

**THE QUESTION OF WAR REPARATIONS
IN POLISH-GERMAN RELATIONS
AFTER WORLD WAR II**

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ARTICLE

I. Introduction

There is no doubt that World War II was the bloodiest conflict in history. Involving all the great powers of the world, the war claimed over 70 million lives and – as a consequence – has changed world politics forever. Since it all started in Poland that was invaded by Germany after having staged several false flag border incidents as a pretext to initiate the attack, this country has suffered the most. On September 17, 1939 Poland was also invaded by the Soviet Union. Ultimately, the Germans razed Warsaw to the ground. War losses were enormous. The library and museum collections have been burned or taken to Germany. Monuments and government buildings were blown up by special German troops. About 85 per cent of the city had been destroyed, including the historic Old Town and the Royal Castle.¹

Despite the fact that it has been 80 years since this cataclysmic event, the Polish government has not yet received any compensation from German authorities that would be proportionate to the losses incurred. The issue in question is still a bone of contention between these two states which has not been regulated by both parties either. The article examines the question of war reparations in Polish-German relations after World War II, taking into account all the relevant factors that can be significant in order to resolve this problem. These factors are carefully investigated in the following sections of the paper.

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¹ ‘Warsaw Uprising of 1944’, <http://www.warsawuprising.com/faq.htm#Warsaw%20Ghetto%20Uprising>, accessed 3 February 2019.

II. Definition and legal basis of war reparations

It would be appropriate to start with the explanation of the concept of war reparations and also where this notion is derived from. According to the Max Planck Encyclopedia of Public International Law, *war reparations involve the transfer of legal rights, goods, property and, typically money from one state to another in response to the injury caused by the use of armed force.*² The practice of claiming and paying war reparations dates back to ancient times and is still known and applied all over the world today. The reasons for requesting an adequate compensation for losses made by one state in the course of war are also clearly discernible in the thoughts of European legal scholarship. Emer de Vattel wrote that *whoever makes a war, is entitled to have the enemy country contribute to the maintenance of his army, at all costs of the war.*³ Alberico Gentili justified the duty to pay war indemnities on the military predominance of the country winning the war.⁴ The aforementioned concept was additionally extended by Samuel Pufendorf, who affirmed that resorting to war instead of adopting a peaceful dispute – settlement mechanism equates to the acceptance of a certain degree of chance. What is more, depending on the final result of the war, the defeated party must accept the verdict of the arms and the post conflict order imposed by the winner.⁵ A completely different concept was invoked by Hugo Grotius, who considered the rationale on which war reparations were grounded to be the necessity to ensure the future security of both the winning and defeated party to a conflict.⁶

As a rule, the use of military force leading to war in international relations is prohibited under international law.⁷ It was regulated for the first time in the Kellogg-Briand Pact (August 27, 1928), also known as Pact of Paris or General Treaty for the Renunciation of War as an Instrument of National Policy. The Pact is not very long, since it contains only three Articles. The recourse to war *for the solution of international controversies* is definitively condemned by the Contracting Parties in Article I. The signatory states went one step further, as under Article II they promise not to use war to resolve *disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them.*⁸ Article III specifies the requirements as to the ratification of the Treaty. The states which signed this Pact first were Germany, France, the United States, Australia, Belgium, Canada, Czechoslovakia, British India, the Irish Free State, Italy, Japan, New Zealand, Poland, South Africa

² P. Sullo, J. Wyatt, *War Reparations*, Oxford Public International Law 2014, p. 1.

³ E. de Vattel, *The Law of Nations: Or, Principles of the Law of Nature Applied to the Conduct and Affairs of Nations and Sovereigns, with Three Early Essays on the Origin and Nature of Natural Law and on Luxury*, Indianapolis, p. 103.

⁴ A. Gentili *De Jure Belli Libri Tres*, Oxford 1933, p. 48.

⁵ S. von Pufendorf, *De iure naturae et gentium libri octo*, Oxford 1934, p. 35.

⁶ H. Grotius, *On the Law of War and Peace*, Amsterdam 1631, 40.

⁷ P. Sullo, J. Wyatt, *War...*, op. cit., p. 2.

⁸ Article II of Kellogg-Briand Pact 1928, Yale Law School.

and the United Kingdom. Soon after, most other states joined them.⁹ Before the outbreak of World War II, the Pact had 63 parties. It should be emphasized that the ratification of each and every of them was a precondition for the entry into force of the very agreement. The Pact was concluded outside of League of Nations structures and remains in effect.¹⁰ Based on the aforementioned remarks, the so-called legal basis for war reparations was formulated. This includes *inter alia* a violation of the *ius ad bellum*¹¹ contrary to Art. 2 (4) United Nations Charter and a breach of international humanitarian law which is the violation of the *ius in bello*. These two elements, constituting a sketch of this legal basis, are independent of each other, which means that it is enough for one of them to be fulfilled in order to trigger the duty to provide war reparations.¹²

The concept of state responsibility has not been well-developed for a very long time. Eventually, this loophole was filled with the adoption of the Draft Articles on Responsibility of States for Internationally Wrongful Acts by the International Law Commission (ILC) in August 2001. The aim of this Act is to codify the generally applicable rules of state responsibility. In other words, it is nothing, but the repetition or even development of the rules of state responsibility. On no account should it be treated as a source of them. From the perspective of this paper, some ILC Articles are of great importance. For instance, as Article 31(1) states *the responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act*. Paragraph 2 of this Article introduces the essence of injury, which includes any damage, whether material or moral, caused by the internationally wrongful act of a State. The Permanent Court of International Justice confirmed it in the *Factory at Chorzów* case adding that *reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed*.¹³ Article 34 in turn sets out the forms of reparation, which separately or in combination will discharge the obligation to make full reparation for the injury caused by the internationally wrongful act.¹⁴ The compensation for war losses can be made through *restitution*,

⁹ Until 24 July 1929, these countries were Afghanistan, Albania, Austria, Bulgaria, China, Cuba, Denmark, Dominican Republic, Egypt, Estonia, Ethiopia, Finland, Guatemala, Hungary, Iceland, Latvia, Liberia, Lithuania, the Netherlands, Nicaragua, Norway, Panama, Peru, Portugal, Romania, the Soviet Union, the Kingdom of Yugoslavia, Thailand, Spain, Sweden, Switzerland, Turkey. After that date, eight further states joined, namely Persia, Greece, Honduras, Chile, Luxembourg, Danzig, Costa Rica and Venezuela. In 1971, Barbados declared its accession to the Treaty.

¹⁰ Westminster, Department of the Official Report (Hansard), House of Commons, https://publications.parliament.uk/pa/cm201314/cmhansrd/cm131216/text/131216w0004.htm#131216w0004.htm_wqn20, accessed 3 February 2019.

¹¹ It means an unlawful use of force in international relations.

¹² P. Sullo, J. Wyatt, *War...*, op. cit., p. 2.

¹³ *Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9*, p. 47.

¹⁴ Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries 2011, http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf, p. 95.

compensation, and satisfaction, either singly or in combination [...].¹⁵ However, as history shows, war losses can be satisfied in many shapes and forms that are not mentioned in the Article in question, notwithstanding they are widely accepted. The best-known examples are territorial guarantees, guarantees of non-repetition, and symbolic reparations.

