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Panel Discussion

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PANEL DISCUSSION*

EGON GUTTMAN

SEYMOUR J. RUBIN

DETLEV F. VAGTS

AMBASSADOR KRISTER WAHLBÄCK

AUDIENCE MEMBER: I would like to ask Professor Vagts a question. I think there has been a tendency in the public debate to talk about neutrality as though it is a single choice and complete package, and the presentations this morning have made clear or reminded us that there are really many choices that are made. I would be interested if you could address the question of whether the law on neutrality, specifically dealing with the right to trade with belligerents, ought to be subject to any limitations. For example, at what point in trade do deposits into banks of what we euphemistically referred to as "non-monetary gold" become complicity in crimes? Should there be limits on these rights that reflect those moral complexities?

PROFESSOR DETLEV F. VAGTS: Well, not strictly in the law of neutrality. There are some limitations on the right of a belligerent state to take property. There is a reason to believe that a neutral state who takes that category of property, knowing of its origins, is, in the international sense, guilty of fencing. Now, curiously, the Hague Convention on land warfare, while forbidding pillaging of private property and forbidding the taking of art treasures, specifically permits the taking of monetary gold. This is stated in somewhat ambiguous terms, but the convention does seem to say to that extent the old conditions of "woe to the vanquished" continue. It is interesting. Switzerland has been rather shy about taking that position, preferring to talk about being a bona fide purchaser and the like, which was

* The panel discussion took place at the Conference on Neutrality, Morality, and the Holocaust, which took place at the American University Washington College of Law on April 23, 1998.

rather implausible. But there was some showing that yes, it was within the bounds of a belligerent's rights, having conquered another country, to dip into its treasury. If one were to sit down and recodify all those rules, maybe one should say that it is not all right, but nobody has done so. I think there is a pretty good ground for saying that taking up indirectly the property that was pillaged is wrong, this is a logical part of the scheme of things.

PROFESSOR SEYMOUR J. RUBIN: This is an aspect in which I have a tremendously strong interest because this was basically the aspect we all negotiated with the neutrals back in 1943 and in 1946. This issue is still under discussion. As I said before, I headed the team negotiating with the Swedes and was the deputy in connection with the Swiss. In this situation, we are not talking about property that was pillaged by an occupying troop. The Germans came into Belgium and so forth and they picked up the gold, but that does not necessarily mean that the Belgians did not have a right to get it back, even under the laws of neutrality. In the 1907 Convention, the occupying power has the power and the authority to take such gold, but that did not necessarily mean that after the war there was no claim against it. And then, most of the property we are talking about was not monetary gold, it was stuff that was pillaged either by the armies of the German forces during the period of occupation, or more significantly, from people who were not being occupied—from the Jews, the Gypsies, the Socialists, the Communists, anyone who had property and was an object of special attention, shall we say, by the Nazis. I do not think that the United States, during the course of the war, back when I was doing economic warfare work, really said that the Swedes could not trade with Germany. We did black list a lot of Swedish companies—as we did with a lot of Spanish, Swiss, and Argentinean companies—because of what we considered to be excessive trade, trade that was not necessary in order to get fuel or food supplies into a neutral country, but trade that was above and beyond that which was necessary. As you undoubtedly know, there were a number of Swedish companies that were on the black list and actually the negotiations with the Swiss were largely, from the Swiss point of view, in order to have the black list removed and the freezing that we had imposed upon Swiss companies removed and lifted.

AUDIENCE MEMBER: There is a question among the scholars as to the effects of activities by neutrals. It seems there are a lot of things

that neutral countries can do that are below the boards. In other words, there were a lot of things done by the United States from before we ever actually entered the war. President Roosevelt made a moral choice when, as I understand it, he allowed British intelligence to operate rather effectively in the United States, which I assume helped Britain's war efforts despite the fact that it might have evoked a domestic outcry here and even might have raised the hackles of some of our internal police agencies like the FBI.

