HOLOCAUST COMPENSATION

I. INTRODUCTION

This Annex is intended to provide an analysis of post-Holocaust indemnification and restitution programs throughout the world, the existence and availability of which have influenced certain of the Special Master's recommendations. Specifically, this Annex describes (1) the most well-known and comprehensive of the indemnification programs for non-property losses, that of Germany's "BEG," directed largely but not exclusively toward Jewish victims of the Holocaust; (2) German indemnification provisions enacted subsequent to the expiration of the BEG application deadlines, the "Hardship Fund," " Article 2," and "CEEF" programs; (3) other German compensation programs, including reparations payments to European nations; (4) German property restitution; (5) indemnification and restitution programs adopted by nations other than Germany, including Austria, the Netherlands, and other European countries; (6) indemnification measures affecting Roma, Jehovah's Witnesses, disabled and homosexual Nazi victims; (7) certain compensation payments by German slave labor-using enterprises; and (8) allocation and administration of "heirless" property and sales thereof, from immediately after the War to date. The key programs also are summarized in an accompanying chart ("Holocaust Compensation Chart"), attached hereto.

Furthermore, since many of the foregoing compensation programs were initiated due to the efforts of, or have been or currently are implemented and administered by one particular agent – the Conference on Jewish Material Claims Against Germany, Inc. (the "Claims Conference") – this Annex also traces the past and current operations of that organization, which parallels and is inextricably interwoven with post-Holocaust history.

It is worth considering here that a proposition first put forth in 1972 remains true even today. With the exception of the seminal assessments by Nehemiah Robinson – who personally shaped the course of Germany's post-War efforts to make recompense to its Jewish Holocaust victims (see infra) – "[s]urprisingly, … no general publication in American or English legal literature deals with the complex task of restitution and compensation for the damage done Jews and other groups persecuted by the Nazi regime. The only literature on the subject – apart from that in German – consists of a number of publications by interested groups."[1]

While the programs described herein represent the most significant of the post-War Holocaust compensation programs, this report does not purport to be an exhaustive analysis of each and every such compensation program undertaken throughout Europe and elsewhere since the end of World War II. Given the geographic and historic breadth of the subject, programs that have not been widely publicized or well documented may have been omitted from the discussion that follows. Equally incomplete is the record concerning the victims, the scope of their material losses, and the monetary compensation that, at the very minimum, would appear to be their due. It probably can be said that for many victims, material compensation has yet to be completed, or indeed even begun.

[1] *See* Kurt Schwerin, "German Compensation for Victims of Nazi Persecution," 67 Northwestern Law Review. 479, 479, n.2. (1972) (hereinafter, "Schwerin").

II. GERMAN INDEMNIFICATION (NON-PROPERTY) PAYMENTS

A. Background

Following the surrender of Germany in 1945, the United States, the United Kingdom, and the Soviet Union constructed a reparations formula in the Potsdam Agreement. To avoid further weakening the German economy, the Allies did not demand monetary compensation but, rather, sought to satisfy their reparation claims through acquisition of specified percentages of German industrial capital equipment and shares of German companies.[2] The Soviet Union was awarded equipment and assets from the Soviet occupation zone in Germany and from Central and Eastern Europe.[3] Importantly, the Potsdam Agreement left out reparations for other Central and Eastern European countries – citizens of those countries were to be compensated by their own nations. Shortly after the War, however, communist governments were created in those countries, and Central and Eastern European victims of the Nazis received little if any payment.[4]

In post-War Germany, the Allies "found two kinds of assets: remnants of valuables that the Germans had hauled in from the Polish killing centers, and capital

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[2] *See, e.g.*, U.S. and Allied Efforts to Recover and Restore Gold and Other Assets Stolen or Hidden by Germany During World War II – Preliminary Study (May 1997) (hereinafter, "Eizenstat Report"), at xxxvi.

[3] *Id.*

[4] *See, e.g.*, Eizenstat Report, at 50. Nations excluded from post-war reparations recently have revisited the political bases for this decision. As posited by the Czech Delegation to the 1998 Washington Conference on Holocaust-Era Assets: "Victims who survived and stayed in Czechoslovakia or other countries of . . . Central and Eastern Europe were de facto excluded from the compensation remedies arranged between the Allies and the German government. We actually do not know the reason for this. The argument that they lived in a communist country is not clear – it meant that they needed the money even more. Moreover, no arguments ever prevented retirement payments to ex-members of the Nazi army." *Concluding Statement – Czech Republic*, *in* Proceedings of the Washington Conference on Holocaust-Era Assets (1998) (hereinafter, "Washington Conference on Assets"), at 95.

investments that had once belonged to Jews deported from the Reich. So far as the valuables were concerned, the Allies promptly decided to sell this haul for non-German currency and to turn over 90 percent of the receipts to Jewish relief organizations for rehabilitation. The sales were accomplished with due dispatch, but it was a small operation that netted only petty cash."[5] The Allies also agreed, as part of the Paris Agreement, "that heirless assets in neutral countries be made available to persecutees. However, in the implementation agreement between the United States, Great Britain, France, Czechoslovakia, and Yugoslavia, the two Eastern signatories declared that they had not given up their claim to the forthcoming inheritances, 'which, according to the provisions of international law, belong to their respective states.'"[6]

The United States, British and French military governments thereafter passed laws obligating Germany to return property or otherwise compensate those wrongfully deprived of such property during the Nazi era for reasons of race, religion, nationality, ideology or political opposition.[7] The United States law, U.S. Military Government Law No. 59, the first post-War restitution provision, represented a complete departure from customary principles concerning disposition of unclaimed property, since "[o]rdinarily, heirless property falls to the state."[8] An "historic achievement of this law was the recognition of the principle that heirless and unclaimed property of Nazi victims should not become the property of the

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5 Raul Hilberg, The Destruction of the European Jews (New York: Holmes & Meier 1985) (revised ed.) (hereinafter, "Hilberg"), at 1160.

6 Hilberg, at 1161 n.20. *See also* Eizenstat Report, at 60 ("[t]he entire package for the non-repatriables thus comprised $25 million, plus the proceeds of German assets in neutral countries, all non-monetary gold found in Germany, i.e., the boxes of SS loot collected from Nazi crematories and composed primarily of tooth-fillings, rings, and other such objects, as well as the assets of heirless accounts held in the neutral countries").

7 *See infra*.

8 Hilberg, at 1160.

successor state of the Third Reich. This was a revolutionary development in international law acknowledging that ordinary legal principles could not be applied when dealing with the consequences of this enormous tragedy."[9]

Following the end of World War II and the partition of Germany among the United States, Britain, France and the Soviet Union, the various *laender* (*i.e.*, German states) located within the U.S., British and French Military Zones adopted various laws for the compensation of Holocaust victims. However, these laws, "wherever they existed, differed considerably, and none of them was satisfactory."[10] In connection with the creation of the Federal Republic of Germany, the Allied-German Agreement, or "Contractual Agreement," provided for Germany to "enact a uniform federal law at least as favorable as the U.S. Zonal laws."[11]

Germany's commitments, and the recompense that followed, are described below.

B. The Luxembourg Agreement

In March 1951, the government of Israel sent the four allied powers a diplomatic note seeking "German payments of 1.5 billion dollars for the integration of 500,000 Jewish refugees."[12] The German reparation provisions subsequently implemented arose from a confluence of German, Israeli and American interests.

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9 Memorandum, Conference on Jewish Material Claims Against Germany, Jan. 14, 1999, at 1 (available from Claims Conference).

10 Nehemiah Robinson, Ten Years of German Indemnification (New York: Conference on Jewish Material Claims Against Germany 1964) (hereinafter, "Ten Years of German Indemnification"), at 22.

11 *Id.*

12 Jeffrey M. Peck, "East Germany," in The World Reacts to the Holocaust (David S. Wyman, ed, Baltimore: Johns Hopkins Univ. Press 1996) (hereinafter, "Peck"), at 471 n. 39.

For Israel, reparations from Germany "were finally put on the agenda in 1951 because of Israel's urgent needs" in the face of a growing influx of refugee Holocaust survivors.[13] For Germany, Chancellor Konrad Adenauer favored the concept of recompense both because of "a certain moral urge" and because of "German foreign policy objectives."[14] "In [Adenauer's] consistent efforts to preserve and strengthen close political relations with the United States," which he regarded as a "bulwark against the expansion of Soviet Communism," the "task of conciliating the American Jewish community, for understandable reasons a hostile factor, came in; and a settlement with the Jewish state became a part of that policy."[15] A "decisive motive" for the completion of the treaty "was the concern, felt by the Bonn government and Chancellor Adenauer, that without such an action Germany's integration into the West would be either endangered or made impossible. [American High Commissioner for Germany John J.] McCloy played a crucial role in conveying that message

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[13] Shlomo Shafir, Ambiguous Relations: The American Jewish Community and Germany Since 1945 (Detroit: Wayne State University Press 1999) (hereinafter, "Shafir"), at 165. "At the same time, most Israelis, who saw no difference between the Third Reich and the Federal Republic, were repelled by the idea of negotiating directly with their former torturers." Andrei S. Markovits and Beth Simone Noveck, "West Germany," in The World Reacts to the Holocaust, *supra* (hereinafter, "Markovits and Noveck"), at 406. "In the Knesset, the opposition to a reparations agreement with West Germany crossed political lines. The debates were highly emotional; protesters filled the streets, hurling insults at the government, calling for new elections, and resorting to violence." Dalia Ofer, "Israel," in The World Reacts to the Holocaust, *supra*, at 866. The Israeli government argued in response that the nation's "success and growth were the only meaningful response to the Nazi crimes, and thus the 'ingathering of the exiles,' the phrase used in Zionist rhetoric to describe the mass immigration, was the primary goal that justified the negotiations with Germany. The agreement was not a pardon of Germany or a legitimization of a new Germany." Ofer, *id.* at 866; *see also* Howard M. Sachar, Israel and Europe: An Appraisal in History (New York: Alfred A. Knopf 1999) (hereinafter, "Sachar"), at 40-41.

[14] Shafir, at 166.

[15] *Id.* "However, the efforts of the Adenauer government stood in opposition to the opinion of the majority of the German people, who were not in favor of reconciliation with the Jews and Israel and felt no responsibility for the atrocities committed by the Third Reich." Markovits and Noveck, at 406.

to the German leaders."[16] On the American side, it was McCloy's "decision to follow a lenient path toward the Nazi war criminals [that] undoubtedly led him to press the Germans even harder for a generous policy of *Wiedergutmachung*, or restitution, toward the Jews and the state of Israel."[17] McCloy was "convinced that [fulfillment of Jewish requests] might soften American Jewish hostility to Germany and ease the way for West Germany's acceptance by the American public as a trustworthy ally."[18]

In September 1951, Adenauer extended an invitation to the State of Israel and to the Jewish people to enter into discussions concerning German recompense for Jewish losses sustained during the Nazi era.[19] In his statement before the German Bundestag, Adenauer opened the door to further negotiations by, crucially, noting that "unspeakable crimes have been committed in the name of the German people."[20] A few weeks later, in October 1951, 23 major Jewish organizations joined together to establish a central body that would be responsible for representing Holocaust survivors, the Claims Conference. The

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16 Thomas Alan Schwartz, America's Germany: John J. McCloy and the Federal Republic of Germany (Cambridge, Massachusetts: Harvard Univ. Press 1991) (hereinafter, "Schwartz"), at 184.

17 *Id.* at 175.

18 *Id.* For their part, American Jewish groups were not entirely unified among themselves or vis-à-vis Israel. For example, although the American Jewish Committee (" AJC") supported Israel's claim for $1.5 billion to resettle Holocaust survivors, "the AJC did not agree with the concept embodied in the original Israeli note 'that Israel is entitled to the reparations . . . [and] should be recompensed because of the outrageous annihilation of the tremendous number of Jews.' Only Israel's acknowledgment that it would not monopolize the total reparations complex served as a basis for the AJC's participation in the forthcoming conference of Jewish organizations that was to review the whole matter of claims from Germany." Shafir, at 165.

19 *See, e.g.*, Memorandum, Conference on Jewish Material Claims Against Germany, Inc., January 14, 1999, at 2-3.

20 1999 Claims Conference Annual Report, at 6. Prior to this speech, Adenauer had consulted with Jewish and Israeli leaders, including Nahum Goldmann, president of the World Jewish Congress, who had "summoned" the original meeting in New York that was to establish the chief negotiating body, the Claims Conference, and who "remained the Claims Conference's undisputed leader for many years to come." Shafir, at 168-69.

Claims Conference would present a "collective claim" in the "name of the Jewish people by both the State of Israel and organized Jewry," with "moneys to be received as reparation" to be "divided by mutual consent."[21]

The Claims Conference – whose "name itself stressed the material nature of the approach to Germany, thus underscoring that there could be no atonement for the Nazi crimes"[22] – sought to accomplish five objectives in negotiating with the German Federal Republic:

- indemnification for individual injuries;
- restitution of confiscated assets;
- relief, rehabilitation and resettlement of victims;
- rebuilding Jewish communities; and
- Holocaust documentation, education, research and commemoration.[23]

On behalf of the Claims Conference, its leader, Nahum Goldmann, attempted to "convince the opponents of negotiations with Germany that the talks dealt only with reparations for the damage and losses suffered by the Jewish people, and in no way meant reconciliation with those who murdered the six million. Because of the evasive response of the United States and the other western powers to Israeli and Jewish claims submitted by

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[21] Nana Sagi, German Reparations: A History of the Negotiations (Jerusalem: The Magnes Pres, Hebrew University 1980), at 86 (hereinafter, "Sagi").

[22] Sagi, at 77.

[23] *See* "Conference on Jewish Material Claims Against Germany – Delegation Statement," in Washington Conference on Assets, at 229.

them, he argued, there remained no alternative other than to try and obtain reparations directly from the resurrected West German state."[24]

On September 10, 1952, following six months of negotiations, the German Federal Republic signed several agreements in Luxembourg, one between the governments of the German Federal Republic and Israel, and the other two between the German Federal Republic and the Claims Conference (collectively known as the "Luxembourg Agreements").

The "Agreement Between the Federal Republic of Germany and the State of Israel" obligated Germany to pay to Israel DM 3 billion (approximately $712 million) in recognition of the "unspeakable criminal acts . . . perpetrated against the Jewish people during the National-Socialist regime of terror," and in further recognition that

> The State of Israel has assumed the heavy burden of resettling so great a number of uprooted and destitute Jewish refugees from Germany and from territories formerly under German rule and has on this basis advanced a claim against the Federal Republic of Germany for global recompense for the cost of the integration of these refugees.[25]

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[24] Shafir, at 168-69. "One of the more thoughtful comments appeared in the Labor Zionist monthly Jewish Frontier edited by Hayim Greenberg. The author assumed that Adenauer's offer to negotiate restitution for destroyed or looted Jewish property might be accepted 'without any qualms that in doing so Germany is being whitewashed of its crimes.' But if it was genuine 'spiritual purging of unheard-of suffering' that the Germans were seeking, they would be best advised not to link it anyway with material reparations:

> The path for such a purging lies elsewhere, first through an unequivocal realization and admission of guilt, and later through genuine remorse. Atonement and the consequent moral rehabilitation in the eyes of the world are not something to be achieved overnight. The Germans must win these themselves. Even the Jews, who were the victims of the German crimes, cannot grant forgiveness as on a platter. We may have to become reconciled to the thought that at least a generation might pass before relations between Germans and Jews enter upon a 'new and healthy basis.'"

Id. at 170.

[25] Agreement Between the Federal Republic of Germany and the State of Israel, Preamble and Article 1.

The agreements between the German government and the Claims Conference were set forth in two "Protocols." Protocol No. 1 "called for the enactment of laws that would compensate Nazi victims directly for indemnification and restitution claims arising from Nazi persecution."[26] Further, under Protocol No. 1, the Federal Republic of Germany "resolved to supplement and amend the existing compensation legislation" (*i.e.*, that in force under the various military zones prior to creation of the new German state).[27]

Protocol No. 2 was based upon the "[r]ealiz[ation] that identifying and locating all possible Holocaust survivors would be impossible" and therefore obligated Germany to make a global payment to Israel "for the benefit of the Claims Conference."[28] This sum — approximately $110 million in total ($10 million per year) – was to be used for the "relief, rehabilitation and resettlement of Jewish victims of Nazi persecution," based upon urgency of need as determined by the Claims Conference, and, "in principle" for the benefit of those living outside of Israel.[29]

Germany's payment of a "global claim" was to be distinct from individual compensation, for an important reason. Not only had individuals suffered devastating

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[26] Twenty Years Later: Activities of the Conference on Jewish Material Claims Against Germany, 1952-1972 (New York: Conference on Jewish Material Claims Against Germany, Inc. 1972) (hereinafter, "Twenty Years Later"), at 9.

[27] *Id.*

[28] Sampson v. Federal Republic of Germany and the Conference on Jewish Material Claims Against Germany, Inc., 975 F. Supp. 1108, 1113 (N.D. Ill. 1997).

[29] *See* Protocol 2; Ronald W. Zweig, German Reparations and the Jewish World: A History of the Claims Conference (Boulder: Westview Press 1987) (hereinafter, "Zweig"), at 25. As noted previously, Israel received separate reparations payment from Germany. "By the time reparations ended, in 1967, Israel's industrial output had increased by 250 percent, capital stock in industry by 300 percent, the number of employed individuals by 83 percent. It was progress achieved at a time when mass immigration had to be absorbed and a war – in 1956 – had to be fought. Growth of this magnitude was due first and foremost to the infusion of German reparations." Sachar, at 50.

personal losses, but so, too, had countless Jewish communities, many of which had been entirely decimated by the Nazis. Moreover, while Germany had agreed in principle to implementation of indemnification provisions, it had yet to do so; meanwhile, thousands of Holocaust survivors in displaced persons camps needed immediate shelter, training, and resettlement. It was impractical and inappropriate to limit relief only to those survivors who, in the midst of all of their other difficulties, had the presence of mind to pursue individual compensation claims.

Early in the implementation of Protocol 2 programs, the decision was made "to give priority to persons and communities in countries that had been occupied by the Nazis, even though tens of thousands of the survivors of Nazism had already left these countries. The grounds for the decision were that not only the sufferings of Jewish individuals had to be taken into account but also the fact that whole communities together with their institutions had been wiped out. In these countries it was necessary to restore the whole fabric of Jewish life."[30]

Both at the time and in hindsight, the 1952 adoption of the Luxembourg Agreement "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, or to another state,

[30] Sagi, at 199.

the State of Israel, which was not even in existence at the time the crimes were committed and had no legal claim to anything, was truly a revolutionary idea."[31]

C. The *Bundesentschädigungsgesetze* (Federal Indemnification Laws or BEG)

In 1953, in accordance with its commitment to the Claims Conference set forth in Protocol 1, the Federal Republic of Germany enacted its first Holocaust indemnification statutes. The law was revised in 1956 and again in 1965. The statutes, collectively known as the "BEG," provided for compensation for wrongful death, disability, injury to health, incarceration, and damage to professional and economic standing, and, to a more limited extent, property loss. The BEG was administered entirely by and within Germany.

The three versions of the BEG are more fully described below.

1. *Bundesergänzungsgesetz zur Entschädigung für Opfer des Nationalsozialismus (BErgG)*

The earliest version of the BEG, the "BErgG", was promulgated on September 18, 1953 and entered into force on October 1, 1953, remaining in place until June 30, 1956.

The BEG was intended to provide a "claim to compensation" to a defined group of "victim[s] of National Socialist persecution" – "persecutees" – who, "because of political opposition to National Socialism, or because of race, religion or ideology, [were] persecuted by National Socialist oppressive measures and, in consequence thereof," thus "suffered loss of life, damage to limb or health, liberty, property, possessions, or vocational or

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[31] Ten Years of German Indemnification, at 8; *see also* Sachar, at 36. "One could, of course, interpret Luxembourg as an act of goodwill, a gesture of material sacrifice attesting to a German commitment to the ideals of democracy and support of a new world order. In a similar vein, one could also interpret the reparations agreement as proof of the Germans' unwillingness to travel the hard road of penitence and contrition." Markovits and Noveck, at 410.

economic pursuits."[32] Holocaust victims entitled to compensation were to include those who had been incarcerated in concentration camps and ghettos, as well as "[p]ersecutees who were subject to compulsory labour and lived under conditions similar to incarceration," and "persecutee[s] who, within the boundaries of the German Reich as of December 31, 1937 lived 'underground' under conditions similar to incarceration or unworthy of human beings."[33]

In addition to applying only to "persecutees" as defined within the statute (or, in certain limited instances, their heirs), "[a] second important aspect of the criteria for eligibility under the BEG [was] that law's principle of territoriality. A claim for compensation [was] tied to the claimant's residence in Germany," so that a claimant either had to have "had his domicile or place of permanent sojourn within the Federal Republic on December 31, 1952," or had to meet the statutory definition of a "repatriate," "expellee," "refugee" or "stateless person."[34]

A "repatriate" was either a former German prisoner of war or a German "who had been interned outside of the Federal Republic or Berlin."[35] An "expellee" was a member of the "German folk" – the German cultural or linguistic group – who resided "outside the borders of the German Reich as of December 31, 1937 or in the German territories now under Polish or Russian administration, and who had to leave these territories" either in flight or

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32 Part One, Sec. 1(1), The (West German) Federal Compensation Law (BEG) and its Implementary Regulations, Institute of Jewish Affairs, World Jewish Congress (1957) (hereinafter, "BEG"), at 8.

33 Protocol No. 1.

34 Schwerin, at 497.

35 *Id.* at 497, n. 71.

because of expulsion.[36] A "refugee" was someone who "emigrated (or [was] deported) from an area that was German on December 31, 1937 (mostly Jewish refugees)."[37] A "stateless person" primarily was a Holocaust survivor who resided in a displaced persons ("DP") camp after the War.[38]

Under the BErgG, as well as under subsequent BEG provisions, an applicant could file more than one claim. For example, a claimant could seek recompense "for deprivation of liberty, and at the same time for damage to health, and/or loss of life, professional damage, or loss of property."[39]

Although the law set forth the basic rules regarding compensation, these rules were of little guidance in the actual administration of the statute. More detailed provisions "had to be spelled out in the enabling regulations"[40] published several years later (described below).

2. *Bundesgesetz zur Entschädigung für Opfer der Nationalsozialistischen Verfolgung (BEG-Bundesentschädigungsgesetz)*

a. Background to 1956 amendment

In an effort to address certain of the weaknesses of the BErgG, on June 30, 1956, West Germany enacted a more comprehensive scheme, the BEG. "The day the new law was passed the chairman of the indemnification committee [in the Bundestag] expressed his 'horror and dismay' at a number of decisions which he said were designed to turn the idea

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36 *Id.* at 498, n. 72.

37 Hilberg, at 1165.

38 *Id.* at 1165; Schwerin, at 498.

39 Ten Years of German Indemnification, at 34.

40 *Id.* at 36.

of indemnification into its very opposite. The committee demanded that only judges who had grasped the spirit of the law should serve on the courts concerned with indemnification. The courts were also attacked for having demanded proof which the victims could not possibly supply."[41]

Under the revised statute, the new filing deadline was April 1, 1958, although that date applied "only to the initial filing"; once a claim had been timely filed, additional claims could be registered later.[42]

The Claims Conference, which had sought improvements in the first BEG statute, considered the revised version of 1956 to be superior to the law enacted in 1953 for a number of reasons. As described by Nehemiah Robinson in a treatise assessing the first ten years of German compensation:

> First, [the law's] validity was extended to the whole of Germany within the borders which existed on December 31, 1937 … while the preceding law dealt only with the Federal Republic and West Berlin, East Berlin being covered … by the Berlin Compensation Law. Thus, persecutees from German areas outside the Federal Republic became eligible. Some benefits were increased, such as certain annuities for loss of life. The minimum disability for eligibility to an annuity was decreased from 30% to 25% and the probability of the causal nexus between persecution and damage to health was declared as sufficient. The responsibility of the German Federal Republic ... for incarceration, and of other damage caused by foreign governments, was specifically stated. The notion of damage to liberty was expanded to include illegal life under inhuman conditions and the wearing of the Star of David everywhere. Maximum benefits granted for damage to property and professions were raised and compensation for the payment

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41 "West Germany," 58 American Jewish Year Book (1957), at 287. "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." Id.

42 Ten Years of German Indemnification, at 31.

> of discriminatory taxes was freed of ceiling restrictions. Considerable improvements were achieved in the field of compensation for professional damage: the maximum amount was raised, annuities were also introduced for former non-self-employed persons, the election of an annuity was made easier, the maximum monthly amount was increased, widows became eligible, and the inheritability of benefits under the Law was expanded in certain respects…. [Further], [i]n the case of refugees and stateless persons, the cuts in the compensation amounts were eliminated; the prerequisite of deprivation of liberty was dropped.[43]

Despite the improvements, the revised statute of 1956 created additional "difficulties of a legal and practical nature. The fact that the Supreme Court [of the Federal Republic of Germany] had to render almost 2,000 decisions is in itself an indication of the legal complexities."[44]

Among these "complexities" were the following:

- Lack of clarity of the definition of "expellee" and "refugee";[45]
- Dispute as to the proper interpretation of the term "inducement," as the 1956 BEG provided that claimants could recover for deprivation of liberty by a foreign government "when the deprivation of, or restriction on, liberty was … the result of an 'inducement' (*Veranlassung*) of the foreign government by the Nazi Government";[46]

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[43] *Id.* at 28-29.

[44] *Id.* at 35. German courts of secondary jurisdiction issued over 37,000 decisions, while courts of original jurisdiction issued over 256,000 decisions. Id., at 36-37. According to information provided by the Claims Conference, the bulk of the cases, however, never reached the German courts but were settled at the agency level.

[45] As to expellees, "[a]lmost every aspect of the law became disputable: What does the belonging to the German 'folk' mean? What must the reason for the departure be? When must it have occurred?…. By the end of the ten-year period [prescribed in Protocol No. 1] no solution of these problems was achieved." Ten Years of German Indemnification, at 41. As to refugees and stateless persons, "[t]he significance of documents testifying to the status of a refugee; the import of payments by foreign governments; the decisive data on acquiring the status of a stateless person or a refugee – these and some other problems were the subject of administrative and judicial decisions." *Id.* at 41-42.

[46] Ten Years of German Indemnification, at 37.

- Problems arising from proof of causation for claims for damage to health; and

- For claims for loss of life, difficulties regarding the "requirement in the law calling for proof in many instances as a precondition for granting annuities to survivors that the persecutee who lost his life supported or would have supported the survivor," particularly where "the survivor had a number of relatives who had supported him or would have had to do so."[47]

The latter concern – relating to inheritability – was of particular importance because of the significant delays associated with the administration of the BEG. "During the mid-1950s claimants were dying at the rate of 5-6 percent per year. With the death of a claimant, all monthly payments lapsed."[48]

As to heirs of Holocaust victims, the BEG provided for payments only under the following circumstances:

> "1. The law admitted as claimants all heirs of victims whose last residence had been West Germany or West Berlin and who had died at any time before December 31, 1952.
>
> 2. Insofar as an otherwise fully eligible claimant had died before adjudication, the payments for property, capital, and tax losses could be claimed by any heir; the award of payments for other losses was restricted to heirs in the immediate family;

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[47] *Id.* at 41. At least some of these legal issues have been addressed over the years in litigation conducted by the United Restitution Organization (URO), a legal aid society organized in London in 1948 and composed primarily of former German Jewish lawyers. In 1954, following implementation of the BEG and initiation of Claims Conference programs, the URO began to serve as the legal aid arm of the Claims Conference. By the mid-1950s, URO offices existed throughout Germany, as well as in Israel, the United States, France, Great Britain, Canada, Belgium, Sweden, Australia, Argentina, Brazil, Chile, Uruguay and South Africa. Between 1949 through 1975, the URO assisted more than 300,000 claimants on over 480,000 claims, with awards exceeding $860,000,000. *See* 1973-1975 Claims Conference Annual Report, at 26; Twenty Years Later, at 141-43. The URO remains in existence to this day, with offices in New York, Toronto, Frankfurt, Tel Aviv and Haifa, and, for a contingency fee, continues to provide legal assistance in connection with the BEG and other more recent compensation programs. *See* Guide to Compensation and Restitution for Holocaust Survivors (Second Edition), Conference on Jewish Material Claims Against Germany (Fall 1999) (hereinafter, "Claims Conference Compensation Guide"), at 2.

