

Fordham International Law Journal

Volume 25, Issue 6

2001

Article 2

The Early History of German-Jewish Reparations

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The Early History of German-Jewish Reparations

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Abstract

This Article provides an overview of the process leading up to the first comprehensive German-Jewish reparations agreements in order to give a historical context to the contemporary discussion of Holocaust-related reparations and restitution. The Article further attempts to shed some light on the behind-the-scenes role played by Josef Rosensaft, one of the individuals involved in the early stages of the reparations negotiations, and his parallel efforts to remedy the 1950-1951 denial of compensation payments to some 18,000 Jewish DP's by the German Land (State) of Lower Saxony.

ARTICLE

THE EARLY HISTORY OF GERMAN-JEWISH REPARATIONS

*Menachem Z. Rosensaft**
& *Joana D. Rosensaft***

INTRODUCTION

The tremendous catastrophe that befell European Jewry during the Holocaust is universally recognized as immeasurable in scope. Millions were murdered, thousands of Jewish communities were decimated, and at the end of the Second World War, several hundred thousand surviving Jews had become homeless refugees, or Displaced Persons (“DPs”). In addition to the enormous human suffering, the material losses suffered by the victims of the Holocaust, both individually and collectively, were incalculable. Many of the murdered Jews were heirless, and the anticipated cost of enabling the survivors to rebuild their lives in Palestine and elsewhere was enormous. Early on, while the implementation of Hitler’s “Final Solution of the Jewish Question” was still underway, a number of legal scholars had begun to develop the juridical and philosophical bases for some type of post-war material compensation by Germany for its persecution of and crimes against the Jewish people.¹

During the years following the end of the Holocaust, however, the concept of Jews accepting either communally or personally what many survivors and Jewish intellectuals considered

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The authors wish to thank Mr. Saul Kagan, former Executive Vice President of the Conference on Jewish Material Claims Against Germany, who reviewed an earlier draft of this article and generously shared his insights into the events discussed therein.

1. See, e.g., NEHEMIAH ROBINSON, INDEMNIFICATION AND REPARATIONS: JEWISH ASPECTS (1944); SIEGFRIED MOSES, DIE JÜDISCHEN NACHKRIEGS-FORDERUNGEN [“The Jewish Post-war Claims”] (1944); SIEGFRIED GOLDSCHMIDT, LEGAL CLAIMS AGAINST GERMANY: COMPENSATION FOR LOSSES RESULTING FROM ANTI-RACIAL MEASURES (1945).

to be tantamount to “blood money” was highly controversial.² Moreover, even among those Jewish leaders who advocated accepting material compensation from Germany, there were at least two distinct, although by no means mutually exclusive, concepts of the form that such compensation should take. One reparations model envisioned some type of collective monetary compensation to the Jewish people to support the resettlement and absorption of the survivors. At the same time, others argued that individual survivors were entitled to compensation for their suffering, and that a mechanism for them to assert their claims had to be devised. In 1945, no model or precedent existed for either type of reparations. The National Socialist Hitler (“Nazi”) regime had persecuted, oppressed, robbed, and murdered Jews from all the European territories under its control. However, the victimized Jews were not recognized as a separate and distinct entity under international law, no Jewish political body had the requisite legal standing to represent either the survivors or the heirs of the murdered, and there did not exist a forum where individual survivors could bring their claims for compensation or restitution.

In 1948, the U.S. military Government in Germany empowered an American based Jewish successor agency to claim and receive heirless Jewish property in the American Zone of Germany for the benefit of Jewish Holocaust survivors,³ and several of the *Länder* (States) in the Western zones of occupation enacted limited compensation laws.⁴ Eventually, a far-reaching German-Jewish reparations program was created pursuant to the 1952 Luxembourg Agreements, which included a State Treaty (“Treaty”) between the Federal Republic of Germany (“FRG”) and the State of Israel, and two accords entered into as Protocols between the FRG and the Conference on Jewish Material Claims Against Germany (“Claims Conference”).⁵ The Treaty provided

2. See, e.g., SHLOMO SHAFIR, *AMBIGUOUS RELATIONS: THE AMERICAN JEWISH COMMUNITY AND GERMANY SINCE 1945*, at 170 (1999); NICHOLAS BALABKINS, *WEST GERMAN REPARATIONS TO ISRAEL* 87 (1971); HOWARD M. SACHAR, *ISRAEL AND EUROPE: AN APPRAISAL IN HISTORY* 37 (1998).

3. See NANA SAGI, *GERMAN REPARATIONS: A HISTORY OF THE NEGOTIATIONS* 41 (1980).

4. See SHAFIR, *supra* note 2, at 61-62; INGE DEUTSCHKRON, *BONN AND JERUSALEM: THE STRANGE COALITION* 43-44 (1970).

5. For the text of the Luxembourg Agreements, see *The Agreement Between the Federal Republic of Germany and The State of Israel*, in KURT R. GROSSMANN, GER-

for payment by the FRG to Israel of DM 3 billion in annual installments over a twelve-year period in the form of goods and services in consideration of Israel's absorption of Holocaust survivors and refugees from Nazi Germany.⁶ Pursuant to Protocol No. 1, the FRG obligated itself to enact legislation for the direct payment of restitution and indemnification to individual Jewish victims of Nazi persecution.⁷ Protocol No. 2 further obligated the FRG to pay to Israel, for the benefit of the Claims Conference, the sum of DM 450 million over a twelve-year period,⁸ to "be used for the relief, rehabilitation and resettlement of Jewish victims of National Socialist persecution, according to the urgency of their needs as determined by [the Claims Conference]."⁹

From the vantage point of the year 2002, the fact that Germany has paid more than DM 100 billion in what is euphemistically called reparations (or, in German, *Wiedergutmachung*, literally "to make good again") to more than 500,000 Jewish Holocaust survivors since 1953¹⁰ is generally taken for granted. Indeed, the principle that Germany had a moral and quasi-legal obligation to pay monetary compensation to Jews who had suffered in ghettos and Nazi concentration camps during the Second World War is a functional cornerstone of the more recent settlements of Holocaust-related claims against Swiss and Austrian banks for, respectively, U.S.\$1.25 billion and U.S.\$40 million.¹¹ This notion of Germany's compensatory responsibility

MANY'S MORAL DEBT: THE GERMAN-ISRAEL AGREEMENT 37-56 (1954) [hereinafter GROSSMANN]. The Treaty was signed by Konrad Adenauer, the Chancellor of the FRG, in Luxembourg, and Moshe Sharett, Foreign Minister of Israel, on September 10, 1952, and was ratified by the Parliament of the Federal Republic of Germany ("FRG") on March 18, 1953. Protocols Nos. 1 and 2 were signed by Chancellor Adenauer and Dr. Nahum Goldmann, Chairman of the Claims Conference. *Id.* at 26.

6. *See id.* at 37, art. I(a). On March 18, 1953, when the Treaty was ratified by the *Bundestag*, the lower house of the FRG Parliament, DM 3 billion was the equivalent of U.S.\$715 million. *Id.* at 1, 8.

7. *See id.* at 49, Protocol No. 1.

8. *See id.* at 54, Protocol No. 2.

9. *Id.* at 56, Protocol No. 2, art. 2. The State of Israel assumed the obligation to pay this amount to the Claims Conference in annual installments, upon receipt from the FRG, under Article 3(c) of the Treaty. *Id.* at 38.

10. THE CONFERENCE ON JEWISH MATERIAL CLAIMS AGAINST GERMANY, HISTORY OF THE CLAIMS CONFERENCE: A CHRONOLOGY 17 (2001) [hereinafter CLAIMS CONFERENCE CHRONOLOGY].

11. *Id.* at 27-28; *see generally* THE PLUNDER OF JEWISH PROPERTY DURING THE HOLOCAUST: CONFRONTING EUROPEAN HISTORY (Avi Beker ed., 2001).

was also fundamental to the December 1999 agreement establishing a DM 10 billion fund to compensate those who, in the words of German President Johannes Rau, “were subjected to slave and forced labor under German rule”¹²

It is important to bear in mind, however, that only fifty years ago, the very concept of any such broad-based German reparations to the Jewish people was remarkable. The Luxembourg Agreements

set a precedent in international law. The German Government had negotiated not only with representatives of Israel, which had no diplomatic relations with Germany, but recognized the representatives of world Jewry, thereby recognizing that the Jewish people as a whole had suffered grave injury resulting from Nazi persecution and were legally entitled to compensation.¹³

This Article provides an overview of the process leading up to the first comprehensive German-Jewish reparations agreements in order to give a historical context to the contemporary discussion of Holocaust-related reparations and restitution. The Article further attempts to shed some light on the behind-the-scenes role played by Josef Rosensaft,¹⁴ one of the individuals involved in the early stages of the reparations negotiations, and his parallel efforts to remedy the 1950-1951 denial of compensation payments to some 18,000 Jewish DPs by the German *Land* (State) of Lower Saxony.

There exist several detailed accounts of the inception of German-Jewish reparations.¹⁵ However, while the identities and accomplishments of the principal protagonists of the early reparations saga, such as Dr. Nahum Goldmann, President of the World Jewish Congress (“WJC”) and of the Claims Conference, and Dr. Noah Barou, one of the leaders of the WJC’s British section and Chairman of the European Executive of the WJC, are

12. CLAIMS CONFERENCE CHRONOLOGY, *supra* note 10, at 27.

13. GROSSMANN, *supra* note 5, at 26.

14. Josef Rosensaft, 1911-1975, popularly known as “Yossel” or “Yossele,” is, respectively, the father and grandfather of the authors of this article. Regarding Rosensaft generally, see Menachem Z. Rosensaft, *My Father: A Model for Empowerment*, in *LIFE REBORN: JEWISH DISPLACED PERSONS 1945-1951, CONFERENCE PROCEEDINGS 77-79* (Menachem Z. Rosensaft ed., 2001) [hereinafter *LIFE REBORN*]; S.J. GOLDSMITH, *TWENTY 20TH CENTURY JEWS 86-92* (1962).

15. See, e.g., BALABKINS, *supra* note 2; DEUTSCHKRON, *supra* note 4; SAGI, *supra* note 3.

acknowledged, Rosensaft's involvement is not widely known. There are only a few, mostly cryptic references to him in the published accounts. Gottlieb Hammer, Executive Director of the American Section of the Jewish Agency for Palestine ("Jewish Agency") in the early 1950s, wrote in his memoirs:

Rosensaft was one of the first, together with Noah Baru [sic], who felt that Germany should not be permitted to keep the untold treasures stolen by the Nazis from Jewish communities throughout Europe, that Germany should be made to pay in some measure for the expense of rehabilitating surviving Jews and restoring to them a measure of their assets. It was these two men who prevailed upon Nahum Goldmann to undertake the leadership which resulted in the successful culmination of the effort to recover restitution and reparations from the postwar Federal German Republic.¹⁶

Other references to Rosensaft in a reparations context are even less informative. Gerhart M. Riegner, the long-time Secretary General of the WJC, confirms Hammer's recollections by referring to Rosensaft's participation in a day-long summer 1951 meeting in Zurich with Goldmann and Barou during which the possibility of obtaining reparations from Germany, and Barou's initial efforts in that connection, were discussed in detail for the first time with Goldmann.¹⁷ In that context, Riegner noted that Rosensaft "had been charged by Goldmann with certain activities in Germany."¹⁸ Goldmann himself, in the fourth incarnation of his autobiography, wrote that "[d]uring the negotiations with the Federal Republic [of Germany], Jossele was very helpful to me. He knew Ludwig Erhard, Blankenhorn, Hallstein and many others—who were all extremely impressed by him—and often brought them messages from me."¹⁹ Goldmann's refer-

16. GOTTLIEB HAMMER, *GOOD FAITH AND CREDIT* 215 (1985). Hammer further wrote that "[t]he idea of obtaining economic reparations for the State of Israel and monetary restitution to individual Jews who had suffered at the hands of the Nazis" was "conceived and nurtured principally" by Barou and Rosensaft who "interested Goldmann in their proposal and urged him to take the leadership in asserting Jewish claims against the German Federal Republic . . ." *Id.* at 240.

17. GERHART M. RIEGNER, *NE JAMAIS DÉSESPÉRER: SOIXANTE ANNÉES AU SERVICE DU PEUPLE JUIF ET DES DROITS DE L'HOMME* ["Never Despair: Sixty Years in the Service of the Jewish People and of Human Rights"] 567 (1998).

18. *Id.* (author's trans.).

