

Polish-German Dispute over WWII Reparations

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Abstract: *This study concerns the dispute between Poland and Germany regarding war reparations for losses caused in Poland in the years 1939 – 1945. The author pointed to the relevant acts of international law. This applies to the so-called Potsdam Agreement, the declaration of the Union of Soviet Socialist Republics (hereinafter referred to as the “USSR”) on the resignation of claims against Germany, the declaration of the government of the People’s Republic of Poland on the resignation of claims, the German unification treaty. As well as in the study, the substantive position that may be presented by Poland was indicated. After the end of the World War II, there was no peace agreement between the defeated Germans and members of the anti-German coalition. This was due to emerging political differences between the victorious states. What is significant in the case is the fact that the Polish war losses were not covered in full. There are reasons to believe that Poland’s renunciation of claims in year 1953 (with effect from January 1, 1954) was invalid.*

Key Words: *International Law; Public International Law; War; World War II; Reparations; Compensation; the Union of Soviet Socialist Republics; Germany; Poland.*

Preliminary issues

On December 28, 2022, the German government gave a laconic response to Poland’s diplomatic note of October 3, 2022, on claims for the World War II losses. The German diplomatic note was delivered to the Polish Ministry of Foreign Affairs on January 3, 2023. According to the German government, the matter of reparations and compensation for war losses remains closed, and the German government does not intend to enter into negotiations on this matter.¹ However, Poland’s claims against demo-

¹ In this paper, in a certain simplification, the position of the German state will be considered to be the report of the Scientific Services of the Bundestag of August 28, 2017, elaboration and commentary by BAINCZYK, M. Raport: Podstawy i ograniczenia prawno-międzynarodowe reparacji wojennych ze szczególnym uwzględnieniem relacji niemiecko-polskiej [Report: Basis and International Legal Limitations of War Reparations

cratic Germany for full war losses in the years 1939 – 1945, despite the passage of a significant period of time since the end of the World War II, have not yet been fully satisfied.² In this study, substantive arguments will be presented regarding the discussion relating to the Polish claims for war losses. A substantive discussion on the issue of claims may be an additional binder of the Polish-German reconciliation.

Poland's claims against Germany for losses incurred in the World War II

The origin of Poland's claims³ against Germany for losses incurred in the World War II dates back to the agreement of August 23, 1939, concluded in Moscow, between the USSR and Germany (the Molotov-Ribbentrop Pact), whose secret protocol divided the Second Polish Republic into two spheres of influence: the Soviet and the German. The German armed attack on Poland on September 1, 1939, marked the beginning of unprecedented losses in the human, material and cultural resources of the Second Polish Republic. The German state is also responsible for mass deportations of the Polish citizens from areas directly incorporated into Germany. The attack of the USSR on Poland on September 17, 1939,

with Particular Emphasis on German-Polish Relations]. In: M. BAINCZYK. *Raporty Służb Naukowych Bundestagu w sprawie reparacji wojennych dla Polski i odszkodowań dla polskich obywateli* [Reports of the Bundestag Scientific Services on War Reparations for Poland and Compensation for Polish Citizens]. 1. wyd. Poznań: Instytut Zachodni, 2018, pp. 13-38. IZ Policy Papers, nr 26(I). ISBN 978-83-61736-78-3. Germany's reply, dated on December 28, 2022, to Poland's diplomatic note regarding unsatisfied claims does not contain substantive argumentation.

² See STOLARCZYK, M. *Reparacje wojenne dla Polski od Niemiec w latach 1945 – 2020* [War Reparations for Poland from Germany in 1945 – 2020]. *Krakowskie Studia Międzynarodowe* [online]. 2020, vol. 17, nr 2, pp. 171-194 [cit. 2023-01-06]. ISSN 2451-0610. Available at: <https://doi.org/10.48269/2451-0610-ksm-2020-2-009>.

