Journal of Political Science and International Relations
2026, Vol. 9, No. 4, pp. 276–285
https://doi.org/10.11648/j.jpsir.20260904.13

Research Article

On the Matter of War Reparations in German Doctrine - a Comparative Analysis with Special Consideration of Poland and Greece

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Abstract

The current paper analyzes Greek and Polish reparation claims against Germany after 1939 - 1945 physical occupation of these countries under special consideration of the German lines of reasoning in respected cases. At the beginning the author presents an overview of Polish literature. At my point of view there are further possibilities to claim reparations from Germany than the ones considered by Polish scholars. Germany did not fulfill the conditions of Marshal Plan and failed to establish a liberal democratic order after 1945. The financial assets, as transferred to Germany within Marshal Plan, were granted under strict conditions. Since these conditions weren't met, the funds are supposed to be transferred back automatically with interest. Further I introduce shortly international law and I take a look at the past of international relationships as well as the fact, that 2+4 Treaty does not contain any regulation regarding reparations. The lack of a regulation on reparations in an international treaty may not mean that the contracting parties decided that there would be no legal base for reparations. It rather means that the states could not agree on a proper regulation and that is why they could not include this matter in an interstate agreement. I analyze the legal situation in case of Greece. I introduce German reasoning in case of Greece, like clausula rebus sic stantibus, venire contra proprium fatum, bona fides, or barred claims due to the statute of limitations. I present the German point of view in case of Poland. In this respect I devote attention to the „resignation" on reparations, which could have been declared 1953. Germany argues in this regard that the workers' appraisal 1953 in Germany Democratic Republic would have given Poland the "motivation" to resign on reparations. At my point of view, this reasoning suffer from logic explanation and I thus coin a new term: "legal act de sensu". Different than Poland, Greece has never issued a "resignation", what makes the comparison even more challenging.

Keywords

(Polish, Greek) Reparations, Treaty 2+4, Peace Agreement, Resignation of a State, Constitutional Law, Law of International Contracts, International State Practice, Issues of Comparative Law

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Received: 18 August 2026; **Accepted:** 31 August 2026; **Published:** 9 November 2026

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1. Introduction

The matter of war reparations that victim-states claim from Germany, since tens of years, raises controversies. Lately the topic has been discussed, with respect of Polish claims from Germany. Previously Greece and Italy were claiming reparations. Before that Namibia lodged similar claims.

The present paper provides an analysis of Polish and Greek claims and it introduces the arguments of German side, which did not see and still does not see any reason for reparations. However, the arguments arisen in German doctrine against the reparations of states - victims of aggression of Germany under Hitler - or third countries entitled to reparations have a great meaning, because one must confront them, based on facts and factual basis. Poland has a good reasons, on its side, that still have not been expressed. It is worth consideration, which further steps would be appropriate, so that the case can re-start, meaning systematically and avoiding costly mistakes. A comparison of the Greek and Polish situations comes to mind, respecting that Greece - different than Poland - has never issued a statement, which would be similar to the Polish one from 1953.

At the beginning I introduce Polish literature and arguments expressed. Further I analyze German reasoning, dealing with Polish and Greek reparations.

2. The Matter of Reparations in Polish Legal Literature

Polish specialists in international law were reviewing the matter of reparations which Poland could claim from Germany [1-5]. They have conducted a thorough analysis of reparations of both Polish state and individuals. Statements of some of representatives of Polish literature have a scientific value, due to individual practical experience, on which they base the study [1]. I read the quoted works with great fascination. Thanks to personal participation in negotiations with the German side, theoretical arguments are very divert and they fit ideally to the respected theory. However, maybe just due to this participation in negotiations, the reasoning seems to be under the impression of German arguments, that I will introduce below [6].

Authors deduce that Polish "resignation" from 1953 is final [1]. Personally, I cannot agree with this statement. Based on solid reasoning, one can argue against it. In this case Poland could claim war reparations not only for individuals, as authors claim, but also for the ones of the Polish state. Moreover, as the authors of the literature describe solely 2 procedural ways [1], there seems to be a third way, neither mentioned not described. Regarding legal relations of the 2+4 Treaty, representatives of Polish science represent the point of view, that it constitutes the final regulation on matters in question. Also here I cannot agree with these statements (compare below C. 2., C. 3.2 and C. 3.6.).

3. Greek Claims

Greece speaks about reparations in an intensive and consequent way. April 2019 on the basis of a decision of the parliament in Athens, Greece issued a verbal note towards the German government, in which it has officially called the German side on a beginning of negotiations regarding reparations. It is about 300 Milliard Euro. Greek government claims not only reparations for war crimes, but also debt repayments from the time of occupation.