19. NAHUM GOLDMANN, *MEIN LEBEN ALS DEUTSCHER JUDE* ["My Life as a German Jew"] 339 (1980) (author's trans.). Earlier versions of Goldmann's memoirs were *THE AUTOBIOGRAPHY OF NAHUM GOLDMANN: SIXTY YEARS OF JEWISH LIFE* 250 (1969);

ences are to FRG Economics Minister Ludwig Erhard; Herbert Blankenhorn, Political Director at the FRG Foreign Office; and Walter Hallstein, *Staatssekretär* (Secretary of State) at the FRG Foreign Office. Finally, a footnote in a study of Israel's foreign policy system notes with respect to the reparations negotiations that "[o]ther persons who were active in those early contacts" included "Yossele Rosenzaft [sic], a leader of the survivors of the Bergen-Belsen extermination camp."²⁰

An understanding of Rosensaft's role and activities in the negotiations preceding the Luxembourg Agreements may provide a new perspective on the circumstances that resulted in monetary compensation being paid to hundreds of thousands of Holocaust survivors. Unlike Goldmann, Barou, and other Jewish leaders who had spent the war years in New York, London, or Tel Aviv, Rosensaft was a survivor of Auschwitz, Bergen-Belsen, and other Nazi concentration camps. Prior to his involvement in the strategizing and negotiations leading up to the Luxembourg Agreements, Rosensaft had already been actively engaged in efforts to obtain monetary compensation for Jewish DPs on the local level in Lower Saxony where the DP camp of Bergen-Belsen was located. The authors of this Article have had access to previously unexamined letters and telegrams between and among Rosensaft, Barou, Goldmann, and others from Rosensaft's private archive ("Rosensaft Archive"), as well as the unpublished manuscript of the memoirs of Rosensaft's wife, the late Hadassah Rosensaft. As a result, it has been possible to integrate, albeit to a limited extent only, Rosensaft's role and activities into this overview of the early phase of the German-Jewish reparations process leading up to the Luxembourg Agreements.

I. HISTORICAL BACKGROUND

A. *The Origins of the Concept of German Reparations to the Jewish People*

As early as 1941, Goldmann, then chairman of the WJC's Executive Board, told the Pan American Conference of Jewish leaders, convened in Baltimore by the WJC: "Who can doubt that we Jews have every right to international help for European

STAATSMANN OHNE STAAT ["Statesman Without a State"] (1970); and *THE JEWISH PARADOX* (1978).

20. MICHAEL BRECHER, *DECISIONS IN ISRAEL'S FOREIGN POLICY* 75 n.1 (1974).

Jewry after the war? If reparations are to be paid, we are the first to have a claim on them.”²¹ In Palestine, meanwhile, two leading Zionists of German origin, Dr. George Landauer and Dr. Siegfried Moses, developed the concept that the Jewish people, although a nation without a State, had a legitimate claim against Germany, and that such a collective claim should be recognized following Germany’s defeat.²²

In October 1944, at the international War Emergency Conference of the WJC held in Atlantic City, a formal resolution was adopted incorporating both demands for restitution and compensation to individual Jewish victims of Nazi persecution, and recognition of the principle of collective compensation to the Jewish people for material and moral losses suffered by the Jewish people and its institutions, or by individual Jews (or their heirs) who were unable to assert their own claims.²³ That same year, the WJC’s Institute of Jewish Affairs in New York published a monograph by Dr. Nehemiah Robinson in which he argued that postwar Germany would have to pay individual compensation, restore property, and pay collective compensation to the Jewish people as a whole.²⁴ Robinson accurately foresaw and analyzed many of the complex legal issues arising out of the Third Reich’s persecution and mass murder of European Jewry, including the need to provide for compensation in situations where restitution was not a feasible remedy,²⁵ the consequences of the fact that “certain Jewish communities may have disappeared altogether,”²⁶ and the practical difficulties that individual Jewish victims of Nazi persecution, or their heirs, would be forced to confront in asserting claims for restitution or compensation.²⁷ Most significantly, Robinson formulated two of the fundamental and interrelated principles that would be at the heart of the post-Holocaust Jewish restitution and reparations process, namely that heirless Jewish property must not be allowed to escheat to

21. See GOLDMANN, MEIN LEBEN ALS DEUTSCHER JUDE, *supra* note 19, at 372; BRECHER, *supra* note 20, at 72.

22. See SAGI, *supra* note 3, at 17-21, 26; MOSES, *supra* note 1; DEUTSCHKRON, *supra* note 4, at 42.

23. GOLDMANN, MEIN LEBEN ALS DEUTSCHER JUDE, *supra* note 19, at 372-73.

24. ROBINSON, INDEMNIFICATION AND REPARATIONS, *supra* note 1.

25. *Id.* at 145.

26. *Id.* at 245.

27. *Id.* at 260-61.

the State, and that such property must be used for the benefit of the survivors of Nazi persecution:

Since . . . many Jewish families and even entire Jewish communities may have disappeared, there would be no legal heir, in the orthodox sense, for their properties and claims, as well as for those of various Jewish organizations. Usually the State, as universal heir for defunct physical persons without legally recognized heirs and for extinguished legal persons, inherits all their property and rights to indemnification. The application of this rule would, indeed, be a great injustice to the Jewish people. The great sufferings caused the Jewish people by the war and its aftermath, entitle us to expect that some kind of political and economic security will be obtained for the survivors. Since many Jews have emigrated to other countries, where they have not yet been able to find adequate work and vocations, and others will follow, large funds will be necessary for their colonization and settlement in those or other countries or regions. Certain already established Jewish communities may also require considerable funds. For the purpose of any such project the property and rights of the defunct Jewish families and extinguished organizations and communities would be most appropriate.²⁸

B. *Conditions in Germany Immediately After the Second World War*

The history of the reparations process must be seen in the context of the conditions that existed in Germany after the Holocaust. In the spring and summer of 1945, the victorious Allied forces were confronted with more than ten million uprooted and homeless non-Germans who found themselves in Germany at the end of the war. The vast majority of them, including Jews from Western European countries, were successfully repatriated in a matter of months. Tens of thousands of Jews from Eastern Europe, however, especially those from Poland, were unwilling to return to their pre-war homes. Having been subjected to widespread anti-Semitism both before and during the Holocaust on the part of their Christian neighbors, these Jewish survivors wanted only to begin new lives in countries that were not haunted by bitter memories. Classified as "Displaced Persons," they were placed in camps under the control of the respective American, British, and French military authorities. During 1945

28. *Id.* at 256-57.

and 1946, large numbers of other Jews from various parts of Eastern Europe also came to Germany, substantially increasing the population of the DP camps. In short order, many of these camps became thriving, mostly autonomous Jewish communities with their own political leadership, newspapers, and a host of educational, religious, and cultural institutions.²⁹

The largest of these DP camps, with a population that at times exceeded 10,000, was Bergen-Belsen (often referred to simply as "Belsen") in Lower Saxony in the British Zone of Germany, located in erstwhile German military barracks near the site of the former Nazi concentration camp of the same name.³⁰ Professor Norman Bentwich, Vice-Chairman of the Jewish Committee for Relief Abroad, the parent body of the British Jewish Relief Units, wrote that the Jewish survivors

had a strong sense of self-assertion and a resolve to run their own affairs and make their voices heard. In every bigger [DP] camp there was an elected leader and committee, or Town Council; and in Belsen itself a central Jewish committee of liberated Jews, which represented the surviving Jewish population both in the towns and in the camps of the British Zone. Leaders were thrown up who had an intense energy and imperious will for self-determination. The leader in Belsen, Josef (Yossel) Rosenzaft [sic], soon became a legendary figure.³¹

For more than five years, Rosensaft, a Polish Jew who had survived months of torture and solitary confinement at Auschwitz, headed the Central Jewish Committee in the British Zone of Germany ("Central Committee"), which encompassed the Jewish DPs as well as the newly reconstituted German-Jewish communities of cities such as Hamburg, Cologne, Bremen, Düsseldorf,

29. See generally, LIFE REBORN, *supra* note 14; MICHAEL BRENNER, AFTER THE HOLOCAUST: REBUILDING JEWISH LIFE IN POSTWAR GERMANY 30-32 (1995); ANGELIKA KÖNIGSREDER & JULIANE WETZEL, WAITING FOR HOPE: JEWISH DISPLACED PERSONS IN POST-WORLD WAR II GERMANY (2001).

30. Hagit Lavsky, *A Community of Survivors: Bergen-Belsen as a Jewish Centre after 1945*, in BELSEN IN HISTORY AND MEMORY 162, 162-64 (Jo Reilly et al. eds., 1997); JOANNE REILLY, BELSEN: THE LIBERATION OF A CONCENTRATION CAMP 78, 82, 91 (1998). See generally, BELSEN (1957), published by the Irgun Sheerit Hapleita Me'Haezor Habriti ["The Organization of the Surviving Remnant of the British Zone"] [hereinafter BELSEN].

31. NORMAN BENTWICH, THEY FOUND REFUGE: AN ACCOUNT OF BRITISH JEWRY'S WORK FOR VICTIMS OF NAZI OPPRESSION 143 (1956). See also GOLDSMITH, *supra* note 14, at 88-89 (Rosensaft "created, out of misery and chaos, the first Jewish autonomous community in modern times, a kind of miniature republic").

and Hanover.³² The Central Committee administered the affairs of the Belsen DP camp until March 1947, when a separate Belsen committee, also headed by Rosensaft, was elected.³³

Writing in 1953, a former senior official of the American Jewish Joint Distribution Committee (“JDC”) in the American Zone of Germany wrote that during April and May, 1945, Rosensaft had become recognized as the undisputed leader of the Jewish DPs of Belsen,

leaving nothing undone to assist his people. When the British Military were selecting a limited number of the sick for convalescence in Sweden, he interceded for members of families who were again being separated. With an unflinching nose for German and Hungarian collaborationists, he hunted down dozens who had concealed themselves among the liberated. He spurred British soldiers to collect clothing for the thousands being discharged from the temporary hospital, in the former Panzer Training School. He possessed an uncanny ability to locate danger spots and to hammer at the highest authorities for action.³⁴

According to one historian of post-Holocaust Jewish life in Germany, Rosensaft “ruled the Jews in the British Occupation Zone with almost dictatorial powers but was repeatedly reelected democratically and did everything to improve the conditions of ‘his’ Jews.”³⁵

From the outset, he successfully defended the Jewish DPs’ interests in a series of confrontations with the British military authorities. In May 1945, he frustrated an attempt to resettle several thousand Jewish DPs from Belsen in another DP camp in Northern Germany where conditions proved to be significantly inferior, an action for which he was put on trial before a military tribunal and ultimately acquitted.³⁶ Refused permission to hold

32. See generally, HAGIT LAVSKY, *NEW BEGINNINGS: HOLOCAUST SURVIVORS IN BERGEN-BELSEN AND THE BRITISH ZONE IN GERMANY 1945-1950* (2002); Juliane Wetzel, *Die Selbstverwaltung der Sche’erit Haplejt: Das Zentralkomitee der befreiten Juden in der britischen Zone 1945-1951* [“The Self-Administration of the Surviving Remnant: The Central Committee of the Liberated Jews in the British Zone 1945-1951”], in *IM SCHATTEN DES HOLOCAUST* [“In the Shadow of the Holocaust”] 43-54 (Herbert Obenaus ed., 1977) [hereinafter *IM SCHATTEN DES HOLOCAUST*].

33. REILLY, *supra* note 30, at 173-74.

34. LEO SCHWARZ, *THE REDEEMERS: A SAGA OF THE YEARS 1945-1952*, at 32-33 (1953).

35. BRENNER, *supra* note 29, at 32.

36. REILLY, *supra* note 30, at 83-84 (1998); GOLDSMITH, *supra* note 14, at 89; BRENNER,

a congress of Jewish DPs in Belsen in the summer of 1945, he convened one anyway, and invited prominent Jewish political leaders from Great Britain to participate.³⁷ In 1946, when the British sought to prevent thousands of Polish Jews from entering the British Zone, Rosensaft and his Committee openly defied the Military Government by giving them sanctuary in Belsen and cared for them illegally.³⁸ He repeatedly and publicly criticized the British Government's anti-Zionist policies. According to official British Foreign Office documents, the British authorities considered him to be an "extreme Zionist" and a "dangerous troublemaker."³⁹ A senior British official complained that "[t]he difficulties our authorities have had in dealing with Jewish DPs in the British Zone are in large measure directly attributable to him."⁴⁰

In 1946, he married a fellow survivor, Dr. Hadassah Bimko. Rosensaft remained in the Belsen DP camp for more than five years until all but a few hundred of its inhabitants had resettled outside of Germany. When the Belsen DP camp was closed in the summer of 1950 and these remaining survivors were moved to another DP camp, Upjever, in northern Germany, Rosensaft accompanied them, and spent the following year shuttling between Upjever and Montreux, Switzerland, where he had found a temporary home for his family.

II. GERMAN RESTITUTION AND COMPENSATION TO JEWISH VICTIMS OF NAZI PERSECUTION PRIOR TO THE LUXEMBOURG AGREEMENTS

After the end of the Second World War, the subject of obtaining restitution of property first became a practical concern for those German Jews living in their former communities who wanted to retrieve their homes, businesses, and other assets. Initially, this issue was not a priority for most of the Jewish DPs from Eastern Europe who did not have such expectations. Norbert Wollheim, an Auschwitz survivor originally from Berlin and Vice-

NER, *supra* note 29, at 32; Josef Rosensaft, *Our Belsen*, in BELSEN, *supra* note 30, at 24, 27-29.

37. KÖNIGSREDER & WETZEL, *supra* note 29, at 83-84; Josef Rosensaft, *supra* note 36, at 37.

38. REILLY, *supra* note 30, at 103.

39. *Id.* at 100, 105.

40. *Id.* at 105.