As for the first form of reparation, restitution can be understood in two ways, having a double meaning. According to one definition, restitution consists in re-establishing the *status quo ante*, i.e. the situation that existed prior to the occurrence of the wrongful act. Under another definition, restitution is the establishment or re-establishment of the situation that would have existed if the wrongful act had not been committed.¹⁶ Article 35 adopts the first definition, which is simultaneously the narrower one. Among the forms presented in Article 35, restitution has primacy over the rest of them. However, there are some restrictions as to the obligation to make restitution. Pursuant to the aforementioned Article, restitution is required *provided and to the extent that* it is neither materially impossible nor wholly disproportionate. Article 36 deals with compensation for damage caused by an internationally wrongful act, to the extent that such damage is not made good by restitution. As the ICJ stated in the *Gabčíkovo-Nagymaros Project* case *it is a well-established rule in international law that an injured state is entitled to obtain compensation from the state which has committed an internationally wrongful act for the damage caused by it*.¹⁷ The scope of compensation is also limited since it concerns any damage which is capable of being evaluated in financial terms. Article 37 regulates the third form of reparation, which is satisfaction. It can be executed insofar as an internationally wrongful act cannot be satisfied by restitution or compensation. It means that satisfaction is used in exceptional cases. Paragraph 2 of the aforementioned Article provides for some modalities of satisfaction such as *an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality*. Of course, *it shall not be out of proportion to the injury and may not take a form humiliating to the responsible State*.¹⁸ Other acts extend the duty to pay compensation by one State to another when a belligerent party violates the provisions of the Convention and the Protocol I.¹⁹ This is the so-called inter-State duty to pay compensation. As far as the objectives of reparations in international law are concerned, the primary function is the re-establishment of the situation that would have existed if an international wrongful act

¹⁵ Art. 34 of the Draft Articles on Responsibility of States For Internationally Wrongful Acts (2001).

¹⁶ Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries 2011, http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf, p. 96.

¹⁷ *Gabčíkovo-Nagymaros Project (Hungary v Slovakia)*, Judgment, I.C.J. Reports 1997, p. 81, para 152.

¹⁸ Art. 37(3) of the Draft Articles on Responsibility of States For Internationally Wrongful Acts (2001).

¹⁹ Art. 3 of the Hague Convention concerning the Laws and Customs of War on Land (Hague Peace Conferences [1899 and 1907]) and Art. 91 of the Geneva Conventions Additional Protocol I (1977).

had not been committed.²⁰ It is beyond doubt that a state as an entity can claim war reparations. However, the situation is not so clear in the case of an individual who has suffered in the course of war. It is open to debate whether civilians are entitled to receive compensation for what they have experienced during the war. Opinions vary, which makes this topic a matter of dispute until this day.

III. German reparations after World War II

A separate category of the discussed topic is that of World War II reparations. In order to streamline such a broad topic, the author is going to look at the issue of World War II reparations, including the German position as the main aggressor and opponent of the order established by means of the Versailles Treaty and its 'contribution' to the post-war reality. What is crucial is that these types of reparations are different by its nature from the reparations system introduced by the Versailles Peace Treaty, both in terms of the political failings of the World War I reparations regime and the particular circumstances of World War II.²¹ Since the Versailles reparations regime could not meet the expectations of a perfect remedy for the effects of World War II on the states and nations involved, there was a need for the creation of a new system of reparations that could overcome all the weaknesses of the old regime. The issue of German reparations belonged to the competence of the four governments of the United States, Soviet Union, United Kingdom and France. By the Berlin Declaration signed on June 5, 1945 these states, acting on behalf of the Allies of World War II, jointly assumed 'supreme authority' over German territory and asserted the legitimacy of their joint determination of issues regarding its administration and boundaries.²² The 1945 Yalta Conference became the first platform to talk over this sensitive issue. The Allies, namely the United Kingdom, the United States and the USSR, based on the Conference Protocol, obliged Germany to pay war reparations *in kind* instead of monetary indemnities, since the monetary reparations claimed after World War I later became a cause of strife and ultimately detrimental to future peace in Europe.²³ The system of reparations *in kind* was based on three following forms: *removals from the national wealth of Germany located on the territory of Germany herself as well as outside her territory, annual delivers of goods from current production and use of German labor*.²⁴ Especially the third form was subject to some controversy from the very beginning.

²⁰ P. Sullo, J. Wyatt, *War...*, op. cit., p. 2.

²¹ *Ibid.*, p. 5.

²² J. Barcz, J. Kranz, *Reparacje od Niemiec po drugiej wojnie światowej w świetle prawa międzynarodowego. Aspekty prawa i praktyki*, Warsaw 2019, p. 80.

²³ G. Karkampasis, *What Happened to the German War Reparations after the end of WWII?*, ResearchGate 2016, p. 4.

²⁴ Protocol on the Talks between the Heads of the Three Governments at the Crimean Conference on the Question of the German Reparations in Kind, 11 February 1945. Documents on Germany, 1944–1961 (Committee on Foreign Relations, United States Senate, 87th Congress, 1st Session). Washington 1961.

Another document which regulates this question is the Potsdam Agreement – the outcome of the Potsdam Conference organized in 1945 by the same group of states that gathered in Yalta.²⁵ Following Roosevelt's death, the representative of the United States at the conference was the new President of this country, Harry Truman.²⁶ The main goal of the conference was not only to reconstruct both Germany as a country and its borders but also the entire European Theatre of War territory.²⁷ The Potsdam Agreement constitutes the main legal basis for reparations, nevertheless other acts were enacted later in order to make it function. In the first line, the agreement concerns the responsibility of Germany for the consequences of World War II. In other words, the Third Reich was ultimately held accountable for the outbreak of World War II, meaning that the partial obligation to fix the damage and cover losses arising out of the war was imposed on the German government.²⁸ It was also agreed that Germany would be forced *to compensate to the greatest possible extent for the loss and suffering that she has caused to the United Nations, and for which the German people cannot escape responsibility*.²⁹ War reparations were to be paid from the removal of German industrial capital equipment and the delivery of products which was monitored by the Inter-Allied Commission of Compensation with its headquarters in Moscow.³⁰ Disposal of the German navy and merchant marine was also one of the elements of the reparations mechanism.³¹ What is more, the Council decided *to seize German external assets by vesting [...] all rights, titles and interests in respect of any property outside Germany owned or controlled by any person of German nationality*.³² Neither the amount of reparations nor the special procedure leading to their collection was considered. The share of the several powers and other states was determined in general terms, partially expressed as a percentage.³³

One of the results of the Potsdam Conference was also the introduction of 'the first charge principle', invoked by the United States Secretary of State, James F. Byrnes. This rule is also known as *a long-standing American policy*³⁴ and reflects the position of the United States at that time, stating that *reparations should not be paid*

²⁵ M.P. Leffler, *The Struggle for Germany and the Origins of the Cold War*, German Historical Institute 1996, p. 70.

²⁶ A.M. Goldstein, *Truman at Potsdam: The First Battle of the Cold War*, <https://www.ciu.edu/historia/Goldstein2017.pdf>, p. 114.

²⁷ M.P. Leffler, *Adherence to Agreements: Yalta and the Experiences of the Early Cold War*, International Security 1986, Vol. 11, No. 1 (Summer), p. 108.

²⁸ P.E. Mosely, *Dismemberment of Germany: The Allied Negotiations from Yalta to Potsdam*, Foreign Affairs 1950, p. 491.

