

The German-Israeli Restitution Agreement: A Precedent for Historical Justice?¹

In recent years, Germany's 20th century history not only has become a measure stick for state-sponsored mass crimes, but also for attempts to compensate their victims. As a consequence of Nazi dictatorship in Germany between 1933 and 1945, not only hundred thousands of Germans had been persecuted, among them namely political opponents, Jews and other groups which were not considered being suitable for the German "community of people". Since the beginning of the Second World War in 1939, persecution was widened on a European scale, and what followed was not only an attempt to eradicate the Jewish people as a whole but also enormous misery for the people of the conquered territories including the killing of millions of people in the occupied countries namely in the East. Hence, what makes Nazi crimes special is the circumstance that they were directed both at "internal" and "external" enemies. From the perspective of then existing international law, however, crimes committed at the German population were not subject of international liability. Until then, the generally accepted principle of state sovereignty which had evolved after the Peace of Westphalia in 1648, made clear, that no state could interfere in the so-called internal affairs of another state—and this also encompassed harassing, torturing and killing of their own citizens.

So why then did this change since 1945? Two circumstances were mainly responsible that this situation did no longer seem acceptable at that time: Firstly, the existence of a large community of Jewish emigrants from Germany in the United States which could produce political awareness for their cause. And secondly, especially Western countries feared, other dictators might follow the German example to expel unwished groups of their population to other countries after they had stripped them of all their belongings, thus producing social tension in their countries of destination. While for all the devastations in occupied countries at least in principle the well-established instrument of war-reparations existed, non-such device was at hands with respect to the victims which had been German citizens at the time of their persecution. Given the scale of the overall-devastations of the Second World War, it was a relatively minor group. However, it was them which prepared the starting point for a development which since then changed

¹ The following article is based on my book *Schuld and Schulden. Die Politik der Wiedergutmachung für NS-Verfolgte seit 1945*, Goettingen: Wallstein, 2nd edition 2008 (= *Guilt and Debts. The Politics of Compensation for Victims of National Socialism since 1945*) where extensive references to primary sources and literature are provided.

international law and international relations, the ongoing erosion of the principle of state-sovereignty which can be perceived both with respect to the dealing with the perpetrators and with the victims of state-sponsored mass crimes against parts of the own population.

Germany not only was at the beginning of the establishment of international procedures to bring dictators to court because of crimes against their own people. Under the close guidance namely of the Western Allied Occupation Powers, in Germany also a dense system of restitution and compensation for Nazi victims developed since the late 1940s, and in the decades to come a complicated system of so-called "*Wiedergutmachung*" emerged, which affected many aspects of the consequences of Nazi persecution.

In my following remarks, I will focus on one special aspect of these endeavors, which for a long time has been considered as a synonym for German restitution efforts to Nazi victims because it not only involved important material but also important symbolic aspects: the Luxembourg agreements which were settled in 1952 between Germany and Israel. As a major aspect of this agreement, Bonn accepted to pay within the next 14 years 3.45 billion DM (ca. 1.8 billion Euro) to Israel and the Jewish Conference for Material Claims against Germany for the purpose of rehabilitation of Nazi victims. The Jewish Conference for Material Claims against Germany which represented Jewish Holocaust victims living outside of Israel received a share of 450 million DM (ca. 230 million Euro) from the total amount. Since in the meantime we have become accustomed to think in hundreds of billions of Euro it is necessary to deliver a fair assessment of this amount: In 1952 the total federal budget of West Germany had been circa 14 billion DM (ca. 7 billion Euro). Due to the fact that the German Mark was not yet convertible at that time, the payment was mostly made in German products.

Over the last decades, historical interest in the so-called Luxembourg agreement has somewhat shifted: Initially scholars mainly had inquired into the German political motives: Did Washington push Bonn to settle the Israeli and Jewish claims? And had the Luxemburg agreement been a prerequisite for the integration of West Germany into the "free world" in the early 1950s? However, since the end of the Cold War, debates on the German-Israeli restitution agreement have moved into another context: More and more it has become to be considered as a model case for attempts to settle conflicts which result from historical injustices against minorities. The logic seems as follows: If Israel and Germany more or less have been able to come to terms with each other even on the background of the Holocaust – which has made a career as the ultimate measure stick of state sponsored mass-crimes – , then there might derive an important lesson for the solution of other conflicts.