Chairman of the Central Committee, recalled that when leaders of the German Jewish communities first brought the problem of indemnification and restitution to the DP leaders in Bergen-Belsen and to Jewish organizations outside Germany, the “reaction among the Chaveirim [colleagues or friends] at Belsen” was one of skepticism:

“How is any indemnification or compensation possible for what has been done to us and ours?” was their understandably emotional reply. But during the years following those first debates, and after the first tangible legislation concerning the restitution demands had come out, the essential validity of these demands of the [German-] Jewish communities was finally understood also by the Chaveirim. This meant simply, that the idea had been generally accepted that it is immoral to permit someone, who has committed murder, robbery and theft to live in the quiet enjoyment of his spoils.⁴¹

In due course, some early efforts at restitution were made, primarily in the American Zone of Occupation. In November 1947, General Lucius D. Clay, the American Commander in Germany, enacted legislation providing for the restitution of property to Jewish survivors in the American Zone. General Clay later wrote that “[t]o ensure that the property of the Jewish people who were killed in Germany and left no heirs would not benefit German holders, a Jewish successor agency, formed by recognized world Jewish organizations, was authorized to claim and receive their property, including valuable cultural property.”⁴² Beginning in 1948, the Jewish Restitution Successor Organization (“JRSO”), which was headquartered in Nuremberg, presented tens of thousands of claims to private Jewish property as well as claims for the restitution of communal property that had been confiscated or seized from Jewish communities, organizations, and institutions.⁴³ The Jewish Trust Corporation, was

41. Norbert Wollheim, *Belsen's Place in the Process of "Death-and-Rebirth" of the Jewish People*, in BELSEN, *supra* note 30, at 60.

42. LUCIUS D. CLAY, *DECISION IN GERMANY* 311 (1950).

43. Benjamin B. Ferencz, *Restitution to Nazi Victims—A Milestone in International Morality*, in *TWO GENERATIONS IN PERSPECTIVE* 300, 301-03 (Harry Schneiderman, ed., 1957); The Jewish Restitution Successor Organization (“JRSO”) was incorporated in 1946 in New York by The American Jewish Committee, The American Jewish Conference, the Joint Distribution Committee (“JDC”), the Board of Deputies of British Jews, the Commission on European Jewish Cultural Reconstruction, the Council for the Protection of the Rights and interests of Jews from Germany, the Jewish Agency, and the

subsequently set up along the same lines to recover Jewish property in the British Zone.⁴⁴ According to Benjamin B. Ferencz, the JRSO's Director General, in the American Zone alone,

property worth close to \$250,000,000 was restored to former owners, now living in sixty different countries throughout the world. In addition, heirless assets worth over \$25,000,000 were recovered. These proceeds were used to provide shelter for refugees crowding tent camps in Israel, to aid needy Jews still living in Germany, hard-core medical cases, the aged, the blind and the destitute.⁴⁵

Several of the German *Länder* in the American Zone also promulgated indemnification laws providing for minimal compensation to select categories of victims of Nazism from a fund consisting in part of contributions by erstwhile Nazi officials,⁴⁶ "but these decrees were too narrow in scope, too limited in application and too arbitrary in their restrictions to be of help to more than a very small percentage of the victims."⁴⁷ Thus, for example, only claimants who had been in Germany on or after January 1, 1947 were covered under even the most liberal of these laws, leaving Holocaust survivors who had left Germany between May 8, 1945 and January 1, 1947 ineligible for compensation.⁴⁸ Similar measures, albeit substantively less comprehensive, were enacted in the British and French Zones of Occupation.⁴⁹ The concept of limiting compensation to victims of Nazi persecution who had remained in Germany past a fixed date was sharply criticized in a comprehensive memorandum on Jewish claims against Germany submitted on July 25, 1950 to Lord Henderson, the British Under Secretary for Foreign Affairs, by A.L.

World Jewish Congress ("WJC"). These organizations were subsequently joined by Agudas Israel World Organization, the Anglo-Jewish Association, the Central British Fund, the *Conseil Représentatif des juifs de France*, and the *Arbeitsgemeinschaft Süddeutscher Landesverbände*. *Id.* at 301. See also SAGI, *supra* note 3, at 41.

44. SAGI, *supra* note 3, at 41-42.

45. Ferencz, *supra* note 43, at 302.

46. DEUTSCHKRON, *supra* note 4, at 43.

47. Ferencz, *supra* note 43, at 304.

48. SAGI, *supra* note 3, at 88.

49. See generally, NEHEMIAH ROBINSON, RESTITUTION LEGISLATION IN GERMANY (1949); Herbert Obenaus, *Die widerwillige Wiedergutmachung: Das Land Niedersachsen und die jüdischen Displaced Persons* ["The Unwilling Reparations: The Land of Lower Saxony and the Jewish Displaced Persons"], in IM SCHATTEN DES HOLOCAUST, *supra* note 32, at 83-118.

Easterman, the Political Secretary of the WJC.⁵⁰ Easterman pointed out that compensation was only payable under the different German compensation laws to individuals

who were resident in Germany on a particular date; in the American Zone the date is 1st January, 1947, in the British Zone, 1st January, 1948, while in Hamburg the date is even as late as 1st January, 1949. These dates are arbitrary and have the effect of debarring from legitimate compensation many thousands of Jewish and other victims of the Third Reich who suffered injury and damage through imprisonment in concentration camps, and through the various other measures of persecution inflicted upon them by the Nazi regime. To limit and even to abrogate the just rights of these victims by fixing a terminal date of residence in Germany is unreasonable and unjust. No such limitation was fixed by the Nazi Government in pursuing and executing the measures of persecution.⁵¹

Among the specific criticisms of the legislation promulgated in the British Zone was that in contrast with the indemnification laws of the American Zone,

[e]xisting laws in the British Zone did not cover survivors living outside Germany and did not provide for compensation for economic losses. It was estimated that about 50,000 German Jews who had migrated from the area . . . in the British Zone and Displaced Persons who had been in the concentration camps [there] were adversely affected by this law."⁵²

This inequity was specifically addressed by Hendrik Van Dam, legal adviser to the Jewish Relief Unit in the British Zone and the first Secretary General of the Central Council of Jews in Germany, in an opinion that he submitted to the Israel Finance Ministry on July 1, 1950:

[L]egislation regarding damages, particularly damages for imprisonment in the British Zone, are conditioned upon residence there on a fixed date. Pensions for persecutees are paid only to residents of the state. . . . This covers the large group of persons who passed through the Bergen-Belsen camp. It may therefore be stated as a rule for practical purposes that Jews resident abroad can scarcely collect damage

50. Letter, A.L. Easterman to The Rt. Hon. Lord Henderson (July 25, 1950) Appendix A, in BALABKINS, *supra* note 2, at 273-82.

51. *Id.* at 278.

52. SAGI, *supra* note 3, at 88.

claims.⁵³

The restitution and indemnification legislation promulgated in the British Zone was substantially more restrictive than in the American Zone in that it differentiated between German citizens or residents on the one hand, and foreigners or stateless persons—that is, virtually all the Jewish DPs—on the other.⁵⁴ Not only was the threshold date for eligibility set one year later than in the American Zone, but residents of DP camps such as Bergen-Belsen were effectively excluded. Thus, the Lower Saxony *Haftentschädigungsgesetz* (law for the indemnification for unlawful imprisonment) of July 31, 1949, limited indemnification payments almost exclusively to victims of Nazism who had established residence in Lower Saxony since at least January 1, 1948,⁵⁵ thereby excluding Jewish DPs living in DP camps “on the pretext that a D.P. camp did not constitute a legal residence within the [British] Zone, and that those contemplating emigration had not in any case established permanent residence.”⁵⁶ The amounts at issue were minimal. Eligible claimants received monthly pensions of DM 150, or one-time payments of, in most cases, DM 1000.⁵⁷ The Jewish DPs for the most part, however, had no property or money, and desperately needed even such meager compensation to emigrate from Germany and establish themselves in Israel, the United States, or elsewhere. Representatives of the Jewish DPs entered into lengthy, often acrimonious negotiations with the Lower Saxony authorities to obtain what they believed was owed to them. Confronted with the argument that the terms of the statute were clear, one of the leaders of the Jewish Committee in Hanover replied, “then you must change the law, even if Mr. Rosensaft . . . would have to fly to London for that purpose.”⁵⁸

In fact, Rosensaft and Wollheim at first attempted, with Easterman’s help, to get the British authorities to intercede, arguing that the Lower Saxony legislation discriminated specifically

53. Hendrik van Dam, *The Problems of Reparations and Restitution for Israel*, in *THE GERMAN PATH TO ISRAEL* 21, 24 (Rolf Vogel ed., 1967).

54. Obenaus, *supra* note 49, at 90.

55. *Id.* at 91.

56. H. G. Van Dam, *Legal Protection in Belsen*, in *BELSEN*, *supra* note 30, at 148, 151. See also Obenaus, *supra* note 49, at 91.

57. Obenaus, *supra* note 49, at 91.

58. *Id.* at 95 (author’s trans.).

against the Jewish DPs.⁵⁹ When this argument proved unsuccessful,⁶⁰ they negotiated directly with the Lower Saxony officials, enlisting the assistance of Jacob Altmeier, a Jewish member of the FRG Parliament, Dr. Kurt Schumacher, chairman of the West German Social Democratic Party, and Van Dam.⁶¹ Such direct negotiations were a departure by Rosensaft from his previously strict policy of not having any direct dealings whatsoever with the German authorities.⁶² These efforts proved relatively effective, ultimately resulting in a ruling from the Lower Saxony Minister of Interior that enabled many of the Jewish DPs who were still in Germany to receive compensation.⁶³

One major outstanding issue remained unresolved, however. When the Lower Saxony authorities refused to pay any compensation retroactively to those Jewish DPs who had left Germany after January 1, 1948, Rosensaft took on their cause. In March 1950 he received a formal power of attorney from the Israeli Consul in Munich with respect to claims by 18,000 such Jewish DPs who had emigrated to Israel, and he pleaded their case repeatedly, albeit unsuccessfully, before both the Lower Saxony and the FRG authorities.⁶⁴ According to historian Herbert Obenaus, "when the last Jewish DPs left for Israel" from Upjever in August 1951, Rosensaft's power of attorney for the 18,000 DPs "lost any further relevance."⁶⁵ As will be seen below, this assessment is inaccurate.

III. *THE ANTECEDENTS OF ADENAUER'S SEPTEMBER 27, 1951 DECLARATION*

It is against the preceding historical background that the relevant events leading up to the 1952 signing of the Luxembourg Agreements must be viewed. The State of Israel was established in 1948, and the FRG came into being the following year. By then, the concept developed by Siegfried Moses and Nehemiah Robinson⁶⁶ that Germany should pay some type of collec-

59. *Id.* at 101.

60. *Id.* at 102.

61. *Id.* at 103.

62. Josef Rosensaft, *supra* note 36, at 47-48; Obenaus, *supra* note 49, at 94, 103.

63. Obenaus, *supra* note 49, at 94-108.

64. *Id.* at 108-10.

65. *Id.* at 110.

66. *See supra* note 1 and accompanying text; *supra* text accompanying notes 22-28.

tive reparations to the Jewish people as a whole, in addition to paying compensation and making material restitution to individuals, had ceased to be merely theoretical in nature. On a practical level, the JRSO had established a precedent by positioning itself as the successor to heirless Jewish property, and using the proceeds thereof to alleviate the hardship of Jewish Holocaust survivors, in both Israel and Germany.⁶⁷ On a political level, Dr. Chaim Weizmann, the President of the Jewish Agency, had asserted a demand for collective restitution and reparations less than four and a half months after the end of the Second World War in a letter dated September 20, 1945, to the Governments of the United Kingdom, the United States, the U.S.S.R., and France.⁶⁸ Along the same lines as Robinson had argued the previous year,⁶⁹ Weizmann wrote:

It should need no argument to prove that property by crime rendered masterless should not be treated as *bona vacantia*, and fall to the Governments which committed the crimes, or to any other governments or to strangers having no title to it. It is submitted that the provisions for heirless property falling to the State were not designed to cover the case of mass-murder of a people. Such properties belong to the victim, and that victim is the Jewish people as a whole. The true heir, therefore, is the Jewish people, and those properties should be transferred to the representative of the Jewish people, to be employed in the material, spiritual and cultural rehabilitation of the Jews.⁷⁰

Weizmann further maintained that the Jewish people were also entitled to "reparation to be obtained from Germany."⁷¹ Accordingly, he contended (a) that title to heirless Jewish individual and communal property "should pass to the representatives of the Jewish people, the realizable assets to be employed for the rehabilitation of Jewish men, women and children;" (b) "[t]hat

67. Ferencz, *supra* note 43, at 302-03.

68. Letter, Chaim Weizmann on behalf of the Jewish Agency for Palestine to the Governments of the United Kingdom, United States, U.S.S.R., and France concerning restitution, indemnification and reparation (Sept. 20, 1945), in STATE OF ISRAEL, MINISTRY FOR FOREIGN AFFAIRS, DOCUMENTS RELATING TO THE AGREEMENT BETWEEN THE GOVERNMENT OF ISRAEL AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY 9 [hereinafter DOCUMENTS].

