I. Theses of the opinion

1. During World War II, Poland suffered the greatest material damage and human losses of all European countries in relation to the total population and national wealth. These losses resulted not only from military activities, but above all from the German occupation policy, in particular intentional and organised extermination of the population living in the occupied territories of Poland, as well as intense exploitation of the Polish society, including forced labour and intentional destruction of property, among others demolition of Warsaw, the capital of Poland.

2. Therefore, it is reasonable to argue that the Republic of Poland is entitled to seek compensation from the Federal Republic of Germany and the allegation that these compensation claims had expired or had been barred by the statute of limitations is unfounded.
3. Taking into account the content of *inter alia* the fourth Hague Convention of 1907, agreements of the Potsdam Conference and German actions towards other countries affected by World War II, consisting in conclusion of agreements and payment of compensation, the German state should compensate the damage incurred by the Polish state connected with the World War II period.

4. According to post-war estimates, losses and material damage to state and private property caused by Germany in connection with World War II amounted to over 258 billion pre-war zlotys. When converted into dollars, it amounted to approximately USD 48.8 billion, using the exchange rate for August 1939, when 1 dollar equalled 5.3 zlotys. Losses in tangible assets were estimated at 62 billion pre-war zlotys – 3.5 times the value of the Polish state’s losses from the World War I period (17.8 billion pre-war zlotys).

5. The total biological losses of the Polish society amounted to over 6 million people. In 1946, the number of alive Polish citizens who had suffered damage resulting from crimes and terror of the Third Reich equalled 10 million 84 thousand 585 people.

6. Despite having suffered the greatest losses and destruction during the war beside the USSR, Poland and Polish citizens received cash payments from Germany whose value was not only disproportionate to the damage suffered, but also significantly lower than compensation paid by the FRG to other countries and their citizens. The FRG allocated approximately 600 million German marks for the benefit of Polish citizens, taking into account payments for victims of pseudo-medical experiments and for the Foundation “Polish-German Reconciliation”. This amount is not even 1% of the amount that the German government allocated after World War II to payment of compensation for citizens of Western Europe, United States, and Israel.

7. Pursuant to Article 3 of the fourth Hague Convention of 1907 concerning the laws and customs of war on land, which was signed also by Germany, a belligerent party shall be responsible for all acts committed by persons forming part of its armed forces. To this day, this obligation has not been fulfilled by Germany in respect of Poland.

8. Following the Potsdam Conference, it was decided that Germany will “be compelled 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”. This provision has not been implemented to this day in respect of Poland. After the Potsdam Conference, the Paris Peace Treaties were signed in 1946. It concerned reparations for the countries of Western and Eastern Europe, Asia and Africa, but it did not include the Polish state.

9. Apart from imposing obligation on the USSR to settle Polish claims from its own share of reparations, the Report on the Potsdam Conference does not include any provision pursuant to which Poland would be entitled to any other direct payments from Germany.

10. In Memorandum of the Polish government submitted during a conference of deputy ministers of foreign affairs in London in January 1947, it was expressly stated: “pursuant to the Potsdam Agreement stating that Germany will be compelled to compensate to the greatest possible extent for the loss and suffering that she has caused to the United Nations – Poland reserves the right to submit further specific requests in that respect”.

11. After World War I, on 31 October 1929 Poland and Germany signed the so-called liquidation agreement, governing the issue of financial and property claims connected with the war and the Treaty of Versailles. The agreement was published in the Polish Journal of Laws. No such agreement has been concluded between Poland and Germany after World War II. However, the Federal Republic of Germany signed separate agreements with other countries concerning compensation – primarily the Bonn convention and bilateral agreements with 12 European countries in 1959-1964 on individual compensation for citizens of these states.

12. The unilateral statement of the Council of Ministers of 23 August 1953 on the Polish People’s Republic waiving its right to war reparations violated the then applicable Constitution of 22 July 1952, since matters connected with ratification and termination of international agreements lay within the competences of the Council of State, and not of the Council of Ministers. This statement was not submitted on the initiative of the Polish government, but on the request and as a result of pressure from the USSR. Moreover, in line with the minutes of the Council of Ministers of 19 August 1953, the waiver concerned only the German Democratic Republic.
13. The Polish People's Republic (PRL) took many attempts to regulate the issue of German compensation after World War II. This happened, among other things, during the 21st and 22nd session of the United Nations Commission on Human Rights and was connected with the speech of a Polish delegate who said: “Polish citizens have not received compensation to this date due to discriminatory legislation of the FRG, and the FRG does not feel obliged to repay this tragic debt to the Polish nation”. For many years, the bipolar political division of the world made it impossible to settle the issue of compensation, which was connected with the existence of two German states and the FRG policy.

14. As A. Klafkowski stated: “International law does not recognise applicability of statutory limitations to war crimes and crimes against humanity. It also states that there is no statute of limitations for compensation for such crimes”.

15. In the Treaty on the Final Settlement with Respect to Germany, or the Two-Plus-Four-Treaty, signed on 12 September 1990, the issue of war reparations was not covered at all, only the problem of a general closure of World War II was handled. Moreover, Poland was not a party to that treaty.

16. Pursuant to the agreement of 16 October 1991 between Polish and German governments, the Foundation “Polish-German Reconciliation” was established. In total, from 1992 till mid 2004 the Foundation paid 731,843,600 zlotys to 1,060,689 persons, which amounted to 689.97 zlotys per person.

17. The failure to settle the issue of compensation claims for damage suffered during World War II for more than 60 years has led to the vast majority of 10 million 84 thousand 585 victims of crimes and terror of the Third Reich dying without having received any compensation.

18. The content of applicable international legal acts and post-war reparations practice, including discriminatory policy of the FRG towards Poland and Polish citizens in comparison with other countries which suffered smaller material damage and human losses, yet received significantly higher compensation, justifies Poland seeking compensation from Germany for damage suffered during World War II.
II. Subject matter of the opinion

The subject matter of this opinion is legal issue of the possibility of the Republic of Poland seeking compensation from Germany for material damage and human losses caused by the German aggression during World War II, in particular the issue of whether other countries sought compensation from Germany for material damage and human losses. The opinion has been prepared at the request of Deputy Arkadiusz Mularczyk. The order was received by the Sejm Bureau of Research on 12 July 2017.

III. General considerations

War leads to damage arising among the participants of the armed conflict. This means both material damage and human losses. The issue of compensation connected with the end of war has been present in international law for a long time. In particular, the division into just and unjust wars, originating in the late Middle Ages, is known. It is connected with academic work of two rectors of the University of Kraków from the 15th century, Stanisław of Skarbimierz and Paweł Włodkowic of Brudzeń. The first one of them, in his sermons entitled *O wojnach sprawiedliwych* (*De bellis iustis*) and *O rozboju* (*De rapina*) provided the first systematic interpretation of public war law. He recognised war as an attribute of state power and distinguished just wars, i.e. those waged to defend the country or violated laws1. According to Stanisław of Skarbimierz, compensation obligation was the result of initiating an unjust war, and it did not concern a state which started a just war and waged it in accordance with the law2. The second above-mentioned rector represented the then Polish-Lithuanian state at the Council of Constance (1414-1418) in the dispute with the Teutonic Knights. He was also a proponent of acceptability of only just wars and stated that “since a war is acceptable in principle only if it is a defensive war, or possibly as the ultimate measure to restore the state which was unlawfully violated, then in principle the only purpose of taking booty should be ensuring compensation for the damage unlawfully caused”3.

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These views expressed in the 15th century constitute an important contribution to the development of armed conflicts science. In practice, the end of wars could mean, usually apart from territorial cessions for the benefit of the winning party, imposing contributions on the defeated state. This consisted in the defeated party paying a specific amount in kind or in cash. However, the issues of war indemnities arise in connection with armed conflicts of the 19th century, starting from the Napoleonic Wars, and the matter of war reparations appears above all in relation to the Treaty of Versailles ending World War I. An example of 19th century war reparations is the treaty ending the Franco-Prussian War, according to which France had to pay five billion francs to the German Empire (quoting the treaty: to His Imperial and Royal Majesty German Emperor). It was agreed that one billion francs would be paid in 1871 and the payment of the rest had to take place within three years from the treaty ratification.

Defining the rules of the law of war took place at the turn of the 19th and 20th century and was connected primarily with the adoption of the Hague Conventions by a number of states. The fourth Hague Convention of 18 October 1907 concerning the laws and customs of war on land was particularly important. Pursuant to Article 3 of this Convention: “a belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation” and “it shall be responsible for all acts committed by persons forming part of its armed forces”. The quoted provision entails an obligation of the state to pay compensation for the damage caused by violating the provisions of Hague rules and the responsibility placed on the state for all acts committed by its armed forces.

