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**IN FOR A PENNY:  
A LEGAL AND DIPLOMATIC HISTORY OF  
REPARATIONS AND THEIR IMPACT ON  
EUROPEAN (DIS?) INTEGRATION**

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**Abstract:** This article summarizes the legal, historical and political developments in regards to the issue of WWII reparations. It suggests that due to the separation between the historical and legal fields which have examined the issue of WWII reparations, no generally accepted notion about their status exists either in the historical, legal or political spheres. It is this lack of clarity that has greatly contributed to this issue remaining unresolved thus far. This paper's originality lies in its combination of diverse and original sources, both primary and secondary, in addition to referring to the text of the treaties in question to bring the debate on WWII reparations into a single narrative and addressing some of the shortcomings in other studies. It is also original because no previous studies on WWII reparations have addressed the

role their ‘settlement’ played in the early European Integration process. In conclusion, the paper responds to arguments stating that the issue is closed, and questions whether or not the US and USSR did in fact have the right to suspend the rights of their allies to claim reparations from Germany upon re-unification.

**Keywords:** Legal History; European and international law and institutions, Debt; WWI Reparations; WWII Reparations; London Debt Agreement; Max Merten; European Integration History; 1972 Mixed Graeco-German Arbitral Tribunal

## 1.- Introduction

One trillion dollars. This is the estimate put forward in April 2019 by the ruling Law and Justice party in Poland, and is the largest estimate worldwide for outstanding WWII reparations claimed from Germany.<sup>1</sup> In the midst of ongoing economic, refugee and migrant crises, and the rise of right-wing populists, the issue of WWII reparations may seem insignificant. However, to dismiss it as such, would be to ignore the tendency in Europe for sparks to become blazes. The issue of WWII reparations is one which touches on numerous fields

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<sup>1</sup><https://www.reuters.com/article/us-poland-germany-reparations/polish-mp-calls-for-new-push-for-ww2-reparations-from-germany-idUSKCN1RU1V6>. It is a repeat of a similar claim made in 2018, but now Poland and Greece are working together V. Germany on the issue. <https://www.dw.com/en/polands-jaroslaw-kaczynski-renews-call-for-german-wwii-reparations/a-44452776>. IN 2017, the \$1trn war reparations claim Poland’s ruling party riles Germany: By Christian Davie, *New Statesman*, 15-21 September 2017. 9/15/2017, Vol. 146 Issue 5384, p13-14. 2p., See also: “Sept. 08--The German government has rejected claims by Polish officials that it should pay billions of dollars in reparations for World War II. Source: Al Jazeera and news agencies” 2017 Al Jazeera (Doha, Qatar) Visit Al Jazeera (Doha, Qatar) at [www.aljazeera.com](http://www.aljazeera.com) Distributed by Tribune Content Agency, LLC.

of history, from legal, diplomatic, economic and political history, to the history of international relations, institutions, debt, European integration and memory. It is perhaps not surprising therefore, that a complete accounting of this issue has remained elusive thus far, as various studies dealing with it have either omitted important evidence, repeated misconceptions, or based their conclusions on questionable reasoning. Compounding the confusion surrounding this issue, is the current state of European interstate relations.

While re-dividing the Schengen region is being debated in response to the ongoing migrant / refugee crisis, and EU members are pointing fingers, assigning blame, and erecting barriers, references to the Second World War are being raised again.<sup>2</sup> The lack of a definitive answer to the question of WWII Reparations will likely continue to be another source of discord. The price of the early Cold War and European Integration considerations that forced the postponement of settling the issue has now been revealed. There are numerous issues to deal with before the ongoing debate over reparations can be settled, and until that occurs, it will continue to act as a point of discord within the EU. Most recently, despite Chancellor Angela Merkel's statements that the issue of reparations is closed for Germany,<sup>3</sup> German President German President Frank-Walter Steinmeier visited Greece and some of

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<sup>2</sup> Though this paper focusses on Reparations (payments from one state to another), it will also discuss Compensation (payments from states or entities to individuals) and Just Satisfaction (payments ordered by an international court, from a state to individuals). Though each term entails different obligations on the part of the state in question, for the purpose of this article, they are referenced in order to show each term relates to a state or entity's responsibility to make up for a past transgression.

