A Small Nation in the Turmoil of the Second World War

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CHAPTER 15

The Proceedings against the *Banque de France* in New York

THE CAUSE

The telegram Kauch sent from Toulouse to New York on 26 January 1941 to inform Theunis, Belgian Ambassador Extraordinary to the United States, of the transfer to Germany of the Belgian gold entrusted to the *Banque de France* was couched in somewhat cryptic terms: Theunis was told that it was now up to him to undertake action in New York against the *Banque de France*. Exactly why these instructions were not more explicit and why it was not clearly stated who was giving them are questions that still remain unanswered. But it was clear that Theunis had to decide on the course of action to be taken, i.e. whether legal proceedings should be begun against the *Banque de France* or a threat of sequestration be made as a means of putting pressure on it to achieve an amicable settlement.

Baudewyns and Ansiaux did not desire a legal confrontation with the *Banque de France* and supposed that this was not Janssen’s intention either. In any case, an action in law was a highly unusual manner in which to solve a difference of opinion between European central banks. Moreover, when Ansiaux travelled to Lisbon in January 1941 he was informed by Cattier that Janssen was in the midst of negotiations with the *Banque de France* to achieve a settlement regarding recognition of its responsibility for the Belgian gold and that the prospects for a settlement were favourable. This was good news for Baudewyns and Ansiaux who also wanted an amicable arrangement. The fact that the idea of a compromise was rejected and legal proceedings begun in New York, indicates that it was not the people of the Bank in London who were

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1 BNB, Archives, Studiedienst, SD 1, dossier 01.02.00.10 (A 230/1): or monétaire (memorandum of 07.01.1944 from J. Nisot, New York).
pulling the strings, but rather Gutt and Theunis, both of whom were bent on confrontation and felt that they had sound reason for seeking it.

Upon lodging the complaint, Theunis had been permitted by the judge in New York to have the French gold in the strong-rooms of the Federal Reserve Bank provisionally sequestrated. In an interview with the New York Times on 6 February 1941, Theunis declared that, on 17-18 June 1940, the Banque de France had declined to respond to the Bank’s request for the contract of deposit in safe custody to be cancelled, that it had refused to evacuate the Belgian gold to the United States, and – even worse – had transferred it to the Reichsbank, against the express will of the Bank ².

In a memorandum from Jean Sancery, head of the Disputes Department in Paris, received on 27 February 1941 by Jean Martial, the Banque de France’s representative in New York, the French central bank, supported in this by the French Ministry of Finance, put forward three arguments disputing the legal action taken by the Bank³. In the first place, it claimed that neither the Belgian government in exile nor the Bank’s representatives in London were competent to initiate legal proceedings. It was true that the British and American governments had recognized the Belgian government and the Bank’s office in London, but there were no clear legal grounds either for the Belgian government to be recognized as the ‘legal government’ or for the office to call itself ‘the National Bank of Belgium’. Since July 1940, and with the approval of the legal Belgian government, then in Vichy, the registered office of the Bank had been brought back to Brussels. Pursuant to the Bank’s bye-laws, only the governor or, in his absence, the deputy-governor could take executive decisions on behalf of the Bank and both were now in Brussels. Consequently, the Bank’s office in London was not competent to conduct legal proceedings in New York.

² BdFr, Archives, Direction de la documentation, dossier 1397.1994.01/73, ‘or belge’: Martial, mon câble d’hier, 07.02.1940 (reçu à la Banque de France, Clermont-Ferrand, 10.02.1941); dossier 1397.1994.01/79: report of 29.04.1941 from Martial (Clermont-Ferrand) to de Boisanger.
Secondly, New York State law itself disqualified the Bank’s office in London from taking legal action, as it stated that a foreign company could institute such proceedings there against another foreign company only if one of them did business in that State, which was not the case in this instance. The Banque de France’s third argument was that there were no grounds for the complaint as such; on 18 June 1940 it had not ‘refused’ to cancel the contract of deposit in safe custody, as it had not been ‘formally’ requested to do so. Furthermore, it had always declared, and was always prepared to reaffirm, that it continued to regard itself responsible for the Belgian gold, even if that gold had for the moment been entrusted to the Reichsbank in the form of a subordinate deposit in safe custody. In any case, the Banque de France would restore the gold to the Bank forthwith on being officially requested to do so by the legally recognized representatives of the Bank and when it was in a position to do so. In the Banque de France’s eyes, thus, there was no reason for legal proceedings.\footnote{BdFr, Archives, Secrétariat Général, dossier 1060.2001.01.41, ‘or belge’: note pour la Banque de France, 02.04.1941.}

Theunis resolved to engage an eminent lawyer to refute the French arguments and turned to John Foster Dulles, who, at the time, was a senior partner in the well known law firm of Sullivan & Cromwell (after the Second World War he was to be appointed Secretary of State in Eisenhower’s presidency). Dulles had studied at the Sorbonne before the First World War. Theunis had got to know him immediately after the war, as they both served on the Reparations Commission in Paris, Dulles as a junior member of the American delegation and Theunis as head of the Belgian delegation. Theunis had already learnt to appreciate Dulles’ talents and now considered that he would be an excellent defender of Belgian interests.

