

REPARATION FOR HOLOCAUST-ERA HUMAN RIGHTS VIOLATIONS

For the past 8–10 years, the media has been flooded with news related to Holocaust survivors' demands for reparation. An entire industry sprang to life: from lawyers helping Holocaust survivors bring claims at (mostly United States) courts, to historians researching the recent past. From media experts and political advisers working on the claims and ensuring negotiations, to social workers and institutions helping former victims fill the endless flow of application forms. Not to mention the many agencies and authorities that supply the claimants with certificates proving that the victims suffered the horrendous fates that most people today know only from books and documentaries.

Criticism of these people's work is never-ending, but so is the praise of the many Holocaust survivors who have benefited from one of the new programmes. After the initial successful claims, representatives of other victim groups started bringing different claims against various governments and companies. Some have been successful, while others have not. The list is endless.

On the following pages, I will attempt to briefly discuss the history of compensation: why and how the plea of Holocaust survivors changed international legal norms. I will also present some ideas on why certain groups litigate successfully for restitution and/or compensation while other groups fail in such attempts.

At the end of this paper, there is a short list of the terminology that I use.

I. HISTORY OF REPARATION: WHY AND HOW THE PLEA OF HOLOCAUST SURVIVORS CHANGED INTERNATIONAL LEGAL NORMS.

As a unique act in the history of diplomacy, after the Second World War Germany¹ entered into a reparation agreement with Israel. Germany was not bound by international law to compensate Jews and the State of Israel; nor was there a precedent for such a payment. Moreover, in the wake of the Cold War, Germany faced little pressure from the international community. However, Germany was ready, to some extent, to atone for its past. The funds collected under the Luxembourg Agreement² helped Israel put its

¹ For the purpose of this paper, the Federal Republic of Germany and the unified Germany are both referred to as 'Germany'.

² See N. Sagi, *German Reparations. A History of the Negotiations* (Jerusalem: The Magnes Press, The Hebrew University, 1980), pp. 212–41.

economy on a secure footing. The German State also helped, through the Conference on Jewish Material Claims Against Germany, Inc.,³ to rehabilitate Jewish communities around the world. Payments given to Jewish individuals helped them to rebuild and rehabilitate their lives.

Although the Luxembourg Agreement opened a new chapter in the history of reparation, the notion of reparation for property rights violations was not invented in the 1940s. It has roots at least as far back as Roman law.⁴ However, the legal concept of reparation for human rights violations resulting in non-pecuniary losses was a new concept. By the Second World War, international law clearly governed violations committed by one state against another state or against citizens of another state. The question that emerged during the Holocaust was whether a state could be compelled by international law to offer reparation to its own citizens.

There are historical precedents for a state providing restitution to people who were its own citizens at the time of the confiscation of their property.⁵ If one examines the period preceding the 20th century, one finds that, in general, provisions for restitution of property were included in most treaties concluded between The Treaty of Westphalia in 1648 and the Final Act of the Congress of Vienna in 1815. However, in the following 100 years, no treaty contained such a provision. In 1920, the Treaty of Sèvres not only included provisions about the restitution of property but also ruled that the heirless properties of people such as the Armenians that had been exterminated by the Turks, should be transferred to the community of which such owners had been members.

Restitution of property confiscated on political grounds is not a measure of rare occurrence, and certainly not an event unique in history, as was believed in 1945. Restitution is claimed and effected whenever the political situation is such as to render it possible – sometimes even after a long lapse of time, as the example of the Huguenots [can show].⁶

Therefore, restitution, even decades after the original injustices, was not merely a development of the 20th century. Funds were also established before the Second World War to handle compensation claims, and heirless assets were also transferred to the survivor community of the deceased victim. However, until the Second World War, under international law, based

³ The Conference on Jewish Material Claims Against Germany, Inc., was set up in New York by various Jewish organizations in order to coordinate their efforts to secure reparation from Germany.

⁴ G. Weis, 'Restitution Through the Ages' (Noah Barou Memorial Lecture 1962) (London: WJC, British Section, 1962), p. 7.