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IV. Reparations in the aftermath of World War I

World War I caused enormous devastation, unprecedented in the history of armed conflicts. Indeed, as prophetically stated in 1916 by Szymon Rundstein, a now forgotten international law expert and law theorist, who perished in 1942 in Treblinka: “each war has its own distinct character, its own intensity and traits, determined by circumstances that could not have been foreseen beforehand. When legal knowledge, in the context of contemporary war, faces the issue of whether and to what extent damage caused by war should be rectified, it cannot rely only on the scarce and altogether insufficient indicators derived from the experience of armed warfare in the past. Contemporary combat is characterised by a degree of tension and extensiveness we have never seen before – even in the most recent past, and thus, such indicators would be disproportionate; ”and “therefore, referring to historical analogies and considering issues related to war reparations on such a dogmatic basis will be possible only to a very limited extent”8.

From that point of view, in the course of World War I, the invasion and occupation of the territory of Congress Poland in 1915–1918 by the German and Austro-Hungarian armies was of particular importance. The Central Welfare Council operated during this period (1916–18), its aim being to help the victims of war9. Interestingly, the Council also worked in 1940–45 on the territory of the General Government. Since 1917, the War Damage Records Division of the Central Welfare Council issued a number of publications under the general title *Liquidation of war consequences in the field of legal and economic relationships in Poland* [Likwidacja skutków wojny w dziedzinie stosunków prawnych i ekonomicznych w Polsce] discussing, among other things, indemnification theory topics, contemporary war damage and the period of the 19th century, particularly taking into account Polish territory10. It is interesting to discuss in this context the findings of Władysław Maliniak who divided war damage and losses into five groups, namely those resulting from:

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8 Sz. Rundstein, Szkody wojenne. Teorya nadzwyczajnych indemnizacyj w prawie publicznem, Warsaw 1916, p. 3.
10 See Sz. Rundstein, Szkody wojenne a współczesne prawo narodów, Warsaw 1917; L. Gajewicz, Własność nieruchomości miejska i Towarzystwa Kredytowe po wojnie, Warsaw 1917; L. Babiński,
1) direct acts of war;
2) actions directly connected to acts of war but not resulting directly from them, e.g. expropriation, sequestration;
3) actions violating the laws and customs of war on land;
4) resulting from a change in the totality of relationships as a result of the outbreak of war;
5) actions of the army or the government of a state – one’s own state or the occupying state.

According to Władysław Maliniak, the first two groups listed above should be classified as actual damage (damnum emergens), the fourth group constituted loss of profit (lucrum cessans), and the other two groups (group 3 and 5) should be classified as both actual damage and loss of profit\(^1\). In his opinion, the categories defined above included all damage caused by war – namely all severe harm “which would not have happened had it not been for the war”, and he adds that “such a broad definition of the limits of the notion of war damage is explained by the fact that, for purposes of further discussion, the point of view of the injured Polish society will form the most appropriate basis. For this society, faced directly with the telling existence of losses suffered, the legal qualification of such losses is relatively insignificant.”\(^12\).

Following the end of World War I, peace treaties were concluded between the parties to the armed conflict. However, already in the course of the Peace Conference, maximalist and minimalist trends appeared as regards the amount of indemnification. In addition, a proposal was put forward to delegate the mandate to determine the amounts to the Reparation Commission appointed for that purpose\(^13\). From the point of view of the compensation and the interests of the Polish state of the time, the Treaty of

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\(^1\) W. Maliniak, Tytuł do indemnizacji strat wojennych, volume III, Warsaw 1917, pp. 3-4.
\(^3\) More in: Sprawy polskie na konferencji pokojowej w Paryżu w 1919 r. Dokumenty i Materiały, volume III, Warsaw 1968, p. 137 et seq.
Versailles of 28 June 1919\textsuperscript{14}, and in particular its Part VIII Reparation\textsuperscript{15}, was of particular importance. In accordance with Article 231 of the Treaty: “The Allied and Associated Governments affirm and Germany accepts the responsibility of Germany and her allies for causing all the loss and damage to which the Allied and Associated Governments and their nationals have been subjected as a consequence of the war imposed upon them by the aggression of Germany and her allies.”

In this manner, a system of liquidating the consequences of World War I consequences was created\textsuperscript{16}. The Treaty acknowledged that the resources of defeated Germany were not adequate to make a complete reparation for all losses and damage connected with World War I. In addition, the Reparation Commission was appointed whose aim was, among other things, to determine the amounts of losses and damage, the amounts of compensation to be paid; as well as Mixed Arbitral Tribunals\textsuperscript{17}, including a Polish-German one\textsuperscript{18}. The latter decided in the first instance and made the final and conclusive decision as regards to, \textit{inter alia}, compensation claims of Polish citizens against the German state in specific cases and in matters related to the liquidation of property of citizens of the German state\textsuperscript{19}.

In that period, the issue of war compensation from Germany for the Polish state raised a number of problems, mainly associated with the fact that the Second Polish Republic was a state created on the territory of three partitioning states and, thus, had not participated in World War I in the capacity of a state being a party to the armed conflict\textsuperscript{20}. The issue of German war reparations was connected with the political and economic situation of that time, which resulted in a gradual reduction of the burden of war compensation imposed on Germany. The above was associated with the

\begin{itemize}
\item \textsuperscript{15} Namely: Section I \textit{General Provisions} (Articles 231-244) with seven annexes concerning the issue of reparations and Section II \textit{Detailed Provisions} (Articles 245-247).
\item \textsuperscript{17} Articles 304-305 (with Annex) of the Treaty of Versailles.
\end{itemize}
execution of the so-called Dawes Plan (1924), and then the so-called Young Plan (1928)\textsuperscript{21}. In this regard, an agreement was entered into between the Polish state and Germany on 31 October 1929 – the so-called liquidation agreement (Polish-German agreement)\textsuperscript{22}. The agreement was one of nine such documents\textsuperscript{23} concluded by Germany in connection with the Young Plan. Pursuant to the agreement, the governments of both states waived all financial and property claims connected with the war and the Treaty of Versailles to which natural and legal persons of those states, and their governments, were entitled, irrespectively of the legal or factual grounds for such claims. The ratification of the agreement met with protests of the parliamentary opposition both in the Sejm and in the Reichstag.\textsuperscript{24}

In connection with the waiver of claims against Germany by the Polish state, the financial claims of the Second Polish Republic were estimated at 523 million gold francs. The said amount included, \textit{inter alia}, compensation claims for loss and damage inflicted during the occupation, these concerned primarily requisition and devastation, military benefits and pensions, and actions of German armed groups\textsuperscript{25}. Importantly, the amounts of Polish indemnification claims, when compared to damage and losses in the period of World War II, which will be discussed below, were not high. It is worth noting that the Polish state of the time, in connection with the end of the World War I and the demarcation of new eastern borders, also signed peace treaties with other states\textsuperscript{26}, whereby the solutions regarding war reparations specified in the Treaty of

\textsuperscript{21} Ibid., p. 302 et seq.
\textsuperscript{22} See The Polish-German Agreement signed in Warsaw on 31 September 1929 ([Reference to the Polish Journal of Laws:] Dz. U. z 1931, Nr 90, poz. 704); government statement of 15 July 1931 on the exchange of ratification documents related to the Polish-German Agreement signed in Warsaw on 31 October 1929 with the final report to Article II of the Agreement ([Reference to the Polish Journal of Laws:] Dz. U. Nr 90, poz. 705).
\textsuperscript{23} Such agreements were entered into with: Belgium (1929, 1930), Great Britain (1929), France (1929), Canada (1930), Australia (1930), New Zealand (1930), Italy (1930); see J. Krasuski, \textit{Stosunki polsko-niemieckie 1919–1932}, Poznań 1975, p. 327 et seq.
\textsuperscript{24} More in: p. 322 et seq.
Versailles were a model for the solutions applied in agreements ending World War II. Summing up the reflection on the period preceding the outbreak of World War II, it should be said that both the Republic of Poland and Germany were signatories of the Kellogg Pact (otherwise known as the Kellogg-Briand Pact or the Pact of Paris) of 27 August 1928 for Renunciation of War. They also signed the Non-Aggression Pact in Berlin on 26 January 1934, pursuant to which mutual relationships between Poland and Germany were to be based on the Pact of Paris (Kellogg Pact). It was to be valid for a period of 10 years, with a possibility of termination six months before the lapse of that period.