3.1. The Search of Uniform Terminology

International law knows - from past experience - only war reparations and damages. States were paying reparations for other states. These reparations could be paid in money or as asset contributions or confiscations.

Reparations were benefits, that did not require neither a moral or legal base. Who was stronger, took it: after 1871 German Empire took over Alsace and Lorraine. Later on France took if from Empire. Subsequently France, Great Britain and Belgium started a control of German colonies and were confiscating German properties, like for instance German ships, that were approaching foreign harbors.

After Franco-Prussian War, France had to pay reparations and after the I World War it was Germany. These examples show, that - as a rule of law - the one, who lost the war, had to pay and the advantages was getting the state, which won the war. At the same time, the matter of the guilt, who started the war, had a secondary meaning.

Reparations, that Poland is claiming, are not the only ones in the World. Poland does not stand on its own in this regard. Few years ago, Greece and Italy lodged similar claims. And Namibia succeeded to negotiate with Germany something, what German and Namibian media call "reparations". German foreign ministry (German: das Auswärtige Amt) and the Office of the President of Germany (which took part in negotiations of this international contract) represent the point of view, that one cannot call it "reparations". Occurrences, due to which these "reparations" will be paid, took place more than 100 years ago. However, Polish reparations differ from the Greek, Italian or Namibian ones. They are huge.

3.2. Historical Overview

Differently, than after 1918, after the II World War one did not regulate German financial obligations in a treaty [7]. Occupied zones did not have any influence on what the victorious powers decided in this regard. Only after establishment of two separate German states, new possibilities of negotiations have appeared for the Federal Republic of Germany, while they did practically not exist for the German Democratic Republic. The Agreement on German External Debts regulated solely debts from before the war, the war debts were included in separate contracts.

In the 1960s, agreements were concluded with the countries entitled to receive reparations from Western Europe to settle their claims dating from the era of National Socialism. Reparations obligations in the *strict sense* were not raised in London. These issues were set aside until after the peace treaty was concluded. Similarly, there was no discussion in London of the claims of Eastern European countries, which were not physically present there, and with which a unified Germany did not conclude agreements until the 1990s.

The 2+4 Treaty did not address the issue of reparations claims, which had been deferred in 1953 pending the conclusion of a peace treaty. Since this agreement is not officially a peace treaty, it was deemed that the settlement of these issues had been tacitly waived. By 1988, Germany had fully paid the amounts owed under the London Agreement. Following German reunification, West Germany also paid the amounts that had been the responsibility of East Germany.

3.3. The Legal Situation Regarding Greece and Germany

On November 14, 1995, the Greek ambassador to Germany delivered an oral diplomatic note to the German Ministry of Foreign Affairs, stating that Greece was demanding the start of negotiations on reparations. This took place four years after the conclusion of the 2+4 Treaty on March 15, 1991, which contained no provisions regarding reparations.

The Secretary of State at the ministry rejected the Greek claims, explaining verbally that they were time-barred more than 50 years after the end of the war. Greece raised the issue again about 20 years later, in the context of the financial crisis. The reparations claim was intended to serve as a basis for Greece to offset the amounts it had not received as reparations against the aid it received during the Eurozone debt crisis [8].

3.3.1. The Arisal of the Obligation to Pay Reparations

Germany's international liability stems from its invasion of Greece in April/May 1941. In doing so, Germany violated the provisions of Article 1 of the Briand-Kellogg Pact of August 27, 1928. In that treaty, Germany undertook to renounce war as a means of resolving international conflicts. The violation of this provision results in and justifies Germany's obligation to pay reparations [9, 10]. However, the Briand-Kellogg Pact does not contain any provisions regarding the form, nature, or amount of reparations.

Therefore, the answers to related questions must be sought in international law. The point of contention here is how and when a state's obligation to provide reparations arises. Opinions are divided. Some argue that the obligation to provide reparations arises at the moment international law is violated [11]. This would mean that a reparations obligation would arise at the time of Nazi Germany's invasion of Poland or Greece. A different assessment, however, would stem from the principle of international law according to which a state that violates the rules of international law is held accountable under the rules in force at the time of the act [12]. International law, as it was valid at the end of the war, provided for the regulation of the consequences of violations of international law through treaties concluded between the victorious and the defeated states.[1] And so, in 1947, peace treaties were signed with Italy, Bulgaria, Finland, Romania, and Hungary, and in 1951 with Japan.

