

*The Hebrew University of Jerusalem
Institute of Contemporary Jewry*

GERMAN REPARATIONS

A History of the Negotiations

By

NANA SAGI

ST. MARTIN'S PRESS, New York
THE MAGNES PRESS, THE HEBREW UNIVERSITY, Jerusalem

1986

GERMAN REPARATION — THE ALLIES' ATTITUDE

The reparation imposed on Germany after World War I by the Treaty of Versailles had left a bitter legacy. The disturbances in the economy and in the foreign and domestic policies of Germany resulting from the reparation and the German attempt to evade payment as far as possible had a worldwide impact with ruinous consequences in every sphere. Linked as it was to the Allied Powers' mutual indebtedness, the reparation problem undermined the structure of world trade and credit, hampered post-war reconstruction and contributed to the gravity of the world economic crisis of 1930. And so, when, in the early years of the war, the idea was first broached in Allied circles that after the war was over Germany, the aggressor who had begun the war and was the cause of enormous destruction of property and loss of life, would again be required to make restitution, there were many who doubted the wisdom of such a policy. They advanced a variety of arguments in support of their view:

Reparations in money would destroy not only the economy of the paying country but also of the receiving country.

Germany still owed the Allies money as a consequence of World War I; this would be a source of tension undermining the possibility of achieving peace in Europe after the war.

Large-scale reparation could be levied only if Germany were under direct Allied occupation. Only close supervision of the German national economy could ensure payment, but such supervision would interfere with normal economic activity both in Germany and in the world economy. Commercial and monetary restrictions would have to be imposed, and this would have harmful consequences.

Germany would not be able to pay all the reparation in money. Even all her funds abroad, if confiscated, would not suffice. Having no alternative she would have to pay in commodities and thus be obliged greatly to develop her export trade, as happened after World War I. Then, to increase her exports, Germany invaded world markets with harmful consequences for countries not at all connected to the war or reparation. At that time,

protective customs barriers were raised by Britain, Italy, France and Belgium. Furthermore, because of the need to pay reparation, German heavy industry was rebuilt, though one of the Allied war aims was precisely to destroy Germany's war potential, notably her heavy industry.¹

The Soviets had a different attitude towards reparation. Their economy, based on complete control by the authorities of production, distribution, manpower and natural resources, could, they thought, absorb a constant unlimited flow of imports without disruption. They felt, then, that they could exact large-scale reparation from Germany and need not consider the effects on the world economy. Moreover, the U.S.S.R. was not concerned by difficulties that reparation payments might create for any democratic regime to be established in Germany after the war; she was prepared to control and supervise Germany and her satellites as long as necessary to secure payment. The Soviets proposed that reparation be allocated among the Allies according to each country's needs for economic reconstruction. Since the U.S.A. and Britain had resources for reconstruction upon which they could draw, preference should be given to the countries whose economies suffered most — that is, to the Soviet Union. They demanded reparation in the form of commodities and means of production (often whole factories). Germany and her satellites would be made to transfer, to the countries entitled to reparation, industrial equipment and machines, railway equipment, seagoing vessels and heavy vehicles, coal, metals and agricultural produce. The principle underlying this demand was that the post-war situation of the defeated countries should be not better than that of countries attacked in the war. Reparation in commodities — both basic equipment and current production — should be paid until the defeated countries were reduced to the level of the countries they had overrun. The Russians also claimed forced labor from the citizens of Germany and the satellite countries for the rehabilitation of regions laid waste in the war.²

Among the Western Allies, too, there were groups and circles, including special research bodies studying the international problems that would arise after the war, who maintained that claims to the property seized by

1 Robinson, N: op. cit. pp. 210—216. Balabkins, N: West German Reparations to Israel, p. 40.
2 Moses, S: The Jewish Post War Claims, pp. 12—15. Robinson, N: op. cit. pp. 216—218.

the Germans in occupied or annexed countries should not be waived, and that the return of this property to its rightful owners be demanded. This view was reflected in the first Allied statement (January 5, 1943) on the subject of restitution and reparation. In this document, the Governments of seventeen Allied countries and the French National Council announced that they reserved all their rights to declare invalid any transfers of property or title of property in territory under Axis control, whether the transfers were effected by force or by quasi-legal means. The declaration referred to acts of seizures already committed and to those which might occur in the future, and was a warning to the Axis that the Allies would refuse to recognize any such acts. While nothing was said about immediate legal steps to be taken, the importance of the declaration lay in its intimation of the direction of future policy.³

A further step was taken by Sir Herbert Emerson, head of the Inter-Governmental Committee for Refugees, in a Memorandum submitted to the Allied Governments on June 3, 1943. Emerson stated his view that the Allied declaration of January 1943 should apply not only to wartime seizures but also to those carried out before the war on grounds of race, religion or political opinion. He also voiced the opinion that it would be unfair to restore property only to persons who had escaped the Nazis and not to those who had failed to flee their grip.

In this Memorandum, Emerson was primarily concerned with the funds the Nazis had confiscated from the Jews and which they wanted to use in 1938 (under the Schacht-Rublee scheme) for financing the settlement of Jews outside Germany. This was the first time an international body — in this instance, the Inter-Governmental Committee for Refugees — declared that steps be taken to secure reparation for the rehabilitation of individual victims, and particularly Jews.⁴ At the Allied Conference in Paris in December 1945 which dealt with the matter of German reparation, this view was endorsed and acted on.

Towards the end of 1943, as the tremendous scale of the destruction wrought by the Nazis became known, the Allied position on reparation underwent a decisive change. It was now apparent that to aid the post-war reconstruction of the countries that had suffered reparation in one form

3 Ibid., p. 113.

4 Adler-Rudel, S: Aus der Vorzeit der kollektiven Wiedergutmachung, pp. 207—208.

or another would be required. That Germany would have to pay reparation gradually became the accepted view. Differences of opinion now focused on the scale and form of reparation and the period over which they were to be paid.

The turn in opinion was reflected in the program concerned with post-war relations between the victorious Allies and Germany presented by U.S. Secretary of the Treasury, Henry Morgenthau, at the second Quebec Conference in September 1944:

- a) After the war, Germany must surrender all machinery and industrial equipment needed by the countries she had ruined, and the remainder of German industry must be destroyed.
- b) Germany must be turned into a non-trading, agricultural country; reparation payments as such would not be exacted; but industrial equipment would be confiscated instead as a form of reparation.⁵

The first official Allied declaration to the effect that Germany must pay reparation was included in the agreement made public after the Yalta Conference on February 10, 1945 and was based on the ideas that had been raised at Quebec. The Allies decided that in order not to create problems of currency transfers they would not exact monetary reparation. Reparation would take the form of commodities and manufactures and would be levied from three sources:

- i) industrial equipment, machines, ships, German investments abroad;
- ii) transfers of annual quotas from current industrial production;
- iii) use of German labor power. Payment in the form of commodities and equipment would eliminate the need for foreign loans to enable Germany to pay, as had been the case after World War I. The U.S.S.R. proposed that the over-all sum to be exacted from the Reich be put at twenty billion dollars, to be shared equally between the Soviet Union on the one hand and the Western Allies on the other. Their proposal was not accepted.⁶

The subject of the reparation to be paid the Allies was discussed, but their size not fixed, at the July 1945 Potsdam Conference. The agreement reached there spoke of machinery and equipment to be taken out of Ger-

⁵ Robinson, N: op. cit. pp. 216—235.

⁶ Balabkins, N: op. cit. pp. 40—45. Robinson, N: Reparation and Restitution in International Law as Affecting Jews, p. 187.

many as reparation, and laid down that the reparation to the U.S.S.R. would come from the Soviet Occupation Zone in Germany, as well as from seized German property in Bulgaria, Finland, Hungary, Rumania and the Soviet-occupied Zone in Austria. In addition the U.S.S.R. would receive 15% of the industrial equipment and machinery to be confiscated in the West, in exchange for which she would periodically transfer quotas of food products to the West. A further 10% of equipment and machinery would go to the U.S.S.R. without any equivalent transfer. The claims of the U.S.A., Britain and other Allied countries entitled to reparation would be met from the Western occupation zones, from German assets abroad (other than those enumerated above), and from gold reserves in Germany confiscated by the Allies. Until a decision could be reached on the quantity of goods, machinery and commodities to be taken from the Western occupied zones as reparation, the Potsdam Agreement provided for the seizure of the German Navy and half the merchant marine.⁷

After concluding the Potsdam Agreement, the Western Allies had to fix the details of the amounts and types of reparation they were entitled to receive under the Agreement. These arrangements were set out in the Paris Reparation Agreement signed on December 21, 1945 at the close of the Paris Reparation Conference (November 9 to December 21). The Agreement laid down the Allies' share in all categories of reparation, set up an Allied organization to handle the distribution of the reparation (the Allied Reparation Agency), dealt with the utilization of the gold and jewellery it expected would be found in Germany, and established a special fund for the rehabilitation of refugees who could not be sent back to their own countries — the "non-reparables" (see below, Part B, Ch. III).

Although the question of restitution of property seized by Germany was not on the planned agenda of the Paris Reparations Conference, ten of the participating countries decided to add it, in accord with the Allied declaration of January 5, 1943. Restitution would apply to identifiable property, and that which had been seized during the period of conquest with or without payment. Moreover, indemnification was to be paid for objects of an artistic, educational or religious character which had been

⁷ Balabkins, N: op. cit. pp. 40—45, Robinson, N: op. cit. p. 187.

⁸ The AJDC Files: Reparation 1946. Robinson, N: Reparation and Restitution op. cit. pp. 191—192.

seized by the Germans but which could no longer be restored to their rightful owners.⁹

Immediately after Germany was defeated, the Soviets began faithfully to implement the Yalta and Potsdam decisions in their zone. In the first two years of their occupation the Western Allies too followed the policy of dismantling German industry — not so much to secure reparation as to destroy Germany's war potential. This followed from the assumption of American policy-makers in the years 1944 and 1945 that world peace would not be secure as long as Germany retained her heavy industry. They were still following the so-called Morgenthau Plan of September 1944 (p. 9 supra). The British and Americans dismantled first and foremost installations of Germany's heavy industry, and transported the machinery out of the country. Concerns that had directly served the German war effort were blown up and wrecked, while production at the remaining enterprises, including iron and steel, was restricted to low production quotas. In addition, research in physics and chemistry was halted, people who had held important executive and economic posts in the Third Reich were arrested — leaving the economy and administration without its upper echelons — and qualified cadres were dispersed.

It might be mentioned that the methods adopted by the Allies were, on the surface, remarkably similar to those applied by the Nazis in wartime. The Nazis, too, had obliged the conquered countries to send raw materials to Germany, removed industrial plants, mobilized skilled laborers for work in Germany, controlled prices and wages, allocated food and consumer goods, set quotas for industrial and agricultural production, and controlled foreign exchange, imports and exports.¹⁰

The Potsdam Agreement stipulated that the future of German industry would be settled by an Allied Dismantling Commission, which would decide what concerns were to be broken up and transferred to the Allies as reparation. The program, drawn up by March 1946, emphasized security rather than economics: Germany would be prevented from manufacturing planes and ships, her metallurgical and chemical industries would be sharply curtailed, and the German standard of living be reduced. The plan was to reduce German national income to half, and industrial output to 45% of the 1938 level. Political realities, however, did not allow much time for the implementation of the program. The cold war developed, sus-

⁹ Robinson, N: *ibid.*, p. 195

¹⁰ Balabkins, N: *op. cit.*, pp. 67—72.

picion of and hostility towards the Soviet Union increased, the British and American zones in 1947 were unified into the bizon (Bizonia) and the policy towards Germany underwent change. Germany was now to be part of the plans for the reconstruction of Western Europe, and economic reconstruction was begun in the bizon.

On August 19, 1947 the American and British Military Governments published an amended industrial plan for the bizon. It stated that under the existing policy of reparation the bizon could not be restored to economic health, and that for it to stand on its own feet and contribute to the economic reconstruction of Western Europe, German industry must reach its 1936 level. Nevertheless, a list of concerns to be dismantled, mainly steel works, was drawn up. The German economy was considerably damaged by the destruction of these concerns, arousing fears that the plan for European reconstruction would in consequence suffer. Partly in response to pressure in the U.S.A. and Britain, reparation and the razing of industrial concerns were terminated by the November 22, 1949 agreement between the West German Federal Republic and the Allied High Commissioners.¹¹

This was one of a series of measures, which included the Marshall Plan, monetary reform, the later plan for an European Defence Community and the Contractual Agreement between the Federal Republic and the Allies, intended to bring about the reintegration of Western Germany in Western Europe. Decisive for the change in the Allied attitude towards Germany was her place on the map. The Western Allies were prepared to make a completed turnabout in policy in order to prevent Germany from becoming a Communist, or neutral, country.

¹¹ *Ibid.*, pp. 57—63.

CHAPTER II

JEWISH ACTION DURING THE WAR IN THE MATTER OF
SECURING REPARATIONS FROM GERMANY

Beginning in 1939, and continuing throughout the war, demands were advanced that Germany pay reparation to the Jews. Initially, the demands formulated at that time largely by Jewish leaders, scholars and researchers active in Britain and the United States, who had escaped from countries overrun by the Germans, were for compensation for property and monies taken from the Jews. In 1944, as information accumulated on the mass murders committed by the Nazis, the call for collective reparation to the Jewish people was finally crystallized.