V. Losses of the Polish state during World War II

According to Ludwik Ehrlich, the aggression of the Third Reich against the Second Polish Republic on 1 September 1939 “was, until the withdrawal of German forces from Poland in 1945, one endless series of unlawful acts” which “since they were inflicted by the Third Reich or its bodies, result in liability of the German Reich to pay compensation, whose size should not be measured not only according to the loss and damage sustained by the Polish state, but also by the sum of losses incurred by Polish citizens and legal persons who, from the legal point of view, were subject to the protection of the Polish state.” Before we present a short analysis of the notion of reparation, war loss and damage, and indemnification (compensation), attention should be drawn to the scope, nature, and size of losses sustained by the Polish state during World War II, resulting first and foremost from the German occupation and not from acts of war. Already in the Manifesto of 22 July 1944, the new Communist government stated that “the Polish Committee of National Liberation shall determine,
on a systematic basis, the amounts of loss and damage caused to the Polish nation by Germans and shall undertake steps to ensure due compensation to Poland”\(^{31}\).

In this regard, a special Reclamation and War Reparation Bureau was appointed and operated by the Presidium of the Council of Ministers\(^{32}\). The Bureau determined the amount of war damage and losses of the Polish state and published a study on the subject in January 1947. In the period preceding the publication, a widespread action of recording war damage and losses was carried out. It was performed, among others, by special offices appointed by ministers, provincial offices, district offices – and local government units, professional organisations, etc. cooperating with them. War damage and losses were calculated as at 9 May 1945, and the estimations were carried out from 21 September 1944 to 1 January 1947.

Damage caused by war was established for the territory of the Polish state within the borders after World War II, excluding the so-called Recovered Territories. In the case of human loss, the Polish and Jewish population was taken into account, also including citizens residing East of the so-called Curzon Line – i.e. from the area already at that time belonging to the Union of Soviet Socialist Republics (hereinafter: Soviet Union)\(^{33}\). The amount of war damage and losses was calculated on the basis of the value of the zloty from before the outbreak of World War II which was defined as the content of gold in the zloty, fixed as a result of the so-called second stabilisation of the zloty in 1927.\(^{34}\) On that basis, it was established that 5924.44 zlotys were to be minted from 1 kg of gold. Today’s valuations of war damage and losses of the Polish state associated with the acts of war and German occupation should take account of the above valuations and should be based on the content of gold in the Polish monetary unit in the period preceding World War II, and on the American dollar.

The total material damage and losses sustained by the Polish state as at 9 May 1945 were estimated at more than 258 billion pre-war zlotys. When converted into dollars, they amounted to approximately 48.8 billion, using the exchange rate from

\(^{31}\) Annex to [Reference to the Polish Journal of Laws:] Dz. U. z 1944 r. Nr 1, poz. 2.


\(^{33}\) Sprawozdanie w przedmiocie strat i szkód wojennych Polski w latach 1939–1945, Warsaw 1947, pp. 3-4.

August 1939, when 1 dollar equalled 5.3 zlotys. Losses in tangible assets were estimated at 62 billion pre-war zlotys – 3.5 times the value of the Polish state’s losses in World War I (17.8 billion pre-war zlotys). This is illustrated in the following summary.

Table 1. Material losses. General recapitulation (in millions of zlotys)

<p>| | |</p>
<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td><strong>Total</strong></td>
<td>258,432</td>
</tr>
<tr>
<td><strong>Direct losses</strong></td>
<td></td>
</tr>
<tr>
<td>Destruction of physical capital</td>
<td>62,024</td>
</tr>
<tr>
<td>Production and services taken over during occupation</td>
<td>26,776</td>
</tr>
<tr>
<td><strong>Indirect losses</strong></td>
<td></td>
</tr>
<tr>
<td>Costs connected with removing certain types of damage not accounted for in physical losses</td>
<td>845</td>
</tr>
<tr>
<td>Lost production in post-war period due to destruction of capital</td>
<td>52,502</td>
</tr>
<tr>
<td>Lost production surpluses of persons killed or affected by invalidity</td>
<td>74,650</td>
</tr>
<tr>
<td>Lost production due to decreased human work productivity and return on equity in post-war period</td>
<td>41,635</td>
</tr>
</tbody>
</table>

The total biological losses of the Polish society amounted to over 6 million people. This is illustrated in the following recapitulation.

Table 2. Biological losses of the Polish society. General recapitulation (in thousands)

<table>
<thead>
<tr>
<th></th>
<th>Number of people in thousands</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total loss of life</strong></td>
<td>6,028</td>
<td>100.0</td>
</tr>
<tr>
<td>Due to direct acts of war</td>
<td>644</td>
<td>10.7</td>
</tr>
<tr>
<td>Due to the terror of the occupying power</td>
<td>5,384</td>
<td>89.3</td>
</tr>
<tr>
<td><strong>Invalidity</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Military and civil invalids – total</td>
<td>590</td>
<td>100.0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Physical invalidity</th>
<th>530</th>
<th>89.8</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mental invalidity</td>
<td>60</td>
<td>10.2</td>
</tr>
<tr>
<td>Surplus TB incidence</td>
<td>1,140</td>
<td>100.0</td>
</tr>
</tbody>
</table>

It is worth noting that the losses connected with the German occupation were many times higher than those resulting from direct acts of war. Losses of the first category were linked with the specific economic and extermination policy conducted by the Third Reich with respect to the population in the occupied territory, primarily within the territory of the General Government\(^{39}\). This consisted in material degradation and intense exploitation of the Polish society, including forced labour. As for the second category, over one million citizens of the Polish state had TB, half a million were invalids and 22% died\(^{40}\). This shows, what must be stressed once again, that loss and damage suffered by the Polish state was due primarily to the occupation policy implemented by the Third Reich\(^{41}\), and was thus not directly linked with military operations, particularly as compared to earlier armed conflicts on the Polish soil.

**VI. Scope of the concept of war reparations and compensation in connection with World War II**

The problem of defining the conceptual scope of war reparation and compensation (indemnification) and thus the liability of the state for losses resulting from war hostilities is not a *novum* in legal science\(^{42}\). The provisions of Article 3 of the fourth Hague Convention of 1907 and those of the Treaty of Versailles were of key

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significance for legal science. Attention was drawn first of all to the fact that war compensation should be understood to mean reimbursement of the cost of warfare imposed upon the defeated party, as determined in the peace treaty ending an armed conflict\textsuperscript{43}. Sz. Rundstein divided war compensation into two groups, on account of separate sources of legal titles:

1) ensuing from international law, e.g. from Article 3 of the fourth Hague Convention or from the Treaty of Versailles;

2) compensation for damage caused by war regulated by the internal legislation of the state; indemnification norms could concern losses of the army and enemy authorities, including the organs of one's own state\textsuperscript{44}.

An attempt to define the aforementioned two concepts was made by Kazimierz Kocot in his work of 1974. Kazimierz Kocot explicitly deemed the Treaty of Versailles the starting point in the differentiation of terms referring to ending war hostilities, also including the Potsdam Agreement\textsuperscript{45}. The wording of Articles 231 and 232 of the Treaty of Versailles in the part "Reparation" was also significant. This was translated in the Polish official translation of the title of the Treaty as “Odszkodowań”.

The respective articles have the following wording:

Article 231: “The Allied and Associated Governments affirm and Germany accepts the responsibility of Germany and her allies for causing all the loss and damage to which the Allied and Associated Governments and their nationals have been subjected as a consequence of the war imposed upon them by the aggression of Germany and her allies;”

Article 232: “The Allied and Associated Governments recognize that the resources of Germany are not adequate, after taking into account permanent diminutions of such resources which will result from other provisions of the present Treaty, to make complete reparation for all such loss and damage. The Allied and Associated Governments, however, require, and Germany undertakes, that she will make compensation for all damage done to the civilian population of the Allied and


\textsuperscript{45} K. Kocot, Problem pojęć: reparacje wojenne, restytucja, odszkodowania itp. w aspektie umowy poczdamskiej, traktatów pokojowych, umów zawartych przez NRF, wyroków sądowych i doktryny prawa międzynarodowego, Warsaw 1974, p. 1.
Associated Powers and to their property during the period of the belligerency of each as an Allied or Associated Power against Germany by such aggression by land, by sea and from the air, and in general all damage as defined in Annex I hereto. In accordance with Germany’s pledges, already given, as to complete restoration for Belgium, Germany undertakes, in addition to the compensation for damage elsewhere in this Part provided for, as a consequence of the violation of the Treaty of 1839, to make reimbursement of all sums which Belgium has borrowed from the Allied and Associated Governments up to November 11, 1918, together with interest at the rate of five per cent (5%) per annum on such sums. This amount shall be determined by the Reparation Commission, and the German Government undertakes thereupon forthwith to make a special issue of bearer bonds to an equivalent amount payable in marks gold, on May 1, 1926, or, at the option of the German Government, on the 1st of May in any year up to 1926. Subject to the foregoing, the form of such bonds shall be determined by the Reparation Commission. Such bonds shall be handed over to the Reparation Commission, which has authority to take and acknowledge receipt thereof on behalf of Belgium”\(^\text{46}\).

