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Debate

Colonialism, Genocide and Reparations: The German-Namibian Case

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ABSTRACT

In 2015 the German government acknowledged that the Empire committed genocide in its colony South West Africa, known since its independence as Namibia. This acknowledgement marked a new reference point in how to engage with colonial crimes. Since then, Germany has fallen short of bearing full and unconditional responsibility for and recognition of the crime in terms of restorative justice. While Germany deserves credit for its commemoration and remorse over the Holocaust during World War II, victims of other forms of extermination with the intent to destroy still crave adequate recognition, commemoration and compensation in the form of reparations. This article presents the Namibian case to illustrate the contradictions and limitations that emerge when general notions are tested and undermined by asymmetric power relations of *Realpolitik*.

INTRODUCTION

This article analyses the pitfalls and limits when a former colonial power negotiates with the former colonized over how to come to terms with crimes committed in the past. The investigation reveals a perpetuation of asymmetric power relations between the two negotiating parties, but also the exclusion of main agencies representing the victim communities within the former colonized society as a result of governments engaging in bilateral state-to-state interactions. The German-Namibian case offers insights and lessons into how negotiations guided by 'damage control' fail to achieve the declared intention of meaningful redress. Despite setting an example by admission of guilt, avoiding the creation of any far-reaching precedent reduces the avowed intent to come to terms with a past in the present to a

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pseudo-solution. It is argued that the negotiated results of such processes, to date, are bordering on another betrayal of justice, sailing under a flag of remorse.

In 2015, the German government conceded that, between 1904 and 1908, the warfare in the colony then known as German South West Africa culminated in a genocide. Since then, bilateral negotiations have taken place with the Namibian government, resulting in May 2021 in a draft Joint Declaration initialled by special envoys. Sometimes referred to as a 'reconciliation agreement', it nevertheless fell short of an unconditional recognition of genocide, in order to avoid legal obligations for reparations. Due to disagreements over its limited nature and consequences, the Declaration had not yet been officially adopted by early 2024.

This article uses the German-Namibian example to illustrate that an official engagement with and recognition of colonial atrocities escalating into genocidal extermination does not automatically secure meaningful transformative justice.[1] The case, as a first of its kind, offers insights and lessons as to the limitations of such acknowledgements of wrong-doing, when negotiations are primarily guided by precautionary measures on the part of the former colonial power to avoid any wider legal precedent and adequate material compensation. It also points to a specific aspect of German exceptionalism caused by and linked to the Holocaust trauma and argues that, despite German references to the singularity of the Holocaust, from a victim perspective genocide is genocide. Any form of ranking of genocides is therefore 'trivializing the sufferings of many other terribly damaged groups of people in both the present and the past' (Stannard, 1997: xiii). This exclusivist notion risks turning the uniqueness of the Holocaust into denial of other forms of mass extermination, refusing a similar recognition of uniqueness to the victims and descendants of those events (Stannard, 2009). Misunderstood and repudiated as an 'assault on Holocaust memory' (Rosenfeld, 2001), the connotations associated with this declared singular status remain a powerful instrument to fence off other claims, not only in the case of Namibia.

This article maintains further that negotiations between two governments, without the direct participation of the descendants of the victim communities, can never achieve reconciliation between people. It points to the fundamental differences in perspective which remain, even on a government-to-government level, as long as the descendants of the perpetrators' society seek to play it safe by stopping short of any unconditional atonement. As categorically stated by Deshpande (2023): 'A half-hearted, piece-meal approach that doesn't include a real apology and excludes

1. Some parts of the article are based on other works (in particular Melber, 2022b, 2024, forthcoming). I thank the editors and reviewers for drawing my attention to relevant additional sources.

descendants of victims does not heal wounds and is far less than what formerly colonised nations and their people deserve'.

Despite all its shortcomings, the German-Namibian case is the first of its kind. It clearly goes beyond the limited engagements with colonial crimes such as the case of the British token compensation for the surviving victims of the brutal repression of the Mau Mau resistance, which had been in court since 2009 (Anderson, 2011). In 2011, the UK government dismissed any total liability for events at that time (Hasian Jr and Muller, 2016). Similarly, the Dutch government offered only a limited apology in 2013 for atrocities committed in the Dutch East Indies during Indonesia's struggle for independence (1945–49), and in particular the 1947 killing of hundreds of villagers in the Rawagede massacre in West Java (van den Herik, 2012; Lorenz, 2014).

Given its wider implications, this article considers the German-Namibian case within the general context of reparations and intertemporality, as matters of relevance for engagements with colonial crimes. The notions of reparations, genocide and intertemporality are therefore summarized in the following two sections, while their intricacies are examined in the German-Namibian case study. My intention is to use this case to highlight the ambiguities of the limited current engagements with colonial and imperialist eras. As suggested by Goldmann (2024: 27), 'a selfless act of *Vergangenheitsbewältigung* seemingly confirms its [Germany's] civilizational superiority',[2] while 'the recognition of colonial injustice is perhaps not as selfless and unwarranted as some make us believe', and 'former imperial societies still have a long way to go to come to terms with their colonial past'.

What follows is a summary presentation on the general demands for reparations, the notion of genocide and the argument of intertemporality. The genocide in South West Africa will then be captured in brief, before turning to the bilateral German-Namibian negotiations. A more detailed critical appraisal of their results and shortcomings serves as evidence of a perpetuation of colonial asymmetric power relations. As will be shown, the limited forms of atonement offered are by no means adequate to find acceptance among the descendants of the main victim communities of the time. So far, closure is nowhere in sight.

THE CASE FOR REPARATIONS

Demands for reparations have long been articulated for the crimes, human suffering and lasting damage inflicted by slave trade and colonialism (Buxbaum, 2005). The recognition of the need to compensate for these

2. *Vergangenheitsbewältigung* can be loosely translated as 'coming to terms with the past'.

injustices entered the global normative framework of the United Nations (UN) for the first time (albeit subtly) with Article 16 in the Charter of Economic Rights and Duties of States, adopted by the UN General Assembly on 12 December 1974. It stipulated that states which practised 'coercive policies are economically responsible to the countries, territories and peoples affected for the *restitution and full compensation* for the exploitation and depletion of, and damage to, the natural and all other resources of those countries, territories and peoples'.[3] This understanding was forcefully promoted by the UNESCO-sponsored World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban from 31 August to 8 September 2001. It adopted the victim-centred Durban Declaration and Programme of Action which, among other things, urges governments to provide effective remedies, resources, redress and compensatory measures to victims of racism and racial discrimination.[4] Notably, the term reparation — included in the Rome Statute of the International Criminal Court adopted two years earlier, referring to 'principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation'[5] — is avoided. Nonetheless, the Durban Conference remained controversial and was marred by 'the lack of concerns of a universal nature as common denominators' (Sundberg, 2002: 302).