For its defence, the Banque de France turned to the equally well known law firm of Coudert Brothers and Co. The partners of this firm were initially reluctant to take the case, regarding the surrender of the gold to the Reichsbank as a breach of contract that would be difficult to defend before an American court. Coupled with this was the very negative reaction of the American press and public opinion to the news of the surrender, which prompted one of the Coudert brothers to object strongly to becoming involved, as he was a senator for New York State.
and, with elections in prospect, was not keen for his name to be linked to a matter that had been subject to such sharp criticism. However, the oldest partner, the father, an ardent francophile, had the final word and accepted the commission from the Banque de France. Paul Fuller, nephew and partner of the brothers, would support the dossier, assisted by a junior partner, Manlon B. Doing⁵. Sancery was sent to New York to appear, together with Martial, for the defence before the American courts, the requisite powers of attorney for both having been signed on 4 March 1941 by the French central bank’s governor, de Boisanger⁶.

Sancery left for New York on 15 March, sailing from Lisbon and carrying the documents that Martial needed to prepare the case for the defence. The Portuguese authorities had assured the Banque de France that his ship would sail directly to New York, but en route it was intercepted by British ships and conducted to a port in Bermuda, where it had to remain at anchor for two days. With British agents subjecting the baggage of all travellers to a close search, Sancery made a quick decision to destroy a number of confidential documents⁷. After the war, Ansiaux would claim that these agents had had the documents photographed at night and had forwarded the photographs to the British Intelligence Service and to the State Department in Washington. Whatever the truth of the matter, Theunis was effectively informed of the situation by a State Department official and allowed access to the documents. This was extremely important in respect of the completion of the dossier⁸.

In his first statement, on 7 April 1941, Martial argued that the American courts were not competent to judge a dispute between two foreign companies, neither of which was active in New York State. Dulles had warned Theunis that the judge could well accept this argument as decisive⁹. He advised the Bank to cede its assets at the Banque de France.

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⁵ BdFr, Archives, Direction de la documentation, dossier 1397.1994.01/78, ‘or belge’: report of 29.04.1941 from Sancery (Clermont-Ferrand) to de Boisanger.
⁶ BdFr, Archives, Secrétariat Général, dossier 1060.2001.01/41, ‘or belge’: pouvoirs donnés à Sancéry et Martial, 04.03.1941.
⁹ BdFr, Archives, Direction de la documentation, dossier 1397.1994.01/73, ‘or belge’: on 20.02.1941, the French Navy (Vichy) passed Martial’s letter of 17.02.1941 (New York) to the French Minister of Finance (Vichy).
to two residents of New York State who would demand restitution from the Banque de France on behalf of the Bank. Acting on this advice, on 14 March the Bank had ceded its claim to Daniel de Gorter and Henri Wild, both residents of New York State, the former being chairman of the Belgo-American Chamber of Commerce and the latter a director of the Banque belge pour l’Etranger. On 24 April, de Gorter and Wild summoned the Banque de France to appear in first instance before the Supreme Court of the State of New York, which sat in the State capital, Albany. Their brief was to recover the Belgian gold that had been deposited with the French central bank, but they also requested that a sequestration order be placed on the Banque de France’s assets at the Federal Reserve Bank of New York. The Court granted their request and the State sheriff had the order executed the following day.

Meanwhile, the Belgian government had decided that Gutt should go to New York to keep a close watch on the proceedings. He showed himself prepared to talk informally about possible alternatives to legal proceedings. At Dulles’ suggestion, he even accepted an invitation to lunch with Fuller from the law firm Coudert Brothers. Their discussion was friendly and Gutt made it clear that Belgium was not necessarily looking to pursue the legal action to the bitter end, but would be prepared to accept an amicable settlement, as long as that put the Bank back in possession of its gold.

Words like that were music to Fuller’s ears. He was convinced that only an amicable settlement offered a way to avoid what would almost certainly be a judgement against the Banque de France. Following his conversation with Gutt he did all in his power, in consultation with Martial and Sancery, to achieve a compromise. His only ally was time, hence his strategy of questioning the competence of the American courts and of exhausting all other procedural means, in order to postpone indefinitely discussion of the core of the matter. This fitted well within de Boisanger’s scheme of things, because he, too, favoured an amicable settlement.

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10 BNB, Archives, Studiedienst, ds 1, dossier 01.02.00.10 (A 230/ 1): or monétaire, memorandum of 07.01.1944 from J. Nisot (New York).

