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Karen Heilig

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From the Luxembourg Agreement to Today: Representing a People

By
Karen Heilig*

I. INTRODUCTION

During the last three years, I have been given the unique opportunity to engage Jewish history and to play a small part in fifty years of Holocaust restitution. I have been fortunate to benefit from the work of those who, in the aftermath of the devastation and destruction of the Holocaust, confronted unprecedented dilemmas during restitution negotiations and in the allocation of restitution funds. They were sailing in uncharted waters and had to reach difficult decisions and compromises. During this concluding phase of restitution matters, we are fortunate to have the benefit of their experience. The Claims Conference¹ successfully met the challenges before it during the last fifty years. This was due, in no small part, to the broad representation of the Claims Conference—geographically, religiously, and ideologically—thereby forging a consensus among the Jewish people as they dealt with unprecedented issues. I take this opportunity to pay tribute to the leaders of the Claims Conference who worked tirelessly for the Jewish people and in particular to Saul Kagan, whose wisdom and vision I have been privileged to witness first hand.

For over fifty years the Claims Conference has undertaken the daunting task of representing the Jewish people in Holocaust compensation and restitution negotiations. Throughout its history, the Claims Conference has not only negotiated Holocaust compensation and restitution agreements but has played a pivotal role in monitoring the implementation of laws and agreements and has participated in the distribution of funds. Since 1995 it has distributed DM 2.7 billion in direct payments to Holocaust survivors and allocated over \$400 million to organizations that provide for the needs of Nazi victims.² Recently, the Special Master in the Swiss Bank Settlement noted the important role of the Claims Conference, stating that:

* Karen Heilig is the Director of International Relations and Staff Counsel at the Claims Conference.

1. The Conference on Jewish Material Claims against Germany (Claims Conference) is a non-governmental organization.

2. CONFERENCE ON JEWISH MATERIAL CLAIMS AGAINST GERMANY, 2000 ANNUAL REPORT 3, 8 (2001) [hereinafter ANNUAL REPORT 2000].

[The] Claims Conference was created in 1951 . . . and has had a singular role in post-Holocaust compensation ever since. Virtually every significant German and Austrian indemnification and restitution program is directly attributable to the Claims Conference's initiative and strenuous negotiations on behalf of hundreds of thousands of Nazi victims. Of equal importance, within the last decade, the Claims Conference has utilized the proceeds of sales of restituted properties in the former East Germany to fund an ever-growing network of social welfare programs designed primarily for the benefit of needy and ill elderly Jewish victims of Nazi persecution.³

However, to understand the agreements and settlements of the 1990s one must recognize that Holocaust compensation and restitution is founded upon certain principles (legal principles and principles relating to distribution and allocation of funds) that have been developed over the course of fifty years.

II.

EVENTS LEADING UP TO THE LUXEMBOURG AGREEMENT

A. Pre-Luxembourg Developments

Following the suffering and destruction of the Shoah,⁴ the major Jewish organizations of the time⁵ conducted discussions with the United States Government on the issue of restitution and indemnification.⁶ As a result, the United States Government established two legal principles that, although ground-breaking at the time, are now unquestioned. First, it recognized that while the interests of private persons whose property was despoiled by Germany were protected by their respective governments, this was not a viable option for Jewish Nazi victims, many of whom were stateless.⁷ Thus justice called for allowing representatives of the Jewish people to pursue a global "Jewish claim." Secondly, on November 10, 1947 under Military Law No. 59, *The Restitution of Identifiable Property*, American authorities accepted that property subject to persecution measures should be restituted to a successor organization where there were no surviving heirs or no timely claimants for such assets. In June 1948 the Jewish Restitution Successor Organization was authorized to take action to recover any

3. Special Master's Proposed Plan of Allocation and Distribution of Settlement Proceeds at 121-22 n. 353, *In re Holocaust Victims Assets Litigation (Swiss Banks)*, 105 F.Supp. 2d 139 (E.D.N.Y. 2000) (No. CV 96-4849) [hereinafter Special Master's Proposal].

4. The Hebrew term "Shoah" is used here in place of Holocaust.

5. These organizations included the World Jewish Congress, American Jewish Committee, American Jewish Joint Distribution Committee, American Jewish Conference and the Jewish Agency for Palestine.

6. The representatives of these organizations presented proposals on restitution to Under Secretary of State Dean Acheson and other State Department officials on Oct. 19, 1945. NANA SAGI, *GERMAN REPARATIONS: A HISTORY OF THE NEGOTIATIONS* 33 (Dafna Alon trans., Magnes Press 1980).

7. "The United States ambassador to the Allied Commission on Reparations Edwin Pauley, argued that. . . most of the 'persecutees' (the name used in official circles for survivors of the Holocaust) were in fact stateless. They had been stripped of their citizenship at the same time as their assets had been seized by the Third Reich. [He further argued that] as stateless refugees they had no channels through which they could seek recompense." RONALD ZWEIG, *GERMAN REPARATIONS AND THE JEWISH WORLD: A HISTORY OF THE CLAIMS CONFERENCE* 13 (2d ed. 2001).

unclaimed or heirless property in the American zone⁸ and equivalent provisions were later adopted in the British and French zones and the western sectors of Berlin (and in recent years with respect to East Germany).⁹ This principle, which was established in response to the unprecedented devastation of the Holocaust, represented a departure from general legal doctrine, as it was and is in stark contradiction to the law of escheat whereby all heirless property reverts to the state.

B. Preparations for Negotiations with the Federal Republic of Germany and the Establishment of the Conference on Jewish Material Claims Against Germany

Although the German Lander adopted certain compensation measures immediately after the war,¹⁰ often at the urging of the occupying power, the main developments in indemnification measures commenced after the creation of the First German Federal Republic. On September 27, 1951 the first Chancellor of post war Germany, Chancellor Adenauer, declared that the German Federal Republic was prepared to commence discussions relating to material reparations with the newly established State of Israel and the representatives of world Jewry. Israel presented their claims in a series of diplomatic notes during 1951 to the four occupying powers.¹¹ The basis of these claims was the cost of resettling 500,000 refugees of Nazi persecution.¹² The occupying powers passed these diplomatic notes to the first German Federal Republic.

On October 26, 1951 Dr. Nahum Goldmann called together twenty-two Jewish organizations covering the broad spectrum of Jewish political and religious ideology and geographic location.¹³ The twenty-two organizations met at the Waldorf-Astoria in New York where they founded the Conference on Jewish Material Claims Against Germany (known as the Claims Conference)—an organization created to pursue the material claims of the Jewish world.¹⁴ The

8. *Id.* at 15; SAGI, *supra* note 6, at 41.

9. Military Law No. 120 in the French Zone was promulgated on the same date as U.S. Military Law No. 59. The British authorities only promulgated their law (British Military Law No. 59 in the British Zone of Germany and Ordinance 180 in the British Sector of Berlin) in July 1949. SAGI, *supra* note 6, at 38. The law in respect to East Germany was passed in 1990 and is described in section VI(2) below.

10. *Id.* at 42.

11. The first note was dated January 16, 1951 and a further note was presented on March 12, 1951. For a full discussion of these issues see *id.* at 49-61.

12. *Id.* at 55.

13. The organizations that are currently members of the Claims Conference include organizations as varied as the ultra-orthodox Agudath Yisroel, the World Union for Progressive Judaism, le Conseil Représentatif des Institutions Juives de France, the South African Jewish Board of Deputies, the American Jewish Joint Distribution Committee and the Jewish Labor Committee. See ANNUAL REPORT 2000, *supra* note 2.