Several resolutions adopted by the UN General Assembly since then have reiterated the global call of the Durban Declaration. On 21 August 2019 the UN Secretary General released a report by Tendayi Achiume, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. It states: 'Full implementation of the International Convention on the Elimination of All Forms of Racial Discrimination must also be understood as an essential means of achieving reparations for slavery and colonialism'.[6] But the process triggered by the Durban Conference continues to face 'unprincipled opposition of members of the Western Europe and Other States Group', who seek 'to sideline any real

3. See A/RES/29/3281: https://digitallibrary.un.org/record/190150?ln=en (accessed 30 January 2024; my italics).
4. See: www.ohchr.org/sites/default/files/Documents/Publications/Durban_text_en.pdf (accessed 30 January 2024).
5. United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court Rome, Italy, 15 June–17 July 1998, Document: A/CONF.183/9 Rome Statute of the International Criminal Court Extract from Volume I of the Official Records of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (Final documents), Article 75.1, p. 42: https://legal.un.org/diplomaticconferences/1998_icc/docs/english/vol_1/a_conf183_9.pdf (accessed 1 February 2024).
6. 'Contemporary forms of racism, racial discrimination, xenophobia and racial intolerance. Note by the Secretary-General', UN General Assembly, A/74/321, 21 August 2019: https://digitallibrary.un.org/record/3827500?ln=en (accessed 2 February 2024).

reckoning for historical and contemporary racism and racial discrimination rooted in slavery and colonialism' (Achiume and McDougall, 2023: 82, 86).

Challenging this opposition, Wittmann (2013) refers to the Responsibility of States for Internationally Wrongful Acts, adopted by the UN International Law Commission in 2001.[7] As she argues, governments tolerating or even directly involved in slave trade were aware that it was illegal under international law. The evidence is not only domestic legislation existing in the slave states, but also the fact that international law of the time was constituted by including a plurality of laws of non-European societies. This stresses the legal basis for reparations (Obeng-Odoom, 2023) as a matter of justice and equity (Bhabha et al., 2021). Despite such advocacy by scholars and activists, 'international law had not only legitimized colonial exploitation' but 'had developed many mechanisms to prevent any claims for colonial reparations' (Anghie, 2005: 2). The case of Namibia is just one spectacular recent example. At the same time, it highlights matters concerning the applicability of genocide and intertemporal law, as outlined in the following section.

GENOCIDE AND INTERTEMPORALITY

The lawyer Raphael Lemkin, a Jewish Polish refugee, coined the term genocide in 1944 (see Lemkin, 1944, 1945, 1946). As a result of his initiative, genocide was turned into a normative notion by the UN (Elder, 2005; Segesser and Gessler, 2005). On 11 December 1946 the UN General Assembly unanimously adopted Resolution 96(1). It states categorically that 'genocide is a crime under international law … whether the crime is committed on religious, racial, political or any other grounds'.[8] It required several compromises — narrowing Lemkin's original definition considerably (Meiches, 2019) — before it was adopted by the General Assembly on 9 December 1948 as the Convention for the Prevention and Punishment of the Crime of Genocide.[9] It defined genocide as 'acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group', and made genocide a punishable crime.

While the Convention came about as a response of the international community to the Holocaust, the origins, historical and social contexts and specific forms of genocide include mass violence perpetrated during the

7. See: https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf (accessed 17 March 2024).
8. See: https://digitallibrary.un.org/record/209873?ln=en (accessed 2 February 2024).
9. See: www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf (accessed 2 February 2024). See also: https://treaties.un.org/doc/publication/unts/volume%2078/volume-78-i-1021-english.pdf (accessed 2 February 2024).

process of colonization and other forms of expansion by violent means. Colonial mass violence in extreme forms eliminated indigenous peoples in the settler colonies (see, amongst others, Adhikari, 2014, 2021, 2022; Madley, 2004; Moses, 2008b). This underlines Raphael Lemkin's insight that genocides have their roots in colonial minds and practices (Moses, 2010; Schaller, 2008; Schaller and Zimmerer, 2009). As Dirk Moses (2008a: ix) suggests, by 'uncovering the colonial roots of the genocide concept itself', one can 'operationalize Raphael Lemkin's original but ignored insight that genocides are intrinsically colonial and that they long precede the twentieth century'.

The Holocaust has been widely accepted as a singular form of planned mass extermination on an industrial scale. This has found a scholarly translation into Holocaust Studies, which until the late 20th century was considered synonymous with Genocide Studies. A pioneer in the promotion of Genocide Studies, Henry Huttenbach (2003: 5) challenges 'the determined practice of dichotomously separating the Holocaust from other genocides'. He argues 'that the phenomenon of genocide has no single cultural or even chronological origins. Genocidal behavior has been shown to respect no boundaries, neither temporal nor spatial or cultural. Like war, it has manifested itself in the past and present *globally*, regardless of local variations' (Huttenbach, 2003: 6, original emphasis).

This leads directly to the issue of the applicability and legal consequences of acts of genocide and discussions of intertemporal law, as legal questions based on the laws effective at a specific time. It includes the willingness to endorse the legality of laws considered as a justification for crimes. Colonial criminal acts are therefore commonly concealed by recognizing the laws of the time by means of the intertemporal principles:

> There are therefore two elements, the first of which is that acts should be judged in the light of the law contemporary with their creation, and the second of which is that rights acquired in a valid manner according to the law contemporaneous with that creation may be lost if not maintained in accordance with the changes brought about by the development of international law. (Elias, 1980: 286; see also Von Arnauld, 2021; Wheatley, 2021)

What is also contested is the definition of legitimate agencies in specific historical contexts. This includes 'a conceptual disconnect between the international system and its constitution through imperialism, colonialism and genocidal violence' (Weber and Weber, 2020: 107). As Carsten Stahn stated: 'Colonial injustice is not a distant wrong that passes away with time. It is an everyday reality that reproduces itself. … The (after)life of colonialism remains present in our relations to spaces, objects, persons or history' (Stahn, 2020: 823); 'colonial injustice results often not so much from the injustice done between particular persons, but rather from the structures of abuse or the institutional systems put in place at the time' (ibid.: 829).