³ The meaning of the terms of reparations, restitutions, revindications, individual compensations are explained by BARCZ, J. and J. KRANZ. *Reparacje od Niemiec po drugiej wojnie światowej w świetle prawa międzynarodowego: Aspekty prawa i praktyki* [Reparations from Germany after the World War II in the Light of International Law: Aspects of Law and Practice]. 1. wyd. Warszawa: Elipsa, 2019, p. 26. ISBN 978-83-8017-224-1. See also BAINCZYK, M. *Raport: Podstawy i ograniczenia prawnomiędzynarodowe reparacji wojennych ze szczególnym uwzględnieniem relacji niemiecko-polskiej* [Report: Basis and International Legal Limitations of War Reparations with Particular Emphasis on German-Polish Relations]. In: M. BAINCZYK. *Raporty Służb Naukowych Bundestagu w sprawie reparacji wojennych dla Polski i odszkodowań dla polskich obywateli* [Reports of the Bundestag Scientific Services on War Reparations for Poland and Compensation for Polish Citizens]. 1. wyd. Poznań: Instytut Zachodni, 2018, pp. 16-17. IZ Policy Papers, nr 26(I). ISBN 978-83-61736-78-3.

opened a second account of losses, and also opened the way to mass deportations of the Polish citizens deep into the USSR. On June 22, 1941, the German-Soviet alliance was broken. The German state began military operations on the territory of the Second Polish Republic under the occupation of the USSR. In year 1944, hostilities resumed on the territory of the Second Polish Republic between the USSR and Germany.

In year 1945, the post-Yalta arrangement of Europe was formed on the basis of the Soviet-Anglo-American arrangements. As a result, Poland did not have any independence in international politics. It was not a party to the international arrangements concerning its territory and population. It became a satellite state of the USSR. The USSR troops were stationed on its territory. The elections in Poland were neither free nor democratic, and their results were falsified. The Atlantic Charter stopped at the so-called Iron Curtain. The post-Yalta arrangement of Europe resulted in mass deportations of the Poles from the lands absorbed by the USSR and mass deportations of the Germans from the lands granted to Poland, under international decisions made without Poland's subjective participation.

Of key importance from the point of view of post-war claims against Germany for war losses was the so-called Potsdam Agreement of August 2, 1945. In Chapter IV (concerning "Reparations from Germany"), the Potsdam Agreement divided Germany into two reparation zones, eastern and western. In the further part of the agreement, its signatories agreed that claims for compensation from the USSR would be satisfied by the removal of relevant items from the Soviet occupation zone and by the German property located abroad. The USSR undertook to satisfy the Polish demands for compensation from its own share of compensation. The compensation claims of the United States of America, the United Kingdom and other countries entitled to compensation were to be satisfied by the western zones and by the corresponding German property located abroad. It is estimated that due to the growing tensions between the USSR and the Western Allies, no peace treaty was signed to settle the effects of the war that had ended.

On the basis of the Potsdam Agreement of which Poland was not a signatory, a bilateral agreement between Poland and the USSR was concluded in Moscow on August 16, 1945. Pursuant to this agreement, the USSR renounced to Poland "its claims to the German property and the German assets, as well as to the shares of the German industrial and

transport enterprises to which it was entitled on the Polish territory [...], as long as they belonged to the German territory” (i.e., in the former German eastern territories). In addition, the USSR undertook to transfer to Poland, in accordance with this agreement and in order to cover the Polish claims, a share in the amount of 15 percent of the benefits due to it as reparations from the German occupation zones. However, these benefits were waived in exchange for Poland supplying 8 to 13 million tons of the “German coal” per year (the so-called Coal Clause).

Another significant event was the statement of the USSR of August 15, 1953, in which the USSR announced the complete release of Germany from its reparation obligations as of January 1, 1954 – “due to the fact that Germany has already fulfilled a significant part of its financial and economic obligations related to the consequences of wars.” It is worth paying attention to the historical context: it was after the so-called Berlin Uprising in June 1953, which the Soviet army bloodily suppressed, using armoured units. Shortly after, it was followed by a loose-form statement by the government of the Polish People’s Republic of August 23, 1954. “Taking into account that Germany has already largely satisfied its obligations in respect of reparations and that the improvement of the Germany’s economic situation is in the interest of its peaceful development, the government of the People’s Republic of Poland – desiring to make its further contribution to the work of settling the German problem in a peaceful and democratic spirit and in accordance with the interests of the Polish nation and all peace-loving nations – decided to renounce, as of January 1, 1954, the payment of compensation to Poland.”

