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Financial Compensation for Nazi Forced Laborers

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Frankfurt am Main, 2010

Introduction

After tough negotiations with the Conference on Jewish Material Claims against Germany, the Krupp Group made the following announcement on December 23, 1959: At least DM 6 million but no more than DM 10 million would be paid to former Jewish concentration camp prisoners who could show that they "were employed in plants of Krupp or its subsidiaries during the war as a result of National Socialist actions"; each entitled claimant would receive the sum of DM 5,000. The sole owner Alfried Krupp, according to the company newsletter, had "resolved upon this agreement in order to make a personal contribution toward the healing of the wounds suffered in the war." By his own admission, the agreement signified "no recognition of any legal obligation," but instead represented a charitable gesture, further emphasized by the announcement of the signing of the document one day before Christmas.[1] The Claims Conference, however, had to guarantee that no legal actions against Krupp would be taken in the future with regard to compensation. As the number of entitled claimants was far larger than originally assumed, and Krupp refused to augment the funds provided, ultimately the former Jewish forced laborers received a maximum of DM 3,000 per capita. Non-Jewish victims and persons who had performed forced labor for Krupp but had not been imprisoned in concentration camps were already barred from asserting any claims to payments from the company's fund; with respect to them, the Krupp lawyers pointed out the "considerable financial expenditures" incurred by the firm on behalf of the former Jewish concentration camp prisoners.[2]

Reflecting on the discussion conducted at the end of the 1990s about the compensation of the forced laborers employed in Germany during World War II, which ultimately led to the establishment of the Foundation "Remembrance, Responsibility, and Future" ("Erinnerung, Verantwortung und Zukunft," EVZ), one might think that German industry had adopted Krupp's negotiating tactics as its own: A share in the responsibility for the Nazis' system of forced labor was strictly denied; after nearly endless negotiations, during which anti-Semitic un-

1 See *Krupp Mitteilungen* 44 (1960), no. 1, p. 2.
2 See Benjamin B. Ferencz: *Less Than Slaves. Jewish Forced Labor and the Quest for Compensation* (Bloomington: Indiana UP, 2002), p. 88.

dertones could not fail to be heard,[3] the industries paid a sum that was meager in light of the number of those concerned and the labor they had performed. Even so, this was not interpreted as an admission of guilt in legal terms, but as a good-will gesture, while conversely an agreement was wrung from the representatives of the forced laborers that they would refrain from future litigation to enforce compensation claims.[4]

The following essay aims to reconstruct the history of financial compensation for Nazi forced laborers in West Germany after World War II. What course did this history run, and what events did it lead to? We must ask about the actors and their role in the historical process, and how the political and social conditions influenced their actions and attitudes, for example, in the context of the negotiations regarding compensation. How did the relationship develop between the representatives of the West German business sector on the one hand and the representatives of the Nazis' victims on the other? What position did the West German state, the Federal Republic of Germany, as the legal successor of the National Socialist regime, take in this regard, and to what extent was this position due to the input of the victorious Western powers of World War II?

Into the 1980s, research on the topic of compensation for Nazi injustice was the domain of those who had professional dealings with compensation issues and especially with West Germany's laws and practices governing compensation: primarily state officials[5] and representatives or lawyers of the victims.[6] This

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3 On this, see in particular Gruppe 3 Frankfurt a. M.: "Ressentiment und Rancune: Antisemitische Stereotype in der Entschädigungsdebatte." In: Ulrike Winkler, ed.: *Stiften gehen. NS-Zwangsarbeit und Entschädigungsdebatte* (Cologne: PapyRossa, 2000), pp. 251–271; also, the article on this website: "Anti-Semitism in the Compensation Debate oft he Late 1990s," http://www.wollheim-memorial.de/en/antisemitismus_in_der_entschaedigungsdebatte_ende_der_1990er_jahre.

4 On the negotiations between Krupp and the Claims Conference regarding compensation, see Ferencz: *Less Than Slaves*, pp. 69–103; on the compensation-related negotiations between German industry and representatives of former forced laborers in the late 1990s, see Winkler, ed.: *Stiften gehen.*

5 In particular, see the multivolume work published by the Federal Ministry of Finance (Bundesfinanzministerium): *Die Wiedergutmachung nationalsozialistischen Unrechts in der Bundesrepublik Deutschland*, 6 vols. (Munich: Beck, 1981–1987).

6 See, among others, the studies by Edward Kossoy: *Handbuch zum Entschädigungsverfahren* (Munich: self-published, 1958); Walter Schwarz: *In den Wind gesprochen? Glossen zur Wiedergutmachung des nationalsozialistischen Unrechts* (Munich: Beck, 1969); Ferencz: *Less Than Slaves.* The perspective of the German companies is provided by Hans-Eckhardt Kannapin: *Wirtschaft unter Zwang. Anmerkungen und Analysen zur rechtlichen und politischen Verantwortung der deutschen Wirtschaft unter der Herrschaft des Nationalsozialismus im Zweiten Weltkrieg, besonders im Hinblick auf den Einsatz und die Behandlung von ausländ-*

situation changed only when numerous local grass-roots initiatives such as the "history workshops"—in the context of a critical effort to come to grips with the Federal Compensation Law, or *Bundesentschädigungsgesetz* (BEG), and its implementation[7]—launched a debate about the "forgotten victims" of National Socialism,[8] which also met with a positive response in the German parliament.[9] Now the spotlight fell on groups of victims that had been compensated thus far only in exceptional cases, if at all, for the suffering inflicted on them: Sinti and Roma, homosexuals, conscientious objectors, people who had been forcibly sterilized, "antisocial elements," Communists, and simply surviving forced laborers, particularly from Eastern Europe and the Soviet Union. With the accession of the GDR to the national territory of the FRG in 1990, the compensation practice of the East German state also was subjected to critical scrutiny.[10] The class-action lawsuits filed by former forced laborers against their former "employers" in U.S. courts in the late 1990s, which ultimately led to the "German Economy Foundation Initiative" and the establishment of the Foundation "Remembrance, Responsibility, and Future," encouraged not only journalistic but also academic discus-

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dischen Arbeitskräften und Konzentrationslagerhäftlingen in deutschen Industrie- und Rüstungsbetrieben (Cologne: Deutscher Industrieverlag, 1966).

7 See, among others, the studies by Christian Pross: *Wiedergutmachung. Der Kleinkrieg gegen die Opfer* (Frankfurt am Main: Athenäum, 1988); Helga Fischer-Hübner / Hermann Fischer-Hübner, eds.: *Die Kehrseite der „Wiedergutmachung". Das Leiden von NS-Verfolgten in den Entschädigungsverfahren* (Gerlingen: Bleicher, 1990); as well as the contributions by Ulrich Herbert, Hermann Langbein, William G. Niederland, Gotthard Jasper, and Arnold Spitta in Ludolf Herbst / Constantin Goschler, eds.: *Wiedergutmachung in der Bundesrepublik Deutschland* (Munich: Oldenbourg, 1989).

8 See, among others, Stefan Romey / Hamburger Initiative "Anerkennung Aller NS-Opfer," eds.: *Wiedergutgemacht? NS-Opfer—Opfer der Gesellschaft noch heute* (Hamburg: self-published, 1986).

9 On this topic, see Deutscher Bundestag / Referat Öffentlichkeitsarbeit: *Wiedergutmachung und Entschädigung für nationalsozialistisches Unrecht. Öffentliche Anhörung des Innenausschusses des Deutschen Bundestages am 24.Juni 1987* (Bonn: Deutscher Bundestag, 1987); and Deutscher Bundestag / Referat Öffentlichkeitsarbeit: *Entschädigung für NS-Zwangsarbeit. Öffentliche Anhörung des Innenausschusses des Deutschen Bundestages am 14.12.1989* (Bonn: Deutscher Bundestag, 1990).

10 See Olaf Groehler: "Verfolgten- und Opfergruppen im Spannungsfeld der politischen Auseinandersetzungen in der SBZ und DDR." In: Jürgen Danyel, ed.: *Die geteilte Vergangenheit. Zum Umgang mit Nationalsozialismus und Widerstand in beiden deutschen Staaten* (Berlin: Akademie, 1995), pp. 17–30; Angelika Timm: *Alles umsonst? Verhandlungen zwischen der Claims Conference und der DDR über „Wiedergutmachung" und Entschädigung* (Berlin: Gesellschaftswissenschaftliches Forum, 1996); Christoph Hölscher: *NS-Verfolgte im ‚antifaschistischen Staat'. Vereinnahmung und Ausgrenzung in der ostdeutschen Wiedergutmachung (1945–1989)* (Berlin: Metropol, 2002); also Susanne zur Nieden: *Unwürdige Opfer. Die Aberkennung von NS-Verfolgten in Berlin 1945 bis 1949* (Berlin: Metropol, 2003).

sion about compensation for Nazi forced labor.[11] In addition, recently there have appeared a variety of retrospective descriptions of the compensation framework in general and compensation for forced laborers in particular; they are the work of historians,[12] lawyers,[13] or direct participants in compensation negotiations.[14]

First, the concept of compensation will be discussed, with respect to its economic and moral implications on the one hand and its definition under German and international law on the other. Subsequently, the history of West German compensation of forced labors will be recapitulated in two sections, dealing with the pre-1990 period and the years following 1990, respectively. Here too, the year 1990 marks a historical break: The international legal interpretation of the *Two Plus Four Agreement* concluded as the equivalent of a peace treaty between the United States, Great Britain, France, and the Soviet Union on the one hand and the two German states on the other put compensation issues, which had been deferred until the negotiation of such a treaty, back on the political agenda.

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11 See Klaus Barwig / Günter Saathoff / Nicole Weyde, eds.: *Entschädigung für NS-Zwangsarbeit. Rechtliche, historische und politische Aspekte* (Baden-Baden: Nomos, 1998); Winkler, ed.: *Stiften gehen*; Peer Zumbansen, ed.: *Zwangsarbeit im Dritten Reich: Erinnerung und Verantwortung. Juristische und zeithistorische Betrachtungen* (Baden-Baden: Nomos, 2002); Susanna-Sophia Spiliotis: *Verantwortung und Rechtsfrieden. Die Stiftungsinitiative der deutschen Wirtschaft* (Frankfurt am Main: Fischer, 2003); Thomas Kuczynski: *Brosamen vom Herrentisch. Hintergründe der Entschädigungszahlungen an die im Zweiten Weltkrieg nach Deutschland verschleppten Zwangsarbeitskräfte* (Berlin: Verbrecher-Verlag, 2004).

12 See Hans Günter Hockerts / Christiane Kuller, eds.: *Nach der Verfolgung. Wiedergutmachung nationalsozialistischen Unrechts in Deutschland?* (Göttingen: Wallstein, 2003); Constantin Goschler: *Schuld und Schulden. Die Politik der Wiedergutmachung für NS-Verfolgte seit 1945* (Göttingen: Wallstein, 2005); Hans Günter Hockerts / Claudia Moisel / Tobias Winstel, eds.: *Grenzen der Wiedergutmachung. Die Entschädigung für NS-Verfolgte in West- und Osteuropa 1945–2000* (Göttingen: Wallstein, 2006); on Austria, David Forster: *„Wiedergutmachung" in Österreich und der BRD im Vergleich* (Munich: Studien-Verlag, 2001); and Clemens Jabloner et al.: *Schlussbericht der Historikerkommission der Republik Österreich. Vermögensentzug während der NS-Zeit sowie Rückstellungen und Entschädigungen seit 1945 in Österreich. Zusammenfassungen und Einschätzungen* (Vienna/Munich: Oldenbourg, 2003).

13 See Jörg Hagen Hennies: *Entschädigung für NS-Zwangsarbeit vor und unter der Geltung des Stiftungsgesetzes vom 2.8.2000* (Baden-Baden: Nomos, 2006); Aline Levin: *Erinnerung? Verantwortung? Zukunft? Die Beweggründe für die gemeinsame Entschädigung durch den deutschen Staat und die deutsche Industrie für historisches Unrecht* (Frankfurt am Main: Lang, 2007); quite early on, Cornelius Pawlita: *„Wiedergutmachung" als Rechtsfrage? Die politische und juristische Auseinandersetzung um Entschädigung für die Opfer nationalsozialistischer Verfolgung (1945 bis 1990)* (Frankfurt am Main: Lang, 1993).

14 For the viewpoint of a U.S. government official, see Stuart E. Eizenstat*: Imperfect Justice: Looted Assets, Slave Labor and the Unfinished Business of World War II* (New York: Public Affairs, 2003); for the viewpoint of the Claims Conference, see Karl Brozik / Konrad Matschke, eds.: *Luxemburger Abkommen. 50 Jahre Entschädigung für NS-Unrecht* (Frankfurt am Main: Societäts-Verlag, 2004); for the viewpoint of the EVZ, see Michael Jansen / Günter Saathoff, eds.: *„Gemeinsame Verantwortung und moralische Pflicht". Abschlussbericht zu den Auszahlungsprogrammen der Stiftung „Erinnerung, Verantwortung und Zukunft"* (Göttingen: Wallstein, 2007).

The history of compensation for forced laborers in Austria and the GDR is touched upon only peripherally in this essay, in the form of two short supplements. With consideration for the chronology of the events, the supplement on the GDR is appended to the third section of this essay, while the supplement on Austria appears at the end of the fourth section.

In conclusion, there will be a discussion of whether the history of compensation for the Nazi forced laborers is defined more by continuities or by breaks. The research literature on the topic ranges here between two positions: One emphasizes that the question of compensating forced laborers, which was posed after World War II, was ultimately resolved satisfactorily, though only with a great time lag and thus after the death of many of those concerned. The other position, in contrast, is based on the continued refusal to pay compensation, as can also be deduced from the cases cited at the beginning of this essay.