11 BdFr, Archives, Direction de la documentation, dossier 1397.1994.01/78, ‘or belge’: report of 29.04.1941 from Martial (Clermont-Ferrand) to de Boisanger.
The defence’s game, thus, became a legal sparring match that lasted for months. Now that, legally, the competence of the American courts could no longer be challenged, Fuller turned to a new point of procedure, stating that, according to the contract of deposit in safe custody, only the Paris courts were competent to judge a dispute concerning it. This argument was rejected by the Supreme Court of the State of New York on 3 July, but the Banque de France then challenged that decision and laid the matter before the Appelate Division, a body of second instance at the Supreme Court of the State of New York. On 12 August, this body unanimously confirmed the verdict, to which the Banque de France replied by requesting the Appelate Division to allow it to place the matter in third instance before the Court of Appeals, a request that was again rejected unanimously.

The Banque de France now changed tack and on 3 November submitted a number of conclusions to the Appelate Division, the purpose of which was to challenge the competence of the Supreme Court of New York; these conclusions were in turn rejected. Then, on 10 November, the central bank requested a further delay, only for the Appelate Division to refuse to allow any prolongation. On 17 November, the Banque de France approached Chief Justice Lehman to obtain the requested prolongation, but he, too, refused to grant it. The next day, however, both admitted a procedural error and on 18 November granted the prolongation of delay. That same day, the Banque de France submitted an appeal to the Court of Appeals against the judgment of 3 November, which had rejected a request for the competence of the American courts to be limited.12

In tandem with his strategy of using all the legal tricks to postpone the case, Fuller had been continuing to work for an amicable settlement between the two central banks and in June-July had already produced a text that both his client, the Banque de France, and the French Ministry of Finance could agree to, no mean feat. By the terms of the text, the Banque de France declared itself prepared to make restitution of the Belgian gold and to do so against the guarantee of its own gold deposited in New York, with restitution obviously devolving to the ‘legal’

12 BNB, Archives, Studiedienst, ds 1, dossier 01.02.00.10 (A 230/1): or monétaire (memorandum of 07.01.1944 from J. Nisot (New York).
13 BdFr, Archives, Direction de la documentation, dossier 1397.1944.01/79, ‘or belge’: letter of 09.10.1941 from Cathala (Paris) to de Boisanger (Clermont-Ferrand).
representatives of the Bank and not to those in London who ‘claimed’ to be the legal representatives\(^\text{14}\).

Naturally enough, the Bank in London, receiving the proposal in November 1941, was unable to agree. For his part, Dulles found it too vague and, to put it mildly, too bruising for the representatives of the Bank in London. From the Banque de France’s point of view, there was good reason for it to continue to refuse to recognize the Bank in London as being legally the National Bank of Belgium, because, from Paris, it was still negotiating with Brussels to achieve an accommodation\(^\text{15}\). In furtherance of this, in October the Banque de France submitted Fuller’s proposal to Goffin. However, advised by the jurist Marcq, the board of directors of the Bank replied that it had no competence in respect of measures taken in unoccupied territory and that the Bank in Brussels could therefore not respond to the French proposal. From that point on, the Banque de France saw no purpose in continuing to negotiate with Brussels and now turned exclusively to the Belgian government and the Bank in London for further attempts at an accommodation.

THE FRENCH ATTEMPTS TO ACHIEVE AN AMICABLE SOLUTION

Fuller did not down tools after his failed attempt to achieve a compromise. In November 1941, he contacted Dulles again to see whether an arrangement of that sort could be worked out. Dulles answered that he would consult his client on the matter and informed the American Treasury and the State Department of what was happening\(^\text{16}\); thereafter, both departments took a close interest in the case\(^\text{17}\).

\(^\text{14}\) BdFr, Archives, Direction de la documentation, dossier 1397.1994.01/73, ‘or belge’: telegram of 07.06.1941 from Martial (New York) to the Banque de France (Clermont-Ferrand); dossier 1397.1994.01/71, ‘or belge’: letter of 20.06.1941 from de Boisanger (Clermont-Ferrand) to Bouthillier (Vichy); Secrétariat Général, dossier 1060.2001.01/40, ‘or belge’: meetings of 20.06.1941 and 27.06.1941 between de Boisanger and Schäfer in Paris, meeting of 04.07.1941 between Bolgert and Schäfer, letter of 10.07.1941 from Schäfer (Paris) to de Boisanger (Clermont-Ferrand).

\(^\text{15}\) See above.