⁵ George Weis, who was the Secretary-General of the Austrian Relief Fund after the Second World War, gives a short summary of such cases. See Weis, 'Restitution Through the Ages' (Noah Barou Memorial Lecture 1962), note 4.

⁶ Between 1790 and 1825, French law provided for the restitution of properties of Huguenots and other emigrants whose properties had been confiscated after 1666. See Weis, 'Restitution Through the Ages' (Noah Barou Memorial Lecture 1962), note 4, pp. 10–17.

on the theory that an injury to an alien was an injury to the state of the alien's nationality, states were responsible only for injuries to aliens, not to their own citizens. This left not only stateless people, but also the nationals of an offending state, without international legal protection.⁷

During the Second World War, various authors tried to justify intervention on behalf of stateless people and nationals persecuted by their own state, based on the right of intervention according to the so-called "general principles of law recognised by civilised nations" and humanitarian law. It was argued that Germany should pay reparations under international law. Dr. Nehemiah Robinson, head of the Institute of Jewish Affairs of the World Jewish Congress, argued that no country might confiscate property without just compensation under the common law of civilised nations.⁸ Dr. Siegfried Moses, in his book, *The Compensation Claim of the Jews* (1943), asserted that reparations after the Second World War should be different from the Treaty of Versailles of 1919. Reparation should be granted to all victims of injustice, not only citizens of the victorious powers. It should include the citizens of Germany itself.⁹ They both argued for reparation for individuals and the Jewish communities. Dr. Moses also advocated the establishment of an international organisation to handle reparations. There were two other experienced legal scholars who examined the issue of reparation from the international legal point of view, Siegfried Goldschmidt and Hugo Marx. Siegfried Goldschmidt¹⁰ argued that the individual should be recognised as a subject in international law. Hugo Marx¹¹ suggested that German Jews should be classified as minorities, and therefore be protected by international law.

As the Second World War progressed, it became clear not only to the Jews but also to the international legal community that the redress of violations carried out by Hitler's Germany would require a substantially greater effort on the part of the international community than its endeavours in the aftermath of the First World War. In 1943 Raphael Lemkin¹² proposed the following:

7 T. Buergenthal, *International Human Rights* (St. Paul: West Publishing Co., 1988), p. 11.

8 Dr. N. Robinson, *Indemnification and Reparations: Jewish Aspects*, ed. E. Fischhoff (New York: Institute of Jewish Affairs of the American Jewish Congress and World Jewish Congress, 1944). See K. Schwerin, 'German Compensation for the Victims of Nazi Persecution', *Northwestern University Law Review* 479, p. 487.

9 N. Bentwich, 'Nazi Spoliation and German Restitution: The Work of the United Restitution Office', *Yearbook of the Leo Baeck Institute* 10, p. 207.

10 S. Goldschmidt: *Legal Claims against Germany: Compensation for Losses Resulting from Anti-Racial Measures* (New York: The Dryden Press, 1945). See Schwerin, 'German Compensation for the Victims of Nazi Persecution', *Northwestern University Law Review* 479, note 8, p. 487.

11 H. Marx: *The Case of the German Jews: A Legal Basis for the Claims of the German Jews Against Germany* (New York: The Egmont Press, 1944). See Schwerin, 'German Compensation for the Victims of Nazi Persecution', *Northwestern University Law Review* 479, note 8, p. 487.

12 A "noted Polish scholar and attorney," who prepared his study for the Division of International Law of the Carnegie Endowment for International Peace. See R. Lemkin, *Axis Rule in Occupied Europe* (New York: Howard Fertig, 1973).

(A)n administrative-judicial machinery for the restoration of the property to dispossessed persons of occupied countries, namely, one international property restitution agency, national property restitution agencies in each interested country, and property restitution tribunals, both national and international.¹³

Lemkin also stipulated that German companies who exploited workers from the occupied countries should reimburse the exploited workers, or the German State should do so.