69. ROBINSON, INDEMNIFICATION AND REPARATIONS, *supra* note 1, at 256-57. See *supra* text accompanying note 28.

70. Letter (Sept. 20, 1945), *supra* note 68, at 11.

71. *Id.* at 12.

in so far as such assets are to be employed in rehabilitating in Palestine the Jewish victims of racial and religious persecution, they should be entrusted to the Jewish Agency for this purpose;" and (c) "[t]hat the Jewish people should be allotted a proper percentage of reparations, to be entrusted to the Jewish Agency for Palestine for the rehabilitation and resettlement in Palestine of Jewish victims of racial and religious persecution."⁷²

At a December 1949 meeting in New York, the WJC issued a declaration calling on the newly established Parliament of the FRG, among other things, to accept moral and political responsibility for the Nazi crimes against the Jewish people, and to provide material indemnification for these crimes.⁷³ Implicit in this declaration was the fact that the FRG could not be compelled to pay such reparations; it would have to do so voluntarily. The FRG, in short, had no legal obligation even to consider paying collective reparations to the Jewish people.⁷⁴

Moreover, there did not exist at that time any one entity that could authoritatively claim to represent even a majority of, let alone the entire Jewish people. As Goldmann once wrote, "there can be no legal spokesman [for the Jewish people], because the Jewish people are not a legal entity."⁷⁵ An ideological split existed between Zionists who believed in the concept of a Jewish nation, and non-Zionists who saw themselves primarily as Jewish citizens of their respective countries of residence.⁷⁶ Thus,

72. *Id.* Weizmann also proposed "[t]hat the Jewish people's share of reparations should include the assets of German Colonists in Palestine." *Id.* In fact, pursuant to yet another protocol executed by Israel and the FRG on September 10, 1952 at Luxembourg, Israel undertook to refund the value of the property of the German Templars in Israel, which had been nationalized. BRECHER, *supra* note 20, at 96; SAGI, *supra* note 3, at 148-49; *see also* Agreement between the Government of Israel and the Government of the Federal Republic of Germany, concerning German property in Israel, Sept. 10, 1952, at Luxembourg, in DOCUMENTS, *supra* note 68, at 167.

73. BALABKINS, *supra* note 2, at 86.

74. *See* Nahum Goldmann, *A Noble Son of Jewry*, in *ESSAYS IN JEWISH SOCIOLOGY, LABOUR AND CO-OPERATION: IN MEMORY OF DR. NOAH BAROU 1889-1995*, at 11 (Henrik F. Infield ed., 1962) [hereinafter *IN MEMORY OF DR. NOAH BAROU*] (commenting with respect to German-Jewish reparations that "[f]or the first time a people tried to make some amends to another people who had not beaten them in war, whom they had no legal obligation to pay").

75. GOLDMANN, *THE JEWISH PARADOX*, *supra* note 19, at 38.

76. *See generally* MENAHEM KAUFMAN, *AN AMBIGUOUS PARTNERSHIP: NON ZIONISTS AND ZIONISTS IN AMERICA, 1939-1948* (1991). In 1947, Judge Joseph M. Proskauer, President of the American Jewish Committee, stated that "against a negligible but vocal minority of nationalists we have stood steadfast for the principle that politically we are

the Jewish Agency and, after May 15, 1948, the State of Israel, could represent the interests of Jews, including Jewish Holocaust survivors, living in Palestine/Israel, but had no authority, apparent or otherwise, to speak on anyone else's behalf.⁷⁷ Chaim Weizmann implicitly acknowledged this fact in his letter of September 20, 1945, to the four Allied Governments when he called for title of heirless Jewish property to be restored to "the representatives of the Jewish people," but only asked that the Jewish Agency be entrusted with such assets in so far as they would be applied to the rehabilitation in Palestine of Jewish victims of racial and religious persecution."⁷⁸ The WJC, founded only in 1936, was international in scope, but did not represent many of the Jewish communities and organizations. The Board of Deputies of British Jews, for example, had declined to join the WJC, necessitating the establishment of the WJC's British Section.⁷⁹ In the United States, meanwhile, there was no central body that represented American Jewry, and the American Jewish Congress was the only major American Jewish organization affiliated with the WJC.⁸⁰ Indeed, the Jewish victims of the Holocaust themselves were anything but monolithic. They had been citizens of different countries before and during the war, and they had subsequently either returned to their former homes or settled in Palestine, the United States, Canada, South Africa, Latin America, and elsewhere. Even the Jewish DPs had been unable to form a single body to represent all the Jews living in Germany, with the result that there were separate Central Committees of Liberated Jews in the British and American Zones.⁸¹

In their seminal writings of the mid-1940s, both Moses and Robinson recognized that a new entity would have to be created to represent the Jewish people as a whole with respect to postwar

Americans, integrated wholly and completely with our fellow Americans into the life of this country . . ." *Id.* at 237. See also GOLDMANN, *THE JEWISH PARADOX*, *supra* note 19, at 39 (noting that "the Zionist movement was unable to bring about unity").

77. See KAUFMAN, *supra* note 76, at 228-29, 249-50; HAMMER, *supra* note 16, at 49.

78. Letter (Sept. 20, 1945), *supra* note 68, at 12. See *supra* text accompanying note 72.

79. GOLDMANN, *THE JEWISH PARADOX*, *supra* note 19, at 41; RIEGNER, *supra* note 17, at 627.

80. GOLDMANN, *THE JEWISH PARADOX*, *supra* note 19, at 41; RIEGNER, *supra* note 17, at 628.

81. BRENNER, *supra* note 29, at 31-33, 97-98; KÖNIGSREDER & WETZEL, *supra* note 29, at 79-87.

German reparations. Moses wrote that the Jewish Agency, as representative of the Jews of Palestine, should take the initiative to unite the major organizations of world Jewry and the “emigrated Jews from Germany and other countries” into a “representative body of the Jewish people that was capable of taking action.”⁸² Robinson similarly advocated the creation of a new “Jewish Agency for Reconstruction” on the practical ground that

[i]n order to avoid the loss of [property] to Jewry a new Jewish title and title bearer must appear. The United Nations and other states where Jewish property . . . is situated must issue regulations transferring to an organization representing the Jewish people all titles to such property and rights. It is evident that only an organization representing large sections of Jewry, internationally endowed with specific powers and recognized status, would be entitled to claim these assets and dispose of them in a manner ensuring their proper use.⁸³

The identity of the potential claimant with respect to collective reparations was discussed by both Hendrik Van Dam and A.L. Easterman in their respective July 1950 analyses of the German-Jewish reparations issue.⁸⁴ Arguing that “[t]he only organized Jewish community within the meaning of international law is the State of Israel,”⁸⁵ Van Dam concluded that “[t]he Israel government is not only the logical authority to present the reparation claim as a claim of the community. It is also entitled and obligated by the principles of diplomatic intervention to present and prosecute the claims of its citizens.”⁸⁶ Easterman, meanwhile, advocated (without referring to Israel) that German collective indemnification to the Jewish people “should be made available to and utilized by responsible Jewish organizations in their efforts to rebuild the remnants of the destroyed Jewish communities in the countries where the survivors of the Nazi anti-Jewish persecution have found refuge in a new homeland.”⁸⁷

For the Government of Israel, the German-Jewish repara-

82. MOSES, *supra* note 1, at 46 (author’s trans.).

83. ROBINSON, *supra* note 1, at 257-58.

84. See *supra* text accompanying notes 50, 51, and 53.

85. Van Dam, *The Problems of Reparations and Restitution for Israel*, *supra* note 53, at 23.

86. *Id.* at 24.

87. Letter (July 25, 1950), *supra* note 50, at 280.

tions issue presented a particularly sensitive problem. In 1950, when Van Dam submitted his opinion to Israel's Finance Ministry, Israel had no formal relations or official dealings with the FRG. Israelis as well as most Jews throughout the world considered Germany to be a pariah nation.⁸⁸ An Israeli Consul was in Munich primarily to facilitate the processing of immigrants to Israel. However, he was initially accredited to the American military government, and remained in place after 1949 without ever being accredited to the FRG.⁸⁹ On January 16, 1951, in a clear attempt to avoid having to address the FRG directly, the Israel Government sent a note to the United States, the United Kingdom, and France,⁹⁰ in which it criticized as inadequate the existing German indemnification legislation, and called for, among other things, "the adoption of a General Claims Law for the whole of the Federal Republic of Germany."⁹¹ In another Note, dated March 12, 1951, this time addressed to the four Occupying Powers,⁹² the Israel Government described in detail the atrocities committed by Germany against the Jewish people between 1933 and 1945;⁹³ and demanded reparations in the amount of U.S.\$1.5 billion, based "only on the expenditures incurred and anticipated in connection with the resettlement of the Jewish immigrants from the countries formerly under Nazi control," whose number the Note estimated "at about 500,000."⁹⁴ Moreover, the Israel Government added, this U.S.\$1.5 billion figure

88. See DEUTSCHKRON, *supra* note 4, at 24-25 (regarding Israeli attitudes toward Germany prior to 1952, "[n]ext to grief, a wave of hatred mounted in Israel against those who had committed such crimes and against those who had permitted them to happen"); SACHAR, *supra* note 2, at 33 ("[t]he very name 'Germany' was a stench and abomination for the Israeli people"). See generally BALABKINS, *supra* note 2, at 93, 119; SHAFIR, *supra* note 2, 105-21; THE GERMAN PATH TO ISRAEL, *supra* note 53, at 19.

89. DOMINIQUE TRIMBUR, DE LA SHOAH À LA RÉCONCILIATION ["From the Holocaust to Reconciliation"] 23-28 (2000); BRECHER, *supra* note 22, at 75 n.3.

90. Israel Note of January 16, 1951, to the United States, United Kingdom, and France concerning restitution and indemnification, in DOCUMENTS, *supra* note 68, at 13.

91. *Id.* at 15-16. The Note also called attention to the fact that by absorbing the majority of the Jewish DPs from Germany, Israel had "shouldered a financial burden which would otherwise have fallen on the Occupation Authorities." *Id.* at 15.

92. Israel Note of March 12, 1951, to the four Occupying Powers concerning reparations, in DOCUMENTS, *supra* note 68, at 20. The Note to France was submitted on March 11, 1951. *Id.*

93. *Id.* at 20-22.

94. *Id.* at 24.

corresponds approximately to the value of exports from Western Germany alone in 1950, which, in view of Germany's economic recovery, is likely to increase considerably during 1951. If spread over a period of years and transferred partly in the form of goods, a reparation payment of this total would not be beyond the capacity of the German people. No settlement of German reparations can be regarded as equitable on moral or legal grounds which would not meet this minimum claim on behalf of the major sufferers of the Nazi régime. Nor can there be any approach to the rehabilitation of Germany among the community of nations until this basic measure of reparation has been affected.⁹⁵

The three Western Allies, while expressing sympathy, declined to take any action in support of Israel's claim.⁹⁶ In their respective replies to Israel's note of March 12, 1951, the United States and the United Kingdom both noted that they would not "impose" upon the FRG the obligation to pay reparations to Israel.⁹⁷ The implication was clear. If Israel wanted reparations from Germany, it would have to deal directly with the FRG.

In addition to the moral issues involved, there were overriding pragmatic considerations. The impetus for Israel's 1951 initiative to obtain reparations from Germany was Israel's dire economic condition which

was harsh in the last months of 1950; graver, perhaps, than at any other period in the state's independent existence. All the indicators were negative as a result of the mass immigration that predominantly characterized that austerity period: from May 1948 to the end of 1951 Israel's Jewish population more than doubled, from 650,000 to 1,324,000. The major tasks were to provide food, clothing and shelter to the impoverished survivors of the Displaced Persons camps in Europe and Cyprus, and to the underprivileged immigrants from Iraq and Yemen, as well as employment for immigrants and demobilized soldiers.⁹⁸

95. *Id.*

96. See Notes of the United Kingdom, the United States and France, in DOCUMENTS, *supra* note 67, at 28, 30, 32, 34, 36, 39.

97. United States Note of July 5, 1951, in reply to Israel Note of March 12, 1951, concerning reparations, in DOCUMENTS, *supra* note 68, at 34, 35; United Kingdom Note of July 5, 1951, in reply to Israel Note of March 12, 1951, concerning reparations, in DOCUMENTS, *supra* note 68, at 36, 37.

98. BRECHER, *supra* note 20, at 59-60.

Israel simply did not have the resources to finance the absorption of close to 500,000 Jewish victims of Nazi persecution⁹⁹ on its own. The assistance provided by emergency loans from the United States and several Western European countries was only temporary in nature.¹⁰⁰ Thus, a major financial infusion of any kind, whether from Germany or elsewhere, was highly desirable.

By 1951 Israel's imports were exceeding its exports by five times, and the lack of raw materials and electric power created prolonged factory work stoppages. With the Israeli pound collapsing, even veteran citizens had become dependent on food parcels sent by relatives overseas. This was the crisis that impelled the Israeli government to look to Germany for help.¹⁰¹

In late 1950, David Horowitz, director general of Israel's Finance Ministry, persuaded Moshe Sharett and David Ben-Gurion, respectively Israel's Foreign Minister and Prime Minister, of both the necessity and feasibility of asserting a U.S. \$1.5 billion claim against Germany. Following limited discussion, the Israel Cabinet decided on January 3, 1951 to seek and accept reparations for Jewish property plundered by Nazi Germany.¹⁰² When the indirect approach via the four powers proved unsuccessful, Horowitz, accompanied by Maurice Fischer, the Israel Minister to France, met secretly with FRG Chancellor Konrad Adenauer in Paris in 1951. At this meeting, Horowitz made Israel's case for reparations and, at Sharett's instructions, set forth two prerequisites to any German-Israeli interaction: the FRG had to (a) issue a formal acknowledgment of Germany's crimes against the Jewish people, and (b) agree that any reparations would be in line with Israel's claim. Adenauer reacted positively, but made no commitments.¹⁰³

Meanwhile, Barou was independently searching for a way to persuade the German authorities to voluntarily assume the obligation to provide monetary restitution to the Jewish people. Be-

99. The number given in Israel's Note of March 12, 1951, *see supra* text accompanying note 94.

100. SACHAR, *supra* note 2, at 33.

101. *Id.* Regarding the general state of Israel's economy between 1948 and 1952, *see* BALABKINS, *supra* note 2, at 96-118.