Notably, annihilation strategies were already outlawed by the Hague Convention of 1899 as being in violation of 'a statement of international customary law' (Harring, 2002: 407). Its annexed regulations state in Article 23 that it is especially prohibited:

> (b) To kill or wound treacherously individuals belonging to the hostile nation or army;
> (c) To kill or wound an enemy who, having laid down arms, or having no longer means of defence, has surrendered at discretion;
> (d) To declare that no quarter will be given; …
> (g) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war.[10]

If the Hague Convention embodies principles of international law, then its rules apply not only to its signatories but also to indigenous communities who had 'not relinquished their full sovereignty' (Shelton, 2003: 318). Which leads us to the case of the Ovaherero and Nama, who in defence of their sovereignty raised arms against the German colonial invaders.

THE GENOCIDE IN 'GERMAN SOUTH WEST AFRICA'

Much has been researched and published on the German genocide committed in its colony South West Africa between 1904 and 1908. Here, a short characterization of the genocidal warfare and its consequences marks the point of departure for the rest of this article.[11] On 12 January 1904, the Ovaherero launched a surprise attack which killed more than 100 German settlers, to resist further encroachment on and appropriation of their land and subjugation under foreign rule. Following an order of Paramount Chief Samuel Maharero, they spared — with very few exceptions — the lives of missionaries, women and children as well as other Whites. Caught by surprise and feeling humiliated, Germany responded with a massive mobilization of troops and military equipment dispatched to the colony. In August 1904 the war escalated into a series of military encounters around the Waterberg in the heartland of the Ovaherero. Being unable to defeat the Germans, the Ovaherero tried to avoid further clashes. On their escape, they sought refuge partly in the adjacent Omaheke semi-desert. German soldiers cordoned off the area to prevent those who had fled from clandestinely returning and seeking shelter elsewhere in the country. On 2

10. For the full document, see: ihl-databases.icrc.org/en/ihl-treaties/hague-conv-ii-1899 (accessed 9 August 2023).
11. Wallace (2011: 131–203) offers a competent summary overview with full references to the then existing literature, including a chapter on 'The Namibian War, 1904-8' (ibid.: 155–82). For pioneering works by historians from the then two German states, see Bley (1971/1968) and Drechsler (1980/1966); for subsequent studies see, among others, Zimmerer (2021/2001), and the contributions to Zimmerer and Zeller (2008/2003). For a summary see also Melber (2017).

October 1904, the German commander, General Lothar von Trotha, issued an order (dubbed *Vernichtungsbefehl*, or 'destruction order'), declaring that Ovaherero were no longer subjects under German rule and were not allowed to surrender (quoted in Drechsler, 1980/1966: 156–57). The text was rescinded in December of the same year by the Kaiser under pressure from public protests. It had declared:

> The Herero people will have to leave the country. Otherwise I shall force them to do so by means of guns. Within the German boundaries, every Herero, whether found armed or unarmed, with or without cattle, will be shot. I shall not accept any more women and children. I shall drive them back to their people — otherwise I shall order shots to be fired at them.[12]

After witnessing the warfare against the Ovaherero, Nama communities (given the pejorative German label *Hottentotten*) rose up in late 1904. They resorted to a guerrilla strategy and engaged the colonial army for years. On 22 April 1905 von Trotha issued another, less widely known, order addressing them. It declared that all those who do not find mercy should leave the 'German territory' or otherwise they would be shot until all are exterminated. Captured Nama suffered a similar fate as the surviving Ovaherero, imprisoned in concentrations camps under conditions which had fatal consequences for many.

The warfare and subsequent treatment of the survivors amounted to a genocide. In the more recent colonial historical debate, earlier works advocating this assessment have been critically questioned as being teleological in tendency. This is based on the conclusion that the initial military and policing power was at best limited and the reference to official source material selective or uncritical. It is argued that the unfolding dynamics were not pre-determined and that the escalation of violence was a sign of German military weakness rather than strength, with the subsequent rigorous elimination practices representing an indication of German fear. Protagonists of such re-assessments of the intent to destroy nevertheless reach the same conclusion: that the result 'can doubtless be termed a genocide' (Häußler, 2011: 62; see also Häussler, 2021/2018).

As a result of the war, an estimated two-thirds of the Ovaherero and a third to a half of the Nama were eliminated. The Damara (in German, derogatorily called *Klippkaffern*), living among and between the various Nama and Ovaherero communities, were also victims (Garoes, 2021), while the communities of the San (Bushmen) continued to be targets of decimation by settlers throughout German colonial rule (Gordon, 2009). The survivors among these local communities were denied their earlier social organization and reproduction. The structures imposed by the colonial administration, by relocating the survivors into reserves and prohibiting their continued modes of production as semi-nomadic cattle herders, were tantamount to

12. English translation by Drechsler.

destroying their established existence. Apartheid was a German invention and was introduced prior to a similar system being installed in South Africa.

While concrete figures for the numbers killed remain a matter of dispute, there is clear evidence of the intent to destroy as regards the way of life. This is a core definition of genocide. As defined in Article 2 of the applicable Convention:[13]

> [G] enocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
> (a) Killing members of the group;
> (b) Causing serious bodily or mental harm to members of the group;
> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.

According to this understanding, the so-called Whitaker Report (named after its author) presented to ECOSOC in 1985, lists the German warfare against the Ovaherero in 1904 as the first genocide of the 20th century.[14] Since then, the majority of scholars with a focus on colonial history as well as international genocide studies have reached the same or a similar conclusion.

