



CRS Report for Congress

Opening of the International Tracing Service's Holocaust-Era Archives in Bad Arolsen, Germany

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Summary

For over 60 years, the International Tracing Service (ITS) has limited access to information in its vast archives of documents relating to victims of Germany's National-Socialist (Nazi) regime to survivors of Nazi crimes and their descendants. As recently as 2006, ITS had a recorded backlog of over 400,000 requests for information. The archives remain off-limits to historical research. In May 2006, responding largely to pressure from Holocaust survivors and their advocates, the International Commission overseeing ITS agreed to open the archives for historical research and to make digital copies of its collections available to research institutions in Commission member states. Six member states have yet to approve the agreement. In March 2007, the House Committee on Foreign Affairs reported out H.Res. 240 urging these states to expedite approval of the Commission's decision to open the archives. Some Members of Congress have urged the Administration to seek authorization for the immediate transfer of digitized copies of archived materials to the U.S. Holocaust Memorial Museum at the Commission's May 2007 meeting. This report will be updated after the May meeting.

Background

Following the end of the Second World War, the allied powers established the International Tracing Service (ITS) in 1947 "for the purpose of tracing missing persons and collecting, classifying, preserving and rendering accessible to Governments and interested individuals the documents relating to Germans and non-Germans who were interned in National-Socialist concentration camps or to non-Germans who were displaced as a result of the Second World War."¹ Since its inception, ITS has assembled archives of an estimated 30 million to 50 million Holocaust- and post-war-era documents in Bad Arolsen, Germany relating to approximately 17.5 million civilian victims of

¹ "Agreement Constituting an International Commission for the International Tracing Service," 1955. *U.S. Treaties and Other International Agreements*; TIAS 3471, pp. 18-37.

Germany's National Socialist (Nazi) regime. Experts estimate that roughly one quarter of the materials relate to Jews persecuted by the regime.²

After the 1954 repeal of the Occupation Statute in Germany, an international commission of nine member states (Belgium, the Federal Republic of Germany, France, Israel, Italy, Luxembourg, the Netherlands, the United Kingdom, and the United States)³ charged the ITS with continuing its mission as a missing persons tracing service and caretaker of the archives in Bad Arolsen under the neutral auspices of the International Committee of the Red Cross (ICRC). In the so-called Bonn Accords of 1955, the International Commission established the oversight and administrative structure under which ITS continues to function today: a Swiss delegate of the ICRC, accountable both to the ICRC and the eleven-member International Commission, oversees ITS's day-to-day operations and reports to the Commission at its annual meetings; Germany has provided and continues to provide ITS's operating budget.

ITS officials have traditionally administered the service based on an understanding that ITS was established to act primarily as a tracing service for victims of Nazi war crimes.⁴ To this end, access to information in the Bad Arolsen archives has been limited almost exclusively to civilian victims of such crimes and their descendants. Although they have not been granted direct access to the archives, victims and their descendants have the right to request information pertaining to their individual cases. Materials in the archives have not been made available for historical research.⁵

ITS claims it has provided approximately 11 million written responses to individual requests for information since its inception. However, the tracing service has been consistently criticized by survivors, their families, and others who allege that ITS has left hundreds of thousands of requests unanswered and that it has often provided inadequate

Contents of the Bad Arolsen Archives

Records pertaining to an estimated 17.5 million people are archived in three broad collections:

Incarceration/Concentration Camp Collection

Nazi records documenting the capture, deportation, and transfer of individuals to and between concentration and death camps.

At least 10 million pages

Wartime / Forced-Labor Collection

Nazi records relating to individuals sent to forced and slave labor camps.

At least 6 million pages

Post-War / Migration Collection

Records from the aftermath of the war — primarily interviews of displaced persons and lists and information on survivors and missing persons.

At least 14 million pages

Source: Information provided by International Tracing Service, March 2007.

² Interview of U.S. Holocaust Memorial Museum official, March 2007.

³ Greece and Poland were later added to the International Commission.

⁴ Interviews of ITS, ICRC, and U.S. Holocaust Memorial Museum representatives, March 2007.

⁵ Opinion differs on the extent to which the 1955 Bonn Accords themselves limit access to the ITS archives. In what some experts cite as evidence that the Accords do not explicitly limit access, Belgian and Israeli officials reportedly copied and transported records from the archives in the 1950s and 1960s. Interview of U.S. Holocaust Memorial Museum official, March 2007.

or incomplete information to survivors and their descendants. Criticism of ITS heightened in 2000 and 2001 as the service struggled to handle a dramatic increase in requests from people seeking documentation for compensation from funds made available by the German government to survivors of Nazi slave and forced labor camps. Much of the criticism focused on perceived mismanagement and neglect on the part of ITS's long-time former director Charles-Claude Biedermann. Biedermann's detractors contend that his resistance represented the primary obstacle to improving the tracing service's responsiveness and providing greater access to archived materials.⁶ Indeed, when, under strong public and International Commission pressure, the ICRC agreed to replace Biedermann in 2006, ITS had a recorded backlog of 425,000 requests for information. ICRC officials acknowledge that this represented an unacceptable breach of the organization's mission.⁷