²⁹ Potsdam Agreement, 1945 – Communiqué.

³⁰ Berlin–Potsdam Conference. Protocol of the Proceedings, August 1, 1945: III. Reparations.

³¹ Potsdam Agreement, 1945 – Protocol of the Proceedings, section IV.

³² K. Loewenstein, *Law and the Legislative Process in Occupied Germany: I*, Yale Law Journal 1948, p. 755.

³³ J. Barcz, J. Kranz, *Reparacje...*, op. cit., p. 44.

³⁴ C. Buffet, B. Heuser (eds), *Haunted by History: Myths in International Relations*, Berghahn Books 1998, p. 95.

until German exports were sufficient to finance German imports.³⁵ Although, based on the Potsdam Agreement, Germany was treated as an economic unity, reparations were to be received according to the occupation zones. In consequence, the Three Allies and other states satisfied their claims from the Western zones of Germany. The Soviet Union had its own zone used to settle its claims. It is easy to see that the USSR became the main beneficiary of this procedure. Reparation claims of the USSR concerns the Soviet occupation zone in Germany, which was expressed in Section 3 called Reparations from Germany.³⁶ The section also estimates the threshold of reparations that should be transferred to the Soviet Union. It amounted to 10 per cent of the industrial capacity of the western zones which were deemed to be unnecessary for the German peace economy.³⁷ The Potsdam Agreement did not make any distinction between reparations and restitutions. It did not say anything about individual indemnities for victims of the Nazi regime, either.³⁸

The next stage of the final settlement of the question of war reparations was the Agreement on Reparation from Germany, on the Establishment of an Inter – Allied Reparation Agency and on the Restitution of Monetary Gold signed in Paris on January 14, 1946. Interestingly, the agreement was signed only by those states that were entitled to receive reparations from the so-called Western area, which means that the Soviet Union and Poland were excluded from its scope. The notion of reparations used in the title of this Act covers both all the claims of the Signatory Governments and *those of its nationals against the former German Government and its Agencies, of a governmental or private nature, arising out of the war.*³⁹ It was also stressed that German reparations would be of a factual nature such as *industrial and [...] capital equipment removed from Germany, and merchant ships and inland water transport.*⁴⁰ Looking at the further provisions, one might have the impression that the Big Three were trying not to overburden Germany's budget. Article 4 (C) (ii) (c) states that *the relation of the item or items [claimed] should be proportionate to the general pattern of the claimant country's pre-war economic life and to programs for its post-war economic adjustment or development.* The 1946 Agreement regulates another feature of World War II reparations which is a partial acceptance of the claims of individual victims of the atrocities of that war.⁴¹ As Article 8 of the Agreement states *the Allies agreed to allocate a share of the reparations to which they were entitled to the rehabilitation and resettlement of so-called non-repatriable victims of German*

³⁵ Loyd E. Lee, *World War II: Crucible of the Contemporary World: Commentary and Readings*, M. E. Sharpe, Inc. 1991, p. 349.

³⁶ Potsdam Agreement, Protocol of the Proceedings, August I, 1945.

³⁷ P. Sullo, J. Wyatt, *War...*, op. cit., p. 6.

³⁸ J. Barcz, J. Kranz, *Reparacje...*, op. cit., p. 45.

³⁹ R.M. Buxbaum, *From Paris to London: The Legal History of European Reparation Claims: 1946–1953*, Berkeley Journal of International Law 2013, p. 325.

⁴⁰ Agreement on Reparation from Germany, on the Establishment of an Inter-Allied Reparation Agency and on the Restitution of Monetary Gold, Paris, 14 January 1946: Part I. Article 1(A).

⁴¹ M. Cherif Bassiouni, *International Recognition of Victims' Rights*, Human Rights Law Review 2006, p. 219.

*action defined as the true victims of Nazi persecution and to their immediate families and dependents.*⁴²

As mentioned above, Germany's responsibility was regarded as being partial, meaning that World War II reparations were to be shared among all the states that cooperated with the Nazi Regime during the conflict. It was regulated in the Paris Peace Treaties, signed on February 10, 1947 as the outcome of the Paris Peace Conference held from July 29 to October 15, 1946.⁴³ The victorious Allied powers negotiated the details of peace treaties with Austria, Bulgaria, Finland, Romania, Hungary and Italy.⁴⁴ The treaties were prepared by the Foreign Affairs Council which was made up of Allied State Ministers responsible for Foreign Affairs in their states. The Council was established by means of the Potsdam Conference. The representatives of 21 states were also involved in the preparation process of the Treaties. The potential reader might assume that the final resolutions of the Paris Peace Conference were the fruit of the labor of the majority of states, who craved the restoration of peace and security on a European scale. Unfortunately, this was not the case and it is worth noting that only Finland has met the obligations arising out of the Treaties to date.

In 1949 two German states emerged, namely, the Federal Republic of Germany (FRG) and the German Democratic Republic (GDR). Moreover, between 1952 and 1954 the Three Western Powers, except for the USSR, concluded two agreements with West Germany.⁴⁵ Based on the Agreement on German External Debts signed in London on February 27, 1953, the level of German indebtedness arising from both wars was significantly reduced or the repayment was postponed. Pursuant to Article 5 of the Agreement *claims of the countries and national of such countries arising out of the Second World War [...] shall be deferred until the final settlement of the problem of reparation*. The second Act, known as the Provisional Agreement, was concluded in October 1954 between the Federal Republic of Germany and the Western Powers and includes the distinction between reparations and compensation for the victims of the Nazi regime. In Chapter VI, it was agreed that the issue of war reparations should be determined by means of the Peace Treaty or in the earlier treaties, whereas in Chapter IV West Germany was obliged to introduce a piece of legislation on indemnities for the victims of the Nazi regime. The conclusion is straightforward – both agreements constitute undoubtedly a significant concession by the West – and simultaneously – the successful diplomacy of the Federal Republic of Germany. It can be assumed that the leaders of the Allied Powers did not care to make West Germany weaker. In their view, any goal of overburdening Germany with war reparations would constitute a potential danger in the form of the reawakening of neofascist or communist tendencies. That is why it was necessary to prevent such a danger – and hence – subsume West Germany under the new and strong structures

⁴² P. Sullo, J. Wyatt, *War...*, op. cit., p. 6.

⁴³ S. Sutaj, *Paris Conference 1946 – organizational principles of the Peace Conference*, Central European Papers 2015, p. 45.

⁴⁴ F. Tanner (eds), *From Versailles to Baghdad: Post-War Armament Control of Defeated States*, New York 1992, p. 30.

⁴⁵ J. Barcz, J. Kranz, *Reparacje...*, op. cit., p. 48.

of economic, political and military cooperation. In light of these facts, it is really difficult to avoid the impression that the implementation of the resolutions on German responsibility came to naught.