The demand for German reparation was first brought before the public by Shalom Adler-Rudel, who for many years had dealt with refugee aid and rehabilitation as Director of the Organisation of Eastern Jews in Berlin (1919 to 1930), and Director of the Berlin Jewish Community's Department of Productive Welfare (1930 to 1934). By 1939 he was in London, serving as Director of the Central British Fund set up to aid Jewish refugees from Germany. On 10 October 1939, immediately after the war broke out, Adler-Rudel drafted a memorandum containing concrete proposals for collecting factual information relating to Jewish demands for compensation from Germany. The memorandum was sent to a number of personalities in England and the U.S., most of whom rejected the proposal, among them the banker Max M. Warburg, Wilfred Israel and Norman Bentwich. Weizmann alone expressed agreement with the principle underlying the memorandum, and invited Adler-Rudel to see him. He assured him that he would raise the idea in meetings during his forthcoming visit to the United States and particularly with the Jewish organisations.¹

On 12 March 1940, Adler-Rudel met with Leonard Stein, President of the Anglo-Jewish Association, L. Schwarz, a lecturer at the London School of Economics, and A. Brotman, Secretary of the Jewish Board of Depu-

1 Adler-Rudel, S: op. cit. pp. 200—203.

ties. They discussed the evaluation of losses inflicted on the Jews by Germany, but reached no practical conclusions.

Late in 1940, when Ben Gurion visited London, Adler-Rudel sent him a copy of his memorandum and outlined what little had been accomplished until then. Feeling himself isolated, Adler-Rudel complained of the lack of interest in his proposals displayed by Jewish bodies and personalities. Their failure to act was, however, understandable: Britain was in a state of war and great difficulties were being encountered in taking in and settling the numerous refugees from Germany. In this situation, Jewish bodies and personalities were disinclined to concern themselves with projects for after the war, an end to which was hardly in sight.²

Several months later, on 6 March 1941, Adler-Rudel wrote another memorandum which he sent to Sir Herbert Emerson, head of the Inter-Governmental Committee for Refugees. Estimating the damage inflicted by the Nazis on the Jews of Germany and Austria at 4 billion marks, he put forward proposals for more accurate evaluation of damage and for claims for compensation. He also underscored the *sui generis* character of the situation as being not one of warring states, but of a state's striking at and declaring war on its own citizens.³

All of Adler-Rudel's activity at the beginning of the war on the issue of compensation was undertaken on his own personal initiative, without awareness of similar activity taking place in the United States and Palestine.

In the United States, important Jewish organisations — the World Jewish Congress, the American Joint Distribution Committee and the American Jewish Conference (set up during World War II) assisted by Jewish researchers from Europe, who could supply relevant information — began in 1941 to act on the question of post-war rehabilitation and compensation.

The first American body to raise the issue of reparation to German Jewry was the Committee for Peace Studies, set up by the American Jewish Committee in 1940 and headed by Professor Morris R. Cohen. It sought to carry out research on the situation of the Jews in Europe and to present proposals for securing their rights and getting compensation for them after the war.⁴

2 Ibid p. 202. Adler-Rudel, S: Oral History Division (OHD) 26.4.1961. p. 9.

3 Ibid pp. 10—13.

4 Balabkins, N: op. cit. p. 81.

In March 1941, the World Jewish Congress, which had already moved its headquarters from Geneva to New York, set up the Institute of Jewish Affairs with Jacob Robinson at its head. This research institute concerned itself with a number of issues, but it was soon apparent that Jewish policy should concentrate on remedying the consequences of Nazi persecution and providing the survivors of European Jewry with the means of subsistence. Accordingly, the Institute focused its efforts on securing for the Jews the maximum amount of compensation from Germany once she was defeated.

The principle that reparations should be paid by the defeated country not only to the victors but to a persecuted minority among its own citizens as well, was a new departure in international law.⁵ The implementation of such a plan called for an awakened, especially Jewish, public opinion that could spur the governments concerned to action. To that end, the World Jewish Congress convened a pan-American conference in Baltimore in November 1941. Although Germany was then at the height of her power, the World Jewish Congress deliberated on Germany's defeat, the liberation of the occupied countries and payment of compensation for all property stolen and despoiled. In his opening address to the conference, Nahum Goldmann said: "Who can doubt that we Jews have every right to international help for European Jewry after the war? If reparations are to be paid, we are the first who have a claim to them."⁶

In Palestine too, the demand for reparation for Jewish property seized in Germany and in occupied countries was raised in January 1943, following the Allies' declaration. The initiative came from the Nir Company, which, before World War II, had handled the "Ha'avara" agreement which transferred to Palestine capital owned by German Jews. In an interview with "Haaretz" on 20 January 1943, Nir's director, Zvi Schreiber, distinguished between three types of seized property: individual property for which claims could be made; individual heirless property, and property of Jewish communities and organisations that had been destroyed and for which it was not possible to make any claims. He also called attention to the fact that the necessary data on losses sustained had not been registered, nor had a Jewish organisation that could appear before the respective authorities as the official claimant of the Jewish people for its lost properties been established.

5 Goldmann, N: op. cit. pp. 216—218.

6 Goldmann, N: Ibid p. 250.

Schreiber correctly foresaw that the possibilities of restitution would depend on the willingness of the victorious Allies to interfere in the internal affairs of Germany, and the readiness of the future German government to make reparation in view of the fact that the Jews were not the only claimants on Germany's economic capacity. He expressed his belief that all the necessary extensive documentary data would have to be well-prepared, well-organised, and centralised.

Nir itself took steps in this direction and tried to gather as many claims as possible for individual property located within the borders of the Reich. It suggested to owners of such property who were living in Palestine, and who could bring proper evidence, that they give Nir power of attorney to represent them before the respective authorities and to liquidate the property after its restitution. Nir pledged to pay property-owners up to 50% of the sums obtained by liquidation in cash, the balance to be paid in company stocks. By this method, the company sought not only to concentrate efforts and economise on expenses, but also to transfer all funds to Palestine where they could be invested in productive ventures of benefit to the nation as a whole. Schreiber hoped his company's plan would arouse interest within the Yishuv and among world Jewry and ultimately lead to the establishment of a world-wide Jewish organisation dealing with Jewish claims.⁷

That Jewish immigrants from Germany, who had a personal interest in seized Jewish property, would be concerned with reparation was only natural, and indeed the Association of Central European Immigrants in Palestine, which began its political activity in 1943, dealt with this issue from then on.

One of the outstanding personalities in the Association of Central European Immigrants in Palestine was Dr. Siegfried Moses. In December 1944 he set up the Palestinian branch of the Council for the Protection of the Rights and Interests of Jews from Germany — an international body with its center in London. Moses was concerned with the question of war reparation in peace treaties, especially in the Treaty of Versailles, and attempted to assess what conclusions could be drawn from such precedents for the Jewish cause. During 1943, he published several articles in *Haaretz* and in the organ of the Association of Central European Immigrants which considered the extent to which existing international law, as embodied in the Versailles and other peace treaties, could

7 *Haaretz* 20.1.1943, vol. 25, no. 7114.

be invoked in support of the Jewish case. He concluded that existing law could not be relied on to any great extent and that new legal foundations would have to be laid. On the issue of who was to present the claims, Moses came down in favor of the Jewish Agency as the body to present the collective Jewish claim after the war.⁸

During September and October 1943, *Ha'aretz* carried an exchange between Moses and Nathan Feinberg, Professor of International Law and Relations. While both agreed that the time was ripe to establish the right of the Jews to reparation by extensive political action, they differed concerning the legal bases upon which the claims should rest and on who should be entitled to receive reparation. Feinberg examined the rights of German Jews who had remained in Germany, whereas Moses occupied himself with the claims of Jews in all occupied countries as well as with the collective claim of the Jewish people. Feinberg wanted to apply the minority rights enshrined in the Sèvres Treaty (1920) to the Jews who had left Germany, but Moses questioned the wisdom of this approach. The entire matter of minority rights was insecure and controversial and had yet to be put into effect with regard to compensation claims. It could not be used as a basis for the collective claim of the Jewish people. Instead, he felt that a legal framework should be established which could also be utilised for political ends. The Jews who had fled from Germany after 1933 should be considered part of a nation at war with the Reich and thus be entitled to reparation, as were all other nations who were fighting Hitler. The recognition of such a right would enable the Jews who had fled from Germany to claim compensation either officially through the Allied countries in which they were living, or, if they were not citizens of an Allied country, through a specially set-up international Jewish organisation.⁹

Moses expanded on these points in "Jewish Post-War Claims", a booklet published in September 1944 by the Association of Central European Immigrants, which began with a series of questions:

Would Jewish claims to compensation be included in the peace settlements after the war? Who would present these claims, now that so many Jews had been expelled from their countries or emigrated? Would the claims of Jews who had emigrated from Germany be recognised, seeing that they would be presented against a state of which they themselves

⁸ Moses, S: OHD 31.1.1971, p. 1.

⁹ *Ha'aretz* 19.10.1943, vol. 26, no. 7340.

had been citizens in the past? Could a collective claim be presented in the name of the Jewish people, and who was to present it? How should the claims be classified, and on what legal grounds could they be justified?¹⁰

Moses thought it a wrong tack to use international law as the point of departure for handling the Jewish case, and a mistake to advance only those claims which accorded with international law. The course to be followed was precisely the opposite: first work out the claims and only afterwards the legalities to be invoked when presenting them. What was called for was political, not legal, action. Have the justice of the claims recognised and that would be followed by political decisions on the part of the powers, formulated in concepts of international law. But care should be taken to avoid a situation where satisfaction of Jewish claims would depend on internal legislation in Germany that would mean no assurance of their being met. The conditions and methods of implementation must be laid down in the peace treaties.¹¹ Since the accepted usage was that claims for compensation are presented only by citizens of victorious states, in order not to discriminate against Jews from Germany, this provision must be revoked as regards Jews.

In addition to individual compensation, a collective claim must also be presented, for reparation to the Jewish people. This would be a claim in respect of Jewish property whose owners were unknown or dead, the property of Jewish institutions and communities that had been destroyed or had vanished and for damage done to the very fabric of the Jewish people's existence. To make the collective claim effective, a body was needed to represent the Jewish people. The Agency represented the Jews of Palestine, and it was incumbent upon it, together with Jewish international organisations, to take the initiative in setting up a representative body to present the Jewish collective claim. The first step must be co-operation between the larger Jewish organisations in the United States and England and the associations of immigrants from Germany. The role of these latter, who were the most closely involved, was of special importance.

A necessary condition for rendering the claim effective would be the readiness to accept compensation in the form of German commodities and/or services. The Agency would have to declare that as part of the

¹⁰ Moses, S: op. cit. pp. 1—5.

¹¹ *Ibid* pp. 15—30.

settlement between Germany and the Jewish people, Palestine was prepared to accept German commodities. Jews who had settled in Palestine and who were entitled to compensation would be able to receive money from the Agency in respect of their claims. The commodities received as collective reparation would be utilised both for building up Palestine and to help rehabilitate the victims of Nazi persecution among the Jewish people in the Diaspora.¹²

In addition to claims to be presented by Jews from Germany, attention should also be directed to claims to be presented by Jews from countries annexed or occupied by Germany. These latter claims would probably be presented by the annexed or occupied countries concerned.

For securing post-war claims, Moses proposed the following stages:

Political activity aimed at influencing projected peace treaties insofar as they touched on Jewish claims; registration of all Jewish claims; determining the capacity of Palestine to absorb German commodities and particularly capital commodities; ships, railways, etc. insofar as this might constitute a condition for satisfying individual and collective claims; confiscation of German real estate and other property in Palestine.

Besides claims in respect of loss and destruction of property, claims would also be advanced (in accordance with the provisions of the Treaty of Versailles) arising from discriminatory legislation and administrative measures dating from the beginning of the Nazi regime.¹³

Dr. Moses' booklet was the first document presented to Dr. Weizmann in London in which the question of reparation was put on a solid basis after thorough examination of the legal aspects, and played no small part in encouraging Dr. Weizmann to present the Allies with the May 1945 statement of Jewish claims.¹⁴ Indeed, the crystallisation of post-war Jewish claims owed much to this booklet which covered all the most important features of the claim submitted eight years later by the State of Israel: the Jewish claim as an innovation in international law; the collective claim regarding heirless Jewish property and in respect of the damage inflicted on the Jewish people; payment of compensation by Germany in the form of commodities for the development of Palestine; the establishment of a Jewish umbrella organisation to represent world Jewry in its claims for reparation from Germany.

12 Ibid. pp. 50—61.

13 Ibid. pp. 65—80.

14 Avner, G: OHD 30.9.1971, p. 3.

The Association of Central European Immigrants adopted Dr. Moses' recommendations. In this resolution of 27 October 1944 concerning Jewish problems after the war, it was stated that

Jewish claims for reparation after the war should be based on the recognition that the Jews constitute part of a nation at war with Germany since 1933; that reparation payments received for the collective claim of the Jewish people should first of all be utilised for the upbuilding of Palestine; and that individual claims by Jews for damages suffered through the Nazis should be centralised, every effort should be made for their realisation, and emphasis placed on the desirability of having such funds transferred to Palestine.¹⁵

At a convention of the Association of Central European Immigrants, held on 23 June 1945, Dr. Moses stressed the importance of cooperation between the Council for the Protection of the Rights and Interests of Jews from Germany and the Jewish Agency. He expressed the hope that the Jewish Agency would be ready to work jointly with the Council on all matters concerning Jewish claims, and added that the intention was cooperation not only in concrete actions, but also subsequently in decisions concerning the distribution and use of the funds. Inasmuch as the Council considered itself the official representative of the Jews from Germany, Dr. Moses proposed that whenever Jewish communities throughout the world would be asked to express their opinions on the question of Jewish claims, the Council too should be consulted.¹⁶

In the same year that Moses' booklet appeared (1944), another work on the same question was produced independently in the United States. The book of Dr. Nehemiah Robinson (member of the Institute of Jewish Affairs), "Indemnification and Reparations — Jewish Aspects" (New York, 1944), which also became a basis for the claim for reparation later made by the Jewish people, advanced proposals similar to those of Moses.