In scholarly debate, however, we encounter a paradox: German historians often tend to be critical about the German-Israeli restitutions agreement. Foreign scholars seem to be much more willing to consider the Luxembourg agreement as a model case of historical justice. An explanation for this dichotomy might be that German scholars have been more concerned with the complex German motives for this agreement (which often means: being suspicious of the political motives of the German Federal Chancellor Konrad Adenauer who had been mainly responsible for this agreement on the German side), while foreign scholars have been more interested in its effects. In my following remarks, I will try to bring both aspects together and thus attempt a systematic approach to the history of the German-Israeli restitutions agreement with the aim to analyze its potential as a model of historical justice. Hence, two guiding questions shall direct my analysis. Firstly: How was it possible that the West German state paid reparations to another state which not even had existed at the time of the crime? And secondly: What were the effects of the Luxembourg agreement? My argument will be structured in eight theses which try to focus on conditions for political failure or success:

1.) Competition matters: The West German Government had to accept the idea that the murder of European Jews could not be treated on equal footing with other reparation claims. At the outset, the uniqueness of the historical injustice under discussion had to be established.

While nowadays the Holocaust has become to be considered as the major crime of the Second World War, this had not been true for the early 1950s. At that time, the destruction of European Jewry was considered only one element—and not even the most prominent—of the vast destruction of Europe which had been caused by Hitler's war. And Germany was confronted with multifarious claims from both from its former enemies and its victims which doubtless surpassed the overall German capacity to pay. Consequently, it was crucial for their success that Jewish claims had to be taken out of this competition for reparations from Germany. As a prerequisite, Israel had to give up its idea that the Allies would do the business for them: This would have put the question into the framework of war reparations where Israeli claims would not have had a very high priority—especially since Israel hadn't even existed during the war but was only founded in 1948. Getting the acceptance of a kind of uniqueness of the Jewish claims therefore was the major precondition to successful negotiations. And at several instances, the talks threatened to collapse exactly because in Germany strong internal resistance came up against this principle. The basic lesson is that successful claims for historical justice must make plausible their priority against other competing claims especially

in a situation of a complicated mixture of historical mass-crimes but also of more recent demands.

2.) Time matters: In 1952, the crime under discussion still was very close to the present. The German-Israeli restitution agreement therefore was a case of rehabilitative and not of commemorative justice.

Time is a crucial feature of historical justice: On behalf of the individual victims, the needs for restitution are changing over time. Material needs for rehabilitation and symbolic desires for recognition are constantly changing. And this is true even more, when only the individual or collective heirs of the victims are pressing their claims. On the other hand, perpetrators are also aging and dying, and individual guilt is replaced by collective responsibility which tends to evaporate over the course of generations. So we have to deal with a delicate balance which is constantly shifting.

With respect to the German-Israeli restitutions agreement, however, the situation was quite clear: Talks started only seven years after both the Second World War and the Holocaust had come to an end. And there was a pressing need for rehabilitation of the shattered remains of European Jewry. What took place in 1952 was still very far from modern identity politics which uses victimhood and compensation claims as a means to strengthen collective identities of communities: It was simply a matter of bringing broken individuals back to normal life, as far as it was possible anyway. In my opinion, it would also be misleading to consider the German-Israeli restitution agreement as a case of renegotiated history which tries to elaborate mutually accepted narratives of the past in order to overcome historical conflicts: At that time, the price for an agreement had been to keep safe distance from explicit talking on the details of the destruction of European Jewry. Rather these events worked as a kind of tacit knowledge, yet still always lurking around the corner. One might even say that paying restitution to Israel was the price Germany had to pay to be allowed to remain silent about the destruction of European Jewry, at least in the first two decades after 1945.

3.) Space matters: Both sides of the conflict did not share the same society and thus were spatially not related. As a consequence, the German-Israeli restitution agreement could make use of traditional models of international reparation negotiations. And spatial distance was also necessary to neutralize the problems of communication.

Claims for historical justice often are a matter of internal conflicts within societies. In other cases, restitution claims are a matter of conflicts between different countries. In both cases, the rules of the game are different: In the latter case, they derive from the model of war reparations which had been moralized after World War I. In the former case, the dynamics of social distribution within a society are involved. In the German-Israeli case, both sides were referring to the model of international negotiations. And both the German and the Israeli Government were trying to handle the affair as confidential as possible. And they even chose a neutral country for their talks: Under the threat of bomb assaults of radical Israeli adversaries of the talks, they met in the old water castle of Wassenaar in the Netherlands. To a certain extent it was necessary to neutralize the tensions resulting from the very recent past to be able to talk to each other at all. As Benjamin B. Ferencz—the legal expert of the Jewish Claims Conference delegation—put it: “How do you begin? What do you want to say when you have to sit across the table with representatives of the government who tried to kill all the Jews? What do you say to them?”²

4.) Dependency on success matters: Both sides required a positive outcome of the talks.