102. BRECHER, *supra* note 20, at 75-76.

103. *Id.* at 78; DEUTSCHKRON, *supra* note 4, at 34. CHARLES WILLIAMS, ADENAUER: THE FATHER OF THE NEW GERMANY 372 (2000).

ginning in 1950, the London WJC leader held private discussions on this subject in London as well as in Germany with numerous German political figures, bankers, and industrialists.¹⁰⁴ Among them was Herbert Blankenhorn, one of the Chancellor's closest aides and advisers.¹⁰⁵ Blankenhorn accepted the WJC's 1949 declaration on Germany as a basis for further discussions, but Barou, like Horowitz, insisted that no formal German-Jewish or German-Israeli dialogue could take place without an official statement by Adenauer before the German Parliament containing two essential elements: an acknowledgment of Germany's responsibility for the Nazi crimes against the Jewish people; and an undertaking, in the name of his government, to make material amends to Israel and the Jewish people for the losses suffered by European Jewry.¹⁰⁶ Discussions between Barou and Blankenhorn, who was also present at Adenauer's meeting with Horowitz,¹⁰⁷ went on for some time.

In July 1951, Barou brought Rosensaft into the picture.¹⁰⁸ A German-Jewish businessman named Gerhard Lewy, a former schoolmate of Blankenhorn, had approached Barou and offered to intercede with Blankenhorn.¹⁰⁹ On July 14, 1951, Barou

104. BALABKINS, *supra* note 2, at 86-87; RIEGNER, *supra* note 17, at 565-67.

105. DEUTSCHKRON, *supra* note 4, at 30-31; BALABKINS, *supra* note 2, at 87, 89-90; RIEGNER, *supra* note 17, at 566; GOLDMANN, MEIN LEBEN ALS DEUTSCHER JUDE, *supra* note 19, at 378-79. Blankenhorn's role in bringing about the Luxembourg Agreements cannot be underestimated. See BRECHER, *supra* note 20, at 73-74. In early 1951, when Adenauer became the FRG's Foreign Minister in addition to being Chancellor, Blankenhorn became Political Director of the FRG Foreign Office. Together with *Staatssekretär* Walter Hallstein, the FRG's *de facto* Foreign Minister between 1951 and 1958, Blankenhorn was a consistent supporter of and advocate for meaningful German reparations to the Jewish people. See WILLIAMS, *supra* note 103, at 336, 364, 371-75; GOLDMANN, MEIN LEBEN ALS DEUTSCHER JUDE, at 411; 100th Birthday of Walter Hallstein: First President of the European Commission, News Release No. 86/01 of the European Union, Nov. 17, 2001.

106. DEUTSCHKRON, *supra* note 4, at 30-31; BALABKINS, *supra* note 2, at 90.

107. BRECHER, *supra* note 20, at 78.

108. Beginning in 1945, Rosensaft and Barou had developed a close political and personal relationship. After Barou's death in 1955, Rosensaft wrote that Barou "was among the very first and very few who came to us soon after liberation and fought with us for our freedom and our dignity." Rosensaft, *supra* note 36, at 32. Rosensaft subsequently wrote: "There hardly was taken any action [at Belsen] without the participation of Dr. Barou. Whether the problem was of a political nature, or concerned the attaining of emigration certificates, or how to obtain more food and freedom, Barou was there." Josef Rosensaft, *Barou in Belsen*, in IN MEMORY OF NOAH BAROU, *supra* note 74, at 23.

109. HADASSAH ROSENSAFT, YESTERDAY: MY STORY 130 (1997) (unpublished manuscript). See also DEUTSCHKRON, *supra* note 4, at 30 ("According to German government

wrote to Rosensaft in Upjever, asking him to get in touch with Lewy and arrange for Rosensaft to meet Blankenhorn.¹¹⁰ It was shortly after that meeting that Barou and Rosensaft met with Goldmann in Zurich to suggest that Goldmann formally negotiate a reparations agreement with Adenauer.¹¹¹ At the Zurich meeting, Goldmann was informed not only that Blankenhorn had at last agreed to persuade Adenauer to issue a formal declaration along the lines that both Horowitz and Barou had set forth, but also that Blankenhorn, with Barou's participation, had actually prepared a draft of such a statement.¹¹² The proposed text neither mentioned the State of Israel, which was, after all, intended to be the principal beneficiary of the reparations, nor contained an unambiguous acknowledgment of the German State's responsibility for Germany's crimes against the Jews.¹¹³ Goldmann proceeded to edit the draft, and several days later, Barou gave the revised version to Blankenhorn.¹¹⁴ Adenauer then decided to rewrite the declaration himself, making it dryer in tone but keeping the essential elements.¹¹⁵

IV. ADENAUER'S DECLARATION OF SEPTEMBER 27, 1951,
CREATION OF THE CLAIMS CONFERENCE, AND
GOLDMANN'S MEETING WITH ADENAUER
ON DECEMBER 6, 1951

On September 27, 1951, Adenauer read his declaration in

sources, a German-Jewish businessman is said to have made the first direct approach to Dr. Herbert Blankenhorn").

110. Letter, Barou to Rosensaft (July 14, 1951). Rosensaft Archive; see text following note 20.

111. HADASSAH ROSENSAFT, *supra* note 109, at 130; RIEGNER, *supra* note 19, at 566-67. Following this meeting Goldmann and Barou asked Rosensaft to continue his involvement in the reparations negotiations, frequently traveling to Germany to meet with Blankenhorn as well as Economics Minister Ludwig Erhard, Secretary of State Walter Hallstein of the FRG Foreign Ministry, and other FRG officials. *Id.* at 130. Hadassah Rosensaft later recalled that "[w]ith Blankenhorn's help, Yossel arranged numerous secret meetings between Barou, Goldmann, and members of the German cabinet who were involved in the negotiations." *Id.* at 130-31. Rosensaft, Goldmann, and Barou also created a code to be used in letters and telegrams, referring to Adenauer as "Zaken" (Hebrew for "Old One"), Blankenhorn as "Bruno," Hallstein as "Harry," Erhard as "Leo," and FRG Finance Minister Fritz Schäffer as "Kalkala" (Hebrew for "Finance"). *Id.* at 131.

112. RIEGNER, *supra* note 17, at 566-67.

113. *Id.* at 567.

114. *Id.* at 567-68.

115. *Id.* at 568.

the *Bundestag*, the lower house of the FRG Parliament. He acknowledged the “immeasurable suffering that was brought to bear upon the Jews in Germany and in the occupied territories during the time of National Socialism.”¹¹⁶ While maintaining that “[t]he great majority of the German people abhorred the crimes committed against the Jews, and had no part in them,” he proclaimed that

unspeakable crimes were perpetrated in the name of the German people, which impose upon them the obligation to make moral and material amends, both as regards the individual damage that Jews have suffered and as regards Jewish property for which there are no longer individual claimants. . . . The Federal Government will see to it that the restitution legislation is rapidly completed and that it is justly implemented.¹¹⁷

Adenauer then made a historically unprecedented offer in the name of his government, announcing that “[t]he Federal Government is prepared, jointly with representatives of Jewry and the State of Israel, which has admitted so many homeless Jewish refugees, to bring about a solution of the material reparation problem in order to facilitate the way to a spiritual purging of unheard-of suffering.”¹¹⁸ It was not just that the West German Chancellor voluntarily declared that the FRG was willing to negotiate what he called the “material reparation problem” with Israel, another sovereign State, albeit one with which the FRG had no formal relations. In his declaration, Adenauer acknowledged the legitimacy of Israel’s claim to be indemnified for the cost of absorbing the survivors of the Holocaust, and he recognizing the Jewish people as a separate negotiation partner—not any one specific entity such as the WJC or the Jewish Agency, but, far more broadly, the “representatives of Jewry.”

On October 26, 1951, at the suggestion of Israeli Foreign Minister Moshe Sharett,¹¹⁹ Goldmann who was then co-chairman of the Jewish Agency as well as President of the WJC, invited the representatives of twenty-three American and international Jew-

116. Adenauer Statement on Restitution, *in* GROSSMANN *supra* note 5, at 59, 60.

117. *Id.*

118. *Id.*

119. GOLDMANN, *MEIN LEBEN ALS DEUTSCHER JUDE*, *supra* note 19, at 377 (author’s trans.); SAGI, *supra* note 3, at 74; RONALD W. ZWEIG, *GERMAN REPARATIONS AND THE JEWISH WORLD: A HISTORY OF THE CLAIMS CONFERENCE 15* (1987).

ish organizations¹²⁰ to a meeting in New York under the auspices of the World Zionist Organization “for the purpose of giving public support to Israel’s claim against Germany . . . and to discuss ways and means how best to organize such support in the future.”¹²¹ Goldmann’s goal was to obtain the organizations’ acceptance in principle of direct negotiations with the FRG, and for them to authorize a small leadership group to take part in such negotiations on behalf of the Jewish people outside of Israel.¹²² The outcome of this meeting was the creation of the Claims Conference, with Goldmann as President and Saul Kagan, the JRSO’s Executive Secretary who had been that agency’s Director of Plans and Operations from 1948 until 1951, as Executive Secretary.¹²³ In the resolutions adopted at the end of the meeting, the Conference expressed “wholehearted support” for Israel’s claim against Germany, demanded “satisfaction of all other Jewish claims against Germany,” and called for immediate steps to improve existing restitution and indemnification legislation, “to enact such legislation where it does not exist and to speed up the settlement of Jewish claims”¹²⁴

It is noteworthy that the different priorities with respect to German reparations were very much in evidence at the founding meeting of the Claims Conference. Abba Eban, Israel’s Ambassador to the United Nations, reiterated Israel’s claim for U.S.\$1.5 billion, and Goldmann proclaimed that “the highest moral validity lies in our doing everything possible to satisfy the claims of Israel and of the Jewish people, enabling hundreds of

120. Agudas Israel World Organization, Alliance Israelite Universelle, American Jewish Committee, American Jewish Congress, JDC, American Zionist Council, Anglo-Jewish Association, B’nai B’rith, Board of Deputies of British Jews, the British Section of the WJC, Canadian Jewish Congress, Central British Fund, Conseil Représentatif des Juifs en France, Council for the Protection of the Rights and Interests of Jews from Germany, Delegacion de Asociaciones Israelitas Argentinas (D.A.I.A.), Executive Council of Australian Jewry, Jewish Agency, Jewish Labor Committee, Jewish War Veterans of the U.S.A., South African Jewish Board of Deputies, Synagogue Council of America, WJC, Zentralrat der Juden in Deutschland. CLAIMS CONFERENCE CHRONOLOGY, *supra* note 10, at 8.

121. ZWEIG, *supra* note 119, at 15.

122. *Id.* at 16-17.

123. *Id.* at 18-19. Kagan had previously been Chief of the Financial Intelligence Department for the U.S. Military Government in Germany. *Id.* at 19.

124. Resolutions of the Conference on Jewish Material Claims against Germany, on the subject of material claims from Germany, New York, October 26, 1951, in DOCUMENTS, *supra* note 68, at 46.

thousands of new immigrants to enter Israel.”¹²⁵ In contrast, Jacob Blaustein, President of the American Jewish Committee, called for an early settlement of “all claims,” emphasizing that “[t]he claims of the State of Israel are not the only claims. We must press equally for the claims of all Jewry.”¹²⁶

With the Claims Conference established, Ben Gurion authorized Goldmann to try to obtain Adenauer’s acceptance of the figure of U.S.\$1 billion as the starting point for negotiations.¹²⁷ On December 6, 1952, Goldmann and Adenauer met for the first time in secret at Claridge’s Hotel in London.¹²⁸ Later that day, in a two-paragraph letter to Goldmann, Adenauer wrote:

In connection with the statement made by the Federal Government in the *Bundestag* on September 27, 1951, in which it declared its readiness to start negotiations with representatives of the Jewish people and Israel with regard to Reparation for damage done under the Nazi regime, I want to inform you that the Federal Government considers that the time has come when such negotiations should begin. I ask you, in your capacity as Chairman of the Conference on Jewish Claims against Germany to make this known both to the Conference and the Government of Israel.

I want to state that the Federal Government sees in the problem of reparation above all also a moral duty and regards it as an obligation of honor for the German people to do everything possible to repair the injustice done to the Jewish people. The Federal Government will welcome in this connection the possibility of contributing to the upbuilding of the State of Israel through the delivery of goods. The Federal Government is ready to accept the claims which the Government of the State of Israel has formulated in its note of March 12, 1951 as the basis for these negotiations.¹²⁹

Goldmann had accomplished his mission. By referring to Israel’s Note of March 12, 1951,¹³⁰ in which Israel had demanded U.S.\$1.5 billion in reparations from Germany, Adenauer had implicitly agreed that a U.S.\$1 billion demand

125. *German Payment Studied by Jews*, N.Y. TIMES, Oct. 26, 1951, at 11.

