

The post-Holocaust Development of Legal Remedies as a Learning Process

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Holocaust Compensation in Israel: A Case Study

Israel's Unique Position and Challenges in Holocaust Reparations

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This article looks at Israel's position in the Reparations Agreement signed with the Federal Republic of Germany and the particular challenges faced by Israeli politicians in this matter.



Remark

This paper was written by Tomer Chen Fruchter, a student of the project-related international Summer School organized by the Chair of Public Law and International Law (Prof. Dr. Thilo Marauhn) in 2023 as part of the project funded by the Foundation Remembrance, Responsibility and Future (EVZ) and the Federal Ministry of Finance (BMF) on “The post-Holocaust Development of Legal Remedies as a Learning Process” (“post-Holocaust Remedies” project). The work and results of the Summer School participant are reproduced here almost unedited, which is why there may be deviations in the citation style, for example.







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A. Introduction

The Holocaust, one of the most tragic and horrific events in human history, resulted in the systematic murder of six million Jews and millions of other innocent victims by Nazi Germany during the Second World War.¹ In the aftermath of the war, Germany's moral imperative to compensate Holocaust survivors emerged, leading to efforts to provide reparations. The newly established State of Israel, being home to a large population of Jewish survivors, held a unique position in the process of seeking Holocaust compensation. This paper aims to delve into Israel's position in the Reparations Agreement signed with West Germany, as well as the particular challenges Israel's politicians had to face concerning this matter.²

B. Israel's Role in the Process of Seeking Holocaust Reparations

Due to its role as the Jewish homeland, Israel occupied a unique position in seeking compensation for the Holocaust. The State of Israel was not solely intended for its current inhabitants but was rather envisioned as a destination for future Jewish emigration. To realize the visionary goals of the Zionist movement in establishing a state for the Jewish people, Jewish immigration to Palestine was actively encouraged. The waves of Jewish immigration, known as 'Aliyot', were closely linked to the heroic ideals of sacrifice, asceticism, and pioneering work that characterized Zionism.³

These waves of immigration had a profound impact on the demographic, cultural, economic, and social aspects of Jewish communities in Israel. Among these waves was the mass Aliya of the 1950s primarily because it brought a significant number of Holocaust survivors, who made up half of the arrivals during this period. This sudden influx of survivors created a notable concentration of Holocaust-affected individuals within Israeli borders. Consequently, Israel took on the responsibility of addressing the needs and demands for reparations for these survivors, who were its citizens.⁴

Furthermore, there exists a deep connection between the Holocaust and the State of Israel, providing a moral imperative for Israel to assist Holocaust survivors in obtaining reparations. Regarding the question of whether the state was established after the Holocaust and the Second World War and whether these events contributed to the momentum for the Declaration of Independence, various groups have differing views on the causal connection between these

¹ Kampeas, 2017; Lipstadt, 2011.

² Cooper, 2001.

³ Kaufman and Bar-Eli, 2005; Kimmerling, 1995.

⁴ Ofer, Ouzan and Baumel-Schwartz, 2012.

events. However, the prevailing opinion suggests that they were the primary factors leading to the establishment of the State of Israel.⁵

Prof. Yehuda Bauer, an Israeli Holocaust scholar, has contributed to this perspective, noting that Nazi anti-Semitism initiated the chain of events. After the Second World War and the Holocaust, Zionism emerged as the strongest ideological and political movement in the Jewish world. The suffering and persecution during the Holocaust led most Jews who had previously supported non-Zionist movements to adopt a benevolent attitude towards Zionism. Alternatively, many Jews who supported non-Zionist movements had perished during the Holocaust.⁶

Additionally, the Jewish community in Palestine showed remarkable resilience after the war and was one of the few Jewish centers that remained unscathed. Over time, this achievement was recognized not only by the Jewish communities within Europe itself but also outside Europe. As a result, more Jewish communities started to support the Zionist movement and its visionary goals. The devastating effects of the Holocaust and the plight of the survivors became the central argument for justifying the establishment of the State of Israel.

In my opinion, the profound influence that the Holocaust had on the sequence of events leading to the founding of the State of Israel reinforces Israel's obligation to fulfill the unique role it has taken on in the compensation process for Holocaust survivors.

Israel's unique position in the process of seeking Holocaust reparations manifested itself in the historical event of the negotiations between Israel, West Germany, and the Conference on Jewish Material Claims Against Germany, which led to the establishment of the Luxembourg Agreement on reparations.