IV. Justification of Poland's claims on World War II reparations – data analysis

In the current state of public discourse, there is a debate on the issue of compensation for all the crimes and damages inflicted by the Third Reich in Poland during World War II. Poland's claims are certainly justified for a number of reasons. First of all, the recognition of Germany's obligation to pay reparations for war losses being the consequence of the outbreak of the World War II has already been confirmed by the Big Three during the 1945 Yalta Conference and took the form of forced labor, as mentioned above.⁴⁶ Also at that time, the Allied Parties, represented by President Franklin D. Roosevelt, Prime Minister Winston Churchill and the Marshal of the Soviet Union, Joseph Stalin, respectively agreed on the first war reparations towards Poland.⁴⁷ An additional Protocol prepared in the course of the Yalta discussion states that *reparations are to be received in the first instance by those countries which have borne the main burden of the war, have suffered the heaviest losses and have organized victory over the enemy*.⁴⁸ This declaration refers to Germany's obligation and inserted in the wording of the Additional Protocol along with the Potsdam Agreement definitely constitutes a legal basis for Poland to claim war reparations from the German government, even if this legal provision does not mention Poland directly. It is clear that Poland is definitely one of these states, which has *borne the main burden of war*.

The aforementioned legal basis resulting from international agreements and yet challenged by some prominent personages, is not the only factor which justifies Poland's claims towards Germany. The position of the Polish government in this regard is stronger if we take into account statistics alone. It shows the scale of atrocity that was committed by the German occupant in the territory of the Second Polish Republic. The assessment of losses is significant, because it is not only a matter of military actions but also the five years' German occupation. These damages took the various forms, such as territorial losses, huge numbers of victims, permanent destruction of the Polish statehood, property losses and annihilation of the intellectual elite. The data analysis shows the following. In 1939 Germany captured 48,4 percent of Polish territory.⁴⁹ Murders and displacements were the order of the day.

⁴⁶ P. Polian, *Against Their Will: The History and Geography of Forced Migrations in the USSR*, Central European University Press 2004, p. 246.

⁴⁷ A.M. Cienciala, *What did Roosevelt and Churchill really aim to achieve for Poland at Yalta? Was Yalta the price for peace?*, The Polish Review 2010, p. 453.

⁴⁸ L. Engbith, *True Diplomacy at Yalta*, http://www.ctn.state.ct.us/press_room/osh/NHDYalta.pdf, accessed 5 February 2019.

⁴⁹ M. Gniazdowski, *Losses Inflicted on Poland by Germany During World War II. Assessments and Estimates – an Outline*, Polish Quarterly of International Affairs 2007, p. 95.

It is estimated that the number of Poles deported, displaced or 'evacuated' amounts to 1.7 million.⁵⁰ Moreover, 2,857,500 Polish citizens were deported to work in Germany.⁵¹ As far as property losses are concerned, the systematic annihilation of Warsaw under the Nazi regime also took place. As a result of the hostilities and systematic destruction, Warsaw lost 80 per cent of its buildings and suffered the greatest losses among all European capitals.⁵² The number of victims who were inhabitants of Warsaw is several times higher than the civilian population losses in the whole of France during World War II and amounts to 700,000 people.⁵³ Hitler's plan to exterminate Polish people included the intellectual elite as well. In November 1939, around 200 professors of the Jagiellonian University and other universities in German occupied Cracow were arrested and sent to concentration camps. The majority of them were released whereas the rest died from starvation or were murdered.⁵⁴ Although much research has been devoted to the question of how much Poland lost in the course of World War II, no one is able to present the final estimation of these losses. Even the Ministry of Preparatory Work Concerning the Peace Conference of the Polish Government came to the conclusion that *losses inflicted on the society are huge and cannot be expressed by numbers*.⁵⁵ All the more, the issue of war reparations for the Polish government for war losses committed by the Third Reich during World War II seems to have its justification.

Apart from the legal and factual arguments, there is also state practice referring to war reparations in international relations, for instance between Israel and the Federal Republic of Germany. The 1951 Declaration directed to the four powers indicates the amount of the Israeli damages and reparations claims which is \$1.5 billion dollars. However, in talks with Chancellor Konrad Adenauer, the president of the World Jewish Congress, Nachum Goldman, specified that \$1 billion dollars of this sum should be paid by the Federal Republic of Germany and half a billion dollars should be by the German Democratic Republic. The FRG government agreed to negotiate and accept – as a basis of negotiation – the scope of the claims determined in the Israel's Declaration 1951. The result of these negotiations was the Reparations Agreement between Israel and the Federal Republic of Germany signed on September 10, 1952. Based on this Act, the Federal Republic of Germany assumed responsibility for the Holocaust and obliged itself to pay DM 3 billion in favor of Israel. By means of Protocol No. 2, attached to the Agreement in question, the Federal Republic of Germany also paid the sum of DM 450 million to *Jewish Claims Conference* for the integration of Jewish refugees.⁵⁶ It implies that adequate compensation should be received not

⁵⁰ Cz. Łuczak, *Polska i Polacy w drugiej wojnie światowej*, Poznań 1993, p. 146.

⁵¹ S. Nawrocki (eds), *Praca przymusowa Polaków w Trzeciej Rzeszy w latach 1939–1945*, Poznań 1995, p. 7.

⁵² M. Gniazdowski, *Losses...*, op. cit., p. 96.

⁵³ M. Gilzmer (eds), *Widerstand und Kollaboration in Europa*, Munster 2004, p. 32.

⁵⁴ M. Gniazdowski, *Losses...*, op. cit., p. 96.

⁵⁵ S. Dębski, W.M. Góralski, *Problem reparacji, odszkodowań i świadczeń w stosunkach polsko-niemieckich 1944–2004*, Warsaw 2004, p. 2.

⁵⁶ J. Barcz, J. Kranz, *Reparacje...*, op. cit., p. 122.

only by Israel itself but also by victims of the Nazi regime. It is not surprising, since Jews are one of the nations who suffered the most during World War II. According to the Yad Vashem Holocaust Martyrs' and Heroes' Remembrance Authority in Jerusalem, between five and six million Jews died.⁵⁷ Polish people are another example of the nation who had experienced a living hell in the course of war. The number of the Polish victims of World War II amounts to around 6 million, including Polish Jews.⁵⁸ It is beyond question that Poland is also entitled – like Israel – to claim war reparations that could constitute suitable compensation for war losses.

A separate issue is the importance of activities performed by the Polish government in times of the Polish People's Republic. This is especially about the 1953 Declaration by means of which the Council of Ministers⁵⁹ as the executive power waived, as of January 1, 1954 *all outstanding reparations under the agreement between the PRL and the USSR*.⁶⁰ This Declaration is controversial as to the objective scope of 'reparations', the entity affected by the statement and its binding force in the light of international law. According to German authorities, the waiver covers both public and individual claims which is unreasonable to Polish authorities being in a position that Poland has never abandoned the right to demand adequate compensation for all the victims of the Nazi regime. There is no doubt that the post-war acts concerned German reparations in the Potsdam formula. Compared to other post-war acts and treaties, the PRL statement does not say anything about the waiver of claims on behalf of Polish citizens or all the claims arising out of the war.⁶¹ The formula on the abandonment of the claims *towards Germany and German natural and legal persons* was not applied here either.⁶²

As regards the second question, namely who is a recipient of the Polish statement, according to Jan Barcz and Jerzy Kranz, the PRL government waived reparations from Germany. In their view, the Polish government did not resign from reparations from the German Democratic Republic, because Poland was not entitled to receive reparations from either East Germany or the Federal Republic of Germany. These states did not exist in 1945 and what was decided at the Potsdam Conference in the course of reparations concerns Germany as a whole. Germany as one state is mentioned in the similar context in the PRL statement.⁶³ On the contrary, Jędrzej

⁵⁷ P. Hayes, *How Was It Possible?: A Holocaust Reader*, University of Nebraska Press 2015 p. 910.

