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Overview

Greek and Polish demands for reparations from Germany

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1. Introduction

Since the European financial crisis, if not before, **reparation and repayment claims against Germany** have repeatedly been the subject of discussion in **Greece**. In April of this year, the Parliament in Athens decided to assert demands for reparations from Germany, which it put at up to EUR 300 billion. A *note verbale* to this effect officially calling for negotiations on reparations to be opened has now been transmitted to the German Federal Government.

In **Poland**, too, demands of this kind have been voiced once again. The German Federal Government continues to stand by its statement made to the two countries and reaffirmed on multiple occasions that the matter of r**eparations** has already been **definitively resolved** legally and politically.

The Research Services of the German Bundestag have produced multiple expert opinions on issues relating to the **Greek and Polish demands for reparations from Germany** in the past. This overview therefore **does not constitute a new legal assessment** of these matters, but rather serves above all to **clarify terms and definitions of legal bases** and to **systematise legal lines of argumentation.** The "format" selected for this purpose is a **comparison of shared and differing views** on matters relating to demands for reparations in the German-Greek and German-Polish relationship.

2. Bases for and forms of financial restitution

2.1. Voluntary restitution

In the past, the Federal Republic of Germany has made **financial restitution** to **Poland and Greece** for the injustices inflicted by Nazi Germany on the basis of national laws and international treaties: In addition to the Federal Act for the Compensation of the Victims of National Socialist Persecution (***Bundesentschädigungsgesetz*** - BEG), which provides for restitution in the form of monetary compensation for individuals persecuted during the National Socialist era on political, racial, religious or world-view grounds, **foundations** have been established, such as the *Foundation for Remembrance, Responsibility and Future* (*Stiftung Erinnerung, Verantwortung und Zukunft)*, the *Foundation for Polish-German Reconciliation* (*Stiftung Polnisch-Deutsche Aussöhnung)* or the *Foundation for the Management of Restitution for Harm Suffered as a Result of National Socialist Forced Labour* (*Stiftung zur Bewältigung der Wiedergutmachung für die durch NS-Zwangsarbeit erlittenen Schäden).*

In the scope of this, Germany has made payments to both **Polish** and **Greek** victims.

2.2. State and individual reparation claims

A distinction must be made between **individual claims for damages** made by victims of war crimes directly against another state and claims serving to settle **the consequences of war between states** in the sense of a reparations situation.

Individual claims for damages for the consequences of war or war crimes can be asserted against the offending state by a state itself on behalf of its citizens. **Individual claims mediated** in this way are generally also subsumed under the term reparations in international law literature.

In contrast to German jurisprudence, in parts of international law literature, in particular with regard to crimes committed by the German Wehrmacht in Greece, it is asserted that there are legal bases both in German state and official liability law and international law for claims for damages by the Greek victims of German war crimes. **German courts, however, regularly already reject these individual claims for damages or compensation for war damage at the proceedings for a decision (*Erkenntnisverfahren*) stage**. The same legal line of argumentation also applies to **Polish** war victims.

2.3. "Forced loan" and "residual German debt"

Following the occupation of **Greece** by the German Wehrmacht and Italian troops in 1941, the German government initially forced Greece **to assume all the costs of the occupation**. In 1942, this financial burden was limited for economic reasons to a portion of the costs and the amount above and beyond this was invoiced to the German and Italian government to a **special interest-free account**. From 1943, the German Reich made **repayments** in monthly instalments. However, a "Reich debt to Greece" in the amount of 476 million Reichsmarks remained. What is often termed the *residual German debt* is estimated to have a current value of between USD 3.5 billion and USD 75 billion. In their calculations in 2012, the Research Services assume a value of USD 8.25 billion.

Whether this "residual German debt" must be understood as a demand for reparations under international law, as a demand for repayment of a loan in the civil law meaning of the term or as a tort claim is a matter of legal significance, as different legal consequences apply depending on the categorisation. In the political realm and in specialist literature, the majority assumes that these were "forced loans" and therefore a matter of demands for reparations, to which the general considerations apply.

In **Poland** there is **no equivalent** of a "forced loan"; here it is solely the Wehrmacht's war crimes that are cited as the basis for claims.