PROFESSOR VAGTS: When the German government declared war on the United States in December 1941, it said that its reasons for doing so were egregious breaches of the law of neutrality by the United States. In particular, they mentioned the lend-lease program in which the United States government furnished arms to Britain. It mentioned the destroyer bases deal, and they mentioned the fact that United States Naval units were making aggressive patrols and attacking German U-boats in the north Atlantic. But I think it was fairly evident, even to Roosevelt and to Attorney General Jackson, who had to testify at these things, that those were departures from the law of neutrality.

AUDIENCE MEMBER: My name is Dr. Howard Ural. I wanted to ask Professor Vagts how Ambassador Wahlbäck's comprehensive self-defense argument holds up in the neutrality jurisprudence of the last half-century.

PROFESSOR VAGTS: I took his argument to be a very contextual one, one which said you have to judge Sweden's choice not to become a warring party in the balance of the military and other factors that were involved. You notice that this was different from the point of view of every other country in World War II that made those decisions. It is worth remembering that the only two countries that went to war against Germany were Britain and France. And I think it is fair to say that they did so on the basis, kind of, of preventive self-defense. They have done Czechoslovakia, and if they do Poland, we are next. And therefore, it is a simple matter of fighting now, rather than later, under presumably somewhat better circumstances. I would say the episodes in which countries have gone to war against horrors somewhere else when self-defense was not a consideration are few and far between.

AMBASSADOR KRISTER WAHLBÄCK: I would agree.

AUDIENCE MEMBER: My name is Cybil Milton. I had two questions of fact for Ambassador Wahlbäck. As far as I know, the Swedish government was not directly involved in the appointment of Raoul Wallenberg in Budapest. If there was a Swedish governmental policy involvement, I would be most interested in learning more about this. The second question of fact involves the comment on the deportation and fate of Norwegian Jews. As far as I know, Sweden was unsuccessful in assisting and preventing the deportation or rescue of Norwegian Jews.

I also had a more general comment about the issue of monetary gold. Monetary gold and non-monetary gold are very convenient sorting devices. Unfortunately, as both the Eizenstat Report and the Nuremberg documents of 1945-1949 showed in very extensive form, monetary gold is often corrupted by the personnel, because gold as a form that can be resmelted, mixed, and add-mixed with other forms of gold or metal. So this type of definition, that was a matter of convenience in 1945, is today viewed in retrospect under slightly different terminology and with slightly more moral purview.

AMBASSADOR WAHLBÄCK: Concerning your first question about Raoul Wallenberg, no. The Swedish government was, of course, intimately involved, because he was sent to Budapest as a member of our diplomatic service and one of our collaborators in our Budapest delegation. So it was a process of consultation between the Swedish foreign minister, the Americans, and the World Jewish Congress.

Concerning the deportation of Norwegian Jews to Germany, it is true that almost half of the Jewish Norwegian community were deported by ship from Norway to Germany and to the extermination camps. However, before that happened, and during the German's process of rounding up of Norwegian Jews, slightly more than half of the Norwegian Jewish community were able to slip over the borders to Sweden and find safety there. The Swedish government made, of course, representations to the German government to discontinue these deportations, but these were ineffectual.

Concerning the third comment about monetary gold and private gold, I think your description was quite correct and one of the main tasks of the Swedish commission on Jewish assets, which is working right now and of which I am a member, is in fact to try to establish to what extent the amount of tainted gold or looted gold that we re-

ceived from Germany also contained private gold. That is a very hard task to establish for technical and other reasons. But there are ways to make estimates and there will be a report published on precisely this issue, probably before mid-summer.

PROFESSOR RUBIN: On the non-monetary gold issue, of course, there was a distinction made in the Paris Reparations Agreement in 1945 between monetary and non-monetary gold. Non-monetary gold was supposed to go to the International Committee on Refugees, or perhaps the Inter-governmental Committee on Refugees. One of the difficult decisions made in Paris in 1945 had to do with identification. One of the decisions that I think is not noted very much these days was when the Paris Reparations Conference decided that there would be no attempt to return Belgium gold to Belgium, or French gold to France, or Dutch gold to Holland, and so forth. All the gold, the monetary gold, would be put into a common pool and then the claimants would come forward and present their claims, and what was there would be divided up. That is one reason why Albania has received a little bit of gold recently. I have indicated the difficulty with respect to identification. I know that experts can identify gold and maybe you could have identified a particular bar with the Reich-bank stamp on it as having come from Belgian gold, or Dutch gold, or from somebody else's gold. But the people, I think, of good will and considerable knowledge and concern at the time in 1945, decided that that effort would be futile, difficult, and produce more contention than good results.