NEGOTIATING GENOCIDE: THE GERMAN-NAMIBIAN JOINT DECLARATION

It took more than a century before a German coalition government of the Social Democrats (SPD) and the two Christian Union parties (CDU and CSU) admitted in mid-2015 that the colonial warfare between 1904 and 1908 in today's Namibia was tantamount to genocide. This triggered bilateral negotiations between special envoys appointed by the Namibian and German governments at the end of 2015 (for detailed accounts of the unfolding dynamics, see Kößler and Melber, 2017; Melber, 2020). After a total of nine meetings, the two governments initialled a Joint Declaration in May 2021, which made international headlines. For the first time, a former colonial power officially offered a state-to-state level apology for state-sponsored mass crimes in a colony. Despite all criticism of its limitations, this can be acknowledged as a helpful reference point to reduce the ongoing

13. Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the UN General Assembly on 9 December 1948 by resolution 260 A (III) with entry into force on 12 January 1951: www.refworld.org/docid/3ae6b3ac0.html (accessed 8 August 2023). For an early appraisal see Kunz (1949).
14. United Nations Economic and Social Council Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Thirty-eighth session, Item 4 of the provisional agenda, E/CN.4/Sub.2/1985/6 -SPECIAL DELIVERY 2 July 1985, 'Revised and Updated Report on the Question of the Prevention and Punishment of the Crime of Genocide'. Prepared by Benjamin Whitaker (see p. 8). www.preventgenocide.org/prevent/UNdocs/whitaker/ (accessed 8 August 2023).

German colonial amnesia (Kößler and Melber, 2021). Some therefore consider the accord a potential template for efforts towards post-colonial reconciliation. This may apply even while this first case has gone lamentably wrong. Since then, the potential legal implications, as well as the precedent set for former colonial powers, have occupied the minds of legal experts and foreign policy pundits, and keep the matter alive beyond the specific case.

The Joint Declaration has 22 clauses in five chapters, and bears the flowery sub-title 'United in Remembrance of Our Colonial Past, United in Our Will to Reconcile, United in Our Vision of the Future'.[15] With reference to previous resolutions of the German parliament in 1989 and 2004, the Introduction emphasizes 'a special historical and moral responsibility towards Namibia'. Nine clauses under chapter I then summarize in a remarkably undiluted way the crimes committed, and conclude: 'As a consequence, a substantial number of Ovaherero and Nama communities were exterminated through the actions of the German State. A large number of the Damara and San communities were also exterminated'. It continues in chapter II/clause 10: 'The German Government acknowledges that the abominable atrocities committed during periods of the colonial war culminated in events that, from today's perspective, would be called genocide'. Chapter III/clause 11 adds: 'Germany accepts a moral, historical and political obligation to tender an apology for this genocide and subsequently provide the necessary means for reconciliation and reconstruction', while clause 13 states 'Germany apologizes and bows before the descendants of the victims'. The following clause 14 (chapter IV) hastens to add: 'The Namibian Government and people accept Germany's apology and believe that it paves the way to a lasting mutual understanding and the consolidation of a special relationship between the two nations …. This shall close the painful chapter of the past and mark a new dawn in the relationship between our two countries and peoples'.

Both governments agreed on a 'reconstruction and development support programme' (chapter V/clause 16), 'to assist the development of descendants of the particularly affected communities'. Clause 17 commits to 'finding appropriate ways of memory and remembrance, supporting research and education, cultural and linguistic issues, as well as by encouraging meetings of and exchange between all generations, in particular the youth'. The German Government allocates 1.1 billion euro to be disbursed over 30 years after signing, with 1.05 billion earmarked for the development programme and 50 million 'to the projects on reconciliation, remembrance, research and education' (clause 18). Clause 20 stresses: 'these amounts … settle all financial aspects of the issues relating to the past addressed in this Joint

15. The full title is: 'Joint Declaration by the Federal Republic of Germany and the Republic of Namibia. "United in Remembrance of Our Colonial Past, United in Our Will to Reconcile, United in Our Vision of the Future"'; it is available at: www.dngev.de/images/stories/Startseite/joint-declaration_2021-05.pdf (accessed 8 August 2023).

Declaration'. The final clause 22 offers reassurance that Germany remains committed 'to continue the bilateral development cooperation at an adequate level'.

On 28 May 2021, Germany's Foreign Minister Heiko Maas clarified that the admission of genocide does not imply any 'legal claims for compensation' and referred to the 'substantial programme … for reconstruction and development' as a 'gesture of recognition' (Federal Foreign Office, 2021). This level of material compensation makes Maas's 'gesture of recognition' modest indeed.[16] During a subsequent parliamentary question time, Minister Maas stressed that the agreement was purely voluntary with no legal obligations and was not a matter of reparations. He also stressed that the agreement is not a treaty which would require ratification by parliament (Deutscher Bundestag, 2021: 29834 C and D).

In a critical engagement, members of the European Center for Constitutional and Human Rights (ECCHR), a Berlin-based NGO, did not mince their words: 'That the "reconciliation agreement" will be published as a mere Joint Declaration speaks volumes. The preceding negotiation process furthermore disregarded international participation rights based both in treaties and customary international law' (Imani et al., 2021: 1). For these authors, the state-centred approach does not meet the standards of present-day international law. Their verdict is devastating: 'What shows from the choice of title and format of the accord … [is that] the "semantic struggle" was decided in favor of the German government's take on its responsibility, a responsibility that is normatively very thin, almost void in its recognition of accountability and reckoning with its colonial legacy and guilt' (ibid.: 7).

This 'thin' outcome corresponded with the lack of inclusivity during the process of the Namibian communities most affected by the genocide. While Minister Maas claimed in his press statement, 'Representatives of the Herero and Nama communities were closely involved in the negotiations on the Namibian side' (Federal Foreign Office, 2021), the ECCHR bemoaned the insufficient participation of these communities and emphasized: 'There can never be justice in a truly restorative sense when affected communities like the Nama, Ovaherero, San and other communities are not included in the negotiations' (Imani et al., 2021: 4). The ECCHR statement diagnoses 'a mere shift of an initial refusal to call it genocide to a refusal to apply the legal term "reparations"' (ibid.: 6). It also points out: 'Given the joint

16. To illustrate the point: after the tsunami disaster in Asia at the end of 2004, Germany raised 1.1 billion euro through private donations and official humanitarian aid within six months. Construction costs for the new Berlin airport had by the time of its opening in 2021 exceeded 7 billion euro. Costs for the new underground railway station in Stuttgart were estimated in 2023 at over 9 billion euro. Similarly, the 50 million euro 'dedicated to the projects on reconciliation, remembrance, research and education' over the same 30-year-period contrast with the annual maintenance costs of 60 million euro for the controversial Humboldt Forum, which displays in the reconstructed Berlin Castle artefacts looted during colonialism.

declaration's wording and lack of the term reparation therein, it avoids comprehensively acknowledging Germany's legal responsibility for its colonial legacy. … the gesture of an apology will remain purely symbolic if it is not connected to other means of reparations' (ibid.: 2).