Compensation for Nazi Forced Labor? Attempt at a Definition

"Forced labor as such has not been acknowledged up to the present day as a typical Nazi injustice,"[15] the editors of the anthology *Entschädigung für NS-Zwangsarbeit* asserted as recently as 1998:

> Forced laborers therefore had to assert their claims directly against the Federal Republic of Germany as the legal successor of the German Reich, and against the firms. In the past, however, all lawsuits were rejected by the courts on the ground that the loss-adjustment claims for forced laborers fell under reparations law. Thus such claims could be asserted only between states, and an individual victim was not entitled under international law to put forward an individual claim for loss adjustment.[16]

At the same time, clarification of the issue of reparations—that is, of the very loss adjustment that one state imposes on another under international law for war damage and suffering inflicted on the civilian population—was deferred in the 1953 *London Debt Agreement* between the FRG and the Western Allies of World War II until such time as a peace treaty including both German states could be signed, and thus was postponed indefinitely.[17] Whether the denial of compensa-

15 Barwig / Saathoff / Weyde, eds.: *Entschädigung für NS-Zwangsarbeit*, p. 15.
16 Ibid.
17 On this, see the section "Compensation of Nazi Forced Laborers, 1945–1990."

tion to Nazi forced laborers thus was "entirely proper under international law,"[18] or whether German courts were advancing "legally very inconsistent"[19] arguments here, will not be further discussed in this paper. What is certain is that with the classification of compensation for forced labor as a part of reparations law and thus as a part of international law, which regulates relationships between states, the responsibility for the Nazi system of forced labor was ascribed exclusively to the agencies of the Nazi state. In this way, the firms that employed forced laborers were excluded from all liability.[20]

The *Two Plus Four Agreement* negotiated in 1990 between the two German states and the former Allies of the anti-Hitler coalition, which was intended as a "conclusive settlement" of all issues related to World War II with regard to Germany, did not produce any legal clarification of the reparations problems, of course, but this set of problems was subsequently regarded as politically "dead."[21] However, the judgment of the Federal Constitutional Court on May 13, 1996, made a fundamental change in the legal situation within Germany: The court ruled that international law no longer was an obstacle to individual claims of former forced laborers against the state or against private enterprises.[22]

While former forced laborers were referred for more than 50 years to potential future reparations, a domestic "settlement complex," based on provisions of the Western occupying powers in the FRG, was developed for compensating those who had been persecuted by the Nazi regime for political, religious, or racist reasons.[23] It operates under the name of *Wiedergutmachung* (restitution, reparations) and designates, according to the agents involved on behalf of the state as well as the victims, the "restitution of ascertainable assets" and "indemnification

18 Thus says Ludolf Herbst in his introduction to Herbst / Goschler, eds.: *Wiedergutmachung in der Bundesrepublik Deutschland*, pp. 7–31, here p. 30.
19 Thus Pawlita: *„Wiedergutmachung" als Rechtsfrage?*, p. 462.
20 Ibid.
21 Ibid., pp. 468ff.
22 See Barwig / Saathoff / Weyde, eds.: *Entschädigung für NS-Zwangsarbeit*, p. 16. A facsimile of the text of the ruling is also found there, on pp. 222–247.
23 See Pawlita: *„Wiedergutmachung" als Rechtsfrage?,* p. 465. Nazi victims from Eastern Europe and the Soviet Union were categorically excluded from this, on the basis of the residency rules established by the Federal Compensation Law (*Bundesentschädigungsgesetz*); on this, see the section "Compensation of Nazi Forced Laborers, 1945–1990."

for personal injury damages,"[24] that is, for "damage to body or health, deprivation of liberty," for "damage to professional or economic advancement," and for "damage to property and assets," unless these fall into the area of restitution.[25] In addition, there are "global agreements," involving transfers of funds and goods from the FRG to several West and East European states, as well as to Israel and the Claims Conference; in this way, "restitution" was to be made for damages inflicted during war and occupation, and for the genocide of the European Jews.[26]

Even the protagonists of the West German compensation legislation felt that the term they introduced, *Wiedergutmachung* (literally, "making good again"), was "linguistically poor," as it immediately suggests the interpretation that National Socialist crimes, despite their monstrous dimensions, could be made good again, in the sense of undoing them, wiping the slate clean.[27] Though the word continues to be an "irritant"[28] to many people even today, it is broadly accepted in professional circles as a technical term or as a "conceptual umbrella."[29]

Walter Schwarz, one of the key agents in the FRG's *Wiedergutmachung* on the victims' side, stated as early as 1952 that *wieder gut machen,* "making good again," in the literal sense is "a fundamentally insoluble task," and therefore

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24 See Walter Schwarz: "Die Wiedergutmachung nationalsozialistischen Unrechts durch die Bundesrepublik Deutschland. Ein Überblick." In: Herbst / Goschler, eds.: *Wiedergutmachung in der Bundesrepublik Deutschland*, pp. 33–54, here p. 34.

25 See Ernst Féaux de la Croix: "Vom Unrecht zur Entschädigung: Der Weg des Entschädigungsrechts." In: Ernst Féaux de la Croix / Helmut Rumpf: *Der Werdegang des Entschädigungsrechts unter national- und völkerrechtlichem und politologischem Aspekt* (= *Die Wiedergutmachung nationalsozialistischen Unrechts durch die Bundesrepublik Deutschland*. Issued by the Bundesminister der Finanzen in collaboration with Walter Schwarz, vol. 3) (Munich: Beck, 1985), pp. 1–118, here p. 1.

26 Féaux de la Croix, formerly an official in the Finance Ministry, describes the "global agreements" as an "appendix to German reparations" (Ernst Féaux de la Croix: "Internationalrechtliche Grundlagen der Wiedergutmachung." In: Féaux de la Croix / Rumpf: *Der Werdegang des Entschädigungsrechts*, pp. 119–200, here p. 121), while historian Ludolf Herbst characterizes them as "in a way" similar to reparations (Herbst: "Einleitung." In: Herbst / Goschler, eds.: *Wiedergutmachung in der Bundesrepublik Deutschland*, pp. 7–31, here p. 9).

27 See Féaux de la Croix: "Vom Unrecht zur Entschädigung," p. 3.

28 Herbst: "Einleitung." In: Herbst / Goschler, eds.: *Wiedergutmachung in der Bundesrepublik Deutschland*, pp. 7–31, here p. 8; numerous critical commentaries are reported on by Hans Günter Hockerts: "Wiedergutmachung in Deutschland: Eine historische Bilanz 1945–2000." In: Karl Doehring / Bernd Josef Fehn / Hans Günter Hockerts: *Jahrhundertschuld, Jahrhundertsühne. Reparationen, Wiedergutmachung, Entschädigung für nationalsozialistisches Kriegs- und Verfolgungsunrecht* (Munich: Olzog, 2001), pp. 91–142, here p. 91.

29 See Herbst: "Einleitung." In: Herbst / Goschler, eds.: *Wiedergutmachung in der Bundesrepublik Deutschland*, pp. 7–31, here p. 9; Hockerts: "Wiedergutmachung in Deutschland," p. 94.

benefits provided by the state to Nazi victims could never be anything more than a "contribution to the effort that the survivors of this extermination must make in their own right by rebuilding their broken lives all over the world."[30] Schwarz's statement gives rise to the question of whether such a contribution to the victims' effort was made and what meaning was assigned to it from the standpoint of the victims; basically, it is a matter of tracing the "track record of *Wiedergutmachung.*"[31] For this purpose, Tobias Winstel constructed "a kind of idealized grid" consisting of the categories Reconciliation, Rehabilitation, and Compensation: Reconciliation means the rapprochement between perpetrators and victims with the reestablishing of good relations as its ultimate goal; Rehabilitation means the acknowledgement of the suffering of the victims and the admission of guilt on the part of the perpetrators; Compensation means the payment of damages to the victims.[32] In the material below, the general set of problems appearing in the aforementioned categories with regard to a *Wiedergutmachung* of the National Socialists' crimes will be touched on briefly.

After the war ended, Nazi victims frequently found themselves of two minds: on the one hand, the injustice done to them had put them in a catastrophic economic situation and made them dependent on material support, but on the other hand, they thought it outrageous to accept German "blood money."[33] Though they had decided to come to the appropriate authorities with their compensation claims, they experienced this as a strictly formalized bureaucratic process, in which they appeared as claimants, had to name witnesses, and were medically examined, which many felt was a kind of second persecution.[34] Moreover, the fact that Federal German society was deeply divided on the issue of *Wiedergutmachung* surely was not conducive to understanding in the sense of reconciliation. Admittedly, in 1949, in a survey based on sampling, 54 percent of the res-

30 Walter Schwarz: *Rückerstattung und Entschädigung. Eine Abgrenzung der Wiedergutmachungsformen* (Munich: Beck, 1952), p. 1.
31 See Tobias Winstel: "Über die Bedeutung der Wiedergutmachung im Leben der jüdischen NS-Verfolgten. Erfahrungsgeschichtliche Annäherungen." In: Hockerts / Kuller, eds.: *Nach der Verfolgung*, pp. 199–227, especially p. 202.
32 See Winstel: "Über die Bedeutung."
33 Ibid., p. 203.
34 On this, see especially Pross: *Wiedergutmachung*.

pondents affirmed Germany's "duty of *Wiedergutmachung*" toward Jews;[35] however, according to an Allied High Commission report, the vast majority were opposed to the compensation payments made by the FRG to Israel and the Claims Conference in the early 1950s.[36] In 1966, 46 percent of those polled by the Allensbacher Institut für Demoskopie (Allensbach Institute for Public Opinion Research) agreed with the demand that "We should finally pull the plug on *Wiedergutmachung* to the Jews; they've already gotten too much."[37] In 1987, about half of the West German respondents agreed with the statement that Jews were trying to derive some "advantage" for themselves from the crimes of the National Socialists; in 1990 and again in 1994, 39 percent were in agreement with that assertion, and in 2003, the figure was 54 percent.[38]

In addition to recompense—usually financial in nature—for the suffering experienced (damages for pain and suffering), compensation includes the payment of debts: Just as stolen property was returned, back pay for their retained wages and social insurance deductions would have been due to the former forced laborers.

Closely linked with the issue of financial compensation is the issue of rehabilitation. Those who, like the forced laborers, were denied "reparation payments" by Federal German authorities and courts that pointed out their lack of victim status inevitably got the impression that Federal German society did not acknowledge Nazi crimes as such. The physician William G. Niederland, who provided medical care to numerous Nazi victims and represented them in "reparation proceedings," describes this correlation as follows:

> For the surviving victims of National Socialist tyranny who received and are receiving compensation, it is not a specific sum of money that counts most (often it is small enough), although

35 See Institut für Demoskopie: *Ist Deutschland antisemitisch? Ein diagnostischer Beitrag zur Innenpolitik* (Allensbach, 1949), p. 23, cited in Werner Bergmann: "Die Haltung der deutschen Bevölkerung zur Wiedergutmachung." In: Brozik / Matschke, eds.: *Luxemburger Abkommen*, pp. 16–24, here p. 17.

36 Anna Merritt / Richard Merritt: *Public Opinion in Semisovereign Germany. HICOG Surveys 1949–1955* (Urbana, 1980), Report No. 167, cited by Bergmann: "Die Haltung der deutschen Bevölkerung," p. 17.

37 Institut für Demoskopie: *Jahrbuch der öffentlichen Meinung Bd. 4* (Allensbach, 1967), p. 204, cited by Bergmann: "Die Haltung der deutschen Bevölkerung," p. 18.

38 See Bergmann: "Die Haltung der deutschen Bevölkerung," pp. 19ff.

it, too, is important. What really counts, and counts most profoundly, is not the money, but the recognition of their pain and their sufferings that is acknowledged thereby.[39]

Compensation of Nazi Forced Laborers, 1945–1990

As the historian Ulrich Herbert established, 10 to 12 million people were deported from their Wehrmacht-occupied homelands into the German Reich and interned there in camps of the most diverse kinds. When the war ended, most of these people were situated in the territory of the Reich and were classified by the Allies under the catchall heading of "displaced persons" (DPs). They included around 6 million so-called foreign workers, most of whom had been forcibly brought to Germany to work; more than half of them came from Poland and the Soviet Union. In addition, there were about 2 million prisoners of war, who likewise had been used for forced labor in industry and agriculture; the largest groups were members of the Red Army and the French and Italian armed forces. The latter, as well as the Polish POWs, had been forcibly converted to the status of civilian workers. The DPs also included around 750,000 concentration camp prisoners, more than 90 percent of whom were foreigners; the majority had been deployed in the armaments industry, in grueling conditions.[40]

The need to compensate the abovementioned Nazi victims within the scope of reparations was undisputed among the victorious powers of World War II. Thus the *Potsdam Agreement* of August 2, 1945, deliberately conceived of reparations in very broad terms as compensation for "losses and sufferings."[41] For this purpose, provision was made for the sequestration of all German assets held abroad, dismantling of industrial equipment in Germany, and confiscation of the German merchant fleet. In principle, the Allies were to satisfy their claims by taking over assets from their own zones of occupation; the Soviet Union pledged to use part of its share to satisfy the Polish claims as well. Thus the *Potsdam Agreement* led to an East/West split in Europe with regard to compensation pol-

39 Foreword by William G. Niederland in: Pross: *Wiedergutmachung*, pp. 9–12, here p. 11f.

40 Ulrich Herbert: "Nicht entschädigungsfähig? Die Wiedergutmachungsansprüche der Ausländer." In: Herbst / Goschler, eds.: *Wiedergutmachung in der Bundesrepublik Deutschland*, pp. 273–302, here p. 273f.

41 See Hans Günter Hockerts: "Die Entschädigung für NS-Verfolgte in West- und Osteuropa. Eine einführende Skizze." In: Hockerts / Moisel / Winstel, eds.: *Grenzen der Wiedergutmachung*, pp. 7–58, here p. 11.

icy and also fostered the opinion, later expressed time and again by the West Germans, that compensation claims resulting from acts of war and occupation could be asserted only by one state against another, but not by individuals against the former enemy nation.[42] The *Paris Reparations Agreement* of January 14, 1946, which regulated the distribution of the "Western estate," also was interpreted by the participating nations as "covering all their claims and those of their nationals against the former German government or its agencies."[43]

With the *London Debt Agreement* of February 27, 1953, which regulated the settlement of the external debts of the German Reich, West Germany obtained "a kind of protective shield to ward off reparations claims, including compensation claims."[44] In Article 5, the agreement stipulated the following:

> A review of the claims arising out of World War II that have been raised by states which were at war with Germany or whose territory was occupied by Germany, and by nationals of these states, against the Reich and agencies or individuals acting on behalf of the Reich […] is tabled until the final settlement of the reparations question.[45]

Even during the negotiations for the agreement, the leader of the West German delegation, Hermann Josef Abs, a banker and financial adviser in the Adenauer government, had repeatedly cautioned against an overload on West Germany's national economy in the event of extensive compensation claims, and had simultaneously made reparations payments to Israel and the Claims Conference dependent on a negotiation outcome that would be satisfactory to the West German side.[46] In 1961, Hans Gurski, a top official at the Federal Ministry of Finance, concluded that it had been the goal of the *London Debt Agreement* to contribute toward the development of a "thriving international community"; in order to allow the Federal Republic to participate in it, he said, it was necessary to guarantee the FRG a "secure standard of living and social accountability do-

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42 This was objected to only by the Polish side, which made a strict distinction between "national reparations" and "individual *Wiedergutmachung*" and interpreted the latter primarily in terms of compensation for former Polish forced laborers. See Herbert: "Nicht entschädigungsfähig?," p. 276.

43 Cited by Herbert: "Nicht entschädigungsfähig?," p. 277.

44 Hockerts: "Entschädigung für NS-Verfolgte," p. 15.

45 Abkommen über deutsche Auslandsschulden [Agreement on German External Debts], February 27, 1953, *Bundesgesetzblatt*, 1953, Part II, pp. 333–335. A facsimile is found in Barwig / Saathoff / Weyde, eds.: *Entschädigung für NS-Zwangsarbeit*, pp. 215–217.