⁵⁸ H. Kochański, *The Eagle Unbowed: Poland and the Poles in the Second World War*, Harvard University Press 2012, p. 532.

⁵⁹ At that time, the office of the President did not exist and the Prime Minister was Bolesław Bierut.

⁶⁰ Oświadczenie Rządu Polskiej Rzeczypospolitej Ludowej w sprawie decyzji Rządu ZSRR dotyczącej Niemiec, Warszawa, 23 sierpnia 1953 r., Zbiór Dokumentów 1953, nr 9, p. 1830–1832.

⁶¹ J. Barcz, J. Kranz, *Reparacje...*, op. cit., p. 68.

⁶² Such a formula was applied in the Agreement concerning the Re-Establishment of Normal Relations between Japan and the Polish People's Republic [signed 8 February 1957, entered into force 18 May 1957] (Dz. U. 1957.49.233).

⁶³ J. Barcz, B. Jałowicki, J. Kranz, *Między pamięcią a odpowiedzialnością: rokowania w latach 1998–2000 w sprawie świadczeń za pracę przymusową*, Warsaw 2004, p. 256–271.

Bielecki consults the division of Germany, admitting that the Council of Ministers waived Poland's claims from the GDR.⁶⁴ There has been a lot of controversy about the impact of the waiver on the international scene and thoughts are far from uniform in this regard. Some lawyers take the position that the Council of Ministers of the PRL was a competent body to issue the 1953 Declaration. Interestingly, no Polish government to date has challenged the validity of this decision. What is more, its binding force has been confirmed many times.⁶⁵ In light of international law, the Declaration in question was a typical example of unilateral act formulated by the Polish government, which means that it does not have to be accepted by other states and cannot be dismissed.⁶⁶

The argument that the 1953 Declaration is invalid because of the use of coercion seems to be unconvincing.⁶⁷ Otherwise, the validity of all the decisions of Polish authorities made during its political dependence on Moscow must be questioned. This would lead to the challenge of PRL's status in international law. In fact, there is no evidence that the Polish government concluded agreements under coercion.⁶⁸ What is more, one of the most important international act, namely the Vienna Convention on the Law of Treaties (VCLT) is lack of the definition of force, since the signatory states avoided any conclusions in regard to this matter. The definition of economic and political coercion was not determined either.⁶⁹ Furthermore, international dispute resolution procedures are too weak to deal with cases with the 'force' element.

Another view was expressed by Robert Jastrzębski⁷⁰ who prepared a legal opinion devoted to this matter. According to this opinion, *the Republic of Poland is entitled to demand from the Federal Republic of Germany war indemnities and these claims neither expired nor became statute – barred*. It further states that *a Unilateral Statement of the Council of Ministers on the Abandonment of War Reparations signed on August 23, 1953 was made not at the discretion of the Polish government, but under coercion of the USSR*. The author of the expertise also added that *the Treaty on the Final Settlement with Respect to Germany signed on September 12, 1990 does not say anything about war reparations. It is rather an attempt to close*

⁶⁴ J. Bielecki, *Reparacje wojenne od Niemiec: RFN dała nam jałmużnę* (Rzeczpospolita, 4 September 2018), <https://www.rp.pl/Historia/309069817-Reparacje-wojenne-od-Niemiec-RFN-dala-jalmuzne.html>, accessed 26 February 2019.

⁶⁵ For instance: Komunikat Rady Ministrów z 13 lipca 2004 r. w sprawie poselskiego projektu uchwały w sprawie reparacji od Niemiec na rzecz Polski; Oświadczenie Ministerstwa Spraw Zagranicznych w sprawie uchwały Sejmu Rzeczypospolitej Polskiej w sprawie praw Polski do niemieckich reparacji wojennych oraz w sprawie bezprawnych roszczeń wobec Polski i obywateli polskich wysuwanych w Niemczech, 15 września 2004 r.

⁶⁶ P. Saganek, *Akty jednostronne w stosunkach polsko-niemieckich*, Warsaw 2010, p. 84.

⁶⁷ J. Sandorski, *Nieważność zrzeczenia się przez Polskę reparacji wojennych a niemieckie roszczenia odszkodowawcze*, *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 2004, p. 53–68.

⁶⁸ J. Barcz, J. Kranz, *Reparacje...*, op. cit., p. 73.

⁶⁹ J. Sandorski, *Nieważność umów międzynarodowych*, Poznań 1978, p. 129–166.

⁷⁰ PhD holder; since 2017 he is an Assistant Professor at the Department of European Legal Tradition (University of Warsaw). His academic achievement concentrates mostly on economic law.

the WWII problem. What is more, Poland was not a party to this Treaty. Opponents argue that, instead of this, the Oder-Neisse line was eventually confirmed which means that the Two Plus Four Agreement should be understood as *pactum in favorem tertii*.⁷¹ Then the *nothing about us without us*⁷² principle may as well be applied to this case. Even if some lawyers take the position that the issue of war reparations for Poland is doomed – which is true to some extent – it does not mean that the Polish government cannot try to protect its interests if a reason of state requires it to do so.

Hypothetically, Polish authorities could follow two procedural ways. One of them assumes that since Poland satisfied its claims from the Soviet pool, then not Germany but the USSR should be the target for war reparations. It means that the Polish government should demand indemnities from the Russian Federation, which is a continuator of the USSR. However, such a solution seems impossible taking into account its political consequences. What is more, the 1957 Agreement which confirms that all the claims were completely satisfied constitutes a crucial obstacle to following this path.⁷³ The second option concerns the challenge of the Potsdam formula in the course of World War II reparations. However, there is no doubt that nowadays this would be a ridiculous step for Poland. For instance, it might deprive the state of the former eastern territories of Germany or even the determination of the Polish-German border, since the Potsdam Agreement regulates not only the question of German war reparations, but also other issues, which were mentioned above. One of them, namely the transfer of public and private property, was subject to investigation before the European Court of Human Rights.⁷⁴ Moreover, the challenge of the Potsdam formula would involve the cooperation of the former Allied Powers which is currently difficult to achieve. As long as other proposals are concerned, the problem of World War II reparations can also be resolved by bringing the case before the International Court of Justice. The dispute can also be settled in a conciliatory way, for instance under the auspices of the Organization for Security and Co-operation in Europe.

V. Further activities of the German and Polish governments and their stances on the matter

Now it is time to see what has been done so far in the course of war reparations for Poland. Let us return to the Yalta Conference, where the Polish Question has been widely discussed for the first time. One of the topics was the arrangement of the eastern line of the ‘reborn’ Polish State. Instead of the forfeiture of the Eastern Borderlands in favor of the USSR, some historical regions were under the control of the new Polish authorities *inter alia* the Lubusz Land, the Duchy of Pomerania, East

⁷¹ Also known as a *ius quaesitum tertio* arises when the third party is the intended beneficiary of the contract, despite not having originally been an active party to the contract.

⁷² Latin: *Nihil de nobis, sine nobis*.

⁷³ J. Barcz, J. Kranz, *Reparacje...*, op. cit., p. 76.

⁷⁴ J. Barcz, *Orzeczenie ETPCz z 7 października 2008 r. Długi dzień historii, Sprawy Międzynarodowe* 2009, p. 1.