3.3.2. The Lack of Legal Basis for German Reparations for Greece Due to the Lack of a Regulation in an Agreement

The basis for Greece's claims for reparations — both in principle and in terms of their amount—would be the stipulation of Germany's relevant obligation in the agreement [10]. However, it is disputed whether such an agreement has (already) been concluded. Opinions are divided. The 2+4 Treaty does not contain any provisions regarding reparations. Nor do the Paris Agreement, the Paris Reparations Agreement, or the London Debt Agreement contain relevant provisions. In particular, they do not specify the form, duration, or total amount of reparations that Germany would be required to pay. These agreements are of a framework nature. There is also no agreement between Germany and Greece that would establish a reparations obligation.

The very requirement to conclude a treaty governing post-war reparations would mean that a country that lost the war could avoid paying any compensation for the harm it caused simply by refusing to conclude a peace treaty addressing reparations, contributions, or similar matters. One might therefore be tempted to argue that the legal form of the obligation to provide reparations or compensation arising from the outbreak of an armed conflict should correspond to the nature of the state's violation of the principles of international law. Thus, the *actus contrarius*, which is intended to offset the effects of armed aggression, should correspond in form to the *actus primus* — that is, the armed aggression itself. The point is that the effects of factual acts (such as armed aggression) can and indeed should be neutralized by other factual acts (such as making payments or providing any other form of compensation, such as rebuilding bridges or cultural heritage sites).[2] It would be inappropriate to insist that a state that has been the victim of armed aggression must enter into a reparations agreement with the aggressor state, particularly when the aggressor has evaded such an agreement for decades. In such a situation, where the aggressor refuses to acknowledge its own responsibility for armed aggression, the victim state would be forever condemned to a lack of any form of redress.

In my opinion, such an *actus contrarius*, intended to offset

[1] The reason for that was Treaty of Versailles.

[2] Similar negative results or lack of regulations one must „fill up" or "fix" with better contracts, it means analogue.

the effects of aggression, should be interpreted in a broad sense, *sensu largo*. It would follow from this that if the aggressor state has made at least one payment in the past related to the war it instigated, it acknowledges its obligation to pay reparations. Germany, on the other hand—without acknowledging reparations claims—paid out approximately 2.3 billion German marks after 1990 [13].

3.3.3. The Lack of Legal Basis for Reparations Due to the Final Character of 2+4 Treaty

Germany argues that the 2+4 Treaty is final, and since it does not address the issue of reparations, there is no basis for such payments.

During the negotiations immediately following World War II at the Potsdam Conference, as well as afterward, the issue of settling reparations claims was set aside. However, several decades later, during the negotiations on the 2+4 Treaty, it is most likely (though opinions are divided on this point) that no attempt was made to conclude such an agreement for legal and economic reasons. The agreement concluded between West Germany, East Germany, and the four Allied powers (i. e., the United States, the Soviet Union, France, and the United Kingdom) did not explicitly mention war reparations. Furthermore, countries attacked by Nazi Germany, such as Poland and Greece, did not participate in the negotiations.

The interpretation of the (lack of specific) provisions in the 2+4 Treaty is a matter of dispute. Some scholars do not see any intended provisions, others consider Greece's claims to have lapsed (due to the lack of provisions), while still others maintain that the 2+4 Treaty contains an "implicit" provision.

(i). A Possible Lack of Regulation

Some authors do not see any relevant provisions in the 2+4 Treaty [6, 14]. The reasons cited for the lack of a final settlement, as intended in the London Debt Agreement, include the time pressure to reach an agreement. Added to this were Gorbachev's precarious position in the Central Committee, as well as the large number of countries that were at war with Germany and could have sought settlement of their claims. For legal and political reasons, no effort was made to conclude a peace treaty within the meaning of the Potsdam Agreement.

(ii). Expiration of Claims Due to the Final Character of 2+4 Treaty

The Federal Government, as well as some German scholars, consider Greece's claims to have lapsed due to the definitive nature of the Two-Plus-Four Treaty, which was intended to finally settle the consequences of the war [15]. The four great powers sought to settle all issues concerning the consequences of the war in this treaty [15, 16], as evidenced by the objectives of the treaty, as set forth in the preamble to the Treaty. Admittedly, the final nature or effect of the Two Plus Four Treaty does not bind third states entitled to claims, such as Greece, which were not parties to that agreement. Some, however, argue that the Two Plus Four Treaty — as a so-called status agreement — should have *ipso iure* effects to the detriment of third states, including Greece [15, 17].