Other important events include the Treaty on the Basis of Normalization of Mutual Relations between the People’s Republic of Poland and the Federal Republic of Germany of December 7, 1970, signed in Warsaw. It did not refer to Poland’s claims for war losses. On June 4, 1989, the first partially free parliamentary elections in Poland took place. “Deutsche Wiedervereinigung” took place on October 3, 1990, pursuant to an agreement concluded on September 12, 1990, in Moscow between the Federal Republic of Germany and the German Democratic Republic and the four former occupier states. According to the view of the German government, the so-called “Two Plus Four Treaty” finally regulates all legal issues related to ending the war.

The legal responsibility of Germany towards Poland for war losses caused in the years 1939 – 1945

The principle of Germany's legal responsibility towards Poland for war losses should not raise any doubts.⁴ On September 1, 1939, Germany launched a war of aggression against Poland.⁵ According to the Article 3 of the 4th Hague Convention of 1907 on the Laws and Customs of War on Land, also ratified by Germany, a warring state is responsible for every act of a person who is part of that state's armed forces. The scale of biological, material and cultural losses caused by Germany to the Polish state during the World War II was enormous and unprecedented.⁶

⁴ In the literature, attention is drawn to the case of "demands for compensation from the Russian Federation – the international legal successor of the USSR – for the USSR's failure to implement the provisions of the Potsdam resolutions in relation to the Polish reparation claims, which were to be satisfied from part of the German property seized by the then USSR. However, the Polish entitlement was of a secondary nature, which means that it is currently not possible for Poland to collect reparations from Germany or to settle the problem of the Polish repatriates from across the Bug, i.e., Zabuzans, demanding compensation for the loss of their property in the Eastern Borderlands. The current authorities of the Russian Federation fully uphold the claims that the Eastern Borderlands – the area of the Second Polish Republic was lost by it in September 1939 as a result, as the then Soviet authorities believed, their seizure for the sake of the safety of the population of these lands and the western border of the Union of the Soviet Union, and not, as Poland proves, of aggression." See ŁASKI, P. *Polskie żądania reparacji wojennych wobec Niemiec oraz żądania odszkodowawcze Niemców wobec własności poniemieckiej w Polsce z tytułu jej utraty po II wojnie światowej* [Polish Demands for War Reparations against Germany and German Demands for Compensation against post-German Property in Poland for Its Loss after the World War II]. *Problemy Współczesnego Prawa Międzynarodowego, Europejskiego i Porównawczego* [online]. 2021, vol. 19, p. 160 [cit. 2023-01-06]. ISSN 1730-4504. Available at: <https://doi.org/10.26106/0513-ev91>.

⁵ See DOMAŃSKI, L. *Wojna jako tytuł prawny do wynagrodzenia za szkody i straty: Zarys teorii i praktyki prawa międzynarodowego, prywatnego i publicznego* [War as a Legal Title to Compensation for Damages and Losses: An Outline of the Theory and Practice of International, Private and Public Law]. 1. wyd. Warszawa: Drukarnia Polska, 1915, p. 12; RUNDSTEIN, Sz. *Szkody wojenne: Teoria nadzwyczajnych indemnizacji w prawie publicznym* [War Damage: The Theory of Extraordinary Indemnity in Public Law]. 1. wyd. Warszawa: F. Hoesick, 1916, pp. 7-14; BIERZANEK, R. *Wojna a prawo międzynarodowe* [War and International Law]. 1. wyd. Warszawa: Wydawnictwo Ministerstwa Obrony Narodowej, 1982, pp. 94-97. ISBN 83-11-06789-9; and CZAPLIŃSKI, W. *Odpowiedzialność za naruszenia prawa międzynarodowego w związku z konfliktem zbrojnym* [Responsibility for Violations of International Law in Connection with Armed Conflict]. 1. wyd. Warszawa: Scholar, 2009, p. 14. ISBN 978-83-7383-372-2.