The intent of the international community to press for reparation was first expressed in the Inter-Allied Declaration Against Acts of Dispossession Committed in Territories Under Enemy Occupation or Control, issued in London on 5 January 1943.¹⁴ The Final Act of the Paris Conference on Reparation made the plan of reparation tangible on 21 December 1945 (the “Final Act”). By that time it was obvious that even a complex property restitution/compensation programme could not address the plight of the surviving Holocaust victims. Therefore, under the Final Act, the Inter-Allied Reparation Agency was to provide from seized German assets up to an amount of \$25 million to assist Nazi victims. The funds were not to be used to compensate individual claims, but to rehabilitate and resettle victims. The Final Act provided two more bases for refugee assistance: “non-monetary gold” (all gold and other valuables taken by the Nazis from individuals, mostly Jews) found in Germany and heirless assets. Recognising that most of the Holocaust survivors were of Jewish origin, under Paragraph A of the Five Power Agreement¹⁵, the American Jewish Joint Distribution Committee and the Jewish Agency for Israel received 90% of the original \$25 million and of any non-monetary gold, as well as 95% of heirless accounts seized by the Allies. The Final Act and the Five-Power Agreement established a precedent of returning Jewish assets to Jewish organisations for the benefit of all Jewish survivors of Nazism. In some countries, the local Jewish communities¹⁶ became the successor organisation for heirless local Jewish assets.

After the war ended, the various German states located within the American, British and French military zones enacted their own reparation laws, but none of these proved satisfactory. By 1951, the plight of Nazi concentration camp survivors who had been victims of pseudo-scientific experiments received special attention at the United Nations. The Economic and Social Council appealed to the German government to con-

¹³ See Lemkin, *Axis Rule in Occupied Europe*, Preface, note 12.

¹⁴ *Foreign Relations*, 1943, vol. 1, pp. 443–4. In <http://www.ushmm.org/assets/documents/usa/1-17.pdf>.

¹⁵ To help implement the Final Act of the Paris Reparation Conference, five Allied Powers, the United States, the United Kingdom, France, Czechoslovakia, and Yugoslavia, in consultation with the Inter-Governmental Committee on Refugees, elaborated the draft of the Five-Power Agreement on Reparations for the Non-Repatriable Victims of Nazism of 14 June 1946. See S. Rubin and A. Schwartz, ‘Refugees and Reparations’, *Law and Contemporary Problems* 16, p. 379.

¹⁶ Hungary, Italy, Greece, Holland and Poland followed that path.

sider making the fullest possible reparation for the injuries suffered during the Holocaust by people subjected to the so-called scientific experiments in concentration camps.¹⁷ In response the German authorities offered assistance to the victims of experiments whose health had been permanently impaired, even if they were ineligible for reparation under the German reparation laws in force.

Although neither the United Nations nor the international community put pressure on Germany to enter into an agreement with Israel, the Luxembourg Agreement was signed in 1952. The Luxembourg Agreement is a unique international agreement. It is *sui generis* in the history of diplomacy and public international law. At the time of the signing of the agreement, the parties had no diplomatic relations. It is not a typical international reparation agreement because Israel was never at war with Germany. One of the other significant aspects of the Luxembourg Agreement is that it is not only a treaty between Germany and Israel. Through Protocols I and II, signed by Germany and the Claims Conference, the Luxembourg Agreement also governs payments given by Germany to the Claims Conference and to individuals. Germany also undertook to enact a comprehensive reparation law replacing the different state level legislations. In that sense, the Luxembourg Agreement, and its implementation through the German federal reparation laws after 1952, serves as a model for the protection of individual human rights at international level.

Protocols I and II of the Luxembourg Agreement marked the beginning of customary international law in the field of reparations. During the past 45 years, there have been many instances of a country providing reparation to its own citizens, or to a group of its citizens, or negotiating with an organisation representing the victims. It was therefore an important precedence that, in respect of human rights claims, a group representing the interests of individuals became a partner at international level in the Luxembourg Agreement. The recognition that individuals could be represented as a group strengthened the position of individuals seeking remedy subsequently.

