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"A question of fundamental, farreaching importance for all the future": German compensation payments as a result of the Herero War, 1904-1914

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“A question of fundamental, far-reaching importance for all the future”

German compensation payments as a result of the Herero War, 1904-1914

Jakob Zollmann

Introduction

The German state has already paid compensation for damages caused by the Ovaherero war – to the German settlers and companies that were able to claim such war damages from 1904 onwards, as well as to some Africans. Attentive readers of Helmut Bley’s seminal monograph on German colonial rule (1968) or of contemporary Wilhelmine texts and parliamentary minutes have long been aware of this.¹ Yet, as far as can be seen, these possible precedents play no role in current political-legal and historiographical debates about possible German reparation payments to the Ovaherero and Nama in Namibia (and possibly also in Botswana and elsewhere). Even (legal) historians working on German colonial history in Namibia, or on the history of reparation payments, or on claims for reparations hardly took up these examples.² This is remarkable, as they sparked heated debates in the *Reichstag* (Imperial parliament) and in the colony *Deutsch-Südwestafrika* (GSWA, German South West Africa) more than a century ago.

In the following, after some conceptual legal discussions, the early beginnings of this colonial reparations debate, the main actors of this political struggle, and the (preliminary) results will be briefly analysed; well aware that the topic awaits a monographic treatment.

Compensation for war damage – a legal-history overview

Compensation is primarily a civil law concept. It aims at balancing relationships between individuals, the injured party and those who caused the damage. This is often

¹ Helmut Bley: *Kolonialherrschaft und Sozialstruktur in Deutsch-Südwestafrika, 1894–1914*, Hamburg, Leibniz, 1968, e.g., pp. 171, 219.

² See for an early exception Hans Joseph Cahn: *Wesen und Grundbegriffe des Kriegsschadenrechts*, Zürich, Weiss, 1946, p. 318, § 175; later, Markus J. Jähnel: *Das Bodenrecht in “Neudeutschland über See”. Erwerb, Vergabe und Nutzung von Land in der Kolonie Deutsch-Südwestafrika 1884–1915*, Frankfurt am Main, Lang, 2009, pp. 230f.

linked to the claim that this compensation complies with the dictates of justice. The German Civil Code (*BGB*), which has been in force in Germany since 1900, stipulates the following with regard to damages and compensation: “A person who is liable in damages must restore the position that would exist if the circumstance obliging him to pay damages had not occurred.” (§ 249 I BGB n.F.). And: “To the extent that restoration is not possible or is not sufficient to compensate the obligee, the person liable in damages must compensate the obligee in money.” (§ 251 I BGB n.F.).³

In addition, there was and is compensation between states – for example, after a war. In such cases, the term reparations is usually used. Well-known historical examples include France’s obligation to pay “His Majesty the German Emperor [...] five billion francs” after its defeat in the Franco-Prussian War of 1870/71,⁴ and Germany’s reparations payments to the Allies after the First World War (the amount of which was not initially specified) in accordance with the Treaty of Versailles in 1919. At that time, Germany had been required by Article 231 of the Treaty of Versailles to accept:

[German] responsibility ... for causing all the loss and damage to which the Allied and Associated Governments and their nationals have been subjected as a consequence of the war imposed upon them by the aggression of Germany and her allies.⁵

Here too, therefore, it was a matter of reparation by the perpetrator of the damage by means of payments in kind and in cash and restitution, which were intended to put aggrieved governments and individuals – in civil law terms – in the “position that would exist if the circumstance [here: the World War] obliging [Germany] to pay damages had not occurred.”⁶

³ “Wer zum Schadensersatz verpflichtet ist, hat den Zustand herzustellen, der bestehen würde, wenn der zum Ersatz verpflichtende Umstand nicht eingetreten wäre” (§ 249 I BGB n.F.). “Soweit die Herstellung nicht möglich oder zur Entschädigung des Gläubigers nicht genügend ist, hat der Ersatzpflichtige den Gläubiger in Geld zu entschädigen” (§ 251 I BGB n.F.). See Nils Jansen: ‘§§ 249-253, 255 (Schadensrecht)’, in: Mathias Schmoeckel, Joachim Rückert and Reinhard Zimmermann, (eds.): *Historisch-kritischer Kommentar zum BGB. Band II: Schuldrecht. Allgemeiner Teil. 1. Teilband*, Tübingen, Mohr Siebeck, 2007, pp. 517-654 (530 Rn 17; 603 Rn 100).

⁴ Article II Friedens-Präliminarien zwischen dem Deutschen Reich und Frankreich (26. Februar 1871), *Reichsgesetzblatt*, Band 1871, Nr. 26, S. 215-222; Article VII Friedens-Vertrag zwischen dem Deutschen Reich und Frankreich (10. Mai 1871), *Reichsgesetzblatt*, Band 1871, Nr. 26, p. 223-244.

⁵ Article 231 Peace treaty of *Versailles*. (28 June 1919); see Leonard Gomes: *German Reparations, 1919–1932. A Historical Survey*, London, Palgrave Macmillan, 2010; Elazar Barkan: *The Guilt of Nations: Restitution and Negotiating Historical Injustices*, New York, Norton, 2000.