Robinson described the process of dispossession and persecution of the Jews, classified the kinds of damage inflicted, and estimated the value of property seized from the Jews at two billion dollars. Reparation would certainly be demanded, but, he stressed, the matter would be far from simple. Many Jews had emigrated from their countries of origin and

15 "Amudim" 10.11.1944, vol. 1, no. 15.

16 "Amudim" 13.7.1945, vol. 1, no. 50.

would not want, or would be unable to return; many others who had suffered from Nazi persecution would want to emigrate; many Jews had been killed and left behind no family or heirs; thousands of Jewish communities had been wiped out.¹⁷

Robinson proposed that the following principles be adopted in the demand for reparation:

- (1) Comprehensive indemnification with the objective of restoring Jewish life to what it had been before the Jews were subjected to discriminatory treatment;
- (2) Restitution of property wherever possible — whether confiscated, seized by ostensibly legal means, or sold, frozen or transferred under duress.
- (3) Wherever title to Jewish property had been transferred in exceptional circumstances, it must be assumed that this was done under duress. On presentation of evidence of ownership, such property should immediately be restored to its owners. The process of confirming title must be simple and speedy.
- (4) Restitution of commercial and industrial property must include revenues that had accrued from this property and compensation for any fall in its value.
- (5) In cases of property in the form of money, stocks, shares and Government loans, account must be taken of currency depreciation and compensation be claimed in full.
- (6) Property which had been destroyed or otherwise ceased to exist — and thus unable to be restored to its owners — should be compensated for in full.
- (7) The loss and destruction being enormous, all injured parties would not be able to be immediately indemnified. In the order of preferences that would have to be established, Jews should be given priority over other claimants.
- (8) Jewish institutions and concerns should be re-established.
- (9) Jewish public services should be restored.
- (10) Persons practising the liberal professions should be reinstated.
- (11) Compensation should be paid in respect of physical injuries suffered.
- (12) Account should not be taken of the nationality of the injured party

17 Robinson, N: op. cit. pp. 243—245.

claiming compensation, but only of his place of residence at the time he suffered the injury.

(13) Indemnification must begin immediately after the cessation of hostilities, even before peace treaties are signed.

In addition to compensation to individuals, claims should also be presented in respect of heirless property. The general rule in such cases is that the State inherits, but in this instance, it would be unjust to the Jewish people if the German Treasury should profit from the mass murder committed. The survivors, many of whom had emigrated to other countries, must be assured adequate economic and political conditions, and considerable resources must be earmarked for their rehabilitation. Heirless property should be utilised for this purpose, and a successor organisation must be established to be the heirs and to use the property for aiding the victims. A number of factors made it necessary to create such an organisation; Jews from the Axis countries or neutral countries could not expect aid from their countries of origin, and only an international organisation would be able to concern itself with this question.

To ensure that the property would not be damaged, deteriorate or disappear, it should be transferred to the custody of the Jewish successor organisation. This organisation would provide economic and legal assistance to Jewish claimants in presenting their claims and in establishing their right to their property.

Since the Axis countries would probably pay part of the compensation in commodities, the successor organisation should be able to claim part of these commodities, sell them and utilise the proceeds.

The successor organisation would see to the fair distribution of compensation to the victims of Nazi persecution and would provide immediate assistance when individual compensation could not be secured within a short period of time. The organisation should have legal status in every country in any way connected with the question of compensation. It should have the right to transfer property from one country to another unhindered by government restraints, to cooperate with international bodies, to conduct negotiations regarding seized Jewish property with the countries that had belonged to the Axis, and to participate in the process of securing legislation concerning compensation.¹⁸

Robinson ended his book with two important observations, which subsequently proved accurate:

18 Robinson, N: *ibid* pp. 250—262.

First that restoration of Jewish property would depend on the general attitude of the Allies towards Germany: whether German industry was to be rebuilt or not; into how many parts Germany would be divided; and how long the Allied occupation would last.

Secondly, that large-scale rehabilitation projects and the utilisation of raw materials, manufactures and equipment would be feasible mainly in Palestine. These projects must be coordinated with the needs of Palestine industry.¹⁹

The great importance of Robinson's book for the question of compensation was shown eight years later when the compensation claim was put forward in concrete form by the Claims Conference. It was Dr. Robinson who then made the most important contribution in giving the claims their final form, drafting the texts and laying the legal foundations. It was he who drafted the protocols between the Claims Conference and Germany, and he was later present at every stage in the enactment and amendment of indemnification legislation. His book too, like the booklet of Dr. Moses, was written without realization of the scale and nature of the European Holocaust, which explains why he could speak of restoring the previous state of affairs. Once the dimensions of the Holocaust became known, this was seen to be impossible. Nevertheless, the principal claims, the classification of the kinds of loss suffered, and the methods of indemnification as set out by him in his book, were all to be found in the claim presented to Germany by the Claims Conference in 1952.

It was Dr. Jacob Robinson, brother of Nehemiah Robinson and one of the directors of the Institute of Jewish Affairs, who drafted the resolutions on reparation which were accepted by the Conference of the World Jewish Congress held in Atlantic City from 26 to 30 November 1944.

This was the largest international Jewish Conference held during the war. It lasted five days, and 269 delegates, representing the Jewish communities of 40 countries, participated. In addition to 24 members of the Executive and Administrative Committees of the World Jewish Congress, there were 81 delegates from the United States, 86 from overseas countries, and 76 from the European Representative Committees installed in New York. These delegates spoke in the name of Jewish communities which were still under the Nazi heel or had just been liberated. Palestine's *Va'ad Leumi* sent a delegation composed of Dr. Bernard Jo-

19 Robinson, N: Ibid p. 269.

seph, representative of the Jewish Agency Executive, Dr. Siegfried Moses, Dr. Oscar Wolfsberg and Mordechai Bentov.

The Atlantic City Conference, which discussed current affairs and problems of post-war rehabilitation, may be regarded as a turning point in the thinking of the Jewish organizations and communities on the Jewish question of the day and on the relations of the Jewish people to the non-Jewish world.

The problem of restitution and indemnification was dealt with by a special commission chaired by Dr. Siegfried Moses. The points brought up in the commission were:

Reparation to be paid by Germany and her satellites; property of the Jewish communities that had been destroyed and heirless property of individuals.

Although considerable differences of opinion came to the fore in the commission, particularly with regard to the use of heirless Jewish property, agreement was ultimately reached: Germany should be obligated to pay indemnification to the Jewish people and the funds retrieved should be used for the up-building of Palestine as the only constructive solution to the Jewish problem. Noah Barou, Vice-President of the British branch of the World Jewish Congress, also proposed that Jewish organizations claim reparation from the German government for the overall loss inflicted on the Jewish people.²⁰

Two resolutions passed at the Atlantic City Conference concerned the question of post-war reparation:

Resolution No. 4: Restitution and compensation for losses suffered by surviving Jewish communities and by individual Jewish victims of Nazi and Fascist murder and seizure of property.

Resolution No. 5: Recognition of the principle that the Jewish people had a right to collective reparation for the material and moral losses sustained by the Jewish people and its institutions or by those Jews who (or whose heirs) could not make their own claims. These reparation were to serve the upbuilding of Palestine.

The Atlantic City resolutions further affirmed that in view of the unprecedented suffering that had been the lot of European Jewry, the claims of Jewish claimants and their representatives should be among those

20 Kubovitzki, L: Unity in Dispersion, pp. 221—222. "Davar" 12.1.1945, vol. 21, no. 5928, "Amudin" 16.3.1945, vol. 1, no. 34.

given the highest priority when reparation came to be discussed by national and international bodies.²¹

It was also decided to establish a successor organization — an international reconstruction conference — and reconstruction committees in the various countries which would see to the transfer of compensation payments to the Jews. Property rights that had belonged to Jewish communities, organizations, funds and institutions no longer in existence or to families that had been wiped out leaving no heirs, would be declared vested in the international Jewish reconstruction conference. This conference would utilize the funds at its disposal for the rehabilitation of the Jews of Europe and their communities, and would transfer funds for the development of Palestine through the Jewish Agency. It would be declared the legal representative of all missing Jews and those unable to present their claims. The international reconstruction conference would be entitled to take part in United Nations deliberations concerning reparation and restitution.²²

During these years, the Jewish Agency Executive initiated action on parallel lines. On 24 September 1943, Dr. George Landauer (from 1925 to 1934 head of the Palestine Office in Berlin, enthusiastic supporter of the "*Ha'avarah*" ("Transfer") agreement with Germany, and, from 1934 to 1954 director of the Jewish Agency Central Bureau for the settlement of German Jews) addressed a memorandum to the Jewish Agency Executive affirming that after the war was won, the Jewish people must be allowed to present its claims against Germany. Although aware that the Allies would not easily accept the idea of a collective claim of the Jewish people against Germany, Landauer insisted that in view of the special account to be settled between Germans and Jews, the claim must be presented. The chief objective of the Agency's political activity after the war must be the implementation of the claim.²³

The Jewish Agency London Executive discussed the question of reparation in March and May 1943, and appointed a committee (Professor Frankenstein, Leo Istorik, Harry Sacher, Paul Singer and Shalom Adler-Rudel) to tackle the problems involved. In late 1943, the Jerusalem Executive appointed a committee which was also intended to deal with the matter of reparation from Germany and to prepare a plan of action for

21 Kubovitzki, L: op. cit. pp. 221—229.

22 The World Jewish Congress: Resolutions of the Atlantic City Conference.

23 Balabkins, N: op. cit. p. 82. Balabkins, N: The Birth of Restitution, p. 9.

the post-war period. Its members were David Ben Gurion, Eliezer Kaplan, Dr. Siegfried Hoofien and Dr. Eliezer Shmorak.

These two committees were present at a meeting of the Jewish Agency Executive in London on 8 March 1944 which dealt with the question of compensation. According to Adler-Rudel, it also discussed the question of collective reparation. Opinions were divided. Some doubted the prospects of winning reparation, others thought it feasible. Weizmann held that the post-war political situation would decide the issue. Moreover, if a Jewish Commonwealth were set up in Palestine, the question of reparation would also be solved.²⁴ After this meeting, the Legal Adviser of the Jewish Agency Executive, Dr. Bernard Joseph (later Dov Joseph), was directed to draw up a memorandum describing the unique nature of the damage inflicted on the Jews by the Nazis and presenting the arguments upon which the claims to be presented by the Jewish Agency should be based.

The memorandum, comprising fourteen sections, was put before the Jewish Agency Executive on 27 April 1945. In the first part, dealing with the damage inflicted upon European Jewry, Dr. Joseph disagreed with Dr. Robinson's estimate, and evaluated Jewish property losses at 6 billion dollars (not including loss caused to Jews in Russia by the Nazis). Dr. Joseph underscored the responsibility of the German satellites for losses caused to Jews in different countries, and suggested that it might be possible to invoke existing international law as the basis for Jewish claims for reparation. In the second part of the memorandum, Dr. Joseph pointed to the decisive role of Palestine in solving the problem of European Jewry, and he dwelt on the role of the Jewish Agency as representing Jewish interests, including the right to claim collective reparation from Germany. The memorandum also stated explicitly that the right of the Jewish people to collective reparation to be used for the rehabilitation of Nazi victims in Palestine, would not affect the right of the persons concerned to demand individual compensation.²⁵

The memorandum by Dr. Bernard Joseph was the last in the long series of memoranda and proposals drafted during the war, dealing with the question of the compensation to be paid to the Jews after the war. As long as the war raged, these proposals remained visionary speculation. Only when the war ended did their importance become clear.

24 Adler-Rudel, S: op. cit. pp. 209-211.

25 Ibid p. 212.

CHAPTER III

JEWISH CLAIMS AFTER THE WAR AND
THEIR IMPLEMENTATION

On September 20 1945, Chaim Weizmann, acting in the name of the Jewish Agency, presented the four Powers with the first post-war Jewish claim for restitution of property and indemnification. The extent of the horrors inflicted by the Nazis on the Jews was now becoming known; moreover, the Allies, at the Potsdam Conference, had already fixed their claims for indemnification from Germany. Thus, he calculated, the proper moment had arrived for the Jewish Agency — representing the Jewish people and its link with Palestine — to put forward the Jewish claim.

In approaching the issue, Weizmann was influenced both by Siegfried Moses' booklet containing the legal case for the Jews' right to personal and global compensation, and by Dr. Bernard Joseph's memorandum detailing the damage and loss inflicted on the Jewish people. Both writers, it should be added, stressed the special role of Palestine as a place of refuge for survivors of Nazi persecution, and that global reparation was necessary for its development.

Using these arguments, Weizmann began his letter to the four powers by assessing the material damage inflicted on the Jews of Europe at two billion pounds sterling. Other crimes against the Jewish people — murder, oppression, the snuffing out of spiritual and intellectual creative forces — could neither be measured nor atoned for.