⁶ See *Opinia prawna w sprawie możliwości dochodzenia przez Polskę od Niemiec odszkodowania za szkody spowodowane przez drugą wojnę światową w związku z umowami międzynarodowymi* [Legal Opinion on the Possibility of Poland Seeking Compensation from

Claims for war losses do not arise in connection with the inclusion of the obligation in the content of a later peace treaty or in an international agreement, but in connection with their actual occurrence. A peace treaty or an international agreement may, however, exactly and indisputably specify these claims. The fact that there is no bilateral and direct Polish-German agreement relating to Poland's claims against Germany does not mean that these claims have not arisen.

On November 26, 1968, the United Nations General Assembly adopted the Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity. Therefore, Poland's claims are not time-barred. Poland's claims for war losses in the years 1939 – 1945 could not be extinguished due to the fact that they were not fulfilled (concealment, *desuetudo*). Nor could there be tacit consent (acquiescence) regarding Poland's renunciation of claims against Germany, if these claims are not time-barred.

Poland was not a signatory to the agreement of September 12, 1990, in Moscow between the two German States and four former occupiers on the reunification of Germany. The "Two Plus Four Treaty" was not effective *erga omnes*. The only reference in the treaty to the Polish-German relations concerns matters of the interstate border, regulated by a bilateral agreement. Nevertheless, "Two Plus Four Treaty" did not refer to Poland's claims for war losses. For the German perspective, the "Two Plus Four Treaty" was supposed to ultimately close the matter of settlements due to the World War II, but after its conclusion, the Polish-German Reconciliation Foundation was established, from which funds (rather symbolic) were paid out to the living Poles. Poland's approval of the German reunification was not tantamount to a waiver of claims.

Poland's lack of sovereignty in making certain decisions on the international arena in the years 1945 – 1989

In the decades following the year 1945, there was no sovereign, independent Polish state with authorities elected in free and democratic elections, in accordance with the will of its citizens. For decades, the Polish People's Republic remained in total geopolitical dependence on the USSR (although this dependence weakened over the years). The People's Republic of Poland did not pursue an independent international policy; it

Germany for Damages Caused by the World War II in Connection with International Agreements] [2017-09-06]. BAS-WAP – 1455/17.

was a party to a military alliance subordinated to the USSR (the so-called Warsaw Pact); the Soviet troops were stationed on the Polish territory. In addition, the USSR was guided by the doctrine of armed obedience to satellite states. All the above circumstances were known to the German side. There is state continuity between the People's Republic of Poland and the Third Republic of Poland.

Acts of international law, for their validity, require freedom in their expression. Acts of a satellite state resulting from the unacceptable influence of the dominant do not meet this requirement. This does not mean that a satellite state could not conclude any important international agreement. One cannot equate a unilateral statement made under the pressure of the dominant, which is a declaration of unjustified benefit for someone else, or agreements between the dominant and the satellite state and international legal acts of the satellite state with other subjects of international law, which are consistent with its *raison d'état* and which have been concluded without external pressure. The border treaties with the German Democratic Republic and the Federal Republic of Germany regarding Poland's western borders resulted from the natural need to confirm the status of the new (since year 1945) shape of the Polish state. The border treaties referred to the original arrangements of the Yalta powers of the anti-Hitler coalition. The border treaties confirmed the existing *status quo*. Therefore, they have a different legal value than waiving, against one's own interest, claims for war losses.