Pressure To Open the Archives for Historical Research. Beginning in the late 1990s, the U.S. Holocaust Memorial Museum (Holocaust Museum), Holocaust survivor organizations, and others began to pressure International Commission members to open the contents of the ITS archives for historical research. According to the State Department, the United States and several other Commission member states advocated opening the archives as early as 1998 and proposed that the issue be decided by majority vote. However, then-ITS director Biedermann and a number of member states reportedly blocked passage of the proposal by arguing that such changes would require amending the Bonn Accords by unanimous consent.⁸ Those opposed to opening the archives claimed that the release of such sensitive personal information represented a violation of individual privacy rights. Those in favor, led by the United States, argued that the records provide unprecedented and invaluable first-hand documentation of the crimes perpetrated by the Nazi regime and should be opened as soon as possible to allow for research collaboration with the remaining survivors of these crimes.

Recent Developments and Outstanding Issues

In May 2006, after more than five years of debate, and in response to increasing public and political pressure, the International Commission of the ITS unanimously agreed to amend the 1955 Bonn Accords to open the ITS archives to researchers and make digital copies of archived materials available to research institutions in Commission member states. To address continuing concerns regarding individual privacy rights, the Commission agreed that access to files made available in member states would be guided by the respective privacy laws of those states.

Each Commission member state has signed the 2006 amendments allowing full access to the ITS archives. However, to enter into effect, the amendments must be officially adopted according to internal procedures determined by each member state. All but two Commission members, the United States and Poland, require parliamentary action

⁶ Interviews of U.S. Holocaust Memorial Museum representative and U.S. State Department official, March 2007.

⁷ Interviews of ICRC and ITS officials, March 2007.

⁸ Testimony of J. Christian Kennedy, United States Special Envoy for Holocaust Issues before the House Foreign Affairs Committee, Subcommittee on Europe Hearing, Mar. 28, 2007.

for approval. Despite tacit member state commitments to complete the approval process by May 2007, only six of the 11 International Commission members (Germany, Israel, the Netherlands, Poland, the United Kingdom, and the United States) are expected to have officially adopted the amendments in time for the May 2007 annual Commission meeting. May and June national elections in several states appear to be further delaying the parliamentary approval process, which observers indicate is unlikely to be complete before October 2007.

Digitization and File Transfer Issues. U.S. State Department officials report that the timely transfer of digitized materials from Bad Arolsen to the Holocaust Museum in Washington, DC is a top Administration priority related to the opening of the archives. According to ITS, the archives' collection of incarceration documents is digitized and ready for transfer; the forced labor collection will be digitized by the end of 2007 or early 2008; and the post-war collection, by the end of 2008 or beginning of 2009.⁹ Although Administration and Holocaust Museum officials express confidence in ITS's digitization process, they highlight two factors that stand to further delay transfer of the records: first, ITS considers itself barred from transferring any of its materials before all 11 Commission member states have officially approved the 2006 amendments to the Bonn Accords; and second, Holocaust Museum officials estimate that they will need at least four months to make digitized files available to researchers after receiving them from ITS.

In an effort to minimize delays, State Department officials say they will propose the immediate transfer of digitized files at the Commission's May 2007 meeting. They argue that the time required by the Holocaust Museum to make the material publicly available corresponds with the expected time-line for completion of the necessary approval processes in each Commission member state. From this perspective, although the transfer would occur before all Commission members have officially adopted the amendments, documents would only be available to the public after the approval process is complete.

A majority of Commission member states appears to support the U.S. proposal to begin immediate transfer of available digitized materials. However, some suggest that a minority of Commission members may oppose the transfer of materials before the approval process is complete.¹⁰ Although the Bonn Accords do not appear to require that the U.S. proposal be approved unanimously, Administration and other member state representatives appear reluctant to authorize the early transfer with anything short of a unanimous Commission mandate.¹¹

Although State Department and Holocaust Museum officials express confidence in ITS's file digitization process, they emphasize that expedited digitization and transfer has required additional funding.¹² The German government has reportedly committed to covering additional costs beginning in 2008, but ITS anticipates a budget shortfall of just over \$300,000 (250 million Euros) in 2007. ITS expects to fill this shortfall through private donations solicited by the Holocaust Museum and contributions from Commission

⁹ Interview of ITS director Reto Meister, March 20, 2007.

¹⁰ Interviews of State Department, German, Dutch, and French officials, Mar. 2007.

¹¹ Ibid.

