

Sonderdruck aus

JAHRBUCH DES SIMON-DUBNOW-INSTITUTS
SIMON DUBNOW INSTITUTE YEARBOOK



XIII

2014

Vandenhoeck & Ruprecht

Herausgeber

Editor

Dan Diner

Redaktion

Manuscript Editor

Petra Klara Gamke-Breitschopf

Redaktionsbeirat

Editorial Advisory Board

Aleida Assmann, Konstanz · Jacob Barnai, Haifa · Israel Bartal, Jerusalem · Omer Bartov, Providence · Esther Benbassa, Paris · Dominique Bourel, Paris · Michael Brenner, München · Matti Bunzl, Urbana-Champaign · Lois Dubin, Northampton, Mass. · Todd Endelman, Ann Arbor · David Engel, New York · Shmuel Feiner, Ramat Gan · Norbert Frei, Jena · Sander L. Gilman, Atlanta · Frank Golczewski, Hamburg · Michael Graetz, Heidelberg · Raphael Gross, London/Frankfurt a.M. · Heiko Haumann, Basel · Susannah Heschel, Hanover, N.H. · Yosef Kaplan, Jerusalem · Cilly Kugelmann, Berlin · Mark Levene, Southampton · Leonid Luks, Eichstätt · Ezra Mendelsohn, Jerusalem · Paul Mendes-Flohr, Jerusalem/Chicago · Gabriel Motzkin, Jerusalem · David N. Myers, Los Angeles · Jacques Picard, Basel · Gertrud Pickhan, Berlin · Anthony Polonsky, Waltham, Mass. · Renée Poznanski, Beer Sheva · Peter Pulzer, Oxford · Monika Richarz, Berlin · Manfred Rudersdorf, Leipzig · Rachel Salamander, München · Winfried Schulze, München · Hannes Siegrist, Leipzig · Gerald Stourzh, Wien · Stefan Troebst, Leipzig · Feliks Tych, Warschau · Yfaat Weiss, Jerusalem · Monika Wohlrab-Sahr, Leipzig · Moshe Zimmermann, Jerusalem · Steven J. Zipperstein, Stanford

Gastherausgeber der Schwerpunkte

Guest Editors of the Special Issues

Natasha Gordinsky

Carolin Kosuch

Inhalt

Dan Diner Editorial	9
----------------------------------	---

Allgemeiner Teil

Ruth von Bernuth, <i>Chapel Hill, N. C.</i> Zu Gast bei Nikolaus Selnecker: Der jüdische Konvertit Paulus von Prag in Leipzig	15
---	----

Elena Keidošiūtė, <i>Vilnius</i> Converting to Catholicism: Jews in Lithuanian Bishoptics in the Late Russian Empire	37
--	----

Christoph Schmidt, <i>Jerusalem</i> Die Analogie und ihr Missbrauch in der Historie – Über Albert I. Baumgartens Biografie zu Elias Bickermann	61
--	----

Eglė Bendikaitė, <i>Vilnius</i> One Man's Struggle: The Politics of Shimshon Rosenbaum (1859–1934)	87
--	----

Jay Winter, <i>New Haven, Conn.</i> Jüdische Erinnerung und Erster Weltkrieg – Zwischen Geschichte und Gedächtnis	111
---	-----

Peter Tietze, <i>Tübingen</i> »Zeitwende«: Richard Koebner und die Historische Semantik der Moderne	131
---	-----

Schwerpunkt Der Erste Weltkrieg

Natasha Gordinsky, <i>Haifa</i> , Carolin Kosuch, <i>Rom</i> Einführung	169
--	-----

*Reiterarmeen. Jüdische Kriegsliteraturen (1914–1918)**Herausgegeben von Natasha Gordinsky*

Maya Barzilai, <i>Ann Arbor, Mich.</i> Witnessing Dying in the Tongue of Revival: Shaul Tchernikhovsky's World War I Poetry	177
Eugenia Prokop-Janiec, <i>Kraków</i> Writing World War I: The Case of Polish-Jewish Literature	193
Ilse Josepha Lazaroms, <i>New York</i> Borderlands – Joseph Roth's Dystopian Imagination	215
Sabine Koller, <i>Regensburg</i> Jiddische Literatur im Krieg: Moyshe Kulbak und Yisroel Rabon	237
Glenda Abramson, <i>Oxford</i> The Return of the Soldier: S. Y. Agnon's Novels of the First World War	263
 »Die letzten Tage der Menschheit.« <i>Schriften aus dem Großen Krieg</i> <i>Herausgegeben von Carolin Kosuch</i> 	
Sigurd Paul Scheichl, <i>Innsbruck</i> Karl Kraus' <i>Weltgericht</i> – Eine Bilanz	285
Andreas Stuhlmann, <i>Edmonton, AB</i> Vom »Schlafwandler« zum Kriegsgegner: Die Wandlungen des Maximilian Harden	309
Judith Große, <i>Zürich</i> Patriotismus und Kosmopolitismus: Magnus Hirschfeld und der Erste Weltkrieg	337
Daniel Münzner, <i>Berlin</i> A Twisted Road to Pacifism: Kurt Hiller and the First World War	365

Elke-Vera Kotowski, <i>Potsdam</i> Den Ersten Weltkrieg denken: Theodor Lessings »Philosophie der Not«	389
Lisa Marie Anderson, <i>New York</i> “Sehenden Auges und mitfühlenden Herzens:” Ernst Toller’s Witness to the First World War	411

Gelehrtenporträt

Magnus Klaue, <i>Leipzig</i> Mit doppeltem Blick: Max Horkheimers bürgerliche Gelehrsamkeit und wissenschaftliches Unternehmertum	437
--	-----

Dubnowiana

Grit Jilek, <i>Berlin</i> Jenseits von Territorium – Jüdische Nation und Diaspora bei Simon Dubnow	463
--	-----

Aus der Forschung

Felix Pankonin, <i>Leipzig</i> Profil einer Renegatin: Ruth Fischers exemplarische Biografie	491
--	-----

Literaturbericht

David Kowalski, <i>Leipzig</i> Polnische Politik und jüdische Zugehörigkeit: Die frühe Oppositionsbewegung und das Jahr 1968	525
Abstracts	549
Contributors	559

Eglė Bendikaitė

One Man's Struggle: The Politics of Shimshon Rosenbaum (1859–1934)

The lawyer Shimshon Rosenbaum was, just as his contemporary Theodor Herzl, one of the preeminent but, unlike the latter, nowadays widely unknown leaders of the Zionist movement. In 1932 he published his book *Der Souveränitätsbegriff. Ein Versuch seiner Revision* (The Notion of Sovereignty. An Attempt at its Revision),¹ in which he not only advocated a novel concept of sovereignty in international law and relations guided by a limitation of the scope of powers states should lawfully have, but – although not an explicit subject of his treatise – he simultaneously honed his approach to how anti-Semitism can be prevented more effectively.

Rosenbaum's endeavors to resist anti-Semitism were predicated on his principal concurrence with the conviction expressed by Herzl in his opening address at the First Zionist Congress in Basel on 29 August 1897 that the difference between the Zionist movement then and in the past was marked by the Zionists' preference for law over toleration.² The positions Rosenbaum took on this issue throughout his Zionist career were, however, hardly if ever the result of a deductive process in a merely theoretical exercise characterized by a general sense of social injustice: They were, on the contrary, the evolving outcome of an incessant examination of the phenomenon and the consequences of a hermetical system³ of anti-Jewish prejudices under the conditions of relentless personal experience and observation of its various forms, attitudes and utterances, and they were influenced by the fact that Rosenbaum himself became an object – or rather a target – of prevalent anti-Semitism in most of those places in Tsarist Russia in which he resided or was active. One such characteristic event of this kind, which took place in Shimshon Rosenbaum's native Pinsk, is recounted by his son Wladimir Rosenbaum:

“I was walking with my father in the *shtetl*. We were walking on a narrow sidewalk, and my father was telling some story from the Bible. [...] And then two very tall Cossack officers were approaching us – to me they appeared as giants – and telling my

1 Shimshon Rosenbaum, *Der Souveränitätsbegriff. Ein Versuch seiner Revision*, Zurich 1932.

2 Theodor Herzl, *Zionistische Schriften*, Berlin 1920, 141.

3 On the functionality of anti-Semitism as hermetical system of prejudices, see Wolfgang Benz, *Was ist Antisemitismus?*, Bonn 2004, 236 f.