\(^\text{17}\) Washington, National Archives, Belgium, dossier 855.515/69: memorandum of 17.12.1941 (US Treasury) to Dean Acheson (Secretary of State, US State Department).
The discussion between the two lawyers ultimately took place mid-December on the telephone. Prompted by the Banque de France at Clermont-Ferrand, Fuller again suggested a settlement. He stated that the Banque de France remained prepared to put its name to an official document recognizing its obligation to make restitution of the gold received in deposit, but that it still refused to make an immediate transfer to the Bank of the monetary gold it held under dossier with the Federal Reserve Bank of New York, because of the continuing uncertainty about whether restitution was to be made to the Bank in London or the Bank in Brussels. The Banque de France therefore promised to make restitution as soon as doubt about the Bank’s status had been dispelled or – if the circumstances of war prevented this – as soon as hostilities ceased. In the latter case, it would make restitution to the institution then recognized by American jurisprudence as being officially the Bank. Lastly, the Banque de France was also prepared to use the gold it held under dossier at the Federal Reserve Bank of New York as a guarantee for the restitution.

Dulles informed Theunis of the conversation, pointing out that it would be in the Bank’s interest to answer that it found the proposal attractive and wanted to examine it: the proposal was indeed to the Bank’s advantage, as it did not serve to halt the legal proceedings and at the same time implied fresh recognition by the Banque de France of the Bank’s rights. Dulles also advised that the Bank itself should delay the legal proceedings somewhat, because, following the Japanese attack on Pearl Harbor on 7 December 1941, the United States had declared war on the Axis Powers and joined the ranks of the Western Allies. Rumours were now circulating in Washington that the American government would freeze, or even confiscate, the assets of civilians and companies from occupied countries. Freezing or confiscation, it was argued, should be regarded as a guarantee against possible damage or loss that the American government or American citizens might suffer in consequence of the country’s entry into the war on the side of the Allies.


20 BNB, Archives, Studiedienst, DS 13, dossier A 320/6: secret supplementary letter
A further argument was that not to freeze or confiscate the assets could be seen as discriminating between the Allied countries. With its policy of 'cash and carry', the American government had forced Great Britain to liquidate all her domestic gold reserves and all her assets abroad, in order to finance the purchase of war materials. She was not only using those materials to defend herself, but would also be using them for the eventual liberation of the occupied territories. It would, therefore, be unfair to Great Britain if the governments, citizens and companies of those occupied territories had free disposition of their assets in the United States and did not commit them to liberating their own territories, whereas the British had committed their assets to just that purpose. Dulles indicated that the planned measure would have repercussions on the dispute between the two central banks, his reasoning being that, were the American president to eliminate the discrimination against Great Britain, gold that Belgium had demanded and received could be frozen or confiscated as a Belgian asset. Were no restitution to have yet taken place, the gold would be frozen or confiscated as French gold and the Bank would retain its claim against the Banque de France. In Dulles’ view it was now better for the Bank to attempt to defer the restitution for as long as possible.

In a letter of 4 March 1942, Theunis therefore pressed Gutt to follow Dulles’ advice, stating his own opinion that the Bank should reply to the Banque de France that it was prepared to accept the French proposal as the basis for a possible settlement. Gutt was unhappy at Theunis’ suggestion. He had taken a hard line right from the first French overtures in the course of 1941, when he was insisting on a transfer of the French monetary gold at the Federal Reserve Bank of New York to the gold in the Belgian account.

The Banque de France nevertheless continued to hold out hopes of a settlement and had meanwhile again attempted to delay legal proceedings. On 5 March, the Court of Appeals of the State of New York...
granted permission for the question of the competence of the American courts to be laid before the Supreme Court in Washington. Two days later, the French central bank went to that federal court with the request that it annul the verdicts of the Appelate Division and of the Court of Appeals of the State of New York. By the end of the month, however, these two French initiatives had proved unsuccessful, so that Dulles was able to notify Theunis that the opposing party was required to submit its response to the charges within ten days and that, at last, the core of the matter could be argued.

Ultimately, Dulles’ optimism appeared to be somewhat premature, as the Banque de France launched a fresh campaign in April 1942 to have the case postponed. Referring to the court case concerning the Bank of Rumania, it lodged a request with the Supreme Court in Albany on 6 April for the sequestration order placed on its gold with the Federal Reserve Bank of New York to be lifted. The same day, it requested that same court for a new prolongation of delay, in order to be able to respond to the action brought by de Gorter and Wild, since no verdict had yet been given on the lifting of the sequestration order. Both requests met the same fate as their predecessors and were rejected, as was the appeal the Banque de France lodged on 27 April with the Appelate Division against those two verdicts. The next day, a review of the verdict on the request for a prolongation of delay was sought, but this, too, was rejected. At the end of June, finally, the Supreme Court in Washington handed down its verdict, which was likewise in favour of the Bank, and with this, the possibilities of gaining a further delay in arguing the core of the matter were now exhausted. In the meantime, however – more particularly on 5 May – Fuller had tabled a new proposal for an amicable settlement.