C. Luxembourg Agreement – The Reparations Agreement with West Germany

Atonement is a state practice where political representatives issue official apologies and make reparations payments to victims of mass atrocities, war crimes, and human rights abuses. This policy is both an ethical and political choice. Ethically, it is seen as the right response to conflicts. However, it can also be seen as a political decision. In contrast, the concept of reparation involves the public admission of involvement in shameful events, leading to collective guilt and potential political unpopularity.⁷

In 1952, the Luxembourg Agreement, also known as the Reparations Agreement between Israel and the Federal Republic of Germany, was signed between West Germany and Israel. This agreement resulted from lengthy negotiations and was a contentious issue in both countries. The essence of the agreement was West Germany's commitment to pay DM 3 billion to the State of

⁵ Bauer, 2001; Michman, 2000.

⁶ Bauer, 2001; Michman, 2000.

⁷ Bachleitner, 2023.

Israel and DM 450 million to the Jewish Claims Conference. These payments were made largely in the form of goods and services and were intended for the development of Israel and the integration of Jewish immigrants from Europe. Furthermore, West Germany also undertook to provide individual compensation to Holocaust survivors.⁸

The idea of Germany providing reparations to the Jewish state was already conceived before Israel's establishment. Initially, however, the discussions centered more around claims towards individuals rather than involving the German state. It wasn't until the late summer of 1949, after the establishment of both Israel and the Federal Republic of Germany, that the possibility of a bilateral compensation agreement with specific objectives and amounts began to take shape in theory.⁹

This unique development, where Germany, the perpetrator of genocide, provided reparations to its victims through negotiations between two states, was primarily possible because of Israel's unique role as the homeland of the Jewish people.

D. The Challenges for Israel in Terms of Holocaust Reparations

Before signing the Luxembourg Agreement, Israel's politicians faced unique challenges, with the most significant one being public opinion. The idea of engaging in negotiations with Germany generated violent opposition within Israel. Some argued that the agreement signified a step toward normalization and viewed it as an attempt by Germany to seek forgiveness for the horrors of the Holocaust through financial compensation. In addition, some perceived the German funds as 'blood money', something no self-respecting nation should accept after the Holocaust's atrocities. Others contended that Germany should pay more in reparations and that the payments should be directed to Holocaust survivors rather than to the Israeli government.¹⁰ In the political arena, right-wing parties opposed the agreement. During the January 1952 Knesset debate on direct negotiations with the Federal Republic, the Herut Party, led by Menachem Begin, orchestrated violent demonstrations outside the Knesset. These demonstrations led to clashes with the police and ultimately required military intervention to quell the unrest. Begin argued that negotiations would be morally reprehensible, characterizing it as accepting 'blood money' from the perpetrators, labeling it a 'revolting abomination'. Herut's stance was not isolated, as various parties, including the religious factions, Mapam, General Zionists, and Maki, opposed the government's plan, citing the immorality of negotiating with Germany.¹¹ Despite these challenges, direct negotiations with the Federal Republic took place, and the

⁸ Bachleitner, 2023; Balabknis, 1971.

⁹ Litt, 2017; Balabknis, 1971.

¹⁰ Aderet, 2015; Aderet, 2012; Lavy, 1996.

¹¹ Gardner-Feldman, 2019.



Luxembourg Agreement was signed. The Israeli government believed that the agreement was in Israel's best interests and would contribute to securing the nation's future. Israel, with its population doubling in just a few years, needed funding to develop its transportation and industrial infrastructure. During this period, Israel faced financial difficulties, as it had to support immigrants who came to Israel with little or no money while contending with conflicts with neighboring states.¹²

E. Conclusion

To conclude, the Holocaust serves as a somber reminder of one of the darkest periods in human history, born from a toxic blend of hatred, unchecked power, and prejudice. To rectify these historical injustices, efforts were undertaken to provide reparations to Holocaust survivors, leading to the signing of the Reparations Agreement between Israel and the Federal Republic of Germany. Israel's unique role as the Jewish homeland placed it at the forefront of Holocaust reparations discussions. This distinctive position paved the way for the possibility of a bilateral compensation agreement, where Germany, as the perpetrator of genocide, would provide reparations to its victims. Despite facing numerous challenges along the way, Israel has diligently pursued its moral duty towards Holocaust survivors, aiming to foster an inclusive society that acknowledges their suffering and ensures their well-being.

¹² Balabknis, 1971.