He proceeded by presenting the following claims:

- 1) Restitution of property including buildings, installations, equipment, funds, bonds, stocks and shares, valuables, as well as cultural, literary and artistic treasures. If the owners of the property, whether individuals or institutions, were still alive, their claims for restitution must be dealt with in the same way as those of citizens of the United Nations.
- 2) Heirless Jewish property remaining in Axis and neutral countries should not revert to those states but should instead be restored to the representatives of the Jewish people, and thus finance the material, spi-

ritual and cultural rehabilitation of the victims of Nazi persecution. Proceeds from such sources earmarked for use in Palestine should be handed over to the Jewish Agency.

3) Since heirless property would not suffice for the enormous task of rehabilitation and resettlement in Palestine, the Jewish people should be allocated a percentage of all reparation to be paid by Germany. This allocation, in the form of installations, machinery, equipment and materials, to be utilized in developing the National Home in Palestine, should be entrusted to the Jewish Agency.

4) The share of reparation allocated to the Jewish people should include the assets of Germans formerly residing in Palestine.¹

Weizmann did not mention claims to compensation on the part of victims of Nazi persecution who had emigrated to countries other than Palestine. The claims being made were solely in the name of the Jewish Agency which, at the time, was demanding that 100,000 survivors living in Displaced Persons camps be permitted entry into Palestine, and not in the name of a world-wide Jewish umbrella organization.

Weizmann's memorandum was, then, the basis of only the State of Israel's claim which, six years later, was presented to the Federal Republic.

At the same time, however, leading Jewish organizations in the United States were addressing memoranda on the reparation question to the State Department. Proposals were submitted as early as April 1945 by the American Jewish Conference and by the American Jewish Committee.

On 1 February 1946, the World Jewish Congress set up a bureau, headed by Dr. Nehemiah Robinson, for the purpose of collecting information, initiating and promoting international activity in the matter of reparation, collecting documents and making recommendations on legislation.

This bureau published pamphlets on the subject of restitution of property, war damage, the status of Jews from Axis countries residing in Allied countries, as well as bulletins of current news with reports of progress made in the matter of reparation.² But to increase effectiveness, Jewish organizations active in this field — the Jewish Agency, the American Jewish Joint Distribution Committee (AJDC), the World Jewish Congress, the American Jewish Committee and the American Jewish Conference —

1 Israel, Foreign Office: Documents Relating to the Agreement between the Government of Israel and the Government of the Federal Republic of Germany, pp. 9—10.

2 Kubowitzki, L.: op. cit. p. 269.

decided in October 1945 to establish a joint committee. Their respective representatives were Maurice Boukstein (legal adviser to the Jewish Agency in the USA), Moses Leavitt (Vice-Chairman of the AJDC), the adviser on foreign affairs to the American Jewish Committee, Nehemiah Robinson (member of the Institute of Jewish Affairs) and Isaiah Kennen (for the American Jewish Conference).

Seeking to influence the American Military Government to enact a property restitution law and to have heirless Jewish private and communal property transferred to a successor organization yet to be established,³ the committee set out on its work with much energy. On 19 October 1945, only a few weeks after being formed, the committee already presented proposals and recommendations to Under-Secretary of State Dean Acheson and to other senior State Department officials.⁴

An outstanding role in contacts with the State Department and the White House was played by Jacob Blaustein (at the time Executive Committee Chairman of the American Jewish Committee and its President from 1949 to 1954). He began his activity among the higher echelons of the administration in the matter of compensation and restitution of property in 1945, and continued this work for more than twenty-five years. To make contacts and influence people in the State Department and the White House, he made use of his personal and political connections, which carried considerable weight. Blaustein was an oil magnate (a member of the family that founded the American Oil Company), Vice-Chairman of the US Petroleum Administration's Marketing Committee during the war, and member of other wartime bodies. After the war, he served as adviser to the American delegation at the founding of the UN. As a result, he had contacts with leading figures in the US Administration and even had access to the President of the United States.

The Committee's efforts were not without effect. Military Government Law Number 59, the first dealing with restitution of identifiable property in the American Zone of Occupation in Germany, clearly reflected State Department and White House, and indirectly the Committee's influence. Moreover, the Committee's work could also be seen in the line adopted by the American representatives at the November-December 1945 Paris Conference. This was a conference of the Allied powers (other than Russia and Poland) and was convened to decide upon the distribution of the

3 Boukstein, M.: OHD, 28.6.1971, p. 1.

4 Kubowitzki, L.: op. cit. p. 270.

German assets according to the Potsdam Agreement. The conference, the first after the war to deal with payment of compensation to victims of Nazi persecution who could not be returned to their countries of origin, decided to establish an international compensation fund for these "non-repatriables". The idea was proposed by the US delegates and they pressed for its acceptance. Although opinions differed on the general problem of refugees, all the delegates felt duty-bound to give effective and speedy assistance to the "non-repatriables". It was not explicitly stated at the time, but it was well understood that many of these were Jews, and the conference acknowledged that responsibility for their rehabilitation rested on the entire civilised world.⁵

A draft resolution, stating that a special fund be set up to provide immediate assistance to stateless persons, was prepared by the American delegate, Jim Angel. The joint committee of the Jewish organizations offered its comments and the draft was accordingly amended — not "stateless persons", which would include hundreds of thousands who had not suffered at the hands of the Nazis, but "victims of Nazi persecution who cannot be repatriated"; not "immediate assistance" but "rehabilitation and settlement". Furthermore, the amended version now also included the right to present claims.

The new draft was later accepted as Clause 8 of the Conference Resolutions. "Non-repatriables" were defined as "victims of Nazi persecution in need of rehabilitation and not in a position to secure assistance from governments in receipt of reparation from Germany" (i.e. the USA, France, Britain, Czechoslovakia, Yugoslavia). It was decided that a project be worked out, in consultation with the Inter-Governmental Committee for Refugees, for

Refugees from Germany and Austria unable to return to those countries; refugees from Germany and Austria still in those countries who would be helped to emigrate; and refugees from countries that had been occupied by the Nazis and who were unable to return to those countries (not including prisoners of war).⁶

The international fund for the rehabilitation of "non-repatriable" refugees would draw on three sources:

- 5 Adler-Rudel, S: Reparations from Germany, pp. 86—88. Alder-Rudel, S: *Aus der Vorzeit der kollektiven Wiedergutmachung*, pp. 213—214.
6 Kubowitzki, L: *op. cit.* pp. 270—271.

Part of the non-monetary gold that the Allies would find in Germany; twenty-five million dollars to be taken from German assets in neutral countries; and a further twenty-five million dollars to be taken from assets in neutral countries belonging to victims of Nazis persecution who had died without leaving heirs.

Clause 8 further stipulated that the fund would be administered by the Inter-Governmental Committee for Refugees to which the gold to be found in Germany, as well as the money, would be entrusted. The moneys in question would be utilized for rehabilitation not for individual compensation (in projects implemented by public organizations). In consequence, receipt of assistance from this fund would not prejudice a person's later claims for compensation from the German government.⁷ Details on when and how the money would be transferred were not included in Clause 8. These were to be worked out at some future stage by representatives of the five governments in cooperation with the Inter-Governmental Committee for Refugees.

For the Jews, the Paris conference was somewhat disappointing. The Jewish people as such was not represented. Dr. Jacob Robinson was present on behalf of the World Jewish Congress, but as an observer; nor did the resolutions contain any explicit reference to Jews. Moreover, it was clear that the proposed fund was much less than was needed to rehabilitate the tens of thousands of uprooted survivors of Nazi persecution in need of help. Nevertheless, the Jewish organizations demanded a share in the implementation of Clause 8. Projects in which they would participate at various stages were prepared and discussed with representatives of the State Department.⁸

Shortly before the "Big Five" met again in Paris to discuss the details of Clause 8, the World Jewish Congress and the American Jewish Conference persuaded the State Department to appoint a Jewish advisory committee to be involved in the implementation of the clause. The committee was comprised of representatives of the World Jewish Congress, the Jewish Agency, the AJDC, the American Jewish Conference and the American Jewish Committee.

On 14 June, 1946, the five Powers signed an agreement, according to which a fund would be set up for non-repatriable refugees to be financed

- 7 The AJDC Files — Restitution 1946, Robinson, N: *Reparation and Restitution in International Law as Affecting Jews*, pp. 191—193.
8 Kubowitzki, L: *op. cit.* pp. 271—272.

from the three sources referred to in Clause 8 of the Paris agreement; the moneys were not to be utilized for personal compensation but for rehabilitation and assistance; Most of the refugees in the category being Jews, 90% of the non-monetary gold in Germany, 90% of the twenty-five million dollars to be drawn from German deposits in neutral countries, and 95% of heirless assets in neutral countries were to be utilized for Jewish rehabilitation; German assets and counterpart funds for gold would go to the Inter-Governmental Committee for Refugees or to the successor organization, which would transfer the funds to public bodies presenting projects of refugee rehabilitation. It was also agreed that funds intended for Jews would be handed to the Jewish Agency and the AJDC which, when projects would be presented, would be recognized as the public bodies concerning themselves with Jewish rehabilitation and assistance, and that neutral countries would transfer 95% of their heirless assets directly to the Jewish Agency and the AJDC.⁹

Shortly before this agreement was formally endorsed, the Jewish Agency and the AJDC, aware of its content, reached an understanding that the projects to be presented would be coordinated, and that the claims submitted would not exceed the amounts earmarked for the Jews under the agreement. The assumption underlying this arrangement was that 100,000 persons would be migrating to Palestine and that the Agency would take charge of resettling them.

The Jewish Agency-AJDC agreement, signed on 9 June 1946 on behalf of the Jewish Agency by David Ben Gurion, and on behalf of the AJDC by Harold Linder, Vice-Chairman of the organization,¹⁰ also stipulated that:

the AJDC would receive one-third of the German assets in neutral countries and one-third of the gold counterpart funds in Germany. These sums would be used to finance AJDC projects in the field of medical aid, child care, education (general and vocational), and settlement in countries other than Palestine, including the costs of migration. The Jewish Agency would receive the other two-thirds; that if the AJDC also bore the cost of migration to Palestine, it would receive a further sixteen and two-thirds per cent of the funds, or the cost of migration: that if the 100,000 immigrants did not reach Palestine within a period of eighteen months, or if the cost

9 The AJDC Files: Restitution 1946. Adler-Rudel, S: Reparations from Germany, p. 87.

10 The AJDC Files. Reparation 1946.

of their rehabilitation were met by Britain and the United States, the AJDC would not receive the supplementary percentage. It was also agreed that the funds referred in the Five-Power June agreement would not be distributed by the Allies themselves, and were to go directly to the Jewish Agency and the AJDC. These two organizations would themselves coordinate the projects for utilizing the funds.

In August 1946, as anticipated, the Inter-Governmental Committee for Refugees requested the Jewish Agency and the AJDC to present their relief and rehabilitation projects in order to receive their share of the funds. The projects, relating to migration and transfer, child rehabilitation, medical institutions, vocational training and economic assistance, were submitted shortly thereafter, in September 1946.

The moneys at the disposal of the Fund, however, were not distributed with the same alacrity. In fact, only after several years of efforts on the part of the Inter-Governmental Committee for Refugees, the IRO which replaced it at the end of 1946, the Jewish Agency and the AJDC, were the moneys in question actually received.¹¹ Of the neutral countries holding the twenty-five million dollars of German assets, Sweden alone transferred her share (twelve and a half million dollars) with due speed. The money was transferred to the Jewish Agency as early as July 1947, despite the difficult international situation concerning hard currencies and exchange controls. Switzerland, which was to hand over a similar amount, made its first transfer of four and a half million dollars only in June 1948, and its second instalment of four million dollars only in 1952. Switzerland's final transfer and the payment by Portugal were completed only in 1958.

The second source of funds — non-monetary gold in Germany — was even less tractable, though to be sure, the Americans extended every assistance in tracing the gold. Classification, valuation and sale continued until 1950. Expectations from this source were disappointed and the final sum received by the Jewish organizations amounted to only about three and a half million dollars.

Negotiations over heirless Jewish property in neutral countries, especially in Switzerland, were even more protracted and difficult. No way was found to waive the secrecy of banking operations protected by Swiss law. Efforts made by governments, international organizations and Jewish organizations yielded results only in 1962, sixteen years after the signing of the Allied agreement on the fund.¹²

12 Adler-Rudel, S: Aus der Vorzeit der kollektiven Wiedergutmachung, pp. 213—215.

11 Ibid.

The relatively meagre practical results to ensue from the Paris agreements should not detract from an appreciation of their historic significance. Those agreements established important precedents of principle: among the victims of Nazi persecution, the Jews were recognized as a specific group entitled to compensation. Furthermore, the right of Jews to claim individual compensation from Germany was also recognized.

Although the Allies' exertions to secure assistance for Jewish war refugees were such as to justify the pessimism of Siegfried Moses and Nehemiah Robinson, who foresaw that the Allies would not go to any great lengths to secure indemnification for the Jews, the Allies, and more particularly the United States, in the zones of occupation in Germany, did pass laws on the restitution of property and on indemnification.

In their Declaration of 5 January 1943, the Allies had stated that all transfers of property executed by the Nazis and their allies would be regarded as invalid, and under the occupation decrees, the Allies reserved the right to enact legislation for the restitution of property. In the economic situation prevailing in Germany in the first years of the Allied occupation, this was an easier task than indemnification for loss of life, physical harm, deterioration of health, loss of liberty and professional status. The property in question, comprising residential premises, institutions, factories and public buildings, was still partly in existence and still of value. Moreover, not to restore property to its proper owners would have constituted recognition of Nazi acts. For two years then, it was hoped that the Quadripartite government of the Allied Military Commanders would enact a uniform law for the British, American, Russian and French zones; and many drafts indeed were discussed by their legal officers. The hope for action, however, receded as the Cold War between the Soviet Union and the Western democracies emerged, beginning in 1947.