46 See Herbert: "Nicht entschädigungsfähig?," p. 279.

mestically."[47] Demands made by Nazi forced laborers, he added, whether addressed to the state or to private enterprises, had, for one thing, prevented the emergence of this "thriving international community" and, for another, caused the disappearance of the preconditions for "the Federal Republic to be able to participate in the defense efforts of the free world, and later on in aid to developing countries."[48]

Wiedergutmachung and rearmament were linked with each other both politically and administratively by the FRG: Ernst Féaux de la Croix, who before 1945 was the Reich Ministry of Justice official responsible for defining the legal status of "foreign peoples" (*Fremdvölkische*), was in charge of compensation matters in the first two Adenauer cabinets, and in the third he was appointed head of all the war reparations departments in the Federal Ministry of Finance, to which the Office of Defense Costs and the Office of Defense Finance were added.[49] His comments on the "history of compensation law," submitted in 1985 on behalf of the ministry, are evidence that West Germany's "*Wiedergutmachung* policy" was determined by resistance, calculation, and resentment. On the "foreign-policy aspect of reparations," Féaux de la Croix writes:

> *Wiedergutmachung* frequently has been termed the price paid to American Jews for letting their President admit the Federal Republic to partnership in the community of the Western nations. In the same breath, it has been called the prerequisite for the willingness of the world's Jews to accept the German economy and its goods as participants in international trade. Such utterances, often marked by a clearly anti-Semitic bias, were certainly greatly exaggerated in their absoluteness. Nonetheless, it is undeniable that there was a kernel of truth behind them."[50]

Here Féaux de la Croix alludes to the fact that the United States exerted some pressure on the Adenauer government to induce it to make compensation payments to Israel and the Claims Conference. In the so-called *Luxembourg Agreement* of September 10, 1952, the FRG finally pledged to pay reparations to Israel in the amount of DM 3 billion—mostly in the form of shipments of goods—and to pay the Claims Conference DM 450 million: funds that also benefited former Nazi

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47 See Hans Gurski: "Kriegsforderungen." In: *Außenwirtschaftsdienst des Betriebsberaters*, January 1961, p. 14, cited in Herbert: "Nicht entschädigungsfähig?," p. 284.
48 Ibid.
49 See Pross: *Wiedergutmachung*, p. 46f.
50 Féaux de la Croix: "Vom Unrecht zur Entschädigung," p. 10.

forced laborers, among others.[51] Moreover, through the simultaneous ratification of the *Hague Protocol No. 1,* the Claims Conference gained an influence over West Germany's national compensation legislation, which profited most notably the Jewish victims of Nazism from Eastern Europe who had emigrated to the West.[52]

In July 1953, the German Bundestag passed the first national compensation law, known as the *Bundesergänzungsgesetz,* or Federal Supplementary Law. On the basis of numerous interventions by the Western Allies and the Claims Conference, directed primarily against the meager payments designated for Nazi victims and against the exclusion of foreigners who were persecuted by the Nazis, it was amended in 1956 and known as the *Bundesentschädigungsgesetz* (BEG, Federal Compensation Law). Nonetheless, the BEG retained the so-called subjective and personal principle of territoriality, in accordance with which payments could be applied for only by Nazi victims who had resided in the FRG or in West Berlin on the effective date of December 31, 1952 (originally, January 1, 1947), or who had lived within the 1937 borders of the German Reich at the time of persecution and had made their residence in the FRG or in West Berlin until the effective date. Excluded from the outset from all compensation, therefore, were all the people who had been hunted by the death squads of the Wehrmacht and the SS in the countries occupied by Germany during World War II but had not left their home countries.[53]

Also deemed "not qualified for compensation" were the following:[54]

1. victims of forcible sterilization—to them, the Reparations Committee of the Bundestag, with reference to expert opinions written by former Nazi "racial hygienists," pointed out that the 1933 *Gesetz zur Verhütung erbkranken Nachwuchses* (Law for the Prevention of Hereditarily Diseased Offspring) did

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51 See Mark Spoerer: *Zwangsarbeit unter dem Hakenkreuz. Ausländische Zivilarbeiter, Kriegsgefangene und Häftlinge im Deutschen Reich und im besetzten Europa 1939–1945* (Stuttgart/Munich: DVA, 2001), p. 246.

52 See Hockerts: "Entschädigung für NS-Verfolgte," p. 23f.

53 Ibid., p. 21f.

54 See hereafter Pross: *Wiedergutmachung*, pp. 102ff. Apart from the fact that the BEG discriminated against numerous groups of victims, the practice of compensation was characterized by extremely ignorant handling of the life-long sufferings and traumas of many persecutees; on this, see also Anke Schmeling: *Nicht wieder gut zu machen. Die bundesdeutsche Entschädigung psychischer Folgeschäden von NS-Verfolgten* (Herbolzheim: Centaurus, 2000); Fischer-Hübner / Fischer-Hübner, eds.: *Die Kehrseite der „Wiedergutmachung".*

not contravene constitutional principles and that no illegal or negligent decisions had been made by the "hereditary health courts."

2. people who were terrorized by the National Socialists because their social behavior seemed out of line (so-called antisocial elements),[55] as well as the Sinti and Roma—to the later, the Federal Supreme Court (Bundesgerichtshof, BGH) pointed out in a decision in principle on January 7, 1956, that they had been persecuted not for "reasons of race, faith, or ideology" (§ 1 BEG) but on the basis of their "antisocial characteristics." Race-based persecution was deemed by the BGH to have existed only after 1943, when Sinti and Roma began to be sent to the Auschwitz concentration camp.[56]
3. Communists—they were denied compensation pursuant to § 6 BEG, as they were regarded as enemies of the "free and democratic constitutional order."[57]

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55 On the persecution of "antisocial elements" under National Socialism, see, among others, the contributions by Wolfgang Ayass in Dietmar Sedlaczek / Thomas Lutz / Ulrike Puvogel / Ingrid Tomkowiak, eds.: *‚Minderwertig' und ‚asozial'. Stationen der Verfolgung gesellschaftlicher Außenseiter* (Zürich: Chronos, 2005); on refusal to pay compensation, see Lothar Evers: "‚Asoziale' NS-Verfolgte in der deutschen Wiedergutmachung." In: Sedlaczek et al., eds.: *‚Minderwertig' und ‚asozial',* pp. 179–183. Only after a public hearing held by the Bundestag's Committee on Domestic Affairs on June 24, 1987, on the subject of "*Wiedergutmachung* and Compensation for Nazi Injustice," was a "hardship fund" established, from which victims classified as "antisocial elements" could also receive benefits; see Evers: "‚Asoziale' NS-Verfolgte," p. 182f.

56 The Reichsführer SS and Chief of the German Police, Heinrich Himmler, had stated in a circular decree on December 18, 1938, that "the experience gathered to date in combating the Gypsy nuisance and the knowledge gained through research in the field of racial biology" made it necessary "to tackle the settlement of the Gypsy question based on the nature of the race." Starting in May 1940, Sinti und Roma were placed in assembly camps in occupied Poland, and on December 16, 1940, by Himmler's decree, the Auschwitz concentration camp was made the central camp for admission of Sinti and Roma. On February 26, 1944, all the inmates of the "Gypsy camp" at Auschwitz were killed in the gas chambers. The BGH deemed racial persecution to have existed only after Himmler's "Auschwitz decree"; thus "prevention of the Gypsies' roaming about" in particular was "also a standard police measure to date," used to "prevent the possibility of espionage in general" (BGH judgment, January 7, 1956, *Rechtsprechung zur Wiedergutmachung* 7 (1956), no.1, pp. 113ff., cited by Katharina Stengel: *Tradierte Feindbilder: die Entschädigung der Sinti und Roma in den fünfziger und sechziger Jahren* (Frankfurt am Main: Fritz Bauer Institut, 2004), p. 60f). On December 18, 1963, the BGH rescinded its ruling of 1956 inasmuch as it established that "at least […] as of 1938, not only military and security-policy motives, but also racial-policy motives were contributory causes for the measures used against the Gypsies" (BGH judgment, December 18, 1963, *Rechtsprechung zur Wiedergutmachung* 13 (1964), no. 5, pp. 209ff., cited by Stengel: *Tradierte Feindbilder*, p. 70).

57 An "obstacle to compensation," pursuant to § 6, Para. 1, No. 2 BEG, is "fighting against the liberal-democratic constitutional order," which includes, among other things, active membership in a communist party after 1949 and in particular after the banning of the KPD (Communist Party of Germany) in 1956. Of course, compensation also was denied during the Adenauer era to Nazi victims who had fought within organizations to the left of the SPD against remilitarization and integration with the West; see Pross: *Wiedergutmachung*, p. 104f.

4. homosexuals—in the FRG, too, they were threatened with criminal prosecution, because § 175 of the Criminal Code, which had been toughened by the Nazis, remained unchanged and in legal force until the 1969 penal reform; homosexuality remained a punishable offense until the penal reform of 1973.[58]

Former forced laborers were compensated pursuant to the BEG only if they were classified as people who had been persecuted for racial, political, or religious reasons and who met the residence and deadline requirements, which was not the case for the vast majority.[59] The claim for payment of withheld wages for performance of forced labor, at the request of Polish concentration camp prisoner Leon Staucher on February 26, 1963, was finally turned down by the Federal Supreme Court, making reference to Article 5 of the *London Debt Agreement*: The failure of the Dutch negotiating delegation to prevail in its support for the wage demands of former Dutch concentration prisoners against German employers such as I.G. Farbenindustrie AG showed, the court said, "that Art. 5 was intended to protect not only the Federal Republic as a state, but also the economy and currency of the Federal Republic."[60]

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58 According to the *Bericht der Bundesregierung über Wiedergutmachung und Entschädigung für nationalsozialistisches Unrecht sowie über die Lage der Sinti, Roma und verwandter Gruppen*, dated October 31, 1986, "Punishment of homosexual activity in criminal proceedings conducted in accordance with the provisions of criminal law is neither Nazi injustice nor contrary to constitutional democracy. […] Therefore, punishments that were imposed in criminal proceedings conducted in accordance with legal regulations and were carried out within the regular penal system are not compensated as deprivation of liberty. For damage incurred … through transfer to a concentration camp, it was possible to award compensation pursuant to § 5 AKG [*Allgemeines Kriegsfolgengesetz*, General Consequences of War Act – P. H.] […] The regional finance offices have reported that a total of 23 applications pursuant to the AKG were made by homosexuals. The small number of applications is attributed by some to the fact that the applicants supposedly feared they would suffer criminal penalties in the future, too, because homosexuality remained a punishable offense until 1973." (*BT-Drucksache* 10/6287, p. 40.)

59 According to data from the Federal Finance Ministry (as of December 31, 2006), in the period from October 1, 1953, to December 31, 1987, a total of 4,384,138 applications were filed pursuant to the *Bundesergänzungsgesetz* or BEG, of which 2,014,142 were approved; see BMF-Referat V B 4: "Leistungen der öffentlichen Hand auf dem Gebiet der Wiedergutmachung" (as of: December 31, 2006), p. 2, http://www.bundesfinanzministerium.de/nn_53848/DE/BMF__Startseite/Service/Downloads/Abt__V/Leistungen_20der_20_C3_B6ffentlichen_20Hand_20auf_20dem_20Gebiet_20der_20Wiedergutmachung_20bis_202006,property=publicationFile.pdf (accessed on May 29, 2008).

60 BGH-Urteil [BGH judgment], February 26, 1963 in: *Rechtsprechung zur Wiedergutmachung*, 1963, pp. 525–528, cited by Herbert: "Nicht entschädigungsfähig?," p. 242f. On this topic, see also Pawlita: *„Wiedergutmachung" als Rechtsfrage?*, p. 411f.

The organizations of Nazi persecutees and resistance fighters in several Western European countries were unwilling to resign themselves to the "territoriality principle" codified in the BEG. The pressure they exerted led to the conclusion of 11 "global agreements" for the group of so-called Western persecutees in the years 1959 to 1964. The FRG pledged to pay a "global amount" totaling DM 876 million, which was made available to the government of the respective state that was a party to the contract; this government decided independently on the distribution of the money, and thus it could also compensate forced laborers. While the German side repeatedly emphasized the voluntary nature of the payments, regarded them as a "final settlement," and strictly refused to acknowledge a legal obligation, the opposing side—Greece, for example—declared that it reserved the right "to demand a settlement of further demands stemming from National Socialist acts of violence, should it ever come to a general scrutiny of the demands that were deferred in the London Debt Agreement."[61]

The motivation of the West German government in concluding the "global agreements" was explained by international legal expert and diplomat Helmut Rumpf with reference to the Ministry of Foreign Affairs, as follows:

> It was not only the moral and humanitarian motive that gave rise to these agreements, however; another goal was to "expand bilateral relations with the allied and friendly countries by cultivating political and personal contacts." At the same time, there was a wish to "definitively clarify the issues still pending in the relationship with these states." In concrete terms, this meant, if nothing else, the intent to conciliate the groups of Jewish and other persecutees that were influential in some of these countries and reduce the possibility of disturbances in bilateral relations that could emanate from these groups, especially by dint of their influence in the mass media.[62]

Overall, the conclusion of the "global agreements" was a complete success for the German side: It succeeded in removing a potential stumbling block on the road to European integration; in the case of the neighboring states to the west, it even succeeded in including the settlement of pending border issues in the agreements. It also managed to demonstrate to the "East" the unity of the

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61 See Rolf Surmann: "Trugbild. Die deutsche Entschädigungsverweigerung gegenüber den NS-Opfern." In: Winkler, ed.: *Stiften gehen*, pp. 186–204, esp. p. 196; citations, ibid.

62 Helmut Rumpf: "Völkerrechtliche und aussenpolitische Aspekte der Wiedergutmachung." In: Féaux de la Croix / Rumpf: *Der Werdegang des Entschädigungsrechts*, pp. 311–346, here p. 334.

