early years of persecution, interest in this form of financial investment may even have increased, as many Jews tried to make some of their assets as liquid as possible, in the form of insurance policies among other things.<sup>101</sup> There is equally good reason to believe that not all those who were persecuted registered their policies with the Nazi authorities in accordance with the directives of 1938. It is therefore probable that a considerable number of

policies belonging to Jews who remained in Germany were never paid out to those authorities. There is evidence to show, for example, that Schweizerische Rentenanstalt's behaviour towards Nazi demands for information on Jewish policyholders was deliberately slow and uncooperative.

Similar questions arise with regard to many of the occupied countries, both in respect to refugees from the Reich who settled there (who possibly held Swiss insurance policies), and in respect to the local Jewish population.

Another significant problem in connection with insurance policies is that of meeting the policy obligations. Under Swiss contract law applicable to insurance, claims on life insurance policies were subject to a limitation period of only two years after expiry of the policy, and were therefore seen by the companies as no longer relevant. This was an extraordinarily short time period, deviating considerably from the five years allowed under German law.

The small statute of limitations created a mechanism which could prevent the proper payment of policy proceeds, even though insurance lawyers urged that in exceptional circumstances (such as in the case of victims of genocide) this provision should not be applied. A study published in 1940 examined the two-year statute of limitations and commented on the more generous German law: «The fact was considered, in particular, that the rightful beneficiary might not become aware of the occurrence of an insured event or the existence of a claim until it was too late. Cases where the statute of limitations was exceeded without fault will, however, be extremely rare. Nevertheless, where there is undue hardship – such as the time limit may also bring about in other legal spheres – it must be left to the tact and commercial decency of the insurer to relieve the situation.»<sup>102</sup>

There remains the question of what the companies did with the documentation relating to policies where the two-year time limit had expired. Certain documents were retained long after the policy matured, but there are gaps in the records. In many cases, the documents were destroyed over time.

Secondly, there is still the already touched upon problem that insurers also saw their liability as effectively extinguished when they had paid out the surrender value on policies confiscated from Jewish policyholders by the German state. This meant that claims were no longer directed at the insurance companies, but at the German state. Where it was not possible to present such claims in the context of reparations because the policyholders had been murdered, because their heirs did not know they held life insurance or were unable to register the claim for political reasons, for example because they lived behind the Iron Curtain, etc. – entitlement could remain to benefits which were never paid out. Thirdly, the surrender values paid to the German state amounted to less than the full contractual sums, so that even in those cases where payment was made

(wrongly) to the German authorities, it could still be argued that the insurers were left with a liability to pay.

After the war, the search for unpaid policies belonging to war and Holocaust victims produced only limited results. This is not surprising, given that the companies obviously kept strictly to the two-year time limit, even though there were precedents to support more generous treatment of such cases. In 1950, the Association of Swiss Life Insurance Companies (*Vereinigung Schweizerischer Lebensversicherungsgesellschaften*) reported that its members could not find a single policy whose owner had been killed as a result of the machinations of the Nazi regime so that their entitlement to claim under the policy had become «dormant». There were only eight policies where there had been no further contact with the client since 1945, but there was no reason to assume these people had suffered a violent death. In response to the 1962 Registration Decree, against which the companies had been fighting for years, the life insurers initially reported claims amounting to only 264,903 Swiss francs under 60 policies; in 27 cases, it was subsequently possible to identify the heirs. New enquiries by the Swiss Insurance Association (*Schweizerischer Versicherungsverband*) towards the end of the 1990s did not reveal a significant number of additional cases. An initial investigation carried out by the association discovered a total of 112 cases, three of which turned out to be justified on closer examination; these concerned the German branch of Rentenanstalt.

Some cases which can also be compared with the «dormant» bank accounts are the guarantee declarations issued by reinsurance companies domiciled in Switzerland to back up life insurance policies in Central and Eastern Europe in the twenties and early thirties. These gave the policyholders extra security in the event that the policy issuer was unable to pay. Some of these guarantees involved Schweizer Rück, which granted 201 guarantees on life policies issued by the Austrian company Anker, whose clients included a large number of Jewish insured. Other guarantees were granted by Union Genève to 1,034 policyholders with a Polish subsidiary (Vita Warszawa, after 1932 Vita i Krakowskie, after 1937 Vita Kotwica). The majority of these cases, however, concern German subsidiaries in Switzerland, in particular Union Rück, which issued nearly 3,500 guarantees mainly to policyholders in the Baltic region. After the war, only a relatively small number of these cases were reassessed (Union Rück settled 40 cases between 1947 and 1955), and it is very likely that a greater number of justified claims were never presented at all because too little was known about them or because the policyholders or their rightful heirs were groping around in the dark due to the very nature of such reinsurance guarantees.

While the ICE knows the scope of such guarantee declarations, it proved impossible for the ICE, despite the simultaneous investigations being conducted by

the International Commission of Holocaust Era Insurance Claims (ICHEIC), to produce the exact figures on the number or the value of insurance policies concluded with Swiss insurance companies which were never paid out to their legitimate owners. This represents an open issue. Neither did it prove possible to determine either the number of policies that had been sold outside of Switzerland with a special clause stipulating the possibility of their being paid out in Switzerland, or the number of those policies which had been sold to Jews in those countries which were later to be occupied. The extremely daunting task of searching through the enormous inventory of old policies is still a job to be tackled, and the ICHEIC is doing so at present up to a certain degree. Its work is thus limited to a compilation of the names and persons who held such policies, and it is not concerned with an analysis of the insurance company's behaviour.

## 6.5 Restitution of Looted Securities

Until 1943, Swiss banks sold looted securities on the stock exchange for Germany, which in return received urgently needed foreign currency. Only after the Allies warned the neutral countries in January 1943 against dealing in looted goods on behalf of the Axis powers did the stock exchanges and Swiss Bankers Association implement appropriate measures. However, these were by no means systematically implemented, so that a grey market arose, resulting in numerous problems right after the war. In contrast to the bank and insurance assets, securities – similar to looted art – were considered as assets that could physically be restituted and therefore fell under the decree on looted assets outlined in section 6.2.

Hence, any company that had imported securities into Switzerland from Germany and its occupied territories became the focus of events. The Swiss Bankers Association assumed an important role at this time, representing the interests of the financial community and acting as a mouthpiece for the banks concerned. Although it did not appear as a party in the actions brought before the Federal Supreme Court, it did on several occasions take on the task of defending the reputation of banks against accusations that they had acted as receivers of stolen goods. A few months after the war ended, Adolf Jann, managing director of the Union Bank of Switzerland, saw the issue of looted assets as the «acid test for a friendlier and more benevolent attitude of the US towards Switzerland».<sup>103</sup> Jann realised at an early stage that the key issue confronting the Swiss Federal Supreme Court would be whether the Swiss government or more particularly the banks had to fund compensation payments

to claimants. It was in the interest of the Federal Finance Administration, which represented the interests of the Swiss government in court, to trace those banks who had imported looted securities in bad faith lest it become itself the subject of actions for recourse in respect of compensation. The banks, fearful of tarnishing their image, did not want to be found guilty of importing stolen property in bad faith, nor were they prepared to bear the cost of the consequences of special legislation. Even before the Decree on Looted Assets was enacted, Jann believed that

«ultimately it will be the banks in most cases that will be left holding the baby, because they will be accused of acting *<in bad faith>* even if they have purchased the securities from abroad in the usual manner or have negotiated their sale, or accepted the items in question over the counter without affidavits».<sup>104</sup>

However, by the time actions concerning looted securities were concluded in 1951, the Federal Supreme Court had decided in but a single instance that a bank had acted in bad faith. Four of the 25 individual actions were rejected by the court as not entitled to sue; nine claimants withdrew their claims of their own accord, receiving partial compensation from the Swiss government for legal costs.<sup>105</sup> In seven cases, the Federal Supreme Court ordered that the looted securities be restituted to their former owners. In five cases, the defending banks and the Swiss government together paid compensation amounting to just under 30,000 francs as part of a package settlement.<sup>106</sup> The 25 actions from Czechoslovakia (1), the Netherlands (a class action of 760 claimants), Belgium (2), France (5) and Luxembourg (16)<sup>107</sup> amounted to an average contested value of 6,401 francs per suit. The 760 Dutch claimants who brought the class action demanded the return of assets with an average value of just under 700 francs. Only about sixty of these claims involved securities worth more than 4,000 francs.<sup>108</sup>

The sole action in which a bank was ruled to have acted in bad faith did not involve the importation of securities but a deposit transaction. After the war, claimant Laura Mayer, who lived in Eupen in Belgium, demanded back her securities which Credit Suisse had transferred from her portfolio to the stockbroking firm of A. Hofmann & Cie. in 1940. Hofmann sold the securities to Deutsche Golddiskontbank, although the shares should not have been transferred at all because Belgian assets had been frozen. Mayer raised the action because the sale proceeds had never come into her possession. On 21 September 1949, the Chamber of Looted Assets held that Credit Suisse could or should have known that an expropriation had taken place in contravention of

international law and it had therefore acted «in bad faith in terms of the Federal Decree of 10 December 1945 and Article 940 of the Swiss Civil Code».<sup>109</sup> In all other cases in which banks appeared as the defending party accused of trading in looted securities, the Federal Supreme Court did not conclude that the transactions had been conducted in bad faith.

In their defence before the Federal Supreme Court, the accused Swiss commercial banks referred time and again to the example provided by the Swiss National Bank which had done business with the German Reichsbank throughout the war. The banks were not to know, therefore, that dealings in securities with the Reichsbank might turn out to be illegal transactions. In the first action to be heard by the Federal Supreme Court, in which the Luxembourg claimant Nicolas Kieffer was reclaiming five 3% Swiss Government bonds issued in 1937 each worth 1,000 francs, Credit Suisse defended its good-faith acquisition by citing the Swiss National Bank. It claimed to have purchased the bonds from the German Reichsbank in 1941,

«i.e., from a German bank with which all Swiss banks, including in particular the Swiss National Bank, had transacted all regular banking business without hesitation or reservation for the entire duration of the war.»<sup>110</sup>

Eventually a compromise was reached in this first action concerning looted assets. On 10 November 1947 – well before the time limit for the filing of claims had expired – the Federal Supreme Court concluded the case with an amicable settlement between the claimant, Credit Suisse, and the Swiss government which was being sued for compensation. The Federal Supreme Court did not find anything out of the ordinary in the Credit Suisse transaction and stated that in 1941 it would not have been reasonable for a bank to refuse «a German partner which was also a bank, a normal stock market transaction».<sup>111</sup> The claimant reduced his compensation claim from 5,000 francs to 3,000 francs with the Swiss government and Credit Suisse contributing between them the sum to be paid to the claimant.

In the case of the looted assets claim filed by Jeanne Wilhelmy-Hoffmann, the Swiss Bank Corporation also based its argument on a reference to the Swiss National Bank. It had no reason to doubt the legal provenance of the securities as it had acquired them from the Reichsbank. However, the court did not accept this line of argument as the securities had only been acquired in 1943.

«In contrast to the National Bank's gold transactions, the disputed purchase of securities was not required by the national interest [...], in this

purchase only the private business interests of the Swiss Bank Corporation were at stake.»<sup>112</sup>

The Federal Supreme Court emphasised that at that point in time the Swiss Bank Corporation would have had cause «to act more carefully than it did».«<sup>113</sup> Despite clear indications that the bank had not acted in good faith, the Federal Supreme Court nevertheless concluded in November 1948 that: «It does not necessarily follow from all of this that the Swiss Bank Corporation should be regarded as having acquired the disputed securities in bad faith.»<sup>114</sup> In the Wilhelmy-Hoffmann case, the Federal Supreme Court had therefore found a model for subsequent actions concerning looted securities and a way of inducing the banks to pay compensation without finding them guilty of acquiring property in bad faith.

A distinct sharing of costs now became generally apparent. As far as Swiss securities were concerned, it was assumed from the outset that they had been acquired in good faith. In this case the Swiss government had to assume the financial burden of paying compensation. For banks that had imported foreign securities, a compromise formula was chosen: «acted in good faith, but still liable to pay compensation». The Federal Supreme Court considered that it would be of benefit for subsequent legal actions if «the importer» were deemed «to have acted in good faith, if only for honour's sake». Although the banks concerned were made to pay, they had their «honour» respected in return. The Swiss Bank Corporation criticised «the refusal to pay any compensation to the importer out of the Federal Treasury», but interpreted the outcomes of these cases as a negotiated settlement:

«As is known, this is based on an understanding between the Federal Supreme Court on the one hand and the Federal Department of Finance and the Federal Political Department on the other, of which the two latter have expressed the specific expectation that the Federal Treasury will not be involved in compensation payments resulting from the actions concerning looted assets.»<sup>115</sup>

The further unfolding of the looted assets cases and in particular the two examples of Kieffer and Wilhelmy-Hoffmann show that the Federal Supreme Court was not overly interested in determining which banks had undertaken the transactions involving looted securities in bad faith and which had done so in good faith. Instead of its traditional job of judging cases, the Court instead assumed more of an intermediary role between the claimants, the banks, and the Swiss Confederation. It achieved this objective of mediation by concluding

as many cases as possible by amicable settlement. The waiver of legal costs was supposed to motivate claimants to proceed in this way. Even the 760 claims filed by Dutch claimants in a class action by a Dutch governmental assistance organisation for missing or murdered persons were settled amicably by the Federal Supreme Court. In a joint statement founding their claim, the Dutch demanded the return of securities valued at 1.7 million francs in accordance with an evaluation made by Federal Supreme Court Judge Georg Leuch in June 1948. In March 1949, Leuch was still assuming a litigation value of almost 1.3 million francs for the forthcoming settlement negotiations. In the meantime, many claimants withdrew their claims. It was only after lengthy negotiations that in 1951 the Swiss government stated that it was prepared to pay the Dutch claimants the sum of 635,000 francs. The banks contributed 200,000 francs to this sum but – apart from the Federal Bank – they demanded an acknowledgement of good faith. They were not a party to the settlement negotiations and refused to make any acknowledgement of guilt. The Swiss Bankers Association explained the benefits that resulted from contributing to the settlement, as follows:

«If the contribution of 200,000 francs by the banks to the settlement sum of 635,000 francs to be paid by the government prevents political repercussions on the banking industry, it is not only the three big banks that will benefit, but all banks.»<sup>116</sup>

In the context of the Dutch claims, only the Federal Bank acknowledged having imported looted securities in bad faith. It eventually paid half of the banks' contribution to the settlement sum, but observed that this contribution did not reflect the true circumstances. In fact, the Federal Bank, which had long been known to import looted securities, was made the scapegoat to avoid finding all the importers of looted securities.

The fact that no systematic search for the importers of looted securities was ever conducted in Switzerland after 1945 was to be attributed both to the attitude of the Federal Supreme Court and to a whole series of interventions by the banks, which were designed to be a damage limitation exercise in the interests of Switzerland. Already in the supplementary Federal Council Decree of 22 February 1946, the banks had secured some relaxation of the rules in this regard. Under this Decree, they now only had to register as looted assets any securities appearing in a list published by the Federal Political Department on the basis of clarifications by the Swiss Clearing Office emanating from enquiries from abroad. The Federal Council Decree of 10 December 1945 had stipulated that all known looted assets deposited with the banks had to be registered as

such. Although as part of the settlement with the Netherlands the banks had indicated their willingness to conduct an official enquiry with the aim of tracing the importer banks, Federal Supreme Court Judge Leuch now dispensed with the idea of a systematic enquiry. In this way, many cases were resolved by amicable settlement at the Federal Supreme Court before they had become transparent through judicial investigation. Leuch certainly saw this as an advantage since «reaching a settlement (...) keeps the fundamental aspect of the case in abeyance». <sup>117</sup> The Federal Supreme Court justified this by describing the Decree on Looted Assets as a «not entirely unobjectionable separate settlement». <sup>118</sup> It was never intended that this «special right» be applied. Voices were raised in the Federal Administration, convinced that Leuch conducted the looted assets actions from the Netherlands in a partisan manner to favour the banks:

«He [Leuch] now seems to have got it into his head to settle this looted assets case at the expense of the government and will not hear of involving the banks, which would be an obvious move to anyone familiar with the case. He does not shy away from dishing up the most blatant untruths in his efforts.» <sup>119</sup>

The importers of looted securities were therefore never named – let alone convicted. Whereas in the winter of 1945 the main concern was not to name any guilty parties, by 1950 the banks were showing a temporary willingness to hold an enquiry as they wanted to «normalise» international trade relations as quickly as possible.

Consequently, it can be stated that the Decree on Looted Assets offered advantages over the existing laws as laid down in the Civil Code insofar as it made it easier to return looted securities that had turned up in Switzerland. Nevertheless, it has been established that the number of looted securities reclaimed in court was far less than the number that had turned up in Switzerland during the war. It can also be stated with certainty that the relatively small number of claimants either did not receive all their securities back or received compensation below their value. Only those who were able to prove the theft and sale of their property in Switzerland stood a chance of regaining their property. Many owners had died, learned too late – or not at all – of the possibility of filing a claim for restitution, or were unable to pay the fees involved in submitting a claim for restitution. Furthermore, the legislation concerned only securities that had been stolen as of the outbreak of the war and in the occupied territories. In 1946, the Swiss government estimated the value of the securities that had turned up in Switzerland and which had possibly been stolen or sold

under duress to be between 50 and 100 million Swiss francs.<sup>120</sup> However, by 1952 less than one million Swiss francs had been returned.

## 6.6 Restitution of Looted Cultural Goods

The entire restitution process in the range of cultural assets was confined to those objects stipulated by the British art protection officer Douglas Cooper and placed on a list of 75 items (later increased to 77) which was officially handed over to the Swiss authorities by the three Western powers in October 1945. Nineteen objects were originally British-owned, one Dutch-owned, and the remainder French-owned. With his records, Cooper laid the foundations for Swiss restitutions after 1945. In view of the evidence available, the implementation of a «Decree on Looted Assets» could no longer be avoided. The Swiss Federal Council, however, saw no reason to order a search for further looted pieces of art on its own initiative. After the war, not a single work was restituted that had not already been tracked down by Cooper. Moreover, the efforts of the French art dealer Paul Rosenberg show that in view of the inactivity of the Swiss authorities, claimants started to act on their own but with the risk that out-of-court settlements would bypass the test cases which the Allies had been striving for. The Swiss authorities would also have preferred to settle even the major looted art case involving the Gallerie Fischer «amicably». The Swiss Bankers Association did not want individual banks to be burdened with conducting their own investigations, it wanted to wait for concrete enquiries or claims from abroad:

«The contents of closed deposits are not known to the banks. What is inside a bank's vaults is generally packed and sealed, with the result that it is not possible to provide the accurate description of the item that is required. Also, bank officials would hardly be suitable for drawing up this kind of inventory.»<sup>121</sup>

As could be expected, the late deployment of the banks' own clarifications had an effect on the results of the investigations. In a letter to the Federal Political Department dated 22 July 1946, the Swiss Clearing Office wrote that it was quite possible not only for documents but also for objects to have disappeared from 1943 onwards, especially once Cooper and Rosenberg had begun their search for looted art in 1945. Objects could be sold abroad illegally, withdrawn from exhibitions, and hidden in bank safes. The Clearing Office, for example, had not started its investigations into looted art at the Galerie Fischer until early

summer 1946.<sup>122</sup> What is more, it had no expert staff such as art historians and art dealers.