⁶ See Jakob Zollmann: ‘Mixed Arbitral Tribunals (post-World War I peace treaties)’, in: Hélène Ruiz Fabri, (ed.): *Max Planck Encyclopedia of International Procedural Law*, Oxford, Oxford University Press, 2023,

A special case of state compensation is that of its own nationals for war damage caused by its own or enemy troops, such as looting, bombardment, or confiscation/requisition of private property (food, livestock, means of transport, money, and so forth). Within German cameral science and jurisprudence, there has been much discussion since the early modern period about the question of who should bear these and other "war burdens" (these also included special tax payments, contributions), and whether and how these should be distributed as "equally" as possible, that is, "fairly", among the "subjects" and later citizens.⁷ The jurist K. Grattenauer therefore spoke in 1810 of war as a "reciprocal" and "successive" "system of destruction" and "system of maintenance and replacement."⁸

Weighing up these systems, 100 years later Almá Latifi, an international law scholar and civil servant with the Indian Civil Service, presented a comprehensive study on the *Effects of War on Property*, in which he described the development of law and repeatedly addressed the question of requisitions and compensation for war damage. On the basis of the Hague Conventions on Land Warfare, several international legal regulations were adopted in 1899 and 1907, which also made compensation obligations binding for those troops that requisitioned enemy private property (Articles 52; 53).⁹ The renowned international law scholar John Westlake of the University of Cambridge summarised the (by no means doubtless) legal situation in an epilogue and expressed his conviction "that it is not only when they are under fire that private property and means are not sacred."¹⁰

From this perspective, the containment of wartime violence, the minimisation of war damage and its compensation were largely left to the discretion of the warring states. However, if it was a matter of requisitions by one's own armed forces, the corresponding domestic provisions were a special case of "expropriation law", the "expropriation contracts", and the compensation for the individual expropriated by the state regulated therein.¹¹ Such a state duty to compensate was one of the "basic

<https://opil.ouplaw.com/display/10.1093/law-mpeipro/e3355.013.3355/law-mpeipro-e3355>

⁷ See inter alia: Friedrich Heinrich Hatzfeld: *Prüfung der Grundsätze welche über die Peräquation der Kriegslasten bisher sind aufgestellt worden*, Frankfurt am Main, Andreaische Buchhandlung, 1802, p. iv.

⁸ Karl Wilhelm Friedrich Grattenauer: *Repertorium aller der Kriegslasten, Kriegsschäden und Kriegseinquartierungen betreffend neueren Gesetze und Verordnungen. Ein Handbuch*. Teil 1, Breslau, Korn, 1810, p. iv. Grattenauer's uncompromising anti-Semitism should be emphasised here.

⁹ Almá Latifi: *Effects of War on Property, being Studies in International Law and Policy*, London, Macmillan, 1909, p. 30; see 'Abkommen, betreffend die Gesetze und Gebräuche des Landkrieges' 18.10.1907, *Reichsgesetzblatt* (RGBl.) 1910, p. 107.

¹⁰ John Westlake: 'Belligerent Rights at Sea', in Almá Latifi: *Effects of War on Property, being Studies in International Law and Policy*, London, Macmillan, 1909, pp. 145-152 (148).

¹¹ Michael Stolleis: *Geschichte des öffentlichen Rechts in Deutschland*, vol. 2, München, Beck, 1992, p. 412.

parameters of the [German] law of expropriation of the 19th century", influenced above all by French models. It was based on "the idea of sacrifice": Those who are forced by the state to "sacrifice" their property for the common good (such as victory over an enemy in war) thereby acquired "the right to compensation in money for this sacrifice." Nevertheless, it is important to note, with Foroud Shirvani, that in the legal discourse of the 19th century, no generally accepted, "prevailing concept of expropriation" had yet emerged.¹²

But could one's own government, in and after a war, be *additionally* held liable by injured party for the removal, destruction, or other damaging behaviour of the enemy in one's own country? This question was posed in one way or another by German settlers and merchants in Hereroland in DSWA from January 1904, depending on the colonial-military context. Their farms, livestock, equipment and trade goods had been destroyed or looted by the men of Samuel Maharero, Chief of the Ovaherero, in order to force the Germans to leave the country.¹³ Of course, governments, state and municipal administrations, and those who had been damaged by wars or rebellion had already struggled in the centuries before over whether and how such burdens or damages should be compensated. The aggrieved hoped that a state would be obliged to compensate its citizens for war damage, regardless of who caused it. Thus, one regularly finds efforts by individual branches of the administration to limit war-related burdens on the population and thus keep them bearable. An 1873 *Law on War Benefits* regulated some details in Imperial Germany. However, it left the decisive questions about the "scope and amount of any compensation to be granted and the procedure for determining the same" to a "special law of the empire" to be passed in each individual case.¹⁴ There was no legally binding obligation on the part of the German state to compensate individuals for war damage in general, which could have been enforced in court.¹⁵

¹² Foroud Shirvani: 'Entwicklung des Enteignungsrechts vom frühen 19. Jahrhundert bis zur Weimarer Reichsverfassung', in: Otto Depenheuer, Foroud Shirvani, (eds.): *Die Enteignung. Historische, vergleichende, dogmatische und politische Perspektiven*, Berlin, Springer, 2018, pp. 25-51, at p. 38 quoting Otto Mayer p. 43.

¹³ On the topos of the 'looting Herero', see Frank Oliver Sobich: *"Schwarze Bestien, rote Gefahr". Rassismus und Antisozialismus im deutschen Kaiserreich*, Frankfurt am Main, Campus, 2006, pp. 75, 89, 93f.; and Matthias Häussler: *The Herero Genocide*, New York, Berghahn, 2020, pp. 56, 55 Fn. 163 on the smooth transition between 'plundering' and 'requisitioning'.

¹⁴ § 35 Gesetz über die Kriegseleistungen, 13. Juni 1873, *RGBl.*, p. 129.

¹⁵ Cuno Hofer: *Der Schadenersatz im Landkriegsrecht*, Tübingen, Mohr, 1913; Thomas Habbe: *Lastenausgleich. Die rechtliche Behandlung von Kriegsschäden in Deutschland seit dem 30jährigen Krieg*, Frankfurt am Main, PL Acad. Research, 2014.