The principles set out in the provisions cited \textit{in extenso} were also adopted in peace treaties ending World War I, i.e. signed in St. Germain and Trianon, whereby these were relaxed in the treaty with Turkey and Bulgaria\(^\text{47}\). Thus, compensation amounts were not stipulated in the text of the Treaty of Versailles itself, which meant in practice that the Reparation Commission would deal with this topic and also with the issues of the methods, forms and deadlines for payment\(^\text{48}\). Moreover, following World War I, the definition of the concept of reparation was the subject of cognition by the Permanent Court of International Justice. Analysing the case law of the Court, L. Ehrlich came to the conclusion that “compensation on account of material damage suffered directly by the state or its citizens should, as far as possible, restore the state


of affairs that existed before the law was violated, or the state of affairs that would have existed had no violation occurred"\textsuperscript{49}.

During the World War II a number of acts were passed by the Allied States, which concerned the responsibility of the Third Reich and its allies. They concerned mainly the issue of criminal liability, but also economic matters in the occupied areas\textsuperscript{50}. At the end of the war, at the Yalta Conference (Crimean Conference) on 11 February 1945 in Chapter III “German compensation” it was established that the conference participants recognised it as just “that Germany be obliged to make compensation for this damage in kind to the greatest extent possible”, for this purpose a Commission for the Compensation of Damage was to be established in Moscow which was to determine the extent and methods “for compensating damage caused by Germany to the Allied countries”\textsuperscript{51}. Pursuant to the protocol on compensation, it was deemed that the Moscow Compensation Commission would take as a basis an overall amount of USD 20 billion in compensation, of which 50% would fall to the USSR\textsuperscript{52}. Then, at the Potsdam Conference\textsuperscript{53}, based on the settlements of the Crimean Conference in chapter IV “Reparation from Germany”, it was acknowledged that “Germany will be compelled 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”\textsuperscript{54}. Importantly, the USSR undertook to satisfy Polish claims for

\begin{thebibliography}{99}
\bibitem{footnote1} Ibidem, pp. 42 – 45.
\bibitem{footnote6} Prawo międzynarodowe i historia dyplomatyczna. Wybór dokumentów, introduction and elaboration by L. Gelberg, volume III, Warsaw 1960, p. 193. See M. Muszyński, Przejście majątków niemieckich
compensation from its own compensation share and the provisions of the Potsdam Agreement in this respect had the nature of an agreement in favorem tertii.\textsuperscript{55} The USSR’s obligation to satisfy Polish claims did not specify either the extent of satisfaction or the timing of payment. It is worth noting that apart from the USSR’s obligation to satisfy Polish claims from its own reparation share, the conference protocol does not contain a provision according to which Poland is not entitled to any other benefits directly from Germany.

It was further specified in chapter IV “Reparations from Germany” that reparation claims shall be met by removals from occupation zones, whereby reparation claims of the USSR shall be met by removals from the zone of Germany occupied by the USSR and from appropriate German external assets. Furthermore, it was agreed that reparation payments to the USSR would be made in the form of industrial capital equipment supply from the western occupation zones. The USSR undertakes to settle the reparation claims of Poland from its own share of reparations. It follows that the compensation issues set out in the Potsdam Agreement, were regulated de facto by reparations from the area of German occupation zones and concerned basically compensation in kind (in natura). It is worth noting that the Federal Republic of Germany (hereafter: FRG, this opinion also uses the synonym German Federal Republic), as will be discussed below, concluded separate agreements on compensation with other countries, primarily the Bonn Convention and bilateral agreements.\textsuperscript{56} Due to the lack of such an agreement with Poland the Raport o stratach wojennych Warszawy raises the issue that “Due to the different situation of Poland and Germany the arrangements signed in Potsdam in the section concerning reparation and compensation are not closed for Poland definitively in bilateral relations, as relevant agreements between Poland and the then German states have never been concluded”\textsuperscript{57}.


\textsuperscript{56} K. Kocot, \textit{Problem pojęć: reparacje wojenne, restytucja, odszkodowania itp. w aspekcie umowy poczdamskiej, traktatów pokojowych, umów zawartych przez NRF, wyroków sądowych i doktryny prawa międzynarodowego}, Warsaw 1974, p. 54 et seq.

Alfons Klafkowski further examined the concepts of war reparations and war compensation in connection with the Potsdam Agreement. The findings of this expert of international law have a significant influence on the contemporary understanding of these terms. In a number of publications, A. Klafkowski drew attention to significant terminological differences in these concepts, especially from a historical and legal point of view, and above all in comparison with the framework principles of the Potsdam Agreement. According to his views, the differences between these terms can only be identified using the comparative method. In particular, he drew attention to the provisions of the Treaty of Versailles and Article 3 of the Hague Convention (IV). The following findings of A. Klafkowski are particularly important:

1) war reparations are based mainly on peace treaties, which distinguishes them from individual war compensation based on universal international law;
2) war compensation are private law claims;
3) there is no standard of international law defining the concept of war reparations, whereby he agreed with Sz. Rundstein that war reparations are primarily a reimbursement of costs incurred in connection war operations, set out in the peace treaty, which ends the armed conflict;
4) the pursuit of individual war compensation is directly related to the State concerned, which is a subject of international law;
5) the nature of armed conflicts, in particular the period of World War II, has made it difficult to use historical and dogmatic analogies in terms of war compensation;
6) there is a limited set of international law standards dealing with war compensation and hence dogmatic analysis of this issue is limited;
7) he agreed with Władysław Mazurkiewicz that the case of individual war compensation is increasingly based on the assumption that it is not an act of grace (ex gratia) on the part of aggressor, the occupying power, but it is an obligation based on international law;

60 See W. Mazurkiewicz, Zasady indemnizacji strat wojennych w ich rozwoju historycznym, Warsaw 1917, p. 85–86.
8) he stated that the notion of war damage does not have its designation in international law and covers any damage caused in connection with war, at the same time he traditionally divided war damage into two groups: damage caused to the state and damage caused to civilians or individuals.\footnote{See A. Klafkowski, Reparacje wojenne – odszkodowania wojenne, „Życie i Myśl” 1990, book 7/8, p. 28–30.}

From the Polish perspective, the military activities of the German occupier, as mentioned above, account for only a small percentage of war damage. It was the subject of the Polish government’s Memorandum submitted at the conference of deputy ministers of foreign affairs in London in January 1947, with a chapter entitled *Odszkodowania i restytucje*, which *expressis verbis* recognised that: “in compliance with the Potsdam Resolutions stating that Germany will be compelled to compensate to the greatest possible extent for the loss and suffering that she has caused to the United Nations – Poland reserves itself the right to submit further concrete claims in this respect”. Furthermore, the Polish government underlined its interest in settling matters concerning, inter alia, public and private law financial settlements, social security settlements, pensions, receivables and claims of Polish citizens for forced labour in Germany and related to this work.\footnote{S. Cholewiak, Reparacje i odszkodowania wojenne (1939–1954). Wybór dokumentów ze wstępem, Warsaw 1972, p. 171; Problem reparacji, odszkodowań i świadczeń w stosunkach polsko – niemieckich 1944 – 2004, volume II “Dokumenty”, eds. S. Dębski, W. M. Góralski, Warsaw 2004, p. 190–196.} Therefore, A. Klafkowski distinguished, according to the criterion of legal basis, two types of reparation:

1) compensation resulting from the breach of the Hague Convention (IV), which are independent from the end of war i.e. they do not require a peace treaty;

2) compensation resulting from concluded peace treaties, which concern the end of state of war between states and signify the reimbursement of costs incurred in connection with war.\footnote{A. Klafkowski, Podstawowe problemy prawne likwidacji skutków wojny 1939 – 1945 a dwa państwa niemieckie, Poznań 1966, p. 368 et seq.; A. Klafkowski, Umowa poczdamska a sprawy polskie 1945 – 1970, Poznań 1970, p. 239 et seq.; J. Ciechanowicz, Odszkodowania wojenne, „Przegląd Stosunków Międzynarodowych” 1988, No. 1, p. 22 et seq.} In practice, it means that the definitions of these terms depend on the content of specific agreements ending the armed conflict and often on bilateral agreements. In the last case, after 1945, it is linked to the agreements concluded between German Federal Republic and several countries. Therefore, as Renata Sonnenfeld pointed out, “both the obligation of the violating state to make a certain compensation as well as
claims for compensation are based on customary norms, although they may be subject to specific regulation by treaty.\textsuperscript{65}

The four great powers defined the rules of settlement of war reparations after World War II. It is worth noting that, while determining the reparations, they assumed that Germany would not have been able to cover them fully. However, this did not mean a denial of the obligation to pay reparations. It was considered appropriate to enforce them in accordance with the payment capacity of that state, which was in a sense a reference to the Treaty of Versailles. This was done on the basis of the Yalta Agreement and then on the basis of the Potsdam Agreement. In the last agreement it was explicitly stated that the USSR undertook to settle the reparation claims of Poland. On 16 August 1945 in Moscow the Provisional Government of National Unity and the USSR Government signed an agreement on compensation for damage caused by the German occupation. Pursuant to Article 1 of the Agreement the USSR waived, in favour of Poland, all claims to German property and other assets in the entire Polish territory, including the part of German territory, which was incorporated into the Polish state. On the other hand, Article 2 of the Agreement stipulated the share of Poland in the USSR’s reparations at 15%. In addition, from 1946 Poland committed to provide annual coal supplies in the amount of 8 million tonnes in the first year, 13 million tonnes in the next four years and 12 million tonnes in the subsequent years of the occupation of Germany. Importantly, a secret protocol was attached to the agreement, setting the price of coal on preferential terms for the USSR (USD 1.22 per tonne, USD 1.44 per tonne of coke).\textsuperscript{66} Linking the payment of reparations with the obligation to deliver coal at fixed prices to the USSR meant that the reparations were not a free benefit for Poland.