#### **Looted assets cases in the years 1946 to 1953**

During the two-year period for filing claims, five male and two female claimants appeared before the Federal Supreme Court with restitution claims concerning cultural assets.<sup>123</sup> The proceedings brought by Paul Rosenberg, Paule-Juliette Levi de Benzion, Alfred Lindon and Alphonse Kann were successful for the claimants, while others had partial success (Alexandrine de Rothschild) or none at all (Alexander and Richard Ball and Goudstikker/Duits). Below is a summary of relevant claims brought before the Chamber of Looted Assets (Table 9).

The «legal defence mechanism» used by the defendants in the restitution proceedings followed the same pattern: first, the claimants' restitution claims would always be initially disputed; second, doubt would be cast on the binding nature of the Decree on Looted Assets, and, third, the removal of the paintings by German military or civilian authorities and the identity of the paintings would be called into question. The arguments advanced by the lawyers reveal a concept of jurisprudence that did not question the validity of Nazi law. The policy of looting adopted by the German occupying power was, as it were, deemed to be lawful.

The group of claimants before the Federal Supreme Court included only well-known art collectors and dealers. Moreover, only paintings that had been seized in France were restituted. A painting from a Dutch collection was reclaimed without success: it had not, like those in France, been seized by the Einsatzstab Reichsleiter Rosenberg (ERR) or the *Devisenschutzkommando* but due to «Aryanisation» in the Netherlands and a subsequent sale, ended up in the hands of the art dealer Walter Andreas Hofer and Goering respectively. There were many reasons why, apart from two exceptions, only paintings and drawings were the subject of claims. As mentioned, Cooper only searched for paintings and drawings, and even the international art trade was not particularly interested in other cultural assets. Moreover, classic works of this genre in particular are readily identifiable and recorded in the specialist literature.

Of the 77 paintings and drawings on Cooper's list, not all were returned under a court ruling although this was stated time and again.<sup>126</sup> One painting was returned in an out-of-court settlement<sup>127</sup>, four paintings were not the subject of an action in the Chamber of Looted Assets<sup>128</sup>, another painting was not restituted despite legal action<sup>129</sup>, and another was found not to match the one being sought once the claim had been filed.<sup>130</sup> Therefore, of 77 paintings and drawings, 70 were restituted as per judgement.

**Table 9:****Restitution claims involving cultural assets before the Chamber of Looted Assets<sup>124</sup>**

No.	Claimant	Defendant	Objects	Date of action	Result of action
R 3	Paul Rosenberg	Theodor Fischer (23), Fritz Trüssel (1), Emil Bührle (6), Berta Cominx-Girardet (1), André Martin (2), Alois Miedl (4), Henri-Louis Mermod (1) und Pierre Dubied (1)	39 paintings and drawings	8.10.1946	Restitution of all objects as per judgement* of 3 June 1948
R 5	Paule-Juliette Levi de Benzion	Emil Bührle (2), Theodor Fischer (5), Ida Böniger-Ris (1), Arthur Stoll (1), Firma Ursina (1), Pierre Dubied (1), Paul Jörin (1)	12 paintings	24.4.1947	Restitution of all objects as per judgement of 15 December 1948
R 9	Alfred Lindon	Theodor Fischer, Emil Bührle, Alexander von Frey	3 paintings	3.7.1947	Restitution of two objects as per judgement of 15 December 1948 <sup>125</sup>
R 10	Alphonse Kann	Theodor Fischer (10), Emil Bührle (3), Fritz Heer (1), André Martin (1)	15 paintings	5.8.1947	Restitution of all objects as per judgement of 7 July 1949
R 16	Alexandrine de Rothschild	Emil Bührle (1)	Van Gogh, «Paysage»	13.11.1947	Restitution of object as per judgement of 5 July 1948
R 17	Alexandrine de Rothschild	Alois Miedl (1)	Cézanne, «Villa au bord du lac»	13.11.1947	Restitution of object as per judgement of 24 June 1948
R 18	Jacques Goudstikker/Gebr. Duits	Alois Miedl (1)	Jan Steen, «Die Hochzeit von Canae»	15.11.1947	Claim withdrawn on 1 February 1951, ruling* given on 5 February 1951
R 22	Alexander und Richard Ball	Hans Wendland / Fritz Fankhauser (2)	Two corner cabinets	22.12.1947	Claim rejected on 13 October 1948, ruling given on 14 October 1948
R 35	Alexandrine de Rothschild	Charles Blanc (1)	Portolano	31.12.1947	Claim withdrawn on 2 December 1948, ruling given on 4 December 1948
<b>Total</b>	<b>Claimants: 7</b> <b>Cases: 9</b>	<b>Defendants: 19, of whom 16 were Swiss</b>	<b>Objects claimed: 75</b>		<b>Objects restituted: 70</b>

\* A formal distinction is made between a judgement and a ruling, but will not be discussed in greater detail here.

Source: compiled on the basis of files in the chamber of Looted Assets at the Federal Supreme Court, Lausanne

The 77 paintings on Cooper's «looted art list» were found on the premises of 19 people. At the end of the war, Theodor Fischer and Emil G. Bührle owned the most paintings, 39 and 13 respectively, while all the other owners mostly had one painting: half a dozen private collectors from industry such as Arthur Stoll, the firm Ursina AG in Bern/Konolfingen, Pierre Dubied, Henri-Louis Mermod<sup>131</sup> and Paul Jörin, a few professional art dealers such as Albin Neupert

and Willi Raeber, and casual dealers and collectors such as Alexander von Frey, André Martin and Max Stöcklin. It can thus be seen that it was not only the professional art trade that was involved in the purchase of looted art, but also amateur dealers and collectors. At a time of uncertainty and crisis, several individuals had taken advantage of the circumstances and viewed the trade in Impressionists on the Swiss art market as an opportunity. An analysis of actions for recourse shows which players were involved in the «looted assets» trade. The Federal Supreme Court was mainly interested in the issue of whether those involved had acted in good or bad faith. It either ignored or deliberately excluded other questions, such as that of whether Swiss art dealers had acted directly on the Paris art market during the German occupation.<sup>132</sup> The finance authorities presented substantial evidence to prove that Bührle and Fischer had acted in bad faith. By contrast, the Federal Supreme Court decided differently and deemed all purchasers to have acted in good faith, and entered into a «fishy» compromise in the case of Fischer in particular, in that it drastically reduced the sum to be paid in compensation.

**Table 10: Compensation payments by Switzerland concerning cultural assets (in francs)**

	Outcome of suit	Claims	Settlements	Payments
Theodor Fischer	25 June 1952	1 123 768		265 259.92
Emil G. Bührle	5 July 1951			16 943.20
Albin Neupert	26 March 1952	15 000	12 000	8 993.15
Alois Miedl	19 February 1951	400 000	150 000	–
<b>Total</b>				<b>291 196.27</b>

Source: FA, E 2001 (E) 1969/121, vol. 209, claims on the Swiss government from looted goods trials, no author, no date.

The Swiss Confederation was at the end of the recourse chain as German vendors such as Hans Wendland and Walter Andreas Hofer could not be prosecuted. The finance authorities had intended to turn for compensation payments to the blocked assets of the German vendor who had acted in bad faith.<sup>133</sup> As neither Wendland's nor Hofer's assets were found by the Clearing Office, the authorities arranged for a sum of just under 300,000 francs to be repaid by the Federal Republic of Germany in 1958.<sup>134</sup> This recourse had not been provided for in the Decree on Looted Assets, but was subsequently negotiated by Swiss diplomats. Switzerland thereby extended the recourse chain away from itself so as not be left with all the costs. Its success not only whitewashed «Switzerland the art trade centre», but also «political Switzerland», which had of necessity been involved in the actions for recourse.

### **Restitution claims after 1947**

After the deadline for filing claims had expired at the end of 1947, several mostly unsuccessful restitution claims were made. A good example is the attempt made by the Galerie Bernheim-Jeune in 1957 to get back from Switzerland one of its paintings, «Nature morte au bouquet de fleurs» or «La Vénus de Cyrène» by Pierre Bonnard. Seized during the German occupation the painting has been on view in the Kunstmuseum Basel since 1956.<sup>135</sup> In 1998, agreement was reached between the Bernheim-Jeune heirs and the Museum on where the painting should stay – it can still be seen in Basel today.<sup>136</sup>

In June 1957, the French Embassy informed the Federal Political Department that it had tried in vain to recover Bonnard's painting «La Vénus de Cyrène» from the Kunstmuseum Basel. The French Education Ministry therefore filed an official claim for restitution.<sup>137</sup> At the request of the Federal Political Department, Museum Director Georg Schmidt made the following statement:

«As the Bonnard still life in question was not purchased by the Art Museum, but was a bequest made to us, I have made enquiries to the donor and am authorised to make the following announcement. The donor, Mr. Robert Hess, Hotel Jura, Basel, in his capacity as executor of the estate of the Basel artist Esther Mengold purchased the painting in 1955 from the Galerie Ernst Beyeler, Bäumleingasse 9, Basel, and transferred it to the Museum as a bequest of the Esther Mengold Foundation. I am not authorised to make any further statements.»<sup>138</sup>

The Federal Political Department now tried to directly contact Robert Hess, the President of the Esther Mengold Foundation, but he was also unable to provide any further information:

«As President of the ‹Esther Mengold Foundation› I bought the painting on 25 November 1955 at the public exhibition of the Galerie Beyeler in Basel and then donated it to the Öffentliche Kunstsammlung Basel as a bequest of the Foundation. I personally know the Galerie Beyeler very well. It has an excellent reputation in Switzerland and internationally. I therefore did not have the slightest reason to question the Galerie Beyeler about the provenance of the Bonnard painting. As always, I am thus convinced that the purchase of this painting was completely in order. As to the manner in which this Bonnard painting came to be in the Galerie Beyeler, I am sure the gallery itself is best placed to provide any information.»<sup>139</sup>

Beyeler in turn stated that he had purchased the painting from a private individual in Switzerland in 1955 «who himself had bought it from a Paris collector in the proper manner». «All the previous owner knew», continued Beyeler,

«was that the French owner informed him that the painting had been sold by Bernheim during the war. It is well known that the gallery had sold various paintings during the war to friendly galleries and collectors».<sup>140</sup>

The Bernheim-Jeune family did actually sell paintings themselves during the war, but from Lyons or Lausanne. However, if the Paris gallery sold paintings, the sellers were not members of the Bernheim-Jeune family, but Charles Montag or Eduard Gras.<sup>141</sup> Beyeler had proposed to the Federal Political Department that he himself would obtain the legal details. The Department dissuaded him from doing so, as it was up to Bernheim-Jeune themselves to find out about their rights. On 4 September 1957, it replied that a claim could be filed through the normal legal channels.

«The action taken by the Galerie Bernheim seems questionable as it sold several well-known paintings, which are also in different hands today, to known buyers during the war precisely to pre-empt their removal and is now trying to get them back – presumably because the value of these paintings has increased since then. In other such cases, however, it has already been defeated in court.»<sup>142</sup>

On 4 December 1957, the French Embassy advised that the painting had not belonged to the gallery, but had been part of the private collection. This emerged from the written evidence provided by contemporary experts.<sup>143</sup> Other paintings from the private collection had been restituted during the post-war period, and therefore qualified as looted assets.

«If the painting was indeed liquidated as a Jewish asset, no one at the time ought to have ignored the arbitrary nature of these public sales of confiscated goods. It should be noted in this regard that several of the paintings that appear on the same inventory for the hotel in rue Desbordes-Valmore were found in Germany and restituted.»<sup>144</sup>

The Bonnard painting came from the private collection of the Bernheim-Jeune family and, having been painted by Bonnard for the family, was a very personal possession. The subject of the painting is a table with a vase of flowers and a

book with the title «Vénus de Cyrène». It shows the interior view of a room with an open door. The book had been written by Josse Bernheim-Jeune and published privately.

The Embassy rightly referred to the inclusion of this painting in the «Répertoire» of looted assets<sup>145</sup> and requested that the case be re-examined. However, the Federal Political Department held that it would not change its view even if new information became available. After all, even the Galerie Bernheim's account books showed no trace of a sale of this painting and so the Department considered the case closed and forwarded it to the Kunstmuseum Basel. On the other hand, Georg Schmidt was of the opinion that this matter did not concern the Museum either, but only the Galerie Beyeler. But the Galerie Beyeler persisted with the information it had received in Paris, according to which the painting in question had been wrongly reported to the «Répertoire». The painting had been sold legally.

When Beyeler acquired the painting in 1955, the «Répertoire» was already in existence. Beyeler had even consulted it. Although the painting figured in the «Répertoire», he doubted that the painting was a looted asset. He had obtained information in France that allowed him not to categorise the «Aryanisation» of the gallery and the collection as «looting». Despite this, neither Beyeler nor the Kunstmuseum Basel can be considered to have acted in good faith.

### **Recent cases**

Since the rekindling of the restitution issue, new cases have also been appearing in Switzerland. In 1999, Max Liebermann's «Nähsschule im Waisenhaus Amsterdam» was returned in an out-of-court settlement by the Stiftung Bündner Kunstsammlung to Gerta Silberberg, the daughter-in-law – now resident in Great Britain – of Breslau-based collector Max Silberberg who was murdered in Theresienstadt in 1942. The painting was sold to Adolf Jöhr by Silberberg in Berlin in 1934 through the publisher and art dealer Bruno Cassirer. From there it came to the Kunstmuseum Chur as a bequest in 1992. The painting had been exhibited in 1997/98 in Hamburg, Frankfurt, and Leipzig in a major exhibition of Liebermann's works and was tracked down by a Berlin investigation agency.

In 2001, the location of Camille Corot's «L'Odalisque», whose whereabouts had been unknown for a long time, was clarified amicably by its original owner and the current owner. The painting had originally belonged to the Paris art dealer Josse Bernheim-Jeune, was «Aryanised» in 1941, and arrived by a tortuous route in Switzerland where it was finally bought in good faith by art dealer Peter Nathan, the son of Fritz Nathan, in 1959 from the Ursula Veraguth collection. Michel Dauberville, an heir of the Bernheim estate, whose family, like the

Nathan family, had managed to escape from persecution to Switzerland, contacted Nathan and they both agreed to donate the painting «as a grateful reminder of the warm welcome their families received in Switzerland during the Nazi regime». As Dauberville was closer to the collection in the Kunstmuseum Basel and Nathan to the one in St. Gallen, these two collections each became fifty-fifty owners; the painting is exhibited alternately in Basel and in St. Gallen on a two-year rota.<sup>146</sup>

Two further cases are pending, following a problematic change of ownership. The first case concerns Wassily Kandinsky's «Improvisation No. 10», bequeathed by Sophie Küppers to the Hanover Kunsthalle, confiscated by the Nazi regime in 1937, acquired by the art dealer Ferdinand Möller in 1939, sold to Ernst Beyeler in about 1952, who immediately sold it on to a buyer in Winterthur but bought it back again in 1955 and is now faced with a restitution claim from Küpper's son, Jen Lissitzky, and a corresponding action brought in the Civil Court in Basel. The second case, Ferdinand Hodler's «Stockhornkette am Thunersee» also comes from the Silberberg collection, was auctioned by Graupe in Berlin in 1935, and was presumably brought to Switzerland via Fritz Nathan. Around 1945, Bern Professor of Medicine Berhard Walthard bought the painting, thinking it came from the A. Sutter collection in Oberhofen. In 1985, it showed up in an auction at Bern's Galerie Kornfeld and was bought in good faith by Simon Frick, (former) cantonal government member in St. Gallen.

Even though it is extremely difficult to provide a complete compilation of provenance especially for the 1930s and 1940s as written documentation is often lacking or incomplete, the efforts of many museums abroad were nonetheless successful. It would be very desirable if in Switzerland too, the forced dissolution of Jewish collections were no longer ignored in the future and if investigations were conducted into public and private holdings. The results of such investigations should also be made public.

## 6.7 Camouflage Operations and Restitution Claims

The camouflaging of companies by the Germans – with the aid of Swiss partners – when the war broke out or shortly beforehand constituted a conflict-prone form of transfer of ownership in terms of property law. This was due, on the one hand, to the complicated structure of many such companies, with whose help the internationally diversified foreign holdings of German parent companies had been transferred to new Swiss owners or to seemingly «Swissified» holding companies. This was compounded by the fundamental ambivalence of the

camouflaging. After the Allied occupation of Germany, conflicts erupted on several fronts.

Firstly, between Swiss fiduciaries who claimed that the assets they had acquired were Swiss and the Allied victors who disputed this; secondly, between Swiss fiduciaries and former German owners who, a few years after the war regained their capacity to act, came forward with claims, and insisted that the handover of certain assets had taken place only subject to provisos; thirdly, among competing Swiss contenders seeking to acquire former German property.

In all of these cases, the Swiss Clearing Office intervened in the conflict to assess the nature of the companies in question, having been mandated by the Swiss government in the spring of 1945 to establish the extent of German assets in Switzerland.

Abetting a «camouflage» was not a criminal offence in Switzerland. The Swiss involved did not have to fear any consequences even if they repeatedly made false statements to the authorities before or after the war concerning their German partners or their own role in the arrangements. Identifying a company as being under German control – whether camouflaged or not – had immediate ramifications under property law. It came under the block on all German assets or interests issued in February 1945, a provision that met with considerable resistance by all asset managers in Switzerland. This applied in particular to the content of the Washington Agreement of May 1946, according to which these German assets, for which the German owners were compensated in German currency at a uniform exchange rate, should have been liquidated. Even the Allied Control Council Law No. 5, issued by the Military Government in autumn 1945 which contained the Allied demand that all German assets abroad be handed over, met with resistance in Switzerland. «This has been asserted repeatedly by Switzerland to the German state whenever – contrary to the current agreement on legal assistance – enforcements on German assets in Switzerland and other decrees relating to German foreign exchange legislation have been deemed to be in contradiction with Swiss *ordre public*, and has been rightly rejected [sic].»<sup>147</sup> The attempt to apply foreign law to Swiss territory, as determined by the legal commentaries as early as the end of 1945 and beginning of 1946, drawing a parallel between Nazi claims and the conduct of the Allies, constituted an attack on key rights of sovereignty, not to mention the valid rules of international law, which prohibited such confiscation of civilian property in a defeated country. However, the Allies pointed out that these German assets originated partly from looting by the Nazi regime and that they possibly included flight capital that served the intentions of the Nazi perpetrators.