The Reichstag and the compensation claims during the Herero War, 1904-1907

The first entry in the files of the *Reichskolonialamt* (Imperial Colonial Office), at that time still the Colonial Department of the Foreign Office, on the subject of "state aid (compensation payments) on the occasion of the Herero uprising in 1904" dates from February 1904. The Foreign Office had requested Governor Theodor Leutwein in Windhoek by telegram to estimate "if possible, [the] approximate total sum of the damage [...] which had accrued to private individuals as a result of [the] uprising."¹⁶ At the same time, the Reich Treasury was informed of the expected claims. It had already been "discussed in Reichstag circles [...] in what way the farmers, merchants, etc. damaged by the uprising should be compensated."¹⁷

Less than four weeks later, in March 1904, the *Reichsleitung* (Imperial 'government') demanded that the Reichstag approve a supplementary budget as a result of the war in DSWA. Among the line items presented in the bill were not only considerable sums for the repair of the Swakopmund-Windhoek railway damaged by Ovaherero, but also "2,000,000 marks for the compensation of the settlers." With regard to the legal situation, which did not know a general law of war damages, the Colonial Department explained: "Even if a legal obligation to compensate the losses of property and other assets [...] cannot be recognised, in view of the severity of the misfortune that has befallen the protectorate [...] it will not be possible to avoid intervention by the authorities by granting equitable compensation."¹⁸

In the subsequent debate in the Reichstag, Member of the Reichstag Spahn (*Zentrum*) did recognise that parliament had to approve all the funds "required to put down the uprising." But he insisted on referring the draft to the budget commission and critically examining individual items. For:

In the supplementary budget, for the first time actually, 2 million marks are demanded for compensation for the losses inflicted on the whites by the Herero uprising. Although a legal obligation to do so is denied, the severity of the disaster that has befallen the protectorate makes it unavoidable for the authorities to intervene by granting equitable compensation. This question is of fundamental, far-reaching importance for all the future, and therefore it requires particularly thorough examination in the Commission. If we look back at our [German] legislation, the Reich has only one law in which compensation is paid for war damage: that is the law of 14 June 1871, and in that law at that time compensation from Reich funds for the lands devastated in the French war was not envisaged,

¹⁶ Bundesarchiv Berlin-Lichterfelde (BAB) R 1001/2219, Bd. 1, Bl. 3, Tlgr. Auswärtiges Amt, Kolonialabteilung (AA) an Bezirksamt Swakopmund für Gouverneur Windhuk, 19. Feb. 1904.

¹⁷ BAB R 1001/2219, Bd. 1, Bl. 3-5, AA an Reichsschatzamt, 19. Feb. 1904.

¹⁸ Draft bill dating 14.03.1904, quoted in Eduard Heilfron: *Die rechtliche Behandlung der Kriegsschäden*, Bd. 1, Mannheim, Bensheimer, 1918, p. 341.

but it was assumed at that time that compensation should only be granted from the funds of the war indemnity to be paid by France. [...] The compensation commission also had a legislative basis.¹⁹

Spahn recalled that the "Herero Uprising" was by no means the first armed conflict within the German colonial empire. At the same time, he pointed out that "up to now, we have not paid compensation in the colonies for losses caused by uprisings [for example in East Africa]"²⁰ – although who he meant by 'we', the Reichstag or the German colonial administration, remains unclear. Rather, it is up to archival research to find out whether, before 1904, individual colonial administration officials had not found ways and means to "support" settlers due to their losses through "uprisings", that is, to compensate them for their losses. It was not possible for German settlers to take out insurance against future property "damage" caused by "events of war" and "riots". Insurance companies did advertise their products such as "capital and war insurance" among "colonial Germans". But these were exclusively life insurance policies for "provision for surviving dependants and old age" for "persons of both sexes", but not insurance policies for material assets.²¹ Karl Neumeyer, an expert on private international law, still stated after the end of the German colonial era that "imperial insurance law was not applicable to colonial enterprises."²²

If, therefore, claims for compensation as a result of the OvaHerero War could be addressed to the state alone, it could be assumed that the funds requested by the Reichsleitung in 1904 would not be sufficient. The Social Democrat August Bebel knew that "one [...] already speaks today in the organs of colonial politicians with the greatest cold-bloodedness of the fact that these compensations will amount to at least 6 to 8 million marks."²³ In its proposal, the Reichsleitung reverted to the previous practice according to which war damage should never trigger legally binding state compensation obligations, as Spahn's reference to the regulations on German private war damage of 1870/71 showed. Instead, under aspects of equity, compensation for such damages was granted *obrigkeitlich* after the fact. The *Law on the Second Supplement to the Budgetary Budget of the Protectorates. Compensation for Herero*

¹⁹ MdR [Member of Reichstag] Spahn (Zentrum) 17.3.1904, *Stenographische Berichte des Reichstags* [StBR], 11. Legislaturperiode, 60. Sitzung, p. 1888.

²⁰ MdR Spahn (Zentrum) 17.3.1904, *StBR*, 11. LegPer., 60. Sitzung, p. 1888.

²¹ See the advertisement of *Deutsche Militärdienst-Versicherungs-Anstalt in Hannover*, in: *Deutsches Kolonialblatt. Amtsblatt des Reichskolonialamt*, 7, 1896, p. 235. For German nationals, on the other hand, 'the [state] accident insurance, disability insurance and employee insurance in the protectorates' were said to apply, Karl Neumeyer: *Internationales Verwaltungsrecht. Bd. II: Innere Verwaltung*, München, Schweitzer, 1922 (new ed. 1980), § 76, p. 665.

²² Neumeyer: *Verwaltungsrecht*, § 76, p. 665, with reference to maritime shipping.