14. "The principal objectives of the Claims Conference were:

- To gain indemnification for injuries inflicted upon individual victims of Nazi persecution;
- To secure restitution of assets confiscated by the Nazis;
- To obtain funds for relief, rehabilitation and resettlement of victims of Nazi persecution;
- To aid in rebuilding Jewish communities which Nazi persecution had devastated;

Claims Conference presented a *global claim* based primarily upon heirless assets—though in its explanation of the global claim, the Claims Conference pointed to the huge costs faced by Jewish organizations in resettling Jewish refugees and rebuilding Jewish communities devastated by the Nazis outside of Israel.¹⁵ As late as 1950 there were still tens of thousands of people in displaced persons camps in Europe. “It was estimated that there were up to 22,000 cases of serious mental or physical illness among the survivors of Nazism outside of Israel; another 150,000 less serious cases would also need help.”¹⁶ Significantly, the Claims Conference demanded that Germany enact comprehensive indemnification legislation to settle individual claims and resolved that the satisfaction of individual claims should have priority over the global claim.¹⁷ This decision to prioritize individual claims led the Claims Conference to make concessions on the global claim in reaching a settlement agreement with the Federal Republic of Germany.¹⁸

III.

THE LUXEMBOURG AGREEMENTS

After six months of negotiations, which at times were on the brink of collapse, the German Federal Republic signed an agreement on September 10, 1952 with the State of Israel and a separate but parallel agreement with the Claims Conference.¹⁹ The parties agreed that DM 3 billion in goods and services would

• To foster commemoration, research, documentation and education of the Holocaust.” Memorandum from Saul Kagan, Executive Vice President of the Claims Conference (1951-1998), to Members of the Negotiating Committee of the Claims Conference 3 (Jan. 14, 1999) (on file with author).

15. ZWEIG, *supra* note 7, at 34.

16. *Id.* at 35.

17. *Id.* at 34.

18. *Id.* at 36.

19. See Agreement Between Israel and the Federal Republic of West Germany, Sept. 10, 1952, 162 U.N.T.S. 205, *cited in* SAGI, *supra* note 6, at 212-29 [hereinafter *Isr-F.R.G. Agreement*]; Protocol I Between the Federal Republic of Germany and the Conference on Jewish Material Claims Against Germany, *cited in* SAGI, *supra* note 6 at 231-38 [hereinafter *Protocol I*]; Protocol II Between the Federal Republic of Germany and the Conference on Jewish Material Claims Against Germany, *cited in* SAGI, *supra* note 6, at 238-41 [hereinafter *Protocol II*]. Sagi relates that the road leading to the agreement was accompanied by criticism both in Israel and in Germany:

In Germany, reaction to Adenauer’s “personal move”—the acceptance without consulting his Government of an obligation which imposed a heavy economic burden on his country – came first from powerful economic interests and industrial and commercial circles. . . Among the principle opponents was Fritz Schaeffer, the German Finance Minister, who maintained that the German budget was already heavily burdened with the costs of occupation and relief for the millions of refugees. The addition of the Israel claim could fatally destroy the precarious balance that had been attained.

The reaction in Israel was more intense. On January 7, 1952, when the question of negotiations came before the *Knesset* . . . violence erupted. While the issue was being debated within the *Knesset* walls, a stormy demonstration . . . was raging outside . . . Demonstrators poured stones at the building. The police responded with force, the fight went on for hours, and hundreds of people were injured.

SAGI, *supra* note 6, at 81.

be transferred to the State of Israel.²⁰ The agreement with the Claims Conference consisted of two protocols. Protocol 1 called for the enactment of laws that would compensate Nazi victims directly for indemnification and restitution claims arising from Nazi persecution. Protocol 2 provided that DM 450 million would be paid to the Claims Conference to be used for the benefit of victims of Nazism according to the urgency of their needs, the principles and priorities determined by the Claims Conference, and in principle for the benefit of those living outside Israel.²¹ Collectively, these accords became known as the Luxembourg Agreements.

Both at the time and in hindsight, the 1952 adoption of the Luxembourg Agreements was wholly novel. The adoption:

was a revolutionary idea. In no previous case in history had a State paid indemnification directly to individuals, most of them not even its own citizens. Countries paid indemnification when they were defeated in war; the fact is as old as human history itself. But that a government should pay for crimes committed, not only to its own citizens, which was unusual enough, but to hundreds of thousands of non-citizens,²² or to another state, the State of Israel, which was not even in existence at the time the crimes were committed . . . was truly a revolutionary idea.²³

Moreover, the agreement between Germany and the Jewish people was seen as one of the most important cornerstones of the newly formed German Federal Republic as well as an important element in the future relationship between Germany and the Jewish people. Because Germany viewed reparations to victims as a moral obligation as well as pragmatic policy, Germany provided reparations to victims who were in no political position to enforce such payments.²⁴ From the Jewish perspective, the Luxembourg Agreements represented recognition by the Jewish community of the German attempt to atone for its crimes, but in no way symbolized forgiveness of them.²⁵

IV.

1952–1965: IMPLEMENTATION OF THE LUXEMBOURG AGREEMENTS

During the period from 1952 to 1965, the Claims Conference focused on representing the Jewish people in negotiating indemnification legislation, as envisioned by Protocol 1 of the Luxembourg Agreement, and the distribution and

20. See *Isr.-F.R.G. Agreement*, art. 1(a), *cited in* SAGI, *supra* note 6, at 212.

21. Protocol II, art. 1, *cited in* SAGI, *supra* note 6, at 239-40.

22. Sagi notes that “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.” SAGI, *supra* note 6, at 16 (footnote added).

23. NEHEMIAH ROBINSON, *TEN YEARS OF GERMAN INDEMNIFICATION* 8 (1964), *quoted in* Special Master’s Proposal, *supra* note 3, at E-15, 16. (Mr. Robinson was the principal legal advisor to the Claims Conference at the negotiations leading to the Luxembourg Agreements). Also, “[t]here was no legal precedent for the Luxembourg Agreement, both because there is no international law regarding individual financial reparations and because there had never been such a wide-ranging agreement between a sovereign state and voluntary organizations.” ZWIG, *supra* note 7, at 187.

24. See SAGI, *supra* note 6, at 3.

25. ELAZAR BARKAN, *THE GUILT OF NATIONS: RESTITUTION AND NEGOTIATING HISTORICAL INJUSTICES* xxiv (2000).

allocation of the funds awarded to the Claims Conference under Protocol 2 of the Agreement.

A. Allocation and Distribution of Luxembourg Funds

The allocation and distribution of funds was conducted in accordance with certain fundamental principles and procedures. First, applications for funding were initially reviewed by an allocations sub-committee created by the Executive of the Claims Conference.²⁶ Recommendations of the sub-committee were thereafter submitted to the full Board of Directors of the Claims Conference for approval.²⁷ This procedure allowed all Jewish Organizations represented in the Claims Conference to participate in the decision making process. The structure outlined above is the same basic structure that is used today to distribute institutional allocations.²⁸

In addition, certain basic principles were established that would guide all allocations. Saul Kagan memorialized these principles in 1954 and they can be summarized as follows:

- All allocations must be governed by the contractual obligations of the Conference.
- No new agencies will be created by the Conference for the spending of allocated funds.
- No allocations shall be made to compensate institutions or individuals for property losses incurred as a result of Nazi action.
- No allocations shall be made to reimburse organizations for past expenditures in connection with the relief and rehabilitation of Nazi victims.
- Conference funds should not be a substitute for local fundraising or enable local organizations to forego assistance which they might otherwise obtain (e.g. heirless property, grants by local and central governments), nor to forego the use of local funds existing for the purposes requested in the application (building or endowment funds, legacies, foundations, etc.).
- Conference funds should not be allocated to new institutions principally created for the purpose of receiving Conference funds, unless there are compelling reasons to do so.
- The Conference shall make allocations only to recognized, functioning relief organizations, unless there are compelling reasons to do otherwise.
- The Conference shall not make direct allocations to individuals, except in special cases.
- Communities largely dependent on external aid shall have priority over communities independent of external aid.²⁹

26. ZWEIG, *supra* note 7, at 91.

27. *Id.* at 99.