According to this new proposal, the Banque de France would go a step further than the compromise it had offered the previous year. It would be prepared to hold a specific sum in gold under dossier at the

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24 BdFr, Archives, Direction de la documentation, dossier 1397.1994.01/72, ‘or belge’: letter of 11.03.1942 from Martial (New York) to Gargam (Clermont-Ferrand).
25 ARA, Theunis Papers, ‘correspondance Theunis-Gutt’: letter of 25.03.1942 from Gutt (London) to Theunis (New York).
26 BNB, Archives, SD, Ansiaux Papers, A 2, dossier 9.1/26, s. f. 1: letter of 15.06.1942 from Ansiaux (London) to Theunis (New York).
Federal Reserve Bank of New York as a guarantee in favour of the Bank and to give a formal undertaking that, once hostilities had ceased, it would restore the gold to the Bank at whatever location the Bank indicated: New York, Brussels or Paris. During the term of the agreement, the Banque de France would recognize the representatives of the Bank in London as the legal representatives of the Bank, but only within the context of this operation; in the case of dispute, the matter would be referred to an American court of law. In return, the Bank and de Gorter and Wild would halt legal proceedings and request that the sequestration order be lifted.

Martial gave this proposal his full endorsement, supported by the management of the Banque de France: Fuller and Martial could now go ahead. The proposal was received fairly positively in London, and both Dulles and Theunis were in favour, because they thought that a solution was now in sight. However, new difficulties arose and, once again, nothing came of the hoped-for amicable settlement.

The Bank had indeed ceded its claim to de Gorter and Wild, but essentially it remained the claimant. Regulating the relationship between the American government and central banks in exile was American decree No. 31 of 19 May 1941, especially article 25, which laid down that the Secretary of State was empowered to indicate who, on behalf of those central banks, would have power of disposal over their assets. In June 1941, Spaak had submitted a request to that end, with respect to Baudewyns and Theunis, but the request had been declared inadmissible and the Belgian government had left the matter at that. In March 1942, however, with the prospect of the main issue being pleaded in New York, the recognition of the right of disposition for Baudewyns and Theunis became relevant again, as the opposing party or even the court

27 BdFr, Archives, Direction de la documentation, dossier 1397.1994.01/72, 'or belge': telegram of 03.07.1942 (delivered 19.07.1942) from Martial (New York) to the Banque de France (Clermont-Ferrand), Secrétariat Général, dossier 1060.2001.01/42, 'or belge': note sur le projet d’accord élaboré à New York, 02.09.1942.
28 BdFr, Archives, Direction de la documentation, dossier 1397.1994.01/72, 'or belge': letter of 09.10.1942 from Cathala (Vichy) to de Boisanger (Clermont-Ferrand); Secrétariat Général, dossier 1060.2001.01/41, 'or belge': projet d’accord amiable en vue de mettre fin au procès relatif à l’or belge, 13.10.1942.
could use the refusal of the Secretary of State to admit Spaak’s request as an argument against the Bank’s claim for the gold. Legitimizing the decrees of 27 November 1941 on the transfer of the Bank’s registered office from Brussels to London became a first step in negating such a line of argument. With that purpose in mind, the Belgian government in London lodged a request with the Supreme Court in Albany to be officially recognized as the sole legal government of Belgium. Recognition was given on 7 March 1942, thereby automatically legitimizing the decrees. On 25 May, Theunis, as governor, was licensed to take individual decisions in the United States on behalf of the Bank; Baudewyns, as director, and Ansiaux, as nominal secretary, were granted the same authority, but could exercise it only in tandem.

An estimate had meanwhile been made of the sheriff’s fee, the amount the plaintiff was required to pay to the Department of Justice as cover the State’s legal costs: the total was 2,560,000 US dollars. For the times, this was an enormous amount. Dulles and Fuller immediately lodged a protest against it and also had a bill introduced by members of the New York State Assembly in Albany to have payment of the sheriff’s fee deferred until after the final court ruling. The bill was approved. Dulles and Fuller then attempted to go a step further and had a second bill introduced that would limit the sheriff’s fee in the future to a maximum amount of 10,000 US dollars per complaint. This bill, too, was approved by the Assembly, but was vetoed by the New York State governor.

THE PROBLEM OF THE LUXEMBOURG GOLD

The question of the gold deposited with the Bank by the Caisse d’Epargne du Luxembourg was even more sensitive. At the end of March 1942, in a two-fold approach, the prime minister of the Luxembourg govern-

30 BNB, Archives, SD, Malaise Papers: letter of 07.03.1942 from Theunis (New York) to Gutt (London).
31 ARA, fonds ministerie van Financiën, dossier ‘London’: report of the Cabinet meeting of 25.05.1942.
ment in exile, Pierre Dupong, contacted Theunis in Washington and the Luxembourg Minister of Foreign Affairs, Joseph Bech, sought out Gutt in London. Both came with the same disquieting account of how the Bank in Brussels had instructed the Banque de France to restore to Luxembourg the gold that the French central bank had accepted in safe custody together with the Belgian gold. Theunis and Gutt refused to commit themselves, replying that the Bank in Brussels had no authority to make any arrangements regarding that gold and that the present directors of the Caisse d’Epargne du Luxembourg had been appointed by the Germans and consequently had no competence in the matter: only the Bank in London and the pre-war directors of the Caisse d’Epargne du Luxembourg could legitimately take action in that respect.