The USSR powers in covering the Polish war losses (*pacta tertiis*)

The Polish People's Republic, as a satellite state to the USSR, was not a direct party to the international legal agreement with the German state regarding the Polish claims for damages incurred in the years 1939 – 1945. According to Professor Jörn Eckert: "The Potsdam Agreement did not establish the possibility of making separate claims for compensation by Poland. Poland could only rely on the Soviet Union." Nevertheless, the above circumstance did not lead to the expiration of all the Polish claims for war losses. The Potsdam Agreement created a specific *pactum in favorem tertii*. The third person was Poland. The obligated state (Germany) had no influence on the distribution of reparations. In fact, Poland also had no influence on the distribution of reparations.

In the opinion of Professor Jörn Eckert concerning the agreement between Poland and the USSR on August 16, 1945, concluded in Moscow, "By virtue of this bilateral agreement with the USSR, Poland agreed to the

provisions of the Potsdam Agreement, according to which the only addressee of its claims for reparations was to be the Soviet Union.”⁷ However, it was an agreement between the dominant and the satellite state. The dominant itself had its own, separate legal responsibility towards its satellite for war losses caused by it, resulting from the armed attack in year 1939 and the occupation of the part of Poland in the years 1939 – 1941.

Poland’s dependence in collecting claims from Germany was a convenient instrument for the USSR to control the development of a country devastated by war and two occupations: the German and the Soviet. The economic dependence of the Polish People’s Republic on the USSR was another way to limit the sovereignty of the satellite state. Therefore, recognizing such an agreement as properly concluded raises objections.

The size and value of reparations for the USSR was not precisely defined, which meant an obvious unknown for the degree of satisfaction of the Polish claims. In addition, the policy of exporting property deep into the USSR from the areas occupied by the Red Army was in the implementation phase even before signing any reparations agreements.

An element of the agreement of August 16, 1945, was the so-called Coal Clause. In fact, it became a tool for the economic drainage of the People’s Republic of Poland, which was beneficial for the USSR. In the literature, the following argument is raised regarding the Polish-Soviet agreement of August 16, 1945: “It is questioned as inconsistent with the content of the Potsdam resolutions, because the USSR did not have rights to the lands granted to Poland under the Potsdam resolutions.”

The legal meaning of the declaration on the waiver of claims by the authorities of the People’s Republic of Poland of August 23, 1953

According to e.g. Professor Jan Sandorski’s declaration of the government of the People’s Republic of Poland of August 23, 1953, regarding the waiver of compensation payments to Poland as of January 1, 1954, was invalid *ab initio* and as such has never had and does not have legal ef-

⁷ See ECKERT, J. *Reparacje wojenne a rezygnacja z nich: Niemiecko-polskie stosunki z perspektywy historyczno-prawnej* [War Reparations and Resignation from Them: German-Polish Relations from a Historical and Legal Perspective]. *Ruch Prawniczy, Ekonomiczny i Socjologiczny*. 2005, vol. 67, nr 2, pp. 19-31. ISSN 0035-9629.

fects.⁸ The reasons for the absolute invalidity – on the basis of the later Convention on the Law of Treaties of 1969 are: coercion against a representative of the state, coercion against the state by the threat or use of force and conflict of contract with *jus cogens*. Thus, there are grounds for accepting the invalidity of the waiver of claims against Germany made by the government of the People’s Republic of Poland. The statement was not made freely, due to geopolitical conditions. The time sequence of the statements of the USSR and the Polish People’s Republic shows that the statement of the government of the People’s Republic of Poland was, in principle, an act copying the idea of a dominant political act by the satellite state. These circumstances were known to the both German states.

It can be argued that the Polish government statement violated the Constitution of July 22, 1952, which was in force at the time, because the matters of ratification and termination of international agreements were within the competence of the Council of State, and not the Council of Ministers. The government’s declaration of creditor-debtor claims was the matter of an international treaty.