28. All allocations are presented to the Allocations Subcommittee of the Board of Directors and are thereafter presented to the full meeting of the Board of Directors of the Claims Conference. CONFERENCE ON JEWISH MATERIAL CLAIMS AGAINST GERMANY, AN OVERVIEW OF ALLOCATIONS: 1952-1999, at 8 (2000) [hereinafter OVERVIEW OF ALLOCATIONS].

29. ZWEIG, *supra* note 7, at 102-03.

A report entitled "Twenty Years Later—the Activities of the Conference on Jewish Material Claims Against Germany 1952-1972" details the expenditures during this first phase of the Claims Conference's activities. In general, approximately 76% of the funds allocated by the Claims Conference during that phase were for the relief, rehabilitation and resettlement of Nazi victims, 20% of funds were used for cultural and educational reconstruction, 1.5% for the legislative programs of the Claims Conference, and 2.5% for administration.³⁰

The funds for the relief, rehabilitation and resettlement of Nazi victims initially focused on the closing of the displaced persons camps, and in 1957 the last of these camps, Camp Foehrenwald, closed its gates.³¹ In addition, the Claims Conference assisted over 85% of the approximately 20,000 Jewish refugees from Hungary after 1956, the overwhelming majority of whom were Nazi victims, with emergency aid and assistance in migrating overseas.³² However, the largest distribution of funds from the Claims Conference allocations during this period was for the Claims Conference's "relief in transit" program. This program was designed to benefit Nazi victims in Eastern European countries who were barred from compensation under German laws. "Twenty Years Later," notes that the Claims Conference allocated a total of \$48 million to the program. The "relief in transit" program was conducted in a discreet manner by the American Jewish Joint Distribution Committee (JDC). During this period, the JDC acted as the main operating arm of the Claims Conference in its welfare and relief operations.³³ The number of persons who benefited from the "relief in transit" program in 1964 numbered over 200,000.³⁴

The second major effort to receive Claims Conference funding was the reconstruction of destroyed European Jewish communities, including their cultural and educational infrastructure. The rebuilding of Jewish communities that had been destroyed by the Nazis is an enduring legacy of the Claims Conference.³⁵

During the 1990s the Claims Conference devoted 80% of the funds derived from the sale of properties acquired by the Claims Conference as the successor organization in the former East Germany (described *infra*) to welfare and 20% to holocaust research, documentation and education.³⁶

30. CONFERENCE ON JEWISH MATERIAL CLAIMS AGAINST GERMANY, TWENTY YEARS LATER: ACTIVITIES OF THE CONFERENCE ON JEWISH MATERIAL CLAIMS AGAINST GERMANY 1952 – 1972, at 11 (1973) [hereinafter TWENTY YEARS LATER].

31. THE HOLOCAUST ENCYCLOPEDIA 159 (Walter Lacquer ed., 2001).

32. TWENTY YEARS LATER, *supra* note 30, at 12.

33. To this day, there exists a close relationship between the American Joint Distribution Committee and the Claims Conference. Specifically, during the last three years, the Joint Distribution Committee has overseen and monitored the allocation of over \$70 million from the Claims Conference, from funds derived from the Claims Conference designation as the successor to property in East Germany, to the social welfare *Hesedim* in the Former Soviet Union that assist the "double victims" of Nazi persecution.

34. ZWEIG, *supra* note 7, at 133; TWENTY YEARS LATER, *supra* note 30, at 12.

35. For further details about cultural and educational projects during this period, see TWENTY YEARS LATER, *supra* note 30, at 13, 53-66.

36. This allocation was recently endorsed by the Claims Conference. See Planning Committee, Conference on Jewish Material Claims Against Germany, A Plan for Allocating Successor Organization Resources 12 (June 28, 2000) (unpublished report, on file with author).

B. Indemnification Legislation

During the period between 1952 and 1965 the Claims Conference was intensively involved in monitoring and modifying German indemnification legislation. The Claims Conference initially concentrated on pressing for amendments to the first Federal Indemnification Law,³⁷ enacted in 1953, which provided for compensation for wrongful death, damage to health, loss of liberty, damage to economic standing, and limited property restitution. The provisions of the initial law contained numerous deficiencies including, *inter alia*, provisions that limited the persecutees eligible to receive compensation and limited the amount of compensation.³⁸ In response, the Claims Conference created a legal committee of experts which submitted a memorandum of inadequacies to the German Government.³⁹ A revised law, the Federal Indemnification Law ("BEG"), was enacted in 1956,⁴⁰ introducing so many changes that it assumed the character of a new law rather than a mere revision of an earlier law.⁴¹

The focus of the Claims Conference's political negotiations with the German government after the revised BEG was enacted were based upon (a) the inadequacies in the implementation in the law and (b) changing circumstances that required amendments to the legislation. During this period there were numerous instances demonstrating the inflexible and burdensome way in which the BEG was being implemented. For example, there were 74,000 claims for damages to health still pending in 1964, most of which were attributable to the requirement that the Holocaust survivor prove that the damage to his health was a result of Nazi persecution.⁴² The Claims Conference advocated the establishment of a presumption in the case of all survivors of concentration camps and ghettos that the damage to health was a result of incarceration.⁴³ In addition, despite the revisions of the law, the Claims Conference continued to urge the German Government to amend the indemnification legislation based on changing political realities and circumstances. For example, the tens of thousands of victims of Nazi persecution that fled Hungary after 1956 were ineligible to receive compensation under the revised BEG of 1956.⁴⁴ The Claims Conference presented the German Government with a comprehensive list of 50 amendments

37. The full name of the law was *Bundesergänzungsgesetz zur Entschädigung für Opfer des Nationalsozialismus (BErgG)*, v.9.18.1957 (BGBl I S.1387) [hereinafter *BErgG*].

38. For a summary of some of the deficiencies that were amended in the 1956 Federal Indemnification Law see Special Master's Proposal, *supra* note 3, at E-19, 20. In addition, the Special Master notes that: "The German press and radio frequently contrasted the slow indemnification procedure and the great number of rejected claims with the great generosity shown to former Nazis. The attitude of the indemnification offices and the courts was repeatedly criticized in the Bundestag." Special Master's Proposal, *supra* note 3, at E-20 n.41.

39. TWENTY YEARS LATER, *supra* note 30, at 126.

40. The full name of the law was *Bundesgesetz zur Entschädigung für Opfer der Nationalsozialistischen Verfolgung (BEG-Bundesentschädigungsgesetz)*, v. 6.29.1956 (BGBl. I S.559) [hereinafter *BEG*].

41. TWENTY YEARS LATER, *supra* note 30, at 126.

42. *Id.* at 127.