If dealing with German property in Switzerland was already conflict-laden in itself, problems were accentuated as soon as disagreement arose between the

Allied and Swiss authorities as to whether or not camouflage was involved. This usually went hand in hand with disputes in Switzerland, which became heated especially when important economic interests or influential groups were involved. When it turned out that the top directors at the Union Bank of Switzerland were directly and personally implicated in the camouflage of German insurance interests in Switzerland (*Union Rück, Schweizerische Nation-alversicherung*), the question emerged as to whether the Allies should be acquainted with what had been discovered in Switzerland. To a certain degree, the reply turned out to be affirmative since it was to be assumed that the Allies would in all probability find documentary evidence of this in Germany. This was followed by the question of how to judge the behaviour of the highly respected Swiss. Would they suffer any disadvantage as a result? Obviously this had to be considered, otherwise the director of the Federal Insurance Office, Mr. Boss, would not have had to assure the persons in question that the documents «would not be handed over to the Allies or to tax authorities or to other institutions.»<sup>148</sup> But were these persons still credible as possible buyers for the German assets to be liquidated or as members of the board of directors? The Swiss Federation of Commerce and Industry (Homberger) and the Swiss Bankers Association (Dunant) firmly supported the view that the presence of such «respected persons from the business and banking community» would guarantee «that the shares would not return to German ownership». <sup>149</sup> And this was regardless of the fact that the same persons had served German interests as middlemen. Paul Jaberg, the long-standing chairman of the board of directors at the Union Bank of Switzerland, was forced to take the minimum step of abandoning any further involvement in this affair lest the liquidation of German interests not appear to the Allies as fully lacking in credibility.

«We are a type of receivership trustee and must represent the interests of the German creditors.» This was how the diplomat Walter Stucki, who played a leading role in these matters, described the situation in which Switzerland found itself in March 1947. His assertion was in no way intended solely to counter the Allies. For the Swiss authorities, the administration of German assets physically located in Switzerland or simply managed from the country was seen as a veritable juggling act alternating between Allied interests, Swiss interests, and German interests. The question of the respective future prospects had a considerable influence on each party's own judgement. For instance, the insurance office was keen to have blocked assets of German insurance companies in Switzerland released as quickly as possible as these were lucrative companies that the insurance office was eager not to harm, and also because – in the words of the director – «one ought to think of the time when Germany will be strong again and will claim reciprocal rights». <sup>150</sup> Whereas some parties acted in the

belief that relations would continue, others seemed to expect Germany's exclusion from such business to persist for a longer period. «It is shameful how many people believe they could now profit from these German assets», remarked Max Ott, director of the Department for German Assets at the Clearing Office, with respect to the resulting behaviour and added, on a subsequent occasion in November 1948: «If the Allied pressure eases on Germany, a number of Germans may claim that we robbed them.»<sup>151</sup>

When the Germans regained their capacity to act in the course of 1949, this was precisely the situation that arose on a number of occasions. In some cases, it was only possible to assess the ownership situation at camouflaged German companies in Switzerland in court. In the early 1950s, the German insurance companies that had been made independent – Union Rück and Nationalversicherung – had to make payments in arrears running into millions to the former German parent companies, as the German parties put forth a credible argument that the «Swissification» at the beginning of the war had not taken place unconditionally. The documents in these cases were eloquent. It was also plain that Nationalversicherung had undoubtedly taken advantage of a favourable opportunity to free itself of a burdensome and materially oppressive connection. One of the key managers behind the separation, Hans Theler, was a Swiss native but had worked for many years for the German Allianz in Germany, Spain, and Italy in a position of confidence. The Germans found the conduct of «Mr. Theler and the Union Bank of Switzerland [...] to be highly dishonourable.»<sup>152</sup> Putting the problem into this kind of moral framework was not unusual. Confidence had always been a key factor in this type of cross-border business, even in those cases where camouflage was not involved. In Switzerland too, it was acknowledged – with some irritation – that the Germans were on the doorstep once again, as if nothing had happened in the meantime.

### **The Interhandel case**

The legal and media discussion in the case of Interhandel, the former Swiss finance company of the IG Farben group which bore the name IG Chemie until the end of 1945, took on quite unusual proportions.<sup>153</sup> The Americans considered this company to be a typical case of German camouflage, whose significance consisted primarily in its controlling the majority of shares of one of the most important groups of chemical factories in the USA. As a result of the virulence of the American reproaches and the extraordinarily large amounts of capital involved, there was also considerable interest in Switzerland in clarifying the type of German interests at stake.

Two unusually detailed audits in 1945–46 in the circle of the companies in question produced a wealth of material. Unlike the usual procedure adopted by

the Clearing Office, which was to limit its investigations to the conditions at the time that German assets in Switzerland were blocked in February 1945, in this case the auditors went right back to the pre-war period. Their efforts illustrated the closeness of ties until the first part of the war. For the time following their formal dissolution in the spring of 1940, however, only weak evidence of an on-going dependence on IG Farben was found. The case was extraordinary for a number of reasons. Firstly, IG Farben no longer formally owned the shares of the Swiss holding company since the early 1930s, but had merely controlled them by means of a pooling agreement with repurchase options vis-à-vis the share packages placed with IG Chemie. This agreement was terminated in May 1940. Furthermore, there was no sign of any of the papers that were usually an indication of camouflage – repurchase options, concealed agreements of different kinds, etc. The Germans had counted on the force of the facts, trusting in their own ability to shape future conditions to a considerable extent. The Swiss financial holding company had to be transferred unreservedly to Swiss ownership, so as to be able to credibly state that the major interests of IG Farben in the USA were now «Swiss». The outcome of the war, the confiscation of the company, and the arrest of its top managers dashed hopes of any such arrangement which had, since the outset, been burdened by uncertainty. A group of Swiss (preferential) shareholders, built up with the support of IG Farben in the late 1930s, now controlled the company and wanted to hear no more of ambivalent aspects of its previous history.

In 1948 a legal conflict erupted between the representatives of the US Department of Justice and the holding company, and was stubbornly pushed through all levels of the judicial system. It concerned the interpretation of the relationship of IG Chemie/Interhandel to IG Farben and was only settled out of court in the early 1960s without the key legal questions ever being decided: was this company a case of German interests being camouflaged, had the senior executives been «middlemen» acting on behalf of the Germans, and had they continued to be so even after the end of the war? Swiss diplomats intervened in the case on several occasions once the attitude had become prevalent in Switzerland in 1946–47 that it was difficult to prove the American reproaches so that the possibility now arose of securing assets of considerable value for those parties interested in Switzerland. However, the Union Bank of Switzerland was only able to negotiate a compromise with the US Department of Justice in 1963. The American factories which had formerly belonged to IG Farben were auctioned. Of the proceeds, some 40% went to the Union Bank of Switzerland, which had taken over the majority of shares in Interhandel as of 1958, and around 60% went to the USA.

As already mentioned, the Interhandel affair had unusual aspects. Even if this

group of companies was not a traditional case of the camouflaging of German interests, it was still «German-tainted» on the whole. The 1963 compromise marked the end of the matter; however, rumours persisted to the effect that the whole affair had not been entirely above board. Suspicions were aimed at IG Chemie and Interhandel, the Union Bank of Switzerland, and the compromise of 1963. Moreover, the fact that a liquidation company called IG Farben managed the legacy of the former chemical group in Germany and since 1958 had come forward with claims of its own in the dispute (and is still doing so today), gave free reign to speculation. However, lengthy legal proceedings brought before German courts in the 1980s did not produce any new evidence for the plaintiff's conspiracy theory that this was yet another case of camouflaged German property.

## 6.8 Concluding Remarks

Summing up, it can be said that numerous questions relating to property rights that had arisen as a result of the extraordinary and catastrophic events in the 1930s and 1940s remained unresolved after 1945. Immediately after the end of the war and in the early 1960s, some individual attempts (Registration Decree) were made to clarify them. Belated, they were conducted only because of external pressure, and were either incomplete or omitted important aspects. The Swiss authorities and business circles were convinced that they were under no obligation to make «reparations» of any kind. The investigations of the ICE were also unable to satisfactorily clarify all problems resulting from this attitude. One question that remained unanswered was whether, in addition to bank accounts, other assets of later victims of the Nazi regime – real estate, for example – were also being managed in a fiduciary capacity in Switzerland. The ICHEIC's research on the issue of insurance policies has not yet been concluded. With the results of its research, a framework will be available for a more detailed analysis of how these events unfolded. The fate of Swiss victims of Nazism who had been denied diplomatic protection by their own government has been traced only partially. This also holds true in regard to any claims for restitution, although it was precisely in such cases where the government had failed to protect its own citizens that the term «*Wiedergutmachung*» would have been appropriate. Above all, however, the conduit function of Switzerland as a financial centre for forwarding assets to third countries has only been insufficiently explained.

In the immediate post-war period, the first reaction concerned the looted assets that had been brought into Switzerland. However, the corresponding Federal

Councils Decree at the end of 1945 only came about due to massive pressure exerted by the Western Allies. In its particulars, it manifested serious deficiencies which severely limited its effectiveness from the start. First of all, the short term of two years should be mentioned; secondly, it was limited to the war years and to the countries occupied by Germany. Victims of losses in Germany itself or in Austria or Czechoslovakia were not entitled to file a lawsuit. In addition, the onus of proof was placed entirely on the victims. In deviation from the Swiss assurances given in the Currie Agreement dating from March 1945, no official search for looted goods was conducted in Switzerland. The authorities only took action when a lawsuit was filed along with the corresponding evidence required to be submitted by the injured party. It goes without saying that this was virtually impossible in many cases, as the victims were no longer alive or, due to the difficult conditions of the post-war period, had neither the opportunity nor the material resources to file a lawsuit in Switzerland. The Swiss authorities also neglected to publicise the Decree on Looted Assets internationally – an essential precondition for its effectiveness. The proceedings that followed were logically both incomplete and fortuitous. In the case of looted art, they were limited almost entirely to works which had been removed and brought to Switzerland by the Allies in 1945 and which were documented (Cooper list). As regards the extensive trading in looted securities, virtually all claims originated in the Netherlands, which merely reflects the coincidental circumstance that events in that country were well documented thanks to the preservation of the relevant German files. Given the estimated volume of trading in looted securities (50–100 million francs), the restitution cases comprised only a fraction of the total. All such proceedings were – as far as we know – concluded by the early 1950s.

The question of dormant accounts held at Swiss banks or with fiduciaries was only taken up much later. Well-justified motions in the immediate post-war period and individual initiatives put forward by the Swiss government were doomed to failure in the face of resistance from the banks. The intended definitive solution to the problem – the Registration Decree of 1962 – which had been left up to the banks and other asset managers likewise was carried out in a half-hearted manner. In the case of insurance companies, no administrative measures were taken at all.

The delays and shortcomings are attributable mainly to the lack of an effective interest group that could have built up the necessary political pressure within Switzerland. Those affected were usually foreigners who, as individuals or represented by Jewish organisations, did not have any potential for exerting pressure. The International Refugee Organization, to whom the Allies had promised the heirless assets of victims of persecution, also ended up with nothing. The Jewish

communities in Switzerland supported the introduction of efficient measures but were far too weak to assert their position. This is confirmed if one looks back at those cases where Swiss injured parties were involved.

The agreements with Poland and Hungary of 1949 and 1950 provide an interesting contrast to the above-mentioned claims for restitution that were either completely or partially unsuccessful. In these agreements, it was agreed that assets belonging to Polish and Hungarian nationals which had remained dormant would be handed over without further ado, in the hope that this would favour Swiss interests in the disputes over nationalisation of industry in these countries. The other arguments of legal security, property protection and banking secrecy, which would normally have been raised, were cast aside in these cases. In the Interhandel case too, where Swiss claims to former German property were involved, the authorities intervened energetically, the case finally being brought before the International Court in The Hague, whereas they remained passive for decades when it came to dormant accounts. German claims pertaining to property law resulting from wartime camouflaging were also processed efficiently by the Swiss courts in the early 1950s. Even former Nazi perpetrators, who had argued over the division of the spoils, were able to air their differences before Swiss courts.<sup>154</sup> By contrast, the victims were consigned to the end of the queue for decades, so that numerous claims can now no longer be settled definitively.

<sup>1</sup> Fisch, Reparationen, 1992, p. 126; see also Keilson, Reparationsverträge, 1988, p. 122.

<sup>2</sup> Cf. Sagi, Organisationen, 1989, pp. 99f.

<sup>3</sup> Robinson, Indemnification, 1944, p. 83.

<sup>4</sup> For this and the following quotes see NARA, RG 226, Entry 27, Box 2, Final Report of the Inter-divisional Committee on Reparation, Restitution and Property Rights, Reparation Memo 29, 31 May 1944. The Committee formed part of the Executive Committee on Economic Foreign Policy established by an Act of Congress in May 1944 and was chaired by Assistant Secretary of State Dean Acheson.

<sup>5</sup> Inter-Allied Declaration against Acts of Dispossession Committed in Territories under Enemy Occupation or Control, in FRUS, 1943 I, p. 444. Signatories were, – in addition to the United States, Great Britain, the USSR, and the French National Committee – Australia, Belgium, Canada, China, Czechoslovakia, Greece, India, Luxemburg, the Netherlands, New Zealand, Norway, Poland, the Union of South Africa and Yugoslavia, collectively known as the United Nations.

<sup>6</sup> Cf. DDS, vol. 15, 1992, pp. 1026f.

<sup>7</sup> Eckes, Search 1975, p. 153

<sup>8</sup> Proceedings, 1948, p. 939.

<sup>9</sup> Cf. Durrer, Finanzbeziehungen, 1984.

<sup>10</sup> Paris Final Act, Article 8, FA, E 2001 (E) 1969/121, vol. 155.

<sup>11</sup> Paris Final Act, Article 8, FA, E 2001 (E) 1996/121, vol 155.

<sup>12</sup> This procedure and the solution, which was advantageous for Switzerland, have already been described in section 4.5.

- <sup>13</sup> Junz, Restitution, 2000, pp. 8 and 15.
- <sup>14</sup> Cf. Pawlita, Wiedergutmachung, 1994; Goschler, Wiedergutmachung, 1992.
- <sup>15</sup> Fisch, Reparationen, 1992.
- <sup>16</sup> Cf. Junz, Restitution, 2000, pp. 3ff.
- <sup>17</sup> For instance, a civil servant in the Foreign Ministry and Professor at Bochum University, Helmut Rumpf; see introduction to Helmut Rumpf, Die deutschen Reparationen nach dem Zweiten Weltkrieg ([www.vho.org/D/DGG/Rumpf33\\_3](http://www.vho.org/D/DGG/Rumpf33_3)) (original German).
- <sup>18</sup> Herbst, Einleitung, 1989, pp. 8f. (original German).
- <sup>19</sup> Minutes of the National Council Commission on 25 August 1962, p. 8, FA, E 4110 (A) 1973/85, vol. 3.
- <sup>20</sup> Minutes of the National Council Commission on 25 August 1962, p. 8, FA, E 4110 (A) 1973/85, vol. 3.
- <sup>21</sup> SBVg Archives, minutes of the 206<sup>th</sup> meeting of the Board of Directors of the SBA, 22 December 1952, p. 14.
- <sup>22</sup> Fisch, Reparationen, 1992, p. 29 (original German).
- <sup>23</sup> Frowein, Einordnung, 2001 (Publications of the ICE), p. 620; Fisch, Reparationen, 1992, p. 34.
- <sup>24</sup> Fisch, Reparationen, 1992, p. 31.
- <sup>25</sup> Hoover Library, Stanford University, Government Documents Germany, Territory under US-Military Occupation, 1945–, US Zone, Military Government Gazette, Issue A, June 1946.
- <sup>26</sup> Fisch, Reparationen, 1992, p. 30. The author estimates that about half of the «over a billion Marks» restituted in West Germany could be regarded as reparations (p. 213).
- <sup>27</sup> Cf. Goschler, Wiedergutmachung, 1992, p. 63.
- <sup>28</sup> Fisch, Reparationen, 1992, pp. 120 and 122 (original German).
- <sup>29</sup> Jerchow, Deutschland, 1978, pp. 180f.
- <sup>30</sup> Rapport sur les relations financières avec les Etats-Unis d'Amérique, in: DDS, vol. 15, p. 923 (original German).
- <sup>31</sup> DDS, vol. 15, p. 984 (both quotations).
- <sup>32</sup> DDS, vol. 15, p. 986 (original French).
- <sup>33</sup> DDS, vol. 15, p. 1028 (original French).
- <sup>34</sup> SBVg Archives, J3 (current filing), preliminary report to the meeting of the Legal Commission, 13 July 1945.
- <sup>35</sup> UBS Archives, SBG Fund, 12000003024, note [signed Jann], 23 October 1945 (original German).
- <sup>36</sup> FA, E 2001 (E) 1967/113, vol. 442; note, 11 August 1945 (original French); also quoted in Tisa Francini/Heuss/Kreis, Fluchtgut, 2001 (Publications of the ICE), p. 354.
- <sup>37</sup> FA, E 2001 (E) 1967/113, vol. 443, Art Dealers Association to EPD, 30 November 1945 (original German).
- <sup>38</sup> FA, E 2001 (E) 1967/113, vol. 443, Art Dealers Association to EPD, 27 December 1945.
- <sup>39</sup> For a good, supplemented reproduction of Cooper's list see Buomberger, Raubkunst, 1998, pp. 456ff.
- <sup>40</sup> Sweden took legal measures earlier but failed in practice due to the «naïveté» or the «normalcy»-oriented mentality of the inspection authorities. Cf. Seyler, Handel, 2001.
- <sup>41</sup> Vischer, Handel, 2001 (Publications of the ICE).
- <sup>42</sup> Vischer, Handel, 2001 (Publications of the ICE), p. 22 (original German).
- <sup>43</sup> Currie Agreement of 8 March 1945, DDS, vol. 15, p. 896.