[48] Hilberg, at 1174.

> 3. In the event that a special claimant from an expellee area had died before a decision had been reached, payments for discriminatory taxes were granted only to heirs in the immediate family; and in the event that a special claimant in the nationality category had died before an award, the payments for death were disallowed altogether."[49]

Additionally, although modification of the statute to require indemnification to those who had been forced to wear the Star of David was a welcome revision, the effect was of modest financial value. The revised statute now "entitled wearers of the Nazi-imposed emblem to the same compensation paid to persons the Nazis imprisoned illegally in jails or concentration camps – a little more than one dollar a day."[50]

b. Selected Provisions of the BEG

(1) Part One – General Provisions:

(a) Claimants:

The law was applicable to the following claimants:

1. "Persecutees": residents of West Germany or West Berlin as of December 31, 1952; refugees from areas that were German on December 31, 1937; stateless persons (those living in Displaced Persons camps on January 1, 1947); and expellees (those who were part of the "German folk" on December 31, 1937).[51]

2. Persons to be "treated equally with persecutees" (BEG, Sec. 1): those who were persecuted by the Nazis because "their consciences had prompted them to take the risk of opposing actively the regime's disregard of human dignity and destruction of life," who

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49 *Id.* at 1174-75.

50 "West Germany," 1956 American Jewish Year Book, at 396.

51 Hilberg, at 1165; Schwerin, at 498. However, "[a] claim for damages to real estate [could] be made regardless of the persecutee's domicile or permanent sojourn if the real estate [was] located within the area of operation of [the] Law." (BEG at Sec. 4(5)).

"adhered to artistic or scientific beliefs" rejected by the Nazis; or who were "closely connected with a persecutee."[52]

3. Certain limited categories of heirs: "the survivor of a persecutee who was deliberately killed or negligently killed, or was impelled to his death, or who died in consequence of damage to his limb or health" (BEG, Sec. 1); as well as "a damagee who, as a close relative of the persecutee, was affected by the oppressive measures."[53]

(2) Part Two – "Categories of Damages":

(a) First Chapter – Loss of Life:

The following provisions applied:

1. " A claim to compensation for loss of life exists if the persecutee has been deliberately or carelessly killed or driven to death. It suffices if the nexus between death and persecution is probable." (BEG Sec. 15(1) at 13).

2. "If the persecutee died during deportation or during deprivation of liberty within the meaning of this Law or immediately thereafter, it shall be presumed that he was deliberately or carelessly killed or driven to death by [Nazi] oppressive measures." (BEG Sec. 15(2) at 13).

3. "Compensation is payable in the form of … an annuity, … a lump sum, in case of remarriage, … [or] a capital indemnity." Those permitted to assert such claims were (a) the persecutee's wife and children, and (b) the persecutee's dependent husband, parent, grandparent or orphaned grandchild if such person "had been deprived of support from the deceased."[54] Additionally, "the relatives in the ascending line for the period of indigence" were entitled to assert wrongful death claims as "survivors," but only "provided the persecutee was maintaining them at the beginning of the persecution leading to his (or her) death or would maintain them if he (or she) were still alive" (BEG Sec. 17 at (1)5).

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52 Schwerin, at 496.

53 *Id.* at 496 n.67.

54 Hilberg, at 1165.

4. Payment provisions: "Monthly payments … to claimant equal to the pension that would have been granted if the deceased had held a German civil service rank commensurate with his economic or social status before his persecution, and if he had thereupon suffered accidental death on duty. Payments … terminable upon achievement of reasonable self-support, or after remarriage in the case of a widower or widow, or at age seventeen in the case of a child. [A] [l]ump-sum payment [to be made] for the period from date of death to November 1, 1953 [the effective date of the statute]…."[55]

(b) Second Chapter – Damage to Limb or Health:

The following provisions applied:

1. "A persecutee shall have a claim to compensation if he has suffered damage to limb or health that is more than insignificant. It shall suffice if there is a probable nexus between the damage to limb or to health and the persecution." (BEG Sec. 28(1) at 17).

2. "The damage shall be deemed insignificant if it does not entail, nor will probably entail, a lasting impairment of the persecutee's mental or physical faculties." (BEG Sec. 28(3) at 17).

3. Compensation to cover medical costs (at the same rates available to German civil servants in case of accidents); reduction of income provided that income was reduced by at least 25%; monthly payments for salary reimbursement of between 15% – 70% based upon level of disability, calculated according to civil service rates, with a lump sum available for impairment prior to November 1, 1953.[56] Compensation to cover reeducation expenses.

(c) Third Chapter – Damage to Liberty:

The following provisions applied:

1. A persecutee could assert a claim for deprivation of or restrictions on liberty if, at any time between January 30, 1933 and May 8, 1945, such person was subjected to "police or military detention, arrest by the [Nazis], custodial and penal imprisonment, detention in a concentration camp and forced stay in a ghetto" (BEG Sec.

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[55] *Id.* at 1166.

[56] *Id.* at 1166; Schwerin, at 501.

43(2) at 20); "if he lived or did forced labor under conditions similar to those of detention, or did service in a penal or reform unit of the German Armed Forces" (BEG Sec. 43(3) at 20); or if "he had worn the Star of David or had lived 'underground' under conditions unfit for a human being" (BEG Sec. 47 at 21), *i.e.*, in hiding.[57]

2. A persecutee "deprived of his liberty by a foreign state" could assert the same claim where "the deprivation of liberty was made possible by the fact that the persecutee had lost the German nationality or the protection of the German Reich," or "the government of the foreign state was induced by the [Nazi government] to effect the deprivation of liberty" (BEG Sec. 43(1) 1 & 2 at 20).[58]

3. Compensation to be made in a lump sum payment of DM 150 per month (approximately $35) for every month of deprivation of or restriction upon liberty (BEG Sec. 45 at 21).[59]

(d) <u>Fourth Chapter – Damage to Property:</u>

The following provisions applied:

1. A persecutee could assert a claim for property damage occurring within the territory of the German Reich as of December 31, 1937, for "any tangible object … destroyed, defaced or left to be looted," such as through "appropriat[ion]" or "distribut[ion] among a mob,"

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[57] Hilberg, at 1166.

[58] The proper interpretation of "inducement" was the subject of confusion and thus litigation in the German courts. "Volumes of documents, prepared mainly by the United Restitution Organization, had to be assembled for each country and sometimes for individual camps to demonstrate the pressure exercised by the Third Reich upon these Governments to persecute the Jews, the conditions of life in internment, and the period involved. It was only by 1962 that most of the leading decisions regarding the application of this rule had been issued." <u>Ten Years of Indemnification</u>, at 38.

Eventually, "time frames were established to fix German responsibility for actions by satellite states. Thus Slovakia and Croatia were considered to have lacked any power of their own from the beginning of their existence, and all their persecutory activities were treated as German. Vichy France was deemed to have lost its independence only after August 12, 1942; Romania, Bulgaria, and Italy, in September 1943; and Hungary, in March 1944. The law of 1965, however, specified that Germany was to be held accountable for measures taken by Romania, Bulgaria, and Hungary as early as April 6, 1941, if these actions had deprived the victims of all their freedom. The deprivation was total only if it had been caused by such relatively drastic measures as ghettoization, incarceration in a camp, or service in a Hungarian labor company." Hilberg, at 1173; *see also* Schwerin, at 502 n.93.

[59] *See also* Schwerin, at 503.

where the "tangible objects were left without supervision by anyone safeguarding his interests," or where "he had to abandon tangible objects belonging to him because he emigrated, fled or lived in illegality" to evade the Nazis or "because he was expelled or deported" because of persecution. (BEG Sec. 51(1), (2) & (3) at 22).

2. Compensation payable as follows: "[A] [l]ump sum payment of replacement value up to a maximum of [DM 75,000, or approximately $18,750 at the then-prevailing exchange rate of approximately $1.00 to DM 4], for all property losses, provided that for loss of personal belongings, a persecutee could demand payment of 150 percent of his yearly income in 1932.… up to a maximum of [DM 5,000, or then approximately $1,250]. The Federal Restitution Law of 1957 as amended [see infra] recognized claims without a maximum for identifiable property confiscated by the Reich "within Germany and Berlin, or if such property was confiscated elsewhere and brought into Germany."[60]

(e) Fifth Chapter – Damage to Possessions:

The following provisions applied:

1. The same requirements for property damage claimants were applicable; however, no compensation could be paid for losses totaling less than 500 Reichsmarks. As with property losses, the statute imposed a payment ceiling, per persecutee, of DM 75,000. (BEG Secs. 56-58[61] at 23-24).

2. Although the BEG did not define "possessions" (as distinguished from "property"), "[in] a number of decisions the [German] courts . . . interpreted the term 'possessions' to include inventions, patents, goodwill, business connections, and reversionary interests."[62]

(f) Sixth Chapter – Discriminatory Taxes:

1. Compensation was awarded for

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60 Hilberg, at 1167. One problem posed by this provision of the BEG was the "difficult[y] [in] distinguish[ing] between a claim to restitution or a claim to compensation." Schwerin, at 504 n.106. Germany's restitution provisions are more fully discussed *infra*.

61 *See also* Schwerin, at 505.

62 Schwerin, at 505 n.108. However, "[no] compensation [was to] be paid for losses of income derived from the use of property," BEG Sec. 59.

> "[G]eneral discriminatory levies and for … losses through forced contracts, … payments to the Deutsche Goldiskont-Bank to obtain an export license, … payment of the Reich Flight Tax [imposing upon those who fled to foreign countries a tax of 25% of the total value of their property], and … payment of surcharges …."[63]

(g) Seventh Chapter – Damage to Vocational and Economic Pursuits:

The following provisions applied:

1. Self-employed persecutees were entitled to assert a compensation claim if subjected to "substantial" restriction in occupation; i.e., if earnings were reduced by over 25% (BEG Sec. 66). Compensation was made in the form of a lump sum payment for a period ending with achievement of an "adequate standard of living" in accordance with German civil service provisions (up to DM 40,000, or then approximately $10,000); a lifetime annuity for those with "no adequate subsistence"; or assistance in resuming former profession or one of equal standing. (See BEG Secs. 66–86 at 26-31).[64]

2. Privately employed persecutees were entitled to restoration to former or equivalent employment; or to a lump sum payment as set forth above. (See BEG Sec. 87 at 32).[65]

3. Public servants (including employees of the Jewish community in office before 1933) were entitled to a lump sum payment from date of dismissal to April 1, 1950.[66]

4. Students were entitled to a lump sum payment up to DM 10,000 (then approximately $2,500); children of persecutees seeking to commence or resume vocational training were entitled to a lump sum payment up to DM 5,000 (then approximately $1,250) per child. (BEG Secs. 116, 119 at 40-41).[67]

5. In the event of the death of persecutee following election of an annuity claim, his survivor could assert the latter claim as well as an annuity claim for loss of life; however, compensation was limited to

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63 Schwerin, at 505 and at n.112.

64 Hilberg, at 1167-68.

65 Id., at 1168.

66 *Id.*

67 *Id.*

the higher of the two annuities plus 25% of the lower annuity. BEG Sec. 120 at 41. Likewise, a persecutee entitled to receive compensation for damage to limb or health in the same period that he received compensation for damage to economic or vocational pursuits, was limited to the higher of the two compensation claims plus 25% of the lower claim. (BEG Sec. 121 at 41).

6. In addition to compensation for vocational injury, persecutees were entitled to compensation arising from the full or partial loss of a life insurance policy. Moreover, "a beneficiary who [was] not a persecutee [had] a claim to compensation if the insured was a persecutee and the beneficiary [was] either the spouse of the persecutee or, in case of intestate succession, would be an heir of the first or second degree," BEG Sec. 127(2) at 42. Payments were available to a maximum of DM 25,000 (then approximately $6,250).[68]

(h) Eighth Chapter – Immediate Aid to Repatriates:

1. Persecutees who returned to Germany after May 8, 1945 were entitled to "an immediate aid payment in the amount of DM 6,000 [then approximately $1,500]," half of which was to be "set off against compensation payable for damage to property or possessions" (BEG Sec. 141(1) & (2) at 46).

(3) Parts III, IV and V – "Special Provisions for Legal Persons, Institutions or Associations"; "Special Groups of Persecutees"; "Persons Damaged Because of Their Nationality":

The following provisions applied:

1. Corporate persons or their "successors in right," including "successor organizations established under restitution legislation," which maintained corporate headquarters in West Germany or West Berlin as of December 31, 1952 (see infra), or had removed their headquarters from a German area as of December 31, 1937 because of persecution, were entitled to assert claims for losses to property and possessions in accordance with the provisions applicable to persecutees. (BEG Sec. 142(2) at 47).[69]

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[68] *Id.*

[69] *Id.* at 1169.

2. Persecutees who, regardless of residence, lost real estate in West Germany or West Berlin, were entitled to compensation for property losses as set forth under Part II of the BEG.[70]

3. Persecutees who, "because of their nationality, suffered permanent impairment of their health (mainly as a result of medical experiments)" were entitled to monthly payments for damage to health ranging from DM 100 to 200 (approximately $25 to $50) (see BEG Secs. 167, 168 at 52-53).[71]

4. "Heirs of persons who died as [a] result of persecution before December 31, 1952, and whose last residence was in West Germany or West Berlin" could assert claims for the persecutee's death, as set forth under Part II of the BEG.[72]

5. "Persons who had lived in an area from which Germans were expelled after the war (principally Czechoslovakia and western Poland) and who could be considered German by reason of language or culture" could, in accordance with the provisions of Chapter 2 of the BEG, assert claims for (a) "[d]eath of another person in the same category"; (b) damage to health; (c) loss or restriction of liberty; (d) discriminatory taxes (to a maximum of DM 9,750, or then approximately $2,440); and (e) loss of economic or vocational opportunity (to a maximum lump-sum payment of DM 10,000 (approximately $2,500) or a maximum monthly annuity of DM 200 (approximately $50).[73]

6. "Persons who had lost their nationality (other than Austrian) and who were resident in some country other than Israel as of October 1, 1953" could, in accordance with the provisions of Part II of the BEG, assert claims for (a) "death of another person in the same category"; (b) damage to health and (c) loss or restriction of liberty.[74]

7. "Persons who had lost their nationality (other than Austrian) and who were resident in Israel as of October 1, 1953" could assert claims for death of "another person in the same category"

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70 *Id.*

71 *Id.*

72 *Id.*

73 *Id.*

74 *Id.* at 1170. "The West Germans felt that the Austrians had been sufficiently active partners in the Nazi destruction process to share in the payment for its effects. The Austrians on their part contended that as an 'occupied' nation they were not responsible for anything that might have transpired with their cooperation." Hilberg, at 1171; *see also infra*.

(however, no lump sum payment was available); or for restriction of liberty.[75]

8. "Persons not eligible for indemnification under other provisions of the law, who were residents of a non-Communist country on December 31, 1965, and who did not possess the nationality of a Communist state on that date, provided that they were not covered in a European country under programs set up with West German funds,"[76] could, "in cases of nonsupport from any public agency," assert claims for (a) death of spouse because of persecution, if claimant had not remarried, in a lump-sum amount of DM 2,000 (then approximately $500) or, if claimant was age 65 and over, DM 2,500 (approximately $625); (b) disability because of persecution if 80% or more, in the same amounts applicable to death of spouse; and (c) loss or restriction of liberty if such loss was for at least six months. For loss of liberty, claimants who were incarcerated or confined to a ghetto were entitled to DM 3,000 (approximately $750), or higher if period of confinement was for a year or more, and claimants who wore the Star of David or who were in hiding were entitled to DM 1,000 (approximately $250).[77]

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[75] Hilberg, at 1170. Israeli Holocaust victims also were (and remain) eligible, indirectly, for German reparations payments, which have been provided by Israel from German reparation funds as part of the Israeli Invalids of Nazi Persecution Law. *See infra*.

[76] The BEG did not "cover victims who were foreign nationals at the time they suffered injury and who [were] living in their own country. This meant that a victim of Nazi persecution who lived in France or Belgium or Holland but came from Germany was fully entitled to file his claims under the indemnification measures, while the Frenchman, Belgian or Dutchman who had suffered the same persecution had no rights under this legislation. It was this very unsatisfactory situation which led to the agreements with [twelve] European countries; as these agreements only cover the payment by Germany of lump sums, the countries concerned enjoy a large measure of discretion in the distribution of the available money." Van Dam on Reparations, "The Politics of Postwar Germany" (New York: Frederick A. Praegar, Inc., 1963) (hereinafter, "Van Dam"), at 293.

Between 1959 and 1964, West Germany entered into agreements with France (which received DM 400 million), Holland (DM 125 million), Greece (DM 115 million), Austria (DM 101 million), Luxembourg (DM 18 million), Norway (DM 60 million), Denmark (DM 16 million), the Netherlands (DM 125 million), Belgium (DM 80 million), Italy (DM 40 million), Switzerland (DM 10 million), Great Britain (DM 11 million) and Sweden (DM 1 million). Hilberg at 1171 n.35; Schwerin at 511. These so-called "global" agreements, and later agreements with formerly Communist-bloc nations, are discussed in more detail *infra*.

[77] Hilberg, at 1170.

(4) Parts VI and VII – Payment of the Compensation Claims; Mitigation of Hardship:

1. Claims were to be paid by the end of the 1962 fiscal year, with the exception of claims for damage to property and possessions, and losses to economic and vocational pursuits, which were to be paid by April 1, 1967 (BEG Sec. 169(1) & (2) at 53).

2. "In order to mitigate hardships, persons whose damages [were] due to the reasons of persecution … and for whom funds for special purposes [were] not otherwise provided for, [could] be granted hardship – mitigation payments. The payments [could] take the form of grants [and loans] for sustaining the costs of subsistence, for carrying on a medical treatment, for purchasing household goods, for building up a basis of self-sustenance and for vocational training." (BEG Sec. 171(1) at 53).

3. Hardship payments "[could] also be granted to persons who suffered damage through the dissolution [by Nazi measures] of the institution which provided their maintenance if, because of such damage, they [were] in financial distress"; to "damagees who [were] sterilized … under the Law for the Prevention of the Procreation of Progeny Afflicted with Hereditary Diseases, dated July 14, 1933"; to "survivors of persons who [under the Nazi regime] were victims of euthanasia, if it may be assumed that had such persons not been killed their survivors would now be supported by them"; and "to recognized charity organizations or to a Jewish dispensing charity, if such grants appear necessary for the establishment or maintenance of charity institutions for the benefit of persecutees" (BEG Sec. 171(2), (3) & (4) at 54).

As of the end of the initial ten-year period following implementation of the BEG, the "Central Statistical Office in Duesseldorf, where claimants are all registered, carrie[d] the names of over 1,700,000 applicants," a number which included both persecutees as well as "successors in right."[78]

[78] Ten Years of German Indemnification, at 34.

c. *Bundesentschädigungsschlussgesetz (BEG – Schlussgesetz*, or "Final Federal Compensation Law" or "Second Revised BEG") (1965-1969)

(1) Provisions

In the years following enactment of the Revised BEG, it became clear that the 1956 statute was deficient in several respects. Most significantly, the statute did not keep apace with the flood of migrants from Eastern European nations, many of whom did not flee to Western nations until after the BEG cut-off date of October 1, 1953. As of 1964, when the German Bundestag initiated hearings concerning amendment of the law, approximately 125,000 to 150,000 Nazi victims fell within the latter category.[79]

A second key shortcoming in the Revised BEG statute pertained to health claims. Under the 1956 statute, claimants had been required to prove incapacitation of at least 25%, and that such disability resulted from Nazi persecution, with the burden of proof upon the claimant.[80]

On September 14, 1965, West Germany enacted a Second Revised BEG, the BEG-*Schlussgesetz* or "Final Law," which addressed some of these problems.[81] With respect

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[79] Twenty Years Later, at 126-27.

[80] Id.

[81] However, "[o]ne psychological obstacle" to further revision of the BEG "was that the 'man in the street' felt that by 1963 enough had been paid to the Nazis' victims. The average person was unaware of the differences between the restitution of identifiable property (which took place under Allied laws) [*see infra*], indemnification for a variety of losses, such as life or limb, and, lastly, reparations to the State of Israel under the 1952 agreement." "West Germany," 65 American Jewish Year Book (1964), at 250. "In October 1962 Hendrik George van Dam, secretary general of the *Zentralrat der Juden in Deutschland* (Central Council of Jews in Germany), stated that up to then payments to all groups of victims of the Nazis (Jews and others) had come to DM 18.5 billion ($4.625 billion): DM 14 billion ($3.5 billion) under the [BEG] …, more than DM 1.5 billion ($375 million) under Federal restitution legislation, and DM 3 billion in merchandise ($750 million) delivered to Israel. This estimate was less than half as much as that made by official sources, which was DM 40 billion ($10 billion). Van Dam pointed out also that of 1,700,000 persons who had filed claims, only 760,000 were Jews." *Id.* at 250-51.

to post-1953 migrants from Eastern Europe, the Second Revised BEG created a special fund, with a payments ceiling of DM 1.2 billion ($300 million), in favor of those refugees who had left Eastern Europe between October 1, 1953 and September 18, 1965.[82] As to health claims, "[c]laimants for damage to health who suffered incarceration in concentration camps for a year or longer were granted a legal presumption that the disabilities complained of were causally linked to the Nazi persecution, even if they came to light many years later. But the German authorities refused to extend that presumption to inmates of ghettos and labor camps, even though the hardships suffered in them were as severe as those in concentration camps."[83]

The Second Revised BEG also provided for increased benefits for professional loss claimants; granted certain additional benefits to widows or widowers of Nazi victims if such victims would have been entitled to annuities for economic or professional loss under the original BEG deadline of October 1, 1953; and permitted, for the first time, the assertion of claims for damage to health by political refugees or stateless persons residing in Israel who had been members of the German linguistic and cultural community.[84]

(2) Limitations:

Although the Second Revised BEG contained significant improvements, there still remained a number of shortcomings, including the failure to compensate slave labor:

> To begin with, the law did not recognize every kind of loss. There was no recognition of sheer torment and chagrin. No provision of the law authorized payments for suffering as such. For the pure hurt inflicted by the German state there was no remedy at all…. Similarly, the law authorized no compensation for forced labor, nor could anyone who had once been

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82 Twenty Years Later, at 17, 127.

83 *Id.* at 127.

84 *Id.* at 127, 129; *see also* 1973-1975 Claims Conference Annual Report, at 14.

> compelled to work for a public agency now find satisfaction under any law.[85]
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> Significantly, then,
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> [N]one of the German laws provided any indemnity for the labor of the concentration camp inmates. Those who had been incarcerated or who could show that they had been forced into hiding under inhuman conditions received a small grant of about a dollar a day for "false imprisonment." 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.[86]

The law was beset with more mundane problems as well. The 1965 statute had included a firm claim filing date of March 31, 1967, and contemplated the completion of the claim administration process by December 31, 1969. Even by 1975, however, these deadlines had not been met.[87] There was also confusion over an amendment extending the filing deadlines for refugees and stateless persons asserting damage to health claims who had been part of the "German cultural and linguistic group."[88] Moreover, for the latter claim, German appellate courts imposed the requirement that "in addition to the knowledge and use of the German language, a spiritual bond [must have] existed between the expellee and the German

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85 Hilberg, at 1172.

86 Benjamin B. Ferencz, Less Than Slaves (Cambridge, Massachusetts: Harvard University Press 1979) (hereinafter, "Ferencz"), at xvii.

87 Twenty Years Later at 130; 1973-1975 Claims Conference Annual Report, at 14.

88 1973-1975 Claims Conference Annual Report, at 22.

linguistic and cultural community, as reflected by his participation in German educational and cultural life," a "combination … difficult to prove."[89]

The law also continued to omit "all the survivors of Eastern Europe who did not emigrate to a non-Communist country by the end of 1965," while "[l]imited and late was the coverage afforded in 1965 to those who were part of the East European migration during the preceding twelve years."[90]

In addition, as noted previously, the Federal Republic also continued to insist upon proof of injury to health on the part of claimants who had not been interned in concentration camps, such as those who had been confined to ghettos or work camps.[91] Germany held to this position "notwithstanding that conditions of imprisonment, most notably

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[89] 1969 Claims Conference Annual Report, at 21. One result of this interpretation was that although in "principle, stateless persons and political refugees in Israel [were] ineligible to file claims for damage to health, … since stateless persons and political refugees from expulsion areas [were] all considered persecutees, those able to prove they were members of the German linguistic and cultural community [could] claim compensation …, even though they [were] residing in Israel." Id., at 20.

But because "German authorities and courts now had to investigate who did or did not fit" within this provision, "[t]his led to grotesque proceedings." Christian Pross, Paying for the Past: The Struggle Over Reparations for Surviving Victims of the Nazi Terror (Baltimore: The Johns Hopkins University Press 1998) (hereinafter, "Pross"), at 69. The German Supreme Court of Appeals "decided that 'language used in personal life' was the criterion. However, it was impossible to tell from behind a German desk which language the applicant had spoken decades ago in Kovno, Bialystok, or Budapest. Therefore, they came up with the idea of language tests, which had to be taken before members of the German embassies or, in Israel, at the Finance Ministry. At one such test, one person wrote in his test booklet, 'Never again saw my wife, my three sons, mother, and siblings. Everyone dead in Auschwitz. I ask myself how I manage to sit here and say I am part of the German cultural sphere.' In one case, the Supreme Court of Appeals stated that the claimant showed no 'desire to feel German.' This provision was based on the BEG's basic concept that only German persecutees, that is, only 'German' Jews should receive restitution." Id.

[90] Hilberg, at 1170.

[91] 1973-1975 Claims Conference Annual Report, at 24.

in the notorious ghettos of Warsaw and Lodz, were as intolerable as in the concentration camps."[92] Thus,

> [t]he former inmates of the Lodz ghetto [were] the victims of a double misfortune. The gates of the Lodz ghetto were closed less than a year before the end of the war, and the inmates were transferred to genuine concentration camps. In those camps, their imprisonment endured for less than a year, and hence the legal presumption arising from imprisonment in concentration camps [was] inapplicable to them as well.[93]

Even those entitled to the presumption of harm from imprisonment in a concentration camp listed in the relevant German statute[94] were confronted with difficulties: the International Tracing Service of the International Committee of the Red Cross at Arolsen, in Germany, informed the Federal Republic in the early 1970s that "the two lists of concentration camps it had previously published failed to include some 70 concentration camps conducted by the S.A. for periods of one to two years"; furthermore, between 250-300 camps on the published lists contained incorrect opening and closing dates, "often reduc[ing] the lifetime of a given concentration camp to less than one year, and thereby depriv[ing] former inmates of the right to claim annuities for damage to health."[95]

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92 1969 Claims Conference Annual Report, at 21.

93 *Id.* at 21-22.