father: ‘Get off the sidewalk, you lousy Jew!’ My father – a small and tiny little man with an intelligent face – stopped and looked at these two with his calm brown eyes, without fear, without unrest, without question, neither in a challenging nor in a submissive way, but calmly and with philosophic serenity – and just waited. Thus, he did not obey their order. Still today I recall the choked scream of horror of the people in the street, because it was clear that these two would beat us up, regardless of if we would be lying underfoot them only hurt or even beaten to death. But my father just looked at them, upon which something peculiar happened. I recall that the facial expression of these fellows started to display human traits. The two officers stepped down from the sidewalk and passed us in silence. We continued our walk, and my father continued to tell his story. [...] And then – this I also never have forgotten – he stopped, slightly shook his head, and said: ‘These poor boys.’”⁴

In many respects, Shimshon Rosenbaum’s book epitomized the final stage of his approach to anti-Semitism under constant reassessment and readjustment. To analyze its conceptual development, which was broadly tested in his legal and political activities, is the aim of this contribution. In order to explain the complex phenomenon of Rosenbaum’s approach towards anti-Semitism, it will not always be possible to uphold a strict orientation along a chronological timeline. As the extent of legitimacy of anti-Semitic patterns of behavioral and decision-making processes in legal, social, cultural and religious contexts constantly underwent alterations – often, but not exclusively, as a consequence of changes and adaptations in the predominant political framework – and as Rosenbaum several times relocated the centers of gravity of his political endeavors combating anti-Semitism, the subsequent presentation shall be subdivided into his activities in the Russian Empire, in Lithuania and in Mandatory Palestine.

Before Resettling in Vilna in 1915: Rosenbaum’s Encounters with Blunt Anti-Semitism at Home and Zionist Aspirations Abroad

In a post-modern appraisal of Shimshon Rosenbaum’s curriculum vitae prior to his resettlement in Vilna in 1915, findings of the tenor that he would come to experience intolerance to difference⁵ appear consequential when taking into account the crucial data of his biography:⁶

- 4 Peter Kamber, *Geschichte zweier Leben. Wladimir Rosenbaum und Aline Valangin*, Zurich ²2002, 8 (first publ. Zurich 2000); Schweizerisches Sozialarchiv, Fund Ar.115.1, Wladimir Rosenbaum, *Tagebuch (1958–12)*, 61.
- 5 On the notion of “intolerance to difference,” see Zygmunt Bauman, *Modernity and Ambivalence*, Ithaca, N. Y., 1991, 104.
- 6 David Tidhar, *Entsiklopedyah le-halutse ha-yishuv u-vonav* [Encyclopedia of the Foun-

Born on 3 September 1859, in Pinsk (Governorate of Minsk), Shimshon Rosenbaum grew up in a traditional Orthodox, Litvak-Jewish environment. He studied law in Vienna and in Odessa, where he received his doctorate in 1887.⁷ Already as a student, he had become enthralled by the idea of a renaissance of the Jewish people and involved himself in the Jewish national movement. Rosenbaum tried to convince Jews to emancipate themselves from their own rigid traditions without giving up their Jewish identity,⁸ but was in no doubt that a lot of convincing would be required before they came to see themselves not just as a religious community, but as a nation as well. In these endeavors, he apparently succeeded to adapt his goals to geopolitical changes. Therefore, when the Russian Empire collapsed, he saw it as his urgent task as a moderate Zionist to support the Jews in independent Lithuania.⁹

It is not easy to refute that his actions bear evidence of assimilatory efforts. But it is questionable whether he himself, in the era prior to resettling in Vilna, considered them conclusive and prospective. In his understanding, the social configuration created by this policy of approbatory – or rather: latent – assimilation neither constituted nor remained a trap as there was an exit, which potentially prevented the Jewish nation from isolation and existential vulnerability. This exit is firmly linked to the advocacy of ter-

ders and Builders of Israel], vol. 3, Tel Aviv 1963, 1317 f. (Heb.); Dov Levin, s. v. "Rosenbaum, Shimshon," in: *The YIVO Encyclopedia of Jews in Eastern Europe*, ed. by Gershon David Hundert, vol. 2. New Haven, Conn./London 2008, 1592 f.; Yehuda Slutsky, s. v. "Rosenbaum, Semyon (Shimshon)," in: *Encyclopaedia Judaica*, ed. by Fred Skolnik and Michael Berenbaum, vol. 17, Detroit, Mich., et al. ²2007, 433 f. (first publ. 1971); Eglė Bendikaitė, s. v. "Simonas Rozenbaumas," in: *Didysis Lietuvos parlamentarų biografinis žodynas*, tom. 2: Lietuvos Steigiamojo Seimo (1920–1922 metų) narių biografinis žodynas [Great Biographical Dictionary of the Lithuanian Parliamentarians, vol. 2: Biographical Dictionary of the Members of the Constituent Assembly of Lithuania (1920–1922)], ed. by Aivas Ragauskas and Mindaugas Tamošaitis, Vilnius 2006, 318–321.

- 7 Rosenbaum was sworn in as a law practitioner at Minsk District Court; subsequently, upon moving from Pinsk to Minsk in 1890, he set up a practice as private lawyer in Minsk and was first admitted to appear as counsel at the courts in the districts of Minsk and Pinsk and later – from 1904 – also at the Vilna District Court. As far as Rosenbaum's docket of courtroom advocacy and legal drafting can be reconstructed, it would appear that – at least before 1905 – private law matters stood for the majority of the cases, despite the fact that he had specialized in criminal law in his university studies and in his doctoral thesis. Indicative of this professional orientation is the fact that he was entrusted to draft and to revise the Statutes of the Jewish Colonial Trust. See B. Iu. Ivanov/A. A. Komzolova/I. S. Riakhovskaia, *Gosudarstvennaia дума Rossiiskoi imperii, 1906–1917* [The State Duma of the Russian Empire, 1906–1917], Moscow 2008, 529.
- 8 Eglė Bendikaitė, *Intermediary between Worlds. Shimshon Rosenbaum. Lawyer, Zionist, Politician*, in: Ray Brandon et al. (eds.), *Impulses for Europe. Tradition and Modernity in East European Jewry*, Berlin 2008, 171–178, here 172.
- 9 Moshe Kahan, *Rozenboym als tsyenist* [Rosenbaum as Zionist], in: *Di idische shtime* [The Jewish Voice], 20 November 1924, Special Supplement, 3.

ritorial roorage in Eretz Yisrael.¹⁰ Hence, when his efforts for the Jewish minority in Lithuania ultimately proved futile as a consequence of the demands for homogeneity entailed in the conception and practice of the Lithuanian nation-state, he reverted to the feasibility of establishing a Jewish State in Palestine and, upon accepting this option as realistic for both himself and his Jewish fellow citizens, concentrated his energies on contributing to create favorable conditions in a new homeland for the Jews without relinquishing his engagement for the Jewish diaspora.

Rosenbaum travelled intensively throughout the Pale of Settlement, visiting many towns and *shtetls* and calling on the Jews to take part in making the national ideal a reality.¹¹ He was soon well-known throughout the Northwest of the Russian Empire, and it is no exaggeration to denominate him as one of the principal leaders of the Zionist movement in Russia. From the Second World Zionist Congress, which was held in Basel in 1898 and at which he participated as a delegate for Minsk, to the Thirteenth, held in Carlsbad in 1923 in his presence as a permanent member of the Congress and at the same time as Lithuanian Minister of Jewish Affairs, he assumed responsibilities in the international Zionist movement, in particular after having been elected to the Executive Committee of the Zionist Organization in 1900 at the Fourth Congress held in London. At the Third All-Russian Zionist Congress, held in Helsinki in 1906, he joined in adopting a program that called both for the promotion of Jewish immigration to Eretz Yisrael and for the intensification of “work in the present” or – in Yiddish – *Kegn-vart arbet*,¹² hereby alluding to the struggle for Jewish civil and minority rights in the various countries where Jews were living. Rosenbaum’s interests were not confined to the Zionist Organization; he campaigned not only

10 See Daniel Persky, Shimshon Rozenboym, in: Shlomo Even-Shushan (ed.), *Minsk – ir va-em. Kerech rishon: Yahadoth Minsk me-reshitah ve-ad 1917* [Minsk – Jewish Mother-City, vol. 1: Minsk Jewry from its Inception until 1917], Tel Aviv 1975, 345–348, here 348. – Simon Dubnow ascertained that Rosenbaum in 1905, thus two years after the controversy with Herzl, at the Sixth World Zionist Congress, on the so-called “Uganda Plan,” had a principled stance against a political program for the Zionist movement which would reinforce assimilatory tendencies, or prolong the Jewish nation’s exile. According to Dubnow, Rosenbaum at that point in time conceived national autonomy as a deviation, causing detrimental retardation in the Jewish nation’s orientation towards Eretz Yisrael. See Simon Dubnow, *Dos bukh fun mayn lebn. Zikhroynes un meditatsyes. Material tsu der geshikhte fun mayn tsayt, band tsvey (1903–1922)* [The Book of My Life. Memories and Reflections. Material for the History of My Time, vol. 2: 1903–1922], Buenos Aires/New York 1962, 32. See also Bauman, *Modernity and Ambivalence*, 141, and 143.