¹² J. Christian Kennedy, op. cit.

member governments. The Holocaust Museum, which receives the bulk of its funding from the U.S. government, hopes to cover increasing costs associated with organizing and making the files available to researchers through private donations.¹³

ICHEIC and Outstanding Insurance Claims. ITS representatives perceive the service's mission as having evolved over time from tracing victims and their families to providing information for a wide variety of purposes including documentation for claims on World War II-era insurance policies. In 1998, following a series of high-profile class-action lawsuits against insurance companies alleged never to have honored millions of such policies, an international commission, the International Commission on Holocaust Era Insurance Claims (ICHEIC), was established to facilitate the pay-out of unpaid Holocaust-era insurance policies. In March 2007, ICHEIC officially ended its work, claiming to have facilitated the payment of \$306.25 million to over 48,000 claimants.¹⁴ Throughout its existence, ICHEIC was criticized, including by some Members of Congress, for honoring only a small portion of legitimate claims and for conducting its activities with a general lack of transparency and accountability.¹⁵

To confirm the eligibility of and appropriate payment amounts for the insurance claims it received, ICHEIC reports that it consulted records from a wide variety of archives in addition to policy-holder lists kept by insurance companies. According to ICHEIC, it did not seek access to materials in Bad Arolsen. ICHEIC representatives and current ITS director Reto Meister report that cursory searches of the ITS archives indicate that the records provide little definitive information that could help resolve outstanding claims or lead to new insurance claims.¹⁶ Meister also iterates that the archives have been and remain open to requests for documentation from Holocaust-era victims and their families.

The February 2007 settlement of a lawsuit brought by Holocaust survivors against Italian insurance company Assicurazioni Generali (Generali) highlights disagreement with ICHEIC and ITS's statements regarding the potential usefulness of ITS records to new or existing insurance claims. In the settlement, Generali agreed to continue to accept claims from individuals providing documentation from the ITS archives until August 2008. The primary reason cited for the extension is to allow potential claimants to take advantage of the expected opening of the archives.¹⁷ How much information the archives contain relating to insurance policies remains unclear. However, all but a small number of insurance-related lawsuits have been settled, and ICHEIC is no longer accepting claims.

¹³ Interview of U.S. Holocaust Memorial Museum representative, March 2007.

¹⁴ "Holocaust Victims Get Compensation From Insurance Companies," *Deutsche Welle*, Mar. 21, 2007.

¹⁵ For example, some Members of Congress and expert witnesses criticized ICHEIC during a series of three congressional hearings on ICHEIC and the issue of Holocaust-era insurance claims held by the House Committee on Government Reform from 2001-2003. For information on the hearings and related legislative proposals see [<http://oversight.house.gov/investigations>].

¹⁶ Interviews of ICHEIC representative and ITS director Reto Meister, March 2007.

¹⁷ Joseph B. Treaster, "Settlement Approved in Holocaust Victims' Suit Against Italian Insurer," *New York Times*, Feb. 28, 2007.

ITS Request Backlog. In 2006, the ICRC replaced long-time ITS director Biedermann and initiated efforts to significantly reduce the 425,000 request backlog. ITS claims that the backlog has already been reduced to 145,000 requests and will be eliminated by early 2008. Although most observers commend current ITS director Meister for his efforts, some question the methods by which the backlog has been so substantially reduced. Specifically, they contend that many of the requests have been discarded, a significant portion likely due to the deaths of requesters.¹⁸ ITS has committed to responding to new requests within an eight-week period and, by most accounts, appears to be complying with its policy.

Issues for Congress

Many Members of Congress have demonstrated a strong interest in ensuring the timely opening of the ITS archives to historical research, and Administration officials and Holocaust survivors have singled out the efforts of individual Members as instrumental in drawing international attention to the issue. During a March 28, 2007, hearing of the House Committee on Foreign Affairs' Subcommittee on Europe, witnesses emphasized the importance of heightened congressional attention during the remaining stages of the process to open the archives. Several Members have expressed particular interest in three specific areas relating to the issue: (1) securing expedited adoption of the agreement to open the archives in each Commission member state; (2) ensuring the timely digitization and transfer of ITS collections; and (3) exploring the possibility that opening the archives could reveal documentation to substantiate additional claims on World-War II era insurance policies.

On March 27, 2007, the House Committee on Foreign Affairs reported out H.Res. 240 urging International Commission member states who have yet to officially adopt the agreement to open the archives to expedite the approval process. In addition, during the March 2007 Subcommittee on Europe hearing on the issue, subcommittee members urged the Administration to push for immediate transfer of the digitized materials in Bad Arolsen at the International Commission's upcoming May 2007 meeting.

On March 28, 2007, Representative Ileana Ros-Lehtinen introduced H.R. 1746 requiring the disclosure of Holocaust-era policies by insurers and establishing a federal cause of action for claims arising out of a covered policy. Similar bills were introduced in the 107th and 109th Congresses. Although H.R. 1746 would have no direct effect on the opening of the Bad Arolsen archives, some observers and Holocaust survivors assert that improved access to the archives may expose documentation relating to unpaid Holocaust-era insurance policies. On the other hand, while the evidence is by no means conclusive, ITS officials and some historians indicate it is unlikely that the Bad Arolsen archives contain definitive evidence of such policies.¹⁹

¹⁸ Interview of U.S. Holocaust Memorial Museum representative, March 2007.

¹⁹ Interviews of ITS and U.S. Holocaust Memorial Museum representatives, March 2007.