VII. Declaration of the government of the Polish People’s Republic of 23 August 1953

One of the issues raised today in relation to reparations is the nature of the declaration of the government of the Polish People’s Republic (hereinafter: the Polish


People’s Republic) of 23 August 1953 on the decision of the USSR’s government concerning Germany\(^67\). In accordance with its content the government of the Polish People’s Republic decided to waive the payment of compensation to Poland as of 1 January 1954.This declaration was a consequence of an earlier decision of the USSR of 22 August 1953, in which the USSR’s government, after agreement with the government of the Polish People’s Republic concerning the Polish reparations, completely interrupted the collection of reparations from the German Democratic Republic (hereinafter: GDR) as of 1 January 1954, both in the form of goods deliveries and in any other form\(^68\). Even a very brief analysis of the content of both declarations, according to their Polish translation, raises serious doubts. First of all, these concern the use of non-coherent notions of: reparations (declaration of the USSR’s government), compensation (declaration of the government of the Polish People’s Republic); interruption (declaration of the USSR’s government); waiver (declaration of the government of the Polish People’s Republic); GDR (declaration of the USSR’s government), Germany (declaration of the government of the Polish People’s Republic inconsistent with the minutes of the meeting of the Presidium of the Government of the Polish People’s Republic of 19 August 1953, where reference is made to the GDR).

Secondly, the form of the declaration submitted by the government of the Polish People’s Republic is significant as it may be qualified differently under international law, as well as the mode of its publication. Moreover, the resolution of the Presidium of the Government, contained in the minutes of the meeting of the Presidium of the Government of 19 August 1953, differs significantly from the announced declaration of the government\(^69\). This resolution stated that the government of the Polish People’s Republic fully supported the position of the USSR’s government on the waiver of GDR


from the reparation obligations as of 1 January 1954. Therefore, as of this date it waived the part of reparations, which was payable to the Polish People’s Republic under the agreement between the Polish People’s Republic and the USSR. At the same time it ‘gratefully’ welcomed the decision of the USSR government relieving the Polish People’s Republic from its obligations under the 1945 Coal Agreement and additional protocols related to this issue. Moreover, it expressed its readiness to continue exports of fixed amounts of coal to the USSR under the terms of standard trade agreements. It has to be noted that the question of World War I reparations between the Second Polish Republic and Germany was settled through the conclusion of the “liquidation agreement” (Polish-German agreement) of 31 October 1929, which was published in the Journal of Laws of the Republic of Poland.

All these doubts as well as arguments based on the political and economic situation of the GDR and the political situation in the USSR at the time, the renouncement by the USSR government from coal supplies from the Polish People’s Republic on preferential terms which were linked to the German reparations, the derivative character of the declaration of the government of the Polish People’s Republic in relation to the USSR position, on the basis of which only receiving war reparations from the GDR was interrupted, have provided a basis for conclusions on the invalidity of the renouncement of war reparations by the Polish People’s Republic through the declaration of 23 August 1953. Therefore, the Sejm of the Republic of Poland adopted a Resolution on 10 September 2004, in which it obliged the government of the Republic of Poland to take appropriate actions in order to enforce the payment by the government of the FRG of war reparations due to Poland in connection with the loss and damage sustained by the Polish State as a result of planned wartime destruction perpetrated by Germany during World War II.

Today, the approach claiming that the declaration of the government of the Polish People’s Republic of 23 August 1953 is not valid is demonstrated primarily by Jan Sandorski and Mariusz Muszyński. The former considered that the declaration had been invalid ab initio and never had and still does not have any legal effects. He provided a detailed justification of his position, primarily on the basis of the political

70 See W. Jarząbek, *Ekspertyza z dnia 10 czerwca 2005 r. w sprawie wpływu oświadczenia rządu PRL z 23.08.1953 r. na realizację umowy węglowej z ZSRR z 1945 r. Bilans korzyści i strat.*
circumstances of its adoption, and concluded that the declaration of the government was vitiated by a defect in the declaration of intent (compulsion) and consequently there is no need for its withdrawal. As he stated in the conclusion of his analysis, “the issue of war reparations remains open and allows to formulate claims addressed to the German authorities” and that “Poland should take a position in this spirit in case of bilateral negotiations aimed at counteracting the undesirable escalation of tension in mutual relations at a time when both countries are the Member States of the European Union and uniformly declare ex officio that they want to develop their strategic partnership”.

Similar conclusions have been drawn by M. Muszyński, who presented his opinion in several publications on this subject. He pointed to such factors as the low relevance level of the declaration of the government of the Polish People’s Republic, which by far exceeded the scope of standard foreign policy, and thoroughly analysed the premises that should be present in an act of unilateral declaration of will (stricto) under international law in order to make it a legal act forming a source of international law, i.e. establishing autonomous rights and imposing autonomous obligations. However, in his opinion it is doubtful that the declaration of the government of the Polish People’s Republic meets all these premises. Therefore, he considered that “the declaration of the government of 23 August 1953 should be regarded as a defective

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75 It is worth noting that according to the Constitution of the Polish People’s Republic, the authority entitled to ratify international agreements was the Council of the State, which ratified and terminated international agreements (Article 25(1)(7) of the Constitution of the Polish People’s Republic of 22 July 1952, Journal of Laws No. 33, item 232). See P. Daranowski, Pozycja traktatów w porządku prawnym PRL. In: Miejsce traktatów w porządku prawnym PRL, Acta Universitatis Lodziensis, Folia Iuridica 41, Łódź 1989.
declaration made by the State”76. In support of this argument, he referred to the expert opinion of A. Klafkowski of January 1990 which stated that, among others, the declaration of the government of the Polish People’s Republic was addressed only to the GDR and concerned only war reparations, not war compensation77. Moreover, M. Muszyński pointed to the actions of the Federal Republic of Germany in the years 1970–1990 with the objective of confirming that the declaration of the government of the Polish People’s Republic of 23 August 1953 had been effective in relation to this country; he also underlined the importance of the Treaty on the Final Settlement With Respect to Germany of 12 September 1990 (the “Two Plus Four Agreement”)78, which is considered to be an agreement replacing a peace treaty.

It is worth mentioning here that the Sejm Bureau of Research has indicated in its expert opinions that the lack of previous arrangements concerning reparations between the USSR and Poland and the fact that Poland joined the position of the USSR may constitute indirect evidence supporting the hypothesis that the declaration was forced by the USSR79.

A different position on the declaration of the government of the Polish People’s Republic of 23 August 1953 has been presented by Władysław Czapliński, Jerzy Kranzy, Jerzy Menkes, Robert Grzeszczak, Krzysztof Indecki and others80. They

76 M. Muszyński, Ekspertyza dotycząca skuteczności stanowiska rządu PRL z 1953 r. w sprawie zrzeczenia się reparacji – z punktu widzenia prawa międzynarodowego. Sporządzona na zlecenie Komisji Spraw Zagranicznych Sejmu RP, z dnia 6 grudnia 2004 r., p. 12; M. Muszyński, Skuteczność oświadczenia rządu PRL z 23.08.1953 r. w sprawie zrzeczenia się reparacji. Rozważania w świetle prawa międzynarodowego, „Kwartalnik Prawa Publicznego” 2004, No. 3, p. 72.