11 Persky, Shimshon Rozenboym, 348.

12 See Eglė Bendikaitė, *Sionistinis sąjūdis Lietuvoje* [The Zionist Movement in Lithuania], Vilnius 2006, 40 f.; idem, “Hier und jetzt”. Über Bedingungen und Wirkungsspielräume der zionistischen Bewegung in Litauen, in: *Forschungen zur Baltischen Geschichte* 5 (2010), 143–167, here 147.

for the right of the Jews to their own, remotely located country, but fought for their political and civil rights in the Russian Empire as well. This, he decided, could be best achieved in the courtroom and in the plenary hall, and until he moved to Vilna, both appeared to have become his forums of choice.

It is bequeathed by contemporary witnesses that Rosenbaum did not shy away from politically motivated court cases. He is remembered to have agreed to represent the victims of pogroms as well as Zionists who were accused of “actions that threaten state order and social stability.”¹³ According to the empathic observation of the writer and journalist Daniel Persky (1887–1962), a younger contemporary observer and chronologist of Rosenbaum’s Zionist activities in Minsk,

“[I]legends were told about his wonders as a lawyer, for nothing was too wonderful for him. He was the one who arranged a permit to convene the historical convention of all Zionists of Russia in Minsk in 1902, and he was its living spirit. He was the one who received a government permit to found the *Poale Zion* [i. e. Socialist Zionist] party. He was the defense attorney in every famous court case against Zionist activists, and he was always victorious. In court, he took the side of the Jews who were afflicted by pogroms, and he was vindicated in judgment. [...] No disputing judge or lawyer could equal him under any circumstance, with his tireless rendering of the sparks of his noisy arguments, his convincing logic, and his sharp barbs.”¹⁴

An instructive example to be cited here is the report on the so-called “Minsk Trial,” a criminal case the sheer, and quite unprecedented, procedural magnitude of which offered it huge publicity already at the time it was heard at the Minsk District Court. On the merits, these proceedings¹⁵ – instituted after a turmoil in Minsk on 21 March 1898, involving locally deployed Russian military on the one side and a notable number of Jewish inhabitants of this city on the other side, who were antagonized for the reason of an inconsiderate verbal slander of minor gravity – were based on the charge of violations committed pursuant to Article 269¹ of the Penal Code criminalizing internal disturbances. This provision had been introduced on 9 December 1891, as a consequence of earlier pogroms aimed at Jewish populations. Rosenbaum, co-counseling Jewish defendants in the “Minsk Trial,” insisted that the court would hear a multitude of witnesses, whose ultimate contribution to the establishment of facts substantiating the criminal offenses was of limited juridical value, but whose testimonies all the more displayed the immense

13 Bendikaitė, *Intermediary between Worlds*, 173.

14 Persky, *Shimshon Rozenboym*, 345.

15 *Minskii protsess. Delo o soprotivlenii evreiskikh skopishch voennym patruliam. Rech' prisiazhnogo poverennogo A. S. Shmakogo kak predstavitelia 119-go pekhotnogo Kolomenskogo polka* [The Minsk Trial. The Case on the Resistance of the Jewish Crowd against Military Patrols. Pleading of Bar-Admitted Attorney A. S. Shmakii as Legal Representative of the 119th Kolomenskii Infantry Regiment], Moscow 1899.

social tensions in the Pale of Settlement as the result of systematic anti-Semitic discrimination and thus the root cause for the unfolding of such events, which could be triggered by so much as a stray spark.¹⁶ Branded by the experience of earlier anti-Jewish riots and by the memory of abandonment, those tensions could be brought to rise by the mere rumor that a new pogrom might be imminent.

In the aftermath of the Kishinev pogrom on 6 and 7 April 1903, the Minsk police department surmised that the Jewish population of the city could easily be agitated, if it was reached by a call for the need to prepare its self-defense. Intelligence it had been eager to collect appeared to indicate that the Jews of Minsk seriously expected a similar pogrom to take place there in the month of May and, therefore, saw an overriding necessity to arrange forces – in particular among the Zionists – to fend off possible acts of anti-Jewish aggression. However, as the police were convinced that those conjectures lacked any ground and that the danger of a pogrom was remote, they saw wise to contact Shimshon Rosenbaum as the leading representative of the local Zionist movement and to transmit an assuasive message while simultaneously urging the Zionists to halt with immediate effect any endeavors to organize a Jewish self-defense. The records¹⁷ are silent about Rosenbaum's reaction to this request. Rather, the superintendent of the Minsk police gave an account to the Ministry of the Interior in St. Petersburg of the motives behind his call on Rosenbaum:¹⁸ Reports on repeated meetings of local Jewish groups had alarmed him, he wrote, but at the same time the informants had reassured him that Rosenbaum had spoken in a soothing way (in Russian,¹⁹ not in Yiddish, as it was particularly annotated) at these gatherings, at which decisions were taken to assist the surviving victims of the

16 See also the instructive analysis by Theodor R. Weeks, *Russians, Jews, and Poles. Russification and Antisemitism 1881–1914*, in: *Quest. Issues in Contemporary Jewish History. Journal of Fondazione CDEC* 3 (2012), <www.quest-cdecjournal.it/focus.php?id=308> (10 June 2014).

17 *Donesenie nachal'nika Minskogo gubernskogo zhandarmskogo upravleniia*, 30 Aprelia 1903 [Report of the Head of the Administration of the Minsk Governoratorial Gendarmerie, 30 April 1903], State Archive of the Russian Federation (henceforth SARF), Fund 102 osobyi otdel [special section], 3 otdelenie [third subsection] (hereinafter referred to as "F.102 os. otd., 3 otd-ic"), 1903, File 874, 64.

18 *Donesenie nachal'nika Minskogo gubernskogo zhandarmskogo upravleniia*, 16 Maia 1903 [Report of the Head of the Administration of the Minsk Governoratorial Gendarmerie, 16 May 1903], SARF, F.102 os. otd., 3 otd-ic, 1903, File 837, vol. 4, 23; *Otmoshenie Minskogo gubernatora*, 18 Maia 1903 [Position of the Governor of Minsk, 18 May 1903], SARF, F.102 os. otd., 3 otd-ic, 1903, File 837, vol. 4B, 42.

19 According to Persky's eye-witness observations, Rosenbaum would express himself with great prudence at Zionist meetings, in particular when the covert presence of Russian police authorities was more likely than not. An element of his tactics would then be to speak in Russian, using codes which seemed to be innocuous in linguistic terms, but

Kishinev pogrom financially and to declare three months of mourning of the deceased.