It was, nevertheless, pretty clear that both the Bank in London and Theunis were embarrassed by the question. As early as the beginning of May 1942, Baudewyns was informing Theunis that the Luxembourg gold threatened to become an issue in the Bank’s legal action in New York. Baudewyns was so shocked by the conduct of the Bank in Brussels that he again wondered whether it would not be better to move in the direction of an amicable settlement.

The question of the Luxembourg gold became extremely acute when, in early September, the Banque de France, via its lawyer, Fuller, submitted its response to the charges of de Gorter and Wild to the court. Among other things, it was explicitly stated that, in 1940, the then governor of the Bank, Georges Janssen, had himself directed that the Belgian gold be repatriated to Brussels and, in 1941, the deputy-governor, Ingenbleek had signed the letter instructing the Banque de France to restore the Luxembourg gold to the Caisse d’Epargne du Luxembourg. In its argument, the French defence did not miss the opportunity to underline that the Bank in Brussels knew very well at the time that the Caisse d’Epargne du Luxembourg – now managed by puppets of the Nazi regime, although this was not stated in so many words – would

33 ARA, Theunis Papers, ‘correspondance Theunis-Gutt’: letter of 31.03.1942 from Theunis (New York) to Gutt (London).
34 BNB, Archives, SD, Ansiaux Papers A 3, dossier 9.1/31 s. f. 1: letters of 02.05.1942 and 05.05.1942 from Baudewyns (London) to Theunis (New York).
35 BNB, Archives, Studiedienst, DS 1, dossier 01.02.00.10 (A 230/1): note, Nisot, 07.01.1944.
transfer the gold from Luxembourg to the Reichsbank. This being so, the defence wondered how the Bank could bring charges against the Banque de France for transferring the Belgian gold to the Reichsbank, when the Bank itself was responsible for the Luxembourg gold being transferred to Berlin.

The French response to the Bank’s charge came as a shock to Baudewyns and Ansiaux, as they confessed at the end of September 1942. Dulles suggested that there should be no further mention of the decrees of 27 November 1941, since it would give the American judge the impression that the government and the Bank in London had something to hide and that it was for this reason that, in consultation with the government, the Bank had decided to transfer its registered office to London. In Dulles’ opinion, such an impression would not be conducive to a favourable verdict, particularly now that the core of the matter could be discussed. After consulting his lawyer Nisot, Theunis chose to differ from this argument. From a legal point of view, Ingenbleek’s signature in July 1941 was worthless, as the Luxembourg gold was at that time still outside occupied territory, meaning that, according to Belgian law, Ingenbleek had no power of disposition over it. Furthermore, the officials of the Caisse d’Epargne du Luxembourg had no authority to request the gold’s restitution, since they had been appointed under the occupation and a Grand-Duché de Luxembourg ordinance issued from London on 5 February 1941 had declared their appointments illegal.

Theunis and Nisot therefore argued that the Belgian plaintiffs could go ahead with their action. However, such reasoning smacked more of an exercise in legal cleverness than a realistic approach to the problem. Dulles stuck to his guns. Since Dupong’s visit to Theunis at the end of March 1942, he had had a presentiment that the question of the Luxembourg gold would weigh on the action in New York. He had, in fact, favoured an amicable settlement right from the outset, but his clients had never agreed to it. He now decided not to wait until the beginning.

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38 BNB, Archives, Studiedienst, DS 13, dossier A 320/6: opinion of 13.10.1942 from Nisot (New York) to Theunis (New York).
of September, when the main action was due to be determined, but to react immediately and favourably to the new French proposal of 5 May 1942 seeking an amicable settlement.

In June, together with Fuller, Dulles had cast around for a formula that, taking account of the complications that had arisen, could meet with the approval of both parties\(^3\). However, all indications are that the two lawyers’ efforts were ultimately brought to grief by the inflexibility of the Bank and the government in London\(^4\). In any case, the action continued and, on 4 November, Dulles submitted a ‘motion for particulars’ to the Supreme Court in Albany, with seventeen questions about the replies that, via Fuller, the Banque de France had submitted to the court at the beginning of September\(^5\). Among other things, the motion contained a request for more information about how the Reichsbank had been able to take the place of the Banque de France as custodian of the Belgian gold. How strong had been the pressure from the Vichy government on the Banque de France, to transfer the gold to Berlin? Additional information was also requested about the restitution of the Luxembourg gold, about the competence of Ingenbleek and the current directors of the Caisse d’Epargne du Luxembourg, about whether the registered office of the Banque de France was in Paris or at Clermont-Ferrand, and more besides. Dulles’ conclusion was that the Banque de France’s response of September 1942 was wholly unsatisfactory: there were not only gaps, but also a great many inconsistencies.