- <sup>44</sup> Letter from the three leaders of the Allied negotiation delegations to the Swiss delegation (original French). Unlike the Washington Accord, which was publicised in the course of its ratification by the Parliament, two letters that considered the victims' position were kept secret at the time. Cf. [www.dodis.ch](http://www.dodis.ch): document no. 1732.
- <sup>45</sup> See the case of Baron Robert von Hirsch, 1936; Tisa Francini/Heuss/Kreis, Fluchtgut, 2001 (Publications of the ICE), p. 341.
- <sup>46</sup> Article 1 (2) RGB.
- <sup>47</sup> For further details see Grell, Entartete Kunst, 1999, pp. 197ff.; Siehr, Rechtsfragen, 2001 (Publications of the ICE), Chapter 1.2.2.2; Vischer, Handel, 2001 (Publications of the ICE), chapter A.II.
- <sup>48</sup> Castelmur, Finanzbeziehungen, 1992; Frei, Washingtoner Abkommen, 1969.
- <sup>49</sup> See Uhlig/Barthelmess/König/Pfaffenroth/Zeugin, Tarnung, 2001 (Publications of the ICE), chapter 11; see also ibid, chapter 4.4, the statements by Alfred Kurzmeyer in support of Hermann Josef Abs or the SS member Leo Volk.
- <sup>50</sup> UBS Archives, SBG Fund, 120000002680, 13 May 1950, declaration by Alfred Schaefer (original German). See Perrenoud/López/Adank/Baumann/Cortat/Peters, Place financière, 2002 (Publications of the ICE), chapter 4.6.2.
- <sup>51</sup> Report of the Federal Political Department on financial negotiations with the Allied delegation, in: DDS, vol. 15, p. 1018 (original French).
- <sup>52</sup> FA, E 2001 (E) 1967/113, vol. 474, note of a meeting held on 21 August 1947, published in DDS, vol. 17, no. 19 (original French).
- <sup>53</sup> CSG Archives, Leu Fund, 53.105.201, «Herrenlose Vermögen in der Schweiz. Konferenz auf dem Eidg. Justiz-und Polizeidepartement, Bern, 20 February 1952», 7 March 1952, p. 5 (original German).
- <sup>54</sup> SBVg Archives, minutes of the 203<sup>rd</sup> meeting of the Board of Directors of the SBA, 23 April 1952, p. 9 (original German).
- <sup>55</sup> SBVg Archives, minutes of the meeting of the working committee of the Legal Commission, 1 December 1952, p. 3 (original German).
- <sup>56</sup> Picard, Schweiz, 1994, pp. 194–217.
- <sup>57</sup> Haldemann, Schutz, 2001 (Publications of the ICE).
- <sup>58</sup> Ludi/Speck, Victims, 2001; also Huonker/Ludi, Roma, 2001; Spuhler/Jud/Melichar/Wildmann, Arisierungen, 2002, (Publications of the ICE), chapter 3; Speck, Entrechtungsschäden, 1998.
- <sup>59</sup> Bonhage/Lussy/Perrenoud, Vermögen, 2001 (Publications of the ICE), chapter 6.4
- <sup>60</sup> UBS Archives, SBV Fund, no reference, SBC Zurich to senior management «highly confidential», 21 November 1969 (original German).
- <sup>61</sup> On 25 May 1946 the three Allied delegation leaders asked Walter Stucki «to submit for the kind consideration of your Government, in the interest of any victims of German looting whose property has been found in Switzerland, the possibility of instituting a simple and economic administrative procedure that takes account of the poverty and fragility of these victims» (original French); see FA, KI/ 646, Allied delegation leaders to Stucki, 25 May 1946. [www.dodis.ch](http://www.dodis.ch): document no. 1732.
- <sup>62</sup> FA, KI/ 646, Acknowledgement by the Allied delegation leaders to Stucki of Stucki's letter to the leaders, 25 May 1946 (original French). [www.dodis.ch](http://www.dodis.ch): document no. 1730.
- <sup>63</sup> Hug/Perrenoud, Vermögenswerte, 1997, p. 6.
- <sup>64</sup> Bonhage/Lussy/Perrenoud, Vermögen, 2001 (Publications of the ICE), Figure 11 in chapter 6.1
- <sup>65</sup> Bonhage/Lussy/Perrenoud, Vermögen, 2001 (Publications of the ICE), chapter 6.1.2.
- <sup>66</sup> UBS Archives, SBG Fund, 12000003018, «Notiz über die Besprechung in Bern beim Eidgenössischen Politischen Departement vom Dienstag, den 10. Januar 1950, betreffend herrenlose Güter, die bei schweizerischen Banken verwaltet werden», 10 January 1950 (original German).

- <sup>67</sup> CSG Archives, SVB Fund, 43.104.205.399, File 656, SVB to Albert B., 5 February 1987; the increase in costs between 1960 and 1987 corresponded to the fall in the value of money in Switzerland; at the same time the dollar, as relevant currency for many claimants, dropped to less than half of its value against the franc and the costs rose considerably.
- <sup>68</sup> ICEP, Report, 1999, p. 95.
- <sup>69</sup> ICEP, Report, 1999, p. 10.
- <sup>70</sup> UBS Archives, SBG Fund, 12000003741, «Umsatzlose Konti/Depots verstorbener Kunden; Verrechnung von Spesenforderungen, Saldierung», 1 October 1987; «Liquidierung von ganz alten Dossiers bei SVZE durch SVZE-VAR (Dr. V.)», 9 October 1986 (original German).
- <sup>71</sup> Article 4 of Federal Decree 984 on Historical and Legal Investigation of the Fate of the Assets and Properties which found their way to Switzerland as a Result of the Nazi Regime, 13 December 1996 (AS 1996, p. 3487).
- <sup>72</sup> UBS Archives, SBV Fund, 1000, Case U. A., Federal Banking Commission to SBC MD, 12 June 1990.
- <sup>73</sup> UBS Archives, SBV Fund, 1000, Case U. A., «Strafanzeige gegen U.A.?», undated.
- <sup>74</sup> UBS Archives, SBG Fund, 12000003024, «Exposé zur Frage der erblosen oder nicht disponiblen jüdischen Vermögen in der Schweiz», 16 May 1946, p. 2 (original German).
- <sup>75</sup> Cf. Hug/Perrenoud, *Vermögenswerte*, 1997.
- <sup>76</sup> CSG Archives, SKA Fund, 11.105.208.301, SC 2052, SBA Circular No. 90 D (copy), 13 July 1955.
- <sup>77</sup> BBI 1962/I, p. 936 (original German).
- <sup>78</sup> Bonhage/Lussy/Perrenoud, *Vermögen*, 2001 (Publications of the ICE), p. 119.
- <sup>79</sup> Cf. Picard, *Switzerland*, 1993, p. 9.
- <sup>80</sup> BBI 1962/I, p. 933 (original German).
- <sup>81</sup> This is how the Federal Council summarised the situation in its Message of 1962, see also BBI 1962/I, p. 934 (original German).
- <sup>82</sup> In particular Vischer, *Handel*, 2001 (Publications of the ICE), chapter C.II.1.
- <sup>83</sup> UBS Archives, SBG Fund, 12000003018, «Notiz über die Besprechung in Bern beim Eidgenössischen Politischen Departement vom Dienstag, den 10. Januar 1950, betreffend herrenlose Güter, die bei schweizerischen Banken verwaltet werden», 10 January 1950 (original German).
- <sup>84</sup> See also the case of Arthur D., Bonhage/Lussy/Perrenoud, *Vermögen*, 2001 (Publications of the ICE), chapter 8.3.2.
- <sup>85</sup> It is only since the introduction of money-laundering legislation with the Federal law of 23 March 1990 and the Federal law of 18 March 1994 that banks have been obliged and entitled to ask for details of the beneficial owner of the assets.
- <sup>86</sup> UBS Archives, SBG Fund, 12000007141, «Rapport, Isak C. und Frau Lida C.», undated (original German).
- <sup>87</sup> Bonhage/Lussy/Perrenoud, *Vermögen*, 2001 (Publications of the ICE), p. 310.
- <sup>88</sup> ICEP, Report 1999, p. 69. The figure of 53,866 accounts, as published by the ICEP, has since been amended by final figures: following the work of the arbitration tribunal only 36,132 accounts in ICEP categories 1–4 are left which have a possible or probable link to victims of National Socialism.
- <sup>89</sup> UBS Archives, SBV Fund, no reference, SBC to Hans H., 7 February 1997 (original German).
- <sup>90</sup> These were: Lutherstrasse 30, Kurfürstenstrasse 88, and Viktoriastrasse 33.
- <sup>91</sup> Swiss Re Archives, File: «Verkauf des Anker durch die Schweizer Rück, Korrespondenz 1938–1943, Besprechungen in Zürich, der Anker, Wien», 25 February 1943 (original German).
- <sup>92</sup> BGHZ, Vol. 6, p 34.
- <sup>93</sup> Rentenanstalt Archives, File emigrant insurance II, memo from Basler Leben dated 30 June 1945.

- <sup>94</sup> Investigations carried out by the companies themselves after the end of the war (Annex to Karrer memo (Rentenanstalt) «Zur Frage der beschlagnahmten deutschen Lebensversicherungsverträge von Emigranten», 8 November 1945). It should be noted that the figures stated come from the insurance companies' own investigations. Only payments made up to and including 31 December 1944 are listed. The actual values paid out could be somewhat higher since even in 1945, insurance companies were still making payments to the Nazi authorities, and their head offices did not yet have full and reliable information from the branches. In addition, there were also the sums paid back to the Nazi authorities by the Swiss Re subsidiary in Vienna, Anker: according to its own estimates towards the end of the war, this company had transferred «almost 400,000 reichsmarks» to the Reich authorities; see Stiefel, *Lebensversicherer*, 2001, p. 92.
- <sup>95</sup> ZR 55 (1956), no. 60, pp. 123 ff. See Dreifuss, *Geschäftstätigkeit*, 2001 (Publications of the ICE), chapter C.II.3.1.; Lüchinger, *Rechtsprechung*, 2001 (Publications of the ICE), chapter 7.5.
- <sup>96</sup> BGE 79 II 193. See Dreifuss, *Geschäftstätigkeit*, 2001 (Publications of the ICE), chapter C.II.3.1.; Lüchinger, *Rechtsprechung*, 2001 (Publications of the ICE), chapter 7.5.
- <sup>97</sup> Judgement of the Swiss Federal Supreme Court dated 26 March 1953 in the case of Rentenanstalt vs. Elkan, pp. 9f.
- <sup>98</sup> Vischer, *Recht*, 1998, p. 461.
- <sup>99</sup> BGE 79 II, p. 202.
- <sup>100</sup> See also Feldman, Allianz, 2001; Stiefel, *Lebensversicherungen*, 2001.
- <sup>101</sup> See also Junz, *Restitution*, 2002.
- <sup>102</sup> Thalmann, *Verjährung*, 1940, p. 155.
- <sup>103</sup> UBS Archives, SBG Fund, 12000003024, «Notiz [gez. Jann] betreffend Beutegüter», 18 September 1945.
- <sup>104</sup> UBS Archives, SBG Fund, 12000003024, «Notiz [gez. Jann]», 23 October 1945.
- <sup>105</sup> The total of the compensation paid in this connection amounted to approx. 6,000 francs (Bger, looted assets cases R13, R28, R29, R30, R32, R34, R39, R40, R41).
- <sup>106</sup> For details, see Lussy/Bonhage/Horn, *Wertpapiergeschäfte*, 2001 (Publications of the ICE), chapter 9.
- <sup>107</sup> Case R33 from Luxemburg was a class action consisting of 31 claimants against Credit Suisse: 47 actions from Luxemburg actually went to the Federal Supreme Court because of this.
- <sup>108</sup> FA, E 6100 (A) -/24, vol. 11, Leuch to Federal Council, 29 August 1950.
- <sup>109</sup> Bger, R11/II, Chamber of assessment in actions on looted assets, meeting of 21 September 1948, p. 18.
- <sup>110</sup> Bger, R4, Defence plea by Credit Suisse in the Nicolas Kieffer case, 5 December 1946, p. 7.
- <sup>111</sup> FA, E 6100 (A) -/24, vol. 5, EFV to Federal Councillor Nobs, 9 February 1948.
- <sup>112</sup> Bger, R15, Chamber of assessment in actions on looted assets, meeting of 3 November 1948, p. 15.
- <sup>113</sup> Bger, R15, Chamber of assessment in actions on looted assets, meeting of 3 November 1948, p. 15.
- <sup>114</sup> Bger, R15, Chamber of assessment in actions on looted assets, meeting of 3 November 1948, p. 15.
- <sup>115</sup> UBS Archives, SBC Fund, AN 1948, 1396/3, 4.108, D-13-4-1, «Raubgutprozess Jeanne Wilhelmy [...] Verhandlung vor dem Schweizerischen Bundesgericht», p. 4.
- <sup>116</sup> SBVg Archives, Preliminary Report to the 112<sup>th</sup> meeting of the Board of the SBA, 19 March 1951.
- <sup>117</sup> CSG Archives, 11.105.205.301-0112 SC 2258, «Verband Schweiz. Darlehenskassen St. Gallen», «Bericht über die Vorbereitungsverhandlungen in Sachen Nicolas Kieffer», 3 November 1947.
- <sup>118</sup> FA, E 6100 (A) -/24, vol. 5, Federal Finance Administration to Federal Councillor Nobs, 9 February 1948.
- <sup>119</sup> FA, E 6100 (A) -/24, vol. 11, Note to Federal Councillor Nobs, 26 December 1950.

- <sup>120</sup> FA, E 6100 (A) -/24, vol. 5, memo for the legal service of the Federal Department of Finance and Customs, 3 January 1946.
- <sup>121</sup> FA, E 2001 (E) 1967/113, vol. 437, minutes of the meeting of the legal commission of the SBA, 13 July 1945.
- <sup>122</sup> The Swiss Clearing Office had previously conducted numerous investigations into payment transactions and clearing offences. However, these did not (yet) deal with issues of looted art.
- <sup>123</sup> This table is based on the Archives of the Federal Supreme Court, which has been systematically inspected for this analysis.
- <sup>124</sup> This is a complete compilation of cases involving cultural assets before the «Chamber of Looted Assets».
- <sup>125</sup> In Buomberger incorrectly stated as restitution of all three items (Buomberger, Raubkunst, 1998, pp. 118f.).
- <sup>126</sup> Buomberger states that six paintings were not the subject of a claim. Buomberger, Raubkunst, 1998, p. 120. The other authors write that all 77 items were restituted. Kreis, Kunsthandel, 1998, p. 127; Frehner, Raubkunst, 1998, pp. 135–146; Heuss, Kunst- und Kulturgutraub, 2000, p. 91.
- <sup>127</sup> Dalí's «Die Küste», owned by Watson came to the Öffentliche Kunstsammlung Basel in 1942 as a deposit of the Emanuel Hoffmann Foundation. After the war the painting was the subject of an out-of-court settlement, under which it was awarded to Watson. However, he sold it to the Kunstmuseum Basel for 3,000 francs. The decisive factor is that the painting had not – as Cooper thought – been seized by the ERR, but stolen from Watson's flat by a friend. It was brought to Switzerland through Albert Skira (Buomberger, Raubkunst, 1998, p. 86). – BArch, B 323/290; NARA, RG 84, Entry 3221, Box 8, Safehaven Subject Files, «Looted Pictures»; NARA, RG 84, Entry 3223, Box 90, Safehaven Name Files; FA, E 4320 (B) 1987/187, vol. 78; FA, E 2001 (E) 1967/113, vol. 442 and FA, E 7160-07 (-) 1968/54, vol. 1087.
- <sup>128</sup> Two Corots and a Pissarro from the Bernheim-Jeune Collection and an unknown Utrillo.
- <sup>129</sup> Jan Steen from the Goudstikker Collection.
- <sup>130</sup> Renoir from the Landon Collection.
- <sup>131</sup> H. L. Mermod (1891–1962) was originally an industrialist, but was later known principally as a publisher and patron of the arts. He collected contemporary Vaudois art but also owned works by Cézanne, Vuillard, Matisse, Gris and Picasso. Encyclopédie illustrée, 1978, vol. 7, p. 211, for other Vaudois collectors see pp. 250f.
- <sup>132</sup> There is a parallel with France as here too the key question of theft was omitted: in France some 60 «art thieves» were brought before a court. The subject of the trial was not, however, the plundering of Jewish collections but rather collaboration with the German occupying forces. The issue here was not to what extent the art dealers and collectors had been involved in the Nazis' theft of art and cultural objects, but whether they had known of the looting and had knowingly acquired «looted» art from occupied countries.
- <sup>133</sup> FA, E 7160-07 (-) 1968/54, vol. 83, Annual Report of the Swiss Clearing Office of 1948, Division for the Liquidation of German Assets, section «Behandlung der Regressansprüche gemäß Bundesratsbeschluss betreffend Rückgabe von Raubgut vom 10. Dezember 1945», p. 16.
- <sup>134</sup> FA, E 7160-07 (-) 1968/54, vols. 1093–95 (Wendland); 1096 (Hofer).
- <sup>135</sup> Feliciano, Musée, 1995, pp. 94f. Feliciano writes that the painting was seized by one of the «Aryanisers».
- <sup>136</sup> Buomberger, Raubkunst, 1998, p. 87. Interviews by the author with Dr Katharina Schmidt (former Director of the Öffentliche Kunstsammlung Basel) and Michel Dauberville (heir of Josse Bernheim-Jeune). See also *Le Temps*, 7 August 1998.
- <sup>137</sup> FA, E 2001 (E) 1970/217, vol. 279, French Embassy to EPD, 20 June 1957.
- <sup>138</sup> FA, E 2001 (E) 1970/217, vol. 279, Schmidt to EPD (Head of Legal Service), 13 July 1957.

- <sup>139</sup> FA, E 2001 (E) 1970/217, vol. 279, Hess to EPD, 19 August 1957.
- <sup>140</sup> FA, E 2001 (E) 1970/217, vol. 279, Beyeler to EPD, 27 August 1957.
- <sup>141</sup> See Tisa Francini/Heuss/Kreis, *Fluchtgut*, 2001 (Publications of the ICE), chapter 5.2.2.4.
- <sup>142</sup> FA, E 2001 (E) 1970/217, vol. 279, memo by Zoelly, 29 August 1957.
- <sup>143</sup> FA, E 2001 (E) 1970/217, vol. 279. One piece of evidence was provided on 5 September 1957 by Charles Durand-Ruel who carried out an inventory of Joseph Bernheim's private collection on 27 June 1941 and remembered the Bonnard, which hung over the door connecting the dining room and the living room. The letter from the second expert, Raingo-Pelouse, to Dauberville dated 15 October 1957 confirms this statement. He too remembered that he had given an expert opinion on the Bonnard and that he had described it as «*Dessus de porte (nature morte) par Bonnard*». The painting was located in the «*hôtel particulier*» at 17, rue Desbordes-Valmore.
- <sup>144</sup> FA, E 2001 (E) 1970/217, vol. 279, French Embassy to EPD, 4 December 1957 (original French).
- <sup>145</sup> See Groupe français, *Répertoire*, 1947f., vol. 2, no. 4998, OBIP 43572, p. 225. Owner: Jean Bernheim-Jeune.
- <sup>146</sup> Dominik Heitz in *Basler Zeitung*, 19 June 2001.
- <sup>147</sup> Peter, Auslieferung, 1946, p. 25.
- <sup>148</sup> Swiss Re Archives (Union Re Fund), meeting of Board of Directors, 23 November 1945, p. 6.
- <sup>149</sup> FA, E 7160-07 (-) 1968/54, vol. 13, minutes of the supervisory commission on the Washington Accord, 11 March 1947, p. 108.
- <sup>150</sup> Swiss Re Archives (Union Re Fund), meeting of Board of Directors, 4 September 1946, pp. 61f.
- <sup>151</sup> FA, E 2001 (E) 1968/79, vols. 2ff., minutes of the supervisory commission on the Washington Accord, 23 November 1948.
- <sup>152</sup> Munich Re Archives, A 2.19, no. 109, Schweizerische National, Memo for Dr. Schlieren: regarding «*Schweizer National*» (Herzog), 25 March 1976, p. 5.
- <sup>153</sup> For details see König, *Interhandel*, 2001 (Publications of the ICE).
- <sup>154</sup> See the Miedl versus Schwend case, in: Uhlig/Barthelmess/König/Pfaffenroth/Zeugin, *Tarnung*, 2001 (Publications of the ICE) p. 364, note 4.