That Rosenbaum possessed a unique gift of acting as a de-escalating force in situations carried away by the mood of agitation is witnessed by the Jewish historian and writer Simon Dubnow (1860–1941) in his memoirs when he wrote about a meeting in the spring of 1905 with the Jewish leadership in Vilna, which had severely criticized the Kishinev rabbi Etinger for lack of civil courage and national dignity in his dealings with the local government after the 1903 Kishinev pogrom. Rosenbaum, fully recognizing the impact which this event had “on the Jewish street” and thus also on the Zionist political agenda, is described to have been very reserved towards this view ventilated in the “Jerusalem of Lithuania.”²⁰

On 14 April 1906, Rosenbaum was elected a representative of the constituency of the Governorate of Minsk to the State *Duma* of the Russian Empire, where he joined the parliamentary group of the (liberal) Constitutional Democratic Party (the *Kadets'* Party). He was almost immediately noticed for initiating or co-sponsoring legislative proposals that would give Jews political equality. Among these, the most prominent would be the bills “On Civil Equality,” “On *Habeas Corpus*,” “On the Abolition of the Death Penalty,” and “On the Immunity of Members of the State *Duma*.”²¹ In addition, the evaluation of the stenographical protocols of State *Duma* sessions uncovers his very individual oral style, which combined rhetorical skills with a remarkable quick-wittedness. In one debate on the so-called “national question” concerning the policy and status of national minorities, the Member of the State *Duma* Rosenbaum is recorded to have argued that a Jew in Russia, in order to be granted some selected civil rights, would be forced to commit an offense as this would yield the right of residence – in Siberia, for sure, but a right. Assuming, the representative continued, that this person would be pardoned before having served his full term of imprisonment, he would be deprived of this right once more and forced to return to his regular life bereft of any guaranteed civil rights.²²

which carried clear messages to those who were trained to listen to his speeches; see Persky, Shimshon Rozenboym, 347.

20 Dubnow, *Dos bukh fun mayn lebn, band cyns (biz dem yor 1903)*, vol. 1: Until 1903, Buenos Aires/New York 1976, 376–385; idem, *Dos bukh fun mayn lebn*, vol. 2, 30–36.

21 See Ivanov/Komzolova/Riakhovskaia, *Gosudarstvennaia дума Rossiiskoi imperii, 1906–1917*, 529.

22 *Rech' Rozenbauma, I Sessii, zasedanie 22, 6 VI 1906 g.*, *Gosudarstvennaia Duma: Stenograficheskie otchëty 1906 god. Sessii pervaiia, tom. 2: Zasedaniia 19–38 (s 1 iunia po 4 iulia)*, St. Petersburg 1906, 1072 [Speech by Rosenbaum, First Session, Parliamentary Meeting no. 22, 6 June 1906, State Duma: Verbatim Records for 1906. First Session, vol. 2: Parliamentary Meetings no. 19–38 (from 1 June to 4 July)], St. Petersburg 1906, 1072.

In the parliamentary debate on 6 June 1906, Rosenbaum was noticed for the personal experience he related to the members of the House. He reverted to the issue of the arbitrariness in administrative decision-making while granting or denying the right of residence to Jews. In those professions which Jews were allowed to have, they were subjected to particularly scrupulous supervision. In order for a Jewish attorney to be awarded the rank of “*prisiazhnyi poverennyi*” (literally: sworn attorney), admitting him to the bar and entitling him to courtroom advocacy, a special permission by the Ministry of Justice was required. This permission, however, would not be given on the basis of competence and qualification, but purely arbitrarily – without possibility to determine, on what merits these permissions were granted or denied.²³ The state of the education system, Rosenbaum further explicated, was particularly deplorable. For Jews, this circumstance would have an ironical side to it, as they were required to achieve the highest marks in all subjects in order to be tolerated to receive education. And only if Jewish university students graduated with optimal marks could they hope for some recognition by civil society, as they had to be able to demonstrate such qualifications if they wanted their applications for the lowest positions in the public service even to be considered. Upon a heckling from the right-wing floor, urging Rosenbaum to explain what constituted “the Jewish issue,” he retorted that this intervention, for him, came quite unexpectedly, as he had not imagined the “Jewish issue” to be unclear to anybody in the House. However, Rosenbaum wanted to say right away that he and his fellow Jews knew what it meant when the gentlemen on the right wing looked down on him and his peers as the society’s third class. But, he added, the principal reason why he was here in this elected State *Duma* was: to prevent the parliament from recognizing a stratification of Russian society in first, second, and third classes, and to work for the equality of everybody. Therefore, Rosenbaum emphasized, “the Jewish issue” was in fact not an issue for the Jews, but for the Russian people. For the Jews, it had not been – and continued not to be – an issue as they had succeeded for more than thousand years to live on an equal basis in their society and with their neighbors. Civilization was tantamount to the achievement of equality, and to adhere to this aim, Rosenbaum asserted, the Russian society in general was prepared much more broadly and forcefully than some of the first-class representatives in this House would wish. Rosenbaum stressed that “[a]lready at Mount Sinai the Jews had understood that what was required was one law, equally applicable to the Jews and to those who did not belong to the Jewish nation, but lived closely with them in the same territories.”²⁴

23 Ibid., 1073.

24 Ibid., 1074.

Following the dissolution of the State *Duma* four months later, Rosenbaum and other members of the *Kadets'* parliamentary group signed the Vyborg Manifesto, which called for civil disobedience against Tsarist rule and the withholding of taxes. As a result of this action, Rosenbaum was given a prison sentence in St. Petersburg and stripped of his voting rights.²⁵ In 1913, Rosenbaum moved to St. Petersburg, apparently as the main consequence of the fact that the center of gravity in the workload of his law firm had deflected to the higher courts and central authorities in the Russian capital. He stayed there only until the outbreak of World War I, at the beginning of which he moved to Vilna. There, he was active in the local committee for refugees and assumed the double-tracked task of defending Jewish interests:²⁶ on the one side by representing Russian and Lithuanian Jews suspected by the Russian authorities of spying for the German enemy, and on the other side – equally important – by asserting and defending Jewish rights against infringements by the German occupying power. For Rosenbaum, Vilna would also become the gateway to strengthen contacts with the German Zionist Organization and the scene for his dress rehearsal prior to his entry into international diplomacy. All things considered, it would be the place where he decided that the time had come to recalibrate Zionist priorities.

Recalibrating Zionist Priorities and Opting for Prevention as Means of Choice to Combat Anti-Semitism

The decision of Shimshon Rosenbaum to move to Vilna was precipitated by a rapidly growing need to organize and to grant legal aid mainly – but not exclusively – to Jews, a step which was justified *ex post* by the lowering of legal standards to a deplorable level after the outbreak of the war.²⁷ Since 1904, he had been admitted as counsel for courtroom advocacy at the Vilna District Court, and due to his Zionist activities he considered himself familiar with this important center of Jewish life in the Russian Empire, which another – the Lithuanian – ethnic minority regarded as their historical capital in this multi-ethnic State, too. But it would be plausible also to presume

25 Prokuror Vilenskoi Sudebnoi palaty v pervyi departament Ministerstva Iustitsii po tret'emu ugolovnomu otdeleniiu, 19 ianvaria 1909 g. [Public Prosecutor at the Vilna Trial Chamber to the Third Criminal Law Division in the First Department of the Ministry of Justice, 19 January 1909], Lithuanian State Historical Archives, Fund 446, Inventory 10, File 292, 50–versus.

26 Bendikaitė, “Simonas Rozenbaumas,” 318.

27 Shimshon Rozenboym, Yuridishe hilf [Legal Aid], in: Tsemakh Shabad (ed.), Vilner zamelbukh, ershter band [Vilna Anthology, vol. 1], Vilna 1916, 108–111, here 110.

that he had been requested to move in order to reinforce the Zionist cause in the city, in which the Russian Zionist movement was headquartered. After the German occupation of Vilna in 1915 and the introduction of an occupational regime which in many respects was very favorable to the Jewish population, organized Zionism in Russia might have seen a merit in being represented on site by a personality who was trusted by the international Zionist movement and who could communicate easily with the occupying power owing to his excellent command of the German language. Nothing seems to contradict that several of these reasons might have simultaneously directed his decision to resettle in Vilna and that they are compatible with an emerging approach adopted by Rosenbaum to combat anti-Semitism by general prevention, which is relying on the concept of autonomy and the rule of law.