"West" during the cold war, and to improve Germany's image abroad, just when the Eichmann Trial was under way in Jerusalem (1961).[63] On only one point did Bonn have to back-pedal: Indeed, according to Rumpf,

> the German government wished [...] to keep the assigned purpose of the German global payments within the scope of the positions of the BEG […] and exclude compensation for resistance fighters and partisans. However, because the distribution of the sums was left to the discretion of the contracting partners, it was impossible to either guarantee or verify that in the countries formerly occupied by German troops, people who at that time had attacked German soldiers from ambush and the underground movement would be included or even given preference […][64]

While an agreement with the NATO and Common Market partners proved indispensable in the course of integration with the West, the FRG strictly rejected any compensation of the Nazis' victims in Eastern Europe; the German government made an exception solely for victims of experiments on human beings in the concentration camps.[65] However, the social-liberal coalition did provide so-called indirect reparations in the 1970s, as part of its policy of détente. The basis for this was the "Brioni Formula," named for the island in the Mediterranean where Yugoslav President Josip Broz Tito and West German Chancellor Willy Brandt (SPD) met in April 1973: The communiqué produced there stated that the "still-pending issues from the past" were to be settled by means of "long-term cooperation in economic and other areas."[66] Thus Yugoslavia and Poland, for example, obtained loans at reduced rates of interest. In Poland's case, there was also a lump-sum payment of pension claims in the amount of DM 1.3 billion, though the Poles had to promise as a quid pro quo to allow 120,000 so-called *Volksdeutsche* to leave the country. Thereby the FRG succeeded once again in linking the assertion of its own demands and interests to the issue of compensation, which proved very advantageous for the Germans, especially with regard to

63 See Surmann: "Trugbild," p. 196f; as well as Hockerts: "Entschädigung für NS-Verfolgte," p. 37.
64 Rumpf: "Völkerrechtliche und aussenpolitische Aspekte," p. 335.
65 The FRG reached corresponding agreements with Jugoslavia in 1961, with the Czech Republic in 1969, with Hungary in 1971, and with Poland in 1972; see Hockerts: "Entschädigung für NS-Verfolgte," p. 40f.
66 Cited by Hockerts: "Entschädigung für NS-Verfolgte," p. 42.

the pension claims of former Polish forced laborers: If additional pension claims by individuals had fallen due, they would have totaled around DM 8 billion.[67]

While the compensation payments made by the state look quite modest, considering the number of people affected by the Nazi terror and the devastation caused by the Wehrmacht and SS in the occupied countries of Europe,[68] the *Wiedergutmachung* provided by German industry to former forced laborers between the 1950s and the 1980s can be described only as a pittance: Depending on how it is calculated, it totals DM 75.5 million or 78.5 million,[69] the equivalent of DM 206.37 million or 216.91 million, respectively, in terms of prices in the year 2000.[70] In comparison, the economic historian Thomas Kuczynski calculated that the Nazi forced laborers are entitled to wages alone to the tune of DM 180 billion, taking into account the evolution of wages and purchasing power up to the year 2000.[71]

The opening of the conflicts with German industry over compensation for Nazi forced labor is marked by the civil suit filed by Norbert Wollheim against I.G. Farbenindustrie in Liquidation (i.L.) in the regional court (Landgericht) in Frankfurt am Main in November 1951. Wollheim had been deported in 1943 to the Buna/Monowitz concentration camp operated by I.G. Farben at Auschwitz, where he was first used to do transport and excavation work, and then as a welder for installation work. Now the former forced laborer was demanding damages of DM 10,000 from his erstwhile "employers" to compensate for the "improper use of

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67 See Herbert: "Nicht entschädigungsfähig?," p. 290.

68 In 1945, the direct losses of assets of the Soviet Union alone amounted to US$ 128 billion, according to estimates of the State Planning Commission of the USSR, and the economic costs of the war and its immediate consequences totaled US$ 357 million, according to the same source; see Friedrich Jerchow: *Deutschland in der Weltwirtschaft 1944–1947. Alliierte Deutschland- und Reparationspolitik und die Anfänge der westdeutschen Außenwirtschaft* (Düsseldorf: Droste, 1978), p. 23.

69 The payments are broken down as follows: I.G. Farbenindustrie AG (DM 27 million, 1958), Krupp (DM 10 million, 1959), AEG-Telefunken (DM 4 million, 1960), Siemens (DM 7 million, 1962/1966), Rheinmetall (DM 2.5 million, 1966), Feldmühle-Nobel/Deutsche Bank (DM 5 million, 1986), and Daimler-Benz (DM 20 million, 1988); see Carolina Krussig: "Settlements between Single Firms and the Jewish Claims Conference before the Foundation Act 2000." In: Zumbansen, ed.: *Zwangsarbeit im Dritten Reich*, pp. 173–197, here p. 197. Mark Spoerer puts the compensation payments by I.G. Farben at DM 30 million (Spoerer: *Zwangsarbeit*, p. 248); on this topic, see note 81.

70 Author's own calculations, based on Spoerer: *Zwangsarbeit*, p. 248.

71 See Thomas Kuczynski: "Entschädigungsansprüche für Zwangsarbeit im ‚Dritten Reich'." In: Winkler, ed.: *Stiften gehen*, pp. 170–185; on the question of the size of compensation payments to Nazi forced laborers, see below, in section "Compensation of Nazi Forced Laborers after 1990."

his labor." On June 10, 1953, the court awarded him the full amount he had sought.[72]

The representatives of German business, in particular the Federation of German Industry (Bundesverband der Deutschen Industrie, BDI), saw the judgment as "a dangerous precedent" for the entire national economy, as the BDI's chief executive officer, Gustav Stein, informed Hans Globke (CDU), the current undersecretary in the Office of the Federal Chancellor, who had been employed by the Nazi regime as a lawyer.[73] The *Frankfurter Allgemeine Zeitung* warned of an "avalanche of compensation claims that would soar into the billions" and pointed out that "700 firms alone … [employed] concentration camp prisoners during the war";[74] for *Die Zeit,* reparations claims that were generalized in such a manner threatened even "[to] overturn the political and social order."[75]

I.G. Farben i.L., whose representatives included Otto Kranzbühler, who had defended both Grand Admiral Karl Dönitz in the Trial of the Major War Criminals at Nuremberg and Friedrich Flick and Alfried Krupp in the Subsequent Nuremberg Trials,[76] first appealed from the decision. The rejection of Wollheim's claims was substantiated as follows:

> [The] main arguments [of IG Farben i.L.] emphasize that the deployment of prisoners for the Buna and gasoline plants which were to be built at the command of the highest authorities of the Reich was arranged through Göring and Himmler in February 1941, without any possibility on the part of former IG executives to undertake anything in opposition to it or to the subsequent allocation of prisoners for labor deployment in the plant, and therefore that no responsibility exists on the part of the IG for any adverse effects of a psychological or physical nature on the prisoners due to their confinement and labor deployment, because the IG had no influence on the imprisonment or internment or labor deployment of the prisoners and also

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72 Here and below, see Wolfgang Benz: "Der Wollheim-Prozess. Zwangsarbeit für IG Farben in Auschwitz." In: Herbst / Goschler: *Wiedergutmachung*, pp. 303–326. On the Wollheim lawsuit, see also Joachim Rumpf: "Norbert Wollheim's Lawsuit against I.G. Farbenindustrie AG." Fritz Bauer Institut / Goethe Universität Frankfurt am Main: Norbert Wollheim Memorial 2010, http://www.wollheim-memorial.de/files/1059/original/pdf_Joachim_Rumpf_Norbert_Wollheims_Lawsuit_against_IG_Farbenindustrie_AG_iL.pdf.

73 Gustav Stein (BDI) to Staatssekretär Globke, March 15, 1956, Bundesarchiv Koblenz, BA 136, vol. 1154, cited in Benz: "Wollheim-Prozess," p. 323.

74 "Wollheim contra I.G. Farben. Der Schadensersatzprozeß in der zweiten Instanz." In: *Frankfurter Allgemeine Zeitung*, March 1, 1955, cited in Benz: "Wollheim-Prozess," p. 317.

75 "Wollheim contra I.G. Farben." In: *Die Zeit*, June 25, 1953, cited in Benz: "Wollheim-Prozess," p. 313.

76 See Ferencz: *Less Than Slaves*, p. 43–44.

> could affect their living conditions only to a limited extent, as the exclusive supervision of the prisoners by the SS was an obstacle to everything else.[77]

Subsequent payment of the withheld pay was refused, with the explanation

> That the IG was forced to pay the SS a certain amount daily for each prisoner who performed labor, quite apart from the fact that the plant management had made available for the prisoners a fully equipped camp, Monowitz, which originally was intended for free German laborers, in order to spare them the 9-kilometer march on foot from the main camp of the SS in Auschwitz to the plant, and that food rations were delivered by the plant to the Monowitz concentration camp and other facilities were created, to the extent possible in the circumstances of those times.[78]

Next, in the spring of 1954, the organizations representing the Nazis' Jewish victims, with the Claims Conference leading the way, took up the cause. Herbert Schönfeld from the Bonn liaison office of the Claims Conference met with Walter Schmidt, one of the liquidators of I.G. Farben. This meeting was described as follows by Benjamin Ferencz, then director of the Claims Conference in Germany and a leading player in the subsequent negotiations with I.G. Farben i.L.: "Schmidt was convinced that in the end Wollheim would lose his lawsuit, but he was mindful of the bad impression that the rejection of a small slave-labor claim would have on Farben's reputation abroad."[79] Farben had to worry in particular about its image in the United States, where it was seeking the return of its assets, which had been sequestrated as enemy property by the U.S. trustee. In this connection, the following fear could not be dismissed:

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77 I.G. Farbenindustrie Aktiengesellschaft in Liquidation: *Bericht über die Entflechtung und Liquidation. Vorgelegt aus Anlass der Ordentlichen Hauptversammlung am 27. Mai 1955* (Frankfurt am Main: self-published, 1955), p. 66.

78 I.G. Farbenindustrie Aktiengesellschaft in Liquidation: *Bericht über die Entflechtung*, p. 66. Otto Kranzbühler was still explaining in a TV interview in 1984: "In no way do I accept the claim that an unusually large number of people from concentration camps who were deployed in industry perished. On the contrary, the people were really glad to get out and go to industries, because there they had decent food and a possibility of survival, which, as is well known, was not available to them in the extermination camps." Lea Rosh: *Vernichtung durch Arbeit*, TV documentary, aired on November 4, 1984, by Sender Freies Berlin (SFB), cited in Karl Brozik: "Die Entschädigung von nationalsozialistischer Zwangsarbeit durch deutsche Firmen." In: Barwig / Saathoff / Weyde, eds.: *Entschädigung für NS-Zwangsarbeit*, pp. 33–47, here p. 36.

79 Ferencz: *Less Than Slaves*, p. 42.

> If the Wollheim case was not settled and it became necessary to hear witnesses in the United States describe what had happened to them at Auschwitz, the impact of American public opinion might destroy all German hopes of ever getting the former German properties released.[80]

In February 1957, after two conciliation hearings in court had failed to produce results, I.G. Farben and the Claims Conference finally signed an agreement, which originally provided for compensation in the amount of DM 30 million for former Jewish and non-Jewish forced laborers.[81] Under the terms of the agreement, no further compensation claims could be addressed to I.G. Farben; a German federal law was adopted specifically for that purpose, stating that all claims against Farben would lapse if not filed by December 31, 1957, at the latest.[82]

An arrangement similar to that concluded with I.G. Farben i.L. was reached between the Claims Conference and Krupp in 1959. Here too, a damage suit filed by a former Jewish concentration camp prisoner and forced laborer was the origin of the altercations: In 1943, Mordechai S. had been selected by Krupp employees at Auschwitz for forced labor in the corporation's munitions factory in Markstädt, and for that purpose he was confined in the Fünfteichen concentration camp. While working for Krupp, Mordechai S. lost a thumb and an index finger;

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80 Ibid., p. 45. In this connection, Ferencz makes reference to analogous articles in the U.S. press, for example, in *The Reporter,* June 14, 1956, and in *Chemical Week*, April 14, 1956.

81 According to Benjamin B. Ferencz, at that time director of the Jewish Restitution Successor Organization (JRSO) and the United Restitution Organization (URO), DM 30 million was the sum originally intended for compensation payments; of that amount, I.G. Farben i.L. planned to reserve a total of DM 6 million—DM 3 million respectively—for non-Jewish applicants and for court costs. After the negotiations ended in 1958, I.G. Farben finally paid DM 27 million to the Claims Conference; the latter, however, had to retain DM 3 million for new court costs potentially arising for Farben. In late 1961, I.G. Farben asked that DM 2 million be given back to satisfy the claims of non-Jewish Polish forced laborers. The new negotiations dragged on until mid-1963. Then the Claims Conference returned DM 750,000 to I.G. Farben; see Ferencz: *Less Than Slaves*, pp. 58ff. On the course of the negotiations and payments for the Wollheim Agreement, see Katharina Stengel: "Competition for Scant Funds. Jewish, Polish, and Communist Auschwitz Prisoners in the Negotiations for the Wollheim Agreement." Fritz Bauer Institut / Goethe Universität Frankfurt am Main: Norbert Wollheim Memorial 2010, http://www.wollheim-memorial.de/files/1064/original/pdf_Katharina_Stengel_Competition_for_Scant_Funds_Jewish_Polish_and_Communist_Prisoners_of_Auschwitz_in_the_Negotiations_for_the_Wollheim_Agreement.pdf.

82 Gesetz über den Aufruf der Gläubiger der I.G. Farbenindustrie Aktiengesellschaft in Abwicklung [Law on the Call to Creditors of I.G. Farbenindustrie Aktiengesellschaft in Liquidation], May 27, 1957, *Bundesgesetzblatt* 1957, Part I, p. 569; see also Ferencz: *Less Than Slaves*, p. 50 (note 38) and Benz: "Wollheim-Prozess," p. 325 (note 46).

in January 1954 he filed a civil action with the regional court (*Landgericht*) in Essen.[83]

According to Benjamin Ferencz, Mordechai S. was "stone poor," so that the need to pay the accruing court costs forced him to reduce his original claim and thus the "value in dispute" from DM 40,000 to DM 2,000,[84] while the company's owner, Alfried Krupp, was considered "the wealthiest man in Europe—and perhaps the world."[85] To ensure in this situation "that the former forced laborers [would have] their claims taken seriously," Ferencz said it was necessary "for the Jewish organizations to roll out some of their own big guns."[86] Jacob Blaustein, the senior vice president of the Claims Conference, turned to John J. McCloy, the former U.S. High Commissioner in Germany, who in 1952 had granted amnesty to Krupp, a convicted war criminal. As a result, McCloy met with Berthold Beitz, Alfried Krupp's right-hand man, and passed on to him a suggestion from the Claims Conference that essentially was in line with the settlement with I.G. Farben. Krupp was interested at first, but emphasized that he wanted any payment to come at his own initiative and not be the result of outside pressures.[87]

As months went by without any action, however, Ernst Katzenstein went to see Beitz on behalf of the Claims Conference; also present was Hermann Maschke, who had defended Alfried Krupp before the U.S. Military Tribunal in Nuremberg. According to Maschke, Ferencz reports, "Krupp's connection with forced labor was purely nominal, it was only for a brief period, very few people were involved, they were all well-treated, and the inmates were really employed by the Reich or some other company."[88] Prolonged negotiations, involving, among others, Nahum Goldmann, the president of the World Jewish Congress, were the consequence. Responsiveness on Krupp's part was evident only after Benjamin Ferencz, on the one hand, was preparing a class action by all known Krupp forced laborers before the New York Supreme Court[89] and Krupp, on the other, became concerned with revamping his image as a war criminal and "Cannon

83 See Ferencz: *Less Than Slaves*, p. 76.
84 Ibid.
85 *Time,* August 19, 1957, cited in Ferencz: *Less Than Slaves*, p. 76.
86 Ferencz: *Less Than Slaves*, p. 76.
87 See ibid., p. 78.
88 Ibid., pp. 79–80.
89 See ibid., p. 85.