79 See W. Jarząbek, Ekspertyza z dnia 11 lutego 2005 r. w sprawie oceny oświadczenia rządu PRL z 1953 r. w świetle dokumentów znajdujących się w polskich archiwach (dotyczących okresu 1953 – 1959); J. Wojnowska – Radzińska, Opinia prawną z dnia 21 listopada 2014 r. dotycząca procedury oraz realności starań Rzeczypospolitej Polskiej o odszkodowanie od RFN z tytułu reparacji wojennych za drugą wojnę światową, a także potencjalnej wysokości tego odszkodowania oraz kwestii skuteczności zrzeczenia się tego odszkodowania przez władze PRL, w nawiązaniu do publikacji prasowej pt. „Billiony za wojnę”, p. 6.

generally recognised that this declaration constituted a unilateral act binding the Polish State towards Germany as a whole. In particular, W. Czapliński considered that the declaration of the government of the Polish People’s Republic had been addressed to ‘Germany’, not only to the GDR, and concerned the renouncement of pursuing further reparation redress by the Polish State. In his opinion, this was due to the fact that, according to the Potsdam Agreement and other agreements of the allied countries, the reparation claims for the benefit of Poland were to be satisfied through reparations from the Soviet occupation zone and also due to the fact that the GDR represented the whole of Germany vis-a-vis the states of the Eastern Bloc. Therefore, in his opinion, “the declaration of 1953 is binding for all subsequent governments of the Republic of Poland”, because “it concerned reparation claims against the whole of Germany, even though it was addressed to the GDR government”, as “at that time the GDR was, in the opinion of the Eastern Bloc, the only legitimate German State, in contrast to the FRG”. Moreover, W. Czapliński states that due to the lack of regulations concerning war reparations in the “Two Plus Four Agreement”, it has to be concluded that the parties deemed this issue settled. However, R. Grzeszczak explicitly stated that “if we would like to contest the legal and final nature of the Potsdam Agreements in terms of reparations due to Poland and request their payment by Germany, we have to remember that these agreements include other provisions beneficial for Poland as a third country, namely those concerning territorial gains and the resettlement of the German population”.


VIII. International agreements on war compensation concluded by the Federal Republic of Germany

An analysis of all international agreements on war reparations after World War II would go beyond the scope of this legal opinion. However, before we briefly elaborate on the agreements on war compensation concluded between the Federal Republic of Germany and other states, it is necessary to present some general remarks concerning the post-1945 period, including agreements concluded by the Western states. The above-mentioned agreements, namely the Yalta (Crimean) Agreement and the Potsdam Agreement, were framework agreements, whereas the last of them stated that the USSR will satisfy Polish reparation claims from its own part\(^85\). Thereafter, in 1947 in London the Polish state submitted at the conference of deputy ministers of foreign affairs a Memorandum concerning the peace treaty with Germany. The Memorandum contained a chapter entitled *Compensation and restitutions*, including a list of issues remaining to be settled. Without going too deep into the provisions of the Memorandum, it has to be noted that the then Polish state had indicated therein that Germany would be forced to compensate as much as possible for the losses and suffering caused to the United Nations, and Poland reserved the right to submit specific claims in this respect\(^86\). Moreover, 1947 saw the conclusion of the Paris Peace Treaties with the allies of the Third Reich\(^87\), which included certain provisions concerning compensation and restitutions\(^88\).

On the other hand, in the case of the three Western powers, the issue of German war reparations was regulated separately, following the model of the solutions provided for in the Treaty of Versailles. This issue was first regulated by the Paris Agreement on Reparations concluded on 14 January 1946 in Paris by the three Western powers: the United States of America, the United Kingdom and France, along

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87 Namely: Italy, Romania, Bulgaria, Hungary and Finland.

with other 15 allied countries. It has to be noted that the other parties to the Agreement included: Albania, Czechoslovakia, and Yugoslavia. The treaty specified the relevant national percentage contributions to the Western reparations as well as the rules for including the assets already taken over into these reparations\(^8^9\). The contributions of individual countries is presented in the following table.

### Table 3. The percentage contributions of the Western countries to reparations\(^9^0\)

<table>
<thead>
<tr>
<th>Country</th>
<th>Category A</th>
<th>Category B</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>0.05</td>
<td>0.35</td>
</tr>
<tr>
<td>USA</td>
<td>28.00</td>
<td>11.00</td>
</tr>
<tr>
<td>Australia</td>
<td>0.70</td>
<td>0.95</td>
</tr>
<tr>
<td>Belgium</td>
<td>2.70</td>
<td>4.50</td>
</tr>
<tr>
<td>Canada</td>
<td>3.50</td>
<td>1.50</td>
</tr>
<tr>
<td>Denmark</td>
<td>0.25</td>
<td>0.35</td>
</tr>
<tr>
<td>Egypt</td>
<td>0.05</td>
<td>0.20</td>
</tr>
<tr>
<td>France</td>
<td>16.00</td>
<td>22.80</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>28.00</td>
<td>27.80</td>
</tr>
<tr>
<td>Greece</td>
<td>2.70</td>
<td>4.35</td>
</tr>
<tr>
<td>India</td>
<td>2.00</td>
<td>2.90</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>0.15</td>
<td>0.40</td>
</tr>
<tr>
<td>Norway</td>
<td>1.30</td>
<td>1.90</td>
</tr>
<tr>
<td>New Zealand</td>
<td>0.40</td>
<td>0.60</td>
</tr>
<tr>
<td>Netherlands</td>
<td>3.90</td>
<td>5.60</td>
</tr>
<tr>
<td>Czechoslovakia</td>
<td>3.00</td>
<td>4.30</td>
</tr>
<tr>
<td>Union of South Africa</td>
<td>0.70</td>
<td>0.00</td>
</tr>
<tr>
<td>Yugoslavia</td>
<td>6.60</td>
<td>9.60</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100.00%</strong></td>
<td><strong>100.00%</strong></td>
</tr>
</tbody>
</table>

The next international agreement was Bonn Convention (Treaty of Bonn) of 26 May 1952 on the regulation of war and occupation related issues. It provided adequate further details regarding the Paris Agreement on Reparations. The parties to the Convention were the three Western powers and the Federal Republic of Germany. Chapter VI of the Treaty covered reparations, however, it did not solve the problem but

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suspended the issue of repayment instead. Importantly, the agreement explicitly distinguished between the concept of indemnity (compensation) and the concept of reparations. The former covered the direct victims of Nazi persecution who due to, *inter alia*, political opinions, race and religion lost their lives or were otherwise affected. The third agreement was the Agreement on German External Debts concluded in London on 25 February 1953. It concerned the issue of repayment of German external debts incurred before 8 May 1945. The parties to the agreement were Federal Republic of Germany and 33 Allied Countries. Article 5(2) of the Agreement states that consideration of claims of countries which were at war with or were occupied by Germany shall be deferred until the final settlement of the problem of reparation. The following table shows the parties to the London Agreement.

### Table 4. Parties to the Agreement on German External Debts

<table>
<thead>
<tr>
<th>Country</th>
<th>Date of entry into force of the Agreement</th>
<th>Country</th>
<th>Date of entry into force of the Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Southern Africa</td>
<td>1.01.1954</td>
<td>Cambodia</td>
<td>16.09.1953</td>
</tr>
<tr>
<td>Argentina</td>
<td>30.12.1958</td>
<td>Canada</td>
<td>14.11.1953</td>
</tr>
<tr>
<td>Australia</td>
<td>29.09.1954</td>
<td>Liechtenstein</td>
<td>31.12.1953</td>
</tr>
<tr>
<td>Austria</td>
<td>20.08.1958</td>
<td>Luxembourg</td>
<td>29.06.1954</td>
</tr>
<tr>
<td>Belgium</td>
<td>18.01.1954</td>
<td>Norway</td>
<td>8.10.1958</td>
</tr>
<tr>
<td>Ceylon</td>
<td>10.02.1955</td>
<td>New Zealand</td>
<td>4.10.1955</td>
</tr>
<tr>
<td>Chile</td>
<td>15.10.1953</td>
<td>Pakistan</td>
<td>27.10.1953</td>
</tr>
<tr>
<td>Denmark</td>
<td>13.10.1953</td>
<td>Peru</td>
<td>2.12.1955</td>
</tr>
<tr>
<td>Finland</td>
<td>25.05.1955</td>
<td>Syria</td>
<td>8.07.1960</td>
</tr>
<tr>
<td>France</td>
<td>16.09.1953</td>
<td>Sweden</td>
<td>16.09.1953</td>
</tr>
<tr>
<td>Greece</td>
<td>21.04.1956</td>
<td>Switzerland</td>
<td>31.12.1953</td>
</tr>
</tbody>
</table>


92 K. Kocot, *Problem pojęć: reparacje wojenne, restytucja, odszkodowania itp. w aspekcie umowy poczdamskiej, traktatów pokojowych, umów zawartych przez NRF, wyroków sądowych i doktryny prawa międzynarodowego*, Warsaw 1974, p. 54 et seq.


94 Ibidem, p. 33.

Moreover, in 1959–1964, the Federal Republic of Germany concluded bilateral agreements with 12 European countries regarding individual compensation to be paid the citizens of those countries. The total compensation paid amounted to approximately 1 billion German marks. It is shown in the table below.