The Lithuanian Zionist Organization did not exist as an independent body in the country; its activities were concentrated in the circle of its most dedicated members, led by Rosenbaum. He explained his influence on the Jewish community by objective circumstances, mentioning in the first place the retreat from Lithuania of expert Zionists, whose political and social influence on the Jewish community was very strong, but also his authority as a former Member of the State *Duma*, and his merits as an attorney in serving the remaining local Jewish community and Jews in need of legal assistance.²⁸

Combatting Anti-Semitism by Legal Assistance

In a detailed article entitled *Yuridische hilf* (Legal Aid), which was published in 1916,²⁹ i. e., already during the German occupation of Vilna, Rosenbaum reported on the scope of legal assistance, which had been extended both by himself and in cooperation with other lawyers. The legal subject matters of the cases reported therein were in their majority rather typical for wartime-related criminal proceedings which – in Rosenbaum's presentation – would preferably engage in accusations of treason, espionage and illegitimate favoritism towards the wartime enemy and be vulnerable to traits of show trials if not held strictly pursuant to criminal procedure law. Simultaneously, they would tend to eliminate entire groups which the predominant power structures considered unreliable. Rosenbaum illustrated the change in the public mood immediately before the outbreak of war and in its aftermath by

28 See Central Zionist Archive in Jerusalem (henceforth CZA), Fund Z3, File 509, n. p., Rosenbaum's Report to the Central Zionist Bureau in Berlin, 22 March 1916; Eglė Bendikaitė, The Zionist Priorities in the Struggle for Lite, 1916–1918, in: Vladas Sirutavičius/Darius Staliūnas (eds.), *A Pragmatic Alliance. Jewish-Lithuanian Political Cooperation at the Beginning of the 20th Century*, Budapest 2011, 159–180, here 161.

29 Shimshon Rozenboym, *Yuridische hilf*, 108–111.

highlighting how the Russian leadership in the imminence of the war again and again emphasized that they did not know of any difference between Jews and non-Jews, as the entire Russian population consisted of true Russian patriots only. However, once the war had broken out – and especially after the occupation of Vilna by the German troops – anti-Semitism flourished once more in Russia.

After he began to grasp the extent of the problem of judicial injustice, Rosenbaum decided – together with his attorney colleagues Bramson and Gruzenberg – to encourage the establishing, in several places, of committees for the provision of legal aid to Jewish defendants. Quite soon, committees were formed in Vilna, St. Petersburg, Kiev, and Warsaw. Further, negotiations to launch such activities took place in Baku, Rostov, and Kharkov. In Vilna, St. Petersburg and Warsaw, both Jewish and Christian attorneys agreed to provide legal assistance to Jewish and non-Jewish defendants. Rosenbaum himself, together with attorney Gruzenberg, was mandated to defend persons accused in Vilna and Warsaw.³⁰

Rosenbaum took pride in the fact that thanks to this system of legal aid there had been no convictions of Jewish defendants in criminal proceedings, which were heard before ordinary courts of law. At length he reported that he had succeeded, in a case of alleged crimes against provisions of war economy in Šiauliai,³¹ in proving the false testimony of the main witness of the prosecution against a Jewish defendant. The Vilna District Court had acquitted the accused and, instead, sentenced the witness for false testimony while not under oath to a three years' imprisonment. Also, it had initiated an investigation against the public prosecutor who had called this witness. Rosenbaum also extensively reported on cases, in which Russian officers had accused Jews of having committed fraudulent acts against them during German attacks. He described in detail an individual case,³² in which a Russian officer had a Jew from Stallupönen charged with such fraud. Hearing about this accusation, the non-commissioned soldiers serving under him had contradicted this false accusation “in the true spirit of soldiers” – so that truth would prevail.³³

Rosenbaum underlined that the real problems of anti-Semitic acts by judicial institutions, which could not be solved with the help of committees for the provision of legal aid, were constituted, on the one hand, by the massive ordering of administrative detention of Jews in Siberia and, on the other hand, by the Russian field courts-martial, as in both types of proceedings

30 Ibid., 109.

31 Ibid., 110.

32 Ibid., 109f.

33 Ibid., 110f.

representation or defense by lawyers was not compulsory. It was common practice in these proceedings not even to allow the defendants to speak up for their own cause. Rosenbaum described as particularly offending to the sense of justice those cases, in which the ordinary court of law had acquitted a Jewish defendant, but in which he, once declared free to leave the courtroom, was immediately taken into indefinite administrative detention in Siberia.³⁴

Combatting Anti-Semitism by Prevention in Solid Political Structures Based on the Principle of the Rule of Law

The correspondence of the World Zionist Organization (WZO) proves that Rosenbaum's opinion and influence on the Jewish community were highly esteemed. Arthur Hantke and Paul Nathan, the leaders of the Zionist movement in Germany and intermediaries between the Zionist groups operating in the territory of the "Supreme Commander of All German Forces in the East" – commonly referred to as *Ober Ost* – and the leadership of the WZO, considered Rosenbaum the most important contact person, the most reliable partner, and the faithful executor of Zionist policy in Lithuania.³⁵ Looking at the bigger picture, it would appear justifiable to contend that the policies of the Lithuanian Zionists were for the most part developed or at least coordinated in Berlin.³⁶ The favorable attitude of Jews towards the German military administration was caused by the latter's policy of equal rights principle, allowing them, as Rosenbaum reported to the Central Zionist Bureau in Berlin on 22 March 1916, "to stop feeling like pariahs," and "to launch a vigorous struggle for their political, civic, and national rights."³⁷ According to this report on the Jewish situation in Lithuania, the highest officials of the occupational administration treated representatives of various nations as equals.³⁸ Rosenbaum elaborated that neither in the front zone nor in the territory occupied by Germany did Jews have to be afraid of pogroms or to be "publicly whipped or declared spies and informers without any grounds, be

34 Ibid., 111.

35 CZA, Fund Z3, File 131, 133, 135, 824, 825, et al., Correspondence of the CZA.

36 CZA, Fund Z3, File 10, n. p., Political Memoranda of and to the EAC ["Engeres Aktions-Comité," the Smaller Actions Committee, i. e. the executive body of the Zionist Organization as created by the First Zionist Congress in 1897], 1915–1918; CZA, Fund Z3, File 11, n. p., Minutes of Meetings of Zionist Leaders with Politicians and Statesmen, 1914–1919.

37 CZA, Fund Z3, File 509, n. p., Rosenbaum's Report to the Central Zionist Bureau in Berlin, 22 March 1916.

38 See *ibid.*, Hantke's Letter to Rosenbaum, Berlin, 4 April 1916.

hanged without court, or sent to Siberia.”³⁹ This, however, he continued, were exactly the experiences of the Jews for the past 150 years, when they were subjects of the Russian Empire. This new situation and a fairly liberal attitude of the *Ober Ost* administration made the Jews anxious, as at each step they encountered opposition that protected “the former [i. e., Russian] understanding of equality.”⁴⁰ Rosenbaum anticipated that this policy towards the national minorities might trigger a course of events neither foreseen nor desired by the occupying power: “The Germans should be very cautious in seeking to guarantee equal rights for all national groups, as any equality with regard to Jews would be seen as protecting us and can provoke even stronger hostility towards the Jews.”⁴¹

According to the reports by Rosenbaum to the Central Zionist Bureau, Germany's policy in *Ober Ost* had caused an emergence of anti-Semitism in spheres where it had never existed, and an increase in societal sectors where the notoriety of anti-Semitism previously was of a much lesser degree. Rosenbaum was particularly concerned about the growing distance between Lithuanians and Jews, largely due, as he saw it, to a broadening gap between their views on prospective developments, which Jews alone were incapable of narrowing, unless “they [i. e., the Jews] rejected their most sacred inherent rights.”⁴² Rosenbaum realized the Germans' increasing sympathies for, and connivance with, the Lithuanian interests, and contemplated ways how to assert the Zionist position without antagonizing other groups of the population in the *Ober Ost* territory, whose national ambitions were also pushing for political realization.