When Germany signed the Luxembourg Agreement, it accepted its liability to compensate Jewish survivors. Since 1952, several countries have enacted legislation and/or signed agreements to compensate survivors of human rights abuses. However, the problem with many of these efforts is that most of the governments offering compensation deny that they are liable to do so. They offer *ex gratia* compensation. This is how a state proceeds when it is unwilling to admit any wrongdoing or negligence but is ready, as a humanitarian gesture, to offer reparation. In such cases, it opts for reparation *ex gratia*, reparation on a voluntary basis.¹⁸ One can argue

17 UN ECOSOC Res. 1951/353, in UN ECOSOC E/CN.4/Sub.2/1993/8, p. 9.

18 L. Portmess, 'Compensation *ex gratia* in the Vincennes incident', *Public Affairs Quarterly* 6:4.

that even in cases where clear responsibility exists, *ex gratia* reparation could be a practical choice: for example, legal proceedings would take too much time and the victims would not live to see the result. However, *ex gratia* compensation deprives the victim of any bona fide redress, and gives the wrongdoer a chance to disguise its responsibility. *Ex gratia* compensation is more a political performance than a legal act. It does not address the underlying wrongdoing. "No facts are found, no conclusions of law are drawn, no judgment is entered, and no opinion is written... In other words we sacrifice justice for efficiency and peace."¹⁹

Acknowledging legal liability might be politically unacceptable to the nations involved. However, "(a) practice does not become a rule of customary international law merely because it is widely followed. It must, in addition, be deemed by states to be obligatory as a matter of law."²⁰ For that reason, some would argue that reparation, though widely followed, has not become an international legal norm.

In the late 1980s, with the growing realisation of the importance of reparation and the lack of appropriate attention to the matter, the issue of reparation became the subject of legal discussion at the United Nations. People asked whether reparation should be codified or whether it had already become "a general principle of law recognized by civilized nations."²¹ Although international legal instruments call for reparation to be made to the victims of gross violations of human rights, they do not set the standard for such reparation. For example, the UN calls for "effective remedies" for injustices through Article 8 of the Universal Declaration of Human Rights: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." However, "effective remedies" could be interpreted many ways. Therefore, the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities entrusted Mr. Theo van Boven to undertake a study "concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms."

The study²² published in 1993, concluded that only infrequent and minimal attention is given to the issue of reparation of the victims of human rights abuses. The perspective of the victim is often overlooked. The authorities often consider the issue of reparation too complicated and too inconvenient to implement it in real terms. Therefore, van Boven suggested that the United Nations should set the standard. After extensive

19 J. Coleman and C. Silver, 'Justice in Settlements', *Social Philosophy and Policy* 4. See Portmess, 'Compensation *ex gratia*', p. 402 note 18.

20 T. Burgenthal and H. Maier, *Public International Law* (St. Paul: West Publishing Co., 1990), p. 23.

21 J. Deller, Brief Discussion Paper, Conference of the Canadian Human Rights Foundation on Compensation to Victims of Human Rights Violations: A Canadian Initiative (Ottawa, 29-30 May 1989) [unpublished].

22 See UN ECOSOC E/CN.4/Sub.2/1993/8, note 17.

consultation, a set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law was published.

Under the UN guidelines,²³ every state should make sure that its legal system provides prompt and effective legal procedures of reparation for victims of human rights abuses. Applicants for reparation may include individual victims or a group of victims, the immediate family or the dependants of victims, or even “persons having a special relationship to the direct victims.” The measure of reparation should be expeditious and fully effective. Such reparation should remove or redress the consequences of violations, and may serve the purpose of prevention. Reparation shall be in proportion to the violation. No statute of limitation should apply for human rights violations as long as an effective remedy is not available. The possibility and procedure of reparation should be widely publicised, and the applications for reparation should be diligently dealt with within an appropriate time period. Reparation should include restitution: the re-establishment of the situation that existed before the violation; compensation: redress for economically assessable damage; rehabilitation: medical, psychological, legal and social services; and satisfaction and guarantees of non-repetition.