So far as non-monetary gold was concerned, of course, the consensus was that it was all going to go to the Inter-governmental Committee on Refugees, and again the problem of identification arose. The rings, the bracelets, the inlays, and so forth were not easily identifiable by one person or another, and therefore even though it was possible to find a particular ring with an inscription on it that some person could have identified, the 1945 Allied Conference decided that all of these assets would be put into a pool that would be assigned to the Inter-governmental Committee on Refugees and would be used for the relief of survivors of the Holocaust. Interestingly enough, the Paris Reparations Agreement also agreed that \$25 million out of the reparations funds, the German assets in the neutral countries, would be put into the hands of the Inter-governmental Committee on Refugees and would be used for relief. That money

was supposed to go to the relief of concentration camp victims. I have always found it a little curious, interesting if not a little curious, is that the Paris Reparation Agreement said that these assets not only go to people who were victims of concentration camps, but also specifically says money is to go to the relief of ordinary prisoners of war, that is people who were in ordinary German prisoner of war camps. I always found that phrase a little bit difficult to accept. I cannot think that a German prisoner of war camp as being a very pleasant place to be in, but that distinction was made there. Was that money to go to Nazi persecution victims rather than ordinary prisoners of war?

AUDIENCE MEMBER: I am Robert Wineberg from the International Association of Jewish Lawyers and Jurists ("IAJLJ"), one of the co-sponsors of the Conference. Before putting forward my question, I would just like to take the opportunity to thank all the speakers on behalf of the IAJLJ for participating in this extremely important conference. My question is to the Swedish Ambassador. In the years after World War II, Sweden was often held up as an example of the model social democracy and an example of the tremendous progress made in areas from industrial relations, to the end product of prisons, to economic and social equality. Sweden was generally considered a paragon. My question is whether the people in the political party or parties who brought about that reputation for Sweden in the post-World War II years were in, or frozen out of the government during World War II? Or more generally, who were the people, and what was the domestic politics of the people who controlled the Swedish government during World War II? Was it right, left, center, or otherwise?

AMBASSADOR WAHLBÄCK: Well, it was a national government composed of all major parties. The only party that did not take part in the government in the 1939-1945 period was the small Communist party. However, this national government was led by the Social Democrats, by a Social Democratic Prime Minister, and during the parliamentary elections in September 1940, the Social Democrats had their greatest representation ever. I think they gained on their own something like fifty-one percent of the vote. Even though it was a national government, a large majority in parliament was the Social Democratic party, who as you mentioned also championed the development of the welfare state in the 1930s and after the war. If one

were to try and discuss the issue in terms of party political consternations in Sweden, that is a bit difficult, because when we were facing these German demands for concession, the normal pattern was that about half of the Social Democratic members of the government were very decidedly opposed to these concessions. The Social Democrats were sometimes supported by one, two, or three of the non-socialist members. And then there were roughly about an equal number of members of the government, including some members of the Social Democrats who were in favor of considering the concession in question, and in practice it was mostly the Prime Minister, who was a Social Democrat, who made the final decision. But, I would say it would be wrong to discuss it in party/political terms. There was fairly great unanimity about the main lines of the policy pursued in parliament and the government.

AUDIENCE MEMBER: Professor Rubin, from what I understand, not only did the decision in 1945 mean that they would not try to distinguish the gold from one country to another, but they also did not particularly distinguish between monetary gold and gold that was converted into monetary gold or what looked like monetary gold that was taken from victims. Even though, if they did an accounting of the gold, they knew the Germans did not have that much gold to trade. The impression you gave is that the victims' gold went to the refugees while monetary gold went back to the countries, except for the little bit that still remains in the Federal Reserve and in London. But that is contrary to what we have been given to understand over the last couple of years, that there was a mixture of victim gold and monetary gold, and that the parties took all of the gold and returned it to the countries, so that today there is victims' gold in the vaults of various countries. Gold that was returned through the Tripartite Commission. Am I wrong?