Prussia, Silesia and the Free City of Danzig. In this way, Poland received territorial compensation in the west from Germany.⁷⁵ The eastern border followed the Curzon Line going back to the period following World War I and defined as the demarcation line between the newly emerging states, the Second Polish Republic and the Soviet Union.⁷⁶ The Big Three also referred to 'the Polish Question' at the Potsdam Conference where it was decided that war reparations would be transferred to Poland indirectly with the participation of the USSR.⁷⁷ The agreement itself did not determine the amount of the Soviet reparations from Germany, and consequently, the Polish share in the Soviet pool was dependent on the goodwill of Moscow.⁷⁸ In fact, the size of the war losses incurred by Poland has never been ascertained accurately. On August 16, 1945, in order to enforce the Potsdam Agreement, the USSR and Poland concluded the Agreement on Compensation for Damage Caused by the German Occupant.⁷⁹ It was agreed that 15 per cent of the reparations paid in favor of the USSR from the Western zones would be given to Poland. Reparations claims were to be settled from the Soviet occupation zone as well, which was 15 per cent of all the reparations from this zone. However, the Soviet Union had a casting vote as to the type of its control.⁸⁰ Other provisions of the agreement were exceptionally unfavorable to Poland. This is because the USSR authorities treated the transference of German territories as the depletion of its own occupation zone and made the comparison of the values of the Eastern Polish territories occupied by the Soviet Union with the Eastern territories of Germany captured by Poland. This unfavorable balance was paid back with coal supplies, which were sold at a low price in relation to global prices and affected the amount of German war reparations. The final sum of compensatory benefits from the USSR amounted to 275 million złotych.⁸¹ On August 22, 1953, German Democratic Republic and the Soviet Union concluded the agreement on the extinction of German war reparations. The USSR authorities declared that Germany [not GDR] performed – for the most part – its economic and financial obligations related to the consequences of the war and as of January 1, 1954 would stop collecting reparations in any possible way. In addition, Germany [not GDR] was exempt from paying its state debt towards the Soviet Union. The Agreement in question had repercussions on war reparations for Poland, as evidenced by the aforementioned abandonment of the right to demand them.

⁷⁵ E. Osmańczyk, *Encyclopedia of the United Nations and International Agreements: T to Z*, Taylor & Francis Books 2003, p. 2773.

⁷⁶ P. Eberhardt, *The Curzon line as the eastern boundary of Poland. The origins and the political background*, Geographica Polonica 2012, p. 8.

⁷⁷ W.M. Góralski (eds), *Problem reparacji, odszkodowań i świadczeń w stosunkach polsko-niemieckich 1944–2004 T. 1. Studia*, Warsaw 2004, p. 95.

⁷⁸ J. Barcz, J. Kranz, *Reparacje...*, op. cit., p. 52.

⁷⁹ S. Dębski, W. Góralski, *Problem reparacji, odszkodowań i świadczeń w stosunkach polsko-niemieckich 1944–2004 T. 2. Dokumenty*, Warszawa 2004, p. 41–42.

⁸⁰ D. Stone (eds), *The Oxford Handbook of Postwar European History*, Oxford University Press 2004, p. 322.

⁸¹ W.M. Góralski (eds), *Problem...*, op. cit., p. 167.

The post-war reality has not changed much in Polish-German relations in terms of war reparations. Although certain attempts were made in order to find a perfect solution to this problem in the 1950s, the lack of diplomatic relations between the Polish People's Republic and the Federal Republic of Germany made the whole situation even more complicated.⁸² At that time, the German government clearly stated that since the diplomatic relations with Poland had not been maintained, the claims of the Polish victims would have been inadmissible.⁸³ Admittedly, some Polish-German agreements such as the Payment of Compensation for Victims of Pseudo-medical Experiments (1972) and Treatment of the Question of Unpaid Social Benefits (1975) were concluded, however their resolutions referred to the so – called indirect reparations rather than the money transfer to casualties.⁸⁴ According to the 1972 Agreement, Poland received *ex gratia*⁸⁵ the sum of DM 100 million, however it was subject to financial manipulation by the Polish government.⁸⁶ What is more, West German legislation did not provide for any tools that could help the war victims receive suitable compensation. German bills which were enacted in the 1950s and 1960s regulated only internal affairs without any single reference to the citizens of the East European states. In fact, the victims of pseudo-medical experiments, mostly Poles, began to receive, from the beginning of the 1960s, one-time 'aid' in consequence of the American intervention. Without its help, German authorities would not be prone to pay money to these victims. It is estimated that 1,357 Polish claims were submitted for a total amount of DM 39,440,000. As far as the issue of individual compensation is concerned, this was an ongoing struggle between the Polish People's Republic and the Federal Republic of Germany under the auspices of the United Nations. Two memorandums prepared by Polish authorities were submitted to this international organization. Unfortunately, the UN decided not to take them into account.

The election of Willy Brand as Chancellor and his 'Ostpolitik' turned out to be a great boost for Polish interests. In his book *Peaceful Policy in Europe* he said that *our stance towards this state [Poland] also result from the fact that Poland particularly severely suffered as a result of aggression. Her striving to finally guarantee for herself a secure existence within safe borders and reluctance to be a 'state on wheels' is met with our understanding. Reconciliation with her is our moral and political duty. To this reconciliation belongs not only the elimination of any striving or thought of violence, but also the consciousness that we cannot leave any germ of future conflicts.*⁸⁷

⁸² K. Ruchniewicz, *German War Compensation for Poland in the 1960s and 1970s*, Polish Foreign Affairs Digest 2005, p. 37.

⁸³ K. Ziemer, *Memory and Politics of Cultural Heritage in Poland and Germany*, Warsaw 2015, p. 20.

⁸⁴ D. Sołtysiak, *Podstawy prawne i implementacja odszkodowań niemieckich dla polskich ofiar eksperymentów pseudomedycznych w latach 1945–1989*, Warszawa 2004, p. 1.

⁸⁵ Latin: By favour.

⁸⁶ K. Ruchniewicz, *Polskie zabiegi o odszkodowania niemieckie w latach 1944/45–1975*, Wrocław 2007, p. 97–131.

⁸⁷ Willy Brandt a Polska. O pokój w warunkach wolności i sprawiedliwości społecznej. Wystawa Fundacji im. Friedricha Eberta. Katalog, Bonn, 2000.

That is why it became possible to discuss the question of World War II reparations for Poland again. However, Willy Brand's efforts in this regard met with reluctance from the Polish authorities. During one of the meetings in Warsaw, the First Secretary of the Polish United Workers' Party, Władysław Gomułka pointed out clearly that *Warsaw respected its earlier renunciation of reparations awards from Germany*. However, he recognized that it was necessary to differentiate between material losses and personal losses, asking for the Polish government to be granted a DM 10 billion credit to cover these losses.⁸⁸ In other words, he intended to replace individual indemnities for Polish victims with significant financial support for the Polish People's Republic.⁸⁹ The agreement which was concluded in the aftermath of the Conference on Security and Co-operation in Europe, which took place in Helsinki from July 30 to August 1, 1975 provided Poland with the sum of DM 1,3 billion.⁹⁰ Further efforts have come to nothing. Gomułka's approach to this sensitive issue has been represented by his successor, Edward Gierek until the collapse of communism in Poland. On November 14, 1989 Polish Prime Minister Tadeusz Mazowiecki and German Chancellor Helmut Kohl met each other in order to discuss the moral aspect of compensation for Poles incurred by the Third Reich during World War II. The German stance was straightforward: since Poland abandoned its right to demand war reparations in 1953, the 1975 Pension Agreement was concluded and the Federal Republic Germany had already paid huge sums of money, there is no way to satisfy the claims of the 800,000 who had suffered. However, he did not eliminate the possibility of instigating benefits for the so-called tough cases. He also accepted Mazowiecki's proposal of setting up a committee in order to sort out the issue.⁹¹ In the middle of December 1989, the Marshal of the Sejm, M. Kozakiewicz visited the Federal Republic of Germany, where he referred to Polish losses during World War II, reminding audiences that Poland was still home to 40,000 former prisoners of concentration camps and around 800,000 former forced labourers who had not received any indemnities.⁹² He also pointed out that Chancellor Kohl had promised to reconsider the situation. In this context, Marshal Kozakiewicz presented a solution amounted to the establishment of the Foundation for Indemnities for the Victims of the Nazi Crimes that could receive financial means given by Germany, enterprises and individuals.⁹³ On March 9, 1990 the Polish Ministry of Foreign Affairs (MSZ) submitted a request to start working on the statute of the foundation which was about to be established in Poland.⁹⁴