The statement of the government of the People’s Republic of Poland was so doubtful that the German side later expected confirmation of this statement, which leads to the conclusion that it had concerns about the effectiveness of the waiver of these claims.⁹ It is also not clear who was the addressee of this statement, since reparations were paid by the USSR. It seems that the “Germany” referred to in the statement of August 23, 1954, was the German Democratic Republic, since the USSR collected reparations from its occupation zone, and the so-called Eastern Bloc did not recognize the West Germany. According to Stanisław Żerko, “On May 6, 1970, the Commission for the Study of the Problem of War Reparations was established, operating at the Ministry of Finance. The tasks of this body included ‘determining the Polish losses and damages caused in connection with the World War II, which could constitute the basis for the Polish People’s Republic to make claims for compensation against the

⁸ See SANDORSKI, J. Nieważność zrzeczenia się przez Polskę reparacji wojennych a niemieckie roszczenia odszkodowawcze [The Invalidity of Poland’s Renunciation of War Reparations and German Claims for Compensation]. *Ruch Prawniczy, Ekonomiczny i Socjologiczny*. 2004, vol. 66, nr 3, pp. 53-69. ISSN 0035-9629.

⁹ See ŻERKO, S. Sprawa niemieckich odszkodowań za II wojnę światową w stosunkach między Polską a RFN do 1991 r. [The Case of the German Compensation for the World War II in Relations between Poland and the Federal Republic of Germany until 1991]. *Colloquium* [online]. 2019, nr 3, pp. 101-126 [cit. 2023-01-06]. ISSN 2658-0365. Available at: <https://doi.org/10.34813/06coll2019>.

German Federal Republic'. It was yet another team that the authorities of the People's Republic of Poland created to estimate war losses. Its appointment meant that the government in Warsaw intended to make claims against the West Germany. Admittedly, on the occasion of the Polish-German talks on the Treaty on the Basis of Normalization of Mutual Relations between the People's Republic of Poland and the Federal Republic of Germany of December 7, 1970,¹⁰ Poland's waiver of claims against the Federal Republic of Germany was supposedly confirmed by a statement of the government of the People's Republic of Poland of August 23, 1953. The "confirmation" took the form of statements by (1) the deputy minister of foreign affairs and (2) a deputy to the Parliament of the People's Republic of Poland, a member of the State Council, and the first secretary of the Central Committee of the Polish United Workers' Party. These statements can be assessed in the category of interpretation, not creation of an act of international law.

The statement of the government of the People's Republic of Poland contradicts the actual state of affairs. The benefits actually received by Poland for war losses caused by Germany were so small that they did not justify waiving further claims.

It is worth referring to the study of Professor Mariusz Muszyński¹¹ questioning the characteristics of the declaration of the government of the People's Republic of Poland as a unilateral act of international law. Unilateral acts of behaviour in the sphere of international law have a different legal value than bilateral agreements and multilateral agreements.

The Polish People's Republic was not a direct party to international agreements concerning claims against Germany and, therefore, since the USSR was the dominant entity that announced the end of exploitation of claims, the essence of the declaration of the Polish government could only be the liquidation of a certain sub-relationship (subordinate relationship). Thus, the declaration of the government of the People's Republic of

¹⁰ See ŻERKO, S. *Reparacje i odszkodowania w stosunkach między Polską a RFN (zarys historyczny)* [Reparations and Compensation in Relations between Poland and Germany (Historical Outline)]. 1. wyd. Poznań: Instytut Zachodni, 2017, p. 20. IZ Policy Papers, nr 22(1). ISBN 978-83-61736-71-4.

¹¹ See MUSZYŃSKI, M. *Skuteczność oświadczenia rządu PRL z 23. 8. 1953 r. w sprawie zrzczenia się reparacji: Rozważania w świetle prawa międzynarodowego* [The Effectiveness of the Declaration of the Government of the People's Republic of Poland of August 23, 1953, on the Waiver of Reparations: Considerations in the Light of International Law]. *Kwartalnik Prawa Publicznego*. 2004, vol. 4, nr 3, pp. 43-79. ISSN 1642-9591.

Poland was of a “technical” nature. If the USSR fulfilled the claims and then transferred part of the acquired assets to Poland, the cessation of the realization of the claims by the USSR only closed this “distribution channel”.