Table 5. Agreements between the Federal Republic of Germany and other countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Date of conclusion of the Agreement</th>
<th>Amount of compensation in millions of German marks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Luxembourg</td>
<td>11 July 1959</td>
<td>18</td>
</tr>
<tr>
<td>Norway</td>
<td>7 August 1959</td>
<td>60</td>
</tr>
<tr>
<td>Denmark</td>
<td>24 August 1959</td>
<td>15</td>
</tr>
<tr>
<td>Greece</td>
<td>18 March 1960</td>
<td>115</td>
</tr>
<tr>
<td>Netherlands</td>
<td>8 April 1960</td>
<td>125</td>
</tr>
<tr>
<td>France</td>
<td>15 July 1960</td>
<td>400</td>
</tr>
<tr>
<td>Belgium</td>
<td>28 September 1960</td>
<td>80</td>
</tr>
<tr>
<td>Italy</td>
<td>2 June 1961</td>
<td>40</td>
</tr>
<tr>
<td>Switzerland</td>
<td>29 June 1961</td>
<td>10</td>
</tr>
<tr>
<td>Austria</td>
<td>27 November 1961</td>
<td>101</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>9 June 1964</td>
<td>11</td>
</tr>
<tr>
<td>Sweden</td>
<td>3 August 1964</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>997 million German marks</strong></td>
</tr>
</tbody>
</table>

The countries in consideration can be divided into several groups, namely: countries that were occupied by Germany and which are not signatory countries to the Potsdam Agreement; countries with which peace agreements were concluded (Italy, Austria); the great powers (United States of America, United Kingdom, France) –

signatory countries to the Potsdam Agreement; countries that remained neutral during World War II (Sweden, Switzerland). Importantly, in those agreements the parties refrained from using the term “reparations” and did not refer to the provisions of the Potsdam Agreement either. However, distribution of the (financial) compensation provided for in the agreements between the sufferers was left to the discretion of the governments of the countries which were the parties to the agreements. The above-mentioned bilateral agreements concern war compensation due to racial persecution and according to A. Klafkowski, “German comments regard it as a ‘debt of honour of the German people’” while “the Western countries, by signing those agreements on German compensation to civilians, in their written notes – which are an integral part of the agreements – stated at the same time that the agreements do not cover the claims related to the German war reparations”, thus “it is clear that war reparations and other war compensation to civilians are to be treated separately”.

The Federal Republic of Germany concluded a separate agreement with Israel which de iure and de facto did not exist as a state during the World War II, did not constitute an area occupied by the Third Reich, and did not maintain diplomatic relations with the Federal Republic of Germany, which according to Władysław Czapliński “represents a certain phenomenon in the history of international law”.

The so-called Luxembourg Agreement (the agreement on compensation between the Federal Republic of Germany and Israel) of 10 September 1952 concerned the financial benefits to be paid by the Federal Republic of Germany. Namely, it concerned the payment of 3 billion German marks to the state of Israel as well as 450 million German marks to the Conference on Jewish Material Claims against Germany.

98 More in: K. Kocot, Problem pojęć: reparacje wojenne, restytucja, odszkodowania itp. w aspekcie umowy pocztańskich, traktatów pokojowych, umów zawartych przez NRF, wyroków sądowych i doktryny prawa międzynarodowego, Warsaw 1974, p. 56 et seq.
99 Ibidem, p. 61.
102 W. Czapliński, Odpowiedzialność za naruszenia prawa międzynarodowego w związku z konfliktem zbrojnym, Warsaw 2009, p. 185.
The amount of benefits was divided into instalments to be repaid over 12 years. Moreover, the Federal Republic of Germany amended its national legislation in favour of the victims of Jewish nationality\textsuperscript{104}.

The last issue relates to the national law of the Federal Republic of Germany concerning the payment of compensation to the victims of World War II. More specifically, it relates to the Federal Law of 18 November 1953 (\textit{Bundesentschaedungs gesetz}, hereinafter: BEG) which consisted of a number of legal acts. BEG limited the scope of persons entitled to receive compensation on the grounds of, \textit{inter alia}, place of residence (so-called “residence clause”) and so-called diplomatic clause which set out that on the date of decision to grant the compensation the sufferer should be residing in a country maintaining diplomatic relations with the Federal Republic of Germany. However, none of the clauses applied to applicants of Jewish nationality\textsuperscript{105}. Furthermore, the FRG adopted the Federal Restitution Law of 19 July 1957 (\textit{Bundesrueckerstattungs gesetz}, hereinafter: BRG)\textsuperscript{106}. According to estimations, by 1 July 1972 the Federal Republic of Germany paid a total of 44,192 billion German marks as individual compensation, of which i.a. 32,659 billion under BEG, 3,580 billion under the BRG, 3,450 billion under the Treaty between Israel and the FRG, and 1,000 billion under agreements with other countries\textsuperscript{107}. In the 1980s, it was estimated that the total compensation amount paid to natural persons by 2000, when – for biological reasons – the payment of pensions will be completed, would amount to approximately 85 billion German marks.\textsuperscript{108}

\begin{itemize}
  \item \textsuperscript{107} Data from: S. Cholewiak, \textit{Odszkodowania wojenne europejskich państw Osi po II wojnie światowej}, “Sprawy Międzynarodowe” 1973, book 1, p. 68.
\end{itemize}
IX. Attempts at obtaining compensation during the period of the Polish People's Republic and after 1990

The Polish People's Republic made numerous attempts at regulating the issue of German compensation after World War II\textsuperscript{109}. Such attempts took place, among others, at the twenty-first and the twenty-second session of the United Nations Commission on Human Rights at which the Polish delegate Zbigniew Resich pointed out that: “Polish citizens have not received compensation to this date due to discriminatory legislation of the FRG, and the FRG does not feel obliged to repay this tragic debt to the Polish nation”, “on the contrary, the entire legislation of the FRG is aimed at not fulfilling this obligation”\textsuperscript{110}. In December 1970, the value of Polish claims was estimated at 172.2 billion American dollars, which corresponded to 258.4 billion of pre-war Polish zlotys, of which civil law compensation claims amounted to 89.3 billion American dollars (i.e. 326 billion German marks)\textsuperscript{111}. The note of December 1986 of the Ministry of Foreign Affairs of the Polish People's Republic to the Ministry of Foreign Affairs of the FRG says that “The Government of the Polish People’s Republic points out that in 1946 the number of living Polish citizens who were victims of crimes and terror of the Third Reich was 10,084,585” and that “due to the inevitable passage of time, the current note by the Government of the Polish People’s Republic is one of the last chances for the Government of the Federal Republic of Germany to satisfy the compensation claims for the living victims of the Third Reich persecutions”\textsuperscript{112}.

In practice, the bipolar political division of the world at that time made it impossible to settle the issue of compensation. This aspect of the problem was raised by A. Klafkowski who in 1990, when describing bilateral agreements of the FRG with other countries stated explicitly that “based on this practice, it may be concluded that regulation of the issue of the FRG’s compensation for the benefit of Poland depends


solely on a political decision” and “it is not a legal element and it is not any favour on the part of the aggressor state”\textsuperscript{113}. He also stated that Poland had the right to claim war compensation with the right of priority, similarly to Belgium in the Treaty of Versailles, as the country which was the first victim of German aggression during World War I\textsuperscript{114}.

After normalisation of relations between the Polish People’s Republic and the Federal Republic of Germany in 1970\textsuperscript{115}, pursuant to the agreement of 16 November 1972 on aid for victims of pseudo-medical experiments\textsuperscript{116}, the government of the FRG paid 100 million German marks to the government of the Polish People’s Republic as one-off aid to be distributed by Poland. Therefore, it was not compensation \textit{sensu stricto}. Similar agreements were concluded with: Yugoslavia (for 8 million German marks), Hungary (6.25 million German marks) and Czechoslovakia (7.5 million German marks)\textsuperscript{117}. Furthermore, in 1975 pension agreements were signed between the Polish People’s Republic and the Federal Republic of Germany, which, however, regulated the issues related to insurance succession\textsuperscript{118}. Therefore, in 1978 Ludwik Gelberg stated that “citizens of the Polish People’s Republic who are victims of Nazi terror cannot be treated by the FRG, with regard to compensation, less favourably than the citizens of France, Israel, Norway or other countries” and “Poland has not formally waived its claims in this regard and considers the matter still open”\textsuperscript{119}.

It is worth noting that the Two Plus Four Agreement did not concern war reparations, but only the final settlement of issues related to World War II. The German literature points out that this form of settlement of German issues related to World War II was to allow avoiding an international discussion on reparations from Germany which was the concern of the then Chancellor Helmut Kohl. Thus, it should be recalled that according to Article 35 of the Vienna Convention on the Law of Treaties of 23 May 1969: "An obligation arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third State expressly accepts that obligation in writing".

Therefore, for the Two Plus Four Agreement to result in the loss of the reparations right by the Polish state, the parties to the Treaty would need to state that such an intention indeed existed and Poland would need to expressly accept that obligation in writing. This legal issue was raised in a legal opinion issued by the Sejm Bureau of Research in 2014.