43. *Id.*

44. Generally, only Nazi victims who inhabited the German Federal Republic or West Berlin up to Oct. 1, 1953 and stateless refugees were eligible to apply to the BEG.

to the revised BEG.⁴⁵ Finally, after hearings at the Bundestag in 1964, a second revised BEG was enacted in 1965.⁴⁶

The second major piece of restitution legislation was the Federal Restitution Law (known as the BRUEG) which covered the restitution of personal property.⁴⁷ As with the BEG, the Claims Conference was involved in attempting to improve the law and monitoring the implementation of the BRUEG. During the critical years after 1952, the Claims Conference testified before the Bundestag. Representatives of the Claims Conference also met and lobbied members of the Indemnification Committee of the Bundestag, one of the most important committees of the Bundestag until the 1980s.⁴⁸ The Claims Conference office in Frankfurt, which had been in existence since the founding of the Claims Conference and, in fact, predated the establishment of the Embassy of the State of Israel in the Federal German Republic, served as the representative of the Jewish people on indemnification and restitution issues. Since their enactment, over DM 100 billion has been paid to individuals under the BEG and the BRUEG.⁴⁹

C. URO

In addition to direct negotiations with the German Government, the Claims Conference had a close relationship with the United Restitution Organization ("URO"), which not only assisted Nazi victims in pursuing their claims but also advanced certain "test" cases with the German courts relating to the implementation and interpretation of the restitution and indemnification laws.⁵⁰

Throughout this first phase, the Claims Conference pursued every avenue available to ensure that as many Holocaust victims as possible would be eligible for compensation. Nevertheless, after the deadlines in the Federal Indemnification Laws expired, thousands of Holocaust victims had not received compensation. Thousands were still behind the iron curtain and were unable to apply for or receive payments, some had missed deadlines while trying to rebuild shattered lives, and others yet had been unwilling to apply for payments from the German Government in the 1950s but with the onset of old age required financial assistance. In addition, the German Democratic Republic ("GDR") had neither contributed to individual compensation programs nor enacted property

45. TWENTY YEARS LATER, *supra* note 30, at 126.

46. The full name of this law is *Bundesentschädigungsschlussgesetz*, v. 9.14.1965 (BGB1. I S. 1315) [hereinafter Second Revised BEG].

47. The full name of this law is *Bundesruckerstattungsgesetz*, v. 19.7.1957 (BGB1. I S. 734) [hereinafter BRUEG].

48. The Indemnification Committee still exists as a subcommittee of the Committee on Internal Affairs.

49. Deputy Secretary of State Richard Armitage, Remarks at the Annual Meeting of the Conference on Jewish Material Claims Against Germany (July 18, 2001) (transcript on file with author) ("Through your efforts, more than half a million Holocaust survivors in 67 countries have received approximately \$60 billion in compensation payments"); *See also* CONFERENCE ON JEWISH MATERIAL CLAIMS AGAINST GERMANY, 1998 ANNUAL REPORT 8 (1999) [hereinafter ANNUAL REPORT 1998].

50. CONFERENCE ON JEWISH MATERIAL CLAIMS AGAINST GERMANY, 1962 ANNUAL REPORT 192.

restitution. For these reasons, the Claims Conference would continue to pursue its mission during the coming decades.

V.

1965–1990: THE ESTABLISHMENT OF THE HARDSHIP FUND

As a result of the détente between the United States and the Soviet Union, significant numbers of Soviet Jews, many of whom were victims of the Holocaust, were permitted to emigrate from the Soviet Union. Following this emigration, the Claims Conference advocated that these Nazi victims should be entitled to apply to existing indemnification programs—thereby extending the deadline of the BEG.⁵¹ Such representations were rejected by the German Government.⁵² After long negotiations, the German Government agreed to establish a “Hardship Fund” which would provide a one-time lump sum payment of DM 5,000 to those persons who had received no prior compensation.⁵³ Moreover, the German Government insisted that a precondition for the establishment of the Hardship Fund was a commitment by the Claims Conference to administer it.⁵⁴

The Claims Conference was confronted with two difficult decisions: should it agree to a program where the amount of compensation was only modest at best, and for the first time, would it, not the German Government, be the body to accept or reject an application for compensation from a victim of Nazi persecution? The Claims Conference agreed to the conditions of the Hardship Fund, and as of January 1, 2000, over 230,000 persons had received a payment of DM 5,000 from the Hardship Fund.⁵⁵

VI.

FROM 1990 TO THE PRESENT: REUNIFICATION AND THE END OF THE COLD WAR

During the last decade, there have been significant developments in Holocaust compensation and restitution. The two main factors that led to renewed and successful compensation negotiations in the 1990s were the fall of the iron curtain and the globalization of the world economy. After the fall of the iron curtain, the unified Germany, in implementation of its treaty obligations, began negotiations with the Claims Conference for payments to certain Holocaust survivors that had received little or no compensation. Further, globalization encouraged many German companies that had participated in wartime activities (by using slave labor or aryanizing Jewish assets) and many other companies

51. ANNUAL REPORT 1998, *supra* note 49, at 17.

52. *Id.*

53. *Id.*

54. Editorial, THE JERUSALEM POST, Nov. 28, 1996 (“When pressed about compensation for survivors who emigrated from the Soviet Union in the 1970s, Germany said no, because the original filing deadline for reparations had expired in 1969. Bonn later agreed to expand compensation but only on the condition that the Claims Conference . . . administer the program under the criteria established by the German Government”), *quoted in* Special Master’s Proposal, *supra* note 3, at E-41 n. 108.

55. ANNUAL REPORT 2000, *supra* note 2, at 17.

that profited from the despoliation of Jewish assets (such as insurance companies and banks) to do business worldwide—exposing them to political pressure, government regulators and lawsuits. Moreover, the fall of the iron curtain resulted in the availability of archival information that was not previously accessible. In addition to the above, in the 1990s the U.S. Government became extremely involved in and committed to pursuing Holocaust restitution. The combination of these factors resulted in the creation of the Article 2 pension program and numerous settlements with industry during the last few years. However, all of these agreements required difficult decisions and compromises—especially as the beneficiaries were often by now an elderly population—but would nevertheless be based upon the principles developed during the period after the Second World War.

A. Establishment of the Article 2 Fund (and Later the Central and Eastern European Fund)

In the mid-1970s, following the entry of both Germanys to the United Nations in 1973, the German Democratic Republic commenced negotiations with the United States for the establishment of diplomatic relations. In the course of these negotiations, following representations from the Claims Conference, the United States obtained a promise from the German Democratic Republic to discuss restitution and compensation issues directly with the Claims Conference.⁵⁶ These negotiations were initially conducted on a low level and in the guise of meetings between the Anti-Fascist Committee (“AFC”) and the Claims Conference.⁵⁷ During the course of one of these meetings in November 1976, the East Germans wired the sum of \$1 million to the Claims Conference as a humanitarian gesture to aid Nazi victims in the U.S. East Germany also informed the Claims Conference that talks on compensation would serve no purpose.⁵⁸ This payment was returned.

During the 1980s the Claims Conference and East Germany renewed discussions. A number of these negotiations were conducted between the GDR and the Claims Conference at the highest level, including a meeting between the President of the Claims Conference, Rabbi Israel Miller, and President Honecker, but the GDR continued to deny any responsibility for Nazi era wrongs, and ultimately these compensation discussions did not bear fruit.