The UN guidelines and principles of reparation clearly follow the norms established by the German Reparation Laws as a result of the Luxembourg Agreement and subsequent international practice. However, it cannot answer some questions raised as far back as 1989.²⁴ If the statute of limitation does not apply to human rights violations as long as effective remedy is not available, can claims of ancient injustices be brought to attention? How would the international community force an offender state to pay reparation without considering the offender’s current and future ability to pay? Should the reparation take the form of collective or individual settlements? If individual settlements are chosen, should there be a blanket amount given to each survivor or should each case be settled on its own merits? Probably the most controversial issue is, has been, and will be the appropriate amount. Ideally, the reparation should be sufficient to allow the victim to become compensated and rehabilitated. While it is notoriously difficult to measure non-pecuniary losses such as pain, suffering and emotional distress, property restitution could produce equally numerous problems. What right has the bona fide third party holder against the wrongdoer? What about the bona fide creditor whose rights are secured by that property? What if the property is not in the original form? How should special property rights of limited duration, such as patent, copyrights, and licenses be handled? While answering these questions may help to determine whether a reparation program has served its purpose, they cannot be

23 See UN ECOSOC E/CN.4/Sub.2/1993/8, p. 56–8 note 17.

24 See more on the possible issues at Deller, Brief Discussion Paper, note 21.

answered in a global manner. They must be answered for every individual case of reparation.

II. WHY CERTAIN GROUPS MAY AND OTHERS MAY NOT SUCCESSFULLY LITIGATE FOR REPARATION

As noted above, the German reparation process is not only important in terms of its effect on international law, but also because it established a moral rule of reparation. When US attorneys sued banks, museums, organisations and even sovereign states at United States courts, taking advantage of many factors unique to the US legal system, nobody questioned the moral imperative to settle the meritorious cases. (Except obviously, the defendants and their close allies.) Today, there is a specialty to pursue Holocaust-era claims within the framework of the typical class action lawsuits. Moreover, recently victims of other mass human rights violations have taken their cases to the US courts.²⁵ Although, in the future, experts may argue that there were some basic principles determining which cases would be successful, most of these actions have depended on political motives. This does not mean that they were not meritorious claims or that they lacked solid legal basis, but the actual reparation given at the end depended upon the political, economic, and other circumstances of the parties in each case.

Several prerequisites must be fulfilled before a claim can be deemed meritorious: (i) human injustice must have been committed, that is, a “violation or suppression of human rights or fundamental freedoms recognised by international law”; (ii) sufficient evidence must prove the injustice; and (iii) there needs to be a distinct group of victims who continue to suffer from the original injustice.²⁶ These are the prerequisites that emerged from the German reparation negotiations. Although fifty years have passed since the signing of the Luxembourg Agreement, no major development has affected these principles.

In addition to meritorious claim, legal action, a welcoming political climate²⁷ and international support, several other factors must be present in order to have a successful claim:

1. well-defined class representation, and a final basic agreement²⁸ among individuals and all organisations representing class members;

²⁵ For example, descendants of African American slaves.

²⁶ See more: *When Sorry Isn't Enough. The Controversy over Apologies and Reparations for Human Injustice*, ed. R.L. Brooks (New York: New York University Press, 1999.), pp. 7–11.

²⁷ For example, the US administration currently does not support the settlement of claims of former prisoners of war subjected to slave/forced labor by Japanese individuals and/or corporations, although it has supported the settlement of similar claims against German, Austrian and Swiss corporations.

²⁸ A class action lawsuit and the negotiation in general, may be hijacked by an organization or by a representative of the victims.

2. an understanding of the size of the global fund and/or the assets pursued;
3. a knowledge of the size of the class and of the different claims of class members;
4. at least a preliminary agreement of distribution.

What made the case of Holocaust survivors so successful is not that the Holocaust survivors and their representatives did not argue about every possible detail, but exactly the opposite. They argued about all the details, while bearing in mind that such arguments could go on as long as they did not jeopardise the final settlement. During these arguments, many of which continued for over 50 years, new details, necessary for any decision emerged. Persistence and perseverance is what made the representatives of Jewish organisations successful; they brought their claims over a period of 50 years, and they never gave up. The often-criticised use of high power attorneys, who charged exorbitant fees, also contributed to their success. They provided invaluable legal help, not to mention the equally important media coverage. Holocaust survivors were relatively well organised; they were also brave and had knowledge of how to apply the US legal system.