²³ MdR Bebel (Sozialdemokraten) 17.3.1904, *StBR*, 11. LegPer., 60. Sitzung, p. 1889.

and Witboy [Witbooi] Uprisings (accounting year 1904) initially granted an amount of RM (Reichsmark) 2 million.²⁴

There is not enough space here to recapitulate in detail the Reichstag debates on ever new and ever higher compensation for German losses in DSWA. Members of parliament such as the Centre politician Matthias Erzberger never tired in the following years of denouncing corruption and maladministration in colonial administrative practice, as well as compensation payments due to excessive claims for (alleged) war losses by settlers and colonial societies.²⁵ In particular, politicians and the press were repeatedly preoccupied with the question of whether the (moral) obligation to compensate would be diminished by a contributory negligence²⁶ on the part of the settlers in the "uprising". For the colonial critics, this contributory responsibility resulted from the settlers' violence against the African population, which had been known for years. The colonial administration was also held partly responsible for the outbreak of the OvaHerero war because it had not taken decisive enough action against settler violence and violence from the ranks of officials and soldiers. Thus, at the beginning of March 1904, Chief Samuel Maharero reminded Governor Leutwein that it had been "the whites" who had started the war through their unpunished murders.²⁷ Shortly afterwards, August Bebel described the "uprising of the Hereros against the German regiment [as] an act of desperation."²⁸

While the settlers presented themselves as victims of predatory perpetrators of violence and demanded full compensation for all losses in a "race war" the colonial critics (especially in the Centre and among the Social Democrats) did not buy their proclamations of innocence.²⁹ For if "parts of the 'white' population [were] guilty or complicit in the uprising, this was an excellent argument against blanket compensation."³⁰ In order to prevent a change of mood against their demands, a "delegation of the German South-West African settlers" travelled to Berlin in June 1904. They hoped to convince the Reich Chancellor and the Reichstag that compensation was necessary in terms of colonial policy and presented a *Memorandum on the Causes of the Herero Uprising and the Settlers' Claims for Compensation*.³¹ A little later, the

²⁴ Cahn: *Wesen*, p. 318.

²⁵ See *StBRT*, Bd. 222, pp. 3399f.; pp. 3375ff. (05.12.1904); Anna Rothfuss: *Korruption im Kaiserreich. Debatten und Skandale zwischen 1871 und 1914*, Göttingen, V&R unipress, 2019, p. 220.

²⁶ Nils Jansen: 'Mitverschulden', in: Albrecht Cordes, Hans-Peter Haferkamp, Heiner Lück, Dieter Werkmüller, Christa Bertelsmeier-Kierst, (eds.): *Handwörterbuch zur deutschen Rechtsgeschichte*, 2. Aufl., 23. Lieferung, 2016, Sp. 1576-1578.

²⁷ Maharero an Leutwein, 6.3.1904, cited in Häussler: *Genocide*, p. 46.

²⁸ MdR Bebel (Sozialdemokraten) 17.3.1904, *StBRT*, 11. LegPer., 60. Sitzung, p. 1889.

²⁹ Häussler: *Genocide*, p. 46.

³⁰ Sobich: *Bestien*, p. 75; p. 87 quotes *Die Gartenlaube*, Halbheft 18, 1904, p. 510.

³¹ 'Über die Ursachen des Herero-Aufstandes', in: *Freiburger Zeitung*, 20.08.1904, p. 1, online accessible: <https://www.freiburg-postkolonial.de/Seiten/FreiburgerZeitung1904-08-20.htm> ;

book by the farmer Conrad Rust *Krieg und Frieden im Hereroland* (1905) about his experiences in the war was “handed over to all members of the Reichstag as propaganda material on the question of compensation.”³² Rust argued that the settlers had protected “state property” to the detriment of their private property and gave the amount of private damages in DSWA as RM 7 million, which was “later [1905] increased to RM 10 million.”³³ The settlers made a recognisable effort to present their economic situation before the uprising “in a bright light” in order, as Helmut Bley already emphasised, to “improve the assessment basis for the compensation” vis-à-vis the *Reichstag* and the press in Germany.³⁴

This political pressure on the *Reichstag* members could not stop the ongoing criticism. It did, however, lead to a majority agreeing to the “compensation[s] of the settlers for losses, support, etc. through no fault of their own.”³⁵ Thus, in the budget laws of 1904, 1905 and 1907, the Reichstag passed compensation payments for losses resulting from the wars against Ovaherero and Nama. A new bill to compensate the settlers in DSWA was rejected by the Centre because, in the opinion of Matthias Erzberger and others, it went too far. They also argued that the previous distribution of *Reich* funds had benefited people and companies for whom the compensation had not been intended. However, after the dissolution of the Reichstag in December 1906, a polarising election campaign against the Social Democrats and the Centre and their criticism of colonialism, and new elections in January 1907, the majority of the new *Reichstag*, the so-called Bülow Block, approved two colonial supplementary budgets in March 1907, granting the settlers another RM 5 million.³⁶ The colonial question had thus acquired a hitherto undreamed-of centrality in the German *Kaiserreich*. Overall, between 1904 and 1907, the Reichstag granted the settlers in DSWA probably about RM 11 million for their war losses – possibly more.³⁷

Conrad Rust: ‘Der deutsche Reichstag und das südwestafrikanische Schmerzenskind’, in: *Deutsch Südwestafrikanische Zeitung*, 11.05.1904, p. 1; Paul Rohrbach: *Aus Südwest-Afrikas schweren Tagen. Blätter von Arbeit und Abschied*, Berlin, Weicher, 1909, p. 158.

³² Bley: *Kolonialherrschaft*, p. 357 N. 45; see Sobich: *Bestien*, p. 131.

³³ Conrad Rust: *Krieg und Frieden im Hereroland. Aufzeichnungen aus dem Kriegsjahre 1904*, Leipzig, Kittler, 1905, pp. 492, 495.

³⁴ Bley: *Kolonialherrschaft*, p. 171.

³⁵ *StBRT*, ‘Zweite Ergänzung des dem Reichstage vorliegenden Entwurfs des Haushaltsetats für die Schutzgebiete auf das Rechnungsjahr 1904 (Niederwerfung des Hereroaufstandes, Entschädigung der Ansiedler für unverschuldete Verluste, Unterstützungen etc.)’, 1904. Anlage Bd. III, Nr. 299.

³⁶ See Cahn: *Wesen*, p. 318, li.