During 1990 the German Federal Republic and the German Democratic Republic negotiated the reunification agreement and the Treaty on the Final Settlement with Respect to Germany (also known as the “2 + 4” Treaty) concerning the withdrawal of Allied forces from both Germanys. The Claims Conference, with the active support of the United States Government, pushed for the continuation of the Federal Republic’s pre-reunification policy on restitution by the uni-

56. Benjamin Ferencz, Report to Board of Directors, Conference on Jewish Material Claims Against Germany (July 3, 1979).

57. *See id.*

58. CONFERENCE ON JEWISH MATERIAL CLAIMS AGAINST GERMANY, HISTORY OF THE CLAIMS CONFERENCE: A CHRONOLOGY 16 (2001) [hereinafter HISTORY OF THE CLAIMS CONFERENCE].

fied Germany.⁵⁹ Additionally, the Claims Conference urged the unified Germany to establish an additional fund for those Holocaust victims that had previously received little or no compensation. In accordance with these negotiations, the United German Government committed itself to further compensation in Article 2 of the Implementation Agreement to the German Unification Treaty.⁶⁰

Consequently in October 1992, after 16 months of negotiations, the German Government agreed to pay lifetime pensions of DM 500 per month to those persons who had experienced grievous persecution, were in pressing need, and had received little or no compensation.⁶¹ It was estimated at the time that about 25,000 Holocaust survivors would be covered by the criteria proposed by the German Government.⁶² Moreover, as with the Hardship Fund, the compensation program (which became known as "the Article 2 Fund") was to be administered by the Claims Conference.⁶³

The Claims Conference faced a dilemma. It could either accept the narrow criteria of eligibility proposed by the German Government, or it could reject the offer as inadequate. After vigorous debate, the Board of Directors of the Claims Conference felt that it had no moral right to reject the proposed Article 2 Fund on behalf of those potentially eligible recipients. However, the Claims Conference insisted that it be entitled to continue to negotiate for the liberalization of the initial criteria.⁶⁴ In fact, due to liberalizations achieved since the establishment of the Article 2 Fund (such as the exclusion of social security payments

59. The United States Government did more than ask for a continuation of pre-unification policy. It supported the efforts of the Claims Conference for funds for victims that had received no or little previous compensation. The President of the Claims Conference wrote to Secretary of State James Baker III, "I write to express the thanks of the Claims Conference for your help in the issues of our concern. Your aid in making certain that the claims of survivors was placed on the agenda of issues to be dealt with after unification is very much appreciated. We were particularly gratified that your efforts led to Foreign Minister Hans-Dietrich Genscher's letter to you affirming that the Federal Republic of Germany would seek to provide 'expeditious and satisfactory resolution of claims of Jewish victims of the Nazi regime.'" Letter from Israel Miller, President, Conference on Jewish Material Claims Against Germany, to James A. Baker III, U.S. Secretary of State (Oct. 10, 1990) (on file with author).

60. For the text of the relevant provision, see THE CONFERENCE ON JEWISH MATERIAL CLAIMS AGAINST GERMANY, 1999 ANNUAL REPORT 18 (2000) [hereinafter ANNUAL REPORT 1999].

61. The U.S. Government was supportive during these difficult negotiations. In fact, after the completion of the negotiations, the Claims Conference formally thanked U.S. Ambassador to Germany Robert Kimmitt, for his assistance "in the final round of the negotiations when you personally intervened at the high levels of the German government to encourage a satisfactory conclusion." Letter from Israel Miller, President, Conference on Jewish Material Claims Against Germany, to Robert M. Kimmitt, Ambassador, United States Embassy, Bonn, Germany (Nov. 17, 1992) (on file with author).

62. THE CONFERENCE ON JEWISH MATERIAL CLAIMS AGAINST GERMANY, 1997 ANNUAL REPORT 13 (1998) [hereinafter ANNUAL REPORT 1997].

63. Pursuant to the Agreement Between the German Federal Ministry of Finance and the Claims Conference, dated Oct. 29, 1992, the original eligibility criteria of the Article 2 Fund were that beneficiaries (a) were in a concentration camp for at least 6 months, or were in a ghetto for at least 18 months, or were in hiding for at least 18 months; and (b) had received less than DM 5000 in previous compensation; and (c) had an income less than US\$16,000 for a single or US\$20,000 for a couple.

64. ANNUAL REPORT 1997, *supra* note 62, at 13.

from the income limit of persons over seventy, the inclusion of a significant number of additional camps from those previously approved, etc.), over 53,000 persons have been approved to receive pensions under the Article 2 Fund.⁶⁵ Moreover, in 1999 a Fund based on the same eligibility criteria was negotiated by the Claims Conference for those residents of Central and Eastern Europe not previously covered by any compensation program, and an additional 15,000 Holocaust victims receive pensions of DM 250 per month under the Central and Eastern European Fund.⁶⁶

Consequently, one of the most significant demands of the Claims Conference during the negotiations for the establishment of the German Foundation "Remembrance, Responsibility and the Future," was that the German Government provide an undertaking that the negotiations on "open issues" concerning the liberalization of the Article 2 Fund would continue after the establishment of the German Foundation.⁶⁷ The Claims Conference obtained this commitment⁶⁸ and negotiations on the open issues continued in December 2000, six months after the establishment of the German Foundation.

B. *Return of Jewish Property located in the Former East Germany*

Following reunification, the United Germany prepared legislation for the restitution or compensation of property nationalized by the communist government of the German Democratic Republic. The Claims Conference successfully negotiated a provision in the legislation, the Property Law of 1990 ("*Vermögensgesetz*"), that provided for restitution or compensation of Jewish property sold under duress during the National Socialist regime or confiscated by the Nazi regime.⁶⁹ As a result, Jewish owners of aryanized⁷⁰ property and their heirs gained the right to file claims for their property located in the former East Germany.⁷¹ Furthermore, following the principle that restitution legislation should designate a "successor organization" for heirless property (as was enacted in the

65. ANNUAL REPORT 2000, *supra* note 2, at 19.

66. *Id.* at 20.

67. See Letter from Israel Miller, President, and Israel Singer, Vice President, Conference on Jewish Material Claims Against Germany, to Stuart E. Eizenstat, Deputy Secretary, U.S. Department of the Treasury (Nov. 15, 1999) (on file with author).

68. This commitment was contained in letters to the Claims Conference from the German Ministry of Finance—the German Government Ministry responsible for indemnification issues. Letter from Dr. Kurt Bley, Department Head, German Ministry of Finance, to Dr. Karl Brozik, Representative in Germany, Conference on Jewish Material Claims Against Germany (June 23, 2000) (on file with author); Letter from Dr. Kurt Bley, Department Head, German Ministry of Finance, to Dr. Karl Brozik, Representative in Germany, Conference on Jewish Material Claims Against Germany (July 3, 2000) (on file with author).

69. The Claims Conference negotiated for the adoption of the principles which governed property restitution in West Germany into the proposed legislation. For example, all properties sold after the enactment of the Nuremberg laws in 1935 are presumed to be forced sales, unless the sale can be shown to have been for market value. *Gesetz zur Regelung offener Vermögensfragen*, v.28.9.1990 (BGBl. II S. 889, 1159), §1, ¶6 [hereinafter *Vermögensgesetz* 1990].

70. The term "aryanized property" refers to property that was owned by Jews but which the National Socialist regime forced Jewish owners to sell to an Aryan (as defined under Nazi law), or where the property was confiscated from the Jewish owner and placed in the possession of an Aryan.

71. *Vermögensgesetz* 1990.

military legislation in the American, French and British zones—see section II above), the Claims Conference was designated under the legislation as the successor organization for unclaimed or heirless Jewish individual property and for the property of dissolved Jewish communities and organizations.⁷² These properties are sold by the Claims Conference and the proceeds distributed in accordance with the principles set out below.