From 12 to 17 October 1917, Arthur Hantke visited Vilnius, where his meeting with the local leaders of the Jewish community had the purpose to form an opinion about the economic, social, and cultural situation of the Jews living there. While seeking to use his visit for the propaganda of Zionist ideas too, local Zionists held a meeting in Vilnius on 14 October, which confirmed that the hopes of the Jewish nation to have a national home in its historical lands had not changed in the war years, and that they had not abandoned their aspirations of a return to Palestine. In his address to the participants of the meeting, Rosenbaum stressed that

“Zionism has been finally transferred to the domain of the ministry of foreign affairs rather than that of home affairs, that is, in addition to other problems, the war raised the Jewish issue in a new way, not as an issue of a separate community, but as an issue of a

39 Ibid., Rosenbaum's Report to the Central Zionist Bureau in Berlin, 22 March 1916.

40 Ibid.

41 Ibid.

42 Ibid., Rosenbaum's Letter to Hantke, Vilnius, 21 November 1917.

united nation with all its characteristic attributes. At this moment it has become a European issue, a global question that finally has to be answered.”⁴³

He was convinced that equality was not enough anymore, as the question of equality belonged, like the Tsarist Empire, to the past. On 2 November 1917, Lord Arthur Balfour, the then Foreign Secretary of the United Kingdom, announced a declaration, which became one of the crucial points of reference in the history of Zionism and the Jewish people scattered all over the world. By this declaration, the Jews were granted their political rights to the historical land of their ancestors – Eretz Yisrael.⁴⁴

However, the proclamation of Lithuania’s independence on 16 February 1918, in absence of representatives of the national minorities, disrupted the Jewish confidence in Lithuania as political ally and put the representatives of the Jewish interests in an awkward situation. According to Rosenbaum, the Zionists did not have anything against the declaration of Lithuania’s independence in itself. They would have, however, welcomed it, if this move had not been done unilaterally, but rather upon coordination with the national minorities in the new republic, including the Jewish minority, in a solid and robust system of checks and balances based on a concept of autonomy, equality, and the rule of law. What made the situation even more intricate was that this autocratic step was recognized by Germany, which resulted in privileging the representatives of one out of four nationalities cohabitating in the country – i. e., the Lithuanians.

Rosenbaum assessed the negotiations with the Lithuanians in the following way:

“The Lithuanian gentlemen know that it would be better for them to have more Jews in the Council, as Jews would support them not only against the Polish aspirations, but also against everyone else’s aspirations. With all their energy they will support the country’s independence. If the Lithuanians offer us a number of seats in the Council not satisfying our requirements, like they did for other minorities, it will mean that they are unable to distance themselves from their autocratic aspirations and seek themselves to be recognized as the sole ‘elected’ people of the country. [...] If this happens, we cannot accept it.”⁴⁵

After negotiations with the German Plenipotentiary Commissioner General for Lithuania, permission was obtained to assemble a conference of the

43 Tsyenistishe miting in Vilne [Zionist Meeting in Vilnius], in: Letste naves [Latest News], 16 December 1917, 1.

44 Adolf Böhm/Itzhak Ben-Zvi, Geshikhte fun tsyenizm. Fun dr. Hertsl biz nokh der Balfur-deklaratsye [The History of Zionism. From Dr. Herzl to the Balfour Declaration], Kaunas 1935, 90.

45 CZA, Fund Z3, File 509, n. p., Rosenbaum’s Report to Paul Nathan, Vilnius; *ibid.*, Rosenbaum’s Letter to Paul Nathan, confidentially, Vilnius, 6 May 1918.

country's Zionists, which was held in Vilnius from 5 to 8 December 1918. In the first conference of the Lithuanian Zionists, four "Political Resolutions" and six "Decisions concerning Lithuania" on the coordination of Jewish politics and representation of national interests were adopted.⁴⁶ The establishment of a world Jewish representative office as well as a Jewish representative office in each country – in this way recognizing that Jews belonged to one nation – and the participation of their nation as a member of the League of Nations with full rights, was considered one of the most urgent tasks of the moment.⁴⁷

The goal to seek proportional representation of Jews in the administrative and legal institutions and ensure their civil, political, and national rights, to be confirmed by the country's constitution, had already been advanced by the Zionist leaders in their negotiations with the Lithuanian Council and was now distinguished among the conference decisions.⁴⁸ In addition, as Rosenbaum stressed in his speech, "[l]aw itself does not guarantee the rights. Jews themselves must become lawmakers. The proportional election principle should guarantee that Jews be represented in authority institutions of all levels."⁴⁹

In his speech given at the 1918 Zionist Conference in Vilnius, Rosenbaum, referring to the general opinion of the executive committee of the WZO, insisted that Jews side with Lithuanians and protect the interests of independent Lithuania, as only in that case would Jews have a possibility of "free development." Owing to the efforts of the leaders of the organization, Rosenbaum and Dr. Jacob Wygodzki, it was decided at the Zionist conference that under the current circumstances Jewish representatives could temporarily participate in the activity of the country's government institutions by agreeing to be co-opted into the Lithuanian Council, though without officially representing the Lithuanian Zionist organization. This was a step which entailed the appearance of Shimshon Rosenbaum on the scene of international diplomacy. However, for those who wanted – and there are reasons to believe that Rosenbaum was amongst them⁵⁰ – signs were discernible

46 The texts of these resolutions and decisions, originally drafted in the German language, are presented in an English-language translation, with a commentary, by Eglė Bendikaitė: idem, *The Lithuanian Zionist Conference, Vilnius, 5–8 December 1918*, in: Sirutavičius/Staliūnas (eds.), *A Pragmatic Alliance*, 257–270.

47 Political Resolutions No. 1 and 3, in: *ibid.*, 264.

48 Political Resolution No. 4, in: *ibid.*, 264.

49 Manuscript Department of the Wróblewski Library of the Lithuanian Academy of Sciences, Fund 255, File 929, 31, *Die Rede des Rechtsanwalten [sic] Herrn S. Rosenbaum auf der Zionistischen Konferenz in Wilna*.

50 Not only did Rosenbaum's correspondence with Hantke and Nathan repeatedly ventilate reasons for skepticism or concern, most of which were suspended or retracted for the benefit of tactical gains, but it would appear that he perceived the general aspects of this chal-

already from very early on that the gap between the project of homogeneity inherent in the idea of the Lithuanian nation and taken aboard by the newly independent Lithuanian Nation-State, and the practical heterogeneity of cultural forms within the realm under unified Lithuanian State administration, constituted a challenge and a problem. Still it was too early to predict whether this would trigger responses – comparable to well-documented historical evidence elsewhere in Europe – by the Lithuanian Nation-State aimed at the rendering dysfunctional, if not at repealing or destroying, autonomous mechanisms of reproduction of cultural unity, and if it did, what degree of cultural non-endurance of, and impatience with, all difference it would display.⁵¹

Jewish Autonomy Put to Test in Lithuania: Why Minister Rosenbaum Could not Favor its Cause More Sustainably

For approximately five years, from 1919 to 1924, it is fair to say that Rosenbaum was at the zenith of his Zionist career and in the focus of the public interest, both nationally and internationally. He served first as Deputy Foreign Minister (1918–1919) and then as Minister for Jewish Affairs (1923–1924) in the newly independent State of Lithuania while assuming the tasks of a member of the *Seimas*, the Lithuanian Parliament, and, particularly influential, of the Chairman of the Jewish National Council of Lithuania. He represented the Jewish minority as a member of the Lithuanian delegation to the Paris Peace Conference in 1919, which would oblige Lithuania to establish a rule of national autonomy – preferably of constitutional valence – for the non-Lithuanian groups of the country's population, hence also for the Jews.

From a historiographical point of view, substantial and important parts of Rosenbaum's activities are adequately covered,⁵² while the following three

lenge already at this early stage. Indications to that respect are identifiable in his treatise *Der Souveränitätsbegriff. Ein Versuch seiner Revision* (The Notion of Sovereignty. An Attempt at its Revision).

51 See Bauman, *Modernity and Ambivalence*, 141.

52 See Margaret MacMillan, *Paris 1919. Six Months that Changed the World*, New York 2001; Shimshon Rosenbaum, *La question juive en Lithuanie*, in: Comité des délégations juives auprès de la Conférence de la paix (ed.), *Les droits nationaux des Juifs en Europe orientale. Recueil d'études*, Paris 1919, 69–91; Leon Reich, *Żydowska delegacja pokojowa w Paryżu. Sylwetki działaczy żydowskich* [The Jewish Peace Delegation in Paris. Silhouettes of Jewish Key Persons], Lwów 1922; Nathan Feinberg, *La question des minorités à la Conférence de la paix de 1919–1920 et l'action juive en faveur de la protection*

aspects, which are intimately connected to combating anti-Semitism as the underlying theme for most of Rosenbaum's political activities, have not attracted the attention they deserve: (i) the differences in the trends to assess Jewish autonomy in Lithuania among high-level Jewish profiles, exemplified in the difference of the evaluations made by Rosenbaum and by Dr. Jacob Robinson (1889–1977); (ii) Rosenbaum's interventions in the *Seimas*, when it became clear that the Jewish National Council chaired by him would not muster sufficient political support in order to anchor constitutional provisions warranting a strong system of national autonomy; and (iii) the practically unaddressed issue whether the non-ratification, by the *Seimas*, of the Declaration made by Lithuania on 12 May 1922, on the clauses on the protection of minorities – notwithstanding its constitutionality under domestic law – did not amount to a breach of international law by Lithuania.