King," not least because of his business interests in the United States.[90] On December 23, 1959, Krupp and the Claims Conference reached an agreement stipulating that the former would pay a maximum of DM 10 million to former Jewish forced laborers in his plants, provided they had been imprisoned in concentration camps. Krupp excluded any legal obligation, while simultaneously obtaining from the Claims Conference the assurance that no further litigation would be undertaken in this matter.[91]

Before the Claims Conference successfully concluded a compensation agreement with AEG-Telefunken in 1960, it had pooled more than a hundred claims by former forced laborers with a view to creating a legal precedent. This had proved necessary because AEG-Telefunken had always rejected victims' requests for compensation—the management had declared that it was neither aware of the employment of forced laborers under National Socialism nor responsible for such employment.[92] After three years of negotiating, the firm finally acknowledged that it had employed 750 Jewish forced laborers, and paid DM 4 million to the Claims Conference, which enabled the latter to "compensate" a total of 2,223 forced laborers.[93] AEG-Telefunken insisted that it was acting "without recognition of legal obligations" and without in any way setting an example for "other German companies"; the firm was assured by the Claims Conference that the agreement would be kept secret and that AEG-Telefunken would be relieved "of all further liability" with regard to Jewish forced laborers and their heirs.[94]

Negotiations with Siemens, which led to an agreement between the electrical combine and the Claims Conference in 1962, were necessary because the individuals who had requested compensation from the firm for the work they performed had been "turned down cold."[95] Siemens declared that it had been compelled to employ concentration camp inmates and had treated them well, so that in the final analysis the prisoners were glad to be working for the firm.[96] Siemens demonstrated a willingness to compromise only when the Claims Conference

90 On this topic, see also Peer Heinelt: *‚PR-Päpste'. Die kontinuierlichen Karrieren von Carl Hundhausen, Albert Oeckl und Franz Ronneberger* (Berlin: Dietz, 2003), pp. 68ff.
91 Presented in detail in the introduction.
92 See Ferencz: *Less Than Slaves*, pp. 106ff.
93 See ibid., pp. 113ff.
94 Ibid., p. 115.
95 Ibid., p. 117.
96 See ibid., pp. 117–122.

presented it with an in-house report dated October 1945, which refuted these assertions and further put the number of concentration camp prisoners employed at 3,900: almost twice the number conceded as the maximum by Walther Bottermann, head of the Siemens legal department.[97] In the end, Siemens paid a total of DM 7 million to the Claims Conference, though without acknowledging "any legal *or moral* obligation" therefor, and with the suggestion that the employment of concentration camp prisoners had not been the responsibility of the firm but the "result of National Socialist duress." The Claims Conference guaranteed Siemens that it would "save Siemens and all of its agents forever harmless from all claims which might be brought by Jewish concentration camp inmates or their heirs in connection with forced labor for any of the Siemens companies."[98]

The agreement concluded with the armaments firm Rheinmetall regarding compensation for Jewish forced laborers in 1966 was the result of a hard-fought struggle by the Claims Conference. It started with the damage suit filed in 1957 with the local court in Berlin-Charlottenburg by two women who had been concentration camp prisoners and between July 1944 and March 1945 did forced labor in a Rheinmetall plant near the Buchenwald concentration camp, in inhumane conditions.[99] Though the suit was rejected, "help [came] from an unexpected quarter," as Ferencz reports: in 1964 it became known that a consortium led by Rheinmetall was negotiating with the U.S. Department of Defense to obtain a contract for making guns for the U.S. Army, worth $50 million.[100] Rheinmetall, on whose supervisory board Otto Kranzbühler served as deputy chairman, had defended itself in court with arguments that by then were sufficiently familiar, and it saw no reason to deal with the claims of former forced laborers.[101] This changed only when B'nai B'rith, the largest Jewish lodge in the United States and one of the 23 member organizations of the Claims Conference, launched an effective public campaign against the arms-maker in early 1966, making reference to the firm's role in the Third Reich and gaining broad coverage in the American

97 See ibid., p. 120.
98 See ibid., pp. 121–122; citations, ibid.
99 See ibid., p. 130f.
100 See ibid., p. 133f., citation, ibid.
101 See ibid., p. 131. According to Ferencz, the Rheinmetall lawyers spoke of the plaintiffs' complaint as a *Hassgesang*, or "song of hate," and referred to the claimants as "other Jewish imports" (letter from Wehle to Schmidt, November 13, 1959, cited in Ferencz: *Less Than Slaves*, p. 131).

press. This campaign involved, along with several members of Congress, the mayor of Springfield, MA, which was the home of an armaments company that was competing with Rheinmetall for the Pentagon contract.[102]

At the intercession of FRG Minister of Defense Kai Uwe von Hassel and U.S. Secretary of Defense Robert McNamara, the consortium of firms participating in the manufacture of the guns—which included, besides Rheinmetall, Hispano-Suiza and Diehl—declared its willingness to pay a total of DM 2.5 million to the Claims Conference for compensation of former Jewish forced laborers.[103] For Rheinmetall, this transfer of funds did not signify an admission of moral responsibility, much less of guilt, but instead was an investment in a lucrative business, as the firm itself announced: In 1969, when the *Comité International des Camps* (CIC) called upon Rheinmetall to extend compensation also to the non-Jewish concentration camp inmates who had done forced labor in the firm's plants, Rheinmetall replied that the "well-known payment to the Jewish Claims Conference had been made only in view of […] a prospective contract," and therefore the "firm's payments" had been made on a "quid pro quo" basis.[104]

On January 7, 1970, Eberhard von Brauchitsch, executive partner of Flick KG, announced on behalf of Friedrich Flick the foundering of the negotiations under way with the Claims Conference since 1963, regarding compensation of concentration camp prisoners who had worked for the Flick subsidiary Dynamit Nobel, a producer of ammunition.[105] Even the intervention of John J. McCloy did not swing the balance in favor of the Claims Conference. As Jacob Blaustein reported, in negotiating with McCloy, von Brauchitsch clung stubbornly to his position that there was no legal obligation on Flick's part to make compensation payments, and as a result, McCloy "[had] to run out of the room several times to vomit."[106]

In 1985, when it became known that Friedrich-Karl Flick, Friedrich Flick's son, was planning to sell the Flick shares in Dynamit Nobel, now operating under the

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102 Depicted in detail in Ferencz: *Less Than Slaves*, pp. 137ff.
103 See ibid., p. 147f.
104 Letter from Rheinmetall Berlin AG to the CIC, February 14, 1969, cited in Hermann Langbein: "Entschädigung für KZ-Häftlinge? Ein Erfahrungsbericht." In: Herbst / Goschler: *Wiedergutmachung*, pp. 327–339, here p. 338. Auschwitz survivor Hermann Langbein was one of the CIC representatives.
105 See Ferencz: *Less Than Slaves*, p. 168.
106 Letter from Blaustein to Ernst Katzenstein, June 26, 1969, cited in Ferencz: *Less Than Slaves*, p. 167.

name of Feldmühle Nobel AG, to Deutsche Bank, Robert Kempner, a member of the team of prosecutors at the Nuremberg Trial of the Major War Criminals, wrote to Friedrich Christians, the chairman of the board of Deutsche Bank.[107] Kempner asked Christians to pay compensation to Dynamit Nobel's former forced laborers to keep "the smell of blood from clinging […] to the new shares."[108] Kempner's attempt was made at a time when historical-political initiatives in the FRG were beginning to deal with the topic of Nazi forced labor, the Green Party was making this the subject of parliamentary initiatives, and the European Parliament announced a related resolution. Against this backdrop, Christians' reply—that the problem raised by Kempner was not the problem of Deutsche Bank but of Flick, if indeed it was a problem at all—unleashed a public controversy.[109] It reached its pinnacle when Hermann Fellner, a member of the Bundestag who represented the CSU, said in an interview with the Cologne *Express* that he saw "neither a legal nor a moral basis […] for a claim on the part of the Jews," but instead had the impression that "the Jews are quick to pipe up when they hear the tinkling of money anywhere in German cash-registers."[110]

On January 8, 1986, to prevent further damage to the image of Deutsche Bank and avoid endangering the profitable resale of the Dynamit Nobel shares, Dynamit Nobel announced, in agreement with Deutsche Bank, that it would pay DM 5 million to the Claims Conference for "humanitarian reasons." The amount was equivalent to one-tenth of a percent of the sum raised for acquisition of the Flick block of shares from Deutsche Bank.[111]

Two years later, Daimler-Benz declared its willingness to pay a total of DM 20 million to the Claims Conference and the German Red Cross, as well as its affiliated organizations in Belgium, France, and the Netherlands. This pledge, however, was accompanied by the guideline that the funds had to be used exclu-

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107 Presented in detail in Krussig: "Settlements," p. 195; below, see also the account in Brozik: "Entschädigung von nationalsozialistischer Zwangsarbeit," p. 45f.

108 Cited in Dirk Cornelsen: "Den neuen Aktien sollte nicht der Geruch von Blut anhaften." In: *Frankfurter Rundschau,* January 1, 1986, p. 1.

109 Krussig makes reference to numerous articles in the press on this topic, for example, in *Die Zeit,* January 17, 1986*, Die Tageszeitung,* January 10, 1986, *Frankfurter Rundschau,* January 9, 1986, and *Der Spiegel* 3/1986, see Krussig: "Settlements," p. 195.

110 Cited in Cornelsen: "Den neuen Aktien…," p. 1.

111 See Krussig: "Settlements," p. 196.

sively for the institutional support of retirement homes and nursing homes.[112] As late as January 1987, the firm had told the CIC, with reference to ongoing in-house research on the topic of slave labor, that it was unable "to comment [...] on the issue of compensation" until the research was concluded.[113]

Starting in the mid-1980s, many local and regional historical-political initiatives were concerned with the "forgotten victims" of National Socialism; their aim was to lend emphasis to the compensation demands of forced laborers, Sinti and Roma, people who had undergone forcible sterilization, Jehovah's Witnesses, conscientious objectors, "antisocial elements," or homosexuals by collecting information about the socially tabooed and historiographically poorly researched history of these groups of victims, in order to justify their compensation claims in that way.[114] In particular, the Green Party factions in the European Parliament and in the Bundestag picked up on these suggestions: In 1984, the Green Party faction in the Bundestag initiated the motion to establish a nationwide compensation fund for Nazi forced laborers, to be financed by German industry.[115] The motion was reintroduced after the European Parliament, in a resolution on January 16, 1986, had called on "all German companies that employed slave laborers [...] to set up a fund for compensation payments to the victims of forced labor."[116] Similarly, an identically worded motion introduced on April 6, 1987,[117] was rejected by the parliamentary majority. Therefore, on June 6, 1989, the Green Party presented a draft law and two motions in the Bundestag, providing for compensation of former forced laborers through a federal foundation.[118] The SPD faction introduced its own motion with an identical aim on September 14,

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112 See Brozik: "Entschädigung von nationalsozialistischer Zwangsarbeit," p. 46.

113 Letter from Daimler Benz AG to the CIC, January 15, 1987, cited in Langbein: "Entschädigung für KZ-Häftlinge?," p. 338.

114 On this, see, among others, Romey / Hamburger Initiative "Anerkennung Aller NS-Opfer": *Wiedergutgemacht?.*

115 Here and below, see Günter Saathoff: "Die politischen Auseinandersetzungen über die Entschädigung von NS-Zwangsarbeit im Deutschen Bundestag – politische und rechtliche Aspekte." In: Barwig / Saathoff / Weyde, eds.: *Entschädigung für NS-Zwangsarbeit*, pp. 49–63, esp. p. 55f.

116 Resolution of the European Parliament, January 16, 1986, Dok. B 2-1475/85/rev., cited in Saathoff: "Die politischen Auseinandersetzungen," p. 54.

117 *BT-Drucksache* 11/142, http://dip21.bundestag.de/dip21/btd/11/001/1100142.pdf (accessed on September 17, 2008).

118 *BT-Drucksache* 11/4704, http://dip21.bundestag.de/dip21/btd/11/047/1104704.pdf, 11/4705, http://dip21.bundestag.de/dip21/btd/11/047/1104705.pdf, and 11/4706, http://dip21.bundestag.de/dip21/btd/11/047/1104706.pdf (accessed on September 17, 2008).

1989; moreover, it provided for a way to offset the disadvantages that potential claimants would have under existing pension law.[119]

Those parliamentary initiatives, though they brought about no fundamental change of course in the FRG's compensation policy, did make it possible to hold two public hearings before the Bundestag's Committee on Domestic Affairs: On June 24, 1987, these hearings involved discussion of "Reparations and Compensation for National Socialist Injustice," and on December 14, 1989, the topic was "Compensation for Nazi Forced Labor." Here, for the first time, "forgotten" victims of Nazism or their representatives also had a chance to speak.[120] While the first hearings resulted at least in provision of "hardship funds" at the federal and state levels for seriously disadvantaged groups of victims such as Sinti and Roma or people who had undergone forcible sterilization,[121] the question of compensation for Nazi forced laborers remained open.

Supplement 1: The Compensation of Nazi Forced Laborers in the GDR

Fundamentally, the Socialist Unity Party of Germany (Sozialistische Einheitspartei Deutschlands, SED), the state party of the GDR, took the view that the GDR was a new creation under international law, and therefore the East German state—in contrast to the FRG, which had become the legal successor of the "Third Reich"—was not to be held responsible for the crimes of fascism under Hitler.[122] One can concur with that inasmuch as Nazi criminals and war criminals, as well as the large industries that supported the National Socialist regime, already had been dispossessed in the Soviet occupation zone (SBZ), and the judiciary and administration had been largely cleansed of Nazi functionaries, while no comparable development was to be noted in the western zones of occupation and the

119 *BT-Drucksache* 11/5176, http://dip21.bundestag.de/dip21/btd/11/051/1105176.pdf (accessed on September 17, 2008).

120 The hearings are documented in Deutscher Bundestag / Referat Öffentlichkeitsarbeit, ed.: *Wiedergutmachung und Entschädigung für nationalsozialistisches Unrecht. Öffentliche Anhörung des Innenausschusses des Deutschen Bundestages am 24. Juni 1987* (Bonn: Deutscher Bundestag, 1987), and Deutscher Bundestag / Referat Öffentlichkeitsarbeit, ed.: *Entschädigung für NS-Zwangsarbeit. Öffentliche Anhörung des Innenausschusses des deutschen Bundestages am 14.12.1989* (Bonn: Deutscher Bundestag, 1990).

121 On this topic, see also Wolfgang Lüder: "Entschädigung post BEG: Härtefonds und Vermögensgesetz." In: Brozik / Matschke, eds.: *Luxemburger Abkommen*, pp. 114–125.