NO RESTORATIVE JUSTICE

Demands for reparations are also the subject of debate beyond the Joint Declaration (see, for example, Goldmann, 2020a; Paulose and Rogo, 2018; Präfke, 2019). This relates to the discussions on intertemporal law as presented above: which law is applicable at which times? Affirmative reference to earlier normative frameworks and jurisdiction includes the willingness to endorse the legality of laws considered as a justification of crimes. Germany itself applies rules of intertemporality ambiguously. It dismisses recognition of certain Nazi-era laws or those of the German Democratic Republic, but willingly conceals other crimes, such as colonial acts of violence, by referring to laws of the time, thus applying the intertemporal principles.

Three years into Namibia's independence (declared on 21 March 1990), Lynn Berat (1993: 210) suggested in relation to German liability for the genocide — referring to retroactivity as an essential notion stressed by the International Military Tribunal at Nürnberg — that the 'appropriate measure of redress is reparation for the injuries suffered'. As she argued further, 'if used prudently by the Namibian government, such reparations would at least help restore Namibia's social and economic fabric which was so tragically torn nearly a century ago' (ibid.). But for more than 20 years, neither the German nor the Namibian government had considered the matter to be of any importance. Indeed, agencies of the Ovaherero and Nama seeking redress were not recognized as legal subjects in international relations. Their claims were confined to court cases under the US American Alien Tort Statute. These were finally dismissed in May 2021. The plaintiffs had claimed 'the legitimate right to participate in any negotiations with Germany relating to the incalculable financial, material, cultural, intellectual, religious and spiritual losses suffered'. They asked for the award of punitive damages and the establishment of a Constructive Trust. Into this the defendant (Germany) should pay the estimated 'value of the lands, cattle and other properties confiscated and taken from the Ovaherero and Nama peoples'.[17]

17. For the full text of the claim and the media responses, see the documents compiled and accessible at: www.genocide-namibia.net/2017/01/05-01-2017-herero-und-nama-verklagen-deutschland-ovaherero-and-nama-file-lawsuit-in-new-york/ (accessed 9 August 2023). For an analysis of the case see, among others, Sarkin (2009).

With the formal end of colonial rule almost everywhere, the impact and consequences of the injustices and crimes committed have not been reversed or undone. Colonial structures are reproduced in the present and crimes committed stay unatoned, often with the argument that there are no survivors to be compensated. But the execution of annihilation strategies was already a violation of binding codified international law (Aboudounya, 2022), such as the 1899 Hague Convention referred to above. Customs 'limiting the use of force in war … conferred humanitarian rights upon the Hereros' (Anderson, 2005: 1189). As Cooper (2007) also reiterates, customary international law of the time was clearly a benchmark, against which the extermination war against the Ovaherero was a violation of international law.

Despite the acknowledgement of genocide (notably 'from today's perspective') and some words of remorse, the Joint Declaration avoids bearing full responsibility. In substance, it continues the doctrine of apology without damage payment, as coined by the Foreign Minister Joseph ('Joschka') Fischer some 20 years earlier (see Brehl, 2022: 59). As a soft version of denialism, it offers no true reconciliation. It rather extends what had been diagnosed during the negotiation process as a continued prioritization of principally domestic (national) German interests, albeit dressed in a multidimensional costume (see Roos and Seidl, 2015). But the treatment of the historical legacy demonstrates selectivity just as the (non-)application of the intertemporal principle does. During the existence of the German Democratic Republic, the Federal Constitutional Court stressed in a ruling of 1972 that the Federal Republic of Germany is identical with the German empire (*Deutsches Reich*). This has not been changed with the incorporation of the former East Germany in 1990. The expanded Federal Republic remains legally a continuation of the German empire, as expressed by the academic services of the German parliament (Deutscher Bundestag, 2007). Hence, logically, the current German state remains responsible for acts committed earlier. Cosmetic rhetoric notwithstanding, the Joint Declaration simply presents a refurbished version of asymmetric power relations. It continues to exclude the prime counterparts in efforts to seek restorative justice. Namibian-German bilateral interaction remains a story of aid recipients and the 'White Saviour' (Brehl, 2022: 67–69). Making policy with history in such a way turns into development aid for the Namibian state (Robel, 2013: 388).

'WITHOUT US IS AGAINST US'

The main agencies of the descendants of the Ovaherero and Nama were adamant in their rejection of the deal, with the Damara and San less vocal in the absence of similar effective forms of institutionalized representation. Their motto, 'Anything about us, without us, is against us' (Van Wyk, 2022), refers to a substantive clause in the UN Declaration on the Rights

of Indigenous People.[18] Adopted in 2007 and signed by both countries, article 18 states in no uncertain terms: 'Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures'. As Ester Muinjangue, long-standing activist for the demands of the Ovaherero, declared in an interview: 'It is critical to have representatives of the two communities at the negotiating table, selected and appointed by themselves' (cited in Jason, 2022). Referring to the negotiations that took place in 1952 in Wassenaar, the Netherlands (see De Vita and Goschler, forthcoming), in which Jewish civil agencies were directly involved, paving the way for the subsequent Luxembourg Agreement between Israel and West Germany (Goschler, 2022), Van Wyk asks: 'If Germany could negotiate with 23 groups what is difficult to negotiate with 23 groups of Ovaherero and Nama?' (cited in Jason, 2022). In a similar vein, Rechavia-Taylor and Moses (2021: 3) argue: 'While the Jewish Claims Conference can certainly not be said to have represented the entirety of the Jewish diaspora — nor the entirety of the Holocaust surviving community — it was still an organization *beyond the state* that could negotiate with the German government for a reparations agreement' (original emphasis).

The adequate inclusion of the most affected communities in Namibia and the diaspora in any negotiations remains — together with the demand for reparations — the decisive bone of contention. It points to the limitations of government-to-government negotiations if these do not adequately recognize those who bear the trauma and consequences of the genocide and are confronted daily with the lasting structures anchored in society, not least in the property relations with regard to land (see Melber, 2019, 2022a). But land restitution, one of the most obvious entry and reference points for a policy of restorative justice, is not a matter of concern in the Joint Declaration, beyond infrastructural regional development and land reform within the limitations of existing land ownership. Remaining marginalized and to a large extent landless as a consequence of the genocide, the descendants of the most affected communities are caught between a rock and a hard place, fighting 'their battles for political recognition and legitimation on the terrain of memory … as hegemonic state historical narratives are challenged by historically disenfranchised groups who issue legal and political demands for acknowledgement of their own versions of the past' (Hamrick and Duschinsky, 2018: 451).