Others question this line of reasoning [14]. Doubts arise regarding the extension of the *status-quota* nature of the Two-Plus-Four Treaty to reparations claims by third countries that were not addressed in that treaty. The status agreement constitutes an exception to the principle of international law "*pacta tertiis nec nocent nec prosunt*" — that is, the prohibition against regulating matters to the detriment of third states without their consent, as provided for in Article 34 of the Vienna Convention on the Law of Treaties of May 23, 1969. Excluding Greek claims for reparations would not be consistent with the principle of international law prohibiting the conclusion of treaties to the detriment of third parties, as set forth in Article 34 of the Vienna Convention on the Law of Treaties. The parties to the Two-Plus-Four Agreement could not, therefore, dispose of Greece's right to reparations without its consent. Nor did Greece consent to the provisions of the Two-Plus-Four Treaty in the Charter of Paris for a New Europe.

Germany also applies this "exclusionary effect" of the 2+4 Treaty to Greece and Poland, which did not raise any objections during the negotiations on that treaty [8]. However, it is difficult to expect objections to be raised when the issues were not the subject of negotiations. If the issue of reparations was not on the agenda, the states could not, in fact, raise objections to matters not covered by the agreed-upon agenda. Furthermore, Greece did not officially participate in the negotiations on the 2+4 Treaty. Thus, how could it have raised any objections when it was not even at the negotiating table? The historical background of this treaty provides further arguments and reasons for the absence of any mention of reparations in the agreement [6].

It is also puzzling that the 2+4 Treaty makes no mention whatsoever of the issue of reparations. Although the 2+4 Treaty was intended to address the issue of reparations, this did not happen; that is, it contains no provisions on the subject. This raises the question of whether the complete absence of provisions can be considered a definitive resolution solely because of the purpose the treaty was intended to serve (which, incidentally, was expressed in other agreements rather than in the Treaty itself)? In other words, can a legal gap be considered a definitive regulation solely because of the intention of the competent authorities to regulate certain matters, which — despite their good intentions — they did not regulate due to other, unspecified factors? It is difficult to accept such an argument based solely on the objective or intention of the states as expressed several decades earlier in another agreement that was not "intended" to be a peace treaty. Can a prior agreement have any significance for subsequent agreements between the signatory states (and others) when the subsequent agreement fails to fulfill its stated purpose? It is difficult to accept this.

The authors maintain that since the 2+4 Treaty was concluded "instead of" a peace treaty, the issue of reparations

claims was settled definitively therein (that is, not at all). However, the phrase "instead of"[3] one can also be understood to mean that a peace treaty has not yet been concluded or will not be concluded for the time being. The phrase "instead of" or "in lieu of" is therefore intended to emphasize that there will be no peace treaty (for the time being). One cannot conclude from this that the Treaty—which serves, as it were, as a substitute for the envisaged peace treaty—will regulate all matters that were reserved for the actual peace treaty. If that were the case, there would be no need for a treaty "in place of" a peace treaty; instead, all matters could be addressed directly in the peace treaty itself — and, better yet — the treaty could even be called a "peace treaty." In that case, a "full-fledged" peace treaty would be concluded, and all outstanding issues would be resolved within it.

(iii). Indirect Regulation of Reparations in 2+4 Treaty

Still other scholars maintain that the issue of reparations was addressed indirectly in the 2+4 Treaty. The 2+4 Treaty was concluded "in lieu of" or "in place of" a peace treaty, as is evident from the title of the treaty as well as from paragraph 12 of the preamble, which emphasizes the "final" nature of this treaty with respect to Germany [8]. This means that there will be no further peace agreement or other subsequent peace arrangements.

Here, too, the same argument applies as above. What legal significance can the intention to definitively regulate matters that are in fact unregulated possibly have? Something that was intended to be regulated but was not (along with historical circumstances) cannot constitute a "regulation." In my opinion, the only conclusion that can be drawn is that the agreement in question does not contain certain provisions, and not that (the absence of provisions constitutes or) contains provisions that completely preclude further claims. The exclusion of claims — and in particular claims so vital to redressing the damages caused — must be regulated in a clear and precise manner (specifying exactly what claims are involved, whether they are claims by states, individuals, works of art, etc.). The exclusion of claims cannot be implied or so broadly defined.