I cannot provide a detailed legal argument as to why certain compensation cases are successful and others are not. All of the recent agreements were settled out of court. Therefore, legal principles were only applied at their minimum. At the same time, however, I would not like to create the impression that the recent litigations ending in settlements were purely politically motivated. Instead, I would like to point out the fragile connection between international law and justice and politics. In international negotiations, many interests collide. The victims want full and just reparation, the wrongdoer (in most cases) would argue for the minimum, and the facilitators of the negotiations often have some other interest that they would like to prevail, which may be no more than demonstrating their ability to broker an agreement between opposing parties. There is also consideration for the real needs of the victims and the economic power of the wrongdoer. Thus the framework is established by non-legal means. However, the details rest on legal arguments. Law has to balance all interests so that the fund and/or the assets offered by the wrongdoer is allocated in the most efficient way to facilitate not only just and meaningful reparation but also reconciliation.

Only time will tell whether these recent settlements fuelled by the US legal system will serve as the basis for future developments concerning international legal norms of reparation for human rights violations or whether they will remain a particular chapter in the history of reparation. I cannot predict whether global settlements will be facilitated by not requiring wrongdoers to admit their wrongdoing or whether, by showing that justice will ultimately be served, the wrongdoers will be required by the international community to settle reparation claims in a timely manner with the requirement that they, the offenders, should take responsibility for

their actions. It is certain, however, that the US class action lawsuits have already changed the world of reparations by making it possible for victims to win sizeable awards and even the return of long forgotten assets. Besides Swiss bank accounts, life insurance policies and properties in Germany and in Austria, there is a further group of victims that may benefit from the recent renewed interest in property looted during the Holocaust era: they are the owners of artwork.

Artwork may be singled out from all other property claims because many of the issues that complicate property restitution do not apply to claims concerning artwork looted during the Holocaust era. Claims of looted art are easily classified as meritorious claims: the injustice is clear, it is documented, and the victims clearly continue to suffer from the original injustice. It is much easier to return an artwork to its rightful owner than it is to make redress for non-pecuniary losses, to return real estate that is occupied, to pay for matured life insurance policies when most supporting documents have perished, or to admit liability for the return of frozen bank accounts when most heirs have learned about such accounts only by word of mouth. Moreover, artwork is relatively easy to identify. During the Holocaust artworks were systematically collected and the plunder was precisely documented. Therefore, many looted artworks may be traced using documentation or based on their incomplete or tale-telling provenances. An additional factor facilitating the return of looted art is the absence of any need to consider the original offender's financial ability, as the artwork should be restituted *in rem*.

The restitution of artwork may still create problems in certain areas: (i) the position of the bona fide third party holder, (ii) the right of the bona fide creditor, and (iii) the desirability of keeping certain collections together. Most countries have clear statutes of limitation to protect such interests. Nevertheless the "expiration of legally set deadlines cannot be a reason for preventing the rectification of injustices" stated the president of the Prussian Heritage Foundation, explaining the decision of the National Gallery in Berlin to return van Gogh's ink drawing L'Olivette to the heir of the former Jewish owner, even though the statute of limitation with respect to the restitution of looted artwork in Germany has long expired.²⁹

The international community also appreciated the importance of the return of Holocaust-era looted art. In 1998, the Washington Conference on Holocaust-Era Assets adopted the Principles on Nazi-Confiscated Art; 44 states, including all EU Member States, morally undertook to return looted cultural goods. Subsequently, the Parliamentary Assembly of the Council of Europe adopted a Resolution on Looted Jewish Cultural Property.³⁰ In 2000

²⁹ T. W. Ryback: 'An Even Bigger Scandal', *ART News*, December 1999, pp. 148-57, here p. 148.

³⁰ Resolution 1205 of 4 November 1999.

the Vilnius International Forum on Holocaust Era Looted Cultural Assets set the objective of bringing the Washington principles and the Council of Europe Resolution into effect. The European Parliament also adopted two resolutions on the issue of looted cultural goods: in 1995, on the return of plundered property to Jewish communities; in 1998, on the restitution of property belonging to Holocaust victims.³¹

The issue of looted art involves all countries; there is no other property that travels without borders and is easily identified; and no self-respecting country or institution would like to bear the moral stain of benefiting from Nazi-era looted art. The return of heirless artwork also provides an opportunity for reconciliation. Meaningful agreements between the representatives of victims and the representatives of current holders of Holocaust-era looted art may serve to commemorate the injustice committed, while compelling the parties to negotiate with a view to finding a common solution for the sake of preserving art for future generations.