## 7 Conclusion: Insights and Unanswered Questions

When on 13 December 1996 the ICE was commissioned to investigate unanswered questions concerning Switzerland's role in the Holocaust era, fifty years had elapsed since the signing of the Washington Agreement between the Allies and Switzerland.<sup>1</sup> In 1946, this Agreement supposedly resolved once and for all the controversial issue of Swiss relations with the Axis Powers. In 1946 it also appeared to provide an adequate resolution of the problem of the assets which had been deposited for safekeeping in Switzerland by both the victims of the Nazi persecution and its perpetrators.

Although after the 1940s the subject by no means disappeared from view as a result, it scarcely figured in the public's awareness any longer. Historians who were busily writing about the subject were aware that their books would not sell in great numbers. Despite their continued efforts, victims and their organisations were not in a position to make their voices heard to any great extent. The unresolved questions therefore largely remained pending in just the same way as the bank balances which became a focus of interest in the mid-1990s. This time, however, it was not possible to proceed as if nothing had happened. The enduring silence about a past, that beggared the imagination – this weighty burden of the post-war years – was finally broken. After more than half a century, but particularly during the previous two decades, new ground-rules had evolved. A younger generation began to ask critical questions and wanted to know about a past which was, after all, also its own. Whilst human rights began to play an ever more important role in international relations, the end of the Cold War brought a relaxation of firmly entrenched ideological fronts. And thus came about the fundamental change of attitude which has enabled old questions to take on a fresh topicality, giving rise to a broad, public debate in recent years. This has resulted in the virtually worldwide investigations which are going on even now into how the assets dating from the Holocaust era were handled, and where they came to rest.

The fact that Switzerland was the starting point for these international investigations caused many Swiss people – unsurprisingly – to ask why it was that their country, in particular, became a focus of criticism, as it had not been subject to any dictatorship, nor party to violent anti-Semitism, nor involved in deportations. In actual fact, an obvious, but incomplete answer to the question «Why

Switzerland?» can be found in the very characteristics which had made this country appear to be an attractive and secure location for the safekeeping of assets, as well as a personal refuge, long before the 1930s. Switzerland had all the appearances of a well-ordered state in the midst of a sea of instability: according to this image it was politically and financially stable, displayed a tradition of strong neutrality, was an important financial centre – especially where the management and protection of assets was concerned – and had also fostered a humanitarian tradition dating back to the 19<sup>th</sup> century at least. For refugees and the victims of persecution endeavouring to rescue their assets and, not least of all, themselves, this combination was understandably attractive. Many of the as yet unanswered questions concerning the treatment of Holocaust victims and their assets therefore revert to the central question of whether and how Switzerland was able to live up to these positive expectations embedded within its own tradition.

It is not altogether surprising that Switzerland, towards which the most recent international criticism was initially directed, did not remain alone for long. In other countries, too, discussions about the violation of property rights and unresolved restitution issues erupted. In contrast to the debate in Switzerland, where the entire country felt itself attacked, attention elsewhere was concentrated more on the companies and authorities to whom the searching enquiries had been addressed. Twenty-four further commissions were set up in other countries with parallel tasks to those of the ICE. However, unlike most of these bodies, the ICE was given a very broadly worded and, for a Commission of this kind, very lengthy mandate and was provided with substantial resources. In particular, it was able to carry out its task with the benefit of privileged access to the archives of companies and associations.

As far as our own aims are concerned, the intention was not merely to capture – from a different time-perspective – a reflection of the historic reality of Switzerland during the war and post-war years as if in a mirror. Rather we wished, from a host of fragmented facts, to build up a picture of the country which would of necessity be different from the self-image of Switzerland established over the years. The need to judge this legacy more comprehensively and to disclose suppressed or forgotten facts became apparent. At the same time, this was the last opportunity, after more than fifty years, to document the reality of that period on a broad basis whilst those involved were still alive. It is thus no coincidence that investigations were instigated simultaneously in so many countries and that other countries also had to confront unpleasant truths. In France, for instance, not everyone belonged to the Résistance, not all Dutch shared in the heroic resistance to the occupying forces, and Norway was not the only country to have a Quisling. The analytical perspective which we have

developed differs from the clichés which portrayed Switzerland, on the one hand, as a small, neutral country which from 1940 onwards was completely encircled by the Axis powers and only survived thanks to its power of resistance, and on the other as a country of bribable bankers whose only concern was to extract profit from the human and economic havoc engendered by the war surrounding the country.

In order to attain a clear perspective in considering the treatment of victims and perpetrators and the attitude towards them, three periods must be distinguished: the years from 1933 to 1939 after the seizure of power by the Nazis, which created the framework for future developments; the war period from 1939 to 1945; and the return to normalcy in the years following 1945. It was against this background that the investigation proceeded, scrutinising Switzerland's economic dependence on and close links with the countries surrounding it, the questions concerning the extent to which it enjoyed room for manoeuvre and decision-making as a result of its neutrality, and its silence with respect to the Holocaust in the post-war period.

It is not as if, until now, research into Switzerland's role in relation to the Nazi policy of persecution and extermination, and its consequences, had lain completely fallow; but it had always concentrated on individual aspects only. Thus in Switzerland itself the restrictive and discriminatory treatment of refugees had been raised as an issue again and again over many years, particularly the treatment of those of Jewish descent seeking refuge. But by contrast, other areas had either not been discussed at all or only marginally, as a side issue. Examples of this are the conduct of German subsidiaries of Swiss companies and the attitude of the Swiss business community in general to the Nazi policy of deprivation of rights and property. These diverse aspects of the past were more closely and intricately interlinked than might have appeared to be the case from a purely legalistic or unilateral perspective. The task which lay before us was therefore to conduct a well-focussed search – within the wide field of the era before, during, and after the time of Nazism – for answers commensurate with the mandate we had been given and for internal connections linking the areas of focus.

### **History and historical images**

During the 19<sup>th</sup> and at the outset of the 20<sup>th</sup> century, Switzerland had developed a stable political system by virtue of which the various regional, linguistic and cultural sectors of the country coalesced in a national identity. It was in those times of flourishing economy that its manufacturing industry and financial centre were built up. Switzerland was anything but isolated. The First World War did not leave it unscathed. Tensions between German-speaking and

French-speaking Switzerland called national unity into question; the impoverishment of large sections of society and political polarisation shattered social cohesion. In the general strike («*Landesstreik*») of 1918, this internal confrontation came to a head. After a period of stabilisation at the close of the 1920s, the worldwide economic crisis heralded the next setback. Although the economic collapse hit Switzerland less hard than its neighbours, growing unemployment and general insecurity heightened internal tension. But from the mid-1930s and during the following wartime years, political and social cohesion were successfully strengthened and employers and employees became more closely allied.

The changing nature of the problems within such a short time created a burden which influenced people's mentality in Switzerland, impacting on its cultures, and political, economic and social attitudes in the 1930s and 40s. The 1930s were characterised by the two extremes of Frontism and Communism. Sections of the cultural elite and some of the leading personalities of the traditional right-wing also succumbed to the general trend of these crisis years towards an authoritarian state. This trend was also felt in increased recourse to emergency legislation. Italian fascism was seductive to some adherents of the right; initially even Hitler was reassuring to some sectors of society as it seemed he had rapidly brought about order in Germany, brought fresh reassurance to investors and portrayed the Nazi regime as a bulwark against Bolshevism. From 1934 onwards, but certainly by the time of the racist Nuremberg laws of 1935, the totalitarian nature of the Third Reich, which was brutally persecuting minorities, was becoming painfully clear. It became apparent that the political culture of Switzerland, which relied on a federal state structure and evinced a strong democratic tradition, was irreconcilable with the Nazi regime. However, even in Switzerland liberal values were repressed and a pragmatic corporatism won through, which also influenced the structure of a wartime economy that had been created even before the outbreak of the war. These crises were nurtured by the «*Zeitgeist*» which for many people engendered a deep mistrust of everything that appeared alien to the country's own cultural traditions. The cosmopolitanism so widespread before 1914 and the mobility of that time were on the decline. Many people mistrusted styles of living, of thinking, and of worship which stemmed from abroad – jazz is just one example of this. By contrast, technical innovations from abroad were still welcomed.

Switzerland shared the same problems as other societies in the Western world. Anti-Semitic views were more or less widespread amongst the political classes, the civil service, the military and the church. This form of hostility towards Jews manifested itself mainly verbally and for the most part non-violently, and was all the more dangerous for not causing any feelings of guilt amongst the

population. Anti-Semitism could be detected in Switzerland as early as the mid-19<sup>th</sup> century, but after 1900 was directed above all against immigration by Jews. At the beginning of the 20<sup>th</sup> century, discrimination started against Roma, Sinti and Jenisch, founded as much on a deep-rooted mistrust of the itinerant peoples' culture as on eugenic and ethno-political doctrine. These few observations show that it is impossible to explain the conduct of the Swiss unless a longer temporal perspective is considered, going back to 1914 at least.

The Second World War was, to a far greater extent even than the First, an economic, military and ideological conflict, which with its persecution and annihilation of entire ethnic groups descended to depths of unparalleled barbarity. Switzerland lived through it in a «holding position». Its economy was deeply involved, not least because it had neither access to the sea nor significant natural resources. The country's closeness to the continent and the rest of the world was all the stronger since it had for many years been economically interlocked with the outside world and could not therefore become «self-sufficient», even for a short time. From June 1940 until autumn 1944, this neutral country was surrounded by the Axis powers and Vichy-France, from which it purchased industrial raw materials and food, but to which, on the other hand, it also exported goods, and on which it was therefore doubly dependent. As a highly developed industrial country, Switzerland thus had no choice but to continue commercial exchanges with these powers. After 1943, imports and exports to the Allied powers were steadily built up again. The question which arises is not whether Switzerland should or could have maintained its business contacts and foreign trade with the warring powers in the first place, but rather how far these activities went: in other words, where the line should be drawn between unavoidable concessions and intentional collaboration. After 1945 Switzerland found itself, unharmed by war, in a relatively favourable position: its intact manufacturing resources, retained markets and political stability, the latter particularly remarkable in a world so marked by the upheaval and destruction of war, assured it a leading position in post-war Europe. This, together with the effects of the Cold War, meant that in Switzerland hardly any critical questions were posed regarding the past, not to mention the fact that self-criticism of any kind would not have been permitted at the time. Generally speaking, recollections were coloured by positive aspects of the war period and lent credence to a one-sided view of history. The problem with this idealised collective memory is not the impression it gives of having been entirely made up of «phoney» elements, and any criticism is not intended to belittle the contribution made by the soldiers, women and men who made tremendous efforts in different places for worthwhile causes and wanted to resist the Nazi regime. But after 1945, this view of history, which highlighted resistance whilst ignoring

conformist tendencies, served only to eschew important questions. And in this view of history there was room neither for the victims of the Nazi regime nor the economic and financial network which linked Switzerland to the Third Reich, and thus the country where these victims underwent persecution, deprivation and annihilation.

Towards the end of the 20<sup>th</sup> century, the positive historical image which had dominated since 1945 came in for ever-increasing criticism. The Swiss «Diamond» celebrations of 1989 commemorating the 50<sup>th</sup> anniversary of the outbreak of the war and the general mobilisation of the Swiss army, was attended with controversy. Together with the end of the Cold War, it marked a turning point. Increased overall awareness of the Holocaust and its consequences manifested itself in an Extraordinary Session of the Federal Assembly and also at a celebration held in Bern Cathedral in 1995 (in the presence of the Federal Council) to commemorate the fiftieth anniversary of the end of the war in Europe. After so many years of silence, the victims of Nazi persecution and their successors were given a hearing; the moral and material aspects of restitution and compensation finally came to the forefront of the public consciousness. Too, the opening of numerous archives containing records from the years before and after 1945 brought new facts to light and broadened the spectrum of unanswered questions. It was in this emotionally-charged atmosphere in which firmly-rooted, almost mythicised memories found themselves confronted with a need to uncover the facts and at last make a clean sweep, that the ICE was called into being. Now, five years on, more than twenty volumes have been produced, containing over 10,000 pages of historical studies, research contributions and expert legal opinions. Having benefited from special privileged access to archives, they represent the fruits of intensive endeavours on the part of the Commission. The findings are prioritised in the following sections and a number of unresolved questions highlighted for future research.

### **Refugee policy**

In substantially tightening up its aliens and refugee policy in 1938, Switzerland intensified its rejection of certain people and groups, a tendency which had been evident since the turn of the century and had increased during the 1920s. This trend is exemplified by the measures practised against foreign Roma and Sinti and also indigenous Jenisch whose children had been forcibly removed from their parents since 1926. This is at odds with the image which, since the 19<sup>th</sup> century, had portrayed Switzerland as upholding a humanitarian tradition which rooted in the Swiss conception of itself and was also useful in morally legitimising the country's neutrality. Both outwardly and domestically, the

image of the Confederation was to a large extent founded on its tradition of granting asylum, its good offices, humanitarian aid, and the services provided by the Geneva-based International Committee of the Red Cross (ICRC). Inherent in this tradition was the fact that, economically speaking, the Swiss government had always supported the free, cross-border exchange of goods, capital, and services and in this respect opposed restriction, or accepted it only very reluctantly. The policies pursued as regards asylum-seekers, refugees and other undesirable immigrants, however, represented a stark contrast to the image of Switzerland as a humanitarian and open country. Foreign money, of course, protected by the principles of client protection and banking secrecy, was very welcome; desperate people attempting to flee from the threat of deprivation and persecution by the Nazi regime were often refused entry. The results contained in this report on the whole endorse the findings of earlier research: measured against its previous stand in terms of humanitarian aid and asylum where its refugee policy was concerned, neutral Switzerland not only failed to live up to its own standards, but also violated fundamental humanitarian principles.

By and by, draconian measures were introduced: in 1938, that is to say before the outbreak of war, the Swiss authorities asked Nazi Germany to mark the passports of Jewish citizens of the Reich with a «J»; as they did not want to recognise persons persecuted by the German authorities for racial motives as worthy of asylum. In a move that marked a watershed in 1942 at a time when Switzerland, due to its geographical position, was for many people the only hope of flight and rescue, the country closed its borders and refused to include Jewish children among the children brought into Switzerland for a holiday. It is clear that anti-Semitic attitudes, open or concealed, contributed to such decisions by the authorities; such attitudes had become apparent in the discrimination experienced from the 1920s onwards by those Jews who wished to become naturalised after living in Switzerland for many years. Even the diplomatic protection the Swiss government extended to Swiss Jews and their assets abroad was grudging both on the legal and the political plane after the spring of 1938. Mention must be made of the fact that, after the war, when the compensation of Nazi victims was being discussed, attempts were made to «dispose of» the consequences of the erstwhile refugee policy if possible without any public debate.

Even after 1944/45, it was only after a long struggle that Switzerland decided to grant long-term residency to former victims of persecution. It continued to uphold the view that these refugees should be tolerated only temporarily. Well into the post-war period, people who had been persecuted during the Nazi era were still refused entry on cultural or ethnic grounds. Despite evidence of a

different type of conduct displayed by individual officials – for instance the courageous rescue attempts made by the Police Chief Paul Grüninger in St Gallen in 1938 or the diplomat Carl Lutz in Budapest in 1944 – the overall impression is not conducive to exonerating Switzerland from accusations of racist attitudes and anti-Semitic prejudice. Since the report written about Switzerland's refugee policy by Carl Ludwig in 1957, historical research has continued to piece together more and more evidence making it impossible to present a view of history that glosses over facts.

The implicit endorsement of German race laws by the Swiss authorities is a very serious matter indeed. It involves not only the crucial decisions and instructions issued in 1938 and 1942 regarding the non-admission of Jewish refugees from German-occupied Europe. The 11<sup>th</sup> Ordinance of the Law on German Citizenship (*Verordnung zum Reichsbürgergesetz*) of 25 November 1941 stripped expelled German Jews of their citizenship, thus entailing serious consequences for German Jews living in Switzerland. These persons, who were now stateless, many of whom had lived in Switzerland for a long time, found their status downgraded by the authorities to that of merely tolerated refugees. Another shocking fact is that in February 1945, when the Federal authorities blocked German bank accounts held in Switzerland, these refugees who had been deprived of their own citizenship now counted as German citizens again, a decision resulting in the freezing of their assets. Against this, it should be pointed out that under international law there were but a few obligations<sup>2</sup> regulating the acceptance, protection and rejection of refugees, or prescribing their treatment on the basis of humanitarian principles. Switzerland frequently referred to the rules laid down by such international legal criteria, but failed to interpret them to the advantage of the victims of persecution.

Many of the Commission's findings are new, whilst others afford a deeper insight into already known facts. Amongst the latter one might include, for instance, the fact that Swiss cantons were entitled to demand deposits and promissory notes for residence permits of which every canton made use in a different way; or the obligation imposed upon the «emigrants» to pay a special tax in the form of a so-called solidarity tax, with the result that the assets needed to continue their journey were whittled away; and, finally, the practice of mandatory trustee administration (by the Swiss Volksbank) of all assets of refugees who had entered the country «illegally». Switzerland's role in the International Criminal Police Committee, which was set up after the First World War and approved of the Nazi methods of dealing with minorities, was hitherto unknown. We must also take note of the attempts made by the Swiss side to exploit the room for manoeuvre obtained, as well as its role as protecting power in the context of German ransom demands to assist the flight of Jews into third countries.