³⁷ *StBRT*, Bd. 227, p. 925f. (19.04.1907); cf. Wolfgang Reinhard: “‘Sozialimperialismus’ oder ‘Entkolonisierung der Historie’? Kolonialkrise und ‘Hottentottenwahlen’ 1904-1907”, in: *Historisches Jahrbuch*, 97/98, 1978, pp. 384-417; Ulrich van der Heyden: ‘Kolonialkrieg und deutsche Innenpolitik. Die Reichstagswahlen von 1907’, freiburg-postkolonial.de,

The Compensation Commission in Windhoek

Initially, the Colonial Department instructed Governor Leutwein in Windhoek to estimate the "damage [...] suffered by private individuals as a result of [the] uprising."³⁸ From June 1904, the task was assigned to a special "compensation commission."³⁹ Before that, in May 1904, the *Reichsleitung* had already provided relatively unbureaucratic assistance to the German settlers by granting funds from the "welfare lottery of 2 million marks as compensation for robbed settlers and 500,000 marks for [destroyed?] irrigation facilities."⁴⁰ In contrast, Governor Leutwein had shown himself to be "reserved on the question of compensation for fiscal reasons", which caused the settlers' disappointment in him – who apparently "could not cope" with the OvaHerero – to grow even further.⁴¹

The compensation commission was not only to ascertain damages, but also to organise the payment of the "state financial aid" of RM 2 million to German settlers, which had been approved in the meantime. This was to prevent the German settlers from becoming insolvent and emigrating.⁴² GSWA's chief judge Dr. Paul Richter, a confidant of Governor Leutwein, who had been working in Windhoek for many years, was the first chairman of this commission. The *Reich* leadership attached great political relevance to this office. Thus, *Reich* Chancellor Bülow personally appointed the new chairman of the compensation commission in December 1904 after Paul Richter fell ill. Bülow appointed the theologian and journalist Dr. Paul Rohrbach to the office, who had been working in the colony as settlement commissioner since 1903. At the beginning of the war, Rohrbach had "nothing more to do as settlement commissioner."⁴³ Together with Paul Richter, he was already entrusted with drawing up lists of damages and functioned as a kind of lawyer for the settlers, as their ally. As a convinced supporter of Naumann-style liberal imperialism, Rohrbach was widely regarded as a friend of the farmers in his elevated position in the colonial civil service. He was derisively referred to as the "tribune of the plebs", which made him the antithesis of many other civil servants who were commonly accused of bureaucratism and arrogance. In his "high-emphatic colonial image", according to Birthe Kundrus,

<https://www.freiburg-postkolonial.de/Seiten/Heyden-Reichstagswahlen1907.htm>; Bley: *Kolonialherrschaft*, p. 221.

³⁸ BAB R 1001/2219, Bd. 1, Bl. 3, Tlgr. AA an BezA Swakopmund für Gouverneur Windhuk, 19. Feb. 1904.

³⁹ The commission was set up under Sections 7 and 8 of the 'Reich Chancellor's Ordinance on the Utilisation of the Fund made available in the Second Supplement to the Budget of the Protectorates for the Financial Year 1904 under II. Chapter 1, Title 14 of the Expenditure for the South West African Protectorate'.

⁴⁰ Rust: *Krieg*, p. 500.

⁴¹ Bley: *Kolonialherrschaft*, p. 219.

⁴² Ibid.: cf. also Otto von Weber: *Geschichte des Schutzgebietes Deutsch-Südwest-Afrika*, Windhoek, S.W.A. Wiss. Ges., 1985, p. 175f.

⁴³ Rohrbach: *Südwest-Afrikas*, p. 155.

he advocated a gradual German settlement of the country primarily through a capital-rich agriculture and cattle industry, led by "gentleman farmers." Rohrbach's vision for DSWA (and for the effects the colony would have on the motherland) was "bourgeois, elitist and racist."⁴⁴

Rohrbach saw it as the task of the compensation commission, when distributing the imperial funds to farmers, not only to ensure that their illiquidity was bridged in the short term, but also to make it financially possible overall to rebuild and expand their farms destroyed by the war. For this reason, *Landrentmeister* Junker, who had been working for the colonial administration in the country since 1889, was appointed to the commission as a financial expert and second civil servant member, as well as the farmers Mittelstädt and Conrad Rust. Rohrbach later praised Junker as "the embodiment of African experience and African humour." He was obviously on good terms with all three commission members in his private life. They made long journeys together to inspect the destroyed farms and check information on stolen livestock. The resulting damage data and other estimates were later submitted to the Colonial Department and finally to the Reichstag (there was talk of 800 looted farms, 178 farms were completely destroyed, 26 partially destroyed).⁴⁵ In the years to come, the commission members continued to register and check the damage reports received from farmers, companies and other aggrieved parties, travelled around the country, compiled statistics and then decided on the distribution of the *Reichs* monies.⁴⁶ How this distribution proceeded in detail, what evidence was presented for the reported damages, and what checks were deemed appropriate is still unclear and requires further research. In any case, the suspicion of embezzlement and the concern that the members involved in turn were giving friends and acquaintances (too much) money that was not intended for them were always present. On June 18, 1906, the commission declared that its work was "provisionally concluded." But in DSWA all those involved hoped for further payments from the *Reich*. To this end, "petitions are circulating to the Reich Chancellor to appoint Governor von Lindequist as a commissioner for the Reichstag negotiations [on a new budget for compensation payments]."⁴⁷ It was undoubted that Rohrbach would continue to support the settlers in their "fierce struggle with the *Reich* and the Reichstag" over compensation.⁴⁸ In

⁴⁴ Birthe Kundrus: *Moderne Imperialisten. Das Kaiserreich im Spiegel seiner Kolonien*, Köln, Böhlau, 2003, p. 73.

⁴⁵ Rohrbach: *Südwest-Afrika*, pp. 6, 157; for figures, see Jähnel: *Bodenrecht*, p. 230.

⁴⁶ Andreas Osterhaus: *Europäischer Terraingewinn in Schwarzafrika. Das Verhältnis von Presse und Verwaltung in sechs Kolonien Deutschlands, Frankreichs und Großbritanniens von 1894 bis 1914*, Frankfurt am Main, Lang, 1990, p. 308.