The geopolitical goal of the USSR at that time was to provide economic support to the German Democratic Republic, especially after the crisis of the bloody suppressed Berlin Uprising in June 1953, a critical assessment of the conduct of the German affairs by Lavrentiy Beria. In other words, the East Germany was to be the beneficiary of the USSR’s renunciation of claims, in order to better embed the USSR power in the East Germany.¹²

It should be noted that the statement of the government of the People’s Republic of Poland states that it “decided to renounce, as of January 1, 1954, the payment of compensation to Poland.” This wording does not include a waiver of individual claims.

There is no doubt that in mature international legal relations, an effective waiver of claims for such serious war losses should be free, in accordance with internal law (including competence norms, the proper form of such an act, etc.), unambiguous (as to the wording), based on rational premises.

Little effectiveness of the services provided by the German side so far

In fact, the small scale of covering the claims of Poland and its citizens in the context of the scale of damage done in Poland and the scale of payments made to other countries is of significant importance in the dispute.

According to Professor Jörn Eckert, “there was a close connection between the issue of compensation and the issue of territorial cessions on the part of the “Third Reich”, agreed during the Potsdam Conference in 1945 among the victorious powers of the World War II. The cession of the former German lands east of the border on the Oder and the Lusatian Neisse rivers and the expropriation of the German property located there constituted, from the perspective of international law, part of the repara-

¹² See JARZĄBEK, W. Władze Polskiej Rzeczypospolitej Ludowej wobec problemu reparacji i odszkodowań od Republiki Federalnej Niemiec 1953 – 1989 [The Authorities of the Polish People’s Republic towards the Problem of Reparations and Compensation from the Federal Republic of Germany 1953 – 1989]. *Dzieje Najnowsze*. 2005, vol. 37, nr 2, pp. 85-103. ISSN 0419-8824.

tions benefits.” This view is inaccurate. Territorial cessions to Poland at the expense of Germany were “compensation” for the larger lands lost in the East. As a result of the “shift to the West”, pursuant to the Yalta agreements, Poland was significantly reduced in terms of territory. War reparation is not depriving the aggressor of part of his territory as a sanction for a devastating war of aggression. Anyway, the decision regarding Poland’s borders was made “without it and for it”. Moreover, there were historical claims to the lands granted to Poland at the expense of Germany. Other authors – Professor Jan Barcz, Professor Jerzy Kranz – explained that “the decision of the superpowers to take over private property both in Germany and abroad was an extraordinary measure, which can be justified by the scale of destruction, robbery and damage caused to public and private property in the occupied territories resulting from the German actions. Thus, while the post-war territorial changes cannot be classified as reparations, the confiscation of private German property was, according to the decisions of the superpowers, part of the reparations. This was confirmed by the European Court of Human Rights, which in year 2008 rejected the complaint of the German citizens and stated that the post-war decisions of the superpowers regarding the seizure of private property did not violate international law.”

Conclusions

The negative position of the German government taken at the end of year 2022 – the party concerned in the case – does not yet mean that the Polish claims are groundless. However, the issue of the mode of their investigation is complicated.

The Supreme Court in Poland accepted that “at the present stage of the state and development of public international law, the German state is entitled to immunity from jurisdiction in tort claims committed by the German armed forces during the World War II on the territory of Poland.” The Court of Justice of the European Union, in its judgment of February 15, 2007, confirmed the state continuity of the Federal Republic of Germany with the German “Third Reich”. According to the Tribunal, after the collapse of the “Third Reich”, legal responsibility passed to its successor, i.e., Germany. Nevertheless, the courts of foreign countries (states of the place of the event, *loco delicti commissi*) do not have jurisdiction over the German state in the matter of liability and damages, because the action of the armed forces of the “Third Reich” was an act of *de iure imperii*, and this is covered by the jurisdictional immunity of the state. According

to the current state of knowledge, there is no international tribunal whose jurisdiction would cover the case of Poland's claims for war losses. However, it is possible to renew the diplomatic notes, to propose an *ad hoc* international arbitration.¹³

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Atlantic Charter [1941-08-14].

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