3.3.4. Arguments That Germany Might Raise in Reparations Negotiations with Greece

If the conclusion of an appropriate agreement is required, various arguments may be raised during negotiations on an agreement intended to regulate the issue of reparations to Greece. However, according to academic experts, these arguments will only be applicable once we acknowledge that Germany's obligation arose at the time of the invasion of Greece in 1941 [14].[4]

(i). Clausula Rebus Sic Stantibus

Authors in the German literature cite the *clausula rebus sic stantibus* as a potential argument that Germany could raise in negotiations on the issue of reparations.[5] The provisions governing this clause are set forth in Article 62 of the WKPT. These provisions reflect one of the general principles of international law. The contract is to be adjusted in accordance with the principle of *bona fide*.[6]

The authors argue that the regulation of reparations would have to be linked to ensuring and maintaining peace after the war [14]. Meanwhile, more than 70 years have passed since the end of the war. It is difficult to establish any connection between reparations and the end of the war. After reparations obligations arose in 1945, the situation of the former adversaries underwent significant changes, and numerous international agreements were concluded. Consequently, the authors argue that the claims of third countries, particularly Greece, have lost their basis. Greece's pursuit of reparations claims can therefore be considered unlawful.

(ii). Bona Fide

The defense of loss of rights (*bona fides*) is part of the principle of good faith. It is described as "*venire contra factum proprium*", or the prohibition against acting in a manner inconsistent with one's own conduct [14]. This raises the question: Is it possible that Germany might have concluded that Greece would no longer seek reparations?

Greece submitted its claims shortly after the end of World War II under the Paris Reparations Agreement of January 14, 1946. In doing so, Greece initiated reparations proceedings applicable to the three Western Powers and third countries entitled to reparations under the 1945 Potsdam Agreement, including Greece. Under the 1946 Paris Reparations Agreement, Greece was promised industrial facilities worth approximately 25 million U. S. dollars, which the country received. In 1960, Germany and Greece agreed that war damages would be settled with a payment of 115 million German marks. However, Greece reserved the right to pursue further claims.

Greece submitted the reparations claims that had not been settled under the aforementioned proceedings under the Moratorium of the London Debt Agreement of February 27, 1953. Pursuant to Article 5 (2) of that moratorium, the matter of Greek claims was reserved for a subsequent peace treaty to be

[3] German use this phrase in order to exclude further claims and consider the 2+4 Treaty as final regulation.

[4] This author assumes that it was the fact of Nazi Germany's invasion of Greece that formed the basis for claiming any reparations, rather than the conclusion of an international treaty. At the same time, he calls for the conclusion of a treaty and sets out the objections that Germany might raise during negotiations on such a treaty. His argument is therefore based on a logical fallacy.

[5] Here, too, Fischer examines the legal situation that existed after the war (in 2018, he states that 73 years have passed since the war, which puts the date at 1945). In the introduction to his study, he announces his intention to address the issue of reparations on the basis of the legal situation that prevailed at the time of the invasion. This is not consistent.

[6] The author, M. Fischer, appears to be applying a clause that applies to treaties, whereas in the case of Nazi Germany's invasion of Greece, we are dealing with a de facto act. After all, there was no treaty whose subject matter was the invasion of Greece.

concluded with Germany. In preparation for the London Debt Agreement and as a condition thereof, the Federal Republic of Germany recognized itself as the legal successor to the German Reich [18]. This was a moment that Greece could have capitalized on by holding West Germany accountable. However, under the Reparations Moratorium of the London Agreement on German Debts of February 27, 1953, Greece agreed with the Western Powers and West Germany to defer the pursuit of its claims until the matter was finally settled in a peace treaty.[7] Subsequently, Greece was unable to pursue the aforementioned claims for 38 years—that is, for the duration of the reparations moratorium—due to its international obligations. Thus, between 1945 and 1991, Greece gave no cause for the issue to be considered *bona fide* [14].

However, one might try to find such arguments after the conclusion of the 2+4 Treaty. Greece could have known, as early as the Ottawa Conference in February 1990, that the draft 2+4 Treaty did not provide for a final settlement of the reparations issue, as had been established in the reparations moratorium. Greece did not object either to the conclusion of the 2+4 Treaty or to its inclusion in the Paris Charter when, during the Conference on Security and Cooperation in Europe on November 24, 1990, the 2+4 Treaty was incorporated into the Paris Charter for a New Europe as part of the peace arrangements.[8]

Until March 15, 1991 — the date the 2+4 Treaty entered into force — Germany, as a single state, could not negotiate the issue of reparations with Greece. After Germany's surrender, there was no German government capable of conducting such negotiations. Five years after the conclusion of the 2+4 Treaty, Greece requested that the German Foreign Ministry begin negotiations on reparations.