⁴⁷ 'Wochenübersicht', in: *Deutsche Kolonialzeitung*, 23 (35), 1906, p. 341.

⁴⁸ Bley: *Kolonialherrschaft*, p. 219.

the hope of seeing the situation for themselves, *Reichstag* members travelled to DSWA to "also study the compensation question."⁴⁹

The research literature reflects the largely negative contemporary assessments of the success of the Compensation Commission – measured against the expectations of the claimants. Osterhaus describes the demand for ever higher compensation from the motherland as an altogether "clumsier technique of raising money" for the settlers (in comparison to their granting of loans to the Ovaherero before 1904), but sees "in the end the bulk of the settlers' demands fulfilled."⁵⁰ Kundrus also speaks of Rohrbach's "successful activity in the compensation commission", as a result of which the "farmers were very grateful to Rohrbach."⁵¹ Otto von Weber, however, explains in his book, one still completely committed to colonial heroism, that because of their just decisions made "without bureaucratism" "Rohrbach and his colleagues [...] enjoyed general trust", but that the Reich had provided too little money.⁵² Romer writes that the "farmers [...] were disappointed" with the commission.⁵³ Jähnel recognises from the sources that the "compensation solution [...] was generally felt to be unsatisfactory", as the amount of damage had not been covered by the compensation sums.⁵⁴

Rohrbach himself had also emphasised this discrepancy in public. In July 1906, at the provisional conclusion of his work, he declared in Windhoek: In addition to

the 5 million marks granted by the Reichstag [‘of which 3 ½ million had already been distributed’], the cattle [*Beutevieh*, which had been taken from the Ovaherero] worth almost ½ million marks were still available. In contrast, the total damage amounted to 18 million marks, not including the claims of the foreigners [another two million].⁵⁵

There was talk of "injustice" to the settlers everywhere – especially in the settler press. In his book *Aus Südwest-Afrikas schweren Tagen. Blätter von Arbeit und Abschied* (1909), which can be read as a statement of accounts of Rohrbach, the retired compensation commissioner described the activities of his commission, among other things, by means of his diary entries and some private letters to the interested public

⁴⁹ Bundesarchiv Koblenz (BAK) Nachlass Paul Rohrbach N 1408, Brief P. Rohrbachs, Windhuk, 1.10.1906, p. 1, über den nationalliber. Reichstagsabgeordneten Johannes Semler (Hamburg). Cf. Johannes Semler: *Meine Beobachtungen in Süd-West-Afrika. Tagebuchnotizen und Schlußfolgerungen*, Hamburg, Hermann's Erben, 1906.

⁵⁰ Osterhaus: *Terraingewinn*, p. 308.

⁵¹ Kundrus: *Imperialisten*, p. 73.

⁵² Weber: *Geschichte*, p. 176.

⁵³ Sandra Romer: *Eine neue Heimat in Südwestafrika? Die Schweizer Auswanderung nach Namibia*, Basel, Basler Afrika Bibliographien, 2003, p. 85.

⁵⁴ Jähnel: *Bodenrecht*, p. 235.

⁵⁵ 'Zur Entschädigungsfrage', in: *Deutsche Kolonialzeitung*, 23 (35), 1906, p. 346.

in Germany and the colony. In it, he left no doubt about the inadequacy of the means at his disposal.⁵⁶

Rohrbach's reference to the "looted cattle" (*Beutevieh*) of the Ovaherero also points to a second source of compensation for the settlers besides the imperial funds: the defeated Africans themselves. For people who had suffered losses of private property during the war could sue for these "from the Herero tribe or its legal successor, the Imperial Treasury." Huge bills were presented: the firm *Laszig & Ihde*, for example, demanded RM 97,477.10, and the missionary of the Finnish Mission, Rautanen, who at the time was working in Ovamboland, which was not directly affected by the war, also wanted to be compensated for the "damage of RM 5400, – plus interest from 20 January 1904."⁵⁷ As a result, the land and cattle of the defeated were expropriated (and future cattle ownership was largely prohibited), also in order to satisfy the plaintiffs. For "[w]ithin a war between two peoples, compensation for the costs is imposed on the defeated party in the peace treaty."⁵⁸

Rewards and compensation for Africans

On 31 March 1907, Kaiser Wilhelm declared the "state of war" in DSWA to be terminated.⁵⁹ The official designation "war" for this confrontation, simultaneously described as an "uprising", between Ovaherero and Nama on the one side and the troops led by the German General Staff on the other, was relevant in several respects. The German soldiers "involved in the suppression" were credited with the years 1904 to 1907 "as a year of war", which was significant for their allowances and pension entitlements.⁶⁰ Even from a "purely military point of view", it was stated in 1907, the fighting was "undoubtedly" a war, even if it had not been declared under international law and was not fought between two recognised sovereigns (that is, the Hague Conventions on land warfare did not apply).⁶¹ Politically, it therefore seemed

⁵⁶ Rohrbach: *Südwest-Afrikas*.

⁵⁷ National Archives of Namibia (NAN), BOM 34, GA 4, Klage Laszig & Ihde gegen den Stamm der Herero, 6.1.1907; *ibid.*, Klage M. Rautanen gegen den Stamm der Herero, 23.2.1907; cf. Jähnel: *Bodenrecht*, p. 240.

⁵⁸ Cit. in Jähnel: *Bodenrecht*, p. 230.

⁵⁹ Sächsisches Hauptstaatsarchiv Dresden (SHStA), 11248/Nr.7676, Bl. 27, Kaiser Wilhelm II. an Reichskanzler, Oberkommando der Schutztruppen, 6.3.1907.

⁶⁰ SHStA 11248/Nr.7676, Bl. 8, OKdoSchTr an Sächsischen Kriegsminister, 13.3.06 – the same holds true for 1904-07, cf. *ibid.*, Bl. 35.