What is always true in politics was true even more in our case: Both sides needed a success. But there was a difference: For Israel, the problem was not only to get a decent negotiation result. Even more complicated was to get into negotiations at all. There was fierce internal resistance within Israeli society against direct talks with the Germans, blaming German reparations for murdered Jews as “blood money”. And when the Knesseth put that question on a vote, fierce street battles raged in the streets. A strong minority within Israeli society considered talks with Bonn as an assault to the decent commemoration of the victims. Only the dramatic economic misery after the establishment of Israel in 1948 pressed Jerusalem into these talks: Bluntly, the Israeli government needed the money to survive. For Bonn, on the other hand, the problem was not so much to get into the talks, rather the problem was to get out of the negotiations in a decent manner after the talks had been accepted in principle. After the West German Government had accepted negotiations on such a sensitive issue as restitution for victims of Nazi mass murder, they were morally condemned to success. The Federal Republic was not in position to let the negotiations fail since Bonn was struggling for international acceptance and reputation. The fear of the negative repercussions of a failure of the talks on

² Interview from Yehuda Bauer with Benjamin B. Ferencz, April 1971, United States Holocaust Museum, Benjamin B. Ferencz Collection, RG 12.007.01*05, 1 of 2.

the international public and not American political pressure ultimately helped to overcome the fierce internal resistance which also existed on the German side.

5.) Determination matters: Both sides were ready to overcome domestic resistance against talks. Democracy is ambivalent to historical justice.

Both Governments were not in a position to rely on domestic public support in the question under discussion. This also affects a more general question: While transitional justice is often considered as part of a transformation from dictatorial regimes to liberal societies, historical justice often has to be pushed forward against the will of the own population—which under the conditions of a liberal society also means the electorate. Very often transitional justice is the project of intellectual or political elites. And so there exists an obvious paradox in historical justice: While the aim of such an endeavor often is to get rid of the criminal remains of a dictatorship after the establishment of a democracy, democratic acceptance of measures referring to historical justice tends to be low. Looking in our case at the Israeli side, only the determination of the Ben-Gurion administration to oppose public opinion opened the way to talks with Bonn. On the German side, the picture looks even more paradox: In August 1952, only eleven percent of the German population welcomed the agreement without reservation. And the conservative Chancellor Adenauer could get the majority of the votes of the German Bundestag only with the help of the oppositional Social Democrats who voted unanimously for the ratification of the agreement. For the sake of Adenauer, however, one might rightfully doubt if the leader of the Social Democratic Opposition, Kurt Schumacher would have been able to settle such an agreement in case he had been in power at that time.

6.) International environment matters: The international environment was helpful to an agreement, but not responsible for the outcome of the talks.

What about the international situation? Was foreign pressure decisive? And did it even exist? While the Soviet Union stayed apart, the other Western Allies showed some “sympathetic interest” to the Israeli claim. However, they were not ready to exert open pressure on the Federal Republic. There existed two main reasons for that position: Firstly, they had competing interests, ranging from the urge for a West German military contribution to the Western alliance to the desire to get back part of the credits they had provided Germany earlier: At the same time, when Jerusalem discussed with Bonn in Wassenaar, the Allies negotiated with Bonn on the London Foreign Debt Settlement on the payment of the German pre- and post-

war Debts. And secondly: Any direct involvement in the German-Israeli negotiations would have produced some kind of responsibility for the outcome which the Allies were not ready to accept. One of the most important diplomatic contributions namely of the United States was to serve as a convenient “whipping boy” for the fierce Arab protests against German support for Israel. From the very beginning, rumors that Washington had pushed Bonn to a restitution agreement were instrumental to divert Arab anger from Germany.

7.) Does restitution matter? The material effects of the German-Israeli restitution agreement were matched by symbolic effects. The agreement gathered momentum which in the long run was able to improve the German-Jewish relations even against the will of those who didn't want such an outcome.

The question to the effects of the German-Israeli restitution agreement requires some differentiation. Firstly, are we talking about victims or those representing the perpetrators? Are we talking about effects on individuals or on groups and societies? Secondly, are we talking of material, of biographical or rather of symbolic effects? Thirdly: Are we talking about short-term or rather about long-term effects? And fourthly, what discourse on the effects of the agreement emerged and in how far did it produce secondary effects—including being an inspiration for other attempts for historical justice?

Firstly, the agreement produced favorable effects to both sides: In Germany, the structure of the agreement—delivery of German goods to Israel—produced domestic economic demand which turned out to strengthen the post-war economic upswing. More important, however, was the moral credit gained by the Federal Republic which added to the commercial credit made possible by the London Debt settlement. The German society as a whole clearly profited from the agreement, and maybe this is one of the reasons why public consent to the German-Israeli restitution agreement steadily grew over the following years.