C. Allocation of Funds Derived from the Designation of the Claims Conference as the “Successor Organization”

While the goal of helping Holocaust survivors remains the fundamental principle of the allocation and distribution of Claims Conference funds, the needs of Holocaust survivors have changed dramatically since the 1950s and 1960s. During the 1950s and 1960s, funding was concentrated (i) for the resettlement of Nazi victims throughout the world; (ii) in Western Europe to help displaced Jews rebuild their lives, communities and cultural institutions; and (iii) for the “relief in transit” program. Since 1995, the priority of the Claims Conference has been to provide elderly Holocaust survivors with food, shelter and basic medical needs to ensure that they are able to live the rest of their lives in dignity. Consequently, approximately 60% of the funding goes to Israel where the largest number of survivors live and significant funding goes to the Former Soviet Union, where the needs of Nazi victims are urgent and overwhelming.⁷³ Current funding priorities include old age homes, senior day centers, psychogeriatric institutions, basic food and relief programs, medical supplies and equipment and programs that provide social services such as the Jewish Family Service Agencies in the United States.⁷⁴ In addition, 20% of funds have been allocated for projects for the research, education and documentation of the Holocaust.⁷⁵ Overall, since 1995 more than \$400 million has been allocated for such welfare and cultural programs.⁷⁶

D. German Foundation Initiative: The Role of the Claims Conference

1. Negotiations

As representatives of the Jewish world, the Claims Conference actively participated in the negotiations that established the German Foundation “Remembrance, Responsibility and the Future” (known as the German Foundation). The Claims Conference met with President Rau in November 1999 concerning a declaration of moral responsibility by the German Government and industry for

72. *Vermögensgesetz* 1990, §2.1, sent. 3.

73. OVERVIEW OF ALLOCATIONS, *supra* note 28, at 2.

74. *Id.*

75. *Id.* at 6.

76. For further details of individual projects that received funding see THE CONFERENCE ON JEWISH MATERIAL CLAIMS AGAINST GERMANY, 1999 ANNUAL REPORT 23-38 (2000) [hereinafter ANNUAL REPORT 1999].

the morally unjustifiable use of slave labor during the Nazi regime.⁷⁷ The subsequent statement of President Rau on December 17, 1999 will be of lasting significance to German-Jewish relations.⁷⁸ Moreover, the Claims Conference vigorously advanced many of the fundamental principles of the final framework agreement: that there was an essential difference between slave and forced labor, that the payment not be based on the financial situation or country of residence of the slave or forced laborer, that the payment be paid to both those that performed slave labor for private companies and public companies, that there be no reductions in payments for those victims that had received the BEG,⁷⁹ and that payments not preclude or reduce eligibility or payments from other compensation programs or prevent the continuation of the negotiations on the Article 2 Fund "open issues" (discussed above).⁸⁰

In addition, the Claims Conference advocated that a specific portion of funds to be contributed to the German Foundation, agreed on December 17, 1999 to be DM 10 billion, should be allocated to insurance and banking claims. The final allocation of the funds was agreed on March 23, 2000, following an all night meeting in Berlin.⁸¹ In the final allocation just over 80% of the DM 10 billion was designated for payments to slave and forced laborers, 10% to insurance and banking claims, 7% to a future fund, and the remainder to administration (including lawyers fees).⁸² The necessary documents establishing the German Foundation were finalized and signed by the parties, including the Claims Conference, in Berlin on July 17, 2000.⁸³

77. See Joan Gralla, *Jewish Groups to Meet Germany's Rau on Holocaust*, REUTERS, Nov. 15, 1999.

78. President Rau stated, "I know that for many [survivors] it is not money that matters. What they want is for their suffering to be recognized as suffering and for the injustice done to them to be named injustice. I pay tribute to all those who were subjected to slave labor under German rule and in the name of the German people, beg forgiveness. We will not forget their suffering." President Johannes Rau, Remarks at the negotiations for the establishment of the German Foundation (Dec. 17, 1999), at http://www.claimscon.org/compensation_de/rau.asp (translation by author).

79. Under the BEG there was no payment for slave and forced labor. "The German Government refused to make any payment for the work performed for private German companies, or for the pain and suffering connected with such labor. There was thus a gap in the legislative program. No special recognition was accorded the fact that large numbers of human beings had been subjected to conditions of slavery." BENJAMIN FERENCZ, *LESS THAN SLAVES: JEWISH FORCED LABOR AND THE QUEST FOR COMPENSATION* xvii (1979). The Claims Conference had presented to the Interior Committee of the German Parliament on June 15, 1987 a demand for compensation for Jewish slave laborers, based upon the premise that compensation for slave labor was a *lucrae* under existing German Government compensation programs. Letter from Dr. E. Katzenstein, Conference on Jewish Material Claims Against Germany, to Members of the Interior Committee of the German Parliament (June 15, 1987) (on file with author).

80. See Conference on Jewish Material Claims Against Germany, *Slave Labor Proposed Remembrance and Responsibility Fund* (June 15, 1999) (unpublished position paper, on file with author).

81. See Press Release, Treasury Deputy Secretary Stuart Eizenstat, Statement at the Conclusion of the 11th Plenary Meeting of the German Foundation Initiative (Mar. 23, 2000), http://www.state.gov/www/policy_remarks/2000/000323_eizenstat_berlin.html.

82. For the full details of the German Foundation "Remembrance, Responsibility and the Future" see <http://www.state.gov/www/regions/eur/holocaust/germanfound.html>.

83. *Id.*

Despite the fact that the majority of the negotiating committee of the Claims Conference are Holocaust survivors (affiliated with the two major organizations of Holocaust survivors in the United States and Israel), there have been, and will continue to be, criticisms of the German Foundation Agreement. For example, why are heirs generally excluded from slave labor payments? Is the sum of DM 15,000 appropriate for the degree of suffering endured by a slave laborer? The Claims Conference has faced these dilemmas before—in the 1950s, the 1980s, and again in the 1990s. However, when the Executive of the Claims Conference and Board of Directors of the Claims Conference endorsed the agreement, the Claims Conference was confident that, given the broad representation of the Claims Conference, the Claims Conference was implementing the collective consensus of not only Holocaust survivors but of the Jewish world.

2. *Distribution*

After establishment of the German Foundation, in addition to serving on the Foundation's Board of Trustees, the Claims Conference continued its historic responsibility of distributing and allocating indemnification funds and became involved in two aspects of the implementation of the German Foundation: distributing individual payments to former Jewish slave and forced laborers; and administering the Banking Humanitarian Fund. First, the Claims Conference was designated as the partner organization responsible for the distribution of payments to an estimated 160,000 eligible former Jewish slave and forced laborers worldwide, except those residing in the Czech Republic, Poland and the Former Soviet Union.⁸⁴

Second, the Claims Conference was designated to administer the Banking Humanitarian Fund. The banking component of the German Foundation consists of two sub-components. The sum of DM 200 million was allocated for the payment of specific individual banking-property claims to victims and their heirs to be administered by an independent panel.⁸⁵ A further sum of DM 276 million was allocated to Jewish victims of the Holocaust through the Banking Humanitarian Fund in recognition of the role and responsibility of German banks in the aryanization of Jewish property.⁸⁶ German banks were actively involved in and profited from the systematic aryanization of Jewish property throughout occupied Europe.⁸⁷ Overwhelmingly, the Jewish victims in Nazi-occupied Europe perished. In addition, although it can be surmised that the majority of victims of Nazi persecution alive today most likely have a claim against

84. Law Establishing the German Foundation "Remembrance, Responsibility and the Future", §9.2.7 (July 6, 2000), <http://www.state.gov/www/regions/eur/holocaust/foundationlaw.pdf> (translation by U.S. Dept. of State) [hereinafter *The German Foundation Law*].

85. *The German Foundation Law*, §§9.4.1 and 2.

86. *The German Foundation Law*, §9.4. A total of DM 300 million is allocated for the Banking Humanitarian Fund of which DM 24 million will be used for social projects to assist Roma and Sinti survivors.

87. See OFFICE OF MILITARY GOV'T FOR F.R.G. (U.S.), FINANCIAL DIVISION, FINANCIAL INVESTIGATIONS SECTION, REPORT ON THE INVESTIGATION OF THE DEUTSCHE BANK 5 (1946).

the banks, due to the profits or undue enrichment that systematically accrued to the banks from the aryanization process, it will almost be impossible for the vast majority of victims to prove such a case given the lack of documentation and the age of survivors.⁸⁸ Consequently, it was agreed that a portion of the banking component of the German Foundation would form a Banking Humanitarian Fund to be administered by the Claims Conference for social projects that will assist Holocaust survivors.⁸⁹ The designation of settlement funds that will assist needy Nazi victims reflects a continuation of the allocation principles developed by the Claims Conference following the Luxembourg Agreements.