⁶¹ Cf. Steffen Eicker: *Der Deutsch-Herero-Krieg und das Völkerrecht. Die völkerrechtliche Haftung der Bundesrepublik Deutschland für das Vorgehen des Deutschen Reiches gegen die Herero in Deutsch-Südwestafrika im Jahre 1904 und ihre Durchsetzung vor einem nationalen Gericht*, Frankfurt am Main, Lang, 2009.

opportune for the *Reich* leaders and the colonial administration to speak simultaneously of an "uprising" against German colonial rule by those who had hitherto – even as "natives" – been declared "subjects" of the German Reich.⁶²

Under the law, compensation for damages was not obligatory – or at least debatable. It is true that in GSWA the "conviction of the existence of a legal claim" against the *Reich* was widespread among the settlers, according to the *Deutsch Südwestafrikanische Zeitung*. But it was clear to Rohrbach and the other members of the compensation commission that it would be more realistic to plead for compensation as a moral obligation⁶³ – including compensation for defence services rendered. The payments by the *Reich* were officially considered, as mentioned, "voluntary benefits in equity", a "gift" granted by the state.⁶⁴ It was only in the course of the First World War and especially with the November Revolution of 1918 and the "unrest" and "uprisings" "in the interior" of Europe that legal practice in Germany also recognised how obviously arbitrary, for example, the distinction between an "actual" state of war, or in terms of "international law" or "insurance law", and "sedition" by "the rabble" (*Pöbel*) were.⁶⁵

To which group of recipients the "gifts" (*Gaben*) by the state for the "compensation of war damages" would go was not yet determined with the decision on their equity. It is true that after the war the German colonial administration expropriated the land of the "insurgents", their "tribal property" on a large scale, declaring it "crown land"; a policy that Erzberger, for example, characterised as a "modern raid" that was "unworthy of a constitutional state [*Rechtsstaat*]." ⁶⁶ But the land question, which was undoubtedly considered central to the future of the colony, also showed the broad scope of discretion that the German administration granted itself. If other peoples of GSWA were affected by the German "reprisals and persecutions", the Rehoboth Baster and some Nama groups were allocated "small reserves in return for their loyalty to the Germans during the colonial wars."⁶⁷ In this context, there was therefore repeated contemporary talk of "compensating the natives" for war losses.⁶⁸ In this colonial political logic, 'disloyalty' led to retribution and punishment through death and expropriation, while 'loyalty' led to reward in the form of land (and cattle or money). Similarly, in December 1905, shortly after taking office, Governor Lindequist

⁶² Cf. Hellmut Hecker: 'Schutzangehörigkeit und Staatsangehörigkeit in Deutschland', in: *Archiv des Völkerrechts*, 21, 1983, pp. 433-491 (438).

⁶³ *Deutsch Südwestafrikanische Zeitung*, 23, 1904, quoted in Osterhaus: *Terraingewinn*, p. 308.

⁶⁴ BAB R 8023/880, fol. 1, Bl. 44, Bericht, 4. Sitzung des Ausschusses der DKG, 1.3.1907.

⁶⁵ Cf. Reichsgerichtsentscheidung (Zivilsachen) RGZ 90, 378 (380).

⁶⁶ Matthias Erzberger, in: *Der Tag*, 06.01.1906. Cf. Matthias Erzberger: *Kolonial-Bilanz. Bilder aus der deutschen Kolonialpolitik auf Grund der Verhandlungen des Reichstags im Sessionsabschnitt 1905/06*, Berlin, Germania, 1906.

⁶⁷ Jähnel: *Bodenrecht*, pp. 256, 229.

⁶⁸ *Ibid.*, p. 224.

– “take[ing] advantage of their naked need” – had promised the surrendering Ovaherero “in addition to a (from his point of view: undeserved) mercy, the government’s care in the form of food, clothing as well as a ‘small reward’ for the forced labour performed.”⁶⁹ It had become clear to the top echelons of the German colonial administration – in opposition to General von Trotha’s loud-mouthed policy of extermination – that African labour was indispensable for colonial rule and that therefore, “to speak with Max Weber, a ‘certain minimum of wanting to obey, that is: Interest [...] in obeying’ on the part of the inferiors [was] necessary.” Matthias Häussler has recently rightly pointed out that Lindequist and others “sought to arouse such interest [...] with promises.”⁷⁰

This policy of promises – while at the same time being fulfilled much more hesitantly – continued in the years after the end of the war in the face of the impoverishment of those affected – foreseen not only by Erzberger – due to the governorate’s policy of expropriation against Africans.⁷¹ Missionaries of the Rhenish Mission therefore felt compelled time and again to approach Governor Lindequist and demand “land rights for the natives, insofar as they (especially the Bergdamara and ‘bastard’ communities) did not take part in the war.” Secondly, they demanded “compensation for those [Africans] who were conscripted for war service, insofar as they had material losses (livestock) as a result of this service.” But Mission Inspector Johannes Spieker received at best “vague assurances” on these issues from Governor Lindequist in 1907.⁷²

In fact, official “support” for the natives occasionally occurred on a minimal scale, declared as “compensation payments”. In 1908, for example, the governorate, through the Windhoek *Werft* [African settlement] elder Franz Hoesemab⁷³ and the missionary Carl Wandres, distributed 125 goats to several families at Windhoek’s biggest *Werft*; in 1909, another 49. The animals were explicitly intended as compensation for natives who had “remained loyal in the rebellion” – if they were found “worthy”. This “disbursement”, “principally in small livestock”, was supposed

⁶⁹ Matthias Häussler: “‘Auf dass wieder Ruhe und Ordnung herrscht’. Proklamationen im deutschen Feldzug gegen die OvaHerero (1904/05)”, in: *Historische Zeitschrift*, 314 (3), 2022, pp. 599-629 (626).

⁷⁰ Ibid.