94 The most recent version of the German statute listing concentration camps is described as follows in the English translation of the Commentary ("About the Individual Provisions") to the July 17, 2000 German legislation implementing the Foundation "Remembrance, Responsibility and the Future" (hereinafter, "Commentary to German Fund Legislation"): "a concentration camp as defined by Section 42, Paragraph 2 of the German Indemnification Law as further elaborated in the Second Ordinance concerning the Amendment of the Sixth Ordinance for the Implementation of the German Indemnification Law (2. AendV 6. DV-BEG) dated September 20, 1977 (BGB1. I S. 1786), which was most recently amended through the Third Ordinance concerning the Amendment of the Sixth Ordinance for the Implementation of the German Indemnification Law (3. AendV – 6. DV-BEG) of November 24, 1982 (BGB1. I S. 1571)." *Id.* "About Section 11, Paragraph 1," at 34.

95 1973-1975 Claims Conference Annual Report, at 24-25.

The requirements for proving entitlement to compensation for "damage to health" were particularly burdensome. In a 1963 German medical journal, psychiatrist Ulrich Venzlaff observed:

> We must not forget the constant rousing of memories, aggressions, and resentments caused by the restitution process—the endless difficulties of producing witness statements and documents on damage to property and education, proof of persecution as such, the dealing with medical disagreements on the backs of persecutees, the slowness of the process and the sometimes insistent narrow-mindedness of the restitution bureaucracy that led to new illnesses ….[96]

The same journal quoted the "criticisms [leveled at the] German reparations practices" by Danish psychiatrist Henrik Hoffmeyer:

> After the deportees have risked their health in conditions having no equal in history, they return to a society that attempts to calculate the material restitution they deserve with administrative pedantry. The sick are sent from doctor to doctor, their joints and reflexes, hearts and lungs are conscientiously examined, and in general nothing objectively abnormal is found. The results of these examinations are reviewed by a huge, impersonal administrative apparatus that considers itself capable of judging whether a person who has gone through such hell is an 8, 10, or 12 percent invalid. This pedantic examination of reparations rights, typical of the normal method of pension granting, completely denies the existence of a law of all or nothing in this area, and this method is what often gives the sick person the feeling that he is suspected of being a parasite on society.[97]

d. Summary of BEG Compensation Statistics

At the end of December, 1966, over a decade after implementation of the German indemnification laws, Israeli Foreign Minister Abba Eban "announced that,

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[96] Pross, at 96.

[97] *Id.* at 96-7.

according to the late Nehemiah Robinson of New York, the Nazis had directly or indirectly confiscated from Jews property valued at a minimum of DM 116 billion ($29 billion). German estimates of individual indemnification payments made thus far totaled DM 15 billion (not quite $4 billion), he added."[98]

Nearly a decade after that, as of 1975 – by which time BEG filing deadlines were long past and many compensation claims had been disposed of – Nazi victims had submitted over 4,300,000 claims for indemnification.[99] Payments between October 1, 1953 and December 31, 1973 totaled over $10 billion.[100] Of these payments, more than 60% were made in the form of lifetime annuities, with over 268,600 annuities in force as of year-end 1975.[101] These annuities were categorized as follows: Loss of life (26,927 annuities in force as of year-end 1972); Damage to health (180,758 annuities); Damage to professional or economic advancement (60,717 annuities); and Hardship cases (9,402 annuities).[102]

Most recently, the German Federal Ministry of Finance, responsible for tabulation of BEG statistics, has reported that for the entire period of compensation, from the mid-1950s through the end of December, 1998, Germany has made the following payments in total:[103]

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98 68 American Jewish Year Book (1967), at 359.

99 *See* 1973-1975 Claims Conference Annual Report, at 11.

100 *Id.*

101 *Id.*

102 Twenty Years Later, at 128.

103 Not all BEG pensions are paid to Jewish victims, as discussed more fully below. However, the information provided by the German government does not break down the payments based upon the nationality, religion or other status of persecutee (*i.e.*, Jewish, Roma, Jehovah's Witness, disabled, homosexual, or other victim group).

	DM (Approximate)	$ (Approximate)[104]
BEG	DM 80.0 billion	$ 40.0 billion
BRUEG	4.0	2.0
Agreement with Israel	3.5	1.7
Bilateral Agreement[s]	2.6	1.8
Civil Service, etc.	8.8	4.4
Other	5.5	2.8
Total	DM 104.4 billion	$52.7 billion

For the year 1998 alone, the German Ministry of Finance reports that a total of 100,476 individuals were receiving BEG pensions. In 1998, these pensions totaled DM 97,964,000 (approximately $49 million). Individual BEG pensions during the same year, for all victim categories, averaged DM 11,700 (approximately $5,850) annually, or DM 975 (approximately $490) monthly. In 1998, pensions for "loss of life" were paid to 4,199 recipients, each receiving an average annual payment of DM 18,107 (approximately $9,054), or DM 1,509 (approximately $755) monthly. In the same year, "loss of health" pensions were paid to 86,138 Nazi victims, each receiving an average annual payment of DM 11,533 (approximately $5,767), or DM 961 (approximately $480) monthly. "Professional damage" pensions were paid to 8,382 recipients, each receiving an average annual payment of DM 11,584 (approximately $5,792), or DM 966 (approximately $483) monthly. "Hardship

[104] These values are based on an exchange rate of approximately $1.00 to DM 2 as of July, 2000.

payments" were made to 1,757 recipients, each receiving an average annual payment of DM 5,122 (approximately $2,561), or DM 427 (approximately $213) monthly.[105]

According to information provided by the Claims Conference, approximately 40% of BEG payments are made to Holocaust victims living in Israel, 20% to victims living in Germany, and 40% to victims living in all other countries (but primarily in the United States).[106]

D. Hardship Fund (1980 to date)

1. Overview

Compensation under the BEG was limited primarily to Holocaust victims who had been former German citizens, refugees and stateless persons. Those living in Western Europe at least theoretically were able to obtain compensation pursuant to the various agreements negotiated between Germany and each of twelve such nations (see infra). However, Nazi victims living in the former Soviet Union and Central and Eastern Europe remained ineligible for indemnification or restitution from Germany. Moreover, those who emigrated to the West and would have qualified under the BEG as "refugees" nevertheless

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[105] As noted earlier, compensation for "loss of freedom" or "loss of possessions or property" under the BEG, as well as for property damage under the BRUEG, were in the nature of one-time payments, which were largely completed by the 1960s.

[106] *See also* Dr. Otto Graf Lambsdorff, Special Representative of the German Chancellor for the Foundation "Remembrance, Responsibility and the Future," Statement before the Committee on Banking and Financial Services of the United States House of Representatives, February 9, 2000, available at http://www.house.gov/banking/2900/am.htm, at 3 ("The Federal Compensation Law of 1956 is the cornerstone of German compensation to victims of racial, political and religious persecution. Over four million claims have been submitted under this legislation, which provides for monthly pensions as well as extensive health benefits for injuries suffered as a result of persecution. Today, over 100,000 survivors continue to receive monthly pensions averaging 600 dollars. Most of the 600 million dollars annually provided under this law goes to residents of Israel and the United States"); 1999 Claims Conference Annual Report, at 7 ("In all, more than 270,000 survivors received lifetime pensions under the [BEG] and tens of thousands of these survivors continue to receive pensions. Hundreds of thousands more received one-time payments

(footnote continued on next page)

were precluded from obtaining compensation under the German Indemnification Law because of the 1969 filing deadline.

Between 1975 and 1980, the Claims Conference unsuccessfully negotiated with Germany for an extension of the BEG deadline.[107] Although Germany refused to supplement the existing BEG provisions, it did enter into an agreement with the Claims Conference providing for the creation of a special hardship fund intended to compensate primarily Jewish victims of the Holocaust who had emigrated from Central and Eastern Europe and the Soviet Union after the expiration of the BEG filing periods (the "*Härteausgleich*" or "Hardship Fund"). However, it was a "condition of the German government … that [the Hardship Fund] be administered by the Claims Conference rather than by German authorities."[108]

According to the Guidelines published in Germany's Federal Register of October 14, 1980, the Hardship Fund was established in recognition of "the fact that there are still Jewish victims" who had "suffered in their health because of national socialist violence, and therefore [are] in a hardship situation, who for formal reasons did not obtain compensation…," including those who, for legitimate reasons, failed to file timely claims

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under those laws").

107 1998 Claims Conference Annual Report, at 17.

108 *Id. See also Editorial,* The Jerusalem Post, November 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 criteria established by the German government").

under the BEG.[109] Financial need was a prerequisite to compensation under the Hardship Fund. Those who remained behind the Iron Curtain continued to be excluded from the German compensation scheme.

Under the terms of the Hardship Fund, the Federal Republic agreed to establish a fund of DM 400 million, of which 5% was to be paid out in institutional grants. The remaining money was to be paid to eligible survivors as one-time grants of DM 5,000 each (approximately $2,500 in current value). It was estimated in 1980, when the Hardship Fund was established, that the Fund would benefit 80,000 Holocaust survivors.[110] However, as a result of the collapse of communism and a higher level of emigration than initially anticipated, the number of needy Holocaust applicants also was considerably greater than expected. In response, after additional negotiations, the Claims Conference eventually obtained from Germany an agreement to provide an additional DM 135 million to fund the Hardship Fund through the end of 1992, and also to provide an additional DM 10 million for institutional grants to be made in Israel, primarily for social welfare programs.[111] In 1992, the

Claims Conference obtained an additional commitment of new funds from Germany, with DM 200 million earmarked for the continuation of the Hardship Fund during

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109 *See* Hardship Fund Guidelines (published in Germany's Federal Register on October 14, 1980). An English translation of the Hardship Fund Guidelines was provided to the Illinois federal district court in Wolf v. Federal Republic of Germany and The Conference on Jewish Material Claims Against Germany, Inc., No. 93-C-7499,1995 WL 263471 (N.D. Ill. 1995), aff'd, 95 F.3d 536 (7th Cir. 1996).

110 *See* 1997 Claims Conference Annual Report, at 12.

111 *See* 1998 Claims Conference Annual Report, at 6, 17.

the years 1993-1999.[112] In 1999, the Claims Conference obtained a commitment from Germany for additional funding for the Hardship Fund for the years 2000 to 2003.[113]

The specific criteria for eligibility under the Hardship Fund were "established in agreements between the Claims Conference and the German federal government."[114] The key provisions of the Hardship Fund are as follows:

- Section 1: "From the means provided for final payments in single hardship cases in the amount up to [then-] DM 400 millions [sic] payments can be made directly to Jewish victims as defined in § 1 Federal Compensation Act [BEG], who as a result of national socialist violence as defined by § 2 BEG, **suffered severe health damages [sic] and therefore being in a special hardship situation, and who for formal reasons did not obtain compensation payments** because they were unable to file an application in time or met [sic] requirements of deadlines or residence provided for [in] the BEG or BEG Final Compensation Act …." (emphasis added).

- Section 4: "Benefits consist of a lump sum payment in the amount of up to DM 5000…."

- Section 6: "**Heirs of persecuted persons are not entitled to compensation….**" (emphasis added).

- Section 9: "The *Bundesrechnungshof* [the German equivalent to the General Accounting Office]… may at any time ask for information about the use of mon[ies]. It furthermore may check whether the mon[ies] had been properly used…."[115]

Among the information currently requested of applicants to the Hardship Fund is the following:

- date and place of birth for applicant, spouse and children;

- religion;

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112 *See* 1997 Claims Conference Annual Report, Notes to Financial Statements, at 10.

113 *See* 1998 Claims Conference Annual Report, at 17.

114 1998 Claims Conference Annual Report, at 9; 1999 Claims Conference Annual Report, at 17.

115 *See* Hardship Fund Guidelines.

- nationality;
- occupation;
- "domicile at time of persecution";
- "domicile on December 31, 1965" (the deadline under the BEG);
- date of departure from "sphere of communist influence";
- dates and location of subsequent immigration;
- "concise description of persecutory measures suffered with particulars of periods and places of persecution";
- "brief statement of financial circumstances";
- statement as to whether applicant has received compensation under the "German Indemnification Legislation or by virtue of a global agreement of the German Federal Republic with another government," and, if so, a statement as to the "file number" as well as the dates and amounts of compensation;
- for those "persecutees who, prior to December 31, 1965 were resident in countries outside of the sphere of communist influence and who did not file an application under the German Indemnification Law," a statement as to why such person "did not file a timely claim for indemnification";
- statement as to whether earning capacity has been reduced as of time of application, for those applicants under age 60 (females) or 65 (males), and statement as to whether such reduction in earning capacity is of least 80% (for any reason) or 50% (due to persecution);[116]
- if there has been such reduction in earning capacity, a description of illness(es) to which reduction is attributable, including medical treatment, and attachment of "a medical certificate to prove the reduction of earning capacity"; and

[116] According to information provided by the Claims Conference, for those aged 60 and over at the time of the claim, it was presumed that the claimant suffered damage to health and therefore did not have to demonstrate a reduction in earning capacity.

- if there has been no reduction in earning capacity of at least 50%, a description as to whether applicant was deprived of liberty in a concentration camp, ghetto, forced labor or compulsory labor camp, because of a "life in illegality or life under conditions resembling those of life under arrest," or because of flight,[117] restriction of liberty or "other persecution."

2. Summary of Hardship Fund Statistics

Recent Hardship Fund statistics are as follows.[118]

In 1996, the Claims Conference made payments to individuals from the Hardship Fund totaling $50,801,000. Of this amount, Holocaust victims in Israel received approximately $22,243,000; in the United States, $25,545,000; and in other nations,

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[117] The Hardship Fund is the only significant compensation program for Nazi victims which has made payments to those who fled from the advancing Nazi troops, affecting primarily those in the former Soviet Union who fled further East. As noted previously, however, only persons who had emigrated from communist-bloc nations were eligible for Hardship Fund payments.

[118] The Claims Conference has approved over 200,000 applications for Hardship Fund payments. Of these more than 200,000 individuals, two are known to have instituted litigation in response to unfavorable decisions on their applications. *See* Wolf v. Federal Republic of Germany and The Conference on Jewish Material Claims Against Germany, Inc., No. 93-C-7499, 1995 WL 263471 (N.D. Ill. May 1, 1995), aff'd, 95 F.3d 536 (7th Cir. 1996); Sampson v. Federal Republic of Germany and The Conference of Jewish Material Claims Against Germany, Inc., 975 F. Supp. 1108 (N.D. Ill. 1997). Plaintiffs in these actions respectively contended that the Claims Conference purportedly "refused to fairly compensate [them] for [their] imprisonment by Nazi Germany," Sampson, 975 F. Supp. at 1113, and that the denial of Hardship Fund compensation allegedly was based upon an erroneous assumption that the applicant had received prior payment from Germany, Wolf, 1995 WL 263471, at * 17. The Claims Conference has consistently denied that it has any decision-making authority with respect to the Hardship Fund, a position accepted by the courts which have considered the issue. *See* Wolf, 1995 WL 263471, *17 (" According to the Claims Conference, Wolf had received a payment of DM 1,800 in 1960 and was therefore disqualified . . . . Wolf presents his own affidavit stating that he never received a payment of DM 1,800 from Germany in 1960. . . . Wolf has presented no evidence to disprove [the] assertion that the Claims Conference had no discretion to depart from the German government's requirements when determining whether claimants satisfied the requirements of the 1980 Guidelines. Consequently, the Claims Conference was following the terms set by Germany when it denied Wolf's application in 1988"); Wolf, 95 F.3d at 540 (Claims Conference had been "advised by the Restitution Office in Saarburg – an arm of the German government – that Wolf had received DM [1,800] in compensation," and "[e]ven a payment as small as DM 1,800 rendered Wolf ineligible for an award under the Hardship Fund. Grants from the Fund could be made only if no indemnification payment, regardless of the amount, had been received by the applicant").

$3,013,000.[119] Hardship Fund institutional payments distributed by the Claims Conference to social welfare, educational and other programs reached $6,626,000.[120]

In 1997, Hardship Fund payments to individuals totaled $40,285,000, with $21,072,000 of this amount directed to Holocaust victims in Israel; $16,505,000 to victims in the United States; and $2,708,000 to victims in other countries. Another $2,481,000 in Hardship Fund payments were made to social welfare and other institutional programs.[121]

In 1998, the Claims Conference made Hardship Fund payments to 15,054 individuals, for a total of $40,621,000, while an additional 16,672 individuals applied to the Claims Conference for Hardship Fund payments.[122] Of the $40,621,000 paid in 1998, $19,821,000 was paid to Holocaust victims in Israel; $18,387,000 to those in the United States; and $2,413,000 to those in other countries. $1,946,000 in institutional payments were made during the same year.[123]

In 1999, the Claims Conference "approved one-time payments of DM 5000 each under the Hardship Fund to 20,843 Jewish victims of Nazi persecution, bringing the total number of recipients to 202,271."[124] Of the $34,663,000 paid in 1999, $17,950,000 was paid to Nazi victims in Israel, $13,668,000 to those in the United States, and $3,045,000 to survivors elsewhere in the world. Institutional payments amounted to $542,000.[125]

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119 *See* 1996 Claims Conference Annual Report, at 36 (Notes to Financial Statements).

120 *Id. see also infra.*

121 1997 Claims Conference Annual Report, Notes to Financial Statements, at 12.

122 1998 Claims Conference Annual Report, Notes to Financial Statements, at 11.

123 *Id.*

124 1999 Claims Conference Annual Report, at 17.

125 1999 Claims Conference Annual Report, Notes to Financial Statements, at 12.

E. Article 2 Fund (1992 to date)

a. Overview

The impetus for the third major German compensation fund was the collapse of communism and, subsequently, the reunification of Germany. Unlike West Germany, East Germany had never enacted legislation specifically to compensate Holocaust victims.[126] Following the fall of the Berlin Wall, the Claims Conference entered into negotiations with East Germany; these negotiations were overtaken by the 1990 reunification of East and West Germany. The Claims Conference then entered into new discussions with the reunified nation, as well as with the United States. These negotiations resulted in a provision — "Article 2" — set forth in the reunification agreement between the two Germanys, requiring the newly created German Federal Government to "enter into agreements with the Claims Conference for additional Fund arrangements in order to provide hardship payments to persecutees who thus far received no or only minimal compensation according to the legislative provisions of the German Federal Republic."[127]

Germany initially proposed a payment scheme comparable to the one-time compensation provided under the Hardship Fund. However, "[i]n the course of negotiations, the Claims Conference succeeded in changing the form of payment for the Article 2 Fund to

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[126] *See* 1998 Claims Conference Annual Report, at 18. To the contrary, "[t]he issue of reparations [further] contributed to the hostility toward Jews in the GDR. In 1952 the Allied restitution laws of 1945 were dismissed in the GDR. . . . For the GDR, where in official terms anti-Semitism and fascism had been completely destroyed, it was not necessary or appropriate to give special monetary restitution to the Jews." Peck, at 455. *See also* Robin Ostrow, "German Democratic Republic," in 90 American Jewish Yearbook (1989), at 349 (Philadelphia: The Jewish Publication Society 1990) (the GDR refused to enter into restitution agreements "on the grounds that as the antifascist Germany, it bore no responsibility for crimes committed under Hitler").

[127] *See* Claims Conference Memorandum, at 5; 1998 Claims Conference Annual Report, at 18; Implementation Agreement to the German Unification Treaty of October 3, 1990.

monthly pensions of DM 500 for each eligible survivor. As in the case of the Hardship Fund, these payments are administered by the Claims Conference."[128]

As set forth in Guidelines effective January 1, 1993, the relevant provisions of Article 2 are as follows:

- The purpose of the agreement is to create "an additional fund for hardship payments to individuals who are persecutees in the meaning of paragraph 1 of the German Federal Indemnification Law **who have received to date minimal or no compensation, pursuant [to] the legislation of the German Federal Republic**" (emphasis added).

- "One-time [Hardship Fund] compensation payments to individual Jewish persecutees will continue …."

- "Individuals who are able to prove that they [meet the relevant criteria, see infra] may receive a monthly ongoing payment up to the amount of DM 500, to the extent that they have suffered severe damage to health and are in particular financial need, and they meet the requirements [under the Hardship Fund]. The ongoing payments will be extended for as long as the recipient is in particular financial need."

- "There is no legal claim to the payments provided according to this agreement. They are of a highly personal nature and are not transferable nor inheritable. However, bridging payments [between the period January 1, 1993 through July 31, 1995] can be paid to surviving spouses or children" (emphasis added).

- "The German Federal Accounting Office has the right to request information about the allocation of funds at any time. It also has the right to make inspections to ensure that the allocations are being made properly and according to this agreement."[129]

The original Article 2 Fund criteria included several restrictions such as income caps, minimum requirements for length of confinement or persecution during the Holocaust, and exclusion of certain camps and forced labor complexes. The Claims

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[128] 1998 Claims Conference Annual Report, at 18; 1999 Claims Conference Annual Report, at 17.

[129] *See* Article 2 Fund Eligibility Guidelines.

Conference successfully negotiated expansion of several of the original criteria, increasing the number of survivors eligible for Article 2 compensation, although "open issues" still remain and are under further negotiation by the Claims Conference.[130]

As of the beginning of 1999, an applicant under the Article 2 Fund was required to meet the following criteria:

- Persecution: That he or she was a "persecutee" within the meaning of Section 1 of the BEG (see supra); and
- Confinement: That he or she was confined or restricted as a result of one of the following:
    - 6 months or more of imprisonment in a concentration camp as defined under the BEG, or in a forced labor camp for Jews in Poland, according to the ITS list of places of imprisonment; or
    - 6 months or more of imprisonment at the "Strasshof complex" – special camps for Jews – in Austria; or
    - 6 months or more of imprisonment in the Alpenfestung forced labor camps on the Austro-Hungarian border; or
    - 6 months or more of imprisonment at the copper mines in Bor, Serbia ("ZAL Bor"); or
    - 6 months or more of service in forced military labor battalions for Hungarian Jews on the Ukrainian front; or
    - 18 months or more of imprisonment in a ghetto as defined under the BEG; or
    - 18 months or more of life in hiding in inhuman conditions without any access to the outside world; or

[130] 1998 Claims Conference Annual Report, at 11; *see also infra*.

- 18 months or more of life under false identity if, at the beginning of persecution, applicant was under 18 years old and separated from his or her family; and

- Financial Need: That he or she has an annual household income of up to $16,000 if single, or $21,000 if married; as of January 1, 1999, social security or other government "old age" pensions for persons 70 years old or older are excluded from this calculation; and

- Limited or No Previous Prior Compensation: That he or she (a) does not currently receive an indemnification pension from Germany under the BEG, or under the Israeli Invalids of Nazi Persecution Law[131]; and (b) did not receive more than DM 35,000 in previous compensation from an indemnification program; and

- Residency: That he or she does not currently reside in the former Soviet Union or eastern Europe; and that he or she was not a citizen of a Western European country at the time of persecution (i.e., applicant must be a post-World War II

[131] By agreement between Israel and Germany, persecutees who emigrated to Israel could not seek compensation under the BEG for physical injury; instead, Israel itself was required to fund compensation programs through German reparations. In 1957, the Israeli Knesset enacted a disability law for the benefit of Holocaust survivors, the Disabled Victims of Nazi Persecution Law, which specifically applies to those who would have been eligible for payments under the BEG had Israel and Germany not specified otherwise under their 1952 bilateral agreement. As with the BEG, the disabled applicant must have suffered a disability of at least 25%, and was eligible if he or she had emigrated to Israel prior to October 1, 1953 and was an Israeli citizen and resident as of April 1, 1957. The deadline for submission of claims was at the end of 1969, although late applicants who provide a "reasonable explanation" also may receive compensation. Payments are based upon need. As of the beginning of the year 2000, approximately 22,000 Israeli survivors of the Holocaust were receiving pensions ranging from approximately 1000 to 5570 shekels per month (approximately $250 to $1,393 as of July, 2000). An additional 10,000 disabled individuals are receiving monthly payments pursuant to the Disabled Veterans of the War Against the Nazis Law of 1954; recipients must be at least 10% disabled. Both programs are administered by the Bureau for the Rehabilitation of the Disabled in the Israeli Ministry of Finance, which provides medical, rehabilitative and social services as well as cash benefits. Jenny Brodsky and Yaron King, "A Survey of Disabled Victims of Nazi Persecution and Disabled Veterans of the War Against the Nazis," at 1 (study by the Bureau for the Rehabilitation of the Disabled in the Israeli Ministry of Finance) (Jerusalem: November 1997).

emigrant from the former Soviet Union or Central or Eastern Europe).[132]

The Claims Conference continues to press Germany to broaden the eligibility criteria to include those who were in "forced military labor battalions and in concentration camps not currently recognized as such by Germany"; were older than age 18 and lived under false identity; were persecuted for lesser periods of time than those currently specified; were confined in open ghettos; have income in excess of the current levels specified; or were Western Europeans at the time of persecution who have not received compensation from programs in their own countries.[133]

The information currently requested of applicants to the Article 2 Fund includes the following:

- Name, date and place of birth of applicant; spouse (including deceased spouse); and children (born "before liberation");
- Religion;
- Occupation;
- Citizenship;
- Statement of dates, place and type of persecution (e.g., concentration camp, ghetto, life in hiding and so forth);
- Statement as to whether applicant received compensation under the BEG, with copy of the decision or, if no longer in possession of the decision, statement of DM amount received; name of indemnification agency; and file number;
- Statement as to whether applicant received pension from Israel Finance Ministry pursuant to the law for "Invalids of Nazi Persecution";

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[132] *See* Article 2 Fund Instructions; Article 2 Fund Eligibility Guidelines; 1998 Claims Conference Annual Report, at 11, 19); Claims Conference Compensation Guide, at 4-5.

[133] 1998 Claims Conference Annual Report, at 11.

- Statement as to whether applicant filed claim for Hardship Fund DM 5,000 payment; including whether payment was received; whether claim was rejected or as yet undecided; and file number; and

- Monthly income (applicant and spouse).[134]

In 1997, the Claims Conference began to issue "official rejections" for claims which "will never meet the Article 2 Fund criteria," such as for claims filed by non-Jewish applicants, by those who have already received pensions under the BEG, and those who fled from Nazi occupation, in Poland and in the former Soviet Union.[135] Applicants who are formally rejected by the Claims Conference may appeal to the Claims Conference's Independent Review Office in Frankfurt, Germany.

b. Summary of Article 2 Fund Statistics

Article 2 Fund statistics are as follows.

For the period 1993 through 1999, Germany initially committed a total of DM 975 million to cover both Article 2 and Hardship Fund payments. The Claims Conference subsequently obtained from Germany an agreement to increase the latter amount by another DM 648 million for the same period, to a total of DM 1.623 billion. Through 2003, the Claims Conference has obtained from Germany a commitment for Article 2 and Hardship

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134 *See* Claims Conference Article 2 Fund Questionnaire.

135 As with the Hardship Fund, the Claims Conference has no discretion to vary the compensation requirements; Germany is responsible for Article 2 eligibility criteria. *See* Wolf, 95 F.3d at 540 ("[p]ayments from the Article 2 Fund are made by the Claims Conference's office in Frankfurt, Germany, once that office determines that an applicant meets the requirements set forth by Germany in its laws and regulations"); Sampson, 975 F. Supp. at 1120 (The Claims Conference's role in administering the Hardship and Article 2 Funds is limited to "'reviewing whether applicants for such payments meet the clearly-defined qualifications set forth by Germany'") (citation omitted).

Fund payments "in excess of DM 3 billion (more than $1.5 billion in today's exchange rates)."[136]

In 1996, the Claims Conference made payments to individuals from the Article 2 Fund totaling $116,622,000. Of this amount, Holocaust victims in Israel received approximately $71,057,000; in the United States, $42,034,000; and in other nations, $3,531,000.[137]

In 1997, Article 2 Fund payments to individuals totaled $155,912,000, with $87,358,000 of this amount directed to those in Israel; $63,892,000 to those in the United States; and $4,662,000 to those in other countries.[138] As of the same time period (year-end 1997), the Claims Conference had received 98,653 applications to the Article 2 Fund (5,099 in 1997 alone), from 44 different countries. Of these nearly 100,000 applicants (as of the end of 1997), 56% were from Israel, 31% from the United States, 4% from Canada, 3% from Australia, 2% from Germany, and another 4% from other countries.[139]

In 1998, the Claims Conference made Article 2 Fund payments to 41,265 individuals, for a total of $177,013,000, while an additional 4,169 individuals applied to the Claims Conference for Article 2 Fund payments.[140] Of the $177,013,000 paid in 1998, $100,923,000 was paid to Holocaust victims in Israel; $72,617,000 to those in the United States; and $3,473,000 to those in other countries.[141]

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136 1999 Claims Conference Annual Report, at 19.