E. Austria

During the negotiation of the Luxembourg Agreements, the Claims Conference proposed that Jewish victims from Austria should be entitled to claim under the German indemnification and compensation laws.⁹⁰ The Federal German Republic refused to accept this proposition, arguing that Austrians had been deeply involved in executing and implementing the Nazi program against the Jews, and consequently, Austria should be responsible for former Austrian Jews⁹¹—just as Germany was accepting responsibility for compensating former German Jews (as well as stateless persons and refugees). The Claims Conference then established the Committee for Jewish Claims on Austria in January 1953 to secure compensation directly from Austria.⁹²

The subsequent discussions with the Austrian Government were extremely difficult. The Austrian Government, relying on the Moscow Declaration of the Allied Powers in 1943 that Austria was the first National Socialist victim,⁹³ denied responsibility for the implementation of the Nazi policy in Austria and refused to enact indemnification legislation.⁹⁴ Nevertheless, the Austrians established a small "*Hilfsfond*" in 1956—a fund that distributed modest humanitarian payments.⁹⁵ In 1955, the Peace Treaty with Austria included a provision whereby Austria was obligated to enact property restitution legislation.⁹⁶ After the war, seven restitution laws were enacted, but the scope and implementation of the laws resulted in property restitution that can only be described as riddled with gaps and deficiencies—especially in comparison to the measures enacted in

88. See Special Master's Report, *In re Austrian and German Bank Holocaust Litigation*, 80 F.Supp. 2d 164 (S.D.N.Y. 2000) (Master File No. 98 Civ 3938).

89. See The German Foundation Law, §9.4.

90. SAGI, *supra* note 6, at 205.

91. *Id.*

92. HISTORY OF THE CLAIMS CONFERENCE, *supra* note 58, at 11.

93. Certain commentators assert that this declaration was passed in 1943 in order to encourage Austrian resistance to the National Socialist regime. For one example, see THE PLUNDER OF JEWISH PROPERTY DURING THE HOLOCAUST: CONFRONTING EUROPEAN HISTORY 244 (Avi Beker ed., 2001).

94. ROBERT S. WISTRICH, AUSTRIA AND THE LEGACY OF THE HOLOCAUST 19-21 (1999).

95. The Relief Fund Law was promulgated by the Austrian Parliament on Feb. 24, 1956 and created the Fund to Assist Political Refugees (including those Austrians persecuted due to race, religion and nationality) who had their domicile and permanent residence abroad. See SAGI, *supra* note 6, at 209.

96. State Treaty for the Reestablishment of an Independent and Democratic Austria, May 15, 1955, art. 26, 6 U.S.T. 2369.

Germany.⁹⁷ One of the few measures obtained from Austria during this period was the inclusion of former Austrian Jews born prior to 1932 in the Social Security legislation.⁹⁸

During the last few years there have been some limited developments in both the attitude and actions of Austria in this area. In July 1991 Austrian Chancellor Franz Vranitzky told Parliament, "We must also not forget that there were not a few Austrians who, in the name of the Third Reich, brought great suffering to others, who took part in persecution and crimes of this Reich. . . . Our citizens cannot distance themselves even today from a moral responsibility for these deeds."⁹⁹ In 1995, on the fiftieth anniversary of the end of the war, the Austrian government established the National Fund that made a one-time humanitarian payment of Shillings 70,000—about \$6000 in current value—to each surviving Nazi victim from Austria, including 24,000 former Austrian Jews.¹⁰⁰ Following the election of the current government in February 2000, the Claims Conference was contacted by representatives of the Schussel Government with an indication that the government was interested in distributing a supplemental humanitarian payment to former Austrian Jews.¹⁰¹ In October 2000, the Claims Conference participated in the negotiations chaired by US Deputy Treasury Secretary Eizenstat that focused on property restitution in Austria.¹⁰² The negotiations were

97. For example, the historian Helen Junz valued the wealth of Austrian Jews, based upon the 1938 Property Declarations of Austrian Jews to be approximately RM 2.5-2.9 billion. Yet the fund to compensate former Austrian Jews for mortgages, bank accounts, stocks, cash and Jewish discriminatory taxes, created in 1961 under the *Abgeltungsfondsgesetz* (Compensation Fund) was capped at \$6 Million. Helen Junz, *Report on Pre-War Wealth Position of the Jewish Population in Nazi-Occupied Countries, Germany, and Austria*, in *REPORT ON DORMANT ACCOUNTS OF VICTIMS OF NAZI PERSECUTION IN SWISS BANKS A-152* (Paul A. Volcker ed., 1999).

98. From the mid-1980s onwards, representatives of the Claims Conference traveled to Austria about a dozen times to negotiate amendments to the Social Insurance Law (*Sozialversicherung-Uberleitungsgesetz*) that would enable former Austrian Jews to apply for social security benefits. Although the Austrian Government failed to enact comprehensive indemnification legislation, as Germany had, it nevertheless agreed that former Austrian Jews could apply for a pension under the Social Insurance Law. A consequence of using this mechanism was that beneficiaries were required to contribute to the pension fund and prove that they had worked in Austria. In the initial amendment, beneficiaries were required to have been 16 years old prior to leaving Austria. As a result of the Claims Conference negotiations, this age was reduced by a series of amendments to the Social Security legislation, until the Social Security legislation ultimately included all persons born prior to Dec. 31, 1932.

99. Henry Kamm, *Looking Back and Ahead, Austria Wins 2 Points*, N.Y. TIMES, July 19, 1991, at A3.

100. These payments are distributed to victims of National Socialism from Austria. Of the approximately 27,000 recipients in 1995 it is estimated that about 24,000 were Jewish. For details of eligibility for the payment, see National Fund, *Our Work in the Past, Present and Future*, at <http://www.nationalfonds.parlament.gv.at/English/aufgBeschreibung.html> (last visited Nov. 20, 2001).

101. As an example of the position of the Austrian Government on this issue, on Feb. 4, 2000 Chancellor Schussel sent a letter to Gideon Taylor, Executive Vice President of the Claims Conference expressing his commitment "to look into the question of Holocaust assets" and "adopt interim measures which would benefit the surviving victims." The letter was one of the first official documents sent by the newly established government, at a time when the new Chancellor's office did not yet possess its own letterhead. Letter from Wolfgang Schussel, Chancellor, to Gideon Taylor, Executive Vice President, Conference on Jewish Material Claims Against Germany (Feb. 4, 2000) (on file with author).