But even in the British, American and French zones, a uniform law did not come into being. Between the years 1947-1949, each controlling authority proceeded to issue its own law in its zone.¹³

The American and French occupation authorities were the first. Both promulgated laws on 10 November 1947: Military Government Law No 59 in the American Zone, and Military Law No. 120 in the French Zone, respectively.

13 Bentwich, N: Siegfried Moses and the United Restitution Organization, p. 194.

Jewish organizations in the US had played a decisive role in drafting Law No. 59, and of the restitution laws it was clearly the most important as well as being the most fully elaborated. The situation in the American zone also benefited from the positive attitude and sincere interest in the matter of restitution and compensation of Jewish victims of Nazism displayed by the Military Governor, General Lucius Clay, and his successor, John McCloy (later the American High Commissioner in Germany). Both, always ready to be helpful, went beyond duty's call and themselves initiated numerous proposals later passed on to the State and War Departments. General Clay, whose share in the initial stages of developing the Restitution Law in the American Zone was considerable, pressed for the law's enactment and implementation.¹⁴

~~The Committee of five Jewish organizations had laid down the basis of Law-59 as early as 1946.~~ On 2 October 1946, it presented its observations on the proposed Restitution Law for the American Zone of Occupation in Germany to Dean Acheson at the State Department. The Committee proposed that heirless property be handed over not to the future German government but to a special Jewish organization which would utilize the property for the rehabilitation of Jewish refugees. The property of Jewish organizations and communities no longer in existence should also be handed over to this organization.¹⁵ In mid-October, a draft Restitution Law worked out by the legal advisers of the War and State Departments was under discussion in these departments. It was first intended that the law be drafted by the *Laenderrat*, the German regional authority which, in mid-October 1946, did consider several drafts of the Restitution Law but without reaching agreement on a final draft. Some of the proposals of the Committee of the five organizations were quickly accepted by the War and State Departments, such as exemption from inheritance tax on restored property. Those that were not — transfer of heirless property to the Jewish successor organization; establishment of a Military Supervision Committee; appointment of officials to supervise the German restitution authorities — were discussed with General Clay during his visit to New York in November 1946, after which they too were accepted. In this connection, Dr. Nehemiah Robinson was very active, remaining in close contact with General Clay and his advisers. The amendments were included in the new draft law of March 1947. The *Laenderrat*, however, refused to pass the

14 Kagan, S: OHD, 24.3.1971, pp. 5-6.

15 The AJDC Files: Reparation 1946.

law and General Clay decided to place the question before the Allies for their decision. It was soon apparent that the Americans, British and French differed in their views on heirless property and that the prospects of arriving at a common view were slim. The Committee of five organizations accordingly pressed General Clay and the State Department to enact the law as a Military Law, and this was done on 10 November 1947.¹⁶

The French Restitution Law, promulgated on the same date, was simpler than the American Law. The British Authorities were slower to follow the American and French example, only in July 1949 did they finally promulgate a law for the British Zone which incorporated the major features of the American legislation, and that only after many efforts of persuasion directed at the responsible British departments in the Foreign Office and in Germany.¹⁷ The promulgation of these laws, however, still left many problems unsolved. Certain categories of property, for example, such as lost or destroyed property, bank accounts, bonds, stocks and shares, jewelry, etc. were not covered by these laws, nor did they deal with claims for restitution presented against the Third Reich, the Nazi Party and affiliated organizations.

The Restitution Laws enacted in the American, British and French zones respectively, each referred to successor organizations to be created to take custody of ownerless and heirless property. The establishment of a successor organization had been proposed earlier, when, in 1946, the Committee of five organizations were discussing the restitution laws with the State Department.

In December 1946, Bernard Bernstein, legal adviser to the American Jewish Conference (he had been a legal adviser to Eisenhower at SHAEF during the war) had proposed setting up two bodies:

A Jewish Restitution Commission which would be the successor organization implementing restitution claims regarding heirless private property as well as that of organizations and communities that had disappeared. The Commission would assume all responsibilities relating to the property — claiming it, taking possession, caring for it, and utilizing its revenues for rehabilitation, resettlement and assisting emigration.

A Commission for the Cultural Reconstruction of European Jewry which would take charge of cultural treasures and religious objects in Germany and in the countries occupied by her — to claim, collect, and distribute

16 Kagan, S: op. cit. p. 6. Kubowitzki, L.: op. cit. pp. 287—288

17 Bentwich, N: They Found Refuge, p. 16.

them either to their previous owners or to Jewish organizations, institutions and Jewish communities throughout the world.¹⁸

The first successor organization, the Jewish Restitution Successor Organization (JRSO), with its offices in Nuremberg, was set up in Germany by the American administration in June 1948. This organization was appointed directly by the American Military Government — the *Laender* in the American Zone of Occupation had nothing to do with it.

JRSO was comprised of thirteen Jewish organizations.* With the assistance of General Clay, JRSO was granted the status of a Government agency in restitution matters in the American Zone in Germany, and received facilities in matters of quarters, transport, etc.

JRSO presented tens of thousands of claims to heirless property. The moneys secured in this way were used for welfare and for aid to the Jewish Agency and the AJDC. JRSO also presented claims for the restitution of the property of communities, organizations and institutions. The moneys received were primarily utilized for the cultural and religious needs of communities re-established in Germany, providing them with synagogues and welfare institutions. Up to the end of 1967, JRSO received 200 million DM (in addition to property in real estate which was restored to the communities). The greater part of this sum was secured in an overall arrangement with the *Laender* and West Berlin.¹⁹

The parallel British organization for the restitution of property — the Jewish Trust Corporation — was set up in 1950, but only after protracted negotiations. The British had intended to establish a single organization for Jews and non-Jews alike, which would claim all heirless and unclaimed property and use the proceeds for the benefit of Nazi victims indiscriminately. Ultimately, however, they recognized the justice of the request of the Jewish bodies for a distinct corporation which would recover heirless and unclaimed Jewish property in the British Zone and use

18 The AJDC Files: Reparation 1946.

* The Jewish Agency, the AJDC, American Jewish Committee, the World Jewish Congress, the Agudat Israel World Organization, the Board of Deputies of British Jews, the Central British Fund, The Council for the Protection of the Rights and Interests of the Jews from Germany, the Central Committee of Liberated Jews in Germany, the *Conseil représentatif des juifs de France*, Jewish Cultural Reconstruction Inc., the Anglo-Jewish Association, and the *Interessenvertretung israelitischer Kulturgemeinden* in the American Zone in Germany.

19 Kagan, S. op. cit. pp. 7—8. Boukstein, M.: op. cit. p. 3, Bentwich, N: op. cit. p. 194.

it for assistance and rehabilitation of Jewish victims, the JTC, which was established in consequence, had much the same functions and prerogatives as the JRSO.²⁰

✓ The main task of the JTC was to locate and lay claim, within eighteen months, to property not claimed by 30 June 1950 (the final date fixed by the British restitution law for the submission of claims by property-owners or their heirs). Only 30 per cent of the claims presented by the Jewish Trust Corporation were personal claims. The remaining 70 per cent were based on research and surveys carried out by the Corporation itself. The organization submitted claims to the Courts for restitution of property *in natura*, or reached money settlements with the present holders of the property. Claims in respect to losses caused to communities were settled in arrangements with the *Laender*. By the end of 1967, the Jewish Trust Corporation had secured about 170 million DM. These moneys went to the Jewish Agency, the AJDC, the Central British Fund, the Council for the Protection of the Rights of Jews from Germany, communities in Germany, and organizations for building synagogues and *yeshivot* in Israel.²¹

✓ The French successor organization, the French section of the Jewish Trust Corporation, was set up only in 1952. Initially, the French authorities granted the rights to heirless property to the *Laender*, and the moneys secured were used for general indemnification purposes. In September 1951, these rights of the *Laender* were annulled, and in March 1952, the successor organization was established. By 1967, it had secured 27.5 million DM.

✓ As for compensation, in those years the laws passed in Germany were only on the *Laender* level. The first, the General Claims Law, published on 1 April 1949, was enacted in Southern Germany in the American Zone under pressure from the American Military Government. The most thorough-going and inclusive, it differed from the laws enacted in other *Laender* with respect to the kinds of loss and damage dealt with, the definition of the victims of persecution entitled to submit claims, and the level of compensation awarded to the injured parties. As a result of the lack of coordination between the *Laender*, the rights accorded to claimants differed in each region.²²

20 Benwich, N: op. cit. p. 186.

21 Bentwich, N: op. cit. p. 195.

22 Robinson, N: Ten Years of German Indemnification, p. 22.

Governmental bodies were established to deal with personal claims, and special tribunals were appointed to decide disputed claims. In July 1948, a group of German Jewish lawyers created an organization for the purpose of affording legal aid to claimants in difficult economic circumstances, helping them get what they were entitled to and protecting them from avaricious lawyers anxious to exploit their claims. The group prepared claims with meticulous care, secured evidence and documents and presented material to the German courts. Established in England, it developed into a large organization called the United Restitution Organization. ✓ The central office of URO was set up in London, chosen for its proximity to Germany, and because it served as a link between Germany, Israel and the USA — the countries where the majority of the claimants were living. The URO opened offices in Paris, New York, Los Angeles, Tel Aviv, Jerusalem and Haifa, as well as legal offices in the American, British and French Zones and in Berlin. Since the work of these offices required expertise in German law, they were manned by German Jewish lawyers who had practised in Germany before Hitler.

The URO soon came to embody the international Jewish efforts concerning indemnification, and the three major organizations concerned with the Jewish refugee problem — the Jewish Agency, the Central British Fund and the AJDC — agreed to finance its modest budget. ✓

In the first few years of its activity, the URO did not secure much money and had a permanent deficit. These difficulties continued until 1953, when the Federal Republic promulgated its indemnification law earmarking funds for indemnification payments. After the Luxembourg Agreements, the Claims Conference took over financial responsibility for the URO, and by 1967, the URO had secured two billion DM for its clients and had repaid all the money it had received from the organizations that had supported it.²³

It will be recalled that at the Paris Conference, the Allies dealt with the question of heirless Jewish property in neutral countries and decided that a sum of twenty-five million dollars from this source be earmarked for the rehabilitation of non-repatriable victims of Nazism. Within the Allied countries themselves, there also remained a great deal of Jewish property. In the United States, however, property belonging to Jews from Germany, Rumania and Hungary was blocked as enemy assets. The definition of

23 Bentwich, N: op. cit. pp. 195—198.

enemy nationals included persons not only of enemy citizenship but also of enemy residence or origin, and made no allowance for the fact that the Nazis had stripped the Jews of their nationality. According to the Trading with the Enemy Law in the United States, all enemy property in the country — which thus included property held by Jews from Axis countries — was transferred to the Alien Property Custodian, and there was no way of claiming it. The problem was partially resolved by General License 42, which released the property of individuals who, on October 5 1945, were resident in the United States or in a non-blocked foreign country. Not all Jews, however, came under this general license, and to enable the Alien Property Custodian to return their assets, Congress, in March 1946 and August 1946, enacted Public Laws 322 and 671, respectively. These laws stipulated that property vested in the Alien Property Custodian should be released if the owner had at no time since December 8 1941 enjoyed full right of citizenship under the laws of his country of residence. Drafted in response to actions taken by the committee of Jewish organizations, these laws left unsolved the problem of possessions not vested in the Alien Property Custodian but blocked by the Treasury Department, mainly bank deposits. After Congressional intervention, the Treasury Department, in its letter of December 19 1946, agreed to apply to those funds the same rules set out in Law 671. Still another unsolved problem was that of heirless property: by law, a waiting period of fifteen years was needed before any claim could be presented. The committee of Jewish organizations began to press to have the law amended.

The Committee proposed that Clause 32 of the Trading with the Enemy Law, dealing with a claim to property presented by the owner or his heirs, be widened so that Jewish organizations in the United States be able to be named successors to heirless property and be entitled to present claims to property still unclaimed by August 1948. A proposed amendment to the Law, incorporating the above provision, and also stipulating that heirless property could be transferred to successor organizations only if the latter provided guarantees that the property would be administered in the interest of the political, racial or religious group to which its previous owner had belonged, was discussed in the State Department and was put before the Senate by Senator Robert Taft on 27 May 1948. The Senate did not pass the amendment until 1954, after which the moneys in question were released and handed over to JRSO.²⁴

24 The AJDC Files: Reparation 1948. The AJDC Files, Restitution 1946—1959.

As the work in this domain of the American Jewish organizations proceeded apace, the new State of Israel also began to act. Confronted as it was with immense and pressing problems of defense, immigration and construction, the State of Israel could not immediately turn its attention to the reparation problem. But as early as the beginning of 1950, the then Minister of Finance, Eliezer Kaplan, asked Dr. Hendrik van Dam, an influential Jewish lawyer in Germany who was Secretary-General of the Central Committee of liberated Jews in Germany, to draw up a memorandum on the question of the legal basis for claims to heirless property and the prospects of securing its restitution to the State of Israel. On 1st July 1950, van Dam presented his conclusions to the Finance Minister. Reparation to the Jewish people, he wrote, are a moral question for both the German and the Jewish peoples. In Germany, the awareness of a moral obligation was giving way to political and economic considerations. The German Government, motivated by such considerations, was interested in reaching a settlement of the question of reparation, but its readiness to do so would not persist for long. The moral claim of the Jewish people, no less than the moral obligation of the Germans, could not be denied and Israel could not continue to reject reparation. Bound to take action, Israel should do so soon. Van Dam affirmed the Government of Israel's special right to present the global claim in the name of the Jewish people. Israel, he concluded, itself constituted the legal authority for its claim.