<sup>3</sup> "Germany: Issue of War Reparations to Greece 'Closed' By Philip Chrysopoulos (Oct 11, 2018) <https://greece.greekreporter.com/2018/10/11/germany-issue-of-war-reparations-to-greece-closed/>

the country's WWII monuments.<sup>4</sup> There are also rumors about Poland and Greece jointly placing claims for reparations against Germany.<sup>5</sup> It is an issue that will simply not go away, but not only in Europe.

Almost four years earlier, on 19 July 2015, the president of the Japanese construction company Mitsubishi Materials Corp apologized for using slave labor in its factories during WWII.<sup>6</sup> It was the latest development in an ongoing claim made by former POW's against Japanese companies for their practices during the Second World War.<sup>7</sup> Though the Japanese government had already apologize for allowing the use of forced labor during WWII, Prime Minister's Shinzo Abe's recent actions at re-militarizing Japan have, aside from angering neighboring China, raised again the issue of nations and companies compensating victims for crimes committed during the Second World War, and re-introduced the issue of WWII war crimes and compensation to the headlines.<sup>8</sup>

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<sup>4</sup> "German President Visits Notorious Nazi Concentration Camp in Athens," By Tasos Kokkinidis (Oct 11, 2018), <https://greece.greekreporter.com/2018/10/11/german-president-visits-notorious-nazi-concentration-camp-in-athens/>

<sup>5</sup> Chrysopoulos.

<sup>6</sup> 'Mitsubishi Materials apologizes for using US prisoners of war as slave labor.' available at:

<http://www.theguardian.com/world/2015/jul/20/mitsubishi-materials-apologizes-for-using-us-prisoners-of-war-as-slave-labor>

<sup>7</sup> Garry Pierre-Pierre, 'Ex-P.O.W.'s Sue 5 Big Japanese Companies Over Forced Labor,' (September 15th 1999) NY Times, Available at:

<http://www.nytimes.com/1999/09/15/world/ex-pow-s-sue-5-big-japanese-companies-over-forced-labor.html>

<sup>8</sup> William Underwood, 'Mitsubishi, Historical Revisionism and Japanese Corporate Resistance to Chinese Forced Labor Redress.' *Japan Focus*, (February 8, 2006) Available at: <http://www.japanfocus.org/-William-Underwood/1823/article.html>

Shortly after taking office in January 2015, Greek Prime Minister Alexis Tsipras stated that his government would continue pursuing reparations for damages to Greece caused by the Axis occupation during the Second World War. The announcement was met with strong criticism outside of Greece, with claims that Greece was simply trying to camouflage its current financial situation to cheat its way out of paying its debts. Then German economy minister Sigmar Gabriel said it was “dumb” to link the war debt issue to the current debt talks. His justification, was that the "Two Plus Four Agreement of 1990," signed immediately prior to German reunification between West Germany and East Germany and the former Allied countries of the United States, Great Britain, France, and the USSR, insisted that all matters concerning World War II, including further reparations to Greece, were closed because Germany officially surrendered to the Allies collectively and to no other parties, including Greece, individually. They also argue that the peace treaty did not foresee any additional payments in the future.<sup>9</sup> However, then German president Joachim Gauck, said in May 2015, that Germany should examine its historical responsibility to Greece.<sup>10</sup> In August 2016, Der Spiegel claimed that by September 2016, the Greek government would deliver a 77-page

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<sup>9</sup> 'German economy minister calls Greek war reparations request 'stupid'.' Available at:

<http://www.theguardian.com/world/2015/apr/07/german-economy-minister-sigmar-gabriel-greek-war-reparations-stupid>. The Treaty itself makes no mention of reparations, instead it focuses on a reunited Germany's international obligations in terms of signing treaties, the size and composition of its armed forces and when they could be used, and recognition of the Polish border. Original document "Two-Plus-Four Treaty on Germany" (September 12, 1990) Available at: [http://germanhistorydocs.ghi-dc.org/sub\\_document.cfm?document\\_id=176](http://germanhistorydocs.ghi-dc.org/sub_document.cfm?document_id=176)