In contrast, the German coalition government in office since December 2021 seems to advertise 'reactive remembrance' (Boehme, 2020) as an achievement. The German paternalism points to the inherent structure of any such dialogue between the former colonizer and the former colonized,

18. For the full document, see: www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html (accessed 9 August 2023).

which 'entails a format that accords the politician of the transgressor state an elevated speaking position. This results in the ritual being predisposed to problematic representations of the colonised and sanitised narratives of the transgressor' (Bentley, 2018: 399). It remains a challenge for the Namibian government to re-open negotiations and shift public debate by objecting to this German approach. While silence can be understood as consent, 'double ventriloquism' seems an apt characterization of the current status:

> [This] occurs whereby both the (former) colonizing state and the post-colonial government collude to speak for the colonized in respect to offering a narrative of the wrongdoing, determining remedial measures, and agreeing that the issue is 'closed'. Such collusion frames the state as the sole interlocutor in the transitional justice process and is an exercise in marginalizing the subaltern voices in addressing the past. (Bentley, 2022: 1)

ATONEMENT IN THE WAITING ROOM

While affairs remained pending, a new dynamic was introduced when, on 19 January 2023, an application was filed at the Namibian High Court.[19] The 11 applicants were Bernadus Swartbooi, leader of the second biggest opposition party, the Landless People's Movement (LPM), the Ovaherero Traditional Authority (OTA) and nine traditional authorities from Nama communities as members of the Nama Traditional Leaders Association (NTLA). This intervention 'is part of a long-term legal intervention designed together with the affected communities that aims at reparations and at the decolonization of international law' (Theurer, 2023c: 1147). As 'a historical milestone … it is the first time that an interstate agreement on the reappraisal of colonial crimes is being reviewed in a court of a former colony' (Theurer, 2023c: 1168).

The lawsuit seeks a judicial review to set aside the decision by the Speaker of Namibia's National Assembly to take note of the Joint Declaration. It asks that the Declaration be declared unlawful in terms of Namibia's Constitution as well as in breach of a motion adopted by the National Assembly in 2006. As it argues:

> 33.4 The Joint Declaration is not a meaningless international statement — it has domestic application and an adverse effect on citizen's rights to the point that it has made a policy choice which has never been debated or otherwise scrutinised by Parliament or anyone outside the Executive at all;
> 33.5 The Government does not have the inherent power to unilaterally make law (even on an international plane) that has a direct impact on what happens to citizens: that is a substantive law-making power that is the preserve of Parliament; and
> 33.6 Without a parliamentary mandate, the Joint Declaration falls to be set aside due to its over-breadth and reach.[20]

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19. Case number HC-MD-CIV-MOT-REV-2023/00023. Available at: ejustice.jud.na/ejustice/f/caseinfo/publicsearch (accessed 12 August 2023).
20. Ibid.: 13.

As if this were not enough, on 23 February 2023 seven Special Rapporteurs of the Office of the High Commissioner for Human Rights (OHCHR) submitted a letter to the German[21] and Namibian[22] governments (Theurer, 2023b, 2023c). Largely identical, these letters:

> express grave concern at the alleged failure of the Governments of Germany and Namibia, as parties of the negotiations, to ensure the right of the Ovaherero and Nama Peoples, including women, to meaningful participation, through self-elected representatives … international law requires the States to obtain the free, prior, and informed consent of the Indigenous Peoples concerned through their own representatives before adopting and implementing legislative or administrative measures that may affect them. It also stipulates that mechanisms that aim to redress colonial crimes have to be developed in conjunction with them.[23]

The Rapporteurs requested both governments to respond and clarify certain matters. Namibia did so on 30 May 2023 (Republic of Namibia, 2023), and Germany on 1 June 2023 (Permanent Mission of the Federal Republic of Germany, 2023). Predictably, both responses dismissed the criticism entirely. They were eager to stress that participation in the bilateral negotiations was at all times open to the representatives of the affected communities, but declined by OTA and NTLA. This ignores the point made by the Special Rapporteurs, 'that the refusal to participate in ways which are not in accordance with international law, cannot be construed as a refusal to participate in general' (Theurer, 2023c: 1165). Notably, the Namibian reply clarifies that following the debate in the National Assembly in late 2021, 'the contested Paragraphs of the Joint Declaration were ring-fenced for renegotiation' (Republic of Namibia, 2023: 7).

Addressing German-speaking Namibians in late October 2023, Foreign Minister Netumbo Nandi-Ndaitwah revealed that another round of negotiations had taken place in Windhoek from 4 to 6 October. She indicated that the focus was on three unresolved issues, namely 'the amount offered, the 30 year payment period and whether the final joint declaration would bring finality to Germany's obligations towards Namibia in the context of genocide' (cited by Ndjebela, 2023). In another meeting in early December in Berlin the delegations seemed to have found some common ground. On 9 December 2023 Christoph Retzlaff, Director for Sub-Saharan Africa and the Sahel at Germany's Federal Foreign Office, posted on X: 'Constructive and trustful talks with Technical Committee of Government of Namibia in Berlin. Exchange with MPs of Parliament. Addressing the painful colonial past and jointly shaping our special relationship for the future'.[24]

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21. AL DEU 1/2023, see: spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId = 27875 (accessed 12 August 2023).
22. AL NAM 1/2023, see: spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId = 27878 (accessed 12 August 2023).
23. AL DEU 1/2023 and AL NAM 1/2023, p. 8f.
24. See: https://twitter.com/GERonAfrica/status/1733441353764188578 (accessed 10 January 2024).

While rumours suggested that a deal had been sealed, no official announcement confirmed this. But even if, by the time this article is published, such a ratified Agreement might have become reality, it would not end the controversial debate. As Theurer (2023c: 1163) warns, 'if the current German government thinks it will be possible to achieve reconciliation by imposing an agreement that is perceived to reproduce colonial racism and white saviorism and that is rejected by the majority of the affected communities', it might be in for a nasty surprise. Rather, 'it amounts to putting more fuel into the fire'. The same warning can, of course, be addressed to the Namibian government.