Van Dam stated a number of grounds justifying action on the part of the Government of Israel: Since a settlement had to be reached on the governmental level, there was no potential partner to the negotiations other than the Government of Israel. It would in any case be necessary to import merchandise from Germany. The US too, had an interest in a Germany paying reparation to Israel. This would offset, as it were, America's failure to carry out de-Nazification and its courting of Germany.

It should be noted that van Dam did not consider the possibility that any other Jewish bodies would participate in the negotiations with Germany.²⁵

At about the same time, on 25 July 1950, another memorandum on Jewish claims against Germany was drawn up by Alexander Easternman, the European Political Secretary of the World Jewish Congress. It was presented to Lord William Henderson, British Under-Secretary for Foreign Affairs, as the Allies were about to discuss their future relations with

25 Vogel, R: The German Path to Israel, pp. 22—26.

Germany, and was based, on the assumption that the Federal Republic must take upon herself responsibility for the deeds of the Third Reich.

✓ Easterman's memorandum demanded dissemination of knowledge of what the Nazis had done, trial and punishment of Nazi criminals and German re-education. Much of the memorandum was taken up with the issue of compensation, Easterman calling attention to the inadequacy of the relevant laws in Germany. The claims categories they included were incomplete, and moreover, they set arbitrary time limits for presenting claims. (According to their provisions, only persons who had been in Germany on 1 January 1947 in the American Zone of Occupation, and on 1 January 1948 in the British Zone, were entitled to present claims. This disqualified many thousands of claimants):

Easterman proposed that in any agreement to be signed between the Allies and the Federal Republic concerning the future of Germany, the question of restitution should remain in Allied hands and the German Government be required to introduce a uniform compensation law for all of Germany, without limits regarding place and time; Jews who had been expelled or forced to emigrate from Germany be enabled to receive compensation in their countries of residence for their assets in Germany, and all property benefits they received be exempted from "Equalization of burden" taxation. ("Equalization of burden" was a tax imposed by law (14.8. 1952) on property holders in Germany to alleviate the plight of Germans expelled from the East into the area of West Germany.)

Personal compensation, however, would not make amends for all the property seized by the Nazis, nor would it in any way constitute atonement for murder, for the suffering and hardships inflicted on the Jewish people as a whole. Consequently, Germany bore the additional responsibility, which it was incumbent on her to discharge, of making global reparation to the Jewish people. This she must do in commodities, services and other means. Compensation must be made to world Jewish organizations endeavoring to rehabilitate the victims of Nazism in the countries to which they had escaped. Jewish communities throughout the world had made very considerable sacrifices to assist and rehabilitate these refugees, a task which will take many more years, and the Federal Republic must be asked to shoulder part of the burden.²⁶

While van Dam and Easterman both affirmed the right to claim global reparation, Easterman, unlike van Dam, referred not to the State of Is-

26 Balabkins, N: op. cit. pp. 276-280.

rael, but only to the Jewish organizations as the prospective recipients of reparations.

On several occasions after submitting his memorandum, Easterman met with Henderson to explain the Jewish position on the question of compensation. In his reply, in September 1950, Henderson argued that the proposal regarding reparation must come from Germany herself; the Allies could not oblige her to pay. This accurately reflected the Allied position and was restated later in response to Israel approaches on the subject.

As negotiations about concluding the Contractual Agreement between the Federal Republic and the Allies were about to get under way, Easterman, on 11 January 1951, again met with Henderson and presented the Jewish position on reparation. Henderson promised he would do his best to influence the Federal Republic to fulfil its obligations to the victims of the Nazis, and informed Easterman that the Federal Government had already been advised by the Allies to pass a general claims law. Easterman insisted that it was in the Allies' power to persuade Germany that she had a moral obligation towards the Jews and that she was duty-bound to indemnify for the harm done. Henderson countered that no amount of money could compensate the Jewish people for what had been done to it, nor could the German Government make adequate compensation. Nonetheless, he asked what sum would seem adequate as compensation, and who was to receive it. Easterman spoke of 500 million pounds sterling which should go in part to the Government of Israel and in part to a grouping of international Jewish organizations concerned with rehabilitation and aid to the victims of Nazism.²⁷

A number of points in Easterman's proposals were in fact later implemented:

In the contractual agreement between the Federal Republic and the Allies, the Federal Republic did undertake to pass a general claims law. Also, the sum mentioned by Easterman for global indemnification, half a billion pounds sterling, was the sum later demanded by the Government of Israel (1.5 billion dollars). Though not in his memorandum of July 1950, Easterman did foresee that global reparation would be demanded and received partly by the Government of Israel and partly by a general representative Jewish organization.

27 Balabkins, N: op. cit. pp. 283-290. Easterman, A: OHD, 19.3.1971, p. 6.

During these same months, towards the end of 1950, the Government of Israel was also discussing the problem of reparation from Germany. After the Finance Minister received the van Dam memorandum, the Government appointed a Commission to consider the various possibilities for demanding reparation from Germany. The Commission submitted a number of proposals which were considered at a meeting in Jerusalem on 4 September 1950 between representatives of the Government, the Jewish Agency and the AJDC. This was the first step towards coordinating in this sphere between the Government of Israel and the interested Jewish organizations.

Georg Landauer, director of the Jewish Agency Central Bureau for the settlement of German Jews, reviewed the proposals listed by the Commission: an over-all Jewish center for restitution and indemnification, which should be the only body authorized to deal with Germany, must be set up jointly by the Government of Israel, the Jewish Agency, the AJDC, the Central British Fund, URO, JRSO, the Jewish Trust Commission and the French restitution organization. Such an organization was essential; it would prevent duplication among the different Jewish organizations in contacts with the Germans, and could create and maintain pressure on Germany to secure the best possible indemnification law. This organization would endeavor to reach an overall settlement of all Jewish claims on Germany (including individual claims) and would also be in charge of the transfers of commodities to be accepted as reparation by Israel.

Maurice Boukstein, legal adviser to the Jewish Agency in the United States, opposed participation by the Israeli Government and non-governmental organizations in one and the same body. He argued that in view of the difficulties encountered by JRSO until then, the over-all claim proposed by Landauer had no prospect whatsoever of succeeding. Instead, the separate contacts with Germany then in progress should be continued, the various bodies concerned coordinating their activities. Dr. Joseph Schwartz, the director general of the AJDC, and Dr. Nahum Goldmann, also inclined to this view. The proposal to set up an overall organization was rejected and Boukstein's position — separate activity with coordination — was adopted.²⁸

28 The AJDC Files: Restitution 1946—1959.

CHAPTER IV

THE YEAR OF DECISION — 1951

In the prolonged and arduous process of formulating claims on Germany, 1951 was the year of decision. All the efforts by the Jewish organizations, the Jewish Agency and the Israel Government, beginning during the war, all the contacts made and all the soundings taken, came to a head in that year. Germany acceded to the demand that indemnification be paid and agreed to discuss the subject in direct negotiations with the Israel Government and the world Jewish organizations.

Initially, the contact with Germany was not direct. Direct contact was preceded by numerous attempts to get the Powers to pressure Germany to comply. The fear that Germany would shortly regain its sovereignty and thus the Powers would soon be deprived of their influence in matters of restitution and indemnification brought forth a rush of vigorous appeals. The first, in 1951, to address the Four Powers was the Israel Government.

In its Note of 16 January 1951 to the Four Powers on the subject of restitution and indemnification, the Israel Government reviewed the laws and regulations promulgated to date in Germany and the Allies, and declared them inadequate. Israel presented the following demands:

- 1) Retention by the Allied Occupation Authorities of control of restitution and retention of the Military Board of Review or equivalent non-German appellate authorities.
- 2) Improvement of existing indemnification laws — in particular, the adoption of a General Claims Law for the whole of the Federal Republic of Germany.
- 3) Immediate assumption by the Government of the Federal Republic of financial liability under the indemnification laws, jointly and severally with the *Laender*.
- 4) Acceleration of actual restitution and payment of compensation claims.
- 5) The urgent solution of the currency transfer problems.

Israel further argued for her special interest in the transfer problem. She had taken in the majority of the displaced persons who were in the camps in Germany at the end of the war and had thereby shouldered a financial burden which would otherwise have fallen on the Occupation Authorities.¹

On 20, 21 and 24 March 1951, the Western Allies replied to the Israel note in virtually identical terms. The Soviet Union did not reply. They explained that the delay in the enactment of a Restitution Law was a result of their expectation that a uniform Restitution Law for the whole of Germany would be promulgated by the Allied Control Commission. Only after they had become convinced that this could not be done were separate restitution laws promulgated in the different zones. The sluggishness of the restitution procedure, they argued, merely reflected the nature of judicial proceedings; moreover, many of the claimants were outside Germany. As for a General Claims Law, they were in touch with the Federal Government on the matter.

The problem of money transfers, they explained, could not be readily solved. The extremely unfavorable German foreign exchange position, and the continuing need for external financial assistance, made it essential to maintain the existing currency transfer restrictions in Germany. As long as Germany was still dependent on external assistance to balance her current budget, capital exports could not be authorized. Until the time when the form of future relationships with Germany would be decided, the question of how to settle restitution claims must remain in abeyance. Meanwhile, the Allies would stand firm on the implementation of the existing restitution laws.²

In practice, however, many obstacles were impeding the full implementation of the restitution laws passed by the Allies in their respective zones. Germans who held Jewish property seized or acquired at a token price were increasingly disinclined to return it. Hopeful that once the occupation status was replaced by a contractual agreement, property restoration would cease, pressure groups encouraged every delay in the implementation of the Restitution Law. The authorities for their part, were unwilling to embroil themselves with their own citizens over this matter. They were also hampered in transferring compensation for seized or illicitly ac-

1 Israel. Foreign Office: op. cit. pp. 13-15.
2 Ibid. pp. 28-33.

quired property to claimants outside the country by the currency restrictions imposed by the Allies.

The Israeli demand for continued Allied supervision of restitution and indemnification in Germany had been a concern of Jewish organizations in the United States and Britain from late 1950 to late 1951,³ and was discussed in the January 1951 meeting between Easterman and British Under-Secretary for Foreign Affairs Henderson. The demand was repeatedly made that in any new agreement between Germany and the Allies, the German Government should be obligated to implement the legislation on restitution of property, extend indemnification laws enacted by the Allies, and speed up the implementation process. Supervision of restitution, however, should remain in Allied hands. The fear of surrendering restitution to German control was based on the following considerations:

German court decisions were unfavorable and required reversal by the highest Allied court.

Several German political parties had openly favoured drastic modification of the law, and no German voice had been raised in defence of restitution.

Germans holding Jewish property had consistently refused to acknowledge their moral and legal liabilities.⁴

The demands raised by the Committee of the five US organizations in its numerous contacts with State Department officials during these months were summed up in its memorandum of 18 April 1951. Restitution of property, it was stated, was being effected only after endless delays, and hence the Allied Boards of Review had to be operative until restitution was complete. Germany had to be obliged to honor, implement and expand existing legislation and not to amend it without Allied authorization. It was also proposed that the Allies press the Bonn Government to enact a General Claims Law on the model of the Law in the American Zone. The German Government would have to provide the funds and personnel to implement the laws on indemnification. The new settlement with Germany must establish the rights of the Jewish successor organizations. Germany would have to authorize the transfer of money to claimants outside the country. The "Equalization of burden" tax should not be levied on Jewish property.⁵

3 JRSO Letters 18.10.1950, 6.12.1950.

4 JRSO Letters 19.12.1950.

5 The AJDC Files: Restitutions 1946-1959.

These demands met with understanding on the part of the US and British Governments. On 17 May 1951, the British Foreign Office appointed a three-member Committee to examine progress in the disposal of claims under British Military Law 59 in the British Zone of Germany and under ordinance 180 in the British Sector of Berlin. (The British Law of 12 May 1949 was based on the American Military Government Law 59 and followed it in all essential particulars.) The Committee was instructed to examine whether the law was being properly enforced; to ascertain the causes of delays; to make recommendations concerning any action which might be taken by the British High Commissioner to remove or reduce the causes of delays before relinquishing supervision over restitution. Judge D.N. O'Sullivan, Legal Adviser in the British Zone, was appointed Chairman of this committee, its other members being Alexander Easterman and Norman Bentwich. The committee's composition and instructions both reflected the British Government's readiness to accede to Jewish demands related to restitution and indemnification in the British Zone in Germany.

The Committee set out for Germany to hear evidence, and by 30 June 1951, at Lord Henderson's urgings for expeditiousness, the Committee presented its report. The conclusions were published in an official White Paper on 24 October 1951.⁶ In its report, the Committee presented a comparative survey of the implementation of the restitution laws in the three zones and in Berlin. It appeared that in the French Zone, 60% of the claims were disposed of, in the US Zone 37%, in the British Zone 14% and in Berlin only 5%. The Committee analyzed the causes of the delay in the British Zone and cited two major political reasons:

The belief and hope among the Germans that restitution legislation will be abandoned or drastically modified when the occupation statute was brought to an end; and the creation of associations whose expressed object was to organize opposition to the restitution laws. Their propaganda was calculated to frustrate amicable settlements and to retard the work of the German authority concerned.