126. *Id.*

127. GOLDMANN, MEIN LEBEN ALS DEUTSCHER JUDE, *supra* note 19, at 382.

128. *Id.* at 384-87.

129. Adenauer Letter to Dr. Goldmann, in GROSSMANN, *supra* note 5, at 61.

130. *See supra* text accompanying notes 92-95.

would not be unrealistic. Moreover, Adenauer was now offering Israel tangible "delivery of goods," as opposed to his prior reference to an abstract "solution of the material reparation problem" in his *Bundestag* declaration of September 27th.¹³¹ Finally, by asking Goldmann to inform the Claims Conference of the FRG's willingness to negotiate, Adenauer had conferred upon the Claims Conference the requisite "recognized status" contemplated by Robinson,¹³² and effectively acknowledged its standing to assert a collective claim for reparations on behalf of the Jewish people.

V. REACTIONS IN THE UNITED STATES AND ISRAEL

Adenauer's offer to negotiate was met with a decidedly mixed reaction in both Israel and the American Jewish community. Most of the American Jewish organizational leadership viewed positively the FRG's professed willingness to make tangible amends for the Third Reich's crimes against the Jews.¹³³ Others were less receptive. Advocating the continuation of a policy of absolute non-fraternization, one right-wing Zionist argued that Germany was morally "untouchable" and not a fit partner to any international deliberations.¹³⁴ The Yiddish poet Jacob Glatstein called Adenauer's declaration "a lying document."¹³⁵ Samuel Gringauz, a former leader of the Jewish DPs in the American Zone, wrote that "[w]e may have to become reconciled to the thought that at least a generation might pass before relations between Germans and Jews enter upon a 'new and healthy basis.'"¹³⁶ Supporters of German-Jewish negotiations were more pragmatic, arguing that the issue on the table was not reconciliation with the enemy but merely a settling of accounts. Goldmann explained that "[w]e are not dealing here with a *quid pro quo*. Nobody is saying to the Germans: You pay us; we forgive you. We are promising nothing; we are offering nothing. We are simply claiming what is ours, morally and legally."¹³⁷

The debate in Israel was far less restrained. There were

131. GROSSMANN, *supra* note 5, at 60.

132. ROBINSON, *supra* note 1, at 257-58.

133. SHAFIR, *supra* note 2, at 170.

134. BALABKINS, *supra* note 2, at 93.

135. SHAFIR, *supra* note 2, at 170.

136. *Id.*

137. BALABKINS, *supra* note 2, at 94.

heated arguments within the Israel Cabinet on whether or not to accept Adenauer's offer of negotiations.¹³⁸ In early January, 1952, when the Government formally asked the *Knesset*, the Israel Parliament, for formal authorization to enter into direct talks with the FRG, Menachem Begin, the leader of the nationalist Herut Party, called for and organized demonstrations in the streets.¹³⁹ The ensuing parliamentary debate was the stormiest and most violent in Israel's history, with both socialist and right-wing deputies mercilessly attacking the centrist Government.¹⁴⁰ Ya'akov Hazan of the Marxist Mapam Party, charged that "[n]egotiations mean recognition of a neo-Nazi Government, managed mostly by ex-Nazis"¹⁴¹ Thousands of demonstrators protested outside the *Knesset* and hurled stones through its windows. When the police used tear gas to control the crowd, a Herut Member of *Knesset* exclaimed, "gas against the Jews; with that you will win!"¹⁴² Begin accused Ben Gurion of being a "murderer,"¹⁴³ and was suspended from the *Knesset* for three months for his unruly behavior.¹⁴⁴ In the end, the Government obtained *Knesset* endorsement of direct Israeli-German negotiations by a vote of sixty to fifty-one, with five abstentions and four members absent.¹⁴⁵

VI. *THE WASSENAAR NEGOTIATIONS AND THE LUXEMBOURG AGREEMENTS*

On March 21, 1952, the delegations from the Israel Government, the Claims Conference, and the FRG met for the first time at Wassenaar outside The Hague in the Netherlands. The Israel delegation was headed by two former German Jews who emigrated to Palestine after Hitler's advent to power, Giora Josephthal, the Treasurer of the Jewish Agency and head of its Absorption Department, and Felix Shinnar, the head of a special department set up at the Israel Foreign Ministry to deal with Jewish claims against Germany and former Economic Counselor to

138. BRECHER, *supra* note 20, at 82-84.

139. *Id.* at 85; BALABKINS, *supra* note 2, at 121.

140. BRECHER, *supra* note 20, at 85.

141. *Id.*

142. *Id.*

143. *Id.* at 86.

144. DAVID BEN GURION, *ISRAEL: A PERSONAL HISTORY* 400 (1972).

145. BRECHER, *supra* note 20, at 88.

the Israel Legation in London.¹⁴⁶ The Claims Conference delegation was headed by Moses A. Leavitt, Executive Vice Chairman of the JDC. A.L. Easterman was one of its members, and Nehemiah Robinson, Hendrik Van Dam, and Benjamin Ferencz were among its legal experts.¹⁴⁷ The German delegation was headed by Professor Franz Böhm, Dean of the Johann Wolfgang von Goethe University in Frankfurt, who had publicly acknowledged German culpability for the Nazi crimes against the Jews. Böhm's deputy was Dr. Otto Küster of Stuttgart, a prominent Stuttgart attorney and expert on restitution issues who had been dismissed as a judge in 1933 for refusing to cooperate with the Nazi authorities.¹⁴⁸ It was decided at the outset that the FRG delegation would hold separate daily meetings Monday through Friday, with the Israel delegation in the morning, and with the Claims Conference delegation in the afternoon.¹⁴⁹ It was also decided that discussions would be held in English, but since most of the members of the Israel delegations were originally from Germany, most of the German-Israeli negotiations ended up being conducted in German.¹⁵⁰

In its opening statement, the Israel delegation asserted a claim against the FRG in the amount of U.S.\$1 billion, based on a U.S.\$1.5 billion claim "against Germany as a whole."¹⁵¹ This claim was "calculated on the basis of the expenditure incurred in Israel in the resettlement of the Jewish victims of Nazi persecution"¹⁵² In this first official encounter between representatives of Israel and the FRG, the Israel delegation emphasized that

[i]t must furthermore be clearly understood that the satisfaction of Israel's claim cannot be regarded as constituting in any way an expiation of the fearful holocaust of 6 million Jews murdered in Europe, and of the destruction of ancient Jewish Communities and their precious spiritual possessions. These

146. GROSSMANN *supra* note 5, at 19-20; BALABKINS, *supra* note 2, at 89.

147. GROSSMANN, *supra* note 5, at 20, 36.

148. DEUTSCHKRON, *supra* note 4, at 54.

149. SAGI, *supra* note 3, at 105-06.

150. *Id.* at 105.

151. Israel Delegation's statement of March 21, 1952, at the opening of the negotiations on reparations, in DOCUMENTS, *supra* note 68, at 69, 74. The balance of U.S.\$500 million of Israel's claim was apportioned *in absentia*, as it were, to the Communist German Democratic Republic. DEUTSCHKRON, *supra* note 4, at 56.

152. Israel Delegation's statement of March 21, 1952, *supra* note 151, at 74.

losses cannot be made good by any material recompense. The claim advanced by the State of Israel is thus both minimal in its size and symbolic in its character. For settling the historic account, the hour has not yet come.¹⁵³

In its opening statement, the Claims Conference reaffirmed its wholehearted support of Israel's claim "in respect of the rehabilitation in Israel of victims of Nazi persecution"¹⁵⁴ and outlined the nature of its claims with respect to both compensation legislation and heirless Jewish property.¹⁵⁵ The Conference's principal concern regarding individual compensation was that

[t]he most striking deficiency in this field is that only fragmentary legislation has yet been enacted by the German *Länder* in the British Zone to deal with indemnification claims. The Conference proposes that the Federal Government should assume responsibility for securing the enactment of adequate indemnification legislation for the whole of the Federal Republic. Adequate legislation should secure compensation for groups of persecutes now excluded, or insufficiently provided for. Satisfactory and speedy implementation is of the essence.¹⁵⁶

The Conference referred only generally to the principle that "[h]eirless and unclaimed Jewish property should accrue to Jewish organizations caring for the surviving victims of Nazism," noting that there were "important areas of damage to which this principle must be extended in order to narrow the gulf between the amounts illegally received and the value returned."¹⁵⁷

Three days later, the Conference quantified its global claim in the amount of U.S.\$500 million with respect to heirless and unclaimed Jewish assets, to be paid over a five-year period.¹⁵⁸ At this time, the Conference also proposed numerous specific legis-

153. *Id.* To the best of the authors' knowledge, this was the first time that the term "holocaust" was publicly used to describe the Nazi persecution and genocide of European Jewry.

154. Statement of the Delegation of the Conference on Jewish Material Claims against Germany of March 21, 1952, at the opening of the negotiations on reparations, in *DOCUMENTS*, *supra* note 68, at 75.

155. *Id.* at 78.

156. *Id.*

157. *Id.*

158. Outline of Proposals and Claims Presented by the Delegation of the Conference [on] Jewish Material Claims Against Germany, Mar. 24, 1952, at 2. Rosensaft Archive.

lative measures with respect to individual restitution and indemnification. These proposals included the demand that the FRG “should extend to the whole area of its territories satisfactory General Claims legislation,” modeled upon the laws in effect in the American Zone, that “should be implemented within a period of three years, on the basis of full equality between residents of Western Germany and claimants residing abroad.”¹⁵⁹ Such General Claims legislation was to:

- (a) provide fullest compensation for various categories of economic losses;
- (b) grant compensation for deprivation of liberty to Displaced Persons who left Germany prior to January 1, 1947; Jews formerly resident in Germany who emigrated from Nazi Germany; and Jews who were compelled to live underground within Germany;
- (c) clearly assume responsibility of pensions to officials of former Jewish communities and institutions;
- (d) simplify the requirements of proof in recognition of the unavailability of documentary evidence required to substantiate claims;
- (e) provide that the claims under the indemnification legislation be made inheritable, in all cases, to near relatives.¹⁶⁰

The Conference’s legislative proposals thus addressed many of the objections to German restitution laws and policies that had previously been raised in Easterman’s and Van Dam’s respective July 1950 discussions of German-Jewish reparations,¹⁶¹ and that had been the subject of Rosensaft’s negotiations with the Lower Saxony authorities.¹⁶²

The German delegation’s opening statement, while it referred to Adenauer’s *Bundestag* declaration of September 27, 1951, and acknowledged Germany’s “obligation to make reparations” (“*Wiedergutmachungspflicht*”), emphasized that the FRG’s ability to meet the asserted claims was restricted by Allied regulations and the FRG’s obligations to Germany’s pre-war creditors.¹⁶³ In addition, the Israeli and Jewish claims would have to

159. *Id.* at 1.

160. *Id.*

161. *See supra* text accompanying notes 50-51, 53.

162. *See supra* text accompanying notes 55-65.

163. German Delegation’s statement of March 21, 1952, at the opening of the negotiations on reparations, *in* DOCUMENTS, *supra* note 68, at 79, 80-81.

be considered in the light of the FRG's other "reparations obligations."¹⁶⁴

The course of these negotiations was rocky, with the amount of the reparations for Israel the principal source of contention. There was early agreement with respect to most of the Claims Conference's legislative proposals,¹⁶⁵ but the Conference's global claim was deferred, and remained unsettled, until the last phase of the negotiations.¹⁶⁶ Both the FRG Finance Minister, Fritz Schäffer and Hermann J. Abs, Chairman of the Board of Deutsche Bank and the FRG's chief foreign debt negotiator, wanted the Israeli and Jewish reparations claims to be resolved within the broader context of a settlement of the FRG's external debts. The Israeli and Claims Conference delegations at Wassenaar, on the other hand, insisted that the Jewish claims for compensation had to be settled independently and exclusively on their own merit.¹⁶⁷ The two heads of the FRG delegation agreed with the Israeli and Jewish position, with Böhm threatening to resign, and Küster actually resigning, in protest against the FRG Government's equivocation.¹⁶⁸ Barou subsequently wrote that there was

a clear division . . . between the position taken by the German industrial and working-class organizations on the one hand, and by financial and banking circles on the other. The first group supported a settlement in the spirit of Dr. Adenauer's Declaration; the other group made every effort to extend the period of payments to anywhere up to thirty years and to reduce yearly payments to 100 million Marks."¹⁶⁹

Beginning in April 1952, Adenauer and Goldmann exchanged letters and held a series of personal discussions that

164. *Id.* at 81.

165. ZWEIG, *supra* note 119, at 22. See generally SAGI, *supra* note 3, at 114-28.

166. ZWEIG, *supra* note 119, at 22; GOLDMANN, *MEIN LEBEN ALS DEUTSCHER JUDE*, *supra* note 19, at 390; SAGI, *supra* note 3, at 128.

167. For details about the negotiations, see generally SAGI, *supra* note 3; BALABKINS, *supra* note 2, at 119-36; DEUTSCHKRON, *supra* note 4, at 49-71; BRECHER, *supra* note 20, at 90-102.