THE PITFALLS OF GERMAN COMMEMORATION AND REMORSE

Thorsten Hutter, Germany's Ambassador to Namibia since mid-2023, declares in his opening words on the embassy's website that the two countries are 'linked by a long and sometimes painful history'. But 'today', he optimistically continues, 'relations are diverse and future-oriented'.[25] This illustrates the trap that Germany has entered, avoiding the necessary engagement with the inadequately acknowledged 'painful history' as a point of departure for building a sustainable future. To pretend business as usual without shouldering the burden of the past in all its consequences might not lead to the smooth path the ambassador hopes for. It could, for example, put at risk the ambitious mega-project of green hydro-energy production — which has its own pitfalls (Gabor and Sylla, 2023) — when competing with other, similarly keen, foreign rivals to strike a deal. An insufficient awareness of and empathy with the scars and trauma caused by the German genocide, along with other lasting consequences of German colonial rule in the country, might ultimately stand in the way of a project declared to be 'a relationship at eye level' (Biogradlija, 2022). The shortcomings of a selective handling of the past go beyond disrespectfully offending the descendants of the victim communities. The many examples of German insensitivity are revealing.

In early 2024 more fuel was added to the flames by the divisions created over Israel's war in Gaza. This threw a spanner in the works at a moment when it seemed that a government-to-government compromise had been reached. When South Africa announced its claim against Israel in the International Court of Justice, Namibia supported the case. Then, on 12 January, Germany declared itself a third party in defence of Israel — exactly 120 years after the beginning of what some call the Namibian-German War, with no word in remembrance of this event. This triggered an outburst by Namibian President Hage Geingob. In a strongly worded statement

25. See: https://windhuk.diplo.de/na-en

circulated on X the next day, he declared: 'The German Government is yet to fully atone for the genocide it committed on Namibian soil. … Germany cannot morally express commitment to the United Nations Convention against genocide, including atonement for the genocide in Namibia, whilst supporting the equivalent of a holocaust and genocide in Gaza'.[26] President Geingob's reaction testifies to the emotions of many Namibians, feeling disrespected and humiliated by racist discrimination. Questioned by journalists at the Federal German press conference two days later, spokespersons of both the government and the Foreign Ministry failed to engage with the criticism.

A few days later a similarly embarrassing display of 'memory failure' was documented by the German Embassy in Windhoek. On the occasion of Holocaust Remembrance Day on 27 January, the embassy posted photos with the ambassador and staff members holding signs forming the words 'We remember'. A comment explained that the Holocaust 'is the darkest period of German history … our efforts to combat antisemitism can never waver to ensure that these atrocities #NeverAgain occur'.[27] What had been forgotten was the fact that on the very same day in 1908 the first concentration camps in South West Africa were closed. The two photos on display included an unknown man dressed in traditional Jewish outfit, which is not a common sight in Namibia. But Ovaherero and Nama dressed in their traditional attire, while part of everyday ordinary life, remained invisible.

As critics have observed, the Joint Declaration displays deep and significant limitations compared with earlier efforts to come to terms with the crimes of the Nazi regime: 'The proposal to use the term "healing the wounds" suggests that it is not. … It is a posture that inadvertently reproduces colonial thinking. For reconciliation to work requires that we stop that kind of thinking and find a genuinely post-colonial, or decolonial, approach' (Goldmann, 2020b: 4). If taken seriously, bonds of solidarity require the recognition of the other view as equal and the trauma caused as singular. Singularity or *Zivilisationsbruch* is not limited to the Holocaust, as a kind of hierarchical ranking suggests, guided by the power of definition of Eurocentric exclusivity. The exceptionalism of the Holocaust is not denied when the singularities of violence committed elsewhere at other times — not least during the expansion of Europe into the rest of the world — are recognized. As Brumlik (2021: 138), among others, insists, remembrance and commemoration are not a zero-sum game.

It is to the credit of Michael Rothberg (2021/2009) that such long-overdue discussions have also been triggered in Germany. Rothberg 'succeeds in

26. Media Release by the Namibian Presidency, 13 January 2024 https://twitter.com/NamPresidency/status/1746259880871149956 (accessed 3 February 2024).
27. See: https://twitter.com/GermanEmbassyNA/status/1751186775815627260 (accessed 3 February 2024).

providing the wretched rivalries of remembrance — which can always be exploited to political ends — with a universalist perspective that stands in anamnestic solidarity with all victims of tyranny' (Brumlik, 2020). The trauma of mass violence inflicted with the intent to destroy is singular and a breach of civilization also in subaltern perspectives and applicable to all people subjected to extermination strategies. There is no European master narrative, which is entitled to negate and thereby deny any experiences of similar importance and relevance in the history of other people, to them and their descendants. In the words of Brumlik (2020), 'this cannot in turn mean that genocidal crimes that range in their barbarity and magnitudes can simply be equated …. Particularly if "multiperspectival memory" is to give rise to a productive perspective that takes a solidaric and critical approach to historiography and societal analysis, it is essential to precisely name both similarities and differences alike'.

The tendencies in official German memory culture, however, took a different turn. With solidarity (mis)understood as support of Israel's government, a toxic, perverted exclusivity of the Holocaust trauma (re-)gained momentum. The re-branded singularity of the Holocaust bordered on obsession, resulting in 'historical reckoning gone haywire' (Neiman, 2023). Or, as Pankra Mishra (2024) suggests, with reference to Port (2023), an 'otherwise admirable reckoning with the Holocaust may have unwittingly desensitized Germans'. This is emphasized also by Masha Gessen (2023), when she observes: 'The insistence of the singularity of the Holocaust and the centrality of Germany's commitment to reckoning with it are two sides of the same coin: they position the Holocaust as an event that Germans must always remember and mention but don't have the fear [of] repeating, because it's unlike anything else that's ever happened or will happen'.

This new exclusivity plays out in different forms and variations.[28] Commenting on 'comparison controversies', Michael Rothberg (2024), quotes Masha Gessen who had insisted 'Never Again' has to be turned into 'a political project rather than a magical spell'. As he demands, historical comparisons are omnipresent and have to be taken seriously. They should be evaluated with what he calls an 'ethics of comparison', as 'a flexible set of guidelines'. This current debate serves as a reminder that cultivating the singularity of the Holocaust risks engendering a singularity of German remorse — at the expense of all other victims of mass violence carried out by Germans, for whom these experiences were just as singular.