⁸⁸ K. Ruchniewicz, *German...*, op. cit., p. 46.

⁸⁹ W. Jarząbek, *Władze...*, op. cit., p. 94–95; K. Ruchniewicz, *Polskie zabiegi...*, op. cit., p. 191.

⁹⁰ J. Barcz, *Umowa rentowa PRL–RFN z 1975 roku. Artykuły 15 i 16 umowy w świetle stanowiska RFN. Analiza krytyczna*, Warszawa 1988, p. 336.

⁹¹ Notatki Departamentu IV MSZ z rozmów Mazowiecki–Kohl w dniach 9, 10 i 14 listopada 1989 r., *Polska wobec zjednoczenia...*, dok. Nr 27, p. 169–170.

⁹² M. Tomala, *Patrzę na Niemcy. Od wrogości do porozumienia*, Warszawa 1997 p. 406.

⁹³ J. Barcz, J. Kranz, *Reparacje...*, op. cit., p. 217.

⁹⁴ Pismo Departamentu IV MSZ z dnia 9 marca 1990 r. do Departamentu Prawno-Traktatowego MSZ.

In 1989, a new chapter in Polish history began and the issue of war reparations arose again. On October 16, 1989 the newly-elected Minister of Foreign Affairs, Krzysztof Skubiszewski confirmed that *the 1953 disastrous waiver of claims' remained legally binding*, but he promised to support attempts to secure the payment of individual compensation. The situation was to be eventually resolved by signing a treaty on cooperation and good partnership with Poland and after the unification of Germany. Unfortunately, the Polish-German Treaty on Good Neighbourhood and Friendly Cooperation signed on June 17, 1991 does not mention anything about indemnity-related matters.⁹⁵

Today, the German side is invoking a resolution adopted by the Polish government on August 19, 1953, by means of which Polish authorities abandoned the World War II reparations not only from the German Democratic Republic but also from the Federal Republic of Germany.⁹⁶ The German government's stance was confirmed by the German Minister of Foreign Affairs, Heiko Maas. During the meeting with his Polish counterpart, Jacek Czaputowicz in December 2018 he said the following: *Taking into account the German government's stance on the issue of war reparations, nothing has changed. We still think that all these dilemmas have already been regulated in the Two Plus Four Agreement.*⁹⁷ One of its provisions, namely Article 1(2) referred to the third state [which is Poland] stating that the border between Poland and a united Germany would be confirmed which was done by enacting the Polish-German Treaty signed on November 14, 1990.⁹⁸ During negotiations, Chancellor Helmut Kohl tried to avoid the question of war reparations since, in his view, it would be inexplicable for Germans.⁹⁹ What is more, no former allied state had submitted a formal request for the issue of reparations to be discussed, and this was reflected in the text of the Treaty. What was discussed for a very long time was the legal character of the act which was to be the outcome of the conference. The majority of the Contracting States were for the act ['the final regulation'] within the meaning of international law.¹⁰⁰ The sole text of the Two Plus Four Agreement does not use the notions such as 'peace treaty' or 'peace regulation'. Point sixth of the Preamble refers to 'peace order in Europe'. It can be concluded that the parties to the Treaty [France, the United States, the United Kingdom, the USSR and two German states – the Federal Republic of Germany and the German Democratic Republic]

⁹⁵ S. Żerko, *Poland and Germany: Reparations*, Polish Quarterly of International Affairs 2017, p. 103.

⁹⁶ J. Bielecki, *Reparacje wojenne od Niemiec: RFN dała nam jałmużnę* (Rzeczpospolita, 4 September 2018), <https://www.rp.pl/Historia/309069817-Reparacje-wojenne-od-Niemiec-RFN-dala-jalmuzne.html>, accessed 26 February 2019.

⁹⁷ Also known as the Treaty on the Final Settlement with Respect to Germany signed on 12 September 1990 by both East and West Germany, France, the Soviet Union, the United Kingdom and the United States.

⁹⁸ J. Barcz, J. Kranz, *Reparacje...*, op. cit., p. 83.

⁹⁹ S. Żerko, *Reparacje i odszkodowania w stosunkach między Polską a RFN (zarys historyczny)*, Poznań 2018, p. 34; P. Zelikow, C. Rice, *Germany Unified and Europe Transformed*, Cambridge Massachusetts 1995, p. 95.

¹⁰⁰ W.M. Góralski (eds), *Problem...*, op. cit., p. 346.

expressed a tacit approval not to tackle such a sensitive issue as war reparations. As it can be seen, Poland was not party to this Treaty, however it gained some decisions that had a huge significance in the course of state interests – the confirmation of territorial integrity and border stability. From the formal point of view, Poland was not justified in raising the problem of reparations, since it had abandoned this right in 1953. However, the issue of individual claims was still open to discuss since there is no legal basis arising out of the Potsdam Agreement. That is why, as a result of the Two Plus Four Conference, it was decided that the aforementioned issue should be solved bilaterally between a united Germany and the states involved. For instance, according to the 1991 Agreement, the Foundation for Polish-German Reconciliation received DM 500 million [255,64 million euro] for former prisoners of concentration camps and forced laborers.¹⁰¹ The negotiations took two years and covered all different political levels.

For German authorities, the issue is closed but this is not the case for the Polish government. Poland has frequently argued for indemnities for the victims of German crimes and persecution, which was, nevertheless, restrained by the political situation in Poland.¹⁰² On September 10, 2004 the Sejm adopted a resolution declaring that *Poland has not yet received adequate financial compensation and war reparations for the immense devastation and tangible and intangible losses caused by the German aggression*.¹⁰³ What is more, the argument that Poland decided to resign from war reparations in 1953 is undermined by Polish authorities and some lawyers have expressed the same opinion. For instance, Professor Jan Sandorski of Adam Mickiewicz University insists that the consent to abandon Poland's right to demand war reparations was given under economic pressure from the Soviet Union and for this reason it can be considered as invalid from the beginning (*ab initio*). At the end of September 2017, a special parliamentary commission was established by the ruling party, Law and Justice [Prawo i Sprawiedliwość] in order to assess the final indemnities for losses incurred by Poland during World War II. The Committee's presiding lawmaker Arkadiusz Mularczyk has recently announced that *Germany owes Poland \$850 billion dollars for the Second World War*.¹⁰⁴ To date, the problem has not yet been resolved by any party and the issue remains at a standstill.