On 13 January 1943, Judge Bernstein ruled that the Banque de France must submit its reply to Dulles’ motion to the court within thirty days\(^6\), and this duly occurred shortly thereafter. The Banque de France admitted that the Bank had deposited gold in safe custody with it and also admitted that it had transferred the custodianship to the Reichsbank

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39 Washington, National Archives, Belgium, dossier 855.515/72: Department of State, Financial Division, memorandum of 11.06.1942 from Berle.

40 BNB, Archives, SD, Ansiaux Papers, A 2, dossier 9.1/26 s. f. 1: letter of 15.06.1942 from Ansiaux (London) to Theunis (New York).

41 Washington, National Archives, Belgium, dossier 855.515/75: motion of particulars by Dulles to Supreme Court of New York, 04.11.1942.

without consulting the Bank. It maintained, however, that the transfer released it from its obligation to make restitution of the gold to the Bank, justifying this position by submitting that French law permitted one custodian to be replaced by another. The principle of replacement, it argued further, had been effectively established in December 1940 in the Wiesbaden Protocol, an agreement between the Reichsbank and the Banque de France, two institutions that had been recognized by the American government as legal central banks. Consequently, the transfer of the gold to the Reichsbank was totally legal. Furthermore, the Vichy government had forced the Banque de France to make the transfer, so that the central bank could rightly invoke a cas de force majeure and could no longer be held liable. If the Bank desired restitution, it should address itself to the Reichsbank or to the French government at Vichy.

The Banque de France stated further that, on the instructions of the Bank in Brussels, a portion of the gold deposited in safe custody had already been restored to the Caisse d’Epargne du Luxembourg and that a considerable portion had been transferred to its own gold reserve, in settlement of the exchange of Belgian banknotes and in repayment of the State loans to the Belgian government during the months of May-June 1940. It also stated that, according to the original contract of deposit in safe custody, any dispute with the Banque de France regarding this matter was required to be adjudicated by a court at the place where the head office of the custodian was established, in this case at Clermont-Ferrand. Finally, the Banque de France was unable to give any additional information, since Martial, its representative in New York, was deprived of any further contact with France. Dulles’ answer to this was that Martial had had a year and a half to collect the necessary information from France and that, in consequence, he could be assumed to have everything to hand to provide the answers requested.

The pleading of the core matter from April 1943 onward, which the Belgian party had for so long insisted on, did not go all that smoothly. In the first place, embarrassing questions were asked by Martial about the role played by the Bank’s governor, Janssen, in the repatriation of the Belgian gold from West Africa to Europe. A negative assessment was also given of Janssen’s attitude regarding the restitution of gold to

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43 Washington, National Archives, Belgium, dossier 855.515/82 and 85: memorandums of 12.01.1943 and 26.01.1943.
the Caisse d’Epargne du Luxembourg. At the same time the New York Times, in a stark banner headline, trumpeted: ‘Belgian Quislings invited the Vichy government to transfer the Belgian gold to Brussels’\textsuperscript{44}. In a counter article in the same newspaper, Gutt gave a spirited rebuttal of the imputation, but the original report continued to reverberate in the United States\textsuperscript{45}.

Theunis now began to have doubts about a successful outcome to the action, writing to Baudewyns on 30 June that he saw little chance of a satisfactory solution in the short term\textsuperscript{46}. Gutt nevertheless remained obstinately wedded to continuing the action, writing to Boël in November 1943: ‘Do you think that I am going to let them (the Banque de France) get away with murder? Not me!’\textsuperscript{47}. The same month, however, Theunis notified Gutt that Dulles, although he was now in a position to argue the main issue, chose not to, since American jurisprudence provided for such cases to be postponed until four months after the cessation of hostilities, in order to enable the defending party to call its witnesses; with the total occupation of France since the beginning of 1943 there was no question of calling them now\textsuperscript{48}. Gutt at last gave in, but only on condition that the temporary suspension of the court proceedings could in no way be construed as bringing an end to the action\textsuperscript{49}. Baudewyns, and everyone in New York, including Dulles, agreed with the condition.

However, Gutt was not one to let the grass grow under his feet. Now that the action in New York had been temporarily suspended, he set about adjusting his strategy to make use of changed circumstances. The Comité Français de la Libération Nationale, whose registered office was

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\textsuperscript{44} ARA, Theunis Papers, ‘correspondance Theunis-Rolin’: letter of 15.06.1943 from Rolin (London) to Theunis (New York).

\textsuperscript{45} Washington, National Archives, Belgium, 855.515/ 86: Gutt’s reply to an article in the newspaper The New York Times of 08.06.1943.