137 *See* 1996 Claims Conference Annual Report, at 36 (Notes to Financial Statements).

138 *See* 1997 Claims Conference Annual Report, Notes to Financial Statements, at 12.

139 1997 Claims Conference Annual Report, at 14.

140 1998 Claims Conference Annual Report, at 19.

141 *Id.*

In 1999, a total of 48,948 survivors were approved for Article 2 pensions, for a total of $183 million; an additional 4,254 survivors applied to the Fund.[142] Article 2 recipients in Israel received pensions totaling $110,158,000; those in the United States received pensions totaling $69,780,000, and those in other parts of the world received pensions totaling $3,656,000.[143]

F. German Social Security Payments

Holocaust survivors who worked and/or lived in Germany before or during World War II may be eligible for certain payments under the German Social Security System.[144] Those who were slave laborers during the War, however, were often barred from social security compensation because such individuals – who had spent the War years performing slave labor on behalf of German industry or the Nazi Regime – purportedly had not "worked" for the requisite period of time. According to information provided by the Claims Conference, the German Social Security System has modified these requirements, so that certain slave laborers may obtain recompense from this fund: "It should be noted that the German government does not usually recognize slave labor as contributing to the accumulation of pension benefits. However, there are some exceptions, such as labor performed by Nazi victims in the Lodz ghetto and ghettos with similar conditions …. [T]he eligibility criteria and application process for this program are complicated …"[145]

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142 1999 Claims Conference Annual Report, at 19.

143 1999 Claims Conference Annual Report, Notes to Financial Statements, at 12.

144 According to information provided by the Claims Conference, a substantial number of Holocaust victims now living in Israel benefit particularly from the German social insurance programs.

145 *See* Claims Conference Compensation Guide, at 2.

In addition to payment for slave labor and other work, social security payments may be available for certain women "who were victims of Nazi persecution whose children were born before 1950."[146] Payments total approximately $30 per month per child, and eligibility depends upon the "places of birth of mother and child and the date of emigration from German territory."[147]

G. Central and Eastern European Fund ("CEEF")

In January 1998, the Claims Conference and the German government entered into an agreement requiring Germany to contribute DM 200 million over a four-year period beginning January 1, 1999, to compensate directly, for the first time, Holocaust victims who still remain in the former Soviet Union and Central and Eastern Europe.[148] The "Central and Eastern European Fund" or "CEEF" was established in May 1998 and began processing applications in anticipation of the January 1999 German funding date.

Eligibility criteria are the same as for the Article 2 Fund – in effect, the CEEF is an extension of Article 2. Similarly, as with Article 2, the Claims Conference is charged with administration of the program. To that end, the Claims Conference has established offices in the Czech Republic, Hungary, Poland, Romania, Russia, Slovakia and Ukraine.[149] It is estimated that approximately 18,000 survivors ultimately will receive compensation under the CEEF, entitling them to a monthly pension of DM 250 (currently approximately $125).

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146 *Id.*

147 *Id.*

148 1998 Claims Conference Annual Report, at 12.

149 *Id.*; *see also* 1999 Claims Conference Annual Report, at 20.

According to information provided by the Claims Conference, the majority of applications have been filed by individuals living in the Czech Republic, Hungary, Poland, Romania, Russia, Slovakia and the Ukraine. The majority of approvals have been issued to those living in the Czech Republic, Hungary, Poland, Romania and Slovakia. There have been proportionately fewer approvals of applications from those living in Russia and the Ukraine, most of whom fled from Nazi occupation and therefore do not qualify under the CEEF criteria.[150]

As of May 31, 2000, over 20,000 individuals had applied to the CEEF, and 13,479 of these applications had been approved.[151] Approximately $22 million in individual payments were made in 1999, the first full year of operation of the CEEF.[152]

H. Agreement Between the United States and Germany ("Princz" Agreement)

In accordance with a September 19, 1995 settlement agreement between the United States and Germany, Germany has agreed to provide compensation in two stages to United States citizens who are survivors of the Holocaust. The first stage involved a payment to Hugo Princz ("Princz"), a Jewish-American captured by the Nazis during World War II and placed in a concentration camp. The second stage involved a June 1999 payment of $18.5 million, to be distributed to 235 United States citizens who survived Nazi concentration camps.

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[150] In the former Soviet Union, there are relatively few survivors of concentration camps, ghettos or work camps because it was Nazi policy to slaughter entire communities, a duty often carried out by the notorious *Einsatzgruppen* units. *See*, *e.g.*, Hilberg, at 291-295; *see also* Annex G ("The Looted Assets Class").

[151] 1999 Claims Conference Annual Report, at 20.

[152] 1999 Claims Conference Annual Report, Notes to Financial Statements, at 13.

After World War II ended, Princz attempted to obtain a pension from the West German government under the BEG, and then sought relief under the Hardship Fund.[153] However, Princz was ineligible for compensation under the existing German programs. On several occasions, from 1984 through 1991, Princz, now joined by the United States Department of State and certain members of the United States Congress, continued unsuccessfully to seek payment from the German government. Diplomatic efforts, first by the Bush administration and then later by the Clinton administration, were not initially successful, nor was litigation in the United States courts .

However, on September 19, 1995, a settlement agreement was finally reached in which the German government agreed to pay $2.1 million to Princz and ten other American Holocaust survivors. The individual disbursements were left to the United States government, and it was reported that each survivor would receive a lump sum payment based on the length of his or her imprisonment, injuries and other non-specified factors.[154] The agreement settled not only Princz's claim (and the ten other known survivors sharing in the $2.1 million disbursement) but created a second settlement class of unknown potential claimants for a then-unknown amount.[155]

Eligible "unknown claimants" were required to have been United States citizens at the time of their imprisonment, not previously compensated by the German

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153 *See* Princz v. Federal Republic of Germany, 813 F. Supp. 22, 22-25 (D.D.C. 1992) , rev'd., 26 F.3d 1168, 1168-69 (D.C. Cir. 1994).

154 *See* Kimberly J. McLain, *Holocaust Survivors Will Share $2.1 Million in Reparations*, New York Times, Sec. B., p. 5, col. 1, September 20, 1995.

155 *See* Agreement between the Government of the United States of America and the Government of the Federal Republic of Germany Concerning Final Benefits to Certain United States Nationals Who Were Victims of Nationalist Measures of Persecution, Art. 2; *see also* Claims Conference Compensation Guide, at 15. The Princz Agreement also is discussed at Annex D ("Heirs").

government. Although the agreement initially excluded those who were subject to forced labor only, the Department of Justice later expanded eligibility to those interned under "comparable conditions" to a concentration camp.[156]

Legislation passed by Congress in early 1996 authorized the Foreign Claims Settlement Commission ("FCSC"), an agency within the Department of Justice, to establish a program to adjudicate the claims of potential claimants under the second stage of the agreement. Over 1000 people filed claims by the February 23, 1997 deadline. The FCSC sent its verified claims (totaling 235 people) to the United States Department of State in March 1998. On this basis, the State Department then negotiated a settlement with the German government in January of 1999, which the Bundestag approved in June 1999. The two governments agreed to keep confidential the details of the basis for individual payments, although attorneys for the claimants have indicated that eligible survivors are expected to receive a lump sum payment of slightly under $10,000 for each month of incarceration in a concentration camp, as well as an additional special payment for permanent disabilities.[157] Individual payments thus may range from $30,000 to $250,000.[158]

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156 *See* Fed. Reg., v. 61, no. 117, June 17, 1996.

157 Marilyn Henry, *US Citizens win right to Holocaust reparations*, Jerusalem Post, News, p. 3, January 17, 1999.

158 Peter Eisler, *Cash carries weight of closure*, USA Today, News, p. 3A, June 21, 1999.

III. GERMAN PROPERTY RESTITUTION

A. Background – 1945-1957:

Restitution claims arising from confiscation of property were the first to be recognized and also first to be paid after the War. The initial program began at the instance of the United States "on November 10, 1947, when [United States Military Government] Law 59, providing for the reimbursement of concrete wealth illegally confiscated from the Jews by the Nazis, was [introduced] in the American Zone. This decree covered all those possessions expropriated by the Nazis in the course of their Aryanization of the economy. The reparations included, when possible, the return of the goods in question."[159] In the British Zone, Law No. 59 of May 12, 1949 was enacted for the same purpose, while Decree No. 120 of November 10, 1947 entered into force in the French Zone.[160]

As the extent of the destruction of the European Jewish population was revealed, it became clear that entire families had been wiped out and that, in many cases, no heirs remained to assert ownership to specifically identifiable looted property. Therefore, from the earliest period, post-War restitution efforts emphasized recovery not only on behalf of survivors and heirs, but also the heirless.

1. Restitution of "heirless" assets

The United States military government was the first to provide for formal appointment of a specific organization to take title to heirless and unclaimed Jewish property. On June 23, 1948, Regulation 3 to Law No. 59 was issued, recognizing the Jewish Restitution

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[159] Markovits and Noveck, at 406-07.

[160] Schwerin, at 489.

Successor Organization ("JRSO") as the successor body to the heirless property.[161] In the British Zone, the Military Government designated the Jewish Trust Corporation ("JTC") as successor organization.[162] Because "French law [did] not provide for the establishment as a legal entity of such a body, it was decided that restitution operations in the French Zone of Germany could best be carried out under the wing of JTC by the creation of a French Branch."[163]

The zonal restitution laws recognized "the principle that heirless property constituted a collective claim of Nazi victims; that it was to be restituted to successor organizations representing collectively the categories to which the victims, most of whom were Jews, belonged; and that the proceeds of such restituted properties were to be used for the rehabilitation and resettlement of the victims themselves."[164] This principle, first embodied in the military government legislation of 1947, was to guide the work not only of the successor organizations, but also of the organizations subsequently created to continue to pursue and administer Holocaust compensation, including the Claims Conference.[165]

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161 *See* Saul Kagan and Ernest H. Weisman, Report on the Operations of the Jewish Restitution Successor Organization, 1947-1972, (hereinafter, "JRSO Report"), at 6-7.

162 Charles I. Kapralik, Reclaiming the Nazi Loot: The History of the Work of the Jewish Trust Corporation for Germany, Vol. II (London: The Corporation 1962-1971) (hereinafter "JTC Report"), at 26.

163 JTC Report, at 3. As a practical matter, the successor organizations based their claims to heirless property on the ground that no claimants to the property had come forward, rather than upon the absence of legal heirs. *See*, e.g., JTC Report, at 28 ("The German law of inheritance excludes no blood relation, however remote, from succeeding to a person's estate. It is evident that the [JTC] was in no position to supply positive proof that the victim had died without leaving a relative entitled to his inheritance. Practically, therefore, the [JTC] has always based its [property restitution claims on a] showing that no claim for the restitution of the property in question was lodged by an individual claimant").

164 Lucy S. Dawidowicz, "German Collective Indemnity to Israel and the Conference on Jewish Material Claims Against Germany," 54 American Jewish Year Book (1953), at 473.

165 The Claims Conference's role with respect to allocation of communal and heirless assets is more fully discussed *infra*.

The successor organizations directed their initial and most important efforts toward the recovery of heirless real estate formerly belonging to individuals and communities destroyed by the Nazis. Recovery efforts also extended to other types of property, including securities and bank accounts.[166]

Cultural property presented its own challenges. At the instance of Jewish leaders, a Commission on European Jewish Cultural Reconstruction was established with the "aim of assisting in dispersing heirless Jewish cultural property recovered from the Nazis."[167] The most immediate task was to collect whatever plundered property still remained. As early as the summer of 1945, employees of the Office of Military Government, U.S. Zone ("OMGUS") began to locate significant items of cultural property. By the time OMGUS had completed its operations in 1949, it had "located, inventoried and returned [to foreign governments] over 1.6 million items," most of which had been located in the U.S. Zone.[168] As repositories of loot were located, "cultural property was relocated into three central collecting points: Munich for art, Wiesbaden for German property, and Offenbach, near

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[166] In many instances, the JRSO had sufficient data to trace and assert claims to property. As the JRSO Report explains: "In the Third Reich, confiscated Jewish properties were registered in the records of various institutions with a precision and orderliness that bordered on the grotesque, and enabled the JRSO to trace individual as well as mass acts of confiscation that were perpetrated" under various Nazi decrees. JRSO Report, at 12. Among the files consulted by the JRSO were those of the "*Oberfinanzpraesidenten* in the German provinces, the German Reichsbank and the Prussian State Bank" (JRSO Report, at 12), "the lists of Jews subject to mass deportations," as "deportees were required to furnish the *Oberfinanzpraesidenten* with a detailed list of their properties, including bank accounts, securities, household goods, and the like" (*id.*, at 13); and the "balance sheet of the *Reichsvereinigung [der Juden],*" to which deported Jews were "persuaded to transfer their securities, mortgages and bank accounts" on the "pretext that they would be admitted to homes for the aged in Theresienstadt." *Id.* at 14. In reality, the deportees were sent to the Theresienstadt concentration camp, *id.*, and eventually, in many cases, on to Auschwitz. Hilberg, at 438.

[167] Michael J. Kurtz, "Inheritance of Jewish Property," in The Holocaust – Moral & Legal Issues Unresolved: Looted Art, 20 Cardozo L. Rev. 625 (December 1998) (hereinafter, "Kurtz") at 630.

[168] *Id.* at 632.

Frankfurt, for books, archives, and Jewish cultural property."[169] The Wiesbaden Collecting Point was closed on December 31, 1950, "signal[ling] the end for all practical purposes of the American restitution program," and "leaving the JRSO to handle any restitution matters which might arise."[170]

In the Soviet zone of Germany and other communist nations, no such restitution was under way, nor were any serious restitution efforts undertaken for many decades. "[T]he Soviets and the communist regimes in Czechoslovakia and Poland were not turning over to the few survivors of the Holocaust the Jewish property they located. In Czechoslovakia, Jews had to prove 'national trustworthiness,' and in Poland those seeking restitution incurred considerable expenses for court fees, taxes, and lawyers' fees."[171] In these countries, it was not until the 1990s that any serious (if preliminary) efforts toward property restitution were undertaken.[172]

2. Restitution to survivors or heirs

As for individual claimants to identifiable property – namely, survivors or heirs -- Military Law 59 on the Restitution of Identifiable Property required claimants to submit claims to property by no later than December 31, 1948. In the British and French Zones, which enacted heirless property provisions after the United States, the deadlines were somewhat later.[173] However, there was considerable confusion as to whether claimants to confiscated property would be compensated under Law 59 or, rather, would be required to

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169 *Id.* at 631.

170 *Id.* at 652, 653.

171 *Id.* at 646.

172 *See infra.*

173 *See* JRSO Report, at 6, 30.

submit claims under the indemnification law expected to be enacted in the near future – *i.e.*, the BEG.[174] "In fact, [potential claimants] were advised by the Allied authorities, the United Restitution Office and their own lawyers that it might be a waste of effort and time to claim under" the then-existing restitution laws.[175] In addition, the restitution provisions were not clearly defined. For example, only after the deadline for filing claims had passed did the courts charged with administration of these provisions settle upon a definition of "identifiable property," the only property subject to possible restitution under Law 59.[176]

By June 30, 1955, approximately 490,000 restitution claims had been filed by individuals and by the successor organizations any under the Allied restitution provisions, of which 400,000 claims had been adjudicated (positively or negatively).[177] Some 57,400 restitution claims had been filed by the British Zone successor corporation alone,[178] while the JRSO filed over 160,000 claims. The majority of claims, however, were filed by the original owners or heirs. The JRSO, JTC and French Branch also permitted late claimants to file directly with the successor organizations any claims against unclaimed property, extending deadlines virtually annually between 1950 and 1958. "Restored property in the American Zone and West Berlin, where more than two-thirds of the property subject to restitution was located, was estimated by the claimants at $290,000,000," of which $270 million went to

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174 JTC Report, at 52.

175 *Id.*

176 *Id.* "Identifiable property" was ultimately defined as "property identifiable at the time of confiscation, even if it did not exist any longer when the claim was lodged. Thus, such items as household goods, valuables, gold and silver, banking accounts, etc., became the object of quasi restitution as they were certainly identifiable at the time of spoliation, the 'restitutor' in cases of this sort being the former Reich." JTC Report, at 52; *see also* JRSO Report, at 10.

177 *See* "West Germany," 57 American Jewish Year Book (1956), at 392.

178 JTC Report, at 52.

individuals (42% of whom were residents of the United States, 18% of Germany, 11% of Great Britain, and 5.4% of Israel), and $20 million went to the successor organizations.[179]

B. Federal Restitution Law ("BRUEG"):

1. Background: Global Settlement with Successor Organizations

The successor organizations ultimately agreed that a "bulk settlement" of the innumerable restitution claims – the "dritte masse" claims – would be more appropriate than case-by-case pursuit and adjudication of perhaps millions of distinct property claims.[180] There were numerous "factual, legal, and bureaucratic obstacles in handing over identifiable heirless property" to the successor organizations, and "[i]t was clear to all that attempts to identify each and every asset would stretch into the indefinite future."[181] On the other hand,

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179 "West Germany," 57 American Jewish Year Book (1956), at 393.

180 JTC Report, at 54.

181 JRSO Report, at 14. An example of the difficulty in tracing each and every looted asset is presented by the successor organizations' claim asserted against confiscated properties of Polish citizens located within Germany, pursuant to the so-called "Poland Decree" of September 1940 authorizing the Third Reich's "HTO" department to undertake the seizures. "From 1964 onward, the JRSO sought to reach a bulk settlement of these claims with the Federal Finance Ministry …. [T]he German authorities were reluctant to proceed on the grounds of a possible double liability, under the BRUEG and the BEG as well, both covering the same assets. Thereupon, the JRSO proceeded to analyze about 600 HTO files to establish whether assets claimed by individuals were identical with securities or bank accounts held in the banks for the HTO. Three years of preparation by the JRSO preceded the submission to the German authorities of a thoroughly substantiated statement of account covering the securities claimed …. [which] established the value of the HTO assets at DM 5,145,000." JRSO Report, at 16. Similarly, although the JRSO filed claims on behalf of the heirless victims against German-owned assets in the United States that had been frozen pursuant to a March 1942 Executive Order, "[t]he task was tremendous in scope, stretching over a span of ten years, and was beset with many difficulties. After thousands of claims were filed at the [United States Office of Alien Property], it became clear to all that a bulk settlement and not an adjudication on a case-by-case basis was in the mutual interest of all parties. The U.S. Government would otherwise be confronted with enormous administrative costs in proportion to the size of the claims." JRSO Report, at 33. *See also* Annex D ("Heirs") (discussing bulk settlement with the United States for an amount representing only a fraction of the heirless property claims, eventually resulting in the United States' 1998 enactment of the Nazi Persecutee Relief Act and donation to the International Nazi Persecutee Relief Fund for the benefit of needy survivors, of which several million thus far has been allocated to the Claims Conference/JDC "*Hesed*" program). *See also* Special Master's Proposal, Section III(B).

aggregation of claims into one large settlement sum would provide the successor organizations with "ready cash within the briefest possible stretch" and would "make available the proceeds for the relief, rehabilitation, resettlement and cultural rehabilitation of surviving victims of Nazi persecution."[182]

Accordingly,

> The settlement which was eventually concluded between the Federal Government and the Successor Organisations cut the Gordian knot. The Successor Organisations waived all their Reich claims against the payment of a lump sum, and thus enabled all those victims who had missed the filing period under the Restitution Law to present their claims without regard to the rights originally vested in the Successor Organisations. This arrangement was embodied in the … BRUEG.[183]

In settlement of the "dritte masse" claims, Germany agreed to make a payment to the three successor organizations of DM 75 million (approximately $18.75 million), in conjunction with enactment of the BRUEG legislation for individual property compensation.[184]

2. Provisions and Effect of the BRUEG

In 1957, the Federal Republic of Germany enacted the Federal Restitution Law (BRUEG), which "sought to compensate Nazi victims for household furnishings, personal valuables, [bank] accounts, securities and other movable properties confiscated by Nazi authorities which could be specifically identified but yet could no longer be restored to claimants."[185] The statute originally was limited to "property which had been located in the

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182 JRSO Report, at 8.

183 JTC Report, at 54.

184 JRSO Report, at 10.

185 Twenty Years Later, at 16.

territory of the German Federal Republic . . . and West Berlin." The statute also obligated the government to make payment only up to fifty percent of the amount sought.[186] The BRUEG imposed a filing deadline of April 1, 1959. Original property owners, as well as their heirs, were entitled to seek restitution.[187]

The key provisions of the BRUEG were as follows:

- "Restitutory claims" were defined as those claims "due to persons entitled to restitution or to their successors in right, and relate to the payment of a sum of money or of damages"[188];
- "If identifiable property was alienated by [the Nazi regime] outside the area of the validity of the present Law and it [could] be proven that, after alienation, it fell within this area, although the locality in which the property landed is uncertain, the property is regarded as having fallen within the area of the validity of the provisions governing the restitution of identifiable property [i.e. West Germany] … [and the] same applies if it [could] be proven that the alienated property fell within the area of Berlin" (BRUEG at Par. 5);
- "Newly created restitutory claims" involved "property which was identifiable at the time of its alienation" if such property was "lost or damaged or decreased in value," but exclude[d] "[s]ums of money paid to [the Nazi regime] in cash or by remittance" (BRUEG at Par. 12);
- "If a restitutory claim … was passed on in part to a third party, each of the beneficiaries [was] entitled to assert the claim in toto. The claim [could] only be asserted in such a manner that payment [was] to be made to the beneficiaries in proportion to their shares. The claim [was] deemed to have been asserted in toto even though one beneficiary assert[ed] a claim to the share due to himself only" (BRUEG at Par. 26); and

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186 Schwerin, at 491.

187 Twenty Years Later, at 132.

188 BRUEG at Par. 2, translated in Nehemiah Robinson, Federal Law on the Discharge of the Restitutory Monetary Obligations of the German Reich and Assimilated Legal Entities, Institute of Jewish Affairs, (New York: World Jewish Congress July 1957) (hereinafter, "BRUEG at Par. ___").

- "No claim under the present Law shall be satisfied as long as the beneficiary has his (or her) domicile or permanent sojourn in territories with whose government the Federal Republic of Germany does not maintain diplomatic relations" (BRUEG at Par. 45).

The BRUEG granted compensation for "movable properties confiscated outside of what is now the territory of the German Federal Republic . . . if the claimant or his heirs could prove" either that "[t]he goods were shipped subsequently to the territory of the German Federal Republic or . . . Berlin," or that the goods "were in transit, en route to port cities" in France, Belgium and Holland to which the property owner had migrated from the German Federal Republic or Berlin.[189] The proof requirements, however, proved unduly burdensome; "it was all but impossible to establish that the goods in question were subsequently shipped to Germany."[190] As a result, most Nazi victims missed the April 1, 1959 filing deadline, many acting "on the advice of qualified lawyers, offered in good faith, that filing was a useless act" given the virtually insurmountable hurdle of tracing shipment of confiscated goods to Germany.[191]

Following presentations by the Claims Conference, Germany agreed to "loosen the burdensome requirements" on a country-by-country basis. In 1958, Germany waived the proof of shipment requirement for movable goods seized in France; in 1959, for goods seized in Belgium and Holland; and in 1960 and 1961, for occupied territories in Eastern Europe. However, since the Federal Republic did not agree to extend the filing deadline of April, 1959, the waivers were of limited use to many claimants.[192]

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189 Twenty Years Later, at 132.

190 *Id.*

191 *Id.*

192 *Id.*

Rather than extend the filing deadline, Germany enacted a revised BRUEG which entered into force on October 8, 1964. Under the amended statute, available to more recent Central and Eastern European migrants as well as to those who had missed the earlier filing deadlines, the Federal Republic created a special "Hardship Fund" for new restitution claimants.[193] The Hardship Fund abolished the original 1957 payments ceiling of DM 1.5 billion, added a payments ceiling of DM 800 million for the new fund, and raised the compensation obligation from fifty to one hundred percent.[194] The filing deadlines for all restitution claims "expired definitively" on May 23, 1966.[195]

Compensation was to be based on the estimated replacement value as of April 1, 1956. As to the specific compensation provisions under the 1964 version of the BRUEG:

> Approved claimants became eligible for advance payments in the sum of DM 4,000 for confiscated household goods and DM 1,000 for gold and jewelry. Implementing regulations were enacted subsequently to fix the size of the ultimate payments. For household goods, payments reached DM 8,000 per claimant, and for gold and jewelry DM 2,000 each…. Under the [Hardship Fund], some 270,000 claims were submitted. About 42,000 covered household goods, confiscated in France, Belgium and Holland, and the remaining 228,000 pertained to jewelry, confiscated in eastern Europe and in France, Belgium and Holland.[196]

As of year-end 1972, approximately 20,260 awards had been made for household goods and 105,880 awards had been made for jewelry, with 109,000 applications

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193 The BRUEG "Hardship Fund" for restitution is distinct from the 1980 "Hardship Fund" for indemnification established after expiration of the BEG deadlines, *see supra*.

194 Twenty Years Later, at 132-33; Schwerin, at 491; JRSO Report, at 11.

195 *See* "German Restitution Law" at 2, *available at*, http://www.ushmm.org/assets/frg_restitution.htm (hereinafter, "German Restitution Law").

196 Twenty Years Later, at 133.

awaiting adjudication, mostly for jewelry.[197] By year-end 1975, 62,267 applications were pending, 60,000 of which pertained to jewelry.[198]

According to information provided by the Claims Conference, as of the end of 1998, payments under the BRUEG (which had been largely completed by the mid-1970s), totaled nearly DM 4 billion (approximately $2 billion).

C. Restitution of Property from the Former East Germany

Following enactment of the BRUEG, efforts to obtain property restitution from other European nations met with only minimal success. In the mid-1970s, the Claims Conference first entered into negotiations with the former East Germany. These negotiations did not come to fruition, however, until after the fall of communism and German reunification, when the Claims Conference successfully negotiated for enactment of a restitution law for property located within the boundaries of the former GDR, the German Restitution and Property Law ("*Vermögensgesetz*"), enacted in 1990.[199] In accordance with the concept of "*Entziehungsvermutung*," any sale of property that took place between 1933 and 1945 was presumed to have occurred under duress of the Nazi Regime.[200] As in the immediate post-War period, a successor organization – this time, the Claims Conference –

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197 *Id.*

198 1973-1975 Claims Conference Annual Report, at 19.

199 *See* 1990 German Restitution Statute, §1, c1.6 ("This law applies to rightful asset claims from individuals and organizations, who were, from January 30, 1933 to May 8, 1945, victims of persecution, due to racial, political, religious or ideological beliefs and lost their assets because of that, either by forced sale, expropriation, or other means of dispossession") (translation on file with the Special Master).