3. The emergence of interstate claims to reparations

The **time at which interstate claims to reparations arose** is already a matter of dispute under international law. Whilst the German Federal Government holds the view that legally claims *only*

first come into being and at all as a result of **contractual arrangements** (peace treaty etc.), the Polish and Greek Government argue that the **damaging event itself directly gives rise to such claims,** with the result that in their view, reparations claims already arose during the war irrespective of them being identified later by any agreements under international law. An in-depth examination of this matter in the RS expert opinions G1 and G2 concludes that it is reconcilable with international law to assume that at the time of the end of the war the legal existence of reparation claims depended on these being **specified in international treaties**.

3.1. Contractual foundations

As **no peace treaty** was concluded at the end of the Second World War and it was instead the German Wehrmacht's unconditional surrender that ended the military hostilities, to begin with in 1945 no comprehensive contractual provisions were made for Germany's reparation obligations which could have led to the creation of claims.

In the **Paris Agreement on Reparations** of 1946, the Western Allies agreed on the main features of German reparations payments. They did not, however, set any absolute compensation totals, but merely percentages of a fund whose volume remained undefined. Subsequent to the Agreement, **Greece received** compensation in the form of industrial capital equipment amounting to approximately USD 25 million.

The **Potsdam Agreement** of 2 August 1945 granted *inter alia* the USSR the right to meet its claims for reparations for war consequences by removals (dismantling of industry, production removals) from the zone it occupied and a share of 10 per cent of removals from the Western Zones. Any claims by **Poland** were also to be settled out of the USSR's share. As a result, there was a contractual recognition of reparation claims in this Agreement, which were then satisfied via the USSR by these removals.

In the **London Agreement on German External Debts** concluded in 1953, the States Parties, including Greece, agreed to defer the negotiations on reparations issues until "final general settlement of this matter", in other words until the conclusion of a peace treaty, and to initially refrain from making any claims for payment and instead to suspend any potential claims indefinitely – without prejudice to the existence or non-existence of any such claims. The matter of reparations was therefore explicitly identified as one for which provisions would have to be developed and therefore remained undecided.

In the "**Global Compensation Agreement**" (Agreement between the Federal Republic of Germany and the Kingdom of Greece on payments to Greek citizens affected by National Socialist acts of persecution), in 1960 Germany committed to paying DM 115 million to Greece. Here, a deliberate distinction was made between the groups of victims subject to National Socialist persecution and interstate claims due to general war damage. The Agreement was expressly only supposed to be a final settlement of the subject of the Agreement. In express contradiction to the German position and with reference to Article 5 (2) of the London Agreement, Greece reserved the right to approach Germany at a later point in time with further claims arising from individual persecution.

In the "Treaty on the Final Settlement with Respect to Germany" ("**Two Plus Four Treaty**") finally concluded in 1990 between the Federal Republic of Germany, the German Democratic Republic, the United States, the Soviet Union, France and the United Kingdom, reparations payments were not explicitly mentioned.

3.2. Interim findings

A claim to reparations on the part of **Poland** was established in the Potsdam Agreement, met through the USSR and as such **no longer exists**.

Greece received compensation in the form of industrial capital equipment subsequent to the Paris Agreement on Reparations. Further claims were never enshrined in any treaties or agreements, which in the view of the German Federal Government means that further claims for reparations **did not ever actually arise**.

4. Enforceability of any claims

Even under the premise that claims for reparations under international law had arisen directly during the Second World War independently of their establishment in a peace treaty and were attributable to Greece or Poland, the **question arises as to the statute of limitations applying to any such claims**: How does one legally judge the fact that 70 years following the end of the war and almost 30 years after the conclusion of the Two Plus Four Treaty neither of the two countries have asserted demands for reparations in official proceedings under international law?

4.1. Statute of limitations

The German Federal Government argues that any claims – had they in fact arisen at any point in time – would have now **lapsed under the statute of limitations** and as such would **no longer be enforceable**. Statutory limitation is applicable in international law as a general principle of law as per Article 38 (1) lit. c) of the ICJ Statute. The Polish Government on the other hand argues that compensation claims for **war crimes of this kind are not subject to the statute of limitations under international law** – arguing that the same applies furthermore to criminal liability for war crimes and crimes against humanity.