122 See Doehring / Fehn / Hockerts: *Jahrhundertschuld*, p. 134f.

FRG. Compensation payments to the State of Israel or the Claims Conference[123] were rejected on the grounds that the GDR had already fulfilled its reparations obligations arising from the *Potsdam Agreement*. An estimated two thirds of all dismantling, withdrawals from current production, and expenditures on occupation costs had fallen upon the SBZ, of course,[124] but the argument of equal sharing of the burdens is misleading: By rejecting the Israeli compensation claims, the state and party leadership of the GDR wanted to force the Arab states to recognize the GDR under international law and simultaneously—at least to the extent that "monopoly capital" was concerned—to use the "Aryanizations" of the Nazi era for the "building of socialism," not shying away from passing off anti-Semitic stereotypes as political arguments.[125]

Former Nazi forced laborers, mostly foreigners, had an opportunity to obtain individual compensation payments only if they—along the lines of the regulations of the West German BEG—were classified as having been persecuted for racial or political reasons and had made their residence in the GDR, which in the vast majority of instances was not the case.[126] Otherwise, like many other groups of the Nazis' victims (people who were forcibly sterilized,[127] homosexuals, Sinti and

123 On the negotiations between the Claims Conference and the GDR, see in particular Timm: *Alles umsonst?.*

124 See Doehring / Fehn / Hockerts: *Jahrhundertschuld*, p. 129.

125 This became very clear during the proceedings against Paul Merker, a member of the SED Politburo, in the early 1950s. The Central Committee of the SED characterized him as a "subject of the U.S. financial oligarchy," who "demanded compensation for the Jewish assets only to enable U.S. financial capital to penetrate Germany." Further, Merker was accused of having falsely presented "the monopoly capitalists' maximum profits, which had been squeezed out of the German and foreign workers, as the alleged assets of the Jewish people." In reality, "in the 'Aryanization' of this capital, only the profits of 'Jewish' monopoly capitalists were shifted into the hands of 'Aryan' monopoly capitalists." See Doehring / Fehn / Hockerts: *Jahrhundertschuld*, p. 132f.; as well as Rolf Surmann: "‚Wiedergutmachung'. Deutschland zahlt heim. Reparationen, Restitution und Entschädigung von NS-Opfern im historischen Aufriss." In: Rolf Surmann / Dieter Schröder, eds.: *Der lange Schatten der NS-Diktatur. Texte zur Debatte um Raubgold und Entschädigung* (Münster: Unrast, 1999), pp. 61–72, hier p. 69f., and Hölscher: *NS-Verfolgte im ‚antifaschistischen Staat'*, p. 105; citations, ibid.

126 See Doehring / Fehn / Hockerts: *Jahrhundertschuld*, p. 130; and also Surmann: "‚Wiedergutmachung'," p. 69.

127 According to the *Richtlinien für die Anerkennung als Verfolgte des Naziregimes,* dated February 10, 1950, and published in the *Gesetzblatt der DDR*, no. 14, February 18, 1950, pp. 92ff., recognition as Nazi persecutees was granted only to those individuals who had been "sterilized for political or racial reasons" (§ 1, Para. 18), not, however, to those whose sterilization was based on eugenic diagnoses; see Hölscher: *NS-Verfolgte im ‚antifaschistischen Staat'*, p. 91; citation, ibid.

Roma,[128] "antisocial elements"), they generally were excluded from all forms of *Wiedergutmachung*.[129]

The *Richtlinien für die Anerkennung als Verfolgte des Naziregimes* (Guidelines for Recognition as Persecutees of the Nazi Regime), drawn up in 1950 in coordination with the Ministry for Labor and Health, the Central Committee of the SED, and the Union of Persecutees of the Nazi Regime (Vereinigung der Verfolgten des Naziregimes, VVN), also explicitly provided for revocation of persecutee status if the applicant seemed apt to disparage the "political significance" of the persecutees of the Nazi regime or to aid and abet "neofascist efforts," which were not more precisely defined.[130] In this way, the state and party leadership of the GDR created the tool for recognition or revocation of persecutee status on the basis of criteria of political expediency, which in the 1950–1953 period led to the denial of victim status, on grounds of insufficient political reliability, to numerous victims of National Socialism, such as Jehovah's Witnesses, Jews suspected of "Zionism," members of church-based resistance groups, Nazi persecutees connected with the military revolt of July 20, 1944, or Communist oppositionists.[131] The linking of state welfare for Nazi persecutees with the demand for political loyalty finally affected the VVN as well: Because it opposed the social and political integration of former NSDAP members into the "building of socialism" in the GDR, its "self-dissolution" ensued in February 1953, in response to pressure from the SED leaders under Walter Ulbricht.[132]

Under Ulbricht's successor, Erich Honecker, the Presidium of the Council of Ministers of the GDR decided on March 18, 1974, to rescind the 1950 *Richtlinien für die Anerkennung als Verfolgte des Naziregimes* as of December 31, 1975; from then on, only so-called special cases were to be dealt with.[133] In the course of

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128 The 1950 guidelines for recognition of Nazi persecutees required not only residence in the GDR, but also made "registration with the appropriate employment office" a prerequisite for Sinti and Roma; see Hölscher: *NS-Verfolgte im ‚antifaschistischen Staat',* p. 80; citation, ibid.

129 See ibid., pp. 71ff.

130 *Richtlinien für die Anerkennung als Verfolgte des Naziregimes*, February 10, 1950, p. 94, cited in ibid., p. 111f.

131 See Hölscher: *NS-Verfolgte im ‚antifaschistischen Staat',* pp. 114ff.; also Groehler: "Verfolgten- und Opfergruppen," p. 24f.

132 See Hölscher: *NS-Verfolgte im ‚antifaschistischen Staat',* pp. 162ff.; also Groehler: "Verfolgten- und Opfergruppen," p. 27f.

133 These included in particular applications from Nazi victims who had moved to the GDR or acquired GDR citizenship only after the deadlines stated in the guidelines for recognition, applications from individuals who managed to give proof of their struggle of resistance in a foreign

the political "turnaround" in the GDR, this decision was reversed again by the Council of Ministers on March 1, 1990;[134] linked with this reversal was a call for the Committee of Antifascist Resistance Fighters in the GDR (Komitee der Antifaschistischen Widerstandskämpfer in der DDR), which had been created after the dissolution of the VVN, to make a new ruling on rejected applications for recognition or to correct decisions that had been reached. It was designed to apply to various groups, including, among others, "people sentenced by the Wehrmacht, people subjected to forcible sterilization, persecuted homosexuals, and people [...] persecuted for religious activity," as well as "those […] comrades whose recognition had been unlawfully revoked […] for political reasons."[135] The initiative, however, produced no further practical consequences.

The Compensation of Nazi Forced Laborers since 1990

On September 12, 1990, the *Treaty on the Final Settlement with Respect to Germany (Two Plus Four Treaty)* was signed by the FRG and the GDR (the "Two") and the four Allied Powers of the anti-Hitler coalition (the United States, France, Great Britain, the Soviet Union). Though the agreement contains no explicit statements about the reparations to be paid by a united German state as a consequence of World War II, it does represent a "conclusive settlement of the reparations issue" in terms of a peace-treaty equivalent: Article 5 of the *London Debt Agreement,* according to the prevailing legal consensus, from this time on "no longer was an obstacle to the individual claims of forced laborers."[136]

Under Helmut Kohl (CDU), however, the German government succeeded in avoiding the setting out of these facts and circumstances in writing. To forestall compensation claims from so-called *Ostverfolgte* (East European victims of Nazism), "global agreements" that continued the "new Eastern policy" of the Brandt era were concluded with Poland, the Russian Federation, Ukraine, Belarus, the Baltic states, and the Czech Republic between 1991 and 1998. In view of

country only after December 31, 1975, and applications from Soviet citizens who lived in the GDR; see Hölscher: *NS-Verfolgte im ‚antifaschistischen Staat',* p. 221.

134 See ibid., p. 221.

135 Press release of the Komitee der Antifaschistischen Widerstandskämpfer on the resolution of the Council of Ministers on March 1, 1990, cited in ibid., p. 221.

136 Hennies: *Entschädigung für NS-Zwangsarbeit*, p. 57.

the large number of victims of Nazism who were still alive (more than 2 million), they received pension payments amounting to only DM 20 to 40 per month, sums that could, without exaggeration, be referred to as a mere pittance.[137] Following a class action suit filed by the former forced laborer Hugo Princz and fellow victims against the FRG and several German companies in the United States, agreements were concluded between the U.S. government and the German government in 1995 and 1998: These agreements provided for compensation of the plaintiffs in the amount of DM 3.1 million; however, the money was paid not to the victims but to an intermediary organization, to avoid giving the impression that the government of the FRG felt obligated to pay such compensation and was recognizing its responsibility to do so.[138] In other words: The FRG consistently pursued the course it had adopted in the 1950s and abided by its rejection of comprehensive compensation for forced labor performed for the Nazis.

In the mid-1990s, in connection with the conflict over the return of the assets in the so-called dormant accounts in Swiss banks and the debate over the participation of numerous countries in trafficking in the gold and art treasures looted by the Nazis, German companies also came under the spotlight of world attention:[139] Class actions filed in U.S. courts by Holocaust survivors charged, among others, the insurance company Allianz with failure to properly fulfill contractual obligations to policyholders, and Deutsche Bank and Dresdner Bank with participation in trafficking in gold looted by the Nazis. Class-action lawsuits also targeted German industrial firms that had profited from exploitation of forced laborers during World War II. Broad media coverage in the United States ensured that in the end, the mergers of Deutsche Bank and Bankers Trust and of Daimler-Benz and Chrysler threatened to founder on the opposition of the American shareholders.

Earlier there had been numerous attempts by former forced laborers to obtain from their German "employers" an old-age pension or a settlement to compensate for the withheld wages and damage to their health. Their inquiries usually were answered by the PR departments of the firms to which they wrote—generally in the form of a mixture of feigned regret and sheer cynicism. As evidence,

137 See Surmann: "Trugbild," p. 199; also Hockerts: "Entschädigung für NS-Verfolgte," pp. 51ff.
138 See Hennies: *Entschädigung für NS-Zwangsarbeit*, p. 67.

we will cite a representative example, taken from a letter written to the former forced laborer Eugeniusz Szobski by Daimler-Benz in 1991:

> At the forefront of the determination to make no individual payments was the thought that without more red tape, it would scarcely be possible to establish the fact of the forced labor beyond doubt. Such red tape would have led to lengthy proceedings, but above all to fresh injustice, which would have been more apt to open old wounds than to heal them. Moreover, a decision in favor of individual payments would have benefited those persons who have regained their emotional and physical strength over the years and may conceivably be living in easy circumstances.[140]

Against the backdrop of class actions and calls for boycotts of German companies in the United States, Federal Chancellor Gerhard Schröder (SPD) had sought to make contact with German industry even before assuming the duties of office in Germany's "Red-Green" coalition government in October 1998. On February 12, 1999, delegates of the federal government met for the first time with representatives of 12 large German firms: Those represented were Allianz, Bayer, BASF, Hoechst, Degussa-Hüls, BMW, DaimlerChrysler, VW, Dresdner Bank, Deutsche Bank, Thyssen Krupp, and Siemens. A joint communiqué issued afterward stated that the meeting had served the purpose of "meeting complaints, especially class actions in the United States, head-on and putting an end to campaigns against the reputation of our country and its economy."[141] Plans called for setting up a compensation fund for former forced laborers, especially those from Eastern Europe, with an endowment of DM 2 to 3 billion; in return, the U.S. government—represented by Deputy Treasury Secretary Stuart Eizenstat—was supposed to guarantee that in the future, no more lawsuits against German firms would be accepted by U.S. courts ("legal certainty"). The German Association for Small and Medium-sized Businesses (*Bundesverband der mittelständischen Wirtschaft*) refused to allow any participation by its member firms in the planned compensation, on the grounds that forced labor in the Nazi era had been purely a "concern of big industry."[142] The forced laborers who had worked in the agricultural sector, too, were to go away empty-handed; the use

139 On this topic, see also Surmann / Schröder, eds.: *Der lange Schatten der NS-Diktatur*.
140 Cited in Lothar Evers: "Verhandlungen konnte man das eigentlich nicht nennen…" In: Winkler, ed.: *Stiften gehen*, pp. 222–234, here p. 224f.
141 Cited in Ulla Jelpke / Rüdiger Lötzer: "Geblieben ist der Skandal – ein Gesetz zum Schutz der deutschen Wirtschaft." In: Winkler, ed.: *Stiften gehen*, pp. 235–250, here p. 239.

of Polish farm workers was described by the federal government's chief negotiator in the effort of German business to establish a foundation, Count Otto Lambsdorff[143] (FDP), as a "natural historical phenomenon."[144]

As Lothar Evers, a participant in the negotiations and the spokesman of the Federal Association Advice and Information for Victims of the Nazis (*Bundesverband Beratung und Information für NS-Verfolgte*), reports, the German Foreign Office, headed by Joschka Fischer (Bündnis 90/Die Grünen), even went so far as to claim in an amicus curiae letter for Degussa that "no German firm" was able to "elude the requirements of the wartime economy during the reign of the Nazis."[145] German newspapers with close ideological ties to big industries were not the only ones to pick up on statements of this kind; *Spiegel* publisher Rudolf Augstein spoke openly of the "power" of "world Jewry," which was making use of several "sharks in lawyers' robes" to implement its material interests.[146] In particular, the accusation that the lawyers of the Nazis' victims enriched themselves at their clients' expense persists stubbornly to this very day in the scholarly literature on compensation for Nazi forced labor.[147]

In early October 1999, high-profile protests by the participating associations of victims in the United States accelerated the negotiations, which had been proceeding doggedly thus far: The *New York Times* and other publications carried full-page ads pointing out that in the "Third Reich," Bayer and Daimler-Benz had profited from the exploitation of forced laborers. Headed "Bayer's Biggest Headache," one such ad said that the "headaches" of the chemical concern could not

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142 Cited in Jelpke / Lötzer: "Geblieben ist der Skandal," p. 240.

143 In summer 1999, Lambsdorff replaced the previous federal commissioner, Bodo Hombach (SPD). On August 22, 1999, several Holocaust survivors, including Esther Bejarano, Kurt Goldstein, and Peter Gingold from the International Auschwitz Committee called upon the German government to replace Lambsdorff. They invoked the results of research by the Wuppertal historian Stephan Stracke, showing that in the early 1950s, Lambsdorff, in his capacity as chairman of the FDP district Aachen-Land, had supported Nazi war criminals like the high-ranking SS officer Werner Best and called for them to be granted amnesty; see http://www.hagalil.com/archiv/99/08/lambsdorf.htm (accessed on February 18, 2008).

144 Cited in Thomas Kleine-Brockhoff: "8 Milliarden und mehr. Das müssen Staat und Wirtschaft den Zwangsarbeitern bieten." In: *Die Zeit,* November 11, 1999, p. 1.

145 Cited in Evers: "Verhandlungen," p. 231.

146 Rudolf Augstein: "Wir sind alle verletzbar." In: *Der Spiegel,* November 30, 1998, cited in Gruppe 3: "Ressentiment und Rancune," p. 262.