200 *See* 1996 Claims Conference Annual Report, at 12.

was designated to receive unclaimed or heirless Jewish property.[201] Restitution was to involve either the physical return of property to its owner or heir or the Claims Conference, or, where property could not actually be restituted, compensation would be made at four times the 1956 taxable value of the property.[202]

Pursuant to the 1990 legislation, Germany imposed a December 31, 1992 deadline for submission of claims. Prior to this date, the Claims Conference "conducted a massive research effort to identify all possible Jewish properties," because in the event that no claim was submitted, "these Jewish assets would have otherwise remained with either the 'aryanizer' or the successor government to the Third Reich."[203]

Following this search, and in anticipation of the 1992 filing deadline, the Claims Conference filed 81,326 claims. As of year-end 1999, German restitution agencies had ruled on 55% of these claims.[204] Approximately 20,000 claims were found not to involve Jewish properties, approximately 14,000 were found to be duplicate claims, approximately 5,700 were approved for Jewish heirs who had filed timely claims, and approximately 4,600 claims were approved for the Claims Conference as successor organization.[205]

Most of the property was claimed by former owners or their heirs prior to the December 31, 1992 deadline. However, as true for the post-War property filing deadlines, those who did not meet the deadline had no legal recourse against Germany. Although the

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201 *See* §2.1 cl.3 (" As far as titles of Jewish claimants in terms of §1.6 or those of their legal successors are not asserted, the Property Law provides that claims of the successor organizations of the Restitution Law, and in case these do not file applications, the Conference on Jewish Material Claims Against Germany, Inc. are considered legal successors").

202 1996 Claims Conference Annual Report, at 12.

203 1998 Claims Conference Annual Report, at 21.

204 1999 Claims Conference Annual Report, at 22.

205 1999 Claims Conference Annual Report, at 22.

1990 legislation did not obligate the Claims Conference to consider such late claims, in 1994, the Claims Conference established a "Goodwill Fund" to share certain of the proceeds from property sales with late-filing heirs. In 1998, the Claims Conference advertised internationally to notify owners or heirs who had not filed timely claims with the German government that such persons potentially were eligible for payment from the Goodwill Fund. The Claims Conference established a filing deadline of December 31, 1998.[206] Approximately $22 million was paid to Goodwill Fund claimants in 1999, $4.8 million in 1998, and $5.2 million in 1997.[207]

During 1999, the most recent period for which audited figures are available, the Claims Conference, as successor organization, received gross proceeds from sales of restituted properties totaling over $198 million (with a total recovery, since inception in 1992, of over DM 1 billion or approximately $500 million in current dollars).[208]

As more fully discussed below, the proceeds from the property sales by the Claims Conference have been utilized mostly to fund relief programs for needy elderly Jewish Nazi victims around the world, primarily in Israel, the former Soviet Union, Central and Eastern Europe and the United States (see infra).

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206 *See* 1998 Claims Conference Annual Report, Notes to Financial Statements, at 13; 1999 Claims Conference Annual Report, at 22. *See also* 1998 Claims Conference Annual Report, Notes to Financial Statements, at 15 ("The Claims Conference as Successor Organization is a defendant in litigation brought by a party which seeks title to restituted property amounting to $1,168,020 (DM 2,100,000)").

207 1998 Claims Conference Annual Report, at 22; Notes to Financial Statements at 13; 1999 Claims Conference Annual Report, Notes to Financial Statements, at 14.

208 1998 Claims Conference Annual Report, at 22; Notes to Financial Statements, at 13.

IV. OTHER EUROPEAN COMPENSATION PROGRAMS

While it is Germany which -- understandably -- has seen fit to devise the most extensive indemnification and restitution programs for victims of Nazi persecution, other European nations also have sought to provide some level of compensation for World War II injuries. As noted earlier, many of these countries received payments from Germany pursuant to treaties and were responsible for distribution of these moneys. Several also organized their own compensation programs, some in the last few years. Additionally, "[a]t least fifteen states – including the United States – have set up commissions of inquiry" to investigate their own roles in the Holocaust.[209]

Efforts to compensate Nazi victims, and particularly to make restitution, are plagued by sometimes intractable dilemmas. In the years following the War, restitution programs "focus[ed] on communal property, leaving the overwhelming problems of private property until some later date."[210] Yet although more recent programs have begun to tackle private property restitution, identifying such property "can be tricky. Documenting ownership can be difficult. Recovering property can be impossible. In virtually all instances, the process is made knottier by the passage of more than fifty years, inadequate records, and the

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[209] Seymour J. Rubin, "Neutrality, Morality, and the Holocaust: The Washington Accord Fifty Years Later," 14 Am. U. Int'l L. Rev. 61, 81-82 (1998). For example, the "Matteoli Commission" recently completed a three-year inquiry into Holocaust-era looting in France. *See* Summary of the Work of the Study Mission on the Spoliation of Jews in France, April 17, 2000 (available at http://www.ladocfrancaise.gouv.fr) (hereinafter, "Matteoli Report, April 17, 2000 Summary").

[210] Marilyn Henry, The Restitution of Jewish Property in Central and Eastern Europe (New York: American Jewish Committee July 1997) (hereinafter, Henry, Restitution in Central and Eastern Europe), at 23.

likelihood of multiple property transfers, with competing and overlapping claims of ownership."[211]

The investigation and, in some cases, compensation of Holocaust-related losses have intensified in recent years. However, the available information concerning these programs, and particularly their implementation within each country, is incomplete. The most significant of the compensation programs for which public information is available are described below.[212]

A. Western European Nations

1. Austria

a. Background

Two years after the Claims Conference was established, it created a separate Committee for Jewish Claims on Austria. After several years of negotiation with the Committee, Austria established a small relief fund, the Victim Assistance Law, applicable to Nazi victims as well as Austrian war veterans.[213] Efforts to increase the amount committed

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[211] *Id.* at 7.

[212] It should be noted that much of the information set forth herein was compiled as of the Spring of 2000; in certain nations, there may have been more recent developments which may not be reflected below.

[213] 1998 Claims Conference Annual Report, at 14. During the 1950s and early 1960s, Austria also paid compensation to Holocaust victims through the nation's National Social Insurance Law and through a $6.5 million dollar fund for religious or racial victims of Nazi persecution. *Id.* According to information published by the Austrian Information Service, the "original intention [of the Austrian social security system] was to compensate victims for negative consequences to their standing within the Austrian social security system," and in total, "approximately 25,000 persons draw such an Austrian social security pension. The payments amount to ATS 2 billion (approx. $172 million) annually" and include payments to Nazi victims as well as other Austrian war victims, and "have therefore become the primary means through which Austria is trying to compensate … former citizens who had to emigrate against their will." Austrian Information Service, December 16, 1998, "Restitution to Victims of the Nazi Regime," at 5, available at http://www.austria.org/press/103.html (hereinafter, "Austrian Information Service Report"). Eligibility for such payments is based upon Austrian citizenship or residency at the time of the

(footnote continued on next page)

by Austria were hampered by the Austrian and Allied view that "Austria was an occupied country, not a state that had collaborated with the Third Reich."[214] Ironically, that position was in direct opposition to the German view that "Austria was not a liberated country but a Reich successor-state precisely like the Federal Republic. [Germany] also argued that Austria had been Nazi and it was her responsibility to pay compensation," and not Germany's.[215] In the first years following the war, Austrian authorities "rebuffed attempts to recover their 'Aryanized' apartments, houses, and businesses since it was felt that any concessions might undermine the official claim that Austria was the 'first victim' of the Nazis."[216]

> Eventually, in 1955, Austria agreed
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> > after long negotiations and much unfavorable publicity to grant lump-sum payments to victims living abroad who had been Austrian citizens, or who had resided in Austria during the entire decade from 1928 to 1938. A total of 550,000,000 schillinge, or $21,000,000, was made available for expenditure over a period of ten years. Indemnification was granted for: (a) loss of earning capacity due to impairment of health (S. 10,000 to a maximum of S. 30,000, or $385 to $1,155); (b) total disability caused by persecution (S. 30,000, plus S. 10,000 if the disability was incurred as a result of at least six months of harsh imprisonment); (c) persecution in general, to the extent that funds permitted, with priority for elderly victims in need (up to S. 20,000).[217]
>
> Austria also enacted several restitution laws. The *Anmeldegesetz* and *Verwaltergesetz* respectively required "holders of 'aryanized' property ... to register them …. and to undertake no further steps," and "declared as null and void all legal transactions during

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Anschluss, and also requires payments into the social insurance system at a reduced rate. *See* Claims Conference Compensation Guide, at 9.

214 1998 Claims Conference Annual Report, at 14.

215 Sagi, at 160.

216 Robert S. Wistrich, "Austria and the Legacy of the Holocaust," in International Perspectives, Vol. III, No. 44 (New York: American Jewish Committee 1999), available at http://www.ajc.org/pre/austriaf.htm (hereinafter, "Wistrich"), at 13-14.

217 Hilberg, at 1171, n. 37.

the German occupation if undertaken in connection with persecution and racial discrimination."[218] The *Rückstellungsgesetze*, enacted between 1946 and 1949, "envisioned restitution in several phases" and provided that the "immediate victims as well as direct descendants and siblings were eligible for restitution."[219] Claims deadlines varied, with the most important statute imposing a filing deadline of December 31, 1955.[220] Restitution was limited to those still in possession of Austrian citizenship.[221]

As to unclaimed property, the "*Auffangorganisationsgesetz,*" enacted in 1957, created so-called "Collection Points A and B," which received "all unclaimed property" belonging respectively to Jewish and non-Jewish persons, and then paid the sums collected to "victims of persecution." Collection Point A received approximately $15 million and Collection Point B received approximately $4.3 million. The collection points were dissolved in 1972.[222] Overall, 320 million shillings were paid pursuant to the 1957 law, 80% of which went to Jews and 20% to non-Jews. Payments ranged from 2000 shillings (DM 280, then approximately $70) to 22,800 shillings (DM 2,300, then approximately $600). The program was dissolved in 1972.[223]

Austria has acknowledged that "some questions concerning the implementation of restitution and the work of the restitution commissions remain. There presently exists no systematic overview of the files or any historical analysis. Of the 42,096

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218 Austrian Information Service Report, at 2.

219 *Id.*

220 *Id.*

221 55 American Jewish Year Book (1954), at 257; *see also* Hilberg, at 1171 n.37 (1961 Austrian indemnification statute covered limited categories of assets).

222 *See* Austrian Information Service Report, at 2.

223 *Id.*

claims submitted, approximately one-fifth were recognized, one-third were settled by mutual agreement, one-third were denied or withdrawn."[224] There "exists no data about the monetary value of restored property," and in "view of the small number of accepted claims, the possibility of a certain deficit in legal protection cannot be precluded."[225]

b. Recent Austrian Measures

In 1988, the Austrian Parliament passed the Law of Honorary Grants and Assistance Fund, whereby "modest one-time payment[s] of between $250 and $500 [were] granted … by the Austrian government to Jewish victims of the Anschluss all over the world on its fiftieth anniversary."[226] Subsequently, Austria agreed to provide funds to the Committee for Jewish Claims on Austria to be used for institutional projects primarily in Israel, benefiting aged Jewish victims of Nazi persecution in Austria. Austrian authorities must approve each project. Since inception of the fund, Austria has approved grant allocations from the Committee for Jewish Claims on Austria totaling $23,500,900.[227]

In 1995, the Austrian Parliament established the Austrian National Fund for the Victims of National Socialism. The fund provides for a one-time payment of 70,000 Austrian shillings (approximately $6,000) to each victim of Nazi persecution in and from Austria, Jewish and non-Jewish alike. As of September 1999, "29,500 Austrian survivors worldwide, about 80 percent of them Jewish, [had] received payments from this fund."[228]

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224 *Id.* at 3; *see also* "Austria Delegation Statement," in Washington Conference on Assets, at 152.

225 Austrian Information Service Report, at 3.

226 Bruce F. Pauley, "Austria," in The World Reacts to the Holocaust, *supra*, at 497.[NOT PREVIOUSLY CITED]

227 *See* 1998 Claims Conference Annual Report, at 15; *id.*, Notes to Financial Statements, at 15.

228 1999 Claims Conference Annual Report, at 16.

Victims of persecution are eligible if they:

- were citizens of Austria and domiciled in Austria as of March 13, 1938 [the date of German invasion]; or
- had been permanently domiciled in Austria for a period of 10 years as of March 13, 1938 or were born as children of such persons in Austria within that period; or
- before March 13, 1938, lost their Austrian citizenship or their place of residence of at least 10 years because they left the country due to the imminent march of the German Armed Forces into Austria; or
- were born before May 9, 1945, as children of such persons in concentration camps or under comparable circumstances.[229]

Additional funds are available to those who meet the Austrian Parliament's hardship criteria, such as disability.[230] As of the end of 1998, approximately 23,000 Austrian Nazi victims around the world had received payments from the Fund. Approximately 85% of the recipients were Jewish.[231] Recipients live in 65 countries, with the greatest proportion in the United States, Austria, Israel, Great Britain, Australia and Canada.[232]

The Committee for Jewish Claims on Austria also is a leading participant in distribution of $14,500,000 in proceeds from an October 1996 auction of unclaimed looted art. The so-called "Mauerbach Fund" provided for a one-time payment of $1,000 to "Jewish Nazi victims who resided in Austria in March 1938 and whose current gross annual income

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229 Claims Conference Compensation Guide, at 10.

230 1998 Claims Conference Annual Report, at 15-16.

231 *Id.* at 16.

232 *See* http://www.ushmm.org./assets/austria.htm, at 1.

[does] not exceed $16,000."[233] As of March 31, 2000, "the fund has received about 8,250 applications, 5,346 of which have been approved."[234]

Finally, in a decision dated January 6, 2000, the United States District Court for the Southern District of New York gave final approval to a partial class action settlement intended to compensate Holocaust victims who may have claims against Bank Creditanstalt, an Austrian Bank.[235] The class is defined as "[a]ll persons worldwide, their heirs, executors, administrators, successors, beneficiaries and/or assigns" who were "victims or targets of Nazi persecution" during the years 1933 through 1946, who either (a) "had moneys, securities or other assets on deposit with any of the Austrian Banks which were converted," transferred or otherwise not returned to the rightful owners; (b) "had personal and/or private property looted or through any means converted" or seized and transferred to or by or through Creditanstalt; (c) "sent assets through any of the Austrian Banks destined for concentration camp inmates but that never reached such inmates" or were not returned; or (d) were injured as a result of the Austrian Banks' "profiting and/or facilitating the use by others of slave labor, the transfer of gold, precious metals and gems to the Nazi regime and disguising the true ownership of companies or assets owned by German entities between 1933 and 1947."[236]

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233 *See* 1998 Claims Conference Annual Report, at 16.

234 1999 Claims Conference Annual Report, at 16.

235 *See* In re Austrian and German Bank Holocaust Litigation, 80 F. Supp. 2d 164 (S.D.N.Y. 2000).

236 80 F. Supp. 2d at 168.

The settlement provides for the payment of $40 million, $38 million of which is to be paid to the class in three installments, and $2 million of which is "to support the work of a historical commission" to archive documents and "identify members of the class."[237]

2. Belgium

Pursuant to the bilateral treaty between Germany and Belgium executed on September 28, 1960, Germany provided the Belgian government with DM 80 million. According to information provided to the Claims Conference by the Belgian Embassy, Belgium then utilized these funds to compensate for physical hardship and deprivation of freedom those Belgian citizens persecuted by the Nazis. The families of those who died due to the persecution also were eligible for payments. The program did not cover material losses and was not limited to Jewish Holocaust victims. Moreover, "because most of the post-war restitution programs included a requirement of Belgian citizenship, few Belgian Holocaust survivors received any compensation at that time."[238]

As for property losses, pursuant to the Law of April 12, 1947, property seizures based upon race, nationality, opinion, political activity or residence were presumed illegal subject to rebuttal. Claims were to be brought within six months from publication of the law (April 19, 1947), and by no later than April 19, 1949.[239] By statute enacted on

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[237] 80 F. Supp. 2d at 169. The $2 million payment was to have been given to the United States Holocaust Memorial Museum; however, the Museum reportedly has waived any claim to the fund and has indicated its preference that the $2 million instead be given to the class. Mark Hamblett, *Holocaust Banking Pact Approved by Court*, New York Law Journal, January 7, 2000, at 1.

[238] See "Belgium," http://www.house.gov/international_relations/crs/belgium.htm, citing "Interim Report of Commission into the Fate of Members of the Jewish Community of Belgium that Were Despoiled or Surrendered during World War II," at 2.

[239] "Belgium," http://www.house.gov/international_relations/crs/belgium.htm.

October 1, 1947, individuals or corporations, on or before February 10, 1948, could seek compensation for war damages to "movables and immovables."[240]

3. Denmark

Germany paid Denmark DM 16 million pursuant to a bilateral treaty executed in 1959. According to information provided to the Claims Conference by the Royal Danish Consulate General, the funds were then used to compensate the disabled (or their widows or children), or those detained or imprisoned or in other way subjected to assault or persecution by the German occupation forces or collaborators with the Germans. Those who were forced to flee to Sweden also were eligible for compensation.[241] The deadline for filing a claim was October 1, 1961 and, by March 13, 1963, the funds had been distributed.

In addition, "[f]ormer citizens of Denmark who suffer from a physical disability as a result of persecution during the Nazi occupation of Denmark, or as a result of incarceration in concentration camps, may be eligible to receive compensation from the Danish government," the amount depending upon current disability.[242]

As to restitution, "[a]ccording to the Danish Resistance Museum, there were no claims made against the Danish government regarding any stolen or looted assets during the war."[243]

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240 *Id.*

241 Because of the efforts of the Danish population, most of the Jewish community in Denmark was able to escape to Sweden just prior to the intended Nazi deportations. Thus, of the Danish Jewish community of 8,000, approximately 7,220 were evacuated by boat to Sweden; 475 persons were deported to Theresienstadt. *See* "Denmark," http://www.house.gov/international_relations/crs/denmark.htm, at 1, citing Leni Yahil, The Rescue of Danish Jewry: Test of a Democracy (Philadelphia: The Jewish Publication Society of America 1969), at 26.

242 *See* Claims Conference Compensation Guide, at 12.

243 *See* http://www.house.gov/international_relations/crs/denmark.htm at 1.

4. France

Initial post-War legislation in France reinstated the professional status of those wrongfully terminated by the Vichy government and restored the rights of tenants to their rented property. A series of subsequent government orders dealt with the restitution of looted property such as securities, businesses, and household goods. According to the Matteoli Commission, charged with investigation of Holocaust-era looting and compensation in France, "[a]fter the Liberation, the French Republic erased all traces of anti-Semitic legislation, rendered null and void the legal instruments used for plunder, and arranged for the restitution of the stolen assets. However, the genuine endeavours made to return to the rightful owners what could be returned, companies, shops, works of art, furniture, and so on, backed up by a broadly based effort to inform those concerned, peter out at the beginning of the 1950s in a climate of general indifference."[244]

France enacted certain legislation to compensate victims for suffering and personal injuries. For the most part, Holocaust victims were paid as part of a general compensation program for war victims.[245] Under the Franco-German treaty of 1960, Germany paid France DM 400 million. Under a decree of August 29, 1961, France

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[244] *See* Matteoli Commission, "Study Mission in the Spoliation of Jews in France," in Washington Conference on Assets, *available at*, http://www.info-france-usa.org/wchea/second.htm, at 3. *See also* Matteoli Report, April 17, 2000 Summary, at 29 ("With the order of 11th April 1945, the restitution of the very small amount of personal property remaining within the country was organised. Non-identified property items were distributed to needy families by a welfare organization …. Only 30% of this property was redistributed to Jews").

[245] *See* Matteoli Commission, "Study Mission into the Looting of Jewish Assets in France," December 31, 1997 (hereinafter, "1997 Matteoli Commission Report"), at 25 *available at*, http://www.texte_generique?repertoire).

distributed these funds to former deportees and prisoners who were French nationals and who had not received any other compensation from Germany.[246]

The Matteoli Commission concluded in its April 17, 2000 final report that, "on the one hand, many plundered assets were returned pursuant to measures taken after the reestablishment of Republican legality, and on the other hand, that many pillaged assets were compensated as part of the war reparations or by the Federal German government [pursuant to the BRUEG]," and that in such instances, "no new compensation should be envisioned."[247] However, "an asset which was plundered or pillaged and which has not been returned or compensated … should be subject to compensation based on the same principles as the earlier compensations," including uncompensated "deposits made by Drancy internees during the German period (July 1943 to August 1944)."[248]

5. Greece

Germany paid Greece DM 115 million in 1960, pursuant to bilateral treaty. According to information provided by the Claims Conference, the Greek government has not made public its data as to how this money was distributed.

As to restitution, Greece was the first nation to enact legislation requiring the return of looted properties to Jewish owners and, in 1946, waived its right to inherit heirless property. In 1949, a decree established the "Foundation for the Welfare and Rehabilitation of the Jewish Community in Greece," the primary goal of which was to assist the surviving Greek Jewish population.[249] The Decree called upon all the heirs who could lay legitimate

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246 *Id.* at 26.

247 *See* Matteoli Report, April 17, 2000 Summary, at 43.

248 *Id.*

249 *See* http://www.house.gov/international_relations/crs/measures/greece.htm, at 1.

claims on abandoned Jewish property and who possessed the requisite documentation to appear no more than six months after publication of the law; if no heir came forward, the property was "to be administered by the Foundation."[250]

6. Italy

Pursuant to a bilateral treaty executed in 1961, Germany paid DM 40 million to Italy. According to information provided by the Claims Conference, Italy then distributed this sum to, among others, Italians who had been imprisoned in German concentration camps.

Ninety different laws and administrative regulations were passed from 1944 through 1997, aimed at compensating the persecuted victims of the Fascists and Nazis. The first was the "Royal Decree Law 9 of 6 January 1944," which readmitted into public employ those who had been dismissed for political or racial motives. The most recent was Law 244 of 18 July 1997, which ordered restitution to the Trieste Jewish Community of "'sacks' containing personal objects stripped from Jewish citizens by Nazis in the so-called Adriatic Littoral, which came to be discovered in a vault of the State Central Treasury after a series of circumstances over the course of fifty years."[251]

As for heirless property seized "because of racial persecution," the 1997 law mandates its consignment to the Union of Jewish Communities, which is then to distribute it to individual communities based on the origin of the goods and the locations where the dispossession took place.[252]

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250 *Id.*

251 *See* www.ushmm.org/assets/italy.htm; "Italy," http://www.house.gov/international_relations/crs/italy.htm, at 5 (describing Treasury Ministry's restoration of "a substantial amount of valuables that had been looted from Jews at the Nazi death camp of La Risiera di San Sabba (the only death camp in Italy)").

252 *Id.*

7. The Netherlands

Immediately following World War II, the Netherlands took certain steps to restore the property of Dutch citizens that had been illegally stolen or seized, including securities, real estate, and art.[253] Additionally, pursuant to the Law on War Damage (Decree of November 9, 1945), compensation for the loss of household effects was available to all Dutch citizens.[254] However, numerous administrative problems arose, such as determining succession rights of surviving relatives and resolving conflicts of interest between original owners of property and third parties who acquired these properties in good faith.[255]

As to indemnification, monetary assistance initially came in the form of general laws aimed at compensating all war victims as opposed to specific legislation for victims of Nazi persecution. During the 1940s through 1960s, payments were made to certain disabled and needy victims of World War II.[256] In 1950, the Netherlands also passed the War Damage Act, in which the government paid limited compensation to Dutch citizens who had suffered pecuniary losses during the War.[257]

In 1960, Germany paid the Netherlands DM 125 million in reparations, pursuant to bilateral treaty.[258] The Dutch government established the Central Office for the

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253 *See* "Overview of the Restitution of the Legal Rights in the Netherlands after the War", at www.ushmm.org/assets/netherlands/assets4.htm (hereinafter, "Netherlands Overview"), at 2; *see also* "The Netherlands," at http://www.house.gov/international_relations/crs/netherlands.htm, at 1.

254 "The Netherlands," http://www.house.gov/international_relations/crs/measures/netherlands/htm.

255 *Id.*

256 *See* "Provision for Dutch Victims of the Second World War", at www.netherlands-embassy.org/c_ww2bene.html (hereinafter, "Provision for Dutch Victims").

257 *See* "Netherlands Overview," at 3.

258 *See supra*; *see also* "German Restitution for National Socialist Crimes" (September 1990), pamphlet from the German Information Center (hereinafter, "German Information Center Report"), at 6.

Distribution of German Reparations to distribute these funds to victims of Nazi persecution.[259] These payments took two forms. First, compensation was made for material damage for assets taken from Jewish victims of persecution. These were "mainly household and personal effects which could not be found in the Netherlands after the war and which [other] Dutch compensation … was not sufficient to cover."[260] Second, the German funds compensated non-pecuniary damage, generally described as "the suffering caused by persecution."[261] Under this program, payments were made to non-Jewish victims as well, mainly those in the resistance.

In 1973, the Netherlands finally passed separate legislation for the victims of Nazi persecution – the Victims of Persecution 1940-1945 Benefits Act ("WUV"). The WUV was intended to compensate, among others, present and former Dutch citizens persecuted during the War because of their race, religion, beliefs or sexual preference, including those who were Jewish, Roma, Jehovah's Witnesses, homosexual, or political prisoners.[262] Persecution is defined under the Act as "deprivation of liberty through confinement in concentration camps, prisons or other places aimed at the termination of life or permanent surveillance."[263] Victims of sterilization and those who hid underground to avoid imprisonment also are included within the definition.[264] However, eligible victims of persecution are only those who suffer illnesses or disabilities that originated or were exacerbated by the persecution and have incurred necessary medical expenses and/or suffered

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259 *See* "Netherlands Overview," at 3.

260 *Id.*

261 *Id.*

262 *See* Provision for Dutch Victims, at 2; Netherlands Overview.

263 *See* Provision for Dutch Victims, at 2.

264 *Id.*

a loss in normal income. In addition to monthly benefits, other payments may be made for medical expenses, health care assistance, and similar items.[265] The WUV's purpose is to restore the standard of living and provide an income the victim would have enjoyed had the persecution not taken place.[266]

As of the late 1990s, the Dutch government was still making payments to Dutch and former Dutch victims of Nazi persecution, including approximately 1500 persons in Israel, 1400 in the United States, and 300 in Canada.[267]

Most recently, on March 21, 2000, the Dutch government announced its agreement "to give the Jewish community $180 million to compensate for injustices they suffered in Holland after returning from Nazi death camps."[268] The agreement is to cover "15 types of assets, including administrative costs for returned Jewish property and money confiscated from Jews by the Nazi puppet regime to run concentration camps. The lion's share of the payment will go to Dutch war victims, most of whom live in the Netherlands, Israel and the United States."[269]

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265 *See* Netherlands Overview.

266 *See* Provision for Dutch Victims, at 2.

267 *See* Provision for Dutch Victims, at 2: *see also* Ambassador Jan d'Ansembourg, "Concluding Statement – The Netherlands," in Washington Conference on Assets, at 115.

268 Jerome Socolovsky, *Dutch Govt., Jews Reach Settlement,* Associated Press, March 21, 2000. Another $14 million is earmarked for compensation to Roma Sinti victims of the Nazis, *id.* (*see infra*).

269 *Id.*

8. Norway

After the War, Norway adopted certain provisions to effectuate restitution of identifiable property or, where no longer recoverable, to provide compensation for the loss.[270] The "victim's economic position and needs," rather than the actual value of the property, were taken into account, and the "principle of even social distribution meant that the greater the loss the smaller the percentage of compensation."[271] Further, "the payments were regulated by establishing an order of inheritance and the percentage paid out varied according to whether the heir was direct or indirect."[272] One striking aspect of the law was that "the order of inheritance was established on the basis of assumptions of who had died first in a family that entered the gas chamber together."[273] Deductions for estate administration fees were "almost equivalent to the total payments to the Jewish group from the reparations agencies."[274]

Subsequently, West Germany provided DM 60 million to Norway pursuant to a bilateral treaty executed in 1959. According to information provided to the Claims Conference by the Royal Norwegian Consulate General, during the 1960s, the Norwegian government distributed one-time payments to Norwegian citizens who suffered imprisonment

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270 *See* Norwegian Ministry of Justice and the Police ("ODIN"), "Compensation to persons who suffered from anti-Jewish measures in Norway during World War II" (available at http://odin.dep.no/jd/publ/1999/jode/engelsk.html) (hereinafter, "Norwegian Compensation"), at 3.