Looking at the other side, we have to be aware of the nature of German restitution for Israel: The Luxembourg agreement provided collective payments for the purpose of developing Israeli infrastructure and industry. They helped the Israeli society as a whole in a very critical economic situation—and consequently were severely criticized by the Arab enemies of Israel. While the collective payments from Bonn to Jerusalem helped to strengthen the Israeli infrastructure and economy and thus benefitted the whole population, individual compensation payments which existed at the same time for some of the former Jewish Nazi

victims showed more ambivalent effects. On the one hand, they clearly helped to improve the economic situation of this group. On the other hand, however, such payments also raised social tensions and feelings of envy among other groups in Israel which did not receive any payments from Germany.

Even more important, however, are the effects of the German-Israeli restitution agreement for German-Jewish relations. The undersigning ceremony in Luxembourg provides evidence, that at this time it was impossible to agree on a shared interpretation of the critical elements of the common past. The Jewish side was not ready to accept the German expectation that the agreement would promote reconciliation: Both Jerusalem and the Jewish Claims Conference insisted on a clear separation between material payments and moral recognition. Nevertheless the talks and also the agreement set off a process which finally granted Germany the very moral rehabilitation which Adenauer sought for. Benjamin Ferencz described the mechanism: „Once you begin to accept compensation from someone who gives it because he feels he should give it, it is unavoidable that your relationship to that person should change”³. And Herbert Blankenhorn, Adenauer’s foreign policy advisor, put it similarly: “By the way, the enactment of the agreement automatically will lead to a progressive normalization of the relation to Israel and the Jews, and there is no need to insist on that aspect at the given moment.”⁴ Both were right: Not only the negotiations itself which forced both sides to success-oriented talks but also the construction of the agreement established patterns of communication which slowly changed the hostile situation.

8.) Universalization of German reparations to Israel as a model of historical justice started from the beginning: The potential of the German-Israeli restitution agreement to become a blueprint to handle with other cases of historical injustices had already been recognized during the negotiations to the very agreement. Since then, this argument has evolved from a tactical means of calming down the resistance of Arab states against German support for Israel to a discourse on the universalization of restitution.

One may add a fourth aspect to the effects of the German-Israeli restitution agreement which results from the discourse on the agreement. So to speak, we have to do with second-order effects culminating in a debate which considers the

³ Ibid.

⁴ Circular from Herbert Blankenhorn, September 23rd. In: *Akten zur Auswärtigen Politik der Bundesrepublik Deutschland, 1952: 1. Januar bis 31. Dezember 1952*, edited by Martin Koopmann and Joachim Wintzer, München: Oldenbourg, 2000 (= AADP 1952), p. 642.

German-Israeli restitution agreement as a blue print for other instances of historical injustice, especially of genocidal actions. The potential for universalization of the basic principles of the Luxembourg agreement already had been recognized in the early 1950's. But it took about 40 years until the boom of Holocaust restitution politics in the 1990's expanded to a global movement for compensation of historical injustice.

As mentioned before, the Arab states had heavily protested against the agreement which for them unduly strengthened their arch enemy. Already in 1952, Washington tried to appease them by hinting to the potential prejudging effects of the agreement concerning claims of Palestinian refugees against Israel. And Bonn also made the point that Israeli restitution claims offered an opportunity to Arab states to complain the injustice which they had suffered by the Jews and to point out their own claims against Israel. Yet at the same time, West German diplomats distanced themselves explicitly from a qualification of German crimes: "The expelled Arabs are refugees; Nazi Germany, however, killed millions of Jews."⁵ Hence, the future potential of restitution for Israel to become a model for compensation of historical injustice already had been realized and used to legitimize German foreign policy. This step was made possible by the circumstance, that the Israeli claim officially had been based on the burden of integration of Jewish refugees from Europe. In 1952, an internal decree of the West German Foreign Office emphasized: "The Israel-agreement could indicate the way which leads to the solution of the refugee problem also of other people, and we hope that we have made an exemplary contribution to that."⁶

So in the early 1950s, self-satisfaction flourished in the Adenauer-administration about the particular German contribution to the solution of global conflicts over historical injustice. But it took more than 40 years that a globalized restitution movement emerged. For the purpose of a reference for current claims for settlement of historical injustices it might be sufficient to refer to the mythical status of the Luxembourg agreement. But as I hopefully have been able to show, historical analysis of this agreement might offer more than deconstruct some myths. Rather, it might also offer some opportunities for a better understanding of the mechanisms of solutions of conflicts resulting from large scale historical injustice.

⁵ Notes from Etzdorf, September 6th, 1952. In: AADP 1952, p. 600.

⁶ Circular from Etzdorf, September 29th, 1952. In: AADP 1952, p. 646.