147 For example, in Hennies: *Entschädigung für NS-Zwangsarbeit*, p. 70; also, Günter Saathoff: "Entschädigung für Zwangsarbeiter? Entstehung und Leistungen der Bundesstiftung ‚Erinnerung, Verantwortung und Zukunft' im Kontext der Debatte um die ‚vergessenen Opfer'." In: Hockerts / Kuller, eds.: *Nach der Verfolgung*, pp. 241–273, here pp. 249f. and 259.

be cured by its product, aspirin, because they were caused by "slave labor and experiments on human beings" during the Nazi era.[148] Another notice displayed the Mercedes logo, a star, with the words "Design. Performance. Slave Labor" as a caption; below it, the former forced laborer Irving Kempler told how he, as a 15-year-old concentration camp inmate, was "selected" by Daimler-Benz to work in one of the firm's factories after his parents and siblings had already been murdered. The ads were signed by the American Jewish Congress, Polish American Congress, and others.[149]

Subsequently, the German government and industries felt compelled to sweeten the offer: Now the amount to be paid out was upped to DM 6 billion, a sum that again met with a very high-visibility rejection on the part of the victims' associations and the lawyers representing them. B'nai B'rith placed a full-page ad in the *New York Times* on October 15, 1999, headlined "German Companies' Disgraceful Offer to the Forced Laborers." It contained the following: "Germany and the German industrial firms, the heirs to these huge crimes, want to make us believe that they dug deep in their pockets for this shameful offer [and] that a wage of pennies per hour is fair and dignified."[150] The ad was signed by the American Jewish Congress and the Polish American Congress and also by the Bundesverband Beratung und Information für NS-Verfolgte.[151]

Even before the German government and business sector presented the new offer, Lambsdorff had declared in an interview with *Focus* magazine that there would "be an outcry of indignation from the plaintiffs' lawyers and victims' organizations" regardless of the amount he named; this procedure, he said, was just part and parcel of the "dramaturgy of such negotiations."[152] The *Frankfurter Allgemeine Zeitung* described the offer as a "thoroughly […] adequate basis for an agreement" and added that there existed "no grounds for the wails of protest

148 *New York Times,* October 4, 1999, cited in Jelpke / Lötzer: "Geblieben ist der Skandal," p. 241.
149 See Jelpke / Lötzer: "Geblieben ist der Skandal."
150 *New York Times,* October 15, 1999, cited in Carola Kaps: "Die Opfer sind über das deutsche Angebot empört." In: *Frankfurter Allgemeine Zeitung,* October 18, 1999, p. 3.
151 See Kaps: "Die Opfer."
152 "Egal welchen Betrag ich nenne." Interview with Count Otto Lambsdorff. In: *Focus*, October 4, 1999, p. 28.

from the American lawyers, who work for high contingency fees, and for the smear campaigns in America against German companies."[153]

After further controversy, the German government and the economic sector offered in November 1999 to pay DM 8 billion. When this offer, too, was turned down by the victims' attorneys as "completely unacceptable,"[154] Wolfgang Gibowski, the spokesman of the "German Economy Foundation Initiative," stated that "to the other side" it must "be clear that the negotiations are now at the touch-and-go point" and ruled out further talks with the lawyers: "There's nothing more to be negotiated here, the eight billion will not be increased"; between the German government and German industry, he added, there was "not a millimeter of difference" on this question.[155]

In this situation, the German government, headed by Gerhard Schröder, also came under domestic pressure; the criticism was sparked primarily by German industry's reluctance to pay. On December 8, 1999, *Die Tageszeitung* published a list from the American Jewish Committee containing the names of 267 German enterprises that had refused to pay money into the projected compensation fund.[156] Linked with the publication was an indirect appeal to "all those among us who are ashamed at the sight of the holdouts" to ask themselves "whether they are still willing to buy products from firms that abide by their 'No' on the foundation initiative."[157] A few days later, the governments of the United States and the FRG agreed, in direct consultations, on the payment of DM 10 billion to former forced laborers: a sum that the American Jewish Committee had suggested as early as November.[158] The money was to be paid half by the government and half by the business sector and placed into a federal foundation, "Remembrance, Responsibility and Future" ("Erinnerung, Verantwortung und Zukunft," EVZ). As Gibowski put it, the agreement would result in "clear legal certainty" for German enterprises, safeguarding them against the filing of complaints in the United

153 J. J.: "Das Angebot." In: *Frankfurter Allgemeine Zeitung,* October 9, 1999, p. 1.
154 As described by Washington attorney Michael Hausfeld, cited in A. Förster / P. De Thier: "Deutsches Angebot stösst auf Ablehnung." In: *Berliner Zeitung,* December 8, 1999, p. 8.
155 Cited in Förster / Thier: "Deutsches Angebot."
156 "Letzte Mahnung." In: *Die Tageszeitung,* December 8, 1999, pp. 1ff.
157 Ibid., p. 1.
158 See "Nur 22 antworteten, aber niemand sagte, Ja wir machen mit." Interview with Deidre Berger, assistant director of the Berlin office of the American Jewish Committee. In: *Süddeutsche Zeitung,* November 19, 1999, p. 7.

States.[159] The president of the Federation of German Industry (*Bundesverband der Deutschen Industrie*, BDI), Hans-Olaf Henkel, called on the economic sector "to participate now in the foundation initiative."[160]

On July 6, 2000, the German Bundestag approved the Law on the Creation of a Foundation "Remembrance, Responsibility, and Future" (*Gesetz zur Errichtung einer Stiftung "Erinnerung, Verantwortung und Zukunft"*), which had been introduced by the German government and coordinated with all the parliamentary parties.[161] Count Otto Lambsdorff described the draft law on this occasion as a "great achievement" by an "all-party coalition" and once again mentioned the quid pro quo expected by the FRG: "The class actions and individual lawsuits that have been consolidated by a U.S. judge must be taken off the table." Lambsdorff described as a "public scandal" the fact that the "majority of enterprises" had not yet joined the "German Economy Foundation Initiative" at this time; there was, he said, "no reason to evade the overall responsibility of the German economy."[162] The entire CDU/CSU parliamentary group delivered an official "comment on the vote," in which it affirmed that "the question of reparations is not being restated by this law either."[163]

A few days later, on July 17, 2000, two agreements between the negotiating parties were concluded in Berlin. First, the governments of the FRG, the United States, the Republic of Belarus, the Czech Republic, Israel, Poland, the Russian Federation, and Ukraine, as well as the Claims Conference and the Foundation Initiative, issued a joint statement. In it, the sum of DM 10 billion was set as the conclusive upper limit and the federal foundation was appointed as the sole and exclusive forum for assertion of claims by former forced laborers; existence of a legal claim to payments from the foundation's fund was denied.[164] In the *Berlin Agreement* concluded the same day between the governments of the United States and the FRG, the U.S. government declared that it would make no repa-

159 Cited in "Erste Zahlungen an Zwangsarbeiter im Sommer 2000." In: *Frankfurter Allgemeine Zeitung,* December 16, 1999, p. 2.
160 Ibid.
161 Voting in favor were 556 members of the German parliament; 42 members from the CDU/CSU party faction voted against; and 22 members from the ranks of the CDU/CSU, FDP, and PDS abstained; see Richard Meng: "Bundestag billigt Entschädigung." In: *Frankfurter Rundschau,* July 7, 2000, p. 1.
162 Cited in Meng: "Bundestag billigt Entschädigung."
163 Ibid.

rations demands of any kind on the FRG and would ward off further compensation claims by third parties resulting from the events of World War II or from the persecutions of the Nazi era.[165] In addition, the U.S. government announced the issuing of a statement of interest, saying that the settlement of the question of compensation for Nazi forced laborers that was set in motion by establishing the foundation was "in the interest of U.S. foreign policy."[166]

The Foundation Act, which came into force on August 2, 2000, regulates the magnitude and the terms of the payments to be made by the foundation:[167] DM 8.1 billion was set aside for compensation of the former forced laborers; DM 1 billion was to be used to offset "financial losses"; DM 50 million was to benefit the victims of experimentation on human beings and the "children of forced laborers"; DM 700 million was reserved for scholarly or pedagogical efforts to "come to terms with" the National Socialist past; DM 200 million was to be used for administration of the foundation itself. Payments were not made directly to the victims, however, but to international institutions such as the Claims Conference and to "partner organizations" in Russia and in the countries of the Baltic region and Eastern Europe.[168]

In the best position were forced laborers who had been held in concentration camps, ghettos, and "other places of confinement"; they could claim up to DM 15,000. Deported forced laborers who were deployed in business, industry, and trade and in the public sector were to receive up to DM 5,000; others, such as those employed in agriculture, could apply for payment of an equal amount—but only if the implementation regulations and financial capabilities of the individual "partner organizations" allowed this. After the Bundestag had established the presence of "sufficient legal certainty" for German companies on May 30, 2001, the verification of applications from the "partner organizations" began; then, as

164 See Hennies: *Entschädigung für NS-Zwangsarbeit*, p. 190.
165 Ibid., p. 191.
166 Berliner Abkommen/Berlin Agreement, July 17, 2000, Art. 2 Para. 1, cited in Hennies: *Entschädigung für NS-Zwangsarbeit*, p. 191.
167 Here and below, see Saathoff: "Entschädigung für Zwangsarbeiter?," pp. 249ff. A copy of the Foundation Act can be found in Spiliotis: *Verantwortung und Rechtsfrieden*, pp. 274–285.
168 The funds were distributed to the International Organization of Migration (IOM), the Claims Conference, and victims' organizations in Belarus, Poland, Russia, Estonia, Latvia, Lithuania, the Czech Republic, and Ukraine; see Saathoff: "Entschädigung für Zwangsarbeiter?," p. 252.

of June, the first compensation payments started. In 2006, the foundation discontinued its activities, except for the financing of pedagogical projects.[169]
More than a year before the first former Nazi forced laborers received monies from the foundation's fund, the incumbent German Finance Minister Hans Eichel (SPD) wrote a circular letter directing all tax offices to classify payments by German industry to the foundation as tax deductible, and he took this opportunity to make clear once again the German government's legal opinion on the compensation of Nazi forced laborers:

> These payments are […] voluntary payments without any legal obligation. They are used […] in pursuit of the goal of creating a basis for facing the class actions in the United States and deflecting the threatened loss of image that is associated with them, both in the market there and worldwide, as well as avoiding economic sanctions in the form of withdrawals of licenses and calls for boycotts. The contributions thus serve to secure and maintain the reputation of the business sector, that is, the competitive position of the firms. Thus the operational factual connection between expenditures and operation, as required under § 4 Par. 4 EStG [Income Tax Act – P.H.], is present. […] *In particular, the payments do not represent a payment of wages ex post facto, as the previous forced employment did not constitute a 'service' within the meaning of the tax laws*[.][170]

In fact, according to an expert assessment by economist Thomas Kuczynski, there can be no question of back pay for wages that were denied the former forced laborers. Based on his calculations, the state and German businesses would have had to raise at least DM 180 billion.[171] Kuczynski demonstrates that by using forced labor, German industry saved one-fifth of the labor costs as measured by the standard gross wages for German "core workers." Because pay

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169 According to the Foundation Act (§ 2, Para. 2), this includes projects that "serve international understanding, the interests of survivors of the National Socialist regime, youth exchanges, social justice, the memory of the threat presented by totalitarian systems and dictatorship, and international cooperation in the area of humanitarianism"; in addition, encouragement is to be given to projects "commemorating and in honor of the victims of National Socialist injustice who did not survive […] in the interest of their heirs"; cited in Spiliotis: *Verantwortung und Rechtsfrieden*, p. 275.

170 "Rundschreiben des Bundesministeriums der Finanzen an die Finanzämter," February 3, 2000, cited in Jelpke / Lötzer: "Geblieben ist der Skandal," pp. 246–247. Because the payments to the foundation's fund were tax-deductible, the actual share to be provided by German business was halved, so that the German government eventually had to pay around DM 7.5 billion, three-fourths rather than half of the originally agreed-upon amount of compensation.

171 On this, see Thomas Kuczynski: "Entschädigungsansprüche für Zwangsarbeit im ‚Dritten Reich'." In: Winkler, ed.: *Stiften gehen*, pp. 170–185. A complete copy of the expert assessment, "Entschädigungsansprüche für Zwangsarbeit im ‚Dritten Reich' auf der Basis der damals erzielten zusätzlichen Einnahmen und Gewinne," is found in *1999. Zeitschrift für Sozialgeschichte des 20. und 21. Jahrhunderts* 15 (2000), no. 1, pp. 15–63.

in German industry averaged 28 percent more than the standard gross wage, however, and the forced laborers were compelled to work an average of 72 to 80 hours per week, this saving—as in the case of the Flick concern, for example—increased to one-third of the wages due. The taxes and contributions exacted from the forced laborers, which in the case of the "Eastern workers" from the Soviet Union totaled 45 percent of the gross wage, flowed directly to the social insurance carriers and the state coffers. According to Kuczynski's calculations, the forced laborers who were deported to Germany and employed in German commercial concerns worked a total of 21.385 million years, with wages in the amount of RM 16.23 billion denied to them. Using those figures, and taking into account the evolution of wages as well as purchasing power, Kuczynski comes up with the aforementioned amount of DM 180.499 billion.

The economist Herbert Schui has pointed out that the economic recovery of West Germany after World War II would have "proceeded far less swiftly"[172] without the service of the forced laborers during the war. The surplus skimmed from them by means of wage dumping and special extra contributions was invested, so that gross industrial capital assets within West German territory in 1948, despite destruction, dismantling, and restitution, still exceeded the 1935 level by almost 14 percent; when the war ended, this value had even approached 27 percent.[173]

The Foundation Act was criticized by the PDS (Party of Democratic Socialism) and the extra-parliamentary left in the FRG, with the criticism sparked above all by the size of the compensation payments and their decisive codification, as well as by the exclusion of entire groups of victims:[174] Completely excluded from any compensation by the Foundation Act were those forced laborers who had been deployed in their places of residence outside Germany or in German private

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172 Herbert Schui: "Zwangsarbeit und Wirtschaftswunder." In: *Blätter für deutsche und internationale Politik* 45 (2000), no. 2, pp. 199–203, here p. 203.

173 See ibid. In this regard, see also Werner Abelshauser: "Kriegswirtschaft und Wirtschaftswunder. Deutschlands wirtschaftliche Mobilisierung für den Zweiten Weltkrieg und die Folgen für die Nachkriegszeit." In: *Vierteljahrshefte für Zeitgeschichte* 47 (1999), pp. 503–538.