In a legal article entitled *Der litauische Staat und seine Verfassungsentwicklung* (The Lithuanian State and its Constitutional Development),⁵³ Dr. Jacob Robinson, attorney and former chairman of the Jewish faction in the Lithuanian Parliament, wrote in 1928 – i. e., well four years after Rosenbaum's resignation from the post of Minister for Jewish Affairs and after the Minister's Chancellery had long been disbanded – that “[t]he provisions in Sections 73 and 74 of the Lithuanian Constitution of 6 August 1922 on the rights of national minorities go far beyond those pursuant to Lithuania's declaration on the rights of national and religious minorities, made on 12 May 1922, before the League of Nations.”⁵⁴

A critical evaluation of certain international legal aspects concerning the implementation of the obligations under international law emanating from the Covenant of the League of Nations to protect minorities as well as a thorough analysis of the reactions from Jewish circles in Lithuania to the process that resulted in Sections 73 and 74 of the Lithuanian Constitution of 6 August 1922, are, in many respects, still pending. Rosenbaum, in his capacities in

internationale des minorités, Paris 1929; Aldona Gaigalaitė, *Lietuva Paryžiuje 1919 metais* [Lithuania in Paris in 1919], Kaunas 1999.

53 See Jacob Robinson, *Der litauische Staat und seine Verfassungsentwicklung*, in: *Jahrbuch des öffentlichen Rechts* 16 (1928), 295–326.

54 *Ibid.*, 304 f. Sections 73 and 74 of the Constitution of the State of Lithuania dated 6 August 1922 stipulate the following: “Section 73. The national minority groups that make up a significant part of the total population have the right to autonomously be in charge of their national culture, education, and welfare; they have their representative bodies, which they elect as indicated by the law. – Section 74. According to the aforementioned Article 73, the national minorities have the right to levy taxes on the members of their communities, to cover the needs of their national culture, and to use a fair part of the money allotted by the state and municipalities for educational and charity needs, if these are not covered by the state and municipalities.”

Lithuania at his time, had, in fact, actively challenged – both in the *Seimas* and on behalf of the Jewish National Council – the design of the constitutional provisions on the rights of national minorities. He was of the clear opinion that with the deletion of draft Section 80, which was based on the 1919 Paris Treaty, the remaining provisions in Sections 73 and 74 lacked any meaningful substance. His endeavors by all means to lay a legal basis to the institutional structure of national autonomy by separate laws also were in vain.⁵⁵

The subsequent remarks made by Shimshon Rosenbaum on interventions in the crisis of national autonomy in Lithuania in the public discourse, which took place in 1922, are expected to contribute to an elucidation of the latter topic. They are also an additional element to answering the question of why the approach of combating anti-Semitism by dint of legal and political prevention within the perimeter of League of Nations law failed in Lithuania.

As the *Seimas*, on 10 April 1922, finally turned down four of the seven provisions, proposed by the Jewish National Council under the leadership of Rosenbaum and introduced as bill by the Jewish faction upon consultation with Prime Minister Kazys Grinius, on a system of effective autonomy in a new constitution and merged the remaining three in what later would become Sections 73 and 74,⁵⁶ Rosenbaum in his capacity as Chairman of the Jewish National Council found himself prompted to take a position, not only in the *Seimas*, but also in public. His interventions were abstracted in detail in the Yiddish-language daily newspaper *Di idishe shtime* (The Jewish Voice).⁵⁷

On 21 April 1922, Rosenbaum, in a signed article, wrote:

“First of all, we have to make clear for ourselves that we have to deal not with yielding just the one paragraph, but with the breaking of our national autonomy and the protection of our rights in general. Without Section 80, which was given up as a consequence of the decisions on 10 April, all other paragraphs, which concern our rights, have been affected. [...] And our demand that the competence of the national organs would be increased already at the very beginning of its existence was deleted. [...] It should be noticed that after breaking down the separate parts of our rights, our situation is, in some point of view if it will stay in the same way as it is, worse than in Poland. Why do

55 See Eglė Bendikaitė, “Įstatymas teisių dar negarantuoja”. Žydų frakcijos veikla Steigiamajame Seime [“Law Does not Guarantee the Rights.” The Activities of the Jewish Parliamentary Group in the Constituent Assembly of Lithuania], in: Saulius Kaubrys/Arūnas Vyšniauskas (eds.), *Steigiamajam Seimui – 90. Pranešimų ir straipsnių rinkinys* [On the Occasion of the 90th Anniversary of the Constituent Assembly of Lithuania. Anthology of Papers and Articles], Vilnius 2011, 100–107.

56 See Šarūnas Liekis, *A State within a State? Jewish Autonomy in Lithuania 1918–1925*, Vilnius 2003, 151–157.

57 Shimshon Rosenbaum, *Tsu unzere lage* (teyl I) [On our Status (Part I)], in: *Di idishe shtime*, 21 April 1922, 1; idem, *Tsu unzere lage* (teyl II), in: *ibid.*, 23 April 1922, 3.

Jewish organs in Poland, according to Article 8 of the Versailles Treaty, have autonomous rights even in these subject matters, which were deleted by the *Seimas*, i. e., to deal with, and control, the religious and social issues?

The situation must be considered from the other, the symptomatic side. First of all it shows us the moods of Parliament towards us [i. e. Jews]; second, it shows us how insecure our situation is despite all previous promises.

Even the own interests of the country, which are so essential, cannot serve as the factor to push us to a disenfranchised position. Unwillingly one has to recall the expression of the Russian Tsarina: '*Ot vragov Khristovykh ne zhelaiu korystnoi pribyli.*'⁵⁸ Such is our situation."⁵⁹

Rosenbaum pointed out that the Lithuanian Parliament had its own "*pogromchiks*" with whom there was nothing to talk about, but that there were reasonable parliamentarians from democratic parties, too, and they had to be aware of why Lithuania should live up to the given promises and why the principle of national autonomy should be as important as the principle of autonomy itself. Rosenbaum endeavored to put that situation in a broader context, noticing that Lithuania's demand that Poland shall fulfill the Suwałki Treaty could not be taken seriously in the international arena, while Lithuania herself was not keeping agreements with her own citizens. In other words, Rosenbaum remained faithful to his own line, i. e., to appeal that justice and the rule of law would prevail, even though he realized that the question of law was seen by the dominant nation – the Lithuanians – as question of power. He stressed that

"[t]he minorities should not, and would not need to, have some special rights, but the majority should not have them either. In our constitution, as adopted by the *Seimas* after the second reading, it is clearly expressed that all citizens are equal before the law, so they should be treated equally as well. [...] These who create opposition and hatred among different national groups of the State, they are burying the fundamentals of the State. These who are ruining, they are deepening the conviction among the affected citizens of being ruled unjustly, of living in a State without care of their interests, as it is caring of the interests of the majority only. It should be known to all nations where it has proven impossible to associate freely and to develop freely [this is an allusion to the national movement of Lithuania and its demands], and it should be remembered how to find the graves excavated for States. States like Russia, Austria, and Turkey have already tumbled in theirs."⁶⁰

Finally, it would appear worthwhile turning to the issue whether the implementation of the obligations under international law, emanating from the

58 Literally, this sentence, which Rosenbaum quoted in the Russian language and which is ascribed to Tsarina Elizabeth (1741–1762) as reply to merchants requesting her to allow Jews to trade in Russia, means: "From the enemies of Christ, I do not want any benefit."

59 Rosenbaum, *Tsu unzere lage* (teyl I).

60 *Idem*, *Tsu unzere lage* (teyl II).

Covenant of the League of Nations to protect minorities,⁶¹ by Lithuania stands the test of conformity with international law as it stood at the time of the decision by the *Seimas* not to ratify the Declaration made by Lithuania on 12 May 1922⁶² on the clauses on the protection of minorities. Nothing in the deliberations in the *Seimas* and its competent committees reveals that the contention of constitutionality would have been tested against the international law doctrine, pursuant to which a party to a treaty may not invoke the provisions of its internal law – not even its constitution – as justification for its failure to perform a treaty. On 17 August 1923, the Permanent Court of International Justice in its judgment in the case of the steamship “Wimbledon” confirmed that this doctrine was well-established since long ago and recognized as customary international law.⁶³ As such it was binding also upon the State of Lithuania.