271 *See* Norwegian Ministry of Justice and the Police (ODIN"), White Paper No. 82 to the Sorting (1997-1998), "Historical and moral Settlement for the treatment in Norway of the economic liquidation of the Jewish minority during World War II (available at http://odin.dep.no/repub/97-98/stprp/82/engelsk/) (hereinafter, "White Paper"), at 3.

272 White Paper, at 4.

273 *Id.*

274 *Id.*

and disabilities at the hands of the Nazis. The Norwegian Ministry of Health and Social Affairs estimates that approximately 9,000 Norwegians benefited from the program, of whom 2,000 were Jewish Holocaust survivors or their descendants.

The Norwegian government presented a White Paper on June 26, 1998 in which it proposed that Parliament establish a historical and moral settlement for the persecution of its Jewish minority citizens during the War. The White Paper posited that Norway's reparation measures after the War did not properly compensate for the Nazis' treatment of Jews in Norway, and recommended two types of payments: collective compensation to the Jewish community, and individual payments to Jewish Holocaust victims.[275]

In 1999, the Norwegian government adopted the proposal for individual payments. Under this program, a total of $58 million (approximately $20,000 each) will be paid to persons born before the end of the War who suffered from anti-Jewish measures in Norway during World War II.[276] "Spouses and direct heirs" also may obtain compensation.[277] Payments will be made to Norwegian nationals, as well as "stateless Jews" and "foreign national Jews" as long as the persecution took place in Norway.[278] As for eligibility:

> [C]ompensation will be made to all Jewish families and individuals who either had their property confiscated or were subject to confiscation orders and Jewish families and individuals who did not own assets that could be seized and who therefore had no economic losses after the liquidation, but

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275 *See* White Paper, at 1.

276 *Id.* at 9; Norwegian Compensation, at 1; *see also* Claims Conference Compensation Guide, at 13.

277 *See* Claims Conference Compensation Guide, at 13.

278 White Paper, at 9.

> who suffered in other ways from the persecution or who lost their lives, for example in concentration camps or prison.[279]

The filing deadline for the Norwegian program was November 1, 1999, and it is estimated that 500 to 1000 claimants will qualify for payments.[280]

9. Switzerland

In 1997, prior to the $1.25 billion settlement of this lawsuit, In re Holocaust Victim Assets Litigation, Switzerland created a humanitarian program which it called the "Swiss Fund for Needy Victims of the Holocaust/Shoa" (the "Swiss Humanitarian Fund"). As more fully described elsewhere in the Special Master's Proposal, the Swiss Humanitarian Fund was intended to assist, on a purely humanitarian basis and not as restitution or indemnification, needy Nazi victims around the world, including (but not limited to) the same victim groups included under the terms of this litigation.[281]

As of July, 2000, approximately 250,000 Jewish Holocaust survivors have received or are expected to receive a total of approximately $169,304,924 in payments from the Swiss Humanitarian Fund. Approximately 62,000 recipients live in the United States, 40,000 to 45,000 recipients in Central and Eastern Europe and the former Soviet Union, approximately 120,000 in Israel, and approximately 24,000 in Western Europe, Australia, New Zealand, Canada, Latin America, South America and South Africa. Individual payments have ranged from $502 to United States recipients (who were required to sign a "self-declaration" of need), to an anticipated total of approximately $1400 each to survivors living

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279 *Id.*

280 *Id.* at 11; Norwegian Compensation, at 1.

281 *See also* Annex K ("Swiss Humanitarian Fund").

in Central and Eastern Europe and the former Soviet Union,[282] who were presumed to be needy.[283]

As of July, 2000, approximately 14,900 Roma, Sinti or Yenish Nazi victims have received or are expected to receive Swiss Humanitarian Fund payments, for a total of approximately $10,290,000.[284] The Fund also has made payments to 9 homosexual Nazi victims, for a total of approximately $10,560. A total of 69 Jehovah's Witnesses have received or are expected to receive payments totaling approximately $61,000, and 32 Nazi victims with disabilities have received or are expected to receive payments totaling approximately $35,800.

The Swiss Humanitarian Fund is described in greater detail at Annex K and elsewhere in the Special Master's Proposal.

10. Great Britain

Germany paid the British government DM 11 million pursuant to a bilateral treaty executed in 1964. According to information provided by the Claims Conference, Great Britain utilized these funds for a one-time compensation payment to its citizens who were imprisoned or disabled by the Nazis. Those who became British citizens after having suffered persecution also were eligible.

In 1999, Great Britain adopted an enemy property payment program, which provides compensation to "victims of Nazi persecution who had property in Great Britain

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[282] The Swiss Humanitarian Fund did not make payments to survivors in Eastern Europe or the former Soviet Union who fled from the Nazis. Recipients generally were required to have been interned in concentration camps or ghettos, or to have lived in hiding. *See* Annex K.

[283] In other nations, "need" was established on a country-by-country basis. *See* Annex K.

[284] An additional 4,083 Roma, Sinti or Yenish Nazi victims have applied for payments; their applications are pending. *See* Annex K.

which was confiscated by the British government during the Second World War under Great Britain legislation on trading with the enemy and who have not had their property returned" or compensated.[285] The program is to compensate "the person who would probably have owned the property or had an interest in it had it not been confiscated." The burden, however, rests with the claimant to prove his entitlement as an heir.[286]

11. Other Western European Countries

Through other bilateral treaties, Germany paid reparations to several additional Western European nations which then distributed payments to their own nationals. Luxembourg received DM 18 million in 1959. According to information provided by the Claims Conference, Luxembourg channeled these monies into a fund from which persecuted victims of the Nazis received compensation.[287] Switzerland received DM 10 million from Germany in a 1961 treaty. According to information provided by the Claims Conference, Switzerland has not disclosed its data on distribution of these funds. Finally, in 1964,

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285 *See* "Great Britain," http://www.house.gov/international_relations/crs/measures/uk.htm; *see also* Claim Form of Enemy Property Payment Scheme, *available at,* http://www.enemyproperty.gov.uk (hereinafter "Payment Scheme"). "A recent analysis concludes that a significant portion of the 'enemy assets' held by the British government had belonged to German, Austrian, Romanian, and Hungarian Holocaust victims who had tried to shelter their assets in Britain. These funds were used to compensate Britons who had suffered material losses in those Axis countries. The British Holocaust Education Trust (London) estimates the value of Holocaust victims' assets in this category at $100 million - $1 billion (in current dollars)." *See* "United Kingdom," http://www.house.gov/international_relations/crs/uk.htm. A June 1998 inquiry led by Lord Archer concluded that "while compensation took place in the earlier period, investigations were often conducted with less thoroughness and sensitivity than was called for." *Id.*

286 *See* Payment Scheme.

287 An initial 1950 compensation law "restricted any compensation to Luxembourg nationals who had been victims of [N]azi persecution for patriotic reasons. This excluded all those who had been victims of [N]azi persecution for racial, religious or political reasons: Communists, Jews, homosexuals, witnesses of Jehovah etc." *See* "Luxembourg Delegation Statement," in Washington Conference on Assets, at 291. Luxembourg used the 1959 payment from Germany "to compensate people that had been excluded on the terms of the 1950 law." *Id.*

Germany made a payment to Sweden of DM 1 million. According to information provided by the Claims Conference, only those who were Swedish citizens during the persecution period received compensation (approximately 100 applicants).

B. Central and Eastern Europe

Most compensation programs in Central and Eastern Europe have been hampered by political as well as practical difficulties. "Two generations after the war, it is common that property would have been transferred several times. It had been 'Aryanized' by the Nazis through confiscation or sales that are presumed to have been under duress. The property was later nationalized by the communists, and has likely changed hands or title since the fall of the Berlin Wall."[288] Nevertheless, some progress has been made within the last several years, although restitution is far from complete.

1. Czechoslovakia; Czech Republic; Slovakia

In the former **Czechoslovakia**, immediately following the War, there was an initial effort to restore property seized from Jews alike and non-Jews during the years 1938 to 1945, pursuant to the Restitution Law of May 1946. Also during the early post-War period, approximately 5,000 items located in the Soviet Military Zone in Germany were returned to Czechoslovakia.[289] However, private property was nationalized after the communist regime came to power, and restitution efforts did not resume until 1989, when legislation was enacted for restitution of privately-owned, but not communal, property.[290]

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[288] Henry, Restitution in Central and Eastern Europe, at 24. "This often deposits Jewish claimants in a position that is morally defensible but extremely awkward: in effect, making a claim against a current occupant who may be innocent of any intent to steal or defraud." *Id.*

[289] *See* "Czech Republic," http://www.house.gov/international_relations/crs/czech.htm; "Slovakia," http://www.house.gov/international_relations/crs/czech.htm.

[290] *Id.*

The **Czech Republic** has continued to follow these restitution principles, initially imposing a citizenship requirement on claimants but in July 1994 abrogating that restriction.[291] There was also some initial confusion about whether the more recent legislation was applicable to property claims that could have been brought pursuant to the 1946 statute. A 1994 amendment clarified that any property restitution claim – whether arising from the World War II era or nationalized under the communist regime – could be filed by July 1, 1995.[292] According to a 1998 WJRO report, notwithstanding its presentation of "a list of over 1,000 communal and public properties which belonged to the Jewish Community in the Czech Republic in 1939," as of 1998, "only a small number of communal properties ha[d] been restituted."[293] However, at the end of March, 2000, the Czech government announced that it had "allocated an initial 300 million kroner ($8.1 million) … to a newly created Holocaust Victims Fund for the restitution of Holocaust-era Jewish communal and private property," and that the Fund was expected to begin making payments in May, 2000.[294]

As to indemnification, according to the Czech Delegation to the 1998 Washington Conference on Holocaust-Era Assets, "[a]s waiting for … compensation or humanitarian aid from abroad seemed to take too long, in 1994 the Czech Parliament adopted an act providing financial aid to the Nazi victims. By this day, 55 million dollars were

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291 "Czech Republic," http://www.house.gov/international_relations/crs/measures/czech.htm.

292 *Id.*

293 Ambassador Naphtalie Lavie, "Report of the W.J.R.O. [World Jewish Restoration Organization], November 1, 1998," in Washington Conference on Assets (hereinafter, "WJRO Report"), at 434-35.

294 Elli Wohlgelernter, *Czech Holocaust victims to be compensated*, The Jerusalem Post Internet Edition, March 31, 2000.

distributed from a Czech government agency…."[295] Further, "[i]n December 1997, the so-called 'Czech-German Fund for the Future' was established. The Czech share is 17 million dollars while the German one is 93 million dollars. 53 million dollars out of this amount is to be handed directly to the victims."[296]

In **Slovakia**, pursuant to a 1993 law addressed to "property injustices," certain cemeteries and synagogues have been turned over to the Slovak Jewish community. The law also provided for the assertion of restitution claims against subsequent property owners, imposing a filing deadline of January 1, 1995. The law exempted from restitution any property which, after seizure, had been put to use for "cemetery, health, cultural, social, sport or defense purposes."[297] The WJRO "in coordination with the local Jewish Communities prepared a list of nearly 1,000 communal and public properties belonging to the Jewish Community in Slovakia. The Federation of Jewish Communities in Bratislava submitted claims of over 800 properties including cemeteries, but only 360 have been restituted, most of them cemeteries. Some 250 cases are pending ruling of the local courts."[298]

The Slovak Jewish community also has received approximately $950,000 from the Czech and Slovak governments as compensation for lost gold and jewelry. The funds, administered by the "Ezra Foundation," have been used to refurbish communal property and construct homes for the infirm and the elderly.[299]

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[295] Jiri Sitler, "Concluding Statement – Czech Republic," in Washington Conference on Assets, at 96.

[296] *Id.*

[297] "Slovakia," http://www.house.gov/international_relations/crs/measures/slovak.htm.

[298] WJRO Report, at 435.

[299] "Slovakia," http://www.house.gov/international_relations/crs/slovakia.htm, at 2.

2. Estonia

Property restitution began in Estonia in 1990, and, within the small Jewish community, is essentially resolved. "Most of the real estate lost by Jews who were murdered by the Nazis has been returned to identifiable heirs," and a WJRO official has stated that "Jews have no claims on Estonia in regards to property issues."[300] Estonian law does not differentiate among claimants based upon religion, ethnicity or citizenship, and likewise does not differentiate among claims arising from Nazi-era as opposed to communist expropriation.[301]

3. Hungary

In Hungary, although the initial government after World War II re-established the equality of all citizens and nullified the discriminatory laws of the Nazi era, substantial remedial measures were not taken.[302] Hungary was economically impoverished, an anti-Semitic climate still pervaded the country, and the communist government that came to power collectivized and nationalized all property. As a result, "the Jews enjoyed no tangible results with respect to restitution and indemnification."[303]

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300 "Estonia," http://www.house.gov/international_relations/crs/estonia.htm, at 1 (citations omitted); *see also* WJRO Report, at 437 (Estonia government is "forthcoming on its own initiative" toward communal property claims).

301 "Estonia,"http://www.house.gov/international_relations/crs/measures/estonia.htm.

302 Randolph Braham, The Politics of Genocide: The Holocaust in Hungary (New York: Columbia Univ. Press 1981), at 1151-55; *see also* "Hungary," http://www.house.gov/international_relations/crs/hungary.htm.

303 Braham, at 1153. Immediately after the War, and before the communist regime came to power, a 1946 law "established the Jewish Restitution Fund, the purpose of which was to sell the property of deceased and heirless victims of the Holocaust and use the capital to compensate surviving Jews. This did not begin until 1949, however, and was hindered by the simultaneous nationalization of property by the post-war Communist regime." *See* "Hungary," http://www.house.gov/international_relations/crs/hungary.htm, at 1.

As to direct German restitution of Hungarian losses, although over 66,000 Hungarian applications under Germany's BRUEG property restitution statute were submitted before the 1959 deadline (see supra), difficulties of proof and the absence of diplomatic relations between West Germany and Hungary resulted in compensation of only a very small percentage of the actual value of the looted assets.[304] On January 22, 1971, however, West Germany agreed to pay DM 97 million to Hungary in three separate installments beginning in 1972. Under the agreement, the Hungarian government was responsible for distributing these funds among the initial applicants. Individual payments, to approximately 60,000 claimants, ranged from $80 to $400.[305]

Subsequently, "[i]n 1995, the WJRO and the Federation of Jewish Organizations in Hungary submitted a list to the Hungarian government of some 3,000 former Jewish communal properties for which restitution or compensation was sought. As of late 1998, only a handful of these claims had been acted upon. On October 1, 1998, the Hungarian government and the Jewish Community signed an agreement whereby the community would renounce claims to 152 properties worth some $60 million and receive, instead, an annual allocation of about $3 million for its religious, educational, and charitable activities."[306]

Additionally, in 1997, "[i]n an effort to fulfill its obligation to compensate Jews according to the 1947 Paris Peace Treaty," Hungary established a Hungarian Jewish Indemnification Fund, which provides a lifetime pension to Hungarian Jews aged 60 and over

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304 Braham, at 1160-61.

305 *Id.* at 1161.

306 "Hungary," http://www.house.gov/international_relations/crs/hungary/htm, at 2; *see also* WJRO Report, at 435-36.

residing permanently in Hungary.[307] Recipients may obtain payments ranging from approximately $50 to $200 per month, depending upon the person's age. Approximately 20,000 individuals are eligible for compensation under this program.[308]

4. Latvia

Latvian restitution laws do not generally distinguish between Nazi-era and communist-era confiscation; further, the laws provide for the return of property to owners or their heirs regardless of present place of residence or citizenship.[309]

Pursuant to a 1993 statute, property confiscated by the Nazis and still in the hands of the Latvian government is to be returned to Holocaust survivors, while property not capable of restitution is to be compensated financially to a special fund. Jewish organizations which are able to prove the religious nature of the property also are entitled to restitution. In February 1999, the Council of Jewish Communities and Parishes of Latvia became the coordinating body concerning restitution, and has "reported that, to date, property rights to most pieces of property have been returned."[310]

5. Poland

The initial tentative attempt to restitute communal property immediately after the war was "problematic" because the "Nazis destroyed many of [these properties] in their effort to eradicate all Jewish culture from Poland."[311] Even after the fall of communism, and

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307 "Hungary," http://www.house.gov/international_relations/crs/hungary/htm, at 2.

308 *Survivors in Hungary receive Swiss Holocaust fund checks*, JTA Daily News Bulletin, February 18, 1998.

309 "Latvia," http://www.house.gov/international_relations/crs/measures/latvia.htm; *see also* WJRO Report, at 437.

310 "Latvia," http://www.house.gov/international_relations/crs/measures/latvia.htm.

311 "Poland," http://www.house.gov/international_relations/crs/poland.htm.

"[t]o date, the Republic of Poland has been unable to pass any general law dealing with the restitution of seized property to rightful owners," and, "[a]s a rule, when the property was seized in compliance with the law in force at the time of the seizure, the previous owners cannot now successfully claim its return. It does not matter how unjust the law was."[312] Communal religious property confiscated by the Nazis is, however, subject to restitution; the deadline for filing such claims is 2002.[313]

As to reparations, although no diplomatic relations existed between Germany and then-communist bloc nations, in November, 1972, "Bonn agreed to pay the International Red Cross in Geneva DM 100 million for distribution to the Polish victims of Nazi medical experiments."[314] Subsequently, in October 1991, Germany paid DM 500 million (approximately $250 million) to establish the "Polish-German Reconciliation Foundation." Polish citizens who were "alive on January 8, 1992, who have submitted an application personally, who have their permanent residence in the territory of the Republic of Poland and who are the victims of special [N]azi persecutions," may receive payment.[315] Jewish as well

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312 "Poland," http://www.house.gov/international_relations/crs/measures/poland.htm. No laws deal with the issue of Holocaust-era property compensation. Id. According to the WJRO, although it has "compiled a list of approximately 6000 communal properties … which belonged to the Jewish Community, … the Polish Government ignores this claim. Instead, the government recognizes the rights of the existing nine remnant communities and the Union of these communities to file claims [for restitution]. Until the end of October 1998, less than one hundred claims have been dealt with and only a few of them have been finalized and returned to Jewish ownership." WJRO Report, at 434.

313 Marilyn Henry, *Polish Jews demand WJRO help to reclaim property*, The Jerusalem Post Internet Edition, May 29, 2000 (available at www.jpost.com/Editions/2000/5/11/Jewish World). Polish law "recognizes only the local community – the union – as eligible to claim prewar kehilla property," *id.* There has been considerable "acrimony" between the local community and the WJRO arising from the WJRO's contention that the relatively small Polish Jewish community is not the appropriate representative of "the millions of Polish Jews who died in the Holocaust and the survivors of Polish origin who live abroad," *id.*

314 74 American Jewish Year Book (1973), at 461.

315 *See* "Poland Delegation Statement," in Washington Conference on Assets, at 311.

as non-Jewish victims are eligible, although given the residency requirements, few Jewish Holocaust victims have received payments under this program.[316] For those who were adults during the war, eligibility depends upon the place of persecution; those who were children during the Nazi era also are entitled to compensation under certain circumstances.[317]

6. Other Nations of Central and Eastern Europe and the former Soviet Union

Following the war, the Soviet Union received reparation and restitution payments from Germany pursuant to the Paris Agreement; however, these funds went directly to the Soviet state and not to Holocaust victims.[318] Little if any effort was made to revisit the issue of compensation during the Cold War era.

In the post-Cold War years, certain Central and Eastern European and formerly Soviet nations have made preliminary efforts to compensate Nazi victims primarily for personal losses, many by way of bilateral agreement with Germany (in which case such payments have been made largely to non-Jewish individuals, who now constitute the majority of Nazi victims in those nations). The funds earmarked by Germany for these nations are "for all those who 'especially suffered' from the Nazis, not just for Holocaust survivors."[319] Thus:

- In **Belarus**, no legislation regarding restitution of Holocaust-era assets has been adopted, although the government has stated that it has begun

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316 The pre-War Polish Jewish community of approximately 3,300,000 – nearly 3,000,000 of whom were killed in the Holocaust (*see* Hilberg, at 1212-13) – now numbers approximately 3,500. *See* 1999 American Jewish Year Book, at 561. *See also* Henry, Restitution in Central and Eastern Europe, at 43 ("There were once 3 million Jews in Poland; now there are about 10,000, by the most generous estimates").

317 *See* Elzbieta Turkowska-Tyrluk, "Break-out Session on Holocaust-Era Insurance: Postwar Government Compensation Programs and Nationalizations," in Washington Conference on Assets, at 667-68.

318 *See, e.g.*, "Belarus," <http://www.house.gov/international_relations/crs/belarus.htm> at 1.

319 Mary Mycio, *In Ukraine, Many Survivors of the Holocaust Still Await Recompense,* Los Angeles Times, December 15, 1996, at A12.

to return certain communal properties.[320] Although Germany entered into an agreement with Belarus in 1993 to provide DM 200 million (approximately $100 million) in reparations and restitution to victims of World War II by way of the Mutual Understanding and Reconciliation Fund, the World Association of Belarusian Jews "reports that only a small portion of the German compensation … has been distributed to Jews."[321]

- In **Bulgaria**, pursuant to the 1992 Law on Restoration of Property Rights, certain "illegally confiscated property might be restored to the original owner, or his or her heirs," if the property is publicly owned, actually exists in the form in which it was nationalized in the late 1940s pursuant to communist rule, and if the claimant resides in Bulgaria. Non-residents must dispose of any property successfully restituted.[322]

- In **Lithuania**, although legislation for restoration of private property rights was enacted in 1991, authorizing return of properties confiscated during the Soviet era, no Holocaust-related compensation provisions exist. As to the 1991 law, only resident citizens of Lithuania are eligible for compensation; "[c]onsequently, neither foreign nationals nor Lithuanian citizens permanently residing abroad qualify for restitution."[323]

- In **Romania**, although statutes for restoration of private property have been enacted within the last several years, there has been little progress made in restitution thus far, with only 28 pieces of private real estate returned as of June, 1999.[324] The Foundation of Jewish Communities in Romania has identified 931 former Jewish communal properties for which restitution is sought; fewer than 30 had been restituted as of October 1998, although some continuing restitution efforts were under way.[325]

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320 *See* "Belarus," www/house.gov/international_relations/crs/belarus.htm, citing Belarus Delegation Statement, in Washington Conference on Assets, at 191-93.

321 *Id.* citing BBC Worldwide Monitoring, April 28, 1999.

322 "Bulgaria," http://www.house.gov/international_relations/crs/measures/bulgaria.htm.

323 "Lithuania" http://www.house.gov/international_relations/crs/measures/lithuania.htm. "The Lithuanian Government did not respond positively to attempts being made by" WJRO negotiators. *See* WJRO Report, at 438.

324 "Romania," http://www.house.gov/international_relations/crs/Romania.htm at 1.

325 *Id.* The WJRO reports somewhat different figures: "approximately 3000 communal properties in Romania" have been identified; as of October 1998, the ownership of approximately 20 properties had been or was to be transferred. WJRO Report, at 436.

- In **Russia**, some communal Jewish property has been restituted pursuant to a post-1991 presidential decree; "[t]his is not, however, Holocaust-era property, but property seized by Soviet authorities well before the war."[326] As to indemnification, in 1993, Russia received from Germany DM 400 million (approximately $200 million) to create the Russian National Fund for Mutual Understanding and Reconciliation, which distributes one-time reparation payments to Russian Nazi victims.[327] According to information provided by the Claims Conference, average payments, distributed to Jewish and non-Jewish Nazi victims alike, are approximately DM 1,000 (approximately $500).

- In **Ukraine**, no restitution legislation exists, and the government "claims that all victims of Nazi cruelty have equal rights to compensation from Germany regardless of ethnicity and religion."[328] Germany paid Ukraine DM 400 million (approximately $200 million) to establish a "Mutual Understanding and Reconciliation Fund," which, as in Russia, distributes one-time payments to Jewish and non-Jewish Nazi victims.

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326 "Russia," http://www.house.gov/international_relations/crs/russia.htm.

327 *See* "Russia," http://www.house.gov/international_relations/crs/measures/russia.htm.

328 "Ukraine," http://www.house.gov/international_relations/crs/measures/ukraine.htm. *See also* WJRO Report, at 437 ("no response has been received" from the Ukraine government despite a written request for restitution of Jewish communal properties).

V. COMPENSATION TO NON-JEWISH VICTIMS OR TARGETS OF NAZI PERSECUTION

Jewish survivors generally have fared somewhat better in obtaining compensation and restitution than have many other persecutees who suffered at the hands of the Nazis:

> Because of foreign and domestic political alignments, continuing social ostracism, a lack of representatives, and a shortage of publicity, the following groups were excluded from the BEG payments or were only partially compensated: (1) all those who had been persecuted outside of Germany by German killing squads, who, because they had remained in their native countries, did not fulfill the law's residency requirements, (2) forced laborers, (3) victims of forced sterilization, (4) the 'antisocial,' (5) communists, (6) Gypsies (Sinti and Rom), and (7) homosexuals.[329]

There have been some improvements in recent years, so that victims excluded under the BEG and other early programs have since become eligible for compensation from Germany and other nations. The recompense that has been available for the non-Jewish "Victims or Targets of Nazi Persecution" as defined under the Settlement Agreement – Roma, Jehovah's Witnesses, persons with disabilities, and homosexuals – is more fully described below.

A. Roma

For the first several decades following the end of the War, the main program under which Roma were eligible for compensation was Germany's BEG. However, until the 1980s, Roma were confronted by technical and, more importantly, continuing racial obstacles which prevented the majority of claimants from receiving German compensation. More

[329] Pross, at 52.

recent programs implemented in the 1980s have made some headway in rectifying the years of Roma exclusion from German recompense, including a 1980 measure for compensating those who had been forcibly sterilized. A handful of nations other than Germany have provided for compensation to Roma victims, at least in theory, although hard data remains largely unavailable.

1. BEG

As noted earlier, eligibility under the BEG was determined by the definition set forth in Section 1 of that statute, providing compensation for religious, political or racial persecutees who were either residents of Germany, refugees, expellees, or displaced persons. However, the racial persecution of the Roma often was not recognized by German administrative agencies and courts. Instead, their wartime persecution was regarded as having been premised upon their purportedly "criminal" activity – a startling adoption of Nazi rhetoric – and therefore not compensable.[330]

This restrictive interpretation was given further support by a 1956 decision of the West German Federal Supreme Court, which issued a ruling dividing Roma persecution into two periods: one prior to late 1942, and one thereafter. Confronted with the question of whether the 1940 deportations of the Roma to the *Generalgouvernement* (Poland) were

[330] *See* Barry Fisher, "No Roads Lead to Rom: The Fate Of The Romani People Under The Nazis And In Post-War Restitution," 20 Whittier Law Review 3 (1999) (hereinafter, "Fisher"), at 530-31 ("Since the official description of the NS term 'asocial' included not only 'prostitutes, vagrants, beggars, work dodgers,' but Roma as well, they were continually denied compensation because their relocation into concentration camps was not considered racially motivated under section 1 of the BEG"); Guenter Lewy, The Nazi Persecution of the Gypsies (New York: Oxford Univ. Press 2000) (hereinafter, "Lewy"), at 203.