102. Press Release, Stuart Eizenstat, Deputy Secretary, U.S. Dept. of the Treasury, at <http://www.usembassy-vienna.at/rest5.html> (Oct. 25, 2000) (last visited Feb. 19, 2002).

extremely difficult and again the Claims Conference realized that hard choices had to be made. The ultimate agreement reached in January 2001 was the best that could be achieved under the circumstances. The major elements consisted of (i) a one-time payment of \$7000 to former Austrian Jews alive today, to be distributed by the National Fund (but this was conditioned upon such recipients waiving their rights to claim long term apartment and business leases and the personal possessions of their families that had not been covered by Austrian restitution law), (ii) amendments to the social security legislation,¹⁰³ and (iii) a modest supplemental property restitution program of \$210 million to be administered by an independent panel. The fact that associations of former Austrian Jews in Israel and in the United States were represented on the negotiating committee of the Claims Conference assisted the Claims Conference in reaching the difficult decision to sign the agreement.¹⁰⁴

F. *Swiss Bank Settlement*

Pursuant to the Plan of Allocation and Distribution of Settlement Proceeds by the Special Master to the Swiss Bank Settlement Agreement, approved by Judge Korman of the Eastern District of New York on November 22, 2000, the Claims Conference will be involved in the distribution of settlement proceeds to a number of class members covered by the Swiss Bank Settlement.¹⁰⁵ Under the Plan of Allocation and Distribution, the Claims Conference will be (i) distributing a payment to Jewish victims of Nazi persecution who performed slave labor for a German entity (since the settlement released Swiss Banks from any claims from Victims or Targets of Nazi Persecution who performed slave labor for companies or entities that deposited the revenues or profits from slave labor in Swiss banks),¹⁰⁶ (ii) distributing payments to Jewish refugees denied entry to or expelled from Switzerland or mistreated in Switzerland, and (iii) recommending programs to the Court for the distribution of part of the funds allocated to the looted assets class.¹⁰⁷

103. The Claims Conference was the primary advocate for a number of amendments to the social welfare legislation and it is estimated that the additional benefits to former Austrian Jews resulting from these amendments could be over \$100 million during the lifetime of the survivors. Press Release, Stuart Eizenstat, Deputy Secretary, U.S. Dept. of the Treasury, at www.austria.org/Press/238.html (Jan. 22, 2001) (last visited Feb. 25, 2002).

104. The Joint Statement signed on Jan. 17, 2001 was signed by "The Conference on Jewish Material Claims" (including the Central Committee of Jews from Austria in Israel and the American Council for Equal Compensation of Nazi victims from Austria). See Joint Settlement Statement on Holocaust Restitution (Jan. 17, 2001), <http://www.usembassy-vienna.at/final.html>.

105. There are five sub-classes under the Swiss Bank Settlement Agreement. The full text of the Settlement Agreement can be found at http://www.swissbankclaims.com/PDFs_Eng/exhibit1toPlanofAllocation.pdf.

106. Special Master's Proposal, *supra* note 3, at 145-47. The Special Master recommended that the Court adopt a legal presumption that, due to three distinct financial relationships between Swiss financial institutions and German slave labor entities, all former slaves for German entities should be presumed to be covered by the settlement, thereby making it unnecessary for each claimant to prove a link between the German company for which the slave labor was performed and a Swiss Bank.

107. Special Master's Proposal, *supra* note 3, at 1-38.

The Swiss Bank Settlement covers those Victims or Targets of Nazi Persecution whose assets were stolen, expropriated, aryanized or confiscated by or at the instigation of the Nazi regime and whose property was sent through Switzerland or Swiss entities. This group is known as the “looted asset” class of the settlement. The court-appointed Special Master recommended that neither a claims resolution procedure nor pro rata payments be used to compensate this class of beneficiaries as these options could deplete the settlement fund with little, if any, noticeable benefits to class members (since individual payments could be small, due to the large number of potential beneficiaries, with large associated administrative costs).¹⁰⁸ The Special Master recommended that in dealing with this class of beneficiaries, the settlement should, *inter alia*, support programs designed to benefit the neediest of Holocaust survivors. The recommendation of the Special Master was based on both the decision of the Court of Appeals in the Agent Orange case (that utilized the *cy pres* doctrine to target those veterans most in need of assistance) and the historic precedent of directing bulk settlement of Holocaust-related claims to the neediest of Nazi victims¹⁰⁹—as described in sections IV (1) and VI (3) above.

G. *International Commission of Holocaust Era Insurance Claims*

In August 1998, the Claims Conference was one of the founding members of the International Commission of Holocaust Era Insurance Claims—chaired by former U.S. Secretary of State, Lawrence Eagleburger.¹¹⁰ The other members of the commission, created to establish a just process to address expeditiously the issue of unpaid insurance policies issued to victims of the Holocaust, include the National Association of United States Insurance Commissioners, several European Insurance Companies (Generali of Italy, Allianz of Germany, AXA of France and Zurich and Winterthur of Switzerland), representatives of the World Jewish Restitution Organization, and the State of Israel.¹¹¹ The Claims Conference is involved in negotiating the principles of the payment of

108. *Id.* at 114.

109. *Id.* at 116. The Proposal illustrates the reliance on current legal doctrine and the history of restitution policy. The Special Master quoted the Agent Orange Special Master Report: “The Fund is not large enough to provide meaningful cash compensation to all claimants, but tangible monetary benefits can be targeted to those veterans who are most severely disabled and thus in need of assistance.”

The Holocaust Victim Assets Special Master then noted:

There is also historic precedent for this recommendation. ‘Bulk’ settlement of Holocaust-related compensation claims with payments from the resulting settlement funds directed primarily to the needy dates back to the immediate post-War period, when successor organizations in the United States, British and French military zones utilized the proceeds of sales of apparently heirless or unclaimed property to resettle and rehabilitate survivors, including thousands remaining in ‘displaced persons’ camps.

Id. at 116-17 n.344.

110. Stuart E. Eizenstat, *The Need for Others to Join the International Commission on Holocaust Era Insurance Claims*, in PROCEEDINGS OF THE WASHINGTON CONFERENCE ON HOLOCAUST ERA ASSETS 427-28 (1998), available at <http://www.state.gov/wwwregions/eur/holocaust/heac3.pdf>.

111. See Memorandum of Understanding from the International Commission on Holocaust-Era Insurance Claims, in PROCEEDINGS OF THE WASHINGTON CONFERENCE ON HOLOCAUST ERA ASSETS 1043-48 (1998).

claims (valuation, standards of proof, independent appeals, and audit to ensure verification), publication of lists, and outreach.

It is relevant to note that the Memorandum of Understanding establishing the International Commission of Holocaust Era Insurance Claims created a general Humanitarian Fund for the benefit of needy victims of the Holocaust and other Holocaust-related humanitarian purposes. The memorandum stated explicitly that this provision represents the category of "heirless claims," i.e. unpaid policies issued by companies to Holocaust victims for which there is no living beneficiary or other living person entitled to receive the proceeds.¹¹² The establishment of this humanitarian fund followed the principles that were established immediately after the war: namely, (i) that assets for which there was no heir should be returned to the Jewish people (see U.S. Military Government Law No. 59); and (ii) that general settlement funds (from heirless property) should be directed primarily towards needy Nazi victims.

Despite the passage of fifty years, the legal principles and principles of allocation of funds that were established in the immediate post-war period remain the foundation of restitution and compensation programs and the distribution and allocation of funds.

This final chapter of Holocaust restitution has not been straightforward: difficult decisions and compromises have had to be made, especially given the age of the survivors and the imperative of delivering relief during the lifetime of the victims. The Claims Conference has and continues to assert that these payments and compensation programs are merely symbolic token payments that can only lead to a measure of justice for the survivors of the greatest crime known to humanity.

VII. CONCLUSION

The speech on which this article is based was presented on the Jewish festival of Purim, during which the Jewish people celebrate the failure of an attempt to physically destroy us during the time of the Persians. As a people, we have a long collective memory. However, on Purim we not only read the story of the victory during Persian times, but Jewish law also commands us to have a festive meal, donate to charity, and give gifts to friends. In doing so, we celebrate "life." It is appropriate, then, to conclude by noting that the enduring impact of the Claims Conference will be twofold: it will not only ensure, as a matter of justice, that the murderers and looters are unable to profit from their deeds; it will also be remembered for and judged by its ability to assist those Nazi victims to live a dignified life and to enrich the Jewish cultural and religious life that Hitler attempted to destroy.

112. *Id.* at §8(B).