*Der Souveränitätsbegriff. Ein Versuch seiner Revision:
Shifting the Focus of how to Deal with Anti-Semitism*

Shimshon Rosenbaum was well-trained in legal drafting. Decades of exercise had fostered an ability to present a legal argument in a clearly structured and straightforwardly understandable way. In brief, his legal writing cannot be said to be circumlocutory. This assessment applies also to his opus magnum, in which Rosenbaum argues for a revised concept of sovereignty brought about by the League of Nations.

This treatise is a parenthesis of a professional life at the service of international law: Written already in 1920, Rosenbaum’s manuscript at an early stage voices reservations, of a fundamental nature, regarding the protection of minorities in Lithuania.⁶⁴ Rosenbaum, as he explains,⁶⁵ saw neither a need

61 The issue of the non-ratification, by the *Seimas*, of the Declaration made on 12 May 1922, has been analyzed in light of the compatibility of this parliamentary decision with Article 30 of the Constitution of the State of Lithuania of 6 August 1922; see Jacob Robinson et al., *Were the Minorities Treaties a Failure?*, New York 1943, 166, and 174. Whether this decision was in conformity with international law as it stood at the time of the decision or possibly a breach of that law merits a more thorough analysis.

62 *Journal Officiel de la Société des Nations* 1922, 586–588.

63 See Case of the S. S. “Wimbledon,” Permanent Court of International Justice, Series A No. 1, 29, where the Court ruled that “a neutrality order, issued by an individual State, could not prevail over the provisions of the Treaty of Peace,” while founding its judgment on the precedence set in the 1872 Alabama Claims Arbitration (United States v. United Kingdom) case.

64 Rosenbaum, *Der Souveränitätsbegriff*, 139.

65 *Ibid.*, 143.

for, nor a necessity of, updating it; he contended himself with a brief addendum, in which he commented on legal works published since 1920 by legal authors who had particularly put their focus on the re-evaluation of the dogma of sovereignty in international law in the era of the League of Nations.⁶⁶

One of the central findings in this international law treatise is his definition of “protection of minorities as tantamount to protection of sovereignty.” When Rosenbaum wrote that “[h]enceforth the State may not do and order everything. [...] Sovereignty is not a justification for States to commit injustice, neither towards other States nor towards their own citizens,” he advocated a novel concept of sovereignty guided by limitation.⁶⁷ With direct reference to the attitude of the Lithuanian government, he qualified the view that protection of minorities would rather constitute a diminution of sovereignty as “fundamentally erroneous” and as a violation of the Covenant of the League of Nations and its modern concept of sovereignty.⁶⁸

In Lieu of Conclusions – International Law at the Service of Combating Anti-Semitism: The Sisyphean Task Will Remain

Rosenbaum's perception of anti-Semitism was basically generated in the Russian Empire and in Lithuania. It is imperative to emphasize that it is largely not tantamount to Herzl's, which was gained from experiencing and analyzing anti-Semitic trends in Central and Western European countries. When Herzl in his book *Der Judenstaat* (*The Jews' State*) contended that “[i]n the principal countries where anti-Semitism prevails, it does so as a result of the emancipation of the Jews,”⁶⁹ it would appear that the preconditions for Rosenbaum to adhere to this conclusion were rather poor as the emancipation of the Jews assumed in Herzl's reflection would still have to

66 The approach by Rosenbaum that the era of the League of Nations necessitated a re-assessment of the dogma of sovereignty in international law was not a solitary one. In 1929, Wilhelm F. Schubert, a German diplomat and international lawyer serving in Geneva, published a monograph entitled *Völkerbund und Staatssouveränität* (League of Nations and State Sovereignty; Berlin 1929), which in many respects came to legal conclusions identical with, or very similar to, Rosenbaum's.

67 Rosenbaum, *Der Souveränitätsbegriff*, 139.

68 *Ibid.*

69 Theodor Herzl, *Der Judenstaat*. Versuch einer modernen Lösung der Judenfrage, Zurich 2006, 31 (first publ. Leipzig/Vienna 1896).

come about in that part of Europe, in which he stood up for the Zionist cause.⁷⁰ Thus, Rosenbaum's tireless efforts to attenuate, to curtail and to defy anti-Semitism – be it in the plenary hall, in the courtroom, in international negotiations, or with the commentator's pointed pen and passion – always also sought to create, or to use, a momentum for emancipation of the Jewish nation in the countries of his activities. While anti-Semitism essentially meant something quite different for Herzl and for Rosenbaum in terms of political program and strategy, it is worthwhile noting that both saw it needful to submit to the general as well as to the Jewish public their proposals of a State philosophy and of a concept in international law which they were convinced would bring leverage to bear on a durable solution that would fundamentally change the essence of the problem of anti-Semitism, despite the circumstance that it was reasonable to expect that the hallmark of this problem would continue to be its indestructibility.⁷¹ Whereas Herzl almost entirely refrained from defining his vision of a Jewish State in terms of international law,⁷² Rosenbaum considered it indispensable to contemplate Jewish statehood with a clear understanding of the element of sovereignty that should apply to such subject in international law.

In terms of functionality, *Der Judenstaat* and *Der Souveränitätsbegriff* arguably are complementary to each other. Like Herzl, Rosenbaum held the truth that in the beginning there was law. This law stems from the multi-layered interpretations of emblematic agreements, promises and dreams and is originally reflected through a legal covenant which endorses difference in equality as conceptual image looming in the background of the secular consciousness of international law. Methodically, Rosenbaum's treatise antici-

70 It is not overlooked here that "emancipation" in the usage by Herzl displays the intrinsically individual character of this process, while Rosenbaum arguably tried to subordinate this aspect in favor of perceiving the necessity of emancipation as a process addressing a group or a fraction of the Jewish nation. In this respect, *Der Judenstaat* furnishes evidence of the extent to which Herzl had internalized the discourse on Jewish emancipation in Western European countries, in light of which Rosenbaum's perspective would appear ante-modern in the sense that it obviously remains aloof the emancipatory credo of the French Revolution as expressed by Stanislas Marie Adélaïde, Count of Clermont-Tonnerre, in the National Assembly on 23 December 1789: "Il faut tout refuser aux juifs comme nation et tout accorder aux juifs comme individus. Il faut qu'ils ne fassent dans l'État ni un corps politique ni un ordre. Il faut qu'ils soient individuellement citoyens." See I. H. Hersch, *The French Revolution and the Emancipation of the Jews*, in: *The Jewish Quarterly Review* 19 (1907), 540–565, here 554; Bauman, *Modernity and Ambivalence*, 142; and Shulamit Volkov, *Das jüdische Projekt der Moderne*, Munich 2001, 19.

71 See Marcel Bernfeld, *Le sionisme. Étude de droit international public*, Paris 1920, 246 f. See also Frederick M. Schweitzer, *International Law and Antisemitism*, in: *Journal for the Study of Antisemitism* 4 (2012), 2101–2145, here 2143 f.

72 See Bernfeld, *Le sionisme*, 80, and 245 f.

pated a future state of international law as “gentle civilizer of nations,”⁷³ with a sovereign Jewish nation among civilized nations. It anticipated the initial nucleus of the status in international law of the State of Israel as grand blueprint for a sustainable solution of the problem of anti-Semitism. Seen from this perspective, Rosenbaum did not need to detach himself from the argument that Jewish sufferings gave the right to independence,⁷⁴ as he himself never had embraced it. Instead, by indicating the future role of a State of Israel in the “community of nations,” he pledged a Jewish State’s support to the international community.⁷⁵

73 See Martti Koskenniemi, *The Gentle Civilizer of Nations. The Rise and Fall of International Law 1870–1960*, Cambridge 2001.

74 See Reut Yael Paz, *A Gateway between a Distant God and a Cruel World. The Contribution of Jewish German-Speaking Scholars to International Law*, Leiden/Boston, Mass., 2013, 286.

75 The sources referred to in this article were collected and assessed while the author pursued a biennial research project entitled “The Life, Times, and Work of Shimshon Rosenbaum. A Political Biography of a Preeminent Leader in the Zionist Movement” at the Global and European Studies Institute, University of Leipzig. The research project was funded by the Fritz Thyssen Stiftung. The author wishes to extend her sincere gratitude to the University of Leipzig and to the Fritz Thyssen Stiftung for their support of this research project.