"racially motivated," the Court held that they were not; rather, they were purportedly "'well within the framework of preventive and security measures.'"[331]

> The fact[] … that the relocation violated constitutional principles and that the manner in which it was implemented was cruel and inhumane should not lead us erroneously to conclude that the relocation campaign should therefore be seen as racial persecution …. [The] "antisocial disposition of the Gypsies" [sic] had already warranted restrictions on members of this particular ethnicity.
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> [However, for] detentions of Roma following Himmler's *Auschwitz-Erlass* of December 16, 1942[,] "[t]here is a general consensus … that the date signifies the turning point in the Gypsy politics of the Third Reich …. The desired final goal of the decree is clearly the complete eradication of the Gypsies within the territory of the NS regime." Accordingly, Roma detained after March 1, 1943, "the decisive date for the implementation of the decrees," might be eligible for compensation under the BEG. A large part of the Roma population of Germany, including that of Austria and Serbia, as well as many thousands of others throughout Europe, had been interned and killed many years before this date.[332]

As one compensation expert has observed, the German court's reference to "security measures," which "quite literally employs the language of the SS, would have raised a storm of protest had it been aimed at the Jews. But the Gypsies could not mobilize any supportive public opinion. It was largely due to Kurt May of the URO and a judge of the Frankfurt appeals court, Franz Calvelli-Adorno, who had documented the racial persecution

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331 Fisher, at 531-32 (citation omitted).

332 *Id.* at 532; *see also* Lewy, at 203; Sybil Milton, "Holocaust: The Gypsies," in Century of Genocide: Eyewitness Accounts and Critical Views (New York: Garland Pub. 1997), at 174 (hereinafter, "Milton"), at 224; Gilad Margalit, "Forty Years for German Recognition of Persecution to Gypsies," in The Patrin Web Journal, available at http://www.geocities.com, at 1 ("The main group affected by this decision were the survivors of the deportation to Poland in May 1940").

of Gypsies in the journal *Rechtssprechung zum Wiedergutmachungsrecht* and had sharply criticized the judgment, that the Supreme Court revised its opinion on 8 December 1963 to acknowledge that racial policy was one factor in the May 1940 resettlement of Gypsies."[333] Citing newly discovered historical materials, including a 1938 Austrian memorandum making reference to the anticipated sterilization and forced labor of the Roma, as well as the goal that the Roma be treated equally to Jews, the Court held that race was a contributing cause, if not necessarily the sole cause, of Nazi persecution of the Roma.[334]

"Under the Federal [Indemnification] Final Law of 1965" of the BEG, German Roma (*i.e.*, Sinti) "whose claims had been rejected could apply again. However, many had been intimidated by the earlier judgment or had become resigned and failed to take advantage of this."[335] Although the adjustment of the date of persecution enabled some Roma to pursue compensation claims under the BEG and subsequent programs – and "a small number of Roma received some compensation in the form of small pensions" under these laws[336] – others continued to be excluded, including those who had been incarcerated in "early internment camps such as Marzahn or Lackenbach," or deported to "ghettos such as Radom or Bialystok after 1940."[337] In addition, like Jewish survivors, Roma claimants were required to show "minimum periods of involuntary detention in certain officially recognized camps and ghettos to qualify for meager settlements," and "[h]ealth claims for physical and psychological trauma" were "disregarded."[338] Successful claimants sometimes found that

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333 Pross, at 54.

334 Fisher, at 533; *see also* Milton, at 224.

335 Pross, at 54-55.

336 Fisher, at 529.

337 Milton, at 224.

338 *Id.*

their "modest restitution settlements" were subject to deductions for "any prior welfare assistance,"[339] or were "entirely absorbed by their litigation costs."[340]

Additional difficulties were posed by the special circumstances of the Roma survivors:

> Many of the survivors had great difficulty in talking about their experiences in the camps out of a sense of shame or on account of suspicion that these new inquiries into their lives would lead to further harmful consequences. This resulted in missed application deadlines or incomplete applications. Many of the applicants were illiterate and unaware of the possibility of receiving restitution payments; there was exploitation by the lawyers who represented the Gypsies' interests. The authorities did not recognize "Gypsy marriages," which meant that survivors were unable to receive compensation for the death of a spouse in the camps. The doctors who had to certify damage to health often were less than sympathetic to the cause of the Gypsies, and many of the medical evaluations issued by them were phrased in language that led to the rejection of claims.[341]

In addition, although both the BEG and the subsequently enacted BRUEG made provision for property compensation, "[t]he West German government … regularly denied Roma claims for restitution of impounded property, including houses and businesses."[342]

2. Compensation to Roma for Sterilization and Other Harms

In addition to provisions for compensation of loss of life, health, and professional standing, the BEG also made available special "hardship" compensation ("*Härteausgleich*") for a limited category of victims: those who had "received no other form

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339 *Id.*; *see also* Fisher, at 533.

340 Fisher, at 533.

341 Lewy, at 204.

342 Fisher, at 534; Milton, at 224.

of compensation and whose destitute financial situation required some form of social assistance."[343] Roma victims were eligible for such compensation.

The Hardship Fund of the BEG generally covered "living expenses at the subsistence level, necessary medical treatments, and expenses for vocational retraining. It extended to individuals who were sterilized, not pursuant to the … (Law for the Prevention of Genetically Impaired Offspring) … but as a result of medical experiments such as the 'Clauberg injections' performed at Auschwitz concentration camp. The fund also provided for family members of Holocaust victims left behind without any means of survival."[344]

More general compensation for forced sterilization was made available in December 1980, when Germany approved a one-time payment of DM 5,000 (then approximately $3,000) for victims of such atrocities.[345] In 1988, "the government issued new guidelines for handling special hardship cases. Under these rules, the sterilized can receive additional assistance if they can show damage to their health and a resulting loss in earning capacity of at least 25 percent."[346]

3. Other German compensation to Roma Victims

In 1957, the Bundestag enacted a statute designed to compensate those who had been subject to "forced sterilization, euthanasia-related injuries (a term that is not defined), detention without due process, [or detention] in concentration camps [after

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[343] Fisher, at 535. A separate "Hardship Fund," implemented after 1980, compensated primarily Jewish Nazi victims who had emigrated from Central and Eastern Europe and were ineligible for BEG compensation. *See supra*.

[344] Fisher, at 535.

[345] Fisher, at 531; Lewy, at 204.

[346] Lewy, at 204.

completing] their mandatory sentences."[347] According to one researcher, the provision, the *Allgemeines Kriegsfolgengesetz* (AKG or General War Repercussions Law), which had a general deadline of December 31, 1958, was intended to apply to those "allegedly guilty of vagrancy, sex crimes, prostitution, pimping, drinking, homosexuality and antisocial behavior"[348] and theoretically included Roma, who were then regarded as having been persecuted due to antisocial behavior. Nevertheless, forced sterilizations remained uncompensated under this early statute because, until enactment of the 1980 provision described above, sterilization was viewed as "a legitimate legal measure under the 'Blood Protection Law' of 1935."[349]

A "German government report published in 1986 asserted that most of the Sinti and Roma were considered under" the AKG.[350] However, this assertion has been questioned "since the Sinti and Roma as victims of racial persecution filed their claims primarily under section 1 of the BEG. Furthermore, the BEG claims process was typically so drawn out that the AKG filing deadlines had generally expired by the time the BEG claim was denied."[351]

A similar difficulty has confronted those Roma who have sought relief under the previously-described 1980 Hardship Fund. Although "[n]ew regulations to benefit non-

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347 Fisher, at 534.

348 *Id.*

349 *Id.* at 531.

350 *Id.* at 534.

351 *Id.* at 534-35, citing Anne von Torne, "*Wiedergutmachung von Sinti und Roma: Bundesrepublik Deutschland, Republik Österreich und Deutsche Demokratische Republik im Vergleich*" ("Reparations for Sinti and Roma: A Comparative Study of the Federal Republic of Germany, the Austrian Republic, and the German Democratic Republic"), 27 n.103 (1992) (unpublished thesis, Freie Universität Berlin, on file with Fisher).

Jewish victims of [Nazi] persecution were passed in 1981," eligibility "is still defined by section 1 of the BEG and limited to victims who have never filed a claim under the BEG. This effectively excluded all Sinti and Roma whose claims had been denied under the BEG."[352]

4. Other Nations' Compensation to Roma Victims

As noted earlier, **Austria** has implemented a number of compensation measures for Nazi victims, although subject to the contention that such programs are "voluntary" only, rather than obligatory, because of Austria's stated status as the so-called "first victim" of Nazi aggression. Among these programs, the "Victim Assistance Law," which "covers both victims of combat and victims of political persecution," is applicable to Roma claimants.[353] Austria has contended that "'it has been undisputed – since as early as 1947 – that the persecution of Gypsies was covered by the law just as persecution of persons of Jewish descent, or of Slovenians,'" that the "amendments of 1988 entitle people detained for at least one year to receive a pension," and that "'it is still possible in Austria today to file a claim for compensation and to have it granted.'"[354] However, Austria apparently has not made public its data concerning "how much has actually been paid" to Roma or Sinti claimants "or any other particular group."[355]

Hungary recently has implemented two provisions for compensation of Nazi victims, including Roma. Early efforts undertaken in 1992 and 1997 were said to have been

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352 Fisher, at 535.

353 *Id.* at 537.

354 *Id.* at 537-38 (citing letter from Austrian Consul).

355 *Id.* at 538. *See also* Milton, at 263-64 (noting "failure of postwar restitution to Roma and Sinti," including those claiming under Austrian provisions such as the "Victims Welfare Law").

"poorly publicized and drew few applicants from the generally uneducated, ill-informed Roma community."[356] More recently, in the late 1990s, Hungary enacted a new law providing compensation to all Nazi victims "who survived the ghettos, labor camps and concentration camps."[357] Additionally, Hungary also "set aside about $2.5 million for Roma cultural and political institutions."[358]

As noted previously and as more fully described in Annex K ("Swiss Humanitarian Fund"), approximately 14,900 needy Roma have received payments from **Switzerland** under the "Swiss Fund for Needy Victims of the Holocaust/Shoa."

Finally, as described earlier, **several European countries** – including twelve Western European nations and five Central and Eastern European nations (see supra) – entered into bilateral reparations agreements with Germany beginning in the late 1950s. However, "[s]ince the determinative criterion was citizenship rather than 'race,' it has not been determined whether the Roma have received any compensation from the governments involved,"[359] an issue equally unclear for other Nazi victims.

B. Jehovah's Witnesses

Under the BEG, Jehovah's Witnesses are recognized as "persecutees" and therefore have been eligible for recompense from **Germany**. According to information provided by the Jehovah's Witnesses, "it has been the practice of the Watch Tower Society in

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356 Michael J. Jordan, *Compensation for Gypsy Holocaust Survivors Proposed at the Behest of Outside Pressure*, in The Patrin Web Journal, available at http://www.geocities.com (hereinafter, "Jordan"), at 2. *See also* Fisher, at 537.

357 Jordan, at 2; *see also supra* (describing Hungarian compensation measures).

358 Jordan, at 2; Fisher, at 537.

359 Fisher, at 536.

Germany to leave claims for compensation because of losses suffered under the Nazi Regime up to the individual male and female Witness. Therefore, no official records exist in the Germany branch office that could document such claims [were] made."[360] As to East Germany, where limited compensation was made available to certain World War II victims, primarily those who supported Communist rule, Jehovah's Witnesses "lost compensation, pensions, and various privileges because of Communistic prejudice and persecution."[361]

In **Austria**, Jehovah's Witnesses have been eligible for payments under two programs: the National Fund, established in 1995, and the Victim Welfare Law, established in the late 1940s (see supra). Under the former, approximately 35 Jehovah's Witnesses have received a one-time payment of approximately $6,000,[362] while under the latter, "[s]ome survivors have applied for, and received, a small victim's pension."[363]

The **Swiss** Fund for Needy Victims of the Holocaust/Shoa has compensated approximately 69 needy Jehovah's Witness Nazi victims.[364]

As to **other European nations**, the Jehovah's Witnesses report that some Nazi victims have received compensation payments from Belgium, France, the Netherlands (for the Watch Tower Society) and Norway. No compensation has been received from the Czech

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360 Jehovah's Witnesses Report to Special Master, "Spiritual Resistance and Its Costs for a Christian Minority. A Documentary Report of Jehovah's Witnesses Under Nazism 1933-1945 (Oct. 1999), Part XI, Monetary Compensation Received Thus Far," at 4. Jehovah's Witnesses " who suffered as conscientious objectors," however, have not been considered "as being entitled to compensation." *Id.*

361 *Id.* at 5-6. The Jehovah's Witnesses estimate that, as of October 1946, 6,000 "active Witnesses" lived in East Germany, a "large majority" of whom "had also been Witnesses during the Nazi period." *Id.* at 6.

362 *Id.* at 2.

363 *Id.*

364 *See supra*; *see also* Annex K ("Swiss Humanitarian Fund").

Republic, Hungary, or Luxembourg. The Jehovah's Witnesses also report that there is no information available concerning compensation of Jehovah's Witnesses in Italy, Russia or the Ukraine.[365]

C. Persons with Disabilities

As has been the case for many other Nazi victims, disabled victims of the Nazis have struggled with the stringent requirements imposed by **German** compensation provisions:

> After the war, disabled victims were not recognized as persons persecuted by the Nazi regime. Survivors received no restitution for time spent in the killing hospitals; neither did they receive restitution for compulsory sterilization. Although the sterilization law had been declared invalid by the Allies, the postwar German state did not recognize sterilization under the Nazi era law as racial persecution, and postwar German courts held that compulsory sterilization under the law had followed proper procedures. Disabled persons challenging such rulings lost their cases in court when they could not prove that the finding that led to their sterilization had been medically wrong. The appeal of a sterilized deaf person was thus denied in 1950 after two court appointed physicians certified that the original finding of congenital deafness had been accurate. In 1964, the appeal for restitution from a sterilized person, who during the Nazi period had been a student at the former Israelite Institution for the Deaf in Berlin, was denied. The postwar German court found that while the appellant as a Jew belonged to a group recognized as persecuted under the restitution law, his sterilization as a deaf person did not constitute Nazi persecution. To this day, the German state has not fully

[365] *Id.* at 3, 7-10. Jehovah's Witnesses in these countries may have received compensation under the Swiss Humanitarian Fund, *Id.*

> recognized and compensated the disabled, including the deaf, for their persecution during the Nazi period.[366]

The Special Master is not aware of further information regarding compensation of disabled Nazi victims, whether in Germany or other European nations. It would appear, however, that the disabled victims who were subject to forced sterilization would have been eligible for one-time payments of DM 5000 under Germany's 1980 statute enacted primarily for the benefit of non-Jewish Nazi victims, as described previously.

In addition, the **Swiss** Fund for Needy Victims of the Holocaust/Shoa has compensated approximately 32 disabled victims of the Nazis.[367]

D. Homosexuals

Compensation to the homosexual community has been beset by complications similar to those confronting other victim groups and, in practice, has been virtually non-existent. The same prejudices that led to the Nazi campaign against homosexuals contributed to non-recognition of homosexual suffering in the years following World War II. Thus:

> For homosexuals, the Third Reich did not fully end with its defeat. None of the lucky few who came out alive was granted any compensation when the new post-war West German government, bowing to American pressure, set up a

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366 Horst Biesold, Crying Hands: Eugenics and Deaf People of Nazi Germany (Washington, D.C.: Gallaudet Univ. Press 1999) (Introduction by Henry Friedlander) at 11-12. *See also* Pross, at 53 ("The demand by the forcibly sterilized that they be included in the BEG was rejected by the Bundestag reparations committee between 1961 and 1965 on the basis of expert hearings. The experts who testified happened to be some of the Third Reich's prominent racial hygienists, such as Professor Hans Nachtsheim of the Max Planck Institute for Comparative Hereditary Biology and Pathology, and Professor Werner Villinger, professor of psychiatry at the University of Marburg, who had been an assessor at the Supreme Court of Genetic Health in Hamm and Breslau in the 1930s, and in 1940 became a consultant to the Nazi euthanasia murder program. In its final report of 21 November 1965, the reparations committee explained that victims of forced sterilization were not entitled to compensation because the Law to Prevent Genetically Defective Offspring of 1933 did not contravene the principles of the rule of law, and no illegal or negligent decisions had been made by the courts of genetic health").

367 *See supra*; *see also* Annex K ("Swiss Humanitarian Fund").

> cumbersome but functioning legal bureaucracy to grant restitution to political, Jewish, and other selected ex-inmates.[368]
>
> As has been further observed:
>
> For fear of renewed prosecution, homosexuals did not dare go public until after the [West German] Criminal law reform of 1969. Suits by several homosexuals in the 1950s for liberalization of . . . the Criminal Code (outlawing homosexuality), which had been tightened by the Nazis in 1935, and for reparations in this connection were rejected.[369]

According to information provided to the Special Master by a group of six organizations advocating on behalf of homosexual Nazi victims, in **Germany**, the situation since has scarcely changed: the "few homosexuals who received compensation in Germany did so on the basis of 'hardship' funds initiated in the late 1980's," and, "[a]ccording to the most reliable statistics available, no more than 22 gay men have been acknowledged as victims of persecution by the Nazi regime and have received compensational [sic] payments from the German authorities."[370]

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[368] Richard Plant, The Pink Triangle: The Nazi War Against Homosexuals (New York: Henry Holt and Company 1986), at 181. *See also* Heinz Heger, The Men With the Pink Triangle: The True Life-and-Death Story of Homosexuals in the Nazi Death Camps (Merlin-Verlag 1980), at 14 (describing a homosexual survivor of Neuengamme, Wittenberge (Elbe) and Auschwitz, who, after having been sentenced in 1949 to "four years in prison for violation" of the German statute criminalizing homosexuality, Paragraph 175, thereafter "asked for reparations from the German government in 1953 and again in 1960. Both times his request was refused: in the eyes of the German government, homosexuals were not victims of the Nazi regime").

[369] Pross, at 55.

[370] *See* Proposal Submitted to the Special Master by the International Lesbian and Gay Association of Europe ("ILGA-Europe"), on Behalf of Agudah (Association of Gay Men, Lesbians and Bisexuals in Israel), European Region of the International Lesbian and Gay Association, Homosexuelle Initiative Wien, International Gay and Lesbian Human Rights Commission, Lesben- und Schwulenverband in Deutschland, and World Congress of Gay and Lesbian Jewish Organizations, February 29, 2000, at 3, and at Appendix 1, page 5. *See also* Annex K ("Swiss Humanitarian Fund").

As to **Austria**, "as recently as 1995 the parliament rejected a proposal to extend to homosexual victims the compensation rights enjoyed by other classes of victim."[371]

The **Swiss** Fund for Needy Victims of the Holocaust/Shoa has compensated approximately 9 homosexual victims of the Nazis.[372]

VI. SLAVE LABOR SETTLEMENTS WITH GERMAN ENTERPRISES

Beginning in the 1950s, individual plaintiffs began instituting lawsuits against some of the largest German industrial firms that had used Jewish slave laborers under the Third Reich. Between 1957 and 1966, the Claims Conference reached settlement agreements with five companies on behalf of slave laborers, and assumed responsibility for administration and distribution of these settlement funds.[373] A later settlement with a sixth company was reached in the early 1980s.

Most recently, an approximately $5 billion settlement has been reached with Germany and German companies to compensate, among others, Jewish and non-Jewish slave and forced laborers.

The settlements are more fully described below.

A. IG Farben Co.

In 1951, a former Jewish slave laborer won his lawsuit in Frankfurt against the IG Farben Co. on the basis of pain and suffering under cruel and inhuman conditions inflicted at the IG Farben rubber factory near Auschwitz. On the recommendation of the German appellate court, IG Farben agreed to negotiate a global settlement with all possible claimants.

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371 *Id.* at 3.

372 *See supra*; *see also* Annex K ("Swiss Humanitarian Fund").

373 Twenty Years Later, at 146.

The Claims Conference represented the claimants during the two years of settlement discussions, culminating in an agreement signed on February 6, 1957. Under the agreement – which was the first of its kind – IG Farben provided a fund of approximately DM 30 million (then-approximately $7 million) for distribution among Farben slave laborers at the Auschwitz factory, with approximately $714,000 of the fund earmarked for non-Jewish victims.[374]

With input from Auschwitz survivors, the Claims Conference thereafter established in Frankfurt a special trust, the Compensation Treuhand GmbH, to administer and distribute the settlement fund. From 1958 through 1972, the Claims Conference approved 5,855 claims.[375] However,

> No one could foresee that the process of deciding the claims would take as long as it did. The questionnaires, which came from all parts of the world, were often illegible or incomplete. Addresses changed and envelopes were returned unopened. The information received had to be compared with records stored at the International Tracing Service of the Red Cross in Arolsen, where millions of concentration camp dossiers were filed. Screening committees, working after normal working hours, could handle only a limited number of cases at a session. They frequently would ask the claimant to come back with additional evidence or witnesses. . . . Legal forms had to be signed and authenticated. . . . Thousands of claims had to be turned down when the applicant was unable to prove that he had been a concentration camp inmate employed in one of four designated Farben plants at Auschwitz.[376]

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374 *See* Ferencz, at 210; Twenty Years Later, at 146.

375 Twenty Years Later, at 146.

376 Ferencz, at 54. The screening committees consisted of "*Kameraden* (old comrades)" who would "interview persons whom no one seemed to remember, and give their opinion whether the claimant had really worked for Farben at Buna. An applicant who did not know when the typhoid epidemic had broken out or where the latrines were located was soon disqualified. Many ineligible claimants conceded that they must have been mistaken and their claims were apologetically withdrawn." Ferencz, at 52. As an additional measure of proof, "Compensation Treuhand managed to obtain a list of all of the Auschwitz inmates who bore tatoo numbers from

(footnote continued on next page)

During the initial years following the settlement, those who had served as slave laborers for less than six months received DM 1,500 each (then worth approximately $375), while those who had served for longer than six months received DM 2,500 each (then $625). "It took several years of screening before the initial advance payment could safely be increased."[377] Those enslaved at Farben's Buna plant for less than six months were then given another DM 1,000 (approximately $250), and those there for longer than six months received another DM 2,500, bringing the total up to DM 5000 ($1,250).[378]

Dissatisfied claimants were granted a right of appeal to an impartial arbitration court made up of former concentration camp inmates.[379] Under this procedure, "some 610 arbitration awards were granted."[380]

After all eligible claimants had received distributions, the fund still contained residual moneys, from which the Claims Conference created a Hardship Fund, also for the benefit of IG Farben slave laborers. After surveying Farben survivors, "a consensus began to emerge" in favor of making available supplementary payments of between DM 2000 and DM 4000 (approximately $500 to $1000), for approximately 1,817 "widows, minor children, the aged receiving public assistance, and other especially needy persons."[381]

150000 to 200000. From it could be seen which ones had been assigned to Buna." *Id.* at 53.

377 *Id.* at 54.

378 *Id.*

379 Twenty Years Later, at 147.

380 *Id.*

381 Ferencz, at 62.

B. Friedrich Krupp Company

In December 1959, the Friedrich Krupp Company signed an agreement with the Claims Conference establishing a fund in the amount of DM 6 million to settle potential claims arising from the company's use of Jewish slave labor at its factories in Silesia.[382] "If the DM 6 million would not suffice to provide each entitled claimant with DM 5,000, Krupp would pay up to DM 4 million more. Krupp's total obligation was not to exceed DM 10 million [then-$2,380,000]. If the DM 10 million proved insufficient, the amount for each claimant would have to be reduced."[383]

Over 5,000 claimants from around the world filled out "detailed questionnaires, and the data was then compared with documentary evidence available in Germany,"[384] including, where necessary, providing claimants with information that they were unable to remember, such as the identity of the German factory at which they had been enslaved. "Certain applications could be approved quickly and beyond question. Where a complete transport list was discovered giving the names of the Krupp workers, all that was required was to verify the identity of the applicant. . . . Validating the claim was also relatively easy where the records showed that only Krupp had employed inmates in that particular place, such as Geisenheim, Neukolln, and Essen. Where many companies worked in the same region and there was a constant interchange of inmates, such as in the area of

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382 Twenty Years Later, at 147-48; Ferencz, at 86.

383 Ferencz, at 86.

384 Twenty Years Later, at 147. As with the Farben claims process, the information in the questionnaires was often compared with data supplied by the ITS. *Id.*

Langenbielau and Reichenbach, it was almost impossible to know from the records alone whether or not the applicant qualified for payment."[385]

"The audit of Compensation Treuhand showed that 3,090 claimants from 33 different countries received a total of DM 10,050,900 . . . . Over DM 4 million went to claimants in Israel, over DM 3 million to claimants in the United States, and close to half a million to claimants in Sweden, West Germany, and Canada. Survivors in Australia and Hungary also received significant distributions. The maximum amount that each survivor was able to receive from the Krupp fund was DM 3,300, which was then $825."[386] Additionally, claimants who submitted claims after the expiration of the filing deadline were allocated sums ranging from DM 1,000 to 2,000 each.[387]

C. AEG-Telefunken

In 1960, the German electrical company AEG-Telefunken entered into an agreement with the Claims Conference establishing a fund of DM 4,000,000 (approximately $1,000,000).[388] "In order to alert the potential beneficiaries without disclosing the name of

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[385] Ferencz, at 97.

[386] *Id.* at 100; *see also* Twenty Years Later, at 148.

[387] Twenty Years Later, at 148.

[388] *Id.* During the negotiations with the Claims Conference, AEG, which had acquired Telefunken, insisted that "the number of camp inmates who had been employed was insignificant" and, in response to Claims Conference lists of former AEG or Telefunken slave laborers, "demanded that the lists specify the camp in which each person was employed." Ferencz, at 114. "Complying with AEG's request was not as simple as it sounded. Over a hundred persons, for example, writing independently from different parts of the world, swore that they had worked for AEG at 'Ankers,' yet that name did not appear on any map of the region and AEG absolutely denied that it had ever had a plant at such location. The number of claimants was too large for the conference to dismiss the claims as fictitious, and after close interrogation of claimants, the mystery was unraveled. 'Ankers' was neither a town nor a factory but was the German name for a part of a machine – a belt or *Anker* – which was being manufactured by AEG in Riga. The workers only knew that they worked at 'Ankers,' without knowing that it was a thing, not a place." Ferencz, at 114.

any AEG company [an AEG requirement], the conference was to publish an announcement calling upon all those who had performed slave labor for *any* German firm to submit an application . . . . As soon as the agreement was signed, AEG remitted DM 4 million to the conference account with the Warburg bank and booked the item under 'general expenses.' All the Claims Conference had to do was to see to it that all of the pending lawsuits were withdrawn, issue the general call-up, locate the beneficiaries wherever in the world they might be, verify the validity of their claims, divide the money among those entitled under the restrictive terms of the contract, and hope for the best."[389]

Further,

> Just as in the Krupp case, the only way to deal with the problem of insufficient funds was to adopt the most restrictive rules before approving any claims. If the applicant could not show that as a concentration camp inmate he or she had worked in a factory of AEG or Telefunken, the claim was rejected. Those who did not work on the production line – such as clerical workers or kitchen help – were excluded. Those who worked on jobs where AEG was only a subcontractor were ineligible. A cutoff date was set. No hardship cases could be considered. There could be no appeals. There just was not enough money to go around.
>
> A total of 2,223 claims against the AEG/Telefunken companies was finally validated. Each award was for $500. Latecomers received only $375. The total amount paid out by Compensation Treuhand, including interest, amounted to DM 4,312,500. . . . Of the beneficiaries, 885 lived in Israel, 456 in the United States, 300 in Hungary, and nearly 200 in Holland. Survivors in Canada, Czechoslovakia, and twenty-nine other countries, from New Zealand to Brazil, all received their meager dole.[390]

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[389] Ferencz, at 115-16.

[390] *Id.* at 116-17; *see also* Twenty Years Later, at 148.