168. GOLDMANN, *MEIN LEBEN ALS DEUTSCHER JUDE*, *supra* note 19, at 395; SAGI, *supra* note 3, at 136.

169. N. Barou, *Origin of the German Agreement*, in *CONGRESS WEEKLY*, Oct. 13, 1952, at 6, 7.

kept the talks from collapsing altogether.¹⁷⁰ Ultimately, it was Goldmann who negotiated many of the general terms of the Luxembourg Agreements, first with Böhm in Paris on May 23, 1952,¹⁷¹ and then with senior FRG officials, including Hallstein, Böhm, and Abs, in Bonn on June 10, 1952.¹⁷² Israel was to receive DM 3 billion in commodities and services over a twelve-year period, amounting to around seventy percent of its original claim. Goldmann compromised much more with regard to the Claims Conference's global claim. He agreed to accept DM 500 million, one quarter of the demanded U.S.\$500 million, which would also be payable in commodities to Israel, with the Israel Government in turn undertaking to make payment to the Conference.¹⁷³ However, the Conference had decided early on that Israel's claim would have priority,¹⁷⁴ and that satisfaction of the legislative demands would take precedence over the Conference's global claim.¹⁷⁵ Adenauer personally took part in the Bonn negotiations, and on June 17, 1952, he presented the terms of the agreed-upon reparations to his Cabinet.¹⁷⁶

Subsequently, in Wassenaar, the FRG negotiators continued to question the magnitude of Jewish heirless property, and they demanded an accounting of the various Jewish organizations' past expenditures on behalf of the victims of Nazism. In re-

170. GOLDMANN, *MEIN LEBEN ALS DEUTSCHER JUDE*, *supra* note 19, at 392-404; DEUTSCHKRON, *supra* note 4, at 60-68.

171. GOLDMANN, *MEIN LEBEN ALS DEUTSCHER JUDE*, *supra* note 19, at 396-97; SAGI, *supra* note 3, at 139-42. Barou as well as Josephthal, Shinnar, and Gershon Avner of the Israel Delegation at Wassenaar also participated in these negotiations. GOLDMANN, *MEIN LEBEN ALS DEUTSCHER JUDE*, *supra* note 19, at 397; SAGI, *supra* note 3, at 139.

172. GOLDMANN, *MEIN LEBEN ALS DEUTSCHER JUDE*, *supra* note 19, at 398-403; SAGI, *supra* note 3, at 143-45. Barou and Shinnar also participated in these negotiations. GOLDMANN, *MEIN LEBEN ALS DEUTSCHER JUDE*, *supra* note 19, at 398; SAGI, *supra* note 3, at 143.

173. Letter, Goldmann to Adenauer (July 11, 1952). Rosensaft Archive; *see also* DEUTSCHKRON, *supra* note 4, at 67; SAGI, *supra* note 3, at 140; ZWEIG, *supra* note 119, at 23.

174. ZWEIG, *supra* note 119, at 23.

175. GOLDMANN, *MEIN LEBEN ALS DEUTSCHER JUDE*, *supra* note 19, at 388; SAGI, *supra* note 3, at 111; ZWEIG, *supra* note 119, at 23 (quoting Claims Conference Executive Committee's directive of March 13, 1952, to the Negotiating Team that "[a]s a general rule the satisfaction of individual claims should have priority over the aggregate claim. In other words, if the satisfaction of the most pressing individual claims will appear impossible at the same time as the assignment of an aggregate amount, concessions should be made on the latter").

176. DEUTSCHKRON, *supra* note 4, at 66-68; GOLDMANN, *MEIN LEBEN ALS DEUTSCHER JUDE*, *supra* note 19, at 403.

sponse, the Claims Conference provided two detailed memoranda. The first established that the value of Jewish heirless assets far exceeded the combined Israeli and Jewish claims. The second showed that the Jewish organizations had already spent in excess of U.S.\$1.1 billion on the relief, rehabilitation, and resettlement of victims of Nazi persecution, and expected to have to pay substantial amounts for this purpose in the future.¹⁷⁷ The issue was ultimately resolved, again with Goldman's involvement, by having the DM 500 million payment characterized as a "hardship fund" for the benefit of "needy refugees dispersed in all the countries of the world."¹⁷⁸ This DM 500 million figure was subsequently further reduced to DM 450 million, with the FRG undertaking to allocate DM 50 million for reparations to Christian converts of Jewish origins who had been victims of Nazi persecution.¹⁷⁹

There does not appear to have been much discussion or controversy concerning the principal elements of the individual compensation claim, although according to two accounts, Goldman agreed to reduce the settlement of the Claims Conference's global claim from DM 500 million to DM 450 million in exchange for a promise that the FRG would enact the agreed-upon legislation in the immediate future.¹⁸⁰ The FRG negotiators also maintained that a sovereign government could not enter into a bilateral agreement requiring parliamentary ratification with a private party such as the Claims Conference.¹⁸¹ Goldman proposed to Blankenhorn that the FRG issue a declaration that it would incorporate the agreed-upon legislative principles into the appropriate legislation, and that an agreement between the two delegations would be acceptable with respect to the DM 450 million payment.¹⁸² Leavitt, the head of the Claims Conference delegation, insisted that a governmental agreement with a private entity was possible, citing prior agreements between the JRSO and the *Länder* as precedent. Ultimately, it was decided

177. SAGI, *supra* note 3, at 149-50; ZWEIG, *supra* note 119, at 23-24.

178. Letter, Goldman to Adenauer (July 11, 1952), at 1, *supra* note 173 (author's trans.). See also ZWEIG, *supra* note 119, at 24.

179. GOLDMANN, *MEIN LEBEN ALS DEUTSCHER JUDE*, *supra* note 19, at 404; SAGI, *supra* note 3, at 151; ZWEIG, *supra* note 119, at 24.

180. BALABKINS, *supra* note 2, at 135; SAGI, *supra* note 3, at 151.

181. SAGI, *supra* note 3, at 163.

182. Letter, Goldman to Blankenhorn (July 28, 1952). Rosensaft Archive.

that the FRG and the Conference would execute protocols, which, unlike bilateral agreements, did not require parliamentary ratification.¹⁸³ It turned out to be a distinction that made little practical or substantive difference. Since the DM 450 million global payment to the Claims Conference was to be made via Israel, it, too, was part of the Treaty between Israel and the FRG, and therefore subject to ratification.¹⁸⁴ Similarly, Protocol No. 1 sets forth a “legislative programme” for the improvement of existing legislation in the FRG “for the redress of Nationalist wrongs” that could only be implemented by the FRG Parliament. Accordingly, regardless of the FRG negotiators’ formalistic posturing at Wassenaar, all three parts of the Luxembourg Agreements required the approval of the FRG Parliament to become effective. With all the substantive issues resolved, the three separate accords were put in final form at Wassenaar, and the negotiations were concluded on August 27, 1952.¹⁸⁵ On September 10,

183. SAGI, *supra* note 3, at 163. Both Protocols No. 1 and No. 2 “are appended” to the Treaty “for reference purposes only.” Agreement Between the Federal Republic of Germany and the State of Israel, art. 16(b), GROSSMANN, *supra* note 5, at 48.

184. Article 1(b) of the Treaty provides that:

the Federal Republic of Germany shall, in compliance with the obligation undertaken in Article 1 of Protocol No. 2 this day drawn up and signed between the Government of the Federal Republic of Germany and the Conference on Jewish Material Claims against Germany, pay to Israel for the benefit of the said Conference the sum of 450 million Deutsche Mark; the said sum of 450 million Deutsche Mark shall be used for the purposes set out in Article 2 of the said Protocol.

GROSSMANN, *supra* note 5, at 37. Article 2 of Protocol No. 2 provides in relevant part that this sum of DM 450 million

will be used for the relief, rehabilitation and resettlement of Jewish victims of National Socialist persecution, according to the urgency of their needs as determined by the Conference on Jewish Material Claims Against Germany. Such amounts will, in principle, be used for the benefit of victims who at the time of the conclusion of the present Agreement were living outside of Israel.

Id. at 56.

185. BALABKINS, *supra* note 2, at 135-36. On August 1, 1952, Barou wrote to Goldmann informing him of the most recent developments regarding the finalization of the reparations agreements, noting that:

Rosensaft has probably already seen you to-day [sic] and informed you of our conversations in Germany. I had a firm promise from Bruno that he or Harry would watch over the proceedings there very carefully and help us to bring them to a conclusion within the next ten days. Bruno is going away for a week’s holiday on Sunday but Harry will be there to see that nothing happens.

Letter, Barou to Goldmann (August 1, 1952). Rosensaft Archive. The references to “Bruno” and “Harry” were code references to Blankenhorn and FRG Foreign Ministry Secretary of State Walter Hallstein, respectively. See *supra* note 111 and accompanying text. As late as August 24, 1952, Adenauer asked Blankenhorn if the term “*Verbrechen*”

1952, the FRG, Israel, and the Claims Conference formally entered into the Luxembourg Agreements, and despite opposition from prominent members of Adenauer's own Christian Democratic Union party and a boycott threat against the FRG from Arab countries, the Treaty between Israel and the FRG was ratified by the *Bundestag* on March 18, 1953 by a vote of 239 in favor and 35 against with 86 abstentions. Two days later, the Treaty was approved by the *Bundesrat*, the upper house of the FRG Parliament.¹⁸⁶

While most of the attention, and most of the controversy, centered on the amount of reparations Israel was to receive from the FRG, the provisions embodied in Protocol No. 1 are evidence of the Claims Conference negotiators' commitment to the principle that individual survivors were no less entitled to reparations than the collective represented by the State of Israel. As Noah Barou wrote shortly after the Luxembourg Agreements had been executed, "the program of legislation upon which the Claims Conference and the German Government agreed, can benefit hundreds of thousands of Jews all over the world."¹⁸⁷

The pivotal roles of Goldmann and Barou in bringing about these precedent-setting reparations accords has deservedly been acknowledged.¹⁸⁸ However, in their private writings, Goldmann and Barou themselves recognized Rosensaft's unpublicized involvement as essential to the process. On October 12, 1952, Goldmann wrote to Rosensaft to express his "profound appreciation" for the latter's role during the "difficult months" leading up to the signing of the reparations agreements with Germany.¹⁸⁹ "What you did and accomplished," Goldmann wrote, "was of the greatest significance for the successful conclusion of the negotiations. You had to carry out many delicate tasks, and

(crimes) in the preamble to the Agreement with Israel could be changed to "*Unrecht*" (injustice). Letter, Adenauer to Blankenhorn (Aug. 24, 1952). Rosensaft Archive. (author's trans.). The term used in the final version was "criminal acts." Preamble to Agreement Between the Federal Republic of Germany and the State of Israel, GROSSMANN, *supra* note 5, at 37. Other minor wording changes requested by Adenauer in the same letter were made.

186. See GOLDMANN, MEIN LEBEN ALS DEUTSCHER JUDE, *supra* note 19, at 405-07; BALABKINS, *supra* note 2, at 137-50; BRECHER, *supra* note 20, at 96-97.

187. N. Barou, *Origin of the German Agreement*, *supra* note 169, at 8.

188. See, e.g., BALABKINS, *supra* note 2, at 90, 92; GOLDSMITH, *supra* note 14, at 28-29; Avi Beker, *Introduction: Unmasking National Myths—Europeans Challenge their History, in THE PLUNDER OF JEWISH PROPERTY DURING THE HOLOCAUST*, *supra* note 11, at 3.

189. Letter, Goldmann to Rosensaft (Oct. 12, 1952). Rosensaft Archive.

did so with great tact and understanding. . . . The fact that your work took place behind the scenes increases its value.”¹⁹⁰ On October 17, 1952, Barou wrote to Rabbi Israel Goldstein in New York that Rosensaft

has given us very valuable assistance in the Israel-German negotiations Mr. Rosensaft is one of the initiators of the idea, that our national organizations should undertake a very important task in helping the thousands of DP[]s, scattered all over the world, in getting their compensation from Germany under the legislation agreed upon in Wassenaar.¹⁹¹

VII. *ROSENSAFT’S PARALLEL EFFORTS TO RESOLVE THE INDEMNIFICATION CLAIMS OF JEWISH DPS FROM BERGEN-BELSEN WHO HAD EMIGRATED TO ISRAEL*

During the latter part of 1951 and throughout 1952, while the above-discussed events leading up to the Luxembourg Agreements were occurring, Rosensaft remained preoccupied with the specific unresolved problem that affected 18,000 Jewish DPs who had emigrated from Belsen to Israel before January 1, 1948, and who hence were ineligible for compensation under the restrictive Lower Saxony *Haftentschädigungsgesetz*.¹⁹² According to documents in the Rosensaft Archive, he did not give up in attempting to arrive at a solution that would enable them to receive reparations outside the statutory framework.

On September 28, 1951, the day after Adenauer’s declaration in the *Bundestag*, Salomon Adler Rudel, a senior official of the Jewish Agency in Jerusalem, wrote to Rosensaft in Switzerland advising him that he had sent a letter to Goldmann, presumably discussing the issue of reparations, and asking Rosensaft

to see that conflict and misunderstanding with the Agency’s office in Germany is avoided. I do not think that you will have any difficulty but it is necessary that they are informed about all important matters so that your activities should not interfere or damage other negotiations which are going on at

190. *Id.* (author’s trans.).