Meanwhile, the Greek parliament debated the issue of reparations. On April 18, 1991, the Greek foreign minister discussed the matter with Minister H.-D. Genscher, who pointed out that there is no similar precedent in international legal practice for pursuing claims more than 50 years later [19]. On November 14, 1995, Greece, in an oral diplomatic note delivered to the German Ministry of Foreign Affairs, requested the initiation of negotiations regarding a final settlement of the reparations issue. The German Ministry of Foreign Affairs immediately rejected this request [19]. Greece only occasionally brought up the issue of reparations following Germany's refusal.

It was not until 2015, amid the Eurozone debt crisis, that Greece raised this issue, apparently seeking to offset the reparations it had not received against the aid provided by Germany [8]. The Prime Ministry of Greece *A. Tsipras* decided to claim reparations 2018 [20]. Given Greece's inconsistent approach over the years, authors in the German literature point out that Greece has largely limited itself to raising the issue of reparations, but has not officially sought them through diplomatic channels [14]. However, the raising of the issue of seeking reparations in the context of the European crisis gave the impression in Germany that it was more of a threat of setoff than an attempt to enforce reparations claims.

(iii). Statute of Limitations - Possible or Not: The Issue in Dispute

International law does not recognize statutes of limitations. According to the views expressed by authors in German legal literature, as well as the position of the federal government, claims filed more than 50 years after Germany's aggression are time-barred and therefore cannot be enforced [17]. It is possible, however, that the principles of good faith preclude Germany from invoking the statute of limitations if the debtor of reparations (Germany) was unable to enter into negotiations with Greece because it lacked the authority to do so. Even after the founding of the Federal Republic of Germany on May 23, 1949, the Allies did not grant the Federal Republic of Germany the authority to resolve these issues independently.[9] Until the 2+4 Treaty entered into force on March 15, 1991, reparations could be negotiated only with the three Western powers. Perhaps for this reason, the statute of limitations should be calculated without taking into account the period from 1953/1955 to 1990. In the authors' view, Germany cannot invoke the statute of limitations on Greek claims on the basis of the principle *venire contra proprium factum*.

Other authors disagree, arguing that claims for reparations cannot be barred by the statute of limitations [8]. In their view, because the Allies postponed the final resolution of the issue of reparations in the peace treaty, this issue did not arise until the reunification of Germany [8]. Both of the views cited reach the same conclusion in this case.

3.3.5. Greece's Agreement to Waive Its Claims

The Federal Government and many representatives of German scholarship accept the view that third countries, such as Greece, agreed to waive their claims for reparations in the Gesamt-Kommuniqu é of November 21, 1990, of the Paris Charter for a New Europe. Third countries, such as Greece, merely took note — with great satisfaction — of the provisions of the 2+4 Treaty within the framework of the Paris Charter. Taking note does not — in the ordinary use of language — constitute an expression of consent or disapproval. Consent is binding only when it is clearly expressed in writing (Art. 35 of the Vienna Convention on the Law of Treaties). Greece's acknowledgment, as recorded in the minutes, cannot be construed as consent to the exclusion of claims for reparations; such consent was not provided in writing with regard to the exclusions set forth in No. 12 of the Preamble to the Two-

[7] Art. 5 para 2.

[8] However, that the states' consent was granted 21.11.1990 r.

9 Paragraph 1 (b) of the Occupation Statute defining the powers and responsibilities of the future German Government and the Allied Control Authority, dated 10 May 1949, left the authority to settle the reparations issue definitively with the three Western Powers. This was incorporated into the Treaty on Relations between the Federal Republic of Germany and the Three Powers of 26 May 1952, as amended on 23 October 1954 (Germany Treaty).

Plus-Four Treaty. Furthermore, this provision does not directly address the issue of reparations.

3.3.6. The Issue of State Immunity

After 1995, the discussion shifted from the issue of reparations to individual claims for compensation or restitution for crimes committed, for example, in the Greek village of Distomo. The victims sued Germany directly. Lawsuits were filed against German perpetrators and against the Federal Republic of Germany. However, these judgments could not be enforced due to state immunity. At the request of Greek courts, Italian judges seized a German villa located in Italy. The federal government challenged this action before the International Court of Justice in The Hague and won. At the same time, the Court noted that adjudicating cases related to World War II does not fall within its jurisdiction.

Due to the absence of further contractual provisions between Greece and Germany (war reparations were not mentioned in the 2+4 Treaty), German scholars see no basis for further claims by Greece [13].