Both fundamentally and with regard to the specific prerequisites and legal consequences, **to this very day** there **continues to be a lack of clear regulations** regarding the time-barring of interstate payment claims under international law. Even if one were to assume that a statute of limitations were fundamentally to apply, it would still be unclear **what prerequisites and which time periods would apply**. Furthermore, with regard to the Greek demand to repay the "forced loan" it is unclear when the time period under the statute of limitations would even be supposed to begin, as this would first of all require the date on which the loan was due to be repaid to be determined as the prerequisite for the start of the limitation period.

The RS expert opinion G4 therefore concludes that "for the limitation period to begin under international law, an extensive substantive law appraisal based on general considerations of fairness would first be necessary" and therefore could "if at all, only take place in the scope of a court or arbitration procedure."

4.2. Renunciation

In the view of the German Federal Government, the **explicit renunciation of any claims**, and/or **tacit consent** thereto on the part of both countries furthermore stands in the way of any claims.

4.2.1. Explicit renunciation by Poland

According to the German Federal Government, any potential Polish claims disappeared with the explicit **unilateral renunciation declared** in 1953 and reaffirmed in 1970. In 1953, the Polish Council of Ministers did indeed declare its renunciation of further German war reparations, as did the USSR, this was reaffirmed again in 1970 by Poland's Deputy Foreign Minister Józef Winiewicz during the negotiations on the Treaty of Warsaw.

The Polish side sees this renunciation as **ineffective** on the other hand. The declaration was made under pressure from the Soviet leadership, it claims, and furthermore violated the 1952 constitution in force at the time, as it was not the Council of Ministers but rather the Council of State that was responsible for the ratification and cancellation of international law treaties. This argument does not stand up under international law, however, as under Article 46 (1) of the Vienna Convention on the Law of Treaties it is generally prohibited to cite internal state mechanisms in the context of the ratification of treaties, especially when rules governing the division of competencies within the state are concerned and the infringement was not obvious. Given that even sections of Polish legal scholarship assume effectiveness, this criticism proves to be insufficiently substantiated at any rate.

The German Federal Government's legal assessment that Poland's renunciation **is also binding for the current Polish government** pursuant to the principle of the sanctity of contracts (*pacta sunt servanda*) is therefore in line with applicable international law.

This means that whether **tacit renunciation** occurred in the scope of the negotiation and conclusion of the Two Plus Four Treaty in 1990 or not is a moot point. Instead, from the perspective of international law it can be assumed that the explicit declaration of renunciation in 1953 frustrates the assertion of demands for reparations and compensation by the current Polish Government.

4.2.2. Tacit renunciation by Greece

In contrast to Poland, Greece **never made an explicit declaration of renunciation**. Consequently, for Greek demands, the debate on forfeiture on the grounds of tacit renunciation is of greater significance.

Whilst the Greek side argues that reparations claims have never been finally settled and therefore the assertion thereof has never been ruled out, the German Federal Government holds the view that the **Two Plus Four Treaty** does indeed **constitute final and comprehensive settlement**,

which not only settled all legal issues relating to the consequences of war, but also implicitly reparation obligations.

At the heart of the discussion is the **legal concept of tacit consent** under international law**.** In its various forms ("*tacit consent*" or "*acquiescence*"), this leads to the forfeiture of a right, thus serving higher objectives of international law such as stability, maintaining peace and creating legal certainty as weighed up against the basic international law principle of state sovereignty. As a specific expression of the principle of good faith, this legal concept is heavily influenced by equity considerations and thus opens up broad assessment latitude.

With regard to possible demands for reparations, Greece and the other States Parties to the **London Agreement** first of all agreed to defer the settlement of the matter of reparations to a later point in time. Subsequent to this, in 1960 the Greek Government already made clear its expectations that provisions still had to be made, with the result that up until the Two Plus Four Treaty at any rate a **moratorium** must be assumed inhibiting forfeiture.