191. Letter, Barou to I. Goldstein (Oct. 17, 1952). Rosensaft Archive.

192. See *supra* text accompanying notes 64-65.

the same time.¹⁹³

Adler Rudel went on to refer to a proposal by Goldmann that Rosensaft “come to Israel as soon as possible for further consultation,” and noted that “I have already mentioned in my letter to Dr. Goldmann that the statement of the Bonn Government might have some bearing on the indemnification problem. Please consider this also very carefully and do not rush into any hasty action.”¹⁹⁴ On October 11, 1951, Goldmann wrote to Adler Rudel that “I don’t think whatever we will get from Lower Saxony will conflict with the global agreement with Adenauer and you may be sure that I will see to it that there should not be any conflicts.”¹⁹⁵ The “activities” to which Adler Rudel was referring in this correspondence were most likely Rosensaft’s ongoing efforts on behalf of the above-mentioned 18,000 Jewish DPs for whom he held a power of attorney. Adler Rudel may well have been concerned that Rosensaft’s “activities” in this respect could have an adverse impact on Adenauer’s offer to negotiate collective “material reparation” with Israel and representatives of the Jewish people.¹⁹⁶

On October 18, 1951, Blankenhorn invited Rosensaft to Bonn to discuss “questions of mutual interest.”¹⁹⁷ On October 30, 1951, Barou wrote to Rosensaft and Riegner from New York that he had discussed with Goldmann

in detail the question of whether we should proceed without delay with the problem of Lower Saxony. The opinion of the two of us is that the matter must be dealt with with great urgency because when the conversations will start, it may have less chance.

I would not, therefore, wait for my coming to Germany and if Yosel can make progress with the people in Hanover, he should see Bruno by himself, or if you think it is necessary, you could fly over for this special meeting in Lower Sax-

193. Letter, S. Adler Rudel to Rosensaft (Sept. 28, 1951). Rosensaft Archive. The letter to Goldmann referred to in Adler Rudel’s letter is not in the Rosensaft Archive.

194. *Id.*

195. Letter, Goldmann to Adler Rudel (Oct. 11, 1951). Rosensaft Archive.

196. Adenauer Declaration on Restitution, in GROSSMANN, *supra* note 5, at 60. See *supra* text accompanying notes 116-18.

197. Letter, Blankenhorn to Rosensaft (Oct. 18, 1951) (author’s trans.) Rosensaft Archive.

ony.¹⁹⁸

On December 27, 1951, Blankenhorn wrote to Rosensaft with respect to the matter of the *Haftentschädigung* (indemnification for false imprisonment) “of the Jews who had emigrated from Belsen to Israel.”¹⁹⁹ Blankenhorn took “particular note” that the demands put forward by Rosensaft “stand outside the demands asserted by the State of Israel,” and wrote:

I believe that your demands could be settled by means of the delivery of goods, as this is contemplated in the settlement of Jewish claims for reparations that was proclaimed in the declaration of the Federal Government of 27 September 1951. I want to assure you that the Federal Government is interested to bring about rapidly at least a partial resolution of this matter. I would be indebted to you if you could shortly provide me with concrete, documented proposals on this subject, [including] what goods come into consideration for such a settlement.²⁰⁰

On January 4, 1952, Goldmann both wrote and cabled to Riegner that Rosensaft should fly to Israel “without delay” for discussions with senior officials of the government and the Jewish Agency with regard to technical aspects of the reparations issue.²⁰¹ The precise nature of the ensuing discussions are not known, but they were apparently constructive. An undated draft of a telegram addressed to Riegner on an Israeli form printed in 1947, and most likely in Barou’s handwriting, states that “Josel’s proposition received favourable my conversations started satisfactorily regards best wishes Noah Josel.”²⁰²

The agreed-upon means of resolving the compensation claims of the 18,000 emigrated Jewish DPs appears to have been

198. Letter from Barou, addressed to Riegner but with the salutation, “My dear Riegner and Yosel” (Oct. 30, 1951). Rosensaft Archive.

199. Letter, Blankenhorn to Rosensaft (Dec. 27, 1951) (author’s trans.) Rosensaft Archive. The letter is addressed to Rosensaft as “*Bevollmächtigter der ausgewanderten jüdischen DP’s aus Belsen in Israel*,” the “authorized agent of the Jewish DPs who have emigrated from Belsen to Israel.”

200. *Id.* (author’s trans.) In his letter, Blankenhorn refers to a memorandum he had received from Rosensaft regarding the reparations claims of the emigrated DPs, and containing proposed solutions to the problem. No copy of such a memorandum has been located in the Rosensaft Archive.

201. Letter, Goldmann to Riegner (Jan. 4, 1952); Telegram, Riegner to Rosensaft (Jan. 7, 1952). Rosensaft Archive.

202. Undated draft of telegram addressed to Riegner. Rosensaft Archive.

a special shipment of around DM 20 million worth of pharmaceutical products from the FRG to Israel.²⁰³ Goldmann discussed this issue with Adenauer on several occasions during the course of their various meetings in the spring and summer of 1952.²⁰⁴ On June 12, 1952, three months before the Luxembourg Agreements were executed, Goldmann wrote to Rosensaft, enclosing a letter of the same date to Adenauer.²⁰⁵ In his letter to Rosensaft, Goldmann asked Rosensaft to give the Adenauer letter to “Bruno” (meaning Blankenhorn²⁰⁶), leaving it to Blankenhorn “to decide if and when to submit it to the Chancellor.”²⁰⁷ In his June 12, 1952 letter to Adenauer, Goldmann asked the FRG Chancellor to expedite the prompt delivery to Israel of pharmaceutical products valued up to DM 20 million. “I do not have to tell you,” Goldmann wrote, “what this means, since, every time we have discussed these questions, you have shown great understanding for precisely this kind of assistance.”²⁰⁸ On August 1, 1952, Barou wrote to Goldmann that “Jossel [sic] has suggested that as you will be in Zurich I should come over and meet you, him and Riegner and discuss the problem of individual claims (Israeli citizens)”²⁰⁹ On September 18, 1952, Goldmann brought the subject up again in a letter to Hallstein, *Staatssekretär* (Secretary of State) in the FRG Foreign Office.²¹⁰ Goldmann reminded Hallstein that Adenauer had “many months ago” shown a personal interest in the proposal

that in discharge the payment of individual claims in Lower Saxony, which the Saxon [sic] government is unable to satisfy because of a lack of money, the Federal Republic would ad-

203. Letter, Goldmann to Adenauer (June 12, 1952); Letter, Goldmann to FRG Secretary of State Walter Hallstein (Sept. 18, 1952). Rosensaft Archive. In his letter of January 4, 1952 to Riegner, Goldmann wrote, without further explanation, that “[a]s soon as the Germans place the 22 million to disposal, a committee of three must, in my opinion, be created that will make decisions on all transactions and that will also be responsible for the account.” Letter (Jan. 4, 1952), *supra* note 201 (author’s trans.).

204. *See supra* note 200; Letter, Goldmann to Adenauer (June 12, 1952); Letter, Goldmann to Hallstein (Sept. 18, 1952). Rosensaft Archive.

205. Letter, Goldmann to Rosensaft (June 12, 1952). Rosensaft Archive.

206. *See supra* note 111.

207. Letter, Goldmann to Rosensaft (June 12, 1952), *supra* note 205 (author’s trans.).

208. Letter, Goldmann to Adenauer (June 12, 1952), *supra* note 204 (author’s trans.).

209. Letter, Barou to Goldmann (Aug. 1, 1952), *supra* note 185.

210. Letter, Goldmann to Hallstein (Sept. 18, 1952), *supra* note 203.

vance the amount of twenty or twenty-five million Mark for medicine and hospital equipment, that would be purchased for Israel and sent to Israel.²¹¹

There are no further documents on this subject in the Rosensaft Archive, nor have we been able to determine whether or not the plan to purchase and send pharmaceutical and medical equipment to Israel was ever implemented. According to Van Dam, the "injustice" represented by Lower Saxony's refusal to pay compensation to these DPs was removed within the context of the Luxembourg Agreements and the FRG's subsequently promulgated reparations legislation.²¹² It was clear even after the terms of Protocol No. 1 had been agreed upon that it would take a long time for any new legislation to go into effect. New reparations statutes first had to be drafted and enacted. Thereafter, claimants would have to fill out and file applications, which would then have to be reviewed by FRG officials. Thus, there were no realistic expectations in 1952 that Holocaust survivors would receive German reparations any time soon. While the 18,000 Jewish DPs in question, and others similarly situated, would have been covered under the terms of Protocol No. 1 of the Luxembourg Agreements, and would eventually have been eligible for reparations from the FRG, it appears from the available documentation that Rosensaft tried to obtain compensation for them on an accelerated basis. We do not know if he was successful. There can be no question, however, that he made every effort on their behalf.

CONCLUSION

The Luxembourg Agreements have had a profound impact on post-Holocaust German-Jewish and German-Israeli relations. They constituted the immediate catalyst for a process of reconciliation that enabled Israel to establish full diplomatic relations with the FRG in 1965,²¹³ a prospect that had been virtually un-

211. *Id.* (author's trans.). Goldmann added that Adenauer had agreed that immediately after the completion of the reparations negotiations, Gerhard Riegner of the WJC in Geneva would go to Germany to arrange for this transaction, and hoped that Riegner would receive the necessary credentials and documentation for his "unofficial mission." *Id.*

212. See Van Dam, *Legal Protection in Belsen*, *supra* note 56, at 151.

213. See generally DEUTSCHKRON, *supra* note 4; BALABRINS, *supra* note 2; BRECHER, *supra* note 20, at 65-110; THE GERMAN PATH TO ISRAEL, *supra* note 53.

thinkable in 1951. They also provided the framework for a massive infusion of capital into Israel's economy, and a reparations infrastructure that has provided more than 585,000 Jewish Holocaust survivors with aggregate reparations of more than DM 102 billion.²¹⁴ While two of the three principal historical studies of the reparations process focused primarily on the German-Israeli relationship,²¹⁵ these individual reparations, mostly in the form of monthly pensions, have made an ongoing difference in the lives of the survivors, and have been no less significant. It is especially noteworthy from a contemporary perspective that these reparations were obtained through voluntary negotiations, and as the direct result of efforts by dedicated Israeli public officials and Jewish communal leaders, rather than as the result of litigation of any kind.

In this context, Rosensaft's attempts to achieve a positive resolution of the grievances of the Jewish DPs who had been denied compensation by Lower Saxony is significant. But for his persistence, it is unlikely that anyone would have paid attention to the relatively insubstantial individual claims of these 18,000 Holocaust survivors who were trying to start new lives in Israel in the early 1950s. The fact that he was able to enlist the sympathy and support of Goldman and Barou in this pursuit serves as yet another example of their commitment to the principle that Germany had an obligation to compensate the Jewish survivors for the egregious suffering and material losses they had endured. The fact that Blankenhorn and Adenauer reacted sympathetically to a request, made outside the framework of the formal negotiations, on behalf of a group of Jewish Holocaust survivors who had been denied even minimal reparations underscores the morality of Rosensaft's position. Adenauer and Blankenhorn

214. See CLAIMS CONFERENCE CHRONOLOGY, *supra* note 10, at 17. Under legislation enacted by the FRG pursuant to Protocol No. 1, 277,804 Jewish Holocaust survivors have received reparations payments aggregating DM 100 billion as of December 31, 2000. *Id.* at 13-15, 17. In addition, also as of December 31, 2000, 307,564 other Jewish survivors who were ineligible for reparations under the aforementioned legislation have received individual payments aggregating DM 2.7 billion from special funds established by the FRG (and, since 1990, the Government of the reunited Germany) pursuant to negotiations with the Claims Conference. *Id.* at 16-17, 22-25.

215. Both Balabkins, *supra* note 2, and Deutschkron, *supra* note 4, concentrate for the most part on the German-Israeli negotiations. The exception is Sagi, *supra* note 3, who chronicles the Wassenaar negotiations in their entirety.

would not have been likely to waste their time on trying to find solutions for problems that they did not deem to be meritorious.

Moreover, Rosensaft may also have had an impact on other aspects of the process leading up to the Luxembourg Agreements. It is noteworthy that the legislative scheme for FRG reparations legislation proposed at Wassenaar consistently included the extension to the British Zone of the provisions of the more liberal indemnifications laws that were in force in the American Zone. Rosensaft had unsuccessfully tried to persuade the authorities in Lower Saxony to do precisely that. While there does not exist extrinsic evidence in this regard, it is possible to infer that at the very least, Rosensaft made sure that the grievances of the Jewish DPs from the British Zone would not be overlooked during the Wassenaar negotiations. We in no way mean to overstate Rosensaft's role in what has been called the "Twisted Road" toward German-Jewish reparations.²¹⁶ However, it is likely that, within the context of the monumental collective claims that were being asserted in the name of Israel and the Jewish people, his insistence on maintaining a focus on the rights and needs of individual survivors provided a powerful impetus for the formal demands by the Claims Conference that the FRG promulgate and implement the comprehensive German reparations legislative scheme that was ultimately embodied in Protocol No. 1.

216. SHAFIR, *supra* note 2, at 7, 159.