There were also administrative obstacles: difficulties in proving the right of succession, difficulties in converting Reichsmark claims into Deutsche Mark claims, the absence of a General Claim Law in the British Zone, the unwillingness of the German Public Authorities to give effect to orders

6 The World Jewish Congress: Survey of Policy and Action 1948—1953. The AJDC Files: Restitution 1946—1959.

of Restitution Authorities, delays in the consideration of claims against the former German Reich, uncertainty as to the application of the proposed Equalization of Burdens Law.

To remedy the situation, the Committee recommended that the British High Commissioner make a statement to the effect that restitution of property, in accordance with the existing law, would continue, and that any contractual agreement with the Federal Government include an obligation by that Government to preserve and implement the Restitution Law and to execute the orders of the Restitution Authorities. It was further recommended that Allied supervision over Restitution Tribunals be maintained, that steps be taken to increase the number of judges and office staff in the Restitution Agencies and Chambers, that the machinery of restitution be re-examined, and that until a decision be reached on the liabilities of the Reich, administrative action be taken to ensure that restitution claims against the Reich be met. Law 59 was to be amended so that there should be no doubt that the power to decide the right of succession was vested in the Restitution Authorities, whose orders would be binding on German authorities. The DM/RM conversion rate for monetary claims should be fixed by law, and the Federal Government should be urged to enact a General Claims Law. The Committee also suggested that before supervision be relinquished, a decision be taken concerning exemption from the proposed "Equalization of Burden" tax on properties subject to restitution claims, that Law 59 be amended to provide retroactive effect to amicable settlements affecting restitution, and that the Federal Government be urged to accept liability for restitution claims against the German Reich and that the Contractual Agreement with the Federal Government provide for the continuance of this liability and for specific guarantees for its discharge.

As for the Jewish Trust Corporation (JTC) it was to be invited to formulate an aggregate claim for each of the *Laender* with a view to an overall settlement and the British authorities were to initiate negotiations to this end with German authorities. Similar negotiations were to be initiated with the Federal Government for the overall settlement of the claims of the JTC against the Reich. Also action was to be taken to remove restrictions on the transfer of sums paid into blocked accounts of claimants resident outside Federal Territory and a provision was to be inserted in the Contractual Agreement to ensure that the restrictions were not reimposed.⁷

7 Great Britain, Foreign Office: Report of the O'Sullivan Committee.

The greater part of the Committee's recommendations was accepted by the British Foreign Office. Law 59 was amended as suggested and steps were taken to halt the subversion of the restitution laws in Germany and to underscore the importance these laws would retain after the Contractual Agreement was reached. On 27 July 1951, in a letter which was released to the press, the British High Commissioner Sir Ivone Kirkpatrick informed the Prime Ministers in the British Zone of Germany of the British Government's determination to see the restitution completed. Moreover, His Majesty's Government also intended to see to it that the Contractual Agreement contain provisions ensuring the retention of the law regulating restitution in the British Zone, and the continued implementation of the restitution program.⁸

This letter followed upon an earlier (12 June) letter from the American High Commissioner, John McCloy, to the Prime Ministers in the US Zone, which, in accord with the British committee's suggestion, served as its precedent. As already noted, the personal attitude of McCloy helped speed up the enactment of a Restitution Law. But he did not stop at that. After the law was promulgated, he continued to press for the removal of difficulties and obstacles impeding its execution. In his efforts to accelerate restitution, he dispatched letters to the relevant German authorities and met personally with officials. He also encouraged the conclusion of global settlements between the *Laender* of the US Zone and the JRSO, and secured the restoration of heirless property.

His June 1951 open letter to the Prime Ministers in the US Zone, which like the British letter was also sent to the press, was intended to remove all doubts concerning Allied intentions. After calling attention to letters and comments that had appeared in the German press, proposals circulated by organizations, and statements attributed to *Laender* Government officials, all of which appeared to encourage speculation on US policy with respect to restitution of identifiable property, McCloy went on to reaffirm that policy. Persons and organizations deprived of their property as a result of Nazi persecution should either have their property returned or be compensated therefor. There was no intention to depart from these principles or to annul the obligations incumbent on the holders of property subject to restitution. Officials engaged in the administration of the restitution law should be informed that the US policy remains unchanged in this respect.⁹

⁸ Ibid.
⁹ Ibid.

As the question of restitution and compensation to individuals was being dealt with, the demand for global reparation by Germany to the Jewish people as a whole was also put forward. In its Note of 16 January 1951, the Israel Government stated that it reserved the right to devote a special Note to a problem not covered by the existing laws concerned with restitution and indemnification — the problem of the reparation owed by Germany to the Jewish people in its entirety. The Jewish masses throughout Europe were murdered and there was no one to present individual claims for the restitution of their property or payment of compensation.

This demand was later raised in the Israel Government note of 12 March 1951 to the Four Powers, a note which is the keystone in the history of negotiations with Germany. Here for the first time the global claim on Germany was presented in full detail and with all the supporting arguments. Nine months later it was accepted by Konrad Adenauer as the basis for negotiations between Germany and Israel and the Jewish organizations, and it served as the basis for the Agreement reached at the close of the negotiations in Wassenaar.

The largest part of the Note was taken up with an account of the historical background and was the work of Leo Kohn, then Counsellor in the Israel Ministry of Foreign Affairs. David Horowitz, then Director-General of the Ministry of Finance, provided the figures for calculating the claim. He advised that it be based on the fact that the Yishuv in Palestine and Israel had absorbed half a million Jews, victims of Nazi persecution, and proposed evaluating the cost of absorbing these immigrants at three thousand dollars per capita. On a clear, definite and incontestable basis, he thus reached the total of one and a half billion dollars.¹⁰

In a statement to the *Knesset* on 14 March 1951 on the subject of the Note sent to the powers, Foreign Minister Moshe Sharett declared:

Before the whole world, this document presents the Great Powers with a claim that has not yet been placed on the International agenda. In it, the Government of Israel demands the imposition on Germany of reparation payments to a total of a milliard and a half dollars, a sum representing no more than a quarter of the property that was sized. We bring forward this demand in the consciousness that the German people in its entirety is responsible for the killing and plunder inflicted by the former regime on the House of Israel in Europe and that this responsibility falls on both sectors of Germany. The Government of Israel,

¹⁰ Shinnar, E: *Be-Ol Korah U-Regashot*, pp. 16—17.

viewing as it does the State of Israel as the bearer of the rights of the slaughtered millions and as entitled and bound to demand satisfaction in their name, being the sole sovereign embodiment of a people that was condemned to death because of its nationality, claims for itself this sum of reparation payment. The demand for reparation has been calculated according to the burden that the people in Israel and Jewish organizations throughout the world have taken upon themselves in financing the rehabilitation and the absorption of a half a million survivors of the Holocaust who have settled or will settle in Israel.¹¹

The Note to the Powers was trenchantly expressed and gave vent to Jewish bitterness and hostility towards Germany. It opened with a horrifying recital of the systematic slaughter of six millions in the German campaign to wipe out the Jewish people. It estimated Jewish property seized at six billion dollars. This sum included the collective fine imposed on the Jews of Germany in November 1938 as well as other discriminatory fines, levies and taxes imposed by the Nazi authorities. It declared that the Israel Government considered the Federal Government, as the successor Government, responsible for the deeds of the Third Reich.

The Note repeatedly stressed that there could be neither atonement nor material compensation for the crime of genocide, and all that could be done was to secure compensation for the heirs of the victims and rehabilitation for those who had remained alive. The Germans were still enjoying the fruits of the slaughter and seizure perpetrated by the Third Reich. The dead could not be brought back to life, but the little that was possible to demand was that the German people restore Jewish property and pay for the rehabilitation of the surviving remnant.

The second part of the Note described Palestine's role in absorbing and rehabilitating those rescued from Nazism from 1933 on. In the eighteen years that had passed, the Yishuv in Palestine had taken in and rehabilitated about half a million people. Most of them had arrived possessionless, many as incurable invalids or cripples. Palestine did not possess a developed economy, and Israel, after its establishment, shaped its economic structure to create possibilities of livelihood for the immigrants. The greater part of the outlay involved fell on the people in Israel. Taxes were imposed and a regime of austerity introduced. After the war, when reparation were being claimed from Germany, the Jewish people had no formal legal status in the family of nations. For this reason its claims were

¹¹ Israel, Foreign Office; *op. cit.* pp. 24—25.

not raised earlier, though from the moral point of view these claims were more compelling than those of any other nation. Now, however, Israel could speak in the name of the Jewish people and demand reparation in its name.

The sum to be demanded had to bear a relation to the injury suffered by the Jewish people at the hands of the Nazis and at the same time also to the financial cost involved in rehabilitating the survivors in Israel. The Israel Government was not in a position to secure and submit detailed data on seized Jewish property, estimated at six billion dollars.

Accordingly it only remained for Israel to base her claim on the sums needed for the absorption and rehabilitation of the half-million survivors of Nazism. The sum needed was one and a half billion dollars. This approximated the value of exports from the Federal Republic in 1950. With the economic recovery of Germany, German exports were likely to increase considerably. If the reparation payments were spread over a number of years and transferred partly in the form of commodities, they would not be beyond the capacity of the German people. No progress would be possible towards restoring Germany to her place in the family of nations as long as this debt of hers remained unpaid.

In his speech to the Knesset (which was devoted entirely to the subject of the note) Sharett pointed out that payment of the reparation demanded by the Israel Government would not release the German Government from its responsibility for payment of individual compensation. It was merely to serve as a contribution towards closing the account between the German people and the Jewish people.

Sharett expressed the hope that the Four-Power Conference which was about to meet would deal with the demand for reparation payments and would impose on Germany the duty to make these payments. Since the Conference would deal with the final settlement of the relationship between the Powers and Germany, it was inconceivable that Germany should be permitted to return to the civilized world before she had surrendered her pillage.¹²

It is worth one's while to dwell on a number of points in this Note and in Sharett's speech which were later discussed in the negotiations and incorporated in the Agreement signed by Israel and the Federal Republic:

Israel here demanded one and a half billion dollars from Germany. She

¹² *Ibid.* pp. 25—28.

later was to divide the demand between the two sectors of Germany and to demand one billion dollars from the Federal Republic. The negotiations were in fact conducted on the basis of this sum and ended with a compromise by which Israel received seven hundred million dollars. In the Note it was suggested that part of the payments be made in commodities — as in fact was later done — and also that the payments be spread over a number of years so as to be within Germany's capacity to pay. In his speech to the Knesset, Sharett also stressed that the global payment would not free Germany from her duty to pay individual compensation to the survivors of Nazism. Both these subjects were later dealt with in parallel negotiations with the Germans and were concluded in two separate documents — the global payment was later settled in the Shilumim (Reparation) Agreement with Israel, and the payment of individual compensation and the necessary legislation in Protocol No. 1 with the Claims Conference.

After the Note was presented to the Powers, David Horowitz visited Washington, London and Paris to seek acceptance of Israel's demands. His first meeting was with the American Secretary of State, Dean Acheson, whose attitude towards Israel was one of extreme reserve. Horowitz described the Holocaust to Acheson and prescribed Israel's moral and legal claim to reparation payments from Germany. He stressed that the Nazi crimes could not be atoned for, but it was inconceivable that to rehabilitate the victims of Nazism Israel should suffer economic hardship while the Germans enjoyed the fruits of all their pillage.

Acheson was impressed by the arguments, but he was not, he claimed, in a position to decide the matter and referred Horowitz to Henry Byroade, head of the State Department German Desk. They met the following day, and Byroade declared that the arguments and considerations Horowitz had put before him represented an irrefutable moral claim. He promised to write to the American representative at the committee of the three occupying Powers in London and to request him to see Horowitz. Byroade himself would not undertake to say anything on the matters at issue, claiming that he was without instructions.

Horowitz next met with a representative of the Treasury who curiously enough was the one to lay bare the political aspects. The United States, he indicated, was interested in close relations with Germany and would not readily pressure her in any matter that might not be to her liking. He also explained that since the American taxpayer bore the main burden of German economic rehabilitation, it was he who in the final analysis would

likely bear the brunt of the Israeli demand. The Treasury representative was doubtful that Israel's claim could be acceded to.

Horowitz repeated his arguments in a meeting with Averell Harriman, an outstanding political figure at that time, who listened, but made no comment.

After the series of talks in Washington, Horowitz continued on to London where, as Byroade suggested, he met the American representative at the committee of the occupying Powers. This representative had apparently received instructions to assist Israel in her claim, but not to assume any obligation regarding the extent of the reparation payments. He spoke of the practical difficulties involved, proposed that a Commission be appointed to consider the problem, pointed to Germany's economic difficulties, and suggested United States mediation to bring about contact with the Germans. Horowitz replied with reserve: Israel wished to secure recognition on principle from Germany of the debt she owed Israel and the Jewish people, but any direct contact was extremely difficult in the light of the political and emotional obstacles.

In London, Horowitz also met with British Under-Secretary for Foreign Affairs Henderson. While Henderson's general reaction was favourable, he foresaw many difficulties of an economic nature, and doubted that Germany could be made to consent to settling Israel's claim.

In Paris, Horowitz met Charpentier of the French Foreign Ministry, who, while also stressing the obstacles, hinted that Israel should remain persistent.