⁷¹ The district commissioner of Bethanien, Wasserfall, reported: “The local natives have been completely impoverished by the war. They have no livestock or other property”, NAN ZBU 694, F V f 1, Bd. 1, Bl. 199, DA Bethanien an Gouvernement, 4.1.1908.

⁷² Martin Siefkes: *Sprache, Glaube und Macht. Die Aufzeichnungen des Johannes Spieker in Deutsch-Südwestafrika zur Zeit des Herero-Nama-Aufstands*, Würzburg, Königshausen & Neumann, 2013, p. 109.

⁷³ See Jakob Zollmann: ‘Becoming a Christian, becoming a Troublemaker. The rise and fall of Franz Hoesemab of Windhoek, 1893 to 1933’, in: *Ulrich van der Heyden, Helge Wendt, (eds.): Mission und dekoloniale Perspektive. Der Erste Weltkrieg als Auslöser eines globalen Prozesses*, Stuttgart, Steiner, 2020, pp. 307-322.

to give the "compensation a lasting value."⁷⁴ The fact that such "compensations" remained completely insufficient to put a stop to the impoverishment and to gain trust in the promises of the colonial administration did not occur to the leading officials until late.

After it was raised in the representative council (*Landesrat*) in 1913 "that such deep discontent and ill-feeling against our rule had spread among the natives that one could speak of a new danger of insurrection", the governorate requested reports about the sentiment of the Africans from all district offices.⁷⁵ For the Windhoek District Office (*Bezirksamt*), Gustav Redecker, a government architect familiar with "native affairs", replied. He confirmed that there was "great dissatisfaction among the Windhoek natives, especially among the Bergdamaras." He attributed this to unfulfilled promises made by the administration during the war. At that time, the elder Hoesemab had been promised compensation for the cattle stolen from them by the Ovaherero and a place of his own at Keres for his people if he ensured that they "stood faithfully by the government", which they did "by and large." Compensation was paid, but it was paltry compared to the losses: before the war, Windhoek's 600 or so Bergdamara owned about 90 head of large cattle, 1,150 sheep and 2,500 goats, which grazed in the Khomas Highlands as far as Keres and were almost all driven off during the war. According to Redecker, it was not until 1908 that Hoesemab received the first compensation of 25 goats. By 1912, he said, 480 goats had been transferred, but they often contracted mange and infected the other animals, so that of the 505 animals all but 100 of them "have died of mange today through no fault of the people." The area around Keres was still not guaranteed to them as a grazing ground nine years after the promises were made, because the police claimed the place for its station. All this "has deeply embittered the Bergdamaras beyond Windhoek; [...] it particularly outrages them that they are now on a par with the former rebellious Hereros and Namas."⁷⁶ Windhoek's "native commissioner" (*Eingeborenenkommissar*) Bohr was aware of these facts. But he was of the opinion that the planned allocation of a "reserve", the further compensation of the Damara with cattle that had taken place in the meantime, and the development of new water points in the African settlement (*Werft*) had improved the mood among the African population of Windhoek compared to previous years. However, he also demanded replacement for the losses due to the mange-infested herd that the governorate had supplied as "compensation". The colonial administration therefore

⁷⁴ NAN BWI 36, E 1 e, Bl.17, Polizei an BA Windhuk, 24.4.08; Gouvernement an BA Windhuk, 21.5.1908; Bl. 80, Nachweisung, 8.3.1909. Cf. Jakob Zollmann: *Koloniale Herrschaft und ihre Grenzen. Die Kolonialpolizei in Deutsch-Südwestafrika 1894-1915*, Göttingen, Vandenhoeck & Ruprecht, 2010, pp. 261-263.

⁷⁵ NAN ZBU 2365, Geheimakten VII m, Bl.2, Gouv an alle BA+DA, 4.5.1913.

⁷⁶ NAN ZBU 2365, Geheimakten VII m, Bl.5-7, Redecker an Gouvernement, 12.5.1913.

had reason enough to be more generous in future with regard to the keeping of Africans' livestock.⁷⁷

Finding out to what extent the memory has survived beyond the end of German colonial rule that some Africans were compensated by the Germans, albeit slightly(st), for their war losses in 1904-1907 and others were not, remains a matter for future research. The impression of unkept promises and profound injustices within the colonial order also solidified as a result of this administrative policy, which – despite ongoing criticism – offered little prospect of improvement for those affected. The settlers' complaints about the "injustices" of the mother country's distribution of compensation, which were hardly unknown to them, can therefore only have been taken as mockery by the Africans. The short history of war compensation in DSWA therefore also reflects the much-cited "dual colonial legal order", despite all the reluctance of the colonial administration to deal with the question of compensation 'legally'⁷⁸: here those with rights of action and objection (even if it was the parliamentary right of petition); there 'the others', who at best were allowed to make requests for "rewards" at the administrative level via the "native commissioner" acting in a 'guardianship' capacity. At the same time, alert contemporaries were already aware at that time that the question of how, on what grounds and by what means war compensation would be granted or denied to whom was a "question of fundamental, far-reaching importance for all the future."⁷⁹ As is well known, this question is being asked anew in the 21st century.

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⁷⁷ NAN ZBU 2365, Geheimakten VII m, Bl.24-5, BAWindhuk an Gouvernement, 30.6.1913; Anlage Bericht EK Bohr, Bl.26-8; cf. Gesine Krüger: *Kriegsbewältigung und Geschichtsbewusstsein. Realität, Deutung und Verarbeitung des deutschen Kolonialkriegs in Namibia 1904 bis 1907*, Göttingen, Vandenhoeck & Ruprecht, 1999, p. 188.

⁷⁸Cf. Harald Sippel: 'Recht und Gerichtsbarkeit', in: Horst Gründer, Hermann Hiery, (eds.): *Die Deutschen und ihre Kolonien. Ein Überblick*, 3rd ed., Berlin, be.bra, 2022, pp. 201-221.

⁷⁹ MdR Spahn (Zentrum) 17.3.1904, *StBRT*, 11. Legislaturperiode, 60. Sitzung, p. 1888.

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