One aspect of the image of Switzerland which must not be forgotten is that many Swiss and foreign relief organisations offered humanitarian aid – whether it was to refugees living in Switzerland or to people in danger and distress abroad. This readiness to offer help meant that the Swiss authorities could, to a certain extent, be favourably disposed towards accepting refugees for a short time even if, as a rule, they allowed themselves to be led by considerations of the policies on population, foreigners, and employment. The Confederation perceived the activities of the relief organisations as a private initiative; this principle remained unchallenged for a long time. In any case, the various benefits provided by the State and private individuals, and by the refugees themselves, should not be considered as having emanated from the authorities only. Nor should it be overlooked that a large part of the support provided in Switzerland was funded by foreign relief organisations, specifically American-Jewish relief organisations. At the same time, the authorities had accurate, prompt information about the Nazi regime's inhuman aim of completely eliminating Jews and other minorities – one need only recall the medical missions to the Eastern Front in 1941 or the numerous commercial contacts. Moreover, discrimination, persecution and expulsion were being openly conducted in the years just preceding.

However, there is a considerable gap between knowing, wanting to know, and taking action. This makes it hard to understand retrospectively why the Federal Council did not opt for a policy of resolute protection and more effective aid and rescue as early as 1938, and particularly in 1942. In 1938 – following the Evian Conference, for instance, and in the two subsequent years – comparisons can definitely be drawn between Switzerland and other countries; but from 1942 to 1944, the country was in a unique geographical and historical position from which it could have offered protection to those persecuted life and limb by the Nazi state, or introduced a policy of aid and rescue on an international scale. The considerable number of civilian and, above all, military refugees who found acceptance, support and understanding in Switzerland testifies to the fact that this would have been possible. But, by progressively closing the borders, delivering captured refugees over to their persecutors, and adhering to restrictive principles for far too long, the country stood by as many people were undoubtedly driven to certain death. In this way Switzerland contributed to the Nazi's success in achieving their goals.

In the countless attempts to understand the past with the benefit of hindsight, the central issues of early awareness and appropriate action, acceptance or rejection, rescue or death, come up not only in statements made by former refugees, those who assisted them, and other contemporary witnesses in books and films criticising the legitimising metaphor of the overcrowded lifeboat, but

also in more recent legal proceedings involving extradited refugees. Apologetic vindications abound, but have consistently failed to be addressed to those who helped, let alone the murdered victims and survivors of Nazi persecution. Lest we forget – survivors of the Holocaust, remembered by the Jewish people as the Shoah, and their survivors, are still among us – in Switzerland too.

### **The economic and financial dimension**

Switzerland's above-average standard of living is traditionally attributed to the country's international relations. Thus significant branches of Swiss industry had more customers abroad than at home, and a whole range of multinational enterprises sited their head office in Switzerland. Because of this close interaction with foreign markets, the events of the 1930s – the world-wide crisis, the general tendency toward exchange controls, protectionism and the bilateralisation of trade relations – had a great influence on the way the Swiss business community and the authorities thought and conducted themselves. It is therefore not surprising that Germany, which at that time was already Switzerland's most important trading and investment partner, became an even more attractive market as a result of its economic upturn. In the eyes of many Swiss decision-makers, political considerations served to confirm the positive perception of this phenomenon. Initially, after 1933, the Nazi regime appeared to have created a new stability, and reservations about the «socialist» part of the Party programme faded into the background as it became clear that private property rights would be preserved – provided that they were not those of «undesirable persons».

Accordingly, many Swiss firms actively endeavoured to expand their commercial links with Germany. Insurance companies were on the lookout for new business and expanded their branch offices. The German subsidiaries of enterprises such as AIAG (Aluminium-Industrie AG) or Maggi raised their output since, as in the case of the aluminium manufacturer AIAG, they were able to profit from the armaments boom or the general economic upturn. Swiss hoteliers, who had suffered very badly during the economic crisis, demanded a relaxation of the exchange controls in order to be able to attract wealthy German tourists.

One exception to the general efforts by Swiss business to increase its dealings with Germany was the banking industry. The banks were in a special position as the high-level credit volume which they had granted Germany in the 1920s had been frozen during the great financial crisis of 1931. From this point onwards, the banks endeavoured to reduce their German risk through gradually cancelling the credit limits frozen under the terms of standstill agreements. So many balance sheet items were linked to German assets in some banks, in particular the Federal Bank (FB) and the Basel Commercial Bank (BCB), that

liquidating them was out of the question. However, those banks which wanted to reduce their exposure in Germany were not intent on a wholesale withdrawal; rather, they sought to raise the quality of their investment by shifting their lending business to more reliable German partners – because the latter (such as IG Farben or the major German banks) were large corporations or enjoyed good relations with the State and the Party. It was inevitable, in view of subsequent developments, that several of these establishments should figure among the most «problematic» of those profoundly implicated in the policies of Nazi Germany.

When German imports switched from consumer goods to capital equipment, particularly engineering products and machine tools, some Swiss companies began to look around for new market niches whilst others, such as Sulzer AG in Winterthur, withdrew. Although new direct investments in Germany had practically ceased, Swiss investments grew steadily since enterprises had to reinvest their profits as a result of exchange controls. Firms which had committed themselves to activity in Germany felt that they had to conform to the new political climate, to German business conditions and to the overall environment. They disassociated themselves from Jewish shareholders and dismissed or removed Jewish employees and managers in Germany and in some cases in Switzerland too. They did not even change their behaviour when the Swiss authorities pointed out to them that they were under no obligation to answer questions about the «Aryan» or «non-Aryan» descent of their employees, management board members or shareholders, and moreover should not disclose *any* information of this nature. Finally, confronted with a *fait accompli*, the authorities played along. The fate of those who lost their jobs in this way varied: some were simply dismissed, whilst in other cases employers saved their employees through transferring them to Switzerland, America or even South Africa. Regardless of the consequences for those concerned, there was no desire to endanger business activities in Germany.

The Swiss political authorities played a more important role in this strategic adjustment than was in keeping with the tradition of a liberal market economy. Partly this was related to the change in the international economic environment in the 1930s. In view of the large financial investment in Germany, discussions about clearing agreements were on the official agenda after 1934. In the course of these discussions, public servants were routinely accompanied by representatives of private interest groups such as *Vorort* (Swiss Federation of Commerce and Industry, SHIV) and the Swiss Bankers Association (*Schweizerische Bankiervereinigung*, SBVg). This link between state and business interests reflected the trend towards the kind of organised corporatism characteristic of the thirties. The state became totally enmeshed in a network of interest brokers.

Discussions about the high level of outstanding loans, in particular, proceeded at the same time as the internal Swiss debate about the demands of «labour» and «capital». It was argued that the Germans might not be able to afford so many imports from Switzerland if excessively high interest and capital repayments were demanded, which would in turn result in the loss of jobs in Switzerland.

The attitudes developing in the pre-war era were to form the basis for the policy pursued during the war as well. Swiss business interests stood in a triangular relationship with the Swiss government and Germany, and this was the case long before the end of 1937 when German rearmament and the expropriation of Jewish property intensified. In retrospect it is obvious that at the time a great deal more was at stake: from the standpoint of foreign policy Germany represented a growing danger to peace. As far as German domestic policy was concerned, Swiss authorities had no doubts about the illegality of the measures taken in Germany. However, as a result of Germany's strengthened position, the Swiss business community sensed a growing pressure to conform to German behaviour and with few exceptions accommodated itself regardless of its irreconcilability with Swiss legal principles. This entailed the neglect of the interests of those banking and insurance clients who were persecuted by the Nazis, the implementation of personnel-«cleansing», and even the exertion of pressure on Swiss newspapers not to antagonise German commercial partners or political bodies through critical commentary. Some people justified this conduct with arguments drawing political comparisons with the policy of appeasement being pursued in various European countries, which assumed that a more prosperous Germany would be a more peaceful and friendlier Germany than an isolated one. More important, however, were business and commercial interests, upon which both the business world and the authorities agreed.

During the war, too, the banks financed German trade and continued to seek reliable German business partners. IG Farben and the national banks, for instance, which were financing armaments production that relied increasingly on forced labour, were granted fresh loans. The insurance companies participated in the German War Insurance Association (*Deutsche Kriegsversicherungsgemeinschaft*). They identified and implemented new business opportunities in the occupied countries of Western Europe. In general, Swiss companies played a significant role in preparing German industry for the war: exporters, particularly those exporting machine tools and precision mechanical products, found an important and highly profitable market in Germany. Swiss subsidiaries in the industrial sector adapted to the restructuring of the economy and continued to be active during the war, employing forced labour and in some cases prisoners from concentration camps. The wartime atmosphere, German anxiety about

possible espionage activity, and the increased sense of a national and even «racial» conflict contributed to the fact that the subsidiaries emphasised their «German-ness» as much as possible. Another aspect of this was the preference for employing members of the National Socialist Party, as it could be assumed that they would offer the Swiss company and its interests a certain degree of protection. To demonstrate national reliability, it was necessary to play down the links between Swiss head offices and their German subsidiaries; correspondence was reduced and more importance accorded to personal contacts. In some cases this took place on a close and regular basis.

The cases investigated by the ICE show that the majority of Swiss companies with strong links to Germany adapted to the situation. This was true as regards both their activities in Germany and the decisions taken at their head office. That there was some leeway, and that this could be used with impunity – at least in some documented circumstances – is shown in several exceptions to the rule. The interests of the Swiss companies in Germany naturally coinciding with German interests, a certain degree of latitude on the part of the subsidiary company must have existed, but would never seem to have been exploited.

The Swiss authorities' interest in the effect of Swiss business activity on foreign policy and security, as well as on its consequences for Swiss manufacturing activities and for internal social relations, is obvious. Thus, as late as March 1944, a report on job-creation argued that Switzerland's export production should be increased «far above its pre-war status» with a view to creating new jobs. It is worth noting the date of this report, as it raises the question whether Swiss companies broke off their close ties with the German business community once it dawned upon them that Germany would lose the war. No precise date can be given for this realisation; not least because different players interpreted the military situation in different ways.

Switzerland's exports to Germany diminished considerably in the course of 1943. In the same year the Swiss spokesmen at the economic negotiations with the Reich adopted a more severe tone. As of April 1944, the Swiss National Bank refused to accept further deliveries of gold coins from the Reich. In October 1944, the government prohibited the export of arms and ammunition. In January 1945, it restricted the delivery of German coal to Italy. As the defeat of the Reich became apparent and its liquidity ever more doubtful, Swiss creditors tried desperately, in highly dubious negotiations, to recover outstanding claims. It is well known that, in trying to secure German gold deliveries of the final days of the war, Hans Koenig of the Rentenanstalt wished to safeguard the claims of a host of Swiss insurance companies, and this despite the fact that it had been known for a long time that Reichsbank gold represented looted assets, that the Allies had issued a warning that transactions of

this kind would be abrogated after the war, and that the Swiss negotiators had promised the Allied Laughlin Currie delegation at the beginning of March 1945 to forbid such transactions.

Other interests beside the settlement of old claims were involved. Most Swiss businessmen were convinced that Germany's economy would continue to flourish after the war. For this reason having an early or ongoing presence on the German market would bring major advantages. This explains a number of personal and business decisions which in retrospect seem dubious. Leading personalities in the Swiss business community on more than one occasion defended their German wartime partners against the charge of having actively supported the Nazi regime, that is to say issuing them so-called *Persil-Scheine*, i.e whitewashing them. Documentary evidence exists of Swiss businessmen camouflaging German assets. Some contractual agreements to this effect were discovered after the war. In other instances, such as the famous case of IG Farben and IG Chemie/Interhandel, there seem to have been no written agreements. In the case of IG Farben, hopes were pinned on rescuing their interests in the USA by entrusting them unconditionally friendly Swiss hands.

On the whole, in their assessment of likely developments in international business after the war, companies generally reckoned with a strong demand for advanced and innovative technology. Swiss engineering companies with a firm footing in Germany, and a temporary monopoly owing to the absence of former German competitors, would be able to profit from a development of this kind. The Swiss authorities were sympathetic to this view held by the business world and even shared it; to justify their policy they often invoked arguments about the state of the labour market. The opinions shared by both these groups as regards an increase in the importance of the German market explain to a large extent the negative official attitude of Switzerland to the registration and liquidation of German assets held in Switzerland, which had been agreed upon in the Washington Agreement with the Allies in May 1946.

The overall attitude of the banks constitutes an integral part of this picture. Their activities in relation to assets dating from the Holocaust era, which later became a focus of restitution demands, took place largely on Swiss territory and thus were not subject to any pressure to adapt to German law. Business interests with the Axis powers, however, were deemed to be more important than the interests of those customers who had handed over their assets for safekeeping in Switzerland, or those of the original owners of «Aryanised» companies who sought to protect claims they had against Swiss customers. In this connection, it is significant that part of their balance sheet items was virtually held «hostage» in Germany by virtue of the restrictions imposed through exchange controls. On the basis of the available documentation, however, no generalisa-

tions can be made about the conduct of the Swiss banks. The private banks, in particular, are sparsely documented in both quantitative and in qualitative terms, officially and privately. According to the findings of the ICE, they do not appear to conform to the pattern of the generally legalistic conduct demonstrated by the commercial banks. This can partly be explained by the fact that private banks maintain closer ties with their customers. Before the war there was a basic tendency in the banking industry to release accounts for transfer to a German foreign exchange bank on the basis of the signature of the account-holder. Up until 1938 at least, the question of whether this actually accorded with the wishes of the account-holder, or whether the signature was obtained under duress is one that bank officials in the main could not be expected to answer. Thereafter, the intentions of the Nazi authorities in relation to the spoliation of assets belonging to persecuted groups were clear, and more care could have been expected with regard to «legally founded» asset releases.

#### **Neutrality law and neutrality policy**

The long-standing tradition of neutrality which Switzerland had made its foreign policy maxim was recognised under international law by the Great Powers in 1815 and was subsequently frequently re-confirmed through international legal practice. Switzerland might have professed «differential neutrality» in 1920, when, on joining the League of Nations, it undertook to contribute to non-military measures in order to promote collective security, but in 1938, with the agreement of the Council of the League of Nations, it returned to «integral» neutrality. Switzerland's neutrality is based on the rules of the general law of neutrality which was codified in the two Hague Conventions on the rights and duties of neutral powers dating from 1907. Amongst the laws codified by these Conventions are the right of a neutral state to independence and the inviolability of its territory, and its right to trade with the belligerents. Its duties include compliance with the proscription of offers of assistance to the belligerents in waging war, that of allowing the belligerents to use its territory for military purposes, and – whenever financial regulations are issued and applied (for example, permits regulating the export and transit of war material by private individuals) – that of treating the belligerents unequally. The neutrality law puts only the State under an obligation: it does not regulate the conduct of individuals and above all does not stipulate any obligation to hold neutral views. Thus neither individuals nor companies are subject to the neutrality law. The fact that it relates solely to the State is a classic product of the liberal thinking of the 19<sup>th</sup> century, which was based on the separation of State and society. However, after the First World War the traditional concept of neutrality was called into question by the ever increasing interdependence of

State and private business. This had an impact on neutrality policy. There was mounting criticism of a «*laissez-faire*» attitude in regard to the export of war materials. The chequered history of the respective prohibition orders serves to illustrate that the State could no longer operate with a narrow definition of the neutrality law. Even the equal treatment of warring parties stipulated in the neutrality doctrine (on the basis of the «*courant normal*») in the 20<sup>th</sup> century increasingly became a political issue which began to play an important role in the discussion about the State's neutrality duties.

In the Second World War the rules of the general law of neutrality were violated to a large degree. Neutrality did not preserve small countries like Belgium, the Netherlands or Denmark from occupation by the Third Reich. To this extent it offered only slight protection against the arbitrariness of an unscrupulous and unpredictable aggressor. In the case of Switzerland too, there were violations of the neutrality law by the belligerents. Airspace was repeatedly violated. On the other hand, Switzerland did not always strictly fulfil its duties under the neutrality law. Violations occurred in the export and inadequate monitoring of the transit of war materials and also in the granting of loans to Germany and Italy for use in the war economy. Switzerland often hid behind its neutrality and this same neutrality was improperly invoked to justify not only decisions made in all kinds of spheres, but also inaction on the part of the State. Thus the Federal Government, for instance, regarded the accusations of the Allies concerning transportation by rail, which would only serve the Axis powers, as an attack on its neutrality.

In calculating Switzerland's interest in defence, foreign, and economic policies in the Second World War, neutrality played a major role. According to assessments made by authorities and individuals at the time, it contributed substantially to keeping the country out of the war. Still, no one disputed the fact that Switzerland was spared, thanks chiefly to determined fighting by the Allies and good fortune.

In Swiss doctrine, neutrality is understood to be a means of maintaining independence; it is intended to shield the country, its inhabitants (including refugees), and its institutions from the violence and terror of war and occupation. However, neutrality is also traditionally linked to and legitimised by the humanitarian principle. Nowadays we ask ourselves, of course, how Switzerland's behaviour in the Second World War should be judged morally. To be sure, the pragmatic maxim prevailed that leaving the country in peace should be in the interests of any potential enemy; but today we know how «legalistically» and «insensitively» the neutrality argument was used by the authorities in order to avoid becoming drawn into any eager humanitarian involvement, particularly where refugee policy was concerned. Further developments in inter-

national law after the Second World War have resulted in central elements of neutrality policy (international humanitarian law, international human rights protection) being subject to significant legal reinforcement and enhanced status.

#### **The challenge to the constitutional state by the Nazi system of injustice**

The «seizure of power» by the National Socialists in 1933 destroyed the Weimar Republic's constitutional law. The basic rights enshrined in the Constitution were invalidated; the institutions of representative democracy were replaced by the «*Führerprinzip*» (dictatorship) and a (plebiscite) appeal to a racially-defined community («*Volksgemeinschaft*»). The federal state structures were subject to the policy of «conformity» («*Gleichschaltung*»), separation of powers gave way to monism of power. Formal guarantees such as those of the independence of the judiciary and fair trial decayed. Laws, insofar as they continued to exist, were reinterpreted in order to achieve the power-political and criminal aims of the regime and to abolish rights of freedom, political rights, and property protection in the «greater interest» of the totalitarian state. Even ostensible acknowledgements of legality were at odds with the concept of law, as for instance in 1938 when criticism was voiced in the National Socialist Party newspaper *Der Stürmer* that «random Aryansation» should not be tolerated in a «constitutional state». All in all, it is now clear just how grievous was the absence of full-fledged international law serving as a «safety-net», that is to say, as a basis and legitimisation for the legal order created by states of the international community.