The last in Horowitz' series of meetings was with Alexander Parodi, also of the French Foreign Ministry, whose influence in this sphere was decisive. It was a disappointing meeting. Parodi's attitude was purely legalistic. He declared his support from the moral point of view but argued that the State of Israel had no legal standing at all since she had not been in existence at the time of the Holocaust.¹³

These reactions encountered by Horowitz later reappeared in the Western Allies' reply to Israel on 5 July 1951. (The U.S.S.R. again did not reply.)

The replies were courteous, careful and evasive. The Allies expressed their sympathy for the Jewish people after what the Nazis had done and agreed with Israel's view that no material compensation could make up for the killing and the sufferings inflicted on the Jews. The United States

13 Horowitz, D: *Ha-Shilumim* pp. 14—15.

and Britain stressed that during the war they themselves had given refuge to numerous victims of Nazism. They also dwelt at length on what had been done so far for Jewish refugees. Reference was made to clause 8 of the Paris Agreement that had set up a special Fund to help refugees, the major part of which had gone to help Jews; 350,000 pounds sterling had been given to Israel by Britain (on 30 March 1949), money which Britain had received under the Paris Agreement as Mandatory Palestine's share of reparation; the Allies had also contributed to the IRO, which paid the cost of transferring refugees from Europe to Palestine.

The Allies further stated that they did not see how they could make the opening of a new phase in the relations between the Allies and the Federal Republic conditional on the Federal Government's acceptance of responsibility to pay reparation to the Government of Israel. Pending a definitive settlement, the date of which could not then be predicted, they were precluded by the Paris Agreement from asserting, either on their own behalf or on behalf of other States, further reparation demands on Germany.¹⁴

Despite acknowledgement of the moral justice of the Jewish claim — once the scale of the Holocaust became more fully known — the attitude of the Powers, and particularly of the United States, was rooted in other notably political, military and economic considerations. In the background loomed the "Cold War". The United States, through the Marshall Plan, was determined to rehabilitate weak and unstable countries in Europe, in order to prevent their being overwhelmed by Communism. Germany's geographical situation and potential strength could not be ignored. Thus the Allies' plans for punishing Germany soon gave way to plans for her rehabilitation and re-integration: Germany was to be brought closer to Western Europe and fitted into the economic, political and military organizations being set up there.

Hence, the United States, which had not exacted even the reparation due it, was not about to alienate Germany, an important potential ally, by pressing her to pay a large sum in reparation to another State. Economic considerations further reinforced this tendency. Germany was still being assisted and supported by the Marshall plan, and in the United States its ability to carry the burden of reparation was seriously doubted. It was feared that in consequence the bill of payment would ultimately be addressed to the American taxpayer.

To secure acceptance of the Jewish claim without having themselves

¹⁴ Israel, Foreign Office: *op. cit.* pp. 34—41.

to coerce Germany into paying, the Americans were ready to recommend direct negotiations between Germany and Israel. They were prepared to exert their influence over Germany in the course of the negotiations, but not to claim the money from Germany for Israel.¹⁵

The answer Israel received from the Powers pointed to the inelutability of a change in tactics by Israel and the Jewish organizations. For several years, despite the establishment of the Federal Republic, they had continued to address their claims to the Allies. The possibility of turning directly to Germany was not considered. Now they reached the conclusion that the Allies would not exert themselves to secure reparation for others. In fact, the only positive response to their claim was the German. Direct contact with the Federal Republic soon followed.

¹⁵ Rubin, S: OHD 29.3.1971, pp. 6—7.

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America's Germany

John J. McCloy and the
Federal Republic of Germany

THOMAS ALAN SCHWARTZ

Harvard University Press
Cambridge, Massachusetts
London, England
1991

gram. Among the most important opponents of America's rapid rapprochement with Germany were liberal and Jewish organizations, which echoed the sentiments of Israel's Foreign Minister, Moshe Sharrett, when he told the United Nations in September 1950, "The people of Israel and Jews throughout the world view with consternation and distress the progressive readmission of Germany by the family of nations, with her revolting record intact, her guilt unexpiated, and her heart unchanged." Despite the Cold War atmosphere of Washington, such groups had an important voice in the Democratic party and with President Truman, who was himself inclined to believe that Nazism was an inherent part of the German character. To convince this important segment of American public (and elite) opinion that the Federal Republic was a *new* Germany, with the desire to make amends for the crimes of Hitler, a generous restitution policy was essential.³⁶

McCloy's role in the restitution issue was less direct than his involvement with the war criminals, leading some recent German literature to express skepticism about his actual influence. McCloy's influence was important, but he used it in a more careful and more subtle way than he did on some other issues where the American interest was more immediately apparent. He wanted to avoid the charge that the United States was either "forcing" the Germans to provide restitution or that it was "indifferent" to such a gesture. Either impression would only have increased the unpopularity of *Wiedergutmachung* among the Germans, as well as having a negative effect on public opinion in other countries. The German public, although expressing agreement with the general principle of restitution, placed little priority on assisting the Jews, and a majority actually opposed the treaty with Israel. McCloy also needed to balance his concern for the restitution issue with the other priorities of American policy, such as securing a German defense contribution and promoting Germany's economic recovery. But within these constraints he played a decisive role in moving the Adenauer government to follow its better instincts, overcome its domestic opposition, and take a small first step toward reconciliation with the Jews.³⁷

From the very beginning of his tenure in office McCloy placed a high priority on Germany's attitude toward its own Jewish community. In July 1949 he told a conference of German Jewish delegates in Heidelberg that "the world will carefully watch the new Western German state, and one of the tests by which it will be judged will be

its attitude towards the Jews and how it treats them." He also emphasized "that the moment that Germany has forgotten the Buchenwalds and the Auschwitzes, that was the point at which everyone could begin to despair of any progress in Germany." One of his first actions while still Military Governor was to reverse a previous decision of General Clay's and approve a General Claims Law for indemnification of the victims of Nazism. McCloy's words and actions made it clear to German leaders that the United States would favor initiatives toward restitution, just as he made clear to them the interest of the United States in Franco-German rapprochement.³⁸

To strengthen this message further, McCloy played a direct role in assisting the Jewish Restitution Successor Organization (JRSO) in its activities in Germany. The JRSO, established by American decree, was declared the legal successor to all heirless Jewish property in the American-occupied zone. It was empowered to dispose of this property and use the proceeds for general Jewish purposes. Under the leadership of Benjamin Ferencz, a former Nuremberg prosecutor, the JRSO worked with the individual Länder in the American zone in an attempt to obtain restitution. Ferencz later recalled that he went to McCloy "dozens of times with problems," and he could not recall "a single time when I went away other than being completely satisfied with the way [McCloy] handled it." The High Commissioner often assisted the JRSO in pushing the German Länder into action. In April 1950 he told a meeting of the Minister-Presidents that they should work with the JRSO to arrange "some sort of global settlement" which would provide a speedy solution to many of the claims. He pointed out that this "would make an excellent impression abroad where a certain amount of bad feeling and criticism has been created by the long delays." After these negotiations for global settlements began, the High Commission continued to serve as mediator between the Länder and the JRSO, especially when it became clear that "the Germans do not have enthusiasm for the bulk settlement." As one American official noted, "The Germans profess the view that numerous JRSO claims will turn out to be against innocent third parties or against buyers from former Jewish owners who have not claimed restitution because they received full value and do not feel themselves in any way wronged or aggrieved." During the next two years the various Länder reached agreements on bulk settlements with the JRSO, but not without considerable "prodding" by McCloy. Informed

of Bremen's settlement with the JRSO, McCloy wrote Minister-President Wilhelm Kaisen that "I know you share my view of the importance of [restitution] in the development of Germany's future international relations." McCloy also made sure that the JRSO's administrative expenses were included in the mandatory occupation costs and did not require repayment to the German government.³⁹

Of even greater significance for the restitution question was the negotiation of the Luxembourg Treaty of 1952 between the Federal Republic and Israel. The difficult path to this treaty has been described in detail elsewhere. Despite the importance of Adenauer's desire for reconciliation, as well as the persistence of the negotiating teams from both nations, foreign influence did play a decisive role in securing the treaty. Without foreign pressure, opposition to the treaty, consisting of powerful forces in both countries, might have produced a stalemate. Political leaders in both Germany and Israel drew strength from the perception that negotiations resulting in a treaty would find support in "world opinion," by which they meant the United States.

Israeli leaders were very critical of the American-sponsored rehabilitation of the Federal Republic. It took serious economic difficulties within Israel to overcome their aversion to negotiating directly with the Germans. In January and March 1951 Israel submitted notes to the four occupying powers, demanding the payment of reparations in the amount of \$1.5 billion. The Soviet Union did not respond, but the Western powers replied that they could not force Germany to make such a payment and advised Israel to deal directly with Germany. Although various informal and highly secretive contacts had occurred between Germans and Israelis in 1949 and 1950, the first meeting between Adenauer and David Horowitz, governor of the Bank of Israel, took place in Paris during the final negotiation of the Schuman Plan in April 1951. American diplomats helped arrange this secret meeting, acknowledging the implicit connection between Germany's acceptance by the West and its need to make a gesture toward Israel. In September 1951, only a few days after the Allies had agreed to begin the final phase of negotiating the contractual agreements and the end of occupation, Adenauer spoke movingly in the Bundestag, expressing a willingness to make amends to the Jewish people for the "unspeakable crimes" committed in "the name of the German people."⁴⁰

Adenauer's support for restitution stemmed from his religious and

moral convictions, a strong appreciation of the contributions of German Jews to German life, and his deep distaste for the vulgarity of anti-Semitism. But although Adenauer's underlying motives were moral, he never lost sight of the political aspects of the question. The timing of his September speech was clearly designed to improve the general atmosphere for his talks with the Allies, and most important, to strengthen his standing with American leaders and public opinion. (Schumacher and the SPD also strongly supported Adenauer's position on this issue.) The Chancellor had heard from McCloy that the major U.S. concerns about Germany had to do with the persistence of Nazi beliefs and the question of whether Germany had really embraced democracy. Adenauer also believed that American Jews had a powerful influence on American policy toward Germany, and he hoped to reduce their opposition through a program of reparations. Indeed the positive response of American and world opinion to his speech must have confirmed his estimation. The *Washington Post* called it "the best thing that [has come] from Germany since before 1933," the *New York Times* termed it "a phase of moral regeneration," and other newspapers around the United States and in Europe echoed these sentiments.⁴¹

In December 1951 on a trip to London Adenauer met secretly with Nahum Goldmann, the president of the World Jewish Congress, and agreed to set \$1 billion (DM 4.3 billion) as a basis for negotiations. Although he had not secured Cabinet approval, Adenauer's unilateral declaration helped secure an Israeli willingness to negotiate despite intense popular opposition. In Israel thousands demonstrated outside Parliament on January 9, 1952, as it approved negotiations by a vote of 61 to 52. In Germany opposition was more muted but just as significant. The Finance Minister, Fritz Schäffer, vigorously protested Adenauer's commitment, arguing that Germany could not afford to specify any amount until its defense contribution and the question of its external debts were resolved. With talks set to begin in London on the settlement of Germany's outstanding debt, Schäffer hoped to delay any German commitment to Israel. He found an ally in Hermann Abs, the prominent banker and leader of Germany's delegation to the London talks. Their opposition led Adenauer to back away from his commitment to Goldmann by instructing his negotiators to bide for time and try to ascertain what the Israelis "really wanted."⁴²

Negotiations between the German government and the Israelis be-

gan in March 1952 at the Hague. The United States, though not a direct participant, informed the Israelis that it would "await with sympathetic interest the outcome of the [Hague] negotiations." The Americans wanted Adenauer to pursue the talks, but at the same time they feared any German attempt to shift the responsibility and financial burdens of *Wiedergutmachung* to American shoulders. Yet when Abs asked the United States to suggest postponing the negotiations with Israel, the State Department rejected the notion, fearing the political effects in Israel. McCloy assured Nahum Goldmann, "While I told the Chancellor that I could sympathize with those who had responsibility over the extent of commitments covering the military contribution, the debt settlement, and payments to Israel, I thought it would be unwise to postpone commencement of the discussions." When Adenauer told his Cabinet of America's continuing interest in negotiations, one of the Cabinet members noted "the influence of McCloy."⁴³

Despite American encouragement the Hague talks still faced enormous difficulties. The Israeli government had set its initial demand at \$1 billion, but the Jewish Claims Conference, representing Jews outside the Federal Republic and Israel, asked for an additional \$500 million. The Germans, however, stressed their "limited ability to pay" because of incomplete economic recovery and the unresolved matter of foreign debts. They insisted that the London and Hague negotiations were connected, and Abs argued that Germany could not take on additional obligations without the approval of its foreign creditors. To the Israelis this argument seemed to betray Adenauer's original position that Germany's commitment was fundamentally moral and not simply another financial obligation with an even lower priority than Germany's earlier debts. Soon it appeared that the talks would collapse.⁴⁴

In this tense situation the Israeli Ambassador in Washington appealed to Acheson to intervene with the Germans. He stressed the difficult political situation in Israel which would result if the Germans attempted to "dovetail Hague and London Conferences." Acheson responded cautiously, stressing that it was reasonable for the Germans to consider their other commitments, and that the United States did not want to "press Germans into commitments which might increase German dependence on US aid." Yet he also made it clear (and emphasized this to McCloy) that the "Germans should recognize unfortunate repercussions which would ensure [*sic*] if they now appear