VI. Conclusion

As it can be seen, Polish-German relations after World War II nowadays seem to be good on the one hand but also very difficult on the other. This state of affairs is definitely the consequence of the outbreak of the biggest massacre in the 20th century.

¹⁰¹ J. Barcz, J. Kranz, *Reparacje...*, op. cit., p. 94.

¹⁰² W.M. Góralski (eds), *Problem...*, op. cit., p. 11–54.

¹⁰³ S. Żerko, *Poland...*, op. cit., p. 107.

¹⁰⁴ *Mularczyk: Szacunkowe reparacje wojenne od Niemiec – 850 mld dolarów* (TVP Parlament, 2 March 2018), <http://www.tvpparlament.pl/aktualnosci/mularczyk-szacunkowe-reparacje-wojenne-od-niemiec-850-mld-dolarow/36231563>, accessed 26 February 2019.

The conflict took a heavy toll – millions of people lost their lives and the whole of Europe was plunged into chaos. Taking into account what has been discussed above, Poland turned out to be the biggest loser. In the aftermath of war, a country which was destroyed both economically and ‘mentally’ was made to bow to the pressure of its Eastern neighbour and was unable to defend its interests abroad effectively. The outcome of the Yalta Conference best illustrates how the external powers might have created a unilateral cure for the post-war reality, also in the case of war reparations for Poland. But it was just the beginning – the 1953 Declaration on the Abandonment of War Reparations as a form of compensation for war losses left an imprint on further relations between Poland and Germany. As post-war history shows, this argument has been invoked many times by the German officials to articulate that the issue of war reparations for Poland is closed. In fact, only those victims who lived within the territory of the Third Reich were paid 48 billion euros, which was the amount fixed by the Treaty of Bonn.¹⁰⁵ The majority of Polish victims had to do without any money or compensation. One of the former German Chancellors, Helmut Kohl, agreed to give the Polish government the sum of DM 500 million which was divided among 600,000 Polish victims selected by state officials. Dr. Roth calls it ‘alms’.¹⁰⁶

The author of the article expresses the same view. As already mentioned in the paper, the question of war reparations for losses incurred in the course of World War II is still open to discussion. This is true even if, according to some officials and lawyers,¹⁰⁷ the cake is not worth the candle because of the lack of a direct legal basis. Nevertheless, there are other factors in favor of fighting for more just compensation. Firstly, moral arguments play a key role here. The socioeconomic conditions created during World War II reflect the damage done by past generations of the Nazi regime and are still present in the case of many Poles. Secondly, the issue of World War II reparations is justified by the principle of solidarity arising from international law and should be respected even if there are not formal sanctions as such for its violation, because of the specific nature of this branch of law. A country which does not respect international law and its principles exposes itself to being denounced by the international community. What is more, the apparent lack of a legal basis for such a claim can be replaced by the concept of unjust enrichment. According to *Ballentine’s Law Dictionary*, unjust enrichment involves circumstances that *give rise to the obligation of restitution, that is, the receiving and retention of property, money, or benefits which in justice and equity belong to another*. The case of Poland fits into this scheme perfectly.

¹⁰⁵ J. Bielecki, *Reparacje wojenne od Niemiec: RFN dała nam jałmużnę* (Rzeczpospolita, 4 September 2018), <https://www.rp.pl/Historia/309069817-Reparacje-wojenne-od-Niemiec-RFN-dala-jalmuzne.html>, accessed 26 February 2019.

¹⁰⁶ *Ibid.*

¹⁰⁷ Adam Pawluć, *Polsce przysługują reparacje ze strony Niemiec? Ekspertyza Biura Analiz Sejmowych pełna nieścisłości* (Gazeta Prawna, 11 September 2017), <https://www.gazetaprawna.pl/artykuly/1070258,reparacje-wojenne-ekspertyza-biura-analiz-sejmowych-pelna-niescislosci.html>, accessed 26 February 2019.

SUMMARY

The aim of this article is to analyze the question of war reparations in Polish-German relations after World War II. In order to do so, some relevant factors are taken into account. First of all, the paper concentrates on the issue of whether the Polish government is still entitled to demand war indemnities from Germany as it has been 80 years since the bloodiest conflict in history. In the first section of the paper, the research is based on the definition and legal basis of war reparations. The elements of state responsibility are also carefully examined here. German reparations in turn are analyzed in the light of the international acts such as the Potsdam Agreement, the Agreement on Reparation from Germany, on the Establishment of an Inter-Allied Reparation Agency and on the Restitution of Monetary Gold and the Paris Peace Treaties. An overview of these documents shows that the Big Three applied a soft-footed approach as to the assessment of the German responsibility for war losses. The article is enhanced with the justification of Poland's claims for World War II reparations. The author supports her views based on *inter alia* what was agreed during the 1945 Yalta Conference invoking data analysis, state practice referring to war reparations and the importance of activities carried out by the Polish government. Finally, the paper describes what has been done so far in terms of war reparations by both parties and also their stances on the matter. Although many initiatives were established, the issue came to a standstill. However, the author strongly believes that Poland should stand up for itself, as expressed in the final section of the paper.

STRESZCZENIE

ZAGADNIENIE REPARACJI WOJENNYCH W POLSKO-NIEMIECKICH RELACJACH PO II WOJNIE ŚWIATOWEJ

Celem artykułu jest analiza problemu reparacji wojennych w relacjach polsko-niemieckich po II wojnie światowej. Uwzględniono przy tym kilka istotnych czynników. Przede wszystkim praca koncentruje się na kwestii, czy rząd polski w dalszym ciągu jest uprawniony do tego, by żądać odszkodowań wojennych od Niemiec, jako że od najkrwawszego konfliktu w historii, jakim była II wojna światowa, minęło już 80 lat. W pierwszej części pracy badania oparte są na definicji oraz podstawie prawnej reparacji wojennych. Dokładnej analizie poddane są również elementy składające się na koncepcję odpowiedzialności państwa. Z kolei niemieckie reparacje analizowane są w świetle międzynarodowych aktów prawnych, takich jak umowa poczdamska, umowa paryska o reparacjach wojennych czy układy podpisane w ramach pokoju paryskiego. Przegląd tych dokumentów pokazuje, iż Wielka Trójka zastosowała delikatne podejście w sprawie oszacowania niemieckiej odpowiedzialności za straty wojenne. Artykuł wzbogacony jest o uzasadnienie polskich żądań dotyczących reparacji wojennych. Autorka potwierdza swoje poglądy w oparciu między innymi o ustalenia, jakie zostały poczynione podczas konferencji jałtańskiej w 1945 roku, a także poprzez przywołanie analizy danych, praktyki państwowej odnoszącej się do reparacji wojennych oraz znaczenia działań podjętych przez rząd polski. Wreszcie, praca opisuje to, co zostało do tej

pory poczynione pod względem reparacji wojennych przez obydwa państwa, a także ich stanowiska w tej sprawie. Mimo iż pojawiło się wiele inicjatyw pod tym względem, kwestia ta utknęła w martwym punkcie. Jednakże autorka głęboko wierzy w to, że Polska powinna podjąć próbę wystąpienia o reparacje, co zostało wyrażone w ostatniej części pracy.

Słowa kluczowe: reparacje wojenne, prawo międzynarodowe, relacje

Key words: war reparations, international law, relations