PROFESSOR RUBIN: I think that is very largely correct. I think there is a need for a couple of modifications or clarifications. A great deal of victims' gold was found in Germany as victims' gold: the sacks of teeth, rings, and so forth. Eventually, those sacks were turned over to the Inter-governmental Committee on Refugees and converted into cash. The cash went to the cause of refugee relief. It was quite well known, I think, that some of the victims' gold had been resmelted and converted into gold bars. But in 1945, so far as the people in Paris were concerned, I think the possibility of identifying victims'

gold in one bar of gold as distinguished from another bar of gold was very, very remote. It was also thought that resmelting had not occurred in very large quantities. Whether it had or not, I just do not know. But I do know that a considerable amount of gold was found in the original sacks into which it had been put. What had not been swiped by German soldiers or by civilians was turned over to refugee organizations. Some, undoubtedly, is in the bars of so-called monetary gold, and perhaps some of that is in the hands of the countries to which monetary gold was returned, or in the Federal Reserve Bank in New York where, I guess, there are about seven tons of that gold still left.

AUDIENCE MEMBER: Just to follow up, maybe not in the form of a question but in the form of a statement. The evidence that seems to be coming up now is that not just some victims' gold was mixed into the monetary gold, but it may be as much as one-third of the gold that was declared monetary gold was obtained from victims, which is coming out in several different research efforts that are going on. In fact, it is even suggested that the United States Federal Reserve may have melted down some victims gold, in the form of rings and bracelets, and converted it into monetary gold and shipped it off after the war.

PROFESSOR RUBIN: I would not dispute that. I do not know.

AUDIENCE MEMBER: In light of the difficulties of tracing all of the gold at this point, I wonder if you have any thoughts about what kinds of regulations might be appropriate for banks to adopt to prevent this kind of situation from developing in the future.

PROFESSOR RUBIN: Well, I trust very much that this kind of situation will not arise in the future. But I am not sure exactly what kind of regulations banks could adopt. I do think that the transparency with respect to banking transactions, which has reasonably increased in the course of the past ten-fifteen years, is a very decisive and very good factor. The Swiss were notorious, infamous, whatever the word may be, for banking secrecy and so forth. The Swiss have gradually improved on the openness of their banking system and so forth, and so much so that some people say that there is very little banking secrecy left there. I suppose that kind of disclosure would be highly desirable. How you could prevent a particular bar of gold, or how you should ensure that particular bar is somebody's bar of gold rather

than another's, I do not know. It has a stamp on it and it looks like monetary gold. Nevertheless, a lot of the Reichbank's gold, of course, was stolen or resmelted victims' gold mixed in with the monetary gold. What regulations could prevent this? I do not know.

PROFESSOR EGON GUTTMAN: If I may just ask you a question of Ambassador Wahlbäck. You stated that although the departure from legal neutrality was considered a breach of morality and upset some Swedish citizens, the sale of iron ore to Germany did not seem to raise a similar objection. My question here is, are there any records between Sweden and Germany as a result of these trading activities, and if this balance is favorable to Sweden, how is Sweden feeling about contributing to the reparation activities that are now going on in Switzerland and other places?

AMBASSADOR WAHLBÄCK: Well, in fact, if we look at the Swedish/German trade exchange during the war, what happened was that the Germans wanted us to extend credits—state credits—because they sometimes had great difficulty in delivering the amounts of coal, coke, and other products that would be equivalent in value to the iron ore and other products that they received from us. Such demands for state credits were always turned down. The Germans were made to, they were in fact forced to either deliver coal and coke by making extra effort at the expense of other areas of their economy, or during some periods, to pay in gold. It was in that connection that some gold came into the possession of the Swedish Reichbank. But if you look at this Swedish/German trade exchange over the whole war period, in fact it ended with the Germans having delivered more to us than we to them. So, in fact, we owed them some, not a very considerable amount, but some debt at the end of the war.