\textsuperscript{46} BNB, Archives, Studiedienst, DS 1, dossier 01.02.00.10 (A 230/1): or monétaire (memorandum of 07.01.1944 from J. Nisot, New York, p. 5).

\textsuperscript{47} ARA, Theunis Papers, ‘correspondance Theunis-Gutt’: letter of 17-18.11.1943 from Gutt (London) to Boël (?).

\textsuperscript{48} ARA, Theunis Papers, ‘correspondance Theunis-Gutt’: letter of 18.11.1943 from Theunis (New York) to Gutt (London).

\textsuperscript{49} ARA, Theunis Papers, ‘correspondance Theunis-Baudewyns’: letter of 29.11.1943 from Baudewyns (London) to Theunis (Washington).
in Algiers, had little by little been gaining in status with the Allies since their successful landing in North Africa in November 1942, and during 1943 the prospect of France and Belgium being liberated was improving. Gutt therefore decided to open negotiations with the Comité, with a view to finding a solution to the Franco-Belgian dispute about the gold. He wanted the conflict out of the way before the liberation and hoped to use the action in New York as a means of pressure. By the end of November, he was already having talks in New York with Jean Monnet about the gold. His move proved to be the initial impetus for the fresh negotiations that would lead to an amicable settlement after the liberation.

THE LEGAL PROCEEDINGS: WORTH THE CANDLE?

Attempting to provide an objective evaluation of the legal proceedings in New York is fraught with pitfalls. From the order and calm of good archives, it is no easy matter to form an unbiased picture of how the protagonists in the affair were to hold a straight course in the chaotic circumstances into which they were cast. One problem confronting them was communication. Our generation finds it difficult to comprehend the fact that, barely sixty-five or so years ago, leaders in very critical circumstances did not even have a telephone to hand. In consequence, rumour and misunderstanding were rife and nobody appeared to be immune. A first point of reference in constructing a narrative has therefore to be the written sources, even though they require a critical examination. What they show in this case is that it was certainly not the original intention of the Bank’s governor, Janssen, to resort to open conflict in order to obtain restitution of the Bank’s gold from the Banque de France. On the contrary. The then governor of the Banque de France, Fournier, also wanted to find a solution acceptable to both parties.

Who, then, set the legal action in New York in train? Ultimately, the finger points to Theunis and Gutt as the instigators. Theunis was an impulsive man and showed himself to be extremely irritated about the difficulties placed in his way in the United States about the measures he was trying to take on behalf of the Bank, difficulties that he attrib-
uted to the hybrid status of an occupied and an unoccupied France. For him, a court case would clarify the situation. In addition, he was an authoritarian man who, once set on a course of action, was difficult to persuade to stop and reflect whether means other than a confrontation could serve his purpose.

Despite his vigorous approach in the run-up to the court case and during its first months, Theunis, in fact, appeared willing to consider proposals from the Banque de France for an amicable settlement. Those proposals were warmly recommended by Dulles, as we have seen, and Theunis had come to value his New York lawyer very highly during the negotiations and increasingly took notice of his opinion, which may go some way to explaining, why, in time, he was to abandon his aggressive attitude towards the French central bank.

There remains Gutt. Was he the central figure – the hardliner – who, in all the labyrinthine procedures, never lost sight of the goal of getting the Banque de France formally to admit that it had been gravely at fault? As the court action progressed, it became clear that the driving force behind the stubborn refusal to come to a compromise was, indeed, Gutt and continued to be so, even after it had become apparent that the Bank’s case was not so conclusive as originally thought. Gutt’s distrust of the French authorities was long-standing. He could not forget the dramatic journey in March 1935 to Paris, where he had asked in vain for help to save Belgium from a severe devaluation of its currency. What grieved him most, however, was the reception given to the Belgian government by the French authorities in May-June 1940, if this could in any way be described as a reception. He was a single-minded statesman who did not allow himself to be diverted by emotion. Even for him, though, there were limits; the humiliation brought by the arrogance of the French politicians and monetary leaders towards the Belgian government were a little too hard to take, a bridge too far. A confidential and, for Gutt, very emotional letter to Spaak in 1944 shows him giving vent to his deepest suspicions of the French political and financial world50.

How are the entire proceedings to be evaluated? The Banque de France continued to maintain that it bore no responsibility for the

50 See below.
transfer of the Belgian gold to Berlin, as it had been forced into that action. The legal proceedings led unfortunately to souring the relationship between the two central banks. Even before the question of a court case had come up, the Banque de France had agreed formally to make restitution of the gold. In the event, the court action was halted in 1943 at a moment when the prospect of a favourable outcome for Belgium was no longer looking so rosy. The costs rocketed, particularly when the sheriff’s fee had to be settled, and the question is whether such an investment of public money was justified in such a cause at such a time. The invasion of Europe was imminent and the occupied territories had more to worry about than who was responsible for the Bank’s gold. A judgement boils down to the question of whether the legal proceedings were really worth the candle.