The steps the victims and their lawyers are forced to take in order to pursue their rights may be disdained by many. Those who advocate the erection of a wall between the past and the present – who say that we should move on and not dwell upon past injustices that can never be entirely redressed, are also erecting a wall between the present and the future. They are indicating to potential perpetrators that with time their acts will be forgiven; they are also denying victims and their families the comfort of knowing that their suffering is recognised. Our task is to realise Socrates' argument, to show to our generation that – in the long run – it is better to be the victim than the wrongdoer.

TERMINOLOGY

Compensation: “redress for economically accessible damage,”³² it denotes financial redresses for victims of human rights violations when restitution is not possible. It includes compensation for property losses and indemnification of victims.

Human injustice: “is the violation or suppression of human rights and fundamental freedoms recognized by international law.”³³

Human rights violations: include any violations of human rights as set forth in the Universal Declaration of Human Rights.³⁴

Indemnification: stands for redress “of a variety of non-property damages, deprivations, and losses inflicted upon individuals. These range from damages to life and limb, and to health, through deprivation of liberty, to

31 See all the above-mentioned documents at: www.comartrecovery.org.

32 UN ECOSOC, E/CN.4/Sub.2/1996/17, p. 4.

33 When Sorry Isn't Enough, ed. Brooks, p. 7.

34 Adopted by the United Nations General Assembly, 10 December 1948. UN GAOR 217 A (III), UN Doc A/810 (1948) p. 71.

occupational losses and the loss of employment rights, benefits and pensions.”³⁵

Reconciliation: reconciliation is a process that enables the wrongdoer and the victim to walk on a road together toward peace and that achieves a relative peace between the wrongdoer and the victim.

Rehabilitation: compensation given to a group of victims to assist them in re-establishing their lives³⁶ and to restore them to their former capacities. “(I)t includes legal, medical, psychological and other care and services, as well as measures to restore the dignity and reputation of the victim.”³⁷

Reparation is making amends for the violation of any human rights. The forms of reparation include (i) restitution, (ii) compensation, (iii) rehabilitation, and (iv) satisfaction and guarantees of non-repetition.³⁸

Restitution is to restore something that has been alienated under duress to its rightful owner. It re-establishes “to the extent possible, the situation that existed for the victim prior to the violations of human rights. Restitution requires, *inter alia*, restoration of liberty, citizenship or residence, employment or property.”³⁹

Retribution is bringing to justice the persons responsible for the violation.⁴⁰

Satisfaction and guarantees of non-repetition includes but is not limited to “(a) Cessation of continuing violation; (b) Verification of the fact and full and public disclosure of the truth; (c) A declaratory judgment in favour of the victims; (d) Apology, including public acknowledgement of the facts and acceptance of responsibility; (e) Bringing to justice the persons responsible for the violation; (f) Commemorations and paying tribute to the victims; (g) Inclusion of an accurate record of human rights violations in educational curricula and materials; (h) Preventing the recurrence of violations.”⁴¹

35 L. Dawidowitz, ‘German Collective Indemnity to Israel and the Conference on Jewish Material Claims Against Germany’, *American Jewish Year Book* 54, p. 471.

36 When Sorry Isn’t Enough, ed. Brooks, p. 9 note 35.

37 See UN ECOSOC E/CN.4/Sub.2/1993/8, p. 57 note 17.

38 See UN ECOSOC Guidelines, E/CN.4/Sub.2/1993/8, pp. 56–7 note 17.

39 See UN ECOSOC E/CN.4/Sub.2/1993/8, p. 57 note 17.

40 See UN ECOSOC E/CN.4/Sub.2/1993/8, p. 57 note 17.

41 See UN ECOSOC E/CN.4/Sub.2/1993/8, pp. 57–8 note 17.