The legal revolution which was effected in Germany under the banner of National Socialism did not leave Switzerland's constitutional system unscathed. Not that Swiss jurists would have conducted any meaningful discourse with the new Nazi order. Instead, it was resolutely rejected or simply ignored, and jurisprudence in Switzerland went its own way. Nor was the incorporation of German law into Switzerland's constitutional system contemplated at any time. However, Switzerland reacted to the external power-political challenge to the extent that in 1939 the Federal Assembly empowered the Federal Council to pass emergency legislation. In so doing, it emulated the 1914 decree introducing a system of government by emergency plenary powers (*Vollmachtenregime*) for the First World War (and designated as constitutional by the Federal Supreme Court at the time) and thus built on a dubious practice dating from the 1930s whereby the Federal Assembly on numerous occasions employed emergency clauses to exclude Federal laws from approval by referendum. Relying on the Emergency Plenary Powers Decree (*Vollmachtenbeschluss*) of 30 August 1939, the Federal Council was empowered to intervene in the consti-

tutional rights of Switzerland's citizens and the Cantons within a framework of subsidiarity and proportionality. Even though scarcely any gross abuses of the Federal Council's extraordinary powers were recorded and the populace regarded government by emergency plenary powers as legitimate, its constitutional basis must be questioned. Whilst on the one hand, the absence of a specific state of emergency article in the text of the Constitution was criticised, the authorities, relying on majority juristic opinion, denied there was any conflict since it could not be the intention of the Constitution to tolerate its own destruction. It was not until more than four years after the war, in autumn 1949, through the extremely narrow approval of the popular initiative (*Volksinitiative*) «Return to Democracy» («Zurück zur Demokratie») that an end was put to the process of erosion to which the Federal Constitution had been subjected for two decades through the application of emergency clauses and legislation. According to the German jurist Gustav Radbruch, in the context of the Nazi dictatorship and the subsequent defeat and occupation of Germany, positive law is defined as an order which by its nature is intended to serve justice<sup>3</sup>. As a rule it is, first and foremost, the function of the Constitution to lay down standards for a just legal system and to gauge simple law against them. In the context of the confrontation with the Nazi system of injustice, however, this took effect largely in international private law and in international civil procedural law in the form of the *ordre public* or public policy clause. In a series of decisions, cantonal courts and the Federal Supreme Court refused to enforce foreign judgments or to apply foreign law since this – application of the Nuremberg race laws, for instance – would have «violated the indigenous sense of law to an unacceptable degree». As an «emergency clause» within the system of international private law and civil procedural law, the *ordre public* clause protects the basic values inherent in every constitutional state such as personal dignity, equality before the law, and the proscription of arbitrariness. To this extent, the Swiss system of justice and its judicial decisions were consistent: in cases concerning questions of labour law or the withdrawal of property rights, the courts mainly decided against the dissonant provisions of the Axis powers and of Germany in particular. The conduct of the business community, the government's decisions, and the exploitation of any available scope of action must be viewed against this background.

Another tendency is illustrated by the incorporation of Nazi categories into Swiss administrative law and the practice thereof, as mentioned previously in connection with refugee policy. After the war, in arguments over «dormant accounts», the banks and the authorities finally relied on the *ordre public* in order to object to specific legislation in this sphere. The *ordre public* was used to construe the Law on Banking Secrecy of 1934 – of which the *raison d'être* was to

reinforce the protection of property rights – in such a way that the legitimate property rights of the Nazi victims could be confiscated and the restitution of assets blocked.

### **Responsibility and restitution**

It had become apparent long before 1945 that the years of plundering and of war would have devastating consequences for all those who lived within the sphere of power of the Third Reich. At the same time, no one was able to imagine the true scale of this devastation. This made it seem all the more urgent to implement in practice the measures repeatedly announced by the Allies during the war, whereby asset transactions carried out by force were to be declared void after the war was over. It was therefore no surprise that the Allies turned to the neutral countries and asked them to do their part. In fact, negotiations in this regard had been started even before the war ended, but the return of the assets was ultimately neither prompt nor complete.

How could that be the case, given that the war was over? Switzerland was no longer threatened and «encircled». Its institutions were intact, its economy permitted it to participate in a significant way in the reconstruction of Europe, and not without drawing some benefit: the loans issued by the Federal Government and the banks to France (after March 1945), Great Britain, and numerous other countries allowed them to purchase the manufacturing goods they needed, such as machine tools, from Switzerland. Within a short time the Cold War between the West and the Soviet bloc drove the problems which had emerged from the pre-war and war era into the background. The claims about Switzerland voiced earlier by the victorious powers – and repeated in February 1945 by the Currie Mission – lost their urgency and acuteness. The Washington Agreement of May 1946, which had a very positive outcome for Switzerland, not least because the Swiss Confederation was not charged with misconduct of any kind, seemed to clear up all claims at intergovernmental level. In these circumstances, those in positions of responsibility in both public and private domains in Switzerland maintained their silence – some unconcernedly, some with a heavy conscience – about the weighty burden of the war legacy. The general public also lost interest in the subject. Attention was increasingly focussed on the threat of Stalinism, whilst the threat of Nazism, which had scarcely come to an end, was forgotten. It was time to revert to the business of the day.

The most obvious and specific form in which a sense of responsibility for the past could and should have manifested itself after the war was the restitution to their rightful owners of the assets stored in Switzerland where they had been deposited by the victims of persecution or by plunderers.

The task of the Commission did not include clarification in individual cases of what belonged to whom, or direct involvement with the material restitution of dormant accounts and of cultural and other assets. It was mandated neither to identify the assets retained in Switzerland nor to convey them to their rightful owners abroad<sup>4</sup>. Other bodies were concerned or are concerning themselves with this task. The Commission was to assess the global scale of the problem as far as possible, and to render an account of the circumstances in which it had arisen. Details of this are contained in the foregoing chapter in which we described the loopholes in the law, the helplessness of the courts, the opposition from those in positions of responsibility, and the frequent powerlessness of the owners who had been robbed.

The largest proportion of the assets to be restituted, in terms of the total value, comprised the accounts which lay «dormant» in the banks or which were designated as dormant. Using the pretext of their duty to protect private property rights, the banks were able to dodge all efforts to conduct serious searches for such accounts and their owners, and to dismiss applications for restitution from heirs who were unable to prove their title with all the requisite formal evidence (account numbers, officially issued death certificate). This held true despite the fact that it was in most cases plainly impossible for legitimate heirs, and for the organisations representing the murdered heirs, to procure information such as official death certificates and account numbers. The bankers acknowledged the problem, but opposed any general attempt at regulation for a long period, and did so with success. Even the Registration Decree (*Meldebeschluss*) of 1962, which had been laboriously negotiated during the 1950s, scarcely took into account the proposals of the organisations representing the victims or their heirs. It was applied only incompletely and in an extremely restrictive sense.

The insurance companies, and together with them all those companies strongly oriented towards markets dominated by the Axis countries before and during the war, were confronted with similar problems: survivors of the persecution or their heirs were trying to reinstate their property rights. In the case of insurances, however, there was a fundamental difference: policies are never anonymous, and so the rightful beneficiaries could be identified with no problem. But since Swiss companies had on the whole issued policies within the territories of the Axis countries where they had been compulsorily sold or confiscated, Swiss courts referred the beneficiaries who made complaints to them, to the restitution courts in the Federal Republic of Germany. Those who had been robbed on the territory of the future Eastern Bloc found their actions dismissed in Switzerland as a matter of course. This attitude was new, for even during the war, decisions had been made in favour of the plaintiffs and against

German judicial bodies when the proceedings concerned the surrender of policies containing a clause offering the possibility of payment in Switzerland. No clear answer could be found to the question of what happened to policies which had been issued in Switzerland itself. In many instances of material damage, such as reimbursement for the damage caused during «*Kristallnacht*» on 9 November 1938, the post-war insurers offered very little co-operation in respect of the claims laid before them.

Secondary financial significance, but great emotional value, was attached to the works of art, collections, cultural assets, and other movable valuables. They were included in the London Declaration of 5 January 1943 and the Agreement with the Currie Mission. Restitution was not easy, however: a large proportion of these objects had been passed from hand to hand – Switzerland often acting as a «hub» in this process. In many cases their provenance was no longer readily apparent. Although the dubiousness of the origin of many works of art should have been obvious, they were often acquired in more or less good faith by museums or art-lovers. As with the other categories of assets, in the case of works of art and cultural assets, information from abroad was awaited in order to identify possible looted assets. And so, on the basis of a list of objects compiled by the Allies, the Federal Council issued Decrees in December 1945 and February 1946 allowing owners who had suffered losses to submit a petition to the Chamber of Looted Assets (*Raubgutkammer*) of the Federal Supreme Court. 70 of the 77 objects on the Allies' list were restituted, either through a court judgment or an out-of-court settlement. However, the Decrees issued by the Federal Government by no means solved the problem: they were confined to the war years and to the countries occupied by Germany after 1939, granted the owners a period of only two years to lodge their claim, and made no attempt to make these legal provisions known internationally, meaning that in the chaos of the post-war era many owners did not receive the information in time or were unable to find the requisite documents.

The same governmental Decrees provided for the restitution of securities. But here too, the path to restitution was blocked by the banks with feigned legal obstacles despite the rather more flexible approach of the securities dealers. Moreover, the same short 2-year deadline made it almost impossible for private individuals to obtain satisfactory restitution.

Hesitation on the Swiss side in accepting responsibility for the most recent, momentous past was not confined to material or financial restitution. It was also apparent in the fear in public and business circles of compromising important interests, meaning that obscure business dealings (*Interhandel*) or dubious activities on the part of a handful of middle-men, lawyers, fiduciaries, or business people were never explained.

The defensive attitude of private business vis-à-vis the restoration of the property rights of persecution victims was, of course, not without inconsistency. There were important exceptions where simplified and efficient restitution was effected; but these cases were certainly exceptions. Moreover, the private sector was not alone in its attitude. Delaying and minimising tactics were successfully employed by the authorities in relation to the public property, that is to say the plundered gold, which found its way into Switzerland or had passed through it. Once the issue had resulted in a very favourable outcome for Switzerland with the Washington Agreement (26 May 1946), it was assumed – both in the Federal government and in influential circles – that the worst was over. What remained were recollections of supposedly unjustified criticism, whilst the actions to which this criticism referred were erased from the collective memory. This loss of memory is well illustrated by the recollections of Alfred Zehnder, who was Head of the Political Division at the Federal Political Department (*Politische Abteilung des Eidgenössischen Politischen Departements*, EPD) from spring 1946. Reflecting on the past in 1980 he commented with satisfaction that «the earlier suspicions and defamatory comments» had been dispelled in 1946. By this he meant, amongst other things, the gold which Nazi Germany had taken from the National Bank of the Netherlands and offered for sale to Switzerland. Zehnder described this matter as an unproven allegation: «Despite exhaustive investigations on our part, it has never been possible to confirm the transaction described. But the rumours and suspicions refused to relent for a very long time».<sup>5</sup> In reality, Zehnder must have known even then that these «investigations» were far from exhaustive, and that the «rumours» were therefore thoroughly pertinent.

The repression of wartime events continued into the 1990s. It can be explained in part through the desire to safeguard economic and political interests. Where the banks were concerned, it seems unlikely that the amounts needed for complete restitution of the accounts really represented any obstacle to their willingness to co-operate. It is more likely that the efforts made in the post-war era to reinforce and expand their commercial position as regards asset management, together with the attractiveness of accounts offering the requisite anonymity, made the unassailability of banking secrecy appear absolute, and thus no consideration was given to the special circumstances of clients who had suffered during the Holocaust era.

#### **Awareness, knowledge, and power**

Notwithstanding consideration of all the factual differences between the various areas we investigated, the present research work clearly demonstrates that behaviour was dominated by economic and/or political self-interest, the signs

of which can be followed through in the way in which the victims of persecution were treated from the beginnings of the Nazi regime up to the post-war era. For this reason, neither the threat of danger and the associated fears to which a small, isolated country was subject, nor the question of what was known at what point about the facts of the Holocaust, can assist much in explaining dubious patterns of behaviour displayed towards the victims of the Nazi state.

To the majority of the population, the external threat, both in military terms and also vis-à-vis potential restrictions in supplies of food and other vital items, seemed just as real as the internal dangers (inflation and social conflict). However, the most eminent economic or political decision-makers, who were the ones responsible for this behaviour, were able to judge the situation far more accurately. Even «*Volkes Stimme*» («People's voice») sometimes set aside genuine or supposed fears and self-interest. This is illustrated by the statement of an «ordinary» woman quoted in April 1943 in the *Berner Tagwacht*:

«We think about flour far too much. We talk about flour far too much. We exchange far too many flour, butter, meat and cheese coupons instead of books and ideas. Flour is our greatest worry. For want of flour we can no longer see that it is not just flour but completely different things such as justice, dignity, and freedom of speech that are becoming more scarce, more rationed. Let's forget about flour every once in a while! At least about our own flour, and think about those who have less, or haven't any at all».<sup>6</sup>

Similarly, the argument that it was impossible to know what was going on in Germany until it was too late can be regarded as a pretext behind which economic and political self-interest was concealed. As regards the effect which the general perception of the threat of danger and the existing level of knowledge had on political decisions, it should be remembered that the general public had clear information only on refugee policy. The dealings with bank accounts, investments in Germany, and «Aryanisation» were known only to those involved in business and to the political authorities. And it can scarcely be doubted that after 1933 the latter were aware of evolving Nazi policy and its consequences. Prior to 1939, information was freely available and the general public was well informed. But after the outbreak of war, the flow of information was dependent on informal channels. And it was precisely the close links that Swiss business and banking circles had established with Germany which provided them with information which might possibly not even have been readily available in Germany itself. Added to this was the fact that in Switzerland incoming refugees brought with them information about the human tragedy being played out across the border. There was therefore not

much which would have failed to become known fairly swiftly to the attention of the decision-makers, whether in the public or private sector.

Where the State was concerned, the ICE investigations reveal a distinct hierarchy in terms of the exercise of power. The absence of the Federal Council's participation in certain decisive issues is particularly striking. This is a paradox. One might indeed have expected that the government would have regarded itself as especially responsible for performing important state duties in the difficult war years, both in order to ensure the safety of its own people and to demonstrate the credibility of the country to the outside world. Moreover, the Federal Council had emergency plenary powers which increased its responsibility and gave it all the authority it needed to decree far-reaching measures. The question as to why the government kept a low profile in central issues is of great importance from both a historical and a legal perspective.

The absence of the exercise of political power is striking in two cases, above all. The first concerns the gold transactions with the Reichsbank. The Federal Council did nothing to obtain any information about this, and left the fundamental political decisions to the Swiss National Bank (SNB). Consequently, it scarcely became involved in matters which from 1940 right up to the end of the war proved themselves to be politically very problematical. It was the National Bank's management which held the reins here, but not because it had received any great vote of confidence. Personal contact between the Federal Council and Finance Minister Ernst Wetter and the two members of the Governing Board of the National Bank, Paul Rossy and Alfred Hirs, was neither very frequent nor very friendly; the causes were therefore rooted, rather, in negligence or in an absence of understanding of the problem. The second case concerns railway transit through Switzerland. The Federal Council showed a lack of interest in this issue and left it to the management of the Swiss Federal Railways (*Schweizerische Bundesbahnen*, SBB) to solve problems which were of a political order. There was virtually no response from the government to their urgent questions. Other files show that the Federal Council delegated responsibility to senior officials in the administration, especially where foreign trade policy was concerned. Jean Hotz, head of the Trade Division of the Federal Department of Economic Affairs (*Handelsabteilung des Eidgenössischen Volkswirtschaftsdepartments*, EVD) for instance, had more power than Federal Councillor Stampfli, his superior, from July 1940 onwards. Private industry was very influential, with associations playing a leading role as brokers, particularly the *Vorort* and the various industrial sector associations. These organised interests had a formative influence on the functioning of the war economy which had been built up since 1937 as a shadow organisation and went into operation on 4 August 1939 – even before the military conflict had started. Representatives of Swiss business

such as Rodolphe Stadler (Câbleries de Cossonay), Hans Sulzer (Sulzer AG, Winterthur) and Carl Koechlin (Geigy) found themselves with central roles to play.

More research needs to be carried out in this area. However, as things stand at the present point in time, it may be stated that since the 1930s an informal division of labour between the organised interests of private industry and the Federal Council had developed within Switzerland's political system. This is not infrequently described as a «democracy of associations». The recent discussion about the Articles dealing with the economy («Wirtschaftsartikel») in the Federal Constitution focussed on the question of how the influence of associations could be regulated through the Constitution. In 1947, the relevant Articles were accepted in a plebiscite, together with the insurance covering old-age pensions and payments to surviving dependants (*Alters- und Hinterbliebenenversicherung*, AHV). In this corporatist system which became entrenched during the war years under the regime of emergency plenary powers, the government assigned important functions in the spheres of foreign trade, monetary policy, and social policy to para-state organisations. After 1939, the Federal Council thus operated asymmetrically: on the one hand, in the realm of refugee policy for instance, it implemented far-reaching and tough measures, whilst on the other it preferred to leave matters to organisations representing private interests.

After 1945, however, this structure gave rise to conflicts. When, as a result of obligations it had entered into and ongoing external pressure, the Federal Council took steps to restitute assets, as happened in 1946 and 1962, these measures conflicted with the business interests represented by the associations and organisations. Thanks to the delegation of implementation to the private interest groups and businesses concerned – which was by now normal – there was no actual resolution of the issues in question. In the 1990s, this led to the realisation that the «solution» had itself become the problem.

Historical analysis of the Swiss government system shows that the «average» profile of the members of the Federal Council represented the structural reality – there was no place for charismatic leaders. Correspondingly, there was a dearth of clear, courageous decisions conforming with the basic principles of national policy. Given this background, the weak leadership in place in 1940 should be understood not so much as a consequence of weak Federal Councillors but rather as the reflection of the increased importance – generated by the events of the day – of the business associations, of the organisations involved in the war economy, of the negotiating delegations, and of corporate management. In these circumstances the desire for strong, integrating national personalities was distilled into the figures of General Henri Guisan and Friedrich Traugott Wahlen (instigator of the «Wahlen Plan» which bore his name). These two

seemed to function outside established political «mechanisms» and embodied a heightened symbolic need for action and identification on the inside which the political system was unable to satisfy.

What were the consequences of this political *«laissez-faire»* attitude? Did Switzerland really become a nation of war profiteers? And did Switzerland prolong the war? These are all questions which appear even more potentially explosive when coupled with the suppression of past history and the blocking of restitution. The questions which were revived in the 1990s and were used as arguments to criticise Switzerland's conduct are important questions.