PROFESSOR GUTTMAN: In the form of gold or in the form of products, commodities exchange?

AMBASSADOR WAHLBÄCK: Well, in principle, the Swedish/German trade was based on clearing, so no. It was based on the idea of an equivalent value between what they deliver to us and we to them. Money transactions were not involved. It was special accounts in the Reichbanks of both Sweden and Germany.

PROFESSOR GUTTMAN: My question ultimately leads to this. Whether there was any awareness in Sweden that some of the gold

they received might have been victim gold as opposed to monetary gold?

AMBASSADOR WAHLBÄCK: In the diary notes of the President of the Swedish Reichbank, you can find suspicions fairly early. This is now a subject that is under investigation, and I am not quite sure that I have all facts in my head. There were some diary notes in his handwriting, I think, as early as 1940, indicating suspicions that may be part of the gold that the Germans gave to us could be monetary gold robbed from Austria or the Czech Republic, and later on from the Netherlands and Belgium. But there are, as far as I know, no indications that they ever suspected that victims' gold would be involved. At least not in the written documents, either private or official documents. But again, I would make a reservation in the sense that the report on precisely this issue is not yet finished.

PROFESSOR RUBIN: In the agreement made in August 1946, with Mr. Justice Sandstrom of Sweden, myself, and with British and French representatives, there is a provision that appears in connection with looted gold. There was, I think, no question that the Swedish authorities knew that some of the gold that they were receiving was looted gold. But that does not answer the question whether they knew it was victims' gold or gold taken from other central banks. As far as I can recall, and I was very much in these negotiations, there was nothing put forward, even by the gold experts in the United States—for example, Dr. Otto Fletcher, who worked with me and who was an ex-Austrian Jewish national and an expert in this—there was nothing put forward specifically that I can recall that said that any substantial amount of victims' gold was involved in this transfer of gold to Sweden from Germany. Incidentally, I think the Swedish government should be congratulated because one of the big problems with respect to our negotiations with Switzerland was Swiss claims against Germany in connection with German assets in Switzerland. We had to allocate fifty percent of what was found there to settle the Swiss claims against Germany. So, the Swiss came out having extended credits to Germany, private or governmental, while apparently Sweden did not.

PROFESSOR VAGTS: There is still a lot of uncertainty about the question of victim gold—the “victim” subcategory of the category “looted” gold. While a great deal was known for a long time, a lot of

these cries of "look what wonderful discoveries I have made" are really quite unjustified because they have been around for decades. There is still some uncertainty there. It is worth noting that the Eizenstat report, or more properly the Slany report, does say that there is no convincing evidence that any neutral state knew that it was trading victim gold. Going through that report as carefully as I could, the figures I saw about the victim gold that was transported outside of Germany was, at one point, in the range of forty-four kilograms, which is not really very much. At that level, one is really uncertain about the evidence. The overwhelming bulk of the victim gold was intercepted in Germany, in camps there.

PROFESSOR GUTTMAN: My question was induced by your earlier statement regarding monetary gold as being lootable; so neutrals would have a clear conscience in taking it. But clearly there can be no clear conscience when we are dealing in victim gold, as difficult as it is to obtain it.

AUDIENCE MEMBER: My interest in this gold question. Basically, what I do not understand here is how could a central banker, whether in Sweden, Switzerland, wherever, not know that there was non-monetary gold mixed in with the monetary gold. In other words, what obviously happens in a financial system and what happened in Nazi Germany was that most of the gold that was taken was melted down. Whether these were rings or other jewelry taken from individuals, it was melted down and put into the monetary gold stocks of the Reichbank. The Reichbank then held these gold bars. Whether it was then found after the war, in the mines, or went to Switzerland or other places, that gold was originally, or a lot of it was, non-monetary gold. My real question is why anybody who is a central banker in any of these countries could not have truly understood that. About \$80 million of the gold that was looted by the Nazis was actually private gold, even though it was declared monetary gold after the war. This gold was looted when the Nazis marched into these countries and declared that all gold must be turned over from private individuals to the central bank that was then run by the Nazis. So all of that gold clearly was, and was understood to be, victims' gold. I mean, that was not something that was unknown. The question becomes whether all the other gold that must have flowed in through that bank, so even though there is no precise statement from a central bank stating, "I can see that within this gold bar there is so much of it

that came from concentration camp victims." They must have had known that. If they did not know this, they could not have been in the position that they were in, as chief of central bankers and experts on financial systems. I just do not quite understand how that came about and even in this part of the Paris negotiations which took place on that subject. Thank you.