F. Bibliography and List of Other Sources

- Aderet, O. (2015). When the Israelis Get Closer to Germany, it Moves Away from Them. Haaretz, 12 May, available at: <https://www.haaretz.co.il/news/politics/2015-05-12/> (accessed: 10/05/2024).
- Aderet, O. (2012). Never Again: Israel, Germany Mark 60 Years Since Signing of Holocaust Reparations Agreement. Haaretz, 20 November, available at: <https://www.haaretz.com/2012-11-20/ty-article/.premium/> (accessed: 10/05/2024).
- Bachleitner, K. (2023). When Forgiveness Is Impossible: How Atonement Works as Policy. Lawfare, 23 August, available at: <https://www.lawfaremedia.org/article/> (accessed: 10/05/2024).
- Balabknis, N. (1971). West Germany Reparations to Israel. Rutgers University Press.
- Bauer, Y. (2001). Rethinking the Holocaust. Yale University Press.
- Cooper, B. (2001). Review of the Book Jewish Claims Against East Germany: Moral Obligations and Pragmatic Policy, by Timm, A. German Politics & Society. Vol. 19, 2, pp. 148-155.
- Gardner-Feldman, L. (2019). The September 1952 Reparations Agreement between West Germany and Israel: The Beginning of a Remarkable Friendship. American-German Institute, 12 November, available at: <https://americangerman.institute/2019/> (accessed: 10/05/2024).
- Kampeas, R. (2017). Remember the 11 million? Why an Inflated Victims Tally Irks Holocaust Historians. Jewish Telegraphic Agency. 21 January, available at: <https://www.jta.org/2017/01/31/> (accessed: 10/05/2024).
- Kaufman, H. and Bar-Eli, M. (2005). Processes That Shaped Sports in Israel During the 20th Century. Sport History Review. Vol. 36, pp. 179-192.
- Kimmerling, B. (1995). Academic History Caught in the Cross-Fire: The Case of Israeli-Jewish Historiography. History and Memory. Vol. 7, 1, pp. 41-65.
- Lavy, G. (1997). Germany and Israel – Moral Debt and National Interest. Frank Cass & Co. LTD.
- Lipstadt, D.E. (2011). Simon Wiesenthal and the Ethics of History. Jewish Review of Books, available at: <https://jewishreviewofbooks.com/articles/> (accessed: 10/05/2024).
- Litt, S. (2017). The Reparations Agreement of 1952 and the Response in Israel. The Librarians – The National Library Blog, 16 January, available at: <https://blog.nli.org.il/en/reparations-agreement/> (accessed: 10/05/2024).
- Michman, D. (2002). The Causal Connection between the Holocaust and the Birth of Israel: Myth and Reality. In: Aronson, S. (ed.), New Records - New Perspectives. Jerusalem: Ben Gurion Research Center, pp. 146-150.
- Ofer, D., Ouzan, F.S. and Baumel-Schwartz, J.T. (eds.). (2011). Holocaust Survivors: Resettlement, Memories, Identities. Berghahn Books.









Project “The post-Holocaust Development of Legal Remedies as a Learning Process (Post-Holocaust Remedies)”

The research project “The post-Holocaust Development of Legal Remedies as a Learning Process (Post-Holocaust Remedies)” is carried out by the Chair for Public Law and International Law, Justus Liebig University (JLU) Giessen in cooperation with scholars from Reichmann University in Herzliya/Israel and the Instituto Colombo-Alemán para la Paz (CAPAZ) in Bogotá/Colombia. The project, conducted by Prof. Dr. Thilo Marauhn and Dr. Ayşe-Martina Böhringer, began in late summer 2022 and is dedicated to the in-depth analysis of compensation law in connection with the Holocaust and the legal framework that has been developed since 1945 for dealing with the consequences of Nazi crimes.

The project, funded by the Foundation Remembrance, Responsibility and Future (EVZ) and the Federal Ministry of Finance (BMF) from August 2022 until June 2024 as part of the Education Agenda NS-Injustice, focuses on the critical analysis of the development of political and legal instruments in dealing with the consequences of the Nazi atrocities. The following questions, among others, are addressed: After the atrocities of the Holocaust, what lessons can be learned from the compensation law measures taken to date? Which instruments are suitable for legal remedies? An important main feature of this project is the international summer school, which offered students from Israel, Colombia and Germany the opportunity to take an in-depth look at the legal process of addressing Nazi crimes. The program covered two weeks each at Reichmann University in Herzliya, Israel and JLU Giessen and included a variety of courses and excursions to relevant institutions to ensure a practice-oriented perspective. The summer school took place from 18.08.2023 to 14.09.2023. This unique way of teaching the subject of this project should also inspire future generations to engage in research-based learning, practice-oriented knowledge transfer and academic responsibility.

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