28. The current official German solidarity with Israel's government (often misleadingly equated with the Jewish people), has culminated, among other things, in Germans insulting Jewish critics of the Israeli policy as antisemitic, self-hating Jews.

CONCLUSION

In the light of such continued German stumbles over the pitfalls of selective memory and commemoration, it should not come as a surprise that the Ovaherero and Nama — as well as other communities decimated and uprooted by German colonialism — accuse Germany of double standards. As one of their main criticisms, they claim that without the descendants of the genocide survivors being substantially involved and willing to reconcile, the outcome of the bilateral German-Namibian negotiations remains as patronizing and paternalistic as colonialism had been. The fact remains, that relevant agencies of the descendants of the most affected communities had no seat at the negotiating table.

Without being too speculative, one can assume that a contributing factor in Germany's reluctance to take a step further in the right direction, might be the risk of creating a precedent that turns into a liability for Germany, in the face of World War II crimes committed in Italy, Greece and Eastern Europe, with pending legal disputes. The Namibian case could open a Pandora's box, not only as regards unresolved reparation claims from WWII but also as motivation for subsequent claims based on similar crimes committed in other German colonies. As Theurer (2023a) reveals: 'In private, German diplomats admit that their legal reasoning is tenuous, but that the floodgates must be prevented from being opened'. An unconditional apology which leads to reparations as a legal consequence would set a far-reaching precedent not only for other colonial and war crimes committed by Germany: it would also put the issue of compensation for colonial injustices committed by other powers on the agenda. It therefore doesn't seem far-fetched to assume that other former colonial powers would prefer to keep a lid on the matter. Given the skeletons in their closets, they certainly have reasons to fear the creation of a legal precedent should Germany find a solution in recognition of the demands and claims by the descendants of the victims of colonial crimes against humanity.

By all standards, the genocide of 1904 to 1908 had lasting consequences demographically (and therefore also politically) and in the structurally embedded unequal relations that are still being reproduced. Moreover, as Kourtis (2023: 16) observes, with reference to Card (2005: 238): 'genocide causes a distinct type of harm that reverberates inter-generationally'. Therefore, 'a proper understanding of the crime's ultimate victim should not remain blind to the nuances of transgenerational victimisation … collective victimhood produced by genocide had to be redressed through a viable political future and modalities of reparations attached thereto' (Kourtis, 2023: 23). Moreover, '[a] politically mediated process of collective remedial action, … in cooperation with local stakeholders, the victimised communities, and the territorial state to redress the collective harm, might prove vital, especially as the members of the group reclaim their agency and identity or renegotiate their place in the post-genocide community' (ibid.: 24). The

Joint Declaration lacks any indication of willingness by the governments of the two states to exercise such meaningful responsibility to address these issues by tackling the lasting consequences created. In their letters, the UN Special Rapporteurs not only bemoan the 'insufficient memorialization' of the genocide in both countries. They also stress 'a demand for accountability and reparation for the harm inflicted. This has important ramifications as only full reparation that includes acknowledgement, apology, restitution, compensation, rehabilitation and guarantees of non-recurrence (including the reform of continuous forms of exclusion and discrimination), can effectively remedy past wounds'.[29]

This leaves the Namibian government facing the blame for acting willingly as a junior partner in efforts to address colonial injustices through a neocolonial perpetuation of those injustices. Following President Geingob's sudden passing away on 4 February 2024, the country's Deputy President Nangolo Mbumba became Head of State; he will remain in office until 21 March 2025, when Geingob's second term would have ended. During the last years he was officially tasked with the supervision of the bilateral negotiations on behalf of the government. He had previously voiced frustration over the shortcomings of some of the negotiated results and had tried in vain, in late 2022, to convince the agencies of the Ovaherero and Nama to accept the negotiated results.

In his State of the Nation Address, Mbumba confirmed 'that the Government remains committed to conclude the Genocide negotiations with Germany' (Republic of Namibia, 2024: 18). Mbumba also reacted to the speech made by Germany's President Steinmeier on 24 February, when attending the state funeral of President Geingob. Televised live as part of the ceremonies, it had provoked much indignation. Steinmeier had declared: 'I hope I will be able to return to this country very soon and under different circumstances, because I am convinced that it is high time to tender an apology to the Namibian people'.[30] This once again stressed the morally dubious understanding and approach of the German side, that an apology was the object of the — so far still inconclusive — negotiations. Steinmeier had also stated:

> When I talked to President Geingob for the last time, late last year, he told me that it was his wish to successfully conclude our Joint Declaration in order to bring the special relationship between our two countries to a new level. I am here today to say that my country remains committed to his legacy. We are committed to the path of reconciliation.[31]

This entirely glossed over the falling out in mid-January, as documented earlier, and Geingob's outburst over Germany taking sides with Israel in the

29. AL DEU 1/2023 and AL NAM 1/2023, p. 10.
30. See: www.bundespraesident.de/SharedDocs/Downloads/DE/Reden/2024/02/240224-Trauerfeier-Geingob-Namibia-Englisch2.pdf?__blob=publicationFile&v=2 (accessed 17 March 2024).
31. Ibid.

ICJ case. President Mbumba left no doubt as to what he thought of this with his off-the-cuff response during the question and answer session following his State of the Nation address: 'People come here, the German President Frank Steinmeier, and he said something. But the bottom line is really: is Germany ready to compensate to the level acceptable to all of us? To just say we apologise, is nothing — it is a heavy, heavy responsibility. I am happy to meet the traditional leaders to understand what they want' (Beukes, 2024).[32]

It remains to be seen what the Namibian government's next steps will be. Meeting numerous Ovaherero and Ovambanderu traditional leaders in early April, Mbumba indicated willingness to arrange for a national conference on genocide. But he also cautioned: 'I do not think throwing everything away and starting from zero is the way to go' (quoted in Hembapu and Ngaruka, 2024). Meanwhile, the German government had ended its response to the Special Rapporteurs with the self-righteous claim that the bilateral negotiations 'could serve as a model for addressing colonial injustice' (Permanent Mission of the Federal Republic of Germany, 2023: 14). Given this anything but self-critical posture, restorative justice remains out of view. As Yosef Hayim Yerushalmi (1996: 117) once asked: 'is it possible that the antonym of "forgetting" is not "remembering", but justice?'.

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32. See also: www.youtube.com/watch?v=f31P8OKL41k (accessed 17 March 2024).

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