Ultimately, the Greeks' lawsuits were unsuccessful due to state immunity. The events of the past years raise the question: on what legal grounds are Russian assets currently being confiscated by a supranational organization - the European Union, that suffers from democratic deficit [21-23]? Since the beginning of the war in Ukraine, the assets of Russian oligarchs and the Russian state have been confiscated, even though Western countries are not officially at war with Russia. It is therefore possible that the practice of confiscating the assets of citizens of states that are waging or have waged wars, or that are instigating or have instigated wars, is a recognized international practice. Since Germany started 1939 the World War, its gold reserves, as storage in the United States (about 500 Billion Dollar), should be confiscated by the US and used for paying back the reparations to countries that Germany invaded 1939 - 1945 - analogically to the procedure that the European Union applies now, as it uses the interests from frozen Russian assets to pay credits taken for the war in Ukraine. Fact is, that Nazi Germany attacked Soviet Union on 22 June 1941 (operation Barbarossa). And it should pay the reparations to Russia [24].[10]

The fact, that Germany did not pay reparations after 1939 in conjunction with the present international law practices deliver the legal base for Russia to demand the freezing of German assets by the U. S. A. and an interest of German assets that will be devoted for reparations.

Based on this practice, further arguments can be constructed. The ongoing confiscation has — as politicians argue — economic objectives. The aim, therefore, is the economic destruction of the "enemy" and the cutting off of the financial resources needed to wage war. In light of such objectives, Poland's 1953 waiver — issued shortly after the workers' uprising in the German Democratic Republic (GDR), taking into account and likely issued due to the dire economic situation prevailing in the GDR — is an act that makes no sense whatsoever. It would therefore be an unprecedented act of international law, an act of law *de sensu*.[11] For what reasons would Poland at that time, seeking compensation from Germany (just as Western countries are currently trying to obtain funds from Russia for Ukraine's reconstruction), have or would want to forego reparations? There are no rational reasons.

4. Polish Claims

The high reparations demanded of Germany after World War I posed a major challenge for the Weimar Republic. After analyzing the situation in Germany during the 1920s, the victorious powers changed their strategy in 1945. Thus, after World War II, the Allies settled the issue of war reparations with Germany at the Potsdam Conference. The British and Americans were counting on the support of the German population in their spheres of influence, which is why they were cautious. With a long-term perspective, they wanted to prevent Germans — driven by poverty and hunger — from seeking refuge in communism. France was less restrained at the time. The Soviets, on the other hand, stripped entire factories (or infrastructure, such as railroad tracks) and shipped the spoils eastward.

4.1. The Potsdam Conference: Reasons for the Measures Taken and Outcomes

The Germans point out that Polish experts in international law believe the 1953 waiver can be nullified only in conjunction with the outcomes of the Potsdam Conference. This view is somewhat problematic due to the lack of a cause-and-effect relationship between the Potsdam Conference and the issue of the waiver of reparations.

The legal basis for reparations with respect to Poland was contained in an agreement concluded after the Potsdam Conference, which provided that the Soviet Union would receive compensation for war damages from German territories and that Poland would receive its share of the compensation obtained by the Soviet Union. Poland's share, too, was merely an indirect one and depended on the reparations received by the Soviet Union.

Since it is argued that Poland waived reparations due to the

[10]. In the light of international law, Germany is still in the "state of war". The "state of war" in Germany exists since 1939, since there was not Freedom agreements after 1945 (the year that military occupation of European countries by Germany has ended). In the 2-Plus-4 Treaty there is Part VI. Art. 1 of the Treaty Ruling on Questions Resulting from War and Occupation from 23.10.1954 contains a definition of a "freedom agreement". According to that, a "freedom agreement" is a "freedom agreement concluded between Germany and its previous enemies". As "enemy" one understood all states, that were in state of war with Germany. The 2-Plus-4 Treaty does not contain similar regulation. The 2-Plus-4 Treaty was concluded solely between 4 allies and 2 German states. Thus, there was no freedom agreement concluded after 1939, that would meet the requirements of a "freedom agreement". In the light of international law, Germany is still in "the state of war").

[11] Latin for „without sense", „nonsense".

workers' uprising in the GDR, and the timing suggests a cause-and-effect relationship with Poland's issuance of the statement, it cannot be concluded that the 1953 waiver is relevant, and it should not be considered in conjunction with the results of the Potsdam Conference. Rather, it was related to the aforementioned workers' uprising.

4.2. The Subject of Reparations (Already Received)

German scholars have put forward a number of arguments suggesting that Poland has already received reparations. They point to the historical circumstances from which this conclusion is supposed to follow.