PROFESSOR RUBIN: Well, of course, a lot of knowledge has turned up now that was not available then. One possible explanation for the small amount of non-monetary gold that was found in the gold bars that were in the vaults of the central banks is that non-monetary gold is, to sort of use a different word, contaminated. It has steel and iron and a variety of things that makes it different from monetary gold. Bankers, ordinarily, are very meticulous about the kinds of quality of the gold they are taking. So generally, monetary gold was in the sense pure gold, and the gold that goes into a ring or bracelet or something like that is not pure gold. So, that may not have been all that people may have thought, because perhaps the non-monetary gold was not actually melted down to the extent that it was actually purified. Certainly, there is a lot of evidence now that a large amount was melted down, purified, and turned into so-called monetary gold. There was also a lot of this gold found in the salt mines in Merkers and picked up in Germany still in the sacks, into which people had been forced to put their bracelets or their rings. The Nazis at the crematoriums also put their victims' gold inlays into these bags.

PROFESSOR GUTTMAN: I have another question, just a final question to Ambassador Wahlbäck. I am directing my question to him because at the moment he is neutral on this panel. How far has Sweden been able to determine that there was a private transfer of assets by people subsequently discovered to have been involved in the Nazi activities across Europe? I am thinking of the parallel of what you find in South America, where there are some very well adjusted and economically well-off people who made their wealth most likely through the activities of the Nazi SS. Have you had an investigation of this issue in Sweden?

AMBASSADOR WAHLBÄCK: Oh, yes. That is, in fact, one of the main tasks of the Commission on Jewish Assets in Sweden, to investigate the extent to which Jewish property may have been transferred to Sweden as a result of the persecution against the Jews on

the part of the Nazis. And, of course, to the extent that this happened in a way that meant the Jewish people were robbed of their property or extorted or forced to sell it at low prices to Swedes, for instance. That would be totally unacceptable and that is one of the main objectives of our investigations. The problem is that Swedish businessmen did not seem, so far as we have been able to discover, to have been very interested in taking over property that was in Germany—property owned by Jews who wanted to sell them for instance. It was not a very attractive business proposition to invest in Germany, because Germany was a planned economy with chronological exchange or “*devisen*” problems. So it was very difficult to get anything out of Germany if you took over a Jewish property and managed it. Such cases, therefore, seem to have been extremely rare. There are a lot of indications of offers on the part of Jewish enterprises, of approaches to Swedish banks for instance, asking for Swedish interest in taking over this or that factory, but normally these offers were not accepted. It does not seem to have had an interest.

PROFESSOR GUTTMAN: My question sought to discover what was the reaction of the Swedish population to the activities of Nazi Germany. A population’s reactions will influence what kind of neutrality a country is going to adopt. At least a government that is in some way democratic would have to bear that in mind. My question really was the other way around. Is there any investigation of ex-Germans, or ex-participants in German atrocities, to discover how these people became wealthy in Sweden, so that people may have asked how does this happened in Sweden?

AMBASSADOR WAHLBÄCK: Oh, I see. Okay, well, that issue was, of course, crucial in the immediate post-war years, because all German assets in Sweden were confiscated. And to the extent that some prominent Nazis who had made investments in Sweden, I do not recall really what the results were on that specific point. But to that extent, assets were confiscated. One of our problems, and one of the tasks of the present Commission on Jewish Assets, is to investigate whether some German Jewish owners of property in Sweden had their property confiscated, simply because they were Germans. That would also simply be unacceptable in the sense that they were victims of wars. That is also one of the tasks with which we are also engaged in trying to clarify.

PROFESSOR GUTTMAN: I would like to thank the panel for their rather interesting explanations of things.