D. Siemens-Halske

Another German electrical company, Siemens-Halske, entered into an agreement with the Claims Conference in 1962, providing for creation of a fund of up to DM 7,000,000 (then approximately $1,750,000) to compensate the company's former Jewish slave laborers. The fund was intended to provide claimants up to DM 5,000 ($1,250), requiring Siemens initially to pay a total of DM 5 million. If this amount was insufficient, then Siemens would pay an additional DM 2 million, a subsequent payment which was, in fact, eventually made following Siemens' detailed audit of the first DM 5 million.[391]

While "[a]lmost 6,000 former camp inmates submitted claims against Siemens, … only about one-third could qualify for payment under the restrictive terms of the contract. They had worked for Siemens' firms in nearly a dozen different locations attached to half a dozen concentration camps."[392] The approximately 2200 applicants who did qualify for payment[393] – and who received no more than DM 3,300 ($825) – included 831 former Siemens slave laborers in Israel (who received a total of approximately DM 2,700,000), 474 in Hungary (a total of DM 1,500,000), and 371 in the United States (a total of DM 1,200,000). Survivors located in Czechoslovakia received nearly DM 500,000, while those in Canada,

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391 Ferencz, at 122, 127.

392 *Id.* at 122. As with the other slave labor settlements, the claimants had difficulty recalling or verifying the name of the entity for whom they had performed slave labor. Thus, for example, although it was known that Siemens had used slave laborers from the Ebensee/Mauthausen concentration camp in Austria, "[t]he only lists of Ebensee/Mauthausen inmates which could be found were twenty-five folders of death registers and another list of the thousands of prisoners who had been in the camp when it was liberated by the United States Third Army . . . . . [Following liberation] no one thought to ask each ragged survivor for the name of the particular company under whose direction he was being worked to death. Even if the claimant against Siemens could be found on the Ebensee list, he still had to prove that he had worked for Siemens before his claim could be approved. Only seventy-four Ebensee survivors qualified for payment." *Id.* at 124.

393 Twenty Years Later, at 148.

Australia, Belgium, France and West Germany received a total of approximately DM 100,000 per nation. Other recipients were located in Yugoslavia, Austria, Sweden, England, South Africa, Poland, Norway, Venezuela, and Brazil.[394]

E. Rheinmetall

In 1966, the Rheinmetall Company, one of Germany's largest armaments manufacturers, created a fund of DM 2,500,000 (then approximately $625,000) for payment to Jewish slave laborers. Although "there were no strings attached" to this fund, in contrast to the other settlements, "the amount was so inadequate that only a most restricted distribution would be possible."[395]

The International Tracing Service "had a list of more than a thousand women who had been taken from Buchenwald to work for Rheinmetall at Sommerda. A great deal of information was available about two other Rheinmetall plants at Unterluss and Hundsfeld near Breslau. It was decided by Compensation Treuhand that only those three camps could be considered. Those concentration camp inmates who had been in Rheinmetall camps about which very little was known would have to be sent away empty handed. The alternative would have been to have a long and costly screening procedure, at the end of which the beneficiaries might have received only a pittance."[396]

> The $625,000 received from Rheinmetall was sent to twenty different countries: 806 recipients were in Israel, 380 were in the United States, 65 in Canada, and 29 in Sweden. Only 80 of the Rheinmetall slave laborers could be found in their native land of Hungary, while 33 were traced to Romania and 29 to Czechoslovakia. The others had found new homes in Australia,

394 Ferencz, at 127.

395 *Id.* at 149.

396 *Id.* at 149.

> Brazil, Mexico, Chile, Great Britain, and other lands. The total amount distributed to the claimants was DM 2,546,095 [citation omitted]. The amount that each surviving Rheinmetall slave received was DM 1,700 – $425.[397]

Instead of cash, the fund allocated parcels of clothing and shoes to Jewish slave laborers then living in the Soviet Union.[398] A total of 1,507 individuals received payments of cash or goods from the Rheinmetall fund.[399]

F. Dynamit Nobel (Flick)

The Claims Conference entered into negotiations with Dynamit Nobel, owned by Friedrich Flick, in the early 1960s, asking that the company pay the then-approximately 1,300 known claimants the sum of DM 5,000 each.[400] After protracted discussions, the parties reached an agreement in principle that would have required Flick, by May, 1964, to pay DM 5 million to the Claims Conference for distribution to former slave laborers.[401] The agreement never materialized, despite continued protest and negotiations lasting into the early 1970s, and despite the Claims Conference's eventual possession of "the names of over 3,500 persons who said they had been slaves in a Flick company."[402]

However, following Flick's death in the early 1980s, the company was sold to Deutsche Bank, which promptly agreed to implement the terms of the agreement that had been reached years earlier. According to information provided by the Claims Conference, as of the end of 1992, 2,500 former Nobel slave laborers had received one-time payments of

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397 *Id.* at 153.

398 Twenty Years Later, at 149.

399 Ferencz, at 211.

400 Ferencz, at 160.

401 *Id.* at 162.

402 *Id.* at 169.

2,000 DM each (then-approximately $1,000), for a worldwide total of DM 5 million. Recipients resided in 25 different countries, with the greatest number living in Israel (1,231 individuals), the United States (575), Hungary (320) and Canada (145).

G. German Slave and Forced Labor Agreement of July 17, 2000

Beginning in 1998, several class action lawsuits were filed in the United States against German companies arising from, among other things, their use of slave and forced labor during World War II and their Aryanization of properties. Claims were asserted not only by Jewish slave laborers, but also by non-Jewish forced laborers primarily from Poland, Ukraine, and other parts of Central and Eastern Europe. In March 2000, an agreement in principle on the terms of an approximately $5 billion global settlement of these claims was announced, and the German Bundestag adopted legislation effectuating the Foundation "Remembrance, Responsibility and Future" on July 17, 2000 (the "German Fund").

The details of the slave labor component of the German Fund, which bear directly upon the Special Master's recommendations for Slave Labor Class I, are more fully described in the Special Master's Proposal. Briefly, the German Fund is to provide compensation to former slave laborers in an amount up to DM 15,000 (approximately $7,500 as of August, 2000), and will also compensate former forced laborers in an amount up to DM 5,000 (approximately $2,500 as of August, 2000).[403] In addition to slave and forced labor payments, the German Fund also is expected to establish programs to benefit heirs and others, and also to compensate certain persons for property losses, primarily those who have been

[403] *See* Special Master's Proposal, Section III(C), for a detailed discussion of the terms of the German legislation.

excluded from previous restitution programs. According to the Commentary to the legislation, the intent of the legislation is to make

> payments to persons who personally or else as surviving spouses or children of a[n] ethnically persecuted person … had suffered loss of property as defined by [German law] through confiscation or Aryanization with the collaboration of German business enterprises and who because of administrative technicalities have not been able to receive satisfaction under compensation legislation. Intended are those affected persons who as Jews or as Sinti and Roma peoples had been effectively and legally excluded from German compensation payments because of their residency in the former East Bloc. These people should now receive payments without reference to the established time limits under compensation law.[404]

VII. INSTITUTIONAL ALLOCATIONS

A. Overview

From the earliest days after the War, when the original successor organizations were accorded the legal right and obligation to file claims against apparently unclaimed and heirless property to prevent reversion of the property to the state, Jewish organizations have applied a substantial portion of the proceeds of restituted property toward communal purposes. Recovered properties have provided funds for the resettlement and immigration assistance of displaced persons in the immediate aftermath of the War; re-establishment of destroyed communities; education and research; Holocaust commemoration; and, most recently, food, medical care and other services to the neediest Holocaust survivors, including those still living behind what was once the Iron Curtain – the "double victims."[405]

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[404] "Commentary to German Fund Legislation," "About Section 11," Paragraph 1, at 35.

[405] *See, e.g.*, Eizenstat Report, at x ("Serious inequities developed in the treatment of victims depending upon where they lived after the War. Those Holocaust victims who met the applicable definitions were assisted in resettlement, and if they emigrated to the West or to Israel, they have

(footnote continued on next page)

B. The Successor Organizations (1947 – 1957)

According to the JRSO's assessment of its post-War activities, "[f]rom its early beginnings, the JRSO channeled the funds that arose from the restitution of heirless property to the aid of Nazi victims in need. . . . The question arose whether the JRSO should conduct a program of relief, rehabilitation and reconstruction with an apparatus of its own or should channel welfare funds via organizations with experience in conducting aid programs for Nazi victims in need. From the outset, all hands agreed that the two major constituent bodies of the JRSO – the Jewish Agency for Israel and the JDC [the American Jewish Joint Distribution Committee] – should conduct the relief activities of the JRSO as its operating agents."[406]

Some of the specific programs benefited were as follows:

- **Jewish Agency for Israel:** Between 1947 and 1972, the JRSO provided grants of over DM 114,044,273, used for purchase of pre-fabricated homes, agricultural machines, and construction equipment; immigration and absorption programs (consisting of housing, health services and education); youth aliyah; and assistance to agricultural settlements.[407]

- **JDC:** JRSO grants for the period 1947 through 1972 totaled DM 56,171,060, used for relief needs in the displaced persons camp at Foehrenwald; Malben ("a JDC network in Israel for the aid of aged and handicapped immigrants," primarily Nazi victims); institutional care

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received pensions from the German government. But the 'double victims,' those trapped behind the Iron Curtain after the War, have essentially received nothing"); *see also* Ambassador Stuart E. Eizenstat, "Opening Remarks," in Washington Conference on Assets, at 42 (describing the "double victims of World War II" as "having suffered under both Nazism and Communism"); Ambassador Louis Amigues, "The Closing of the Tripartite Commission for the Restitution of Monetary Gold," in Washington Conference on Assets, at 65 ("One of the initial objectives of the [International Nazi Persecutee Relief Fund] was to help the 'double victims' of Nazi persecutions who, up until now, have been deprived from any compensation"). The International Nazi Persecutee Relief Fund is discussed in the Special Master's Proposal at Sections II and III(B) and at Annex D ("Heirs").

406 JRSO Report, at 34-35.

407 *Id.* at 35.

for the needy elderly in hospitals and homes; programs for disabled children; and immigrant integration efforts in Israel.[408]

- **Council of Jews from Germany:** Allocations from the JRSO totaled approximately DM 15,000,000, distributed to such programs as "Help and Reconstruction" and United Help, Inc. (which aided German-Jewish refugees in the United States); the Leo Baeck Institutes in New York, London and Jerusalem (promoting projects for the preservation of German-Jewish culture); and the Irgun Olej Merkaz Europa, Tel Aviv (providing social welfare programs to needy Nazi victims in Israel).[409]

Of a total of approximately DM 222,300,000 recovered as a result of the bulk settlements with the German states, individual restitution settlements, monetary claims against the former Third Reich, Jewish communal property settlements, and other settlements arising from wartime plundering, "the JRSO granted DM 189,330,349 or 82.5% to its sponsoring agents" for social relief efforts, "and for synagogues and religious research projects in Israel. Another DM 13,200,000 went as equity payments to late [restitution] claimants. Administration of recovered property and payments in consideration of restituted property required an outlay of DM 4,125,000 and payments covering the administration expenses of the German offices and of the JRSO headquarters in New York came to approximately DM 14,000,000 (6.4% of the total receipts) over the 25 year period from 1947 to 1972."[410]

C. Claims Conference Institutional Programs Pursuant to the Luxembourg Agreement

For purposes of distributing the $110 million designated under the Luxembourg Agreement for the "relief, rehabilitation and resettlement of Jewish victims of

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408 *Id.*

409 *Id.* at 35-36.

410 *Id.* at 39.

Nazi persecution,"[411] the Claims Conference placed significant emphasis upon the JDC, an agency which was considered by many to be "the most experienced…with an existing network of officials capable of administering the Conference's relief and rehabilitation program."[412] The JDC was required to participate in the same procedure the Claims Conference had adopted for other applicants seeking a portion of the Protocol 2 rehabilitative and relief funds,[413] a process which remains largely in place to this day.[414] In practice, "the relationship between the two organizations was symbiotic. Each influenced the other."[415]

As to the specific allocation of the institutional funds provided by Germany, in the years immediately following adoption of the Luxembourg Agreement, the Claims Conference operated under two prevailing mandates: the responsibility of administering funds which "were the legacy of six million murdered Jews and [which] could not be spent

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411 *See* Protocol 2 of Luxembourg Agreement; *see also* Twenty Years Later, at 9.

412 Zweig, at 64.

413 *Id.*; Twenty Years Later, at 19.

414 *See* Dr. Israel Miller and Gideon Taylor, Conference on Jewish Material Claims Against Germany: An Overview of Allocations 1952-1999 (hereinafter, "Claims Conference Allocations Overview"), at 8 ("Once the recommendations for projects are formulated, they are presented to sub-committees of the Board of Directors in Israel and the United States. This provides an opportunity for members to raise issues of regional concern. All inquiries and suggestions emerging from these sub-committee meetings are presented to the Allocations Committee at its semi-annual meetings…. [A] booklet of summaries and recommendations [of the Allocations Committee] is distributed to the entire Board of Directors which then makes the final decision on applications. Once a majority of the 23 member organizations concur, the recommended allocations are ratified").

415 *Id.* Some of the "symbiosis" between the two groups was due to the fact that Saul Kagan, a Holocaust survivor and a member of the original Luxembourg Agreement negotiating team – who has been involved in virtually all other major Holocaust compensation negotiations as the long-time Executive Vice President of the Claims Conference and, since 1999, its consultant – was a participant "in the [JDC's] own internal deliberations" and "contributed to the formulation of JDC policy and to the specific contents of its annual application for Conference funds. He was also the address for disgruntled European Jewish community leaders, whenever they disagreed with the JDC's priorities in allocating funds in their communities." Zweig, at 65. *See also*, *e.g.*, 1998 Claims Conference Annual Report, at 2-3.

frivolously or unwisely," and the obligation to provide Germany with a detailed annual accounting.[416] To those ends, the Claims Conference concluded early on that it could "only support established organizations who had learned the art of keeping records and who would be able to submit regular audited reports of their accounts."[417]

In September 1955, the Claims Conference put forth a list of nine principles that were to govern all allocations made under the Protocol 2 program and which remained in force throughout the next ten years, when the Protocol 2 funds had been fully disbursed:[418]

> "1. All allocations must be governed by the contractual obligations of the Conference.
>
> 2. No new agencies will be created by the Conference for the spending of allocated funds.
>
> 3. No allocations shall be made to compensate institutions or individuals for property losses as a result of Nazi action.
>
> 4. No allocations shall be made to reimburse organizations for past expenditures in connection with the relief and rehabilitation of Nazi victims.
>
> 5. Conference funds should not be a substitute for local fund raising or enable local organizations to forego assistance which they might otherwise obtain (e.g. heirless property, grants by local and central governments, etc.) nor to forego the use of local funds existing for the purposes requested in the application (e.g. building or endowment funds, legacies, foundations, etc.)
>
> 6. Conference funds shall not be allocated to new institutions principally created for the purpose of receiving Conference funds, unless there are compelling reasons to do so.
>
> 7. The Conference shall make allocations only to recognized, functioning relief organizations, unless there are compelling reasons to do otherwise.

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416 Zweig, at 69, 70.

417 *Id.* at 70.

418 *Id.* at 82.

> 8. The Conference shall not make direct allocations to individuals, except in special cases.
>
> 9. Communities largely dependent on external aid shall have priority over communities independent of external aid."[419]

As set forth in the Claims Conference's survey of its activities during the first twenty years of its existence, 1952 through 1972, during the initial period following the end of the War, "[o]utlays for general relief reached $68,564,000 in all, and absorbed some 61% of the allocations granted for relief, rehabilitation and resettlement."[420] Of this, approximately $20,000,000 was directed to "Nazi victims in western and central Europe and to overseas lands."[421]

The "greatest single share of all Conference funds," however, was directed toward a program described in then-contemporaneous Claims Conference publications as "relief-in-transit aid."[422] As of 1964, the Claims Conference had allocated a total of nearly $48,000,000 to this program, *id.*, which was actually "a special welfare program for the benefit of Nazi victims in eastern European countries,"[423] most of whom were barred from compensation under the German laws. The Claims Conference, with the JDC, was able to transfer millions of dollars to those living within the former Soviet Union and Eastern Europe, who, for political reasons, could not be named as outright beneficiaries of German

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419 Zweig, at 81-2; *see also* "The Conference on Jewish Material Claims Against Germany: 1953-1958," 61 American Jewish Year Book (1960), at 111-12.

420 Twenty Years Later, at 21.

421 *Id.*

422 *See, e.g.*, 1969 Claims Conference Annual Report, at 11.

423 Twenty Years Later, at 12, 21.

indemnification and Western charitable programs. "By 1964, beneficiaries numbered some 200,000 persons."[424]

Relief aid to these areas behind the Iron Curtain "spanned a wide range and covered cash relief grants as well as goods-in-kind: clothing, coal, Passover supplies, drugs, medicaments, prosthetic appliances and the like …. medical care, vocational training, special housing grants and educational and religious assistance."[425]

Other Claims Conference institutional allocations during its first two decades of operations, through the mid-1970s, included the following:

- **Medical aid** (approximately $3,000,000 benefiting between 7,000 and 9,000 persons in 22 countries, particularly France, Italy, Germany, Belgium, Holland and Austria);[426]
- **Care of the aged** (approximately $4,000,000 benefiting between 770 and 1,700 persons in 23 countries);[427]
- **Child care and youth aid** (approximately $7,200,000 benefiting between 6,400 and 11,400 children in Europe, Latin America and Australia, 90% of which was directed to programs in thirteen European countries, and 60% of which aided those in France, a "magnet for Jewish refugees and newcomers" after the war);[428]
- **Migration assistance** (approximately $6,700,000 benefiting nearly 50,000 Nazi victims who migrated to the United States, Israel, Canada, Australia, New Zealand, and Latin America);[429]
- **Resettlement and integration** (approximately $1,700,000, 70% of which was expended in European nations and the remainder in Australia and Latin America);[430]

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424 Twenty Years Later, at 12.

425 *Id.* at 22.

426 *See* Twenty Years Later at 25.

427 *Id.* at 28.

428 *Id.* at 31.

429 *Id.* at 37.

430 *Id.* at 40.

- **Loan funds** (approximately $1,500,000, approximately 30% of which was directed to Germany and the remainder to Australia and European and Latin American nations);[431]

- **Vocational training** ("ORT") (approximately $3,000,000, benefiting approximately 60,000 persons in Europe, 62% of whom were in France and 24% of whom were in Italy);[432]

- **Communal rehabilitation** (approximately $4,300,000: $3,348,000 was directed to the construction and repair of 92 community and youth centers in Europe – 35 of which were in France — and 16 centers in Latin America; and $772,000 was directed to the construction and repair of 62 religious institutions in 16 European nations);[433]

- **Social and functional services** (approximately $3,500,000, 85% of which was directed to the provision of "[t]rained social workers, medical, legal and vocational advisers, educators, nurses and other specialists and technicians" in Germany, France, Italy and Austria where "displaced persons, hard core refugees, newcomers and transmigrates were most numerous");[434]

- **Cultural and educational reconstruction** (approximately $19,450,000, of which $10,400,000 was directed to the "construction, renovation, repair and equipment of 165 primary, secondary, and supplementary schools, yeshivot, rabbinical seminaries and teacher training institutions," teacher training, purchase of books, and other such programs in 29 countries;[435] approximately $4,000,000 was directed to "established organizations and institutions conducting scholarly, religious and cultural activities" for the purpose of research and publication;[436] approximately $720,000 was directed to "salvage of Jewish cultural and historical treasures," mostly conducted through the YIVO Institute for Jewish Research in New York, the Centre de Documentation Juive in Paris, and the Wiener Library in London;[437] and approximately $4,310,000 was directed to centers engaged in the "commemoration and documentation" of the Holocaust, particularly to

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431 *Id.* at 42.

432 *Id.* at 44.

433 *Id.* at 46, 47.

434 *Id.* at 50.

435 *Id.* at 54-55.

436 *Id.* at 59.

437 *Id.* at 61

Yad Vashem in Jerusalem, the Yivo Institute, the Centre de Documentation Juive, and the Wiener Library);[438] and

- **Special funds** (approximately $3 million in allocations to four major programs: approximately $1,120,000 for refugee rabbis in the United States, Canada and Great Britain, "where social welfare agencies received no Conference allocations;" approximately $1,400,000 for "former leaders of Jewish communities" in 16 countries, one-half of whom were over age 75; approximately $310,000 for "Jews who were invalided by Nazi brutality and had fallen in need; and approximately $145,000 for "Hassidei Haumot, righteous non-Jews, who were instrumental in saving Jewish lives in the course of the Nazi holocaust at the risk of their own, and who had fallen in need").[439]

By the end of 1964, when the Claims Conference was winding down Protocol 2 disbursements, the ongoing "debate over culture versus welfare was finally resolved when it was decided to allocate two-thirds of the remaining funds after 1964 for [a] cultural trust and one third to support the continuing welfare obligations of the Conference. As these obligations were primarily the programs maintained directly by the Conference, the subvention to the JDC would terminate after 1965."[440] The "cultural trust," the Memorial Foundation for Jewish Culture, came into existence in 1964 with an initial fund of over $10,000,000 provided by the Claims Conference.[441]

D. Institutional Programs Pursuant to the Hardship Fund

As part of the 1980 agreement creating the Hardship Fund, Germany and the Claims Conference agreed that 5% of the total DM 400 million committed to fund the new program would be used "for grants to institutions which provide shelter and social services to

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438 *Id.* at 62.

439 *Id.* at 34, 35, 36; *see also id.*, at 150-52.

440 Zweig, at 152.

elderly, needy Holocaust survivors. In subsequent rounds of negotiation, this amount was increased, first by DM 10 million, then another DM 33 million (as part of the Article 2 Fund), for a total of DM 63 million."[442] Between 1981 and 1993, when the Hardship Fund programs were consolidated with the Article 2 Fund, the Claims Conference allocated institutional Hardship Fund grants to 166 programs in 16 different countries, nearly 75% of which went to Israel.[443] Among the grants made were those "to institutions which shelter or provide social care to elderly Nazi victims including Old Age Homes, [p]sychiatric [i]nstitutions [and] social welfare agencies."[444]

E. Allocations From Sales of Proceeds of Restituted Properties From the Former GDR

As described previously, the Claims Conference was designated the successor organization for purposes of asserting ownership rights to properties in the former East Germany unclaimed by heirs. During the period 1995 through 1999, the Claims Conference allocated more than $323 million in funds derived from sales of restituted properties.[445]

The following geographic regions and programs received institutional allocations:

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441 "In 1960 the Claims Conference decided that when its activities neared completion in 1964, it would assign all remaining funds to the establishment of a Memorial Foundation for Jewish Culture, to continue and expand the cultural activities of the Claims Conference in all areas of Judaic Studies, including Holocaust research." Sagi, at 201.

442 1996 Claims Conference Annual Report, at 16, 35.

443 *See* 1996 Claims Conference Annual Report, at 16. The remaining funds went to the Western European nations (13%), North America (10%), South America (3%), and Australia and South Africa (1%). *Id.*

444 *See* Claims Conference Allocations Overview, at 3.

445 1999 Claims Conference Annual Report, at 23.

- **Israel** (for "nursing and psychogeriatric beds," sheltered housing and, via the Foundation for the Benefit of Needy Holocaust Victims in Israel (underwritten by the Claims Conference), the purchase of medical items);

- **North America** ("ongoing grants to social service organizations for the provision of services exclusively to meet the needs of Holocaust survivors," as well as emergency cash grants via the Holocaust Survivor Emergency Assistance Program);

- **Australia, Great Britain, Argentina, Belgium, Brazil, France, Germany, Holland, South Africa and Sweden** (various social welfare and other programs); and

- **Central and Eastern Europe and the Former Soviet Union** (which, in the mid-1990s, received their first Claims Conference grants; a significant portion was directed to local Jewish welfare organizations located throughout the former Soviet Union, primarily in areas occupied by the Germans during World War II. A Jewish Regional Welfare Center – "*Hesed*" – has been established in each city, primarily to address the medical, food and housing needs of elderly Holocaust survivors).[446]

Two additional sources of Claims Conference funding, in recent years, have been Volkswagen and Daimler Benz, each of which provided grants to the Claims Conference for institutional social welfare purposes (and, by express direction of the companies, not for individual payments). The Daimler Benz Fund, established in 1988 with an allocation of DM 10,000,000 (approximately $5,000,000), was designated for "grants to Jewish institutions which provide shelter or home care to aged and infirm Jewish inmates of concentration camps, forced labor camps or ghettos."[447] A total of 54 programs in 12 countries received grants from this fund. The Volkswagen Fund, established in 1992 with an allocation of DM 2,750,000 (approximately $1,300,000), was designated for "institutions in Israel which

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[446] *See* 1996 Claims Conference Annual Report, at 17-18; 1997 Claims Conference Annual Report, at 22-25; 1998 Claims Conference Annual Report, at 23-24; 1999 Claims Conference Annual Report, at 23-25 and 28-38.

[447] Claims Conference Allocations Overview, at 4.

provide shelter or social care to elderly victims of Nazi persecution and forced labor. Twenty one grants were made from this fund, primarily for the establishment of nursing beds."[448]

[448] *Id.* at 3.

VIII. CONCLUSION

West Germany enacted a host of domestic laws in implementation of its formal commitment to the Allies, to the Claims Conference and to Israel, authorizing a variety of payments and programs for the recompense of victims of Nazi persecution. These included a federal indemnification statute (the "BEG"), a federal restitution law ("BRUEG"), a "Hardship Fund" established in 1980, a post-reunification "Article 2 Fund" established in 1992, and, within the last two years, a "Central and Eastern European Fund" ("CEEF").

According to the German Delegation to the Washington Conference on Assets, as of the end of 1998, "Germany can look back on nearly fifty years of compensation totaling more than 100 billion German marks, and annual payments of 1.7 billion German marks continue to be made. This corresponds to more than 60 billion dollars plus continuing annual payments of 1 billion dollars."[449]

Despite the breadth of these compensation programs, not all Nazi victims have been eligible for indemnification and restitution. For example, in the earliest years of recompense, a decision was made to exclude from compensation persecuted citizens of Western European countries; it was argued that these citizens could seek the assistance of their own governments. This exclusion was somewhat rectified years later when West Germany signed twelve separate bilateral treaties with these countries in the late 1950s and early 1960s, in which it paid each respective country a designated sum for compensation to its victims of Nazi persecution. As detailed in this Annex, the individual countries were responsible for distributing these sums to their citizens in whatever matter they deemed

[449] Ambassador Tono Eitel, "Concluding Statement – Germany," in Washington Conference on Assets, at 102.

appropriate. Some of these Western nations recently have revived their Holocaust-era compensation programs and have undertaken new efforts to effectuate material recompense.

However, the Nazi victims of the Soviet Union and Central and Eastern Europe, unable to emigrate, were excluded from the bulk of Germany's compensation programs. As recognized in the Eizenstat Report, "[s]erious inequities developed in the treatment of victims depending upon where they lived after the War. Those Holocaust victims who met the applicable definitions were assisted in resettlement, and if they emigrated to the West or to Israel, they have received pensions from the German government. But the 'double victims,' those trapped behind the Iron Curtain after the War, have essentially received nothing."[450] Only in the late 1990s did Germany undertake an effort to provide compensation to some of the "double victims" still living in Central and Eastern Europe and the former Soviet Union. Likewise, only in the 1990s did Central and Eastern European and former Soviet nations initiate the first – and by and large still incomplete – steps toward restituting property first seized by the Nazis and then nationalized by subsequent communist governments.

However, many Nazi victims – particularly those who fled the German death squads and often lost all but their lives in the process – continue, to this day, to be excluded from Holocaust compensation programs, virtually all of which have required proof of specified periods of internment in a ghetto or concentration camp, or of a wartime life spent in hiding. A post-War life lived in dislocation and abject poverty, following desperate and chaotic flight, has not sufficed.

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[450] *See* Eizenstat Report, at "x."