#### **Did Switzerland prolong the war?**

The accusation levelled at Switzerland that it contributed to the prolongation of the war and thus the suffering associated with it, was a highly emotional one. It was raised during the war itself when Anthony Eden, head of the Foreign Office, told the Swiss Minister in London: «Every franc's worth of war material sent by Switzerland to Germany prolongs the war».⁷ In winter 1944/45, this became a pressing issue as German defence continued to stand firm. Every day of battle counted for the Allies, and they expected Switzerland to cease all services rendered to their enemy. Statements issued in the heat of the final phase of the war must be interpreted as instruments of political pressure. The accusation was raised again in the preface to the Eizenstat Report of 1997.

The theory which maintains that the services, exports, and loans provided by Switzerland influenced the course of the war to a significant degree could not be substantiated. This has less to do with a general *«insignificance»* of Swiss exports and financial centre services than with the enormous economic dimension of this war and the multifarious factors which determined the war economy and the unfolding of events on the front. Strategic bombardment, the battle tactics of the military protagonists, communications systems, and the propaganda war are all important factors on which Switzerland was unable to have any impact, or at least no direct, relevant impact. Thus neither the arms supplies nor the financing of strategic raw materials had any demonstrable effect on the duration of the war. The Commission found no evidence pointing in this direction. In some areas the presumed effects of the support given to Germany were in fact refuted. Thus Swiss ball-bearing manufacturers were keen suppliers, but in no way could they compensate for the shortages caused by Allied bombing. Nor can one draw the conclusion that the war would have ended earlier without Switzerland, given the reserves remaining in the German economy and Germany's resolve to fight to the bitter end. That is not to say that access to Swiss currency and the generous loans granted for certain areas of Germany's war economy were of no significance. Accordingly, it is also not

appropriate to underestimate Switzerland's contribution in quantitative terms. Germany's Clodius Memorandum in June 1943 stated that the deliveries of war material from Switzerland represented only 0.5% of German production. Statistics like this cannot explain how it is that German bodies time and again expressed their gratitude for Switzerland's economic support, even if one takes into account the fact that such statements might conceal a high degree of bureaucratic self-interest. Nevertheless, Federal Councillor Max Petitpierre publicly admitted in 1947:

«These credits and the deliveries of war materials and other products [...] contributed to the war efforts of one of the belligerents. Not only had we abandoned integral neutrality, but – even worse – in so doing, we were as a rule deviating from the very notion of neutrality».<sup>8</sup>

The focus of the question should therefore not be the possible prolongation of the war. The crucial issue is whether the actors asked themselves any such question, and to what extent behaviour at that time was disproportionate to the latitude which neutrality bestowed.

#### **Did Switzerland profit from the war?**

Besides being accused of prolonging the war, Switzerland was also confronted with the somewhat less openly expressed accusation of profiting from the war. In 1945, it saw itself categorised along with disreputable stolen goods racketeers, gold-hoarders and gunrunners. Its defensive rejection of such criticism was supported by a variety of statistics which showed that Switzerland's gross domestic product grew less strongly during the war years than that of the USA and Great Britain.<sup>9</sup> This argument falls short in the first place because it says nothing about how the Swiss economy might have developed without the influence of the war. The assertion that the gross domestic product indicator showed neither a clear upward nor a clear downward trend in the war years, but in fact stagnated, demonstrates at most that Switzerland's economy experienced neither a disastrous collapse nor a general upturn. However, it gives no indication as to whether or not the war had an overall positive or negative long-term effect on Switzerland in economic terms; neither does it provide any information as to how profits and liabilities were distributed amongst the various sectors of the population, areas of the country, or branches of industry. Secondly, the comparison with the USA and Great Britain is spurious: both these countries concentrated all their efforts on increasing war production, thus causing distortions in production capability, the inevitable correction of which after the war conjured up the widespread

spectre of a renewed post-war crisis. Switzerland, on the other hand, despite certain bottlenecks triggered by the war, had at its disposal a largely well-balanced production capability both during and after the war.

The accusation of having profited from the war is levelled not so much at the Swiss economy as a whole, but rather at two specific aspects of it. Firstly, it was said of Switzerland that it had acted as a «hub» for all kinds of dubious business transactions. In fact, a «grey» or «black» market which was more or less tolerated by the authorities, if not exactly encouraged, complemented the official market. This is where stolen goods were exchanged: banknotes, securities, works of art, diamonds, watches, jewellery, stamps, and much more. The difference between the two markets, however, is not always clear. Precisely where the gold deliveries from the German Reichsbank are concerned, it is apparent that the stolen bullion came into the country with the knowledge of individuals at the highest level, even though it came in via a secret route. Many covert and illegal transactions were also managed and financed alongside «normal» business transactions. Transactions of this kind were partly for the benefit of the official Nazi regime, and partly for the personal enrichment of its representatives who were endeavouring, in the light of imminent defeat, to bring stolen goods into Switzerland to safety. Although the ICE was able to document specific cases, it was impossible to come to any quantitative conclusions. But it is beyond doubt that these transactions substantially benefited the «middlemen».

Secondly, there were, of course, those who profited from the increased demand for certain goods caused by the war. Through the organisation of the war economy attempts were made to manage and restrain this process through price ceilings, contingencies, and other administrative controls. In order to prevent circumstances like those which had prevailed in the First World War, the Federal Council, with the close co-operation of the political parties and business associations, had recourse to financial and special fiscal instruments such as the tax on war profits.<sup>10</sup> The question here is not whether Switzerland should have maintained business and trade relations with foreign countries at all, since the possibility of suspending them did not exist. The question should rather be that of how far these activities extended, whether they should be assessed as unavoidable «concessions» or, on the contrary, whether they were viewed as desirable by companies and the authorities. Moreover, not all these business transactions should be categorised as equally problematical. The supply of arms to the Axis powers or the acceptance of gold from Nazi Germany are more politically and morally questionable than the export of foodstuffs, for instance. During the war, large Swiss companies were in a position, precisely because of continued commercial exchanges with the Axis powers, to pursue innovative

methods of growth and to introduce new manufacturing processes, organisational techniques, and products, thus building up substantial productivity reserves for peacetime. The German subsidiaries of Swiss companies made no appreciable profits during the war years; but they, too, established a first-rate presence on the German market with respect to the post-war era.

The answer to the question of whether Switzerland profited from the war depends on the standards of evaluation. As a neutral country which had been spared the ravages of war, it certainly had a competitive advantage, even if it did not experience any significant growth during the war itself. As a consequence of this privileged position, it was expected that Switzerland would offer special contributions in terms of easing distress and reconstructing countries destroyed by war. Through the charitable fund known as the «*Schweizerpende*», government export credits, and also its participation in the Marshall Plan, Switzerland attempted to live up to this expectation. The investment of tax money in the European reconstruction process was uncommonly profitable in that it allowed the economy to exploit its privileged position. From the end of the 1940s, as the markets of Europe began to expand again, Swiss companies were able to benefit from considerable growth opportunities aided, to some extent, by government export credits.

### **Facing the past**

Historians are not judges. A historical commission is not a court of law. It is therefore not a question of indicting individuals, groups or entire countries for their actions or, indeed, exonerating them. But it is important to focus on the question of responsibility.

A democratic state does not stand in isolation. Its citizens, legislators, administrators, and decision-makers therefore occupy a position of dual responsibility, i.e., to their own country and to the international community. In the period with which we are dealing, this dual obligation was not met. The responsibility to the international community was – without external compulsion – neglected, a fact which can be attributed to miscalculation, ignorance of changing circumstances and the consequences thereof (doing «business as usual»), and widespread anxiety; yet also to selfish motives. The reliance on «*raison d'état*», in the name of which many measures were justified, was not appropriate even at the time. The crux of the matter here is not a bitter confrontation between a «realistic» and an «idealistic» viewpoint, but rather the recognition of national moral standards which even during, or in fact especially during, periods of threat and crisis may not be suspended. The «J»-stamp in 1938; the rejection of refugees in mortal danger; refusal of diplomatic protection for the country's own citizens; the generous credits which the Federal Government granted to the

«Axis» under the terms of the clearing agreements; the unduly long tolerance of very large-scale goods transits through the Alps for Germany's benefit; arms supplies to the Nazi state; the financial privileges which were offered to both the Germans and the Italians; insurance policies which were paid out to the Nazi state instead of to the legitimate policy-holders; the disreputable trade in gold and stolen goods; the employment of about 11,000 forced labourers in subsidiaries of Swiss companies in the Third Reich; the absence of determination and obvious irregularities in the restitution process; the harbouring of proponents of Nazism as «decent Germans» after the war: all of this frequently amounted to not merely a violation of formal law, but also of the *ordre public* to which reference was so often made. The sense of responsibility which was lacking at that time was again called upon repeatedly during the past fifty years, and was found to be lacking yet anew. Today's Switzerland must face up to its past.

The efforts at restitution represent the expression of a rediscovered sense of responsibility. Restitution in its material sense is accepted as a necessary, if scarcely adequate, precondition. But restitution also means the act of remembering. We owe this to the victims. But above all, it represents a service to the public at large; to Switzerland, which must come to know its history so that it may take responsibility for it in a state of total awareness; and to the international community, which was entitled to ask Switzerland for answers to questions, and did so with great resolve. It was the task of the Commission to reveal the reality behind the legend – a complex reality comprising glimpses of light, but also more moments of darkness than had been anticipated. These are disclosed by the studies we carried out and by this final report, presenting facts and offering interpretations which should pave the way for future discussion and research.

### **Unresolved questions and future perspectives**

The further we progressed with our research work, the more often the ICE found itself confronted by difficult choices. The mandate given by the Federal Council circumscribed the core issues of the research programme in general terms. In practice, further topic areas became apparent as they became highlighted in the course of our daily work – the issue of the forced labourers, to name just one – or because their significance emerged from the source material. Over and above this, we had a unique opportunity to tap new sources. It is therefore not surprising that our original programme was wide-ranging and ambitious. As mentioned in chapter 1, it soon became clear that the available materials were not only very extensive, but that researching them would be highly labour-intensive since many private archives had been neglected over the years. Our selection concentrated on those areas which promised the greatest number of

new insights or the opportunity of expanding existing knowledge. This process was in turn determined, to a large extent, by the availability of source material which had previously been little exploited.

Alongside the questions of the gold and the dormant bank accounts emphasised in the mandate, the research programme which thus evolved focused on the links between Swiss industrial and financial institutions and the Axis powers, both within Switzerland and within the Third Reich. This gave rise to our series of monographic studies and the associated work on legal issues.

Our decision to work in this way meant, of course, that important topics were not dealt with, in addition to those questions which had to be dropped due to the absence of adequate source material. Thus, for example, it proved impossible to reach any overall conclusion in terms of quantifying the displaced goods and assets. The figures which appear in piecemeal fashion in our report cannot be added up to produce total amounts; any attempts to do so would produce only misleading results. Likewise, the lack of reliable information about middlemen such as lawyers, fiduciaries, etc. permitted only a partial revelation of their murky role; they themselves took care not to leave behind many traces of their activities.

An important topic not treated is that of Switzerland's role as a «hub» for assets of doubtful provenance channelled by Swiss middlemen into third countries. On the one hand, this is a particularly difficult area to document, but on the other, much material has recently become accessible about both the transit routes used and the individuals probably involved in these dealings. This was a consequence of the opening of the archives of the former Soviet Union and the release of vast quantities of classified material in the USA and Great Britain. All this needs further research and evaluation.

Secondly, the material accessible from both public and private archives describing the activities of Swiss companies in Germany proved to be a particularly fertile source. Limited resources prevented a similarly thorough investigation into Swiss subsidiary companies in Italy or the occupied countries, notably in France, Belgium or the Netherlands.

In Switzerland itself, more work could still be done in investigating the fate of the Swiss victims of Nazi Germany and fascist Italy, the protection offered or refused them by Federal offices, and the way in which this question was dealt with after 1945. The private companies in the import/export sector and the transport business which were not taken into consideration could also be investigated. It would be useful to assess the frequency and variety of cross-border contacts. Our observations reveal a mobility far greater than had been imagined. Central issues which were beyond our remit should also be pursued: for instance, the role of the elite classes and the government, or the use of threat and

dissuasion in the broadest possible terms – where the latter is concerned, we have investigated only its effects on clearly-defined areas (gold transactions and rail transit).

The public expects historians to recount stories, and for those stories to make sense. In other words, historians have to provide interpretations. The interpretations which we have presented in the series of monographic studies which together constitute this synthesis report are those which seemed to us the most plausible. However, they in no way represent «state verity» (the ICE was an independent commission) or a single, final truth (our concern was of a scientific nature). Historical research can never be brought to a conclusion; even less so when the areas covered are as extensive as these. We are presenting our findings as a basis for discussion and hope that they will stimulate further work. We believe that we have filled in various gaps and arrived at a deeper understanding. Perhaps the outline given above of what should be looked into at greater length, or rather what we believe to be fundamentally feasible, also constitutes an important aspect of our contribution.

The change in people's awareness of history brings with it new challenges for historical research. Remembering is crucial to building the future. The ICE urges Swiss companies to open up their historical archives, not only to verify the work of the Commission but also to approach the subject from a new angle. The task of documenting our common history calls for equal responsibility on the part of private industry and its trade associations.

Finally, the research carried out by the other Commissions in over twenty countries must also be included. Each one had its own particular mandate, though none so broad as ours. Taken as a whole, the findings will open up fresh perspectives. They will permit more accurate comparisons – although these too will be limited, given that the situation varies considerably from one country to another. What is needed, above all, is a global approach encompassing a vision which transcends borders, the unique character of individual countries, and national sensitivities. Facing up to the past is a precondition for the future, one which must arouse the interest of the international community as a whole. It is therefore imperative that a future phase seek to achieve supranational coordination of fresh discoveries in terms of both inner-state workings and international relations, and of newly emerged facts concerning the economic, political and moral dimensions of developments in individual countries during the era of National Socialism, the Second World War, and the Holocaust. This is no mean task, and the obstacles will be many. But only in this way will it be possible to make a proper assessment of the unprecedented human suffering visited upon mankind by the catastrophes of the 20<sup>th</sup> century. Let us remember and take heed.

- <sup>1</sup> The Washington Agreement was signed on 26 May 1946.
- <sup>2</sup> This refers chiefly to the international agreement dated 4 July 1936 concerning the non-return of German refugees to Germany; see chapter 3 included herein.
- <sup>3</sup> Radbruch, Unrecht, 1973, p. 346.
- <sup>4</sup> It goes without saying, however, that information about discoveries of relevance was passed on immediately.
- <sup>5</sup> Zehnder, Lage, 1980, pp. 13–32, quoted on pp. 28f.
- <sup>6</sup> Emmy Moor in *Berner Tagwacht*, no. 92, of 22 April 1943, quoted by Kunz, Aufbruchstimmung, 1998, p. 47.
- <sup>7</sup> Eden to Norton, 5 May 1943, quoted by Inglin, Krieg, 1991, p. 70; cf. also DDS, vol. 14, no. 355, Appendix II.
- <sup>8</sup> Speech at Conference of Swiss Ministers Abroad, in: DDS, vol. 17, no. 26, p. 87.
- <sup>9</sup> See in particular Lambelet, Mobbing, 1999, pp. 85ff.
- <sup>10</sup> Federal Council's Decree of 12 January 1940. On 18 November 1941 rates were raised from 30–40% to 50–70%.



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E 6351 (-)      *Federal Customs Administration*

*Federal Department of Economic Affairs (EVD)*

- E 7160      *Swiss Clearing Office (SVSt)*  
E 7170 (A)      *Federal Employment Office (BIGA)*  
E 7800 (-)      *«Persönliche Sekretariate der Departementsvorsteher und Chefbeamten»*

*Federal Department of Transport, Communications and Energy (EVED)*

- E 8190 (A)      *Federal Office of Electric Energy*  
E 8300 (A)      *General Directorate and «Kreisdirektionen» SBB*

*Deposits and Donations*

- J.I.114 (-)      *NL Ludwig Friedrich Meyer*

*State Treaties (K I)*

***Swiss National Bank, Zurich (SNB Archives)***

***University of Basel Library, Basel***

*Bequest Per Jacobsson*

## 2.2 Germany

### 2.2.1 Corporate Archives

*Maggi GmbH, Singen (MAS Archives)*

*Münchener Rückversicherungs-Gesellschaft, Munich (Münchener Rück Archives)*

*Rheinmetall DeTec AG, Ratingen (DeTec Archives)*

### 2.2.2 Public Archives

*General State Archives Baden, Karlsruhe (GLA)*

*Badisches Finanz- und Wirtschaftsministerium*

*Federal Archives, Berlin (BArch)*

*R 3101 Reichswirtschaftsministerium*

*R 8119 F Deutsche Bank*

*R 87 Reichskommissar für die Behandlung feindlichen Vermögens*

*German Federal Archives–Military Archives, Freiburg im Breisgau (BA-MA)*

*RW 6 Oberkommando der Wehrmacht (OKW)/Allgemeines Wehrmachtsamt*

*RW 19 Oberkommando der Wehrmacht (OKW)/Wehrwirtschafts- und Rüstungsamt*

*RW 20-5 Rüstungsinspektion V (Stuttgart beziehungsweise Strassburg)*

*Political Archives of the Foreign Ministry (PA/AA), Berlin*

*Handelspolitische Abteilung IIa*

*Economic Archives of North-Rhein Westfalia, Cologne e.V. (RWWA)*

*Abt. 72 Fortsetzung Rodopia-Akten*

*Freiburg im Breisgau State Archives (StaF)*

*A 96/1 Landeskommisär Konstanz*

*D 180/2 Spruchkammer-Verfahren*

*Central Archives of the Preussischer Kulturbesitz Foundation, Berlin (ZdSPK)*

*Files of Berlin National Gallery*

## **2.3 USA**

### **National Archives and Records Administration, Washington (NARA)**

- RG 84           *Records of the Office of the Department of State*  
RG 226           *Records of the Office of Strategic Services*  
RG 239           *Records of the American Commission for Protection and Salvage of  
Artistic and Historic Monuments in War Areas*

## **2.4 Russia**

### **Russian Military State Archives, Moscow (RGVA)**

- (Ehemals Zentrum für die Aufbewahrung historisch-dokumentarischer Sammlungen  
CChIDK, ehemals «Sonderarchiv»)  
700               *Beauftragter für den Vierjahresplan*

## **2.5 Great Britain**

### **Public Record Office, London (PRO)**

- FFO 371           *Foreign Office*

## **2.6 Austria**

### **2.6.1 Corporate Archives**

#### **Der Anker Allgemeine Versicherungsgesellschaft, Wien**

### **2.6.2 Public Archives**

#### **Austrian State Archives, Archives of the Republic, Vienna**

- 04               *Inneres, Reichskommissar für Wiedervereinigung (Bürckel-Materie)*  
06               *Bundesministerium für Finanzen/Vermögensverkehrsstelle (VVSt)*

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