174 Under the headline "Sofortige Entschädigungszahlung an jeden Zwangsarbeiter statt Schlussstrich für die Täter," the *Frankfurter Rundschau* of March 21, 2000, carried a corresponding full-page ad, which was signed by several hundred individuals, including numerous union members and union officials; as previously, at a demonstration in Frankfurt am Main on December 16, 1999, with several hundred participants, there was a demand for immediate payment of the wages withheld from the Nazi forced laborers, "with no ifs, ands, or buts."

households;[175] also excluded were all prisoners of war, even if, like the Soviet POWs, they were imprisoned in concentration camp conditions and used for forced labor, as well as the "Italian military internees."[176] The latter, like the Polish POWs, had been forcibly converted to the status of civilian workers by the Nazi authorities and imprisoned in inhumane conditions. But while the Polish POWs were included in the group of beneficiaries, the "Italian military internees"—based on an opinion written by international legal expert Christian Tomuschat—were defined as being outside the purview of the Foundation Act.[177] The criticism that was voiced was ineffectual, however; thus Count Otto Lambsdorff described the calculations of Kuczynski, for example, as "dubious," without feeling at the same time forced to justify this scathing assessment.[178]

In 1997, the Center of Organizations of Holocaust Survivors, which is based in Israel, ascertained the following: The FRG was paying just around DM 13 billion annually for ongoing monthly pensions to "war victims,"[179] among whom were more than 78,000 former members of the SS and other Nazi criminals.[180] By contrast, the expenditures for the Jewish Holocaust survivors and the non-Jewish

175 On this, see Ulrike Winkler: "‚Hauswirtschaftliche Ostarbeiterinnen'—Zwangsarbeit in deutschen Haushalten." In: Winkler, ed.: *Stiften gehen*, pp. 148–168. The Catholic and Protestant churches also employed forced laborers during World War II, whom they compensated, in some cases symbolically, in the context of the foundation's establishment; on this, see Karl-Joseph Hummel / Christoph Kösters, eds.: *Zwangsarbeit und katholische Kirche 1939–1945. Geschichte und Erinnerung, Entschädigung und Versöhnung. Eine Dokumentation* (Paderborn: Schöningh, 2008); also Jochen-Christoph Kaiser, ed.: *Zwangsarbeit in Kirche und Diakonie 1939–45* (Stuttgart: Kohlhammer, 2005).

176 On this, see also Rolf Surmann: "Kasse zu. Die ‚Zwangsarbeiterstiftung' hat ihre Zahlungen an NS-Opfer beendet. Ein Resümee." In: *Konkret* 50 (2006), no. 3, p. 33.

177 Tomuschat, in his expert assessment for the German government, holds the view that the conversion of the Italian POWs to the status of civilian workers was "merely a relabeling," which was contrary to international law and thus invalid, and for that reason the "Italian military internees" remained prisoners of war despite the change in designation; the deportation of POWs into the German Reich and their involvement in forced labor, in turn, were covered by the *ius in bello,* he argues, and therefore no payments from the foundation's fund are owed to the "Italian military internees"; Christian Tomuschat: "Leistungsberechtigung der Italienischen Militärinternierten nach dem Gesetz zur Errichtung einer Stiftung ‚Erinnerung, Verantwortung und Zukunft'?," unpublished expert assessment for the German government, pp. 18 and 35, cited in Hennies: *Entschädigung für NS-Zwangsarbeit*, pp. 161 and 219. In this regard, see also Roland Müller: "Kreative Fallgestaltung. Warum die ehemaligen italienischen NS-Zwangsarbeiter von den Deutschen keinerlei Entschädigung erhalten." In: *Konkret* 51 (2007), no. 1, pp. 28ff.

178 See Kuczynski: "Entschädigungsansprüche," p. 170f.; citation, ibid.

179 See Zentrum der Organisationen der Holocaust-Überlebenden in Israel: *Die doppelte Moral der deutschen Gesetzgebung für ‚Wiedergutmachung'. Was erhalten die Überlebenden des Holocaust und was die Naziverbrecher?* (Jerusalem: self-published, 1997), p. 32.

180 See ibid., p. 8.

victims of Nazi persecution totaled DM 2.2 billion annually,[181] which amounted to scarcely 0.5 percent of the federal budget at that time, DM 441.82 billion.[182] Even the payment of DM 10 billion to former forced laborers is unlikely to have altered these relationships in any way, especially since, as demonstrated, it can be assumed with some justification that back pay in the amount of DM 180 billion would have been owed to these laborers.[183]

Supplement 2: The Compensation of Nazi Forced Laborers in Austria

Within the territory of the Republic of Austria ("*Ostmark*"), which was "annexed" to Germany in 1938, just about one million forced laborers were deployed during World War II. These civilian laborers, prisoners of war, concentration camp inmates, and, after 1944, also Hungarian Jews worked primarily in agriculture, in the building trades, and for the German state railroad, the Reichsbahn.[184] Their compensation claims were denied after 1945 on the grounds that the Republic of Austria had been attacked in 1938 and therefore had not existed until the end of the war, and for that reason was not to be held liable for the crimes of the Nazi regime (the "occupation theory" or "victim thesis"). In the process, it was denied that Austrians—frequently in leading roles—were participants in Nazi crimes or profited from them.[185]

In the context of the international controversy over the gold looted by the Nazis and the so-called dormant bank accounts, analogously to the situation in Germany, it was Austrian credit institutions in particular that were confronted with class actions filed in U.S. courts in the late 1990s, which also caused the issue of

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181 See ibid., p. 32.

182 Information provided to the author by the Federal Finance Ministry in a telephone conversation on August 4, 2008.

183 See Kuczynski: "Entschädigungsansprüche," p. 171.

184 See Clemens Jabloner et al.: *Schlussbericht der Historikerkommission der Republik Österreich*, pp. 193ff.

185 See ibid., pp. 21ff. and 241ff. It can be assumed that former Jewish forced laborers who were living in Austria also received payments in the context of the agreements reached in the 1950s and 1960s between German industries and the Claims Conference; according to Ferencz, for example, applicants from Austria received payments as a result of the agreement with Siemens; see Ferencz: *Less Than Slaves*, p. 127. In addition, Spoerer mentions that the funds in the amount of DM 101 million that were supplied to Austria by the FRG in the context of the 1961 "Kreuznach Agreement" also benefited former forced laborers in some cases; see Spoerer: *Zwangsarbeit*, p. 246. On the Kreuznach Agreement, see Féaux de la Croix: "Staatsvertragliche Ergänzungen der Entschädigung." In: Féaux de la Croix / Rumpf: *Der Werdegang des Entschädigungsrechts*, pp. 288–309.

compensation for forced laborers to become pressing once again.[186] Like the FRG, Austria, too, linked compensation payments to the guarantee of comprehensive "legal repose" by the U.S. government and the plaintiffs.[187]

The Reconciliation Fund Act (*Versöhnungsfondsgesetz*) passed by the Austrian parliament in 2000 expressly emphasizes that these payments to former forced laborers were "voluntary payments" from the Republic of Austria, to which there was "no legal entitlement."[188] Precise distinctions were made among the groups of beneficiaries, as was the case with the German Foundation Act; the amounts of money were staggered in a similar way. From the outset, former POWs were excluded from any form of material compensation. In Austria, as in Germany, there also was no thought of compensation payments for the wages that had been denied the forced laborers. Unlike Germany, however, Austria granted regular payments also to people who were used for forced labor in agriculture and in the area of personal services. The "Reconciliation Fund" finally received an endowment of around 436 million euros.[189]

Conclusion

Stuart Eizenstat, the U.S. mediator at the time, has this to say about the conclusion of the negotiation on compensation, which resulted in the creation of the German Foundation "Remembrance, Responsibility, and Future" (Bundesstiftung "Erinnerung, Verantwortung und Zukunft," EVZ) in the summer of 2000, and about the attitude adopted in the course of this by Manfred Gentz, CFO of DaimlerChrysler and a protagonist of the "German Economy Foundation Initiative":

> With a great relief at having salvaged the agreement, I met the German delegation in their holding room off the main hallway of the Foreign Ministry, expecting congratulations. Instead I was met with a stunning invective few American officials have ever heard from a negotiator in a friendly country, particularly one from the private sector. […] Gentz concluded his bill of particulars against the U.S. government by a final insult. He was "heavily disappointed," he

186 See Jabloner et al.: *Schlussbericht der Historikerkommission der Republik Österreich*, p. 17f. and p. 25.
187 Ibid., pp. 34ff.
188 Here and below, see ibid., p. 438f.
189 See ibid.

> said, and far from the partnership we had promised […] to secure legal peace, there had been "really a dictatorship of the U.S."[190]

Gentz's statement corresponds, insofar as it criticizes the position of power occupied by the United States in the negotiations regarding compensation, to the position of Féaux de la Croix described in the third chapter; the latter saw a "kernel of truth" in the assertion that West Germany's "policy of *Wiedergutmachung*" was the price exacted for "American Jewry's allowing its president to accept the Federal Republic as a partner in the community of Western nations."[191] Further, Féaux de la Croix points out here at the same time that the West German "reparations payments" were made in exchange for a quid pro quo in the form of the economic, political, and military integration of the FRG with the West. The "principle of something in return for something," is also named by the "German Economy Foundation Initiative" as a definitive structural element of the negotiations regarding compensation for Nazi forced laborers.[192] Willingness to accept moral and financial "responsibility" was linked to the assurance of "legal repose," protection against class actions by former forced laborers in the United States.

The latter—in the words of the long-time representative of the Claims Conference in the FRG, Holocaust survivor Karl Brozik—seems like a "familiar pattern,"[193] if one takes another look at the disputes, depicted in the third chapter, between German industrial firms and the Claims Conference regarding compensation of Jewish forced laborers in the years preceding 1990. In most cases, the firms concerned were willing to negotiate only after former forced laborers had sued them for damages. The goal of the firms' representatives in the negotiations was always to keep the amount of compensation to be paid as low as possible. After years of consultation, payment usually was made only after the American press took up the matter and the economic interests of the firms concerned were affected directly. Basically, the firms in question emphasized that their "willingness to compromise" was due to a "moral and humanitarian attitude" and refused any acknowledgment of a legal obligation to pay compensation monies, while insist-

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190 Eizenstat: *Imperfect Justice*, pp. 275–277.
191 Féaux de la Croix: "Vom Unrecht zur Entschädigung," p. 10.
192 Spiliotis: *Verantwortung und Rechtsfrieden*, p. 195. In his foreword, Manfred Gentz writes that the German Industry Foundation Initiative had "engaged [Spiliotis] to give an account of the history of this unique project" (ibid., p. 11).
193 Brozik: "Entschädigung von nationalsozialistischer Zwangsarbeit," p. 43.

ing in return that the representatives of the Claims Conference must forego legal measures against them for all time.

Before 1990, the line of argument taken by the firms' representatives in the negotiations with the Claims Conference consisted of refusing all responsibility for the deployment of forced laborers, on the grounds that the firms concerned had been compelled by the Nazi authorities to use forced labor.[194] Often this statement was flanked by an allegation that can only be described as cynical, in view of the inhumane working conditions: that Jewish concentration camp prisoners in particular owed their survival to their deployment as industrial workers. At the time of the final payments, the "German Economy Foundation Initiative" stated that the firms that once had employed forced laborers saw themselves as having neither "direct guilt" nor any "legal obligation" to pay compensation; it was the National Socialist state, they argued, that had been the "perpetrator of injustice," to which they had "contributed."[195] Whether the firms' change in position as expressed here is only gradual in nature, or whether from now on the "breakthrough of a value change" is to be detected, as sometimes happens in the scholarly literature on this topic,[196] will be left here for the readers to judge.

However, the question arises whether, as Walter Schwarz believes, "a German […] [has] the right to be proud of the work of reparation,"[197] or whether the position of FDP politician Wolfgang Lüder is to be accepted instead. Lüder, who campaigned during the late 1980s and early 1990s in the Bundestag for compensation of the "forgotten victims" of National Socialism, sums up his experiences as follows:

> I look back with satisfaction on the fact that I helped, that help was granted to many thousands of people. Even though it was little, it was at least something. But I look back with bit-

194 This interpretation was popularized by Kannapin in his book *Wirtschaft unter Zwang*. The author states that the German business sector "[was] not to be held responsible either legally or politically […] for measures that justified wrongful acts in connection with the labor deployment of non-voluntary workers" and had "no influence on issues of labor and employment law, particularly with regard to the conditions of service of the non-voluntary workers." The "organizational interlacing of the concentration camps with factories and industrial facilities," he says, occurred "in the context of the *Bombenkrieg* [Allied aerial bombing campaign]" and "in the course of a development that Himmler sought, for the purpose of bringing the running of the German economy under his influence" (Kannapin: *Wirtschaft unter Zwang*, p. 296).

195 Spiliotis: *Verantwortung und Rechtsfrieden*, p. 194.

196 For example, in Saathoff: "Entschädigung für Zwangsarbeiter?," p. 263; also Hockerts: "Entschädigung für NS-Verfolgte," p. 56.

197 Schwarz: "Wiedergutmachung nationalsozialistischen Unrechts," p. 54.

> terness on the way the topic was treated—only by bringing pressure to bear was any progress made, only by persistently and skillfully working with the bad conscience of the opposing side. You had to take advantage of the decisive moments so that anything at all could be "broken open" with the support of friends from other countries. Without foreign support, no progress […] was made.[198]

On the preceding pages, numerous pieces of evidence have been presented, showing that Lüder's assessment comes very close to the reality and can be generalized to cover the entire political process of compensating the victims of the Nazis; therefore, a few notes may suffice here: The FRG legislation on compensation, which involved the exclusion of numerous groups of victims, came about only as a result of pressure from the Western Allies of World War II, especially the United States, and from the Claims Conference; the same was true of the "global agreements" that were concluded before 1990. Until the late 1990s, German courts, referencing the *London Debt Agreement,* referred former forced laborers to the right of reparation and thus to a claim to be raised only in the distant future. Not until 2000 did a regulation for compensation of Nazi forced laborers come into being, after class actions filed by former forced laborers in the United States and high-profile protests by the organizations representing them threatened to damage the image and the export figures of the firms being sued, as well as the international reputation of the FRG in general. Nonetheless, even in this context several groups of victims were excluded, such as the members of the Red Army and the "Italian military internees" who were used for forced labor in brutal conditions.

Although the "German Economy Foundation Initiative" admits that it is "questionable [...] whether the foundation would have come to exist [...] without the complex structure of international politics, public pressure, legal and moral imperatives, and economic interest,"[199] the EVZ is regarded as a "model" for the future, as an "approach to a solution for cases of coping with collective damage," or even as a "blueprint" for other nations to "deal across legal barriers with past injustice of historic dimensions."[200] Against the background of the present study, such opinions must be met with skepticism. Rather, the suspicion thrusts itself

198 Lüder: "Entschädigung post BEG," p. 124.
199 Spiliotis: *Verantwortung und Rechtsfrieden*, p. 205.
200 Ibid., p. 202f.

upon us that a virtue is being made out of a necessity here by manipulating, to the advantage of German interests, the laborious and conflict-fraught creation of the EVZ and the associated memory of the National Socialist policies of war, exploitation, and extermination—along these lines: We Germans have not only learned from our history, but also have found a way of handling it that allows us to serve as a model for others.

(Translated from German by Kathleen Luft)