Prior to and following the entry into force of the **Two Plus Four Treaty**, the Greek Prime Minister and the Foreign Minister reaffirmed on multiple occasions that Greece was not making any renunciations in connection with the reunification of Germany and that the issue of reparations remained unresolved. The German Federal Government, on the other hand, holds that the Treaty also has the effect of finally settling any claims from the Second World War, too. As reparations are not even mentioned in the Treaty, this position is viewed critically in parts of international law literature.

Even assuming the position of the German Federal Government is correct, it is questionable from the perspective of international law to what extent these provisions impact **states not party to the Treaty** such as Greece. Under Article 34 of the Vienna Convention on the Law of Treaties (VCLT), an international law treaty cannot lead to duties and rights for third countries, i.e. those which are not party to the treaty, without their consent.

The fact that the parties concluded the Treaty as the "Treaty on the Final Settlement with Respect to Germany" and as such on behalf of the remaining former war adversaries (who did not formally object) does not mean, from the perspective of international law, that the states alone had thereby been authorised to make disadvantageous provisions at the expense of third parties. This applies in particular if these are not explicitly stated, like the reparations in question.

In the **Charter of Paris for a New Europe**, as a State Party, Greece could have made it clear by means of a caveat that it did not view the **reparations issue to be resolved**. The statement that the States Parties "note with great satisfaction the Treaty on the Final Settlement with Respect to Germany" is placed under the heading "Unity", however, and on the basis of this systematic ordering only seems to refer to German reunification – in the entire Charter, just as in the Two Plus Four Treaty, there is no explicit reference to reparations questions either. There are therefore legitimate doubts towards an extensive interpretation to the effect that this thereby also implicitly means renunciation has been declared.

Although even 70 years after the end of the war and almost 30 years after the Two Plus Four Treaty the claims **have not been asserted in a formal procedure**, at least from the perspective of international law it therefore **cannot necessarily be assumed that Greece tacitly or implicitly declared it was waiving reparation claims** with the effect of definitive forfeiture because it has not been resolved under international law at what point in time a situation could be assumed in which an **explicit reaction could have been expected** from Greece.

4.3. Comparison of the situation in Greece and Poland

Whilst Poland's explicitly declared renunciation in 1953 continues to be binding under international law today and stands in the way of the assertion of any claims – should they have actually arisen in the first place – **Greece** never explicitly renounced any potential claims. Forfeiture of any claims as a result of **tacit renunciation** would be conceivable. As this legal concept is fundamentally disputed in international law and is also unclear in terms of its details, however, a legal opinion to this effect does not seem automatic either as a result.

5. Conclusion

5.1. Legal assessment of Greek and Polish claims

Whilst for **Polish reparation claims** even in the expert opinion of the research services of the Polish *Sejm* itself no compelling legal lines of argumentation are recognisable, the situation in relation to **Greek claims** is less clear. The German Federal Government's stance is one that can be defended from the perspective of international law but is by no means imperative.

5.2. Possibility of final clarification by the courts

Legal clarity could be achieved by the **International Court of Justice** (ICJ) in The Hague ruling on a complaint in this vein. Proceedings of this kind could only happen, however, if the German Federal Government were to voluntarily submit itself to the jurisdiction of the ICJ on an *ad hoc* basis, because the matter pre-dates the general declaration of submission issued by Germany in 2008 which expressly only takes effect as of the date of the declaration.

The decision as to whether Greece is entitled to reparation payments does not come under the remit of the **court of arbitration under the London Agreement on German External Debts**, as this does not apply to reparation demands from the Second World War. The question as to what the meaning of the establishment of the state of "until final settlement" is, and whether the Two Plus Four Treaty constitutes a final settlement in this sense, could by contrast by all means become the subject of a contentious or appraisal procedure before the court of arbitration because this concerns the interpretation of Article 5 (2) of the London Debt Agreement.

Before **national courts,** the sovereign equality of states means that Germany's **immunity as a state** stands in the way of the assertion of possible claims under international law.

Regarding the "**forced loan**", under international law Greece could assert claims before German courts if these could be established based on loan agreements and as such had to be **qualified as a civil law dispute** falling within the jurisdiction of ordinary civil courts (see Section 13 of the German Courts Constitution Act).