It should also be emphasised that Germany, to a certain extent, did not assume that the Two Plus Four Agreement meant the end of reparations cases as regards World War II. Having signed the Two Plus Four Agreement in 1990, as soon as in 1995 the FRG concluded an agreement with the US, under which it transferred 3 billion German marks for the victims of Nazi persecution. This amount was to be distributed by the US Government; however, the agreement did not cover forced workers. In 2000, the government of the FRG together with German companies using foreign workers during World War II concluded an agreement with the US and Israel, other states and private organisations involved. Under the agreement, a foundation was established, to which 10 billion German marks were transferred for compensation


122 See J. Wojnowska – Radzińska, Opinia prawna z dnia 21 listopada 2014 r. dotycząca procedury oraz realności starań Rzeczypospolitej Polskiej o odszkodowanie od RFN z tytułu reparacji wojennych za drugą wojnę światową, a także potencjalnej wysokości tego odszkodowania oraz kwestii skuteczności zrzeczenia się tego odszkodowania przez władze PRL, w nawiązaniu do publikacji prasowej pt. „Biliony za wojnę”, p. 7.

to victims of forced labour, pseudo-medical experiments and other damage inflicted by German companies during World War II. The agreement resulted from court cases (collective claims) brought before US courts by forced and slave workers against German companies active in the US market, and thus the agreement was aimed at providing the latter with the so-called “legal safety”.

Following the signing of the Two Plus Four Agreement, an agreement of 16 October 1991 was concluded between Poland and Germany, under which the Foundation “Polish-German Reconciliation” was established. 500 million German marks were transferred to the Foundation, and the amount was to be supplemented with possible payments from German companies which had used Polish forced workers. In total, from 1992 till mid 2004 the Foundation paid 731,843,600 zlotys to 1,060,689 persons, which amounted to 689.97 zlotys per person. This means that the payments, just as the aid to victims of pseudo-medical experiments, were not compensation, but merely humanitarian aid to Polish citizens — victims of the Third Reich. Similar foundations have been established under agreements between the FRG and Belarus, Russia and Ukraine. Additionally, the FRG paid 2 million German marks to each Baltic state as compensation to Nazi victims.

The data show that the FRG distributed in total about 600 million German marks to Polish citizens, including payments to victims of pseudo-medical experiments and to the Foundation “Polish–German Reconciliation”. This is not even 1% of the amount

that the German government earmarked after World War II for compensation payments to citizens of Western European countries, the US and Israel\textsuperscript{130}.

**X. Conclusions**

Based on the above analysis of compensation claims for material and human losses, several important conclusions may be drawn. First, it follows from the Potsdam Agreement of 1945 that as regards reparations and war compensation payments, the agreement served as a framework\textsuperscript{131}. Later on, the division of the world into two spheres of influence – between the Western countries led by the US and the USSR with socialist states – was a decisive factor as regards the enforcement of the right to war compensation. Another important factor here is the establishment of two German states – the German Democratic Republic and the Federal Republic of Germany\textsuperscript{132}. However, it should be pointed out that following the conclusion of the Two Plus Four Agreement, in September 1990 the US, the United Kingdom and France signed an agreement with the FRG confirming that the German state is not allowed to raise and support citizens’ claims, as a result of the loss of property related to activities of these states\textsuperscript{133}.

Secondly, until today there has been no clear definition of reparations and war compensation, and thus it is determined by the practice of signing peace treaties which in the past often did not use to deal with this issue at all\textsuperscript{134}. Assuming that war reparations constitute a direct consequence of acts of war as regards both material and personal losses, it needs to be stressed that during World War II the Polish state suffered greater damage due to the German occupation. Indeed, it is worth comparing


\textsuperscript{131} K. Kocot, *Problem pojęć: reparacje wojenne, restytucja, odszkodowania itp. w aspekcie umowy poczdamskiej, traktatów pokojowych, umów zawartych przez NRF, wyroków sądowych i doktryny prawa międzynarodowego*, Warsaw 1974, p. 65.


demographic losses related to direct military operations which represented only around 10% of total losses in population. The remaining losses resulted from the extermination and economic policy of the German occupier. Consequently, such compensation claims, especially individual ones, exceed numerous times war reparations related to the military operations of the Third Reich. A. Klafkowski pointed this out in the above quoted legal expert opinion of January 1990, prepared specifically to pursue compensation claims by Polish war victims\textsuperscript{135}.

Thirdly, another contentious fact is whether the declaration of 23 August 1953 on waiving all reparation claims against Germany was actually issued in line with the then legal order of the Polish People’s Republic. Obviously, the legal effectiveness of this declaration, which is commented upon in legal literature, is also debatable. This is attributable primarily to issues related to: the then political and economic situation in the GDR, the contents of the USSR’s declaration in conjunction with the declaration of the government of the Polish People’s Republic, for the USSR’s government only ceased war reparations, whereas the declaration of the government of the Polish People’s Republic is of a secondary nature in the then political and economic situation of the Polish state, in accordance with the principle of \textit{argumentum a minori ad maius}. Furthermore, under the then applicable Constitution of 22 July 1952, the issues of ratification and termination of international agreements fell within the remit of the Council of the State (Article 25(1)(7) of the Constitution). Therefore, on 18 February 1955 it was the Council of the State, and not the Council of Ministers, that adopted the Resolution on the termination of the state of war between the Polish People’s Republic and Germany\textsuperscript{136}. Article 32(9) of the Constitution of 1952 stated, however, that the Council of Ministers was generally responsible in the field of relations with other countries. Moreover, it needs to be stressed that mutual settlements for damage related to World War I between the Second Polish Republic and the then German state ended with the conclusion on 31 October 1929 of the “liquidation agreement” (Polish-German agreement), which did not happen after World War II.

In the 1950s and 1960s The FRG entered into 12 bilateral international agreements regarding compensation with European countries, including Sweden and Switzerland which remained neutral during World War II. Additionally, the FRG signed

\textsuperscript{135} A. Klafkowski, \textit{Ekspertyza podstaw prawnych roszczeń indywidualnych o odszkodowania wojenne}, Warsaw 2000, p. 28 et seq.
\textsuperscript{136} Monitor Polski No. 17, item 172.
an agreement with Israel (the “Luxembourg Agreement”) which neither existed as a state during the war, nor was an area occupied by the Third Reich. Thus, compensation claims were pursued following the principles specified in international agreements. It needs to be added that such agreements were entered into after 1990, e.g. on account of collective actions of victims that were brought in the United States.

The compensation paid out following international agreements represented over 90% of the amounts handed over to the victims by the FRG. Also internal legal regulations in the FRG included special clauses that made it impossible for the citizens of the Polish state to pursue compensation claims. This fact was pointed out by Krzysztof Ruchniewicz in his monograph issued in 2007 on the Polish efforts to obtain compensation from the Germans. He stated expressis verbis that the FRG “while generally dissociating themselves from Nazism and condemning it, attempted to avoid paying out compensation at a larger scale”, and “the economic factor was of a paramount significance in this regard”\(^{137}\). Furthermore, the motto behind the FRG’s policy was the “political and moral statute of limitations”\(^{138}\). On the other hand, as argued by A. Klafkowski: “International law does not recognise applicability of statutory limitations to war crimes and crimes against humanity. It also states that there is no statute of limitations for compensation for such crimes”\(^{139}\). Obviously, this policy concerned primarily the so-called Eastern European countries, and given the volume of compensation, it was mainly the Polish state that was affected. In the case of the Polish state, the individual compensation paid concerned in general the victims of pseudo-medical experiments and activity of the Foundation “Polish–German Reconciliation”. When compared to the scale of war damage and the costs of German occupation, the compensation paid was merely equivalent to humanitarian aid for the Polish victims of World War II, far from the actual damage suffered.

This issue was commented upon already in 1960 by Manfred Lachs who in a way anticipated the current legal status, stating that “it seems no specific evidence is needed with respect to the facts proving the extreme cruelty of the Nazi occupier inflicted in Poland. The methods applied towards the Polish population were clearly a blatant violation of all laws of war and the rights granted to the population of the


occupied country. As a result of these acts of lawlessness, Poland was totally plundered. All appearances of law were dispensed with, brutal violence was used that was not provided for by the authors of the Hague Conventions while drafting the Regulations concerning the Laws and Customs of War on Land.” Therefore, “in the light of these facts the formalistic considerations should have given way to the substantive considerations and obvious imperatives of equity”, and “this was required by the wording of the Potsdam declaration which called for « compensation – to the greatest extent possible – for the losses and suffering inflicted to the United Nations »” and stated that “the aim was indeed to provide compensation « first of all to those countries that bore the prime burden of war and suffered the greatest damage »”\(^{140}\).

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