For example, as part of the Potsdam Conference negotiations, Poland was granted the eastern territories of Germany "for administration." From these areas, Poland transported various goods and materials to central Poland and other parts of the country. According to views expressed in the German press, this constituted reparations [25]. Since no one believed at the time that these territories would remain Polish forever, Poland acted in this manner. This would imply that Poland was exploiting territories belonging to Germany, since no one believed that these lands would remain Polish forever.

However, it is difficult to accept or acknowledge any significance of this argument—namely, whether anyone living at that time believed that these territories would remain Polish forever. What relevance would the beliefs of people living at that time have to the question of whether Poland received reparations or not? After all, a legal assessment of the situation in terms of its international consequences cannot depend on people's beliefs. And if it were, then states, as subjects of international law, would first have to agree to it. In international law, customary law may be relevant. Thus, this author argues that by exporting various items, Poland was collecting reparations. However, since the eastern territories of Germany were previously assigned to Poland after the war, this would mean that Poland was paying reparations to itself from its own territories. This argument cannot be accepted; it contains logical fallacies. This could lead to a further question: whether the occupation of the eastern German territories could constitute reparations. Since Poland—as the Germans argue—was already to receive reparations, there is no apparent reason why Poland would seek further claims or attempt to enforce them.

4.3. No Need for Contractual Regulation of Reparations

According to some German scholars, Poland can reach a final settlement on the issue of reparations only with Germany [14]. Others argue that the contractual basis for Poland was an agreement concluded after the Potsdam Conference, which provided that the Soviet Union would receive war reparations from German territories. Poland, in turn, was to receive its share of the reparations to be received by the Soviet Union [13].

However, Germany points out that Poland — unlike Greece — waived its claim for reparations by issuing a statement in 1953 [6]. Some quote political reasons for issuing the statement renouncing reparations, just as was the case with the renunciation expressed by the USSR the day before, on August 22, 1953 [26]. Both statements reportedly referred to reparations as defined in the 1945 Potsdam Agreement [6].

4.4. Conditions of Marshal Plan

The previous discussions and lines of reasoning do not consider the newest research. The author has proven, that German courts - as part of state's power - do not fulfill basic requirements, as laid down in the German Basic law [27].

The principles regarding fundamental and thus Human rights, like access to the constitutional judge and right to fair trial - as laid down in the German Basic Law - are a topic for a good night story. They seem to secure a calm sleep, possible rest and a life free from violations of the rule of law.

However, these basic constitutional principles are hollowed out by the rules of lower hierarchy - plans on allocation of cases in courts - what is not visible for the first sight. The statutes of courts, on which the courts base their work are unconstitutional.

The plans on allocation of cases in German courts constitute statutory law - a legal source the lowest in the hierarchy of legal acts in a democratic state. And they do have the legal power to hollow out the constitutional principles. The German state may well know it. It means that the inapplicability of constitutional principles constitutes a state-directed procedure.

The aid granted to Germany within Marshal Plan, after 1945 was conditions on establishment of liberal-democratic order.

Germany clearly failed to fulfill this condition. This means that the funds transferred and aid granted must be withdrawn automatically.

5. Conclusions

Discussions regarding the issue of postwar reparations are very interesting not only from a political perspective, but also from psychological and legal standpoints. Over the years, many arguments have been put forward. Nevertheless, many of them seem to be based on logical fallacies. There is definitely a lack, at least on the German side, of straightforward assertions. And it is precisely such assertions that could not be refuted. Lawyers can argue about everything else.

By rejecting Poland's request to begin negotiations on reparations, Germany effectively deprived itself of any ability to influence the future course of the matter. After all, only by sitting down together at the negotiating table can issues that have plagued such a close partner for several decades be resolved. From a psychological standpoint, this was a highly ill-considered move.

Politically speaking, too, it is worth reconsidering this matter. In 2015, Horst Teltschik, an advisor to conservative Chancellor Helmut Kohl, admitted that avoiding reparations to Poland was the greatest achievement of German foreign policy after 1945. One can only hope that the new German federal government will redefine the goals and achievements of German foreign policy.

One fact seems to be clear and undisputed worldwide. It was a common state practice that after World War II states did not conclude any freedom agreements. It is the case both between Japan and Russia as well as Germany and occupied countries. That is why, from the legal standpoint, the state of war continues continuously since 1939.

Abbreviations

USSR	Union of Soviet Socialist Republics
GDR	German Democratic Republic

Author Contributions

Magdalena Katz: Conceptualization, Methodology, Resources

Conflicts of Interest

The author declares no conflicts of interest.

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