<sup>10</sup> '*Gauck regt Wiedergutmachung für Kriegsverbrechen in Griechenland an*.' *Süddeutsche Zeitung* (1 May 2015), Available at: <http://www.sueddeutsche.de/politik/bundespraesident-im-sz-interview-gauck-regt-wiedergutmachung-fuer-kriegsverbrechen-in-griechenland-an-1.2461218>

report to the German government, detailing the list of claims for compensation and reparations, from both WWI and WWII.<sup>11</sup>

Since 2013, a number of scholarly works have attempted to outline this issue. The article “Not Taking Nein for an Answer: An Analysis of Greece’s Call For Payments Of Reparations And War Debts From Germany’ by Dominic Giova, mistakenly states that Greek PM Alexis Tsipras resigned after the July 2015 Referendum.<sup>12</sup> This significant error leads one to question a number of other statements made in his analysis, such as his description of the causes of the ongoing crisis. Perhaps the most glaring error is in stating that the current Greek government just brought up the issue of WWII reparations in light of the ongoing crisis, but evidence shows that since German re-unification, successive Greek governments have attempted to pursue the issue with Germany.<sup>13</sup>

In “GERMAN DEBTS: Entangled Histories of the Greek–German Relationship and Their Varied Effects,” Klaus Neumann is more thorough and dispassionate than Giova in his analysis, but also makes a number of subjective statements, especially in regards to the issue of the Forced Loan.<sup>14</sup> Neumann argues that the disputed amount of 10 billion Euros is significant for Greece but not for Germany ignores

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<sup>11</sup> Giorgos Christides, “Wie Griechenland von Deutschland 269 Milliarden Euro einklagen könnte: Ein neuer Report aus Athen listet Milliardenansprüche aus dem Zweiten Weltkrieg gegen Deutschland auf. Die Autoren empfehlen zunächst den diplomatischen Weg - aber notfalls auch den Gang vor Gericht,” (How Greece could demand 269 billion euros from Germany: A new report from Athens lists billions claims from the Second World War against Germany. The authors first recommends the diplomatic route - but, if necessary, in court) (August 8 2016, Der Spiegel) available at: <http://www.spiegel.de/wirtschaft/soziales/wie-griechenland-von-deutschland-269-milliarden-euro-einklagen-koennte-a-1107034.html>

<sup>12</sup> Giova, 2016, 19

<sup>13</sup> This is shown in detail in the last section of the paper.

<sup>14</sup> Neumann, 2016, 90-92.

the condescension of stating how much it is for one side and not the other.<sup>15</sup> Lastly, Neumann's suggestion that the inability of the Greek and German governments to come to a settlement being due to the Greek's not understanding the German obsession with saving and fiscal responsibility, belies a significant gap in his analysis either by ignorance or design; the way that the Weimar and Nazi governments accumulated debt, and the way in which the US restructured some and eliminated most of it.<sup>16</sup> This paper addresses that gap.

One of the most authoritative legal studies on the issue up to 1953 is from Richard Buxbaum of Berkeley. "From Paris to London: The Legal History of European Reparation Claims" examines this issue in great detail up to 1953, but does not examine the implication of the London Agreement on German External debt, on the current debate between Greece and Germany, nor does he examine the Polish issue. However, his explanation of the domestic US reasons for suspending WWII reparations are supported by the archival evidence from the period.<sup>17</sup> Buxbaum also posits that the reparations / compensation amounts Greece and the 'smaller' allies received from Germany prior to 1947, were so small, that they cannot be considered as having fulfilled the obligations Germany accepted at London.<sup>18</sup>

The purpose of this paper therefore, is to address the issues, gaps, shortcomings listed above by summarize the legal and historical studies relating to the issue of WWII reparations into a single coherent narrative. Next, to outline the progression of the estimation and consideration of Axis reparations arising from the Second World War, and to highlight the role of the 'big allies' in the control and distribution of Reparations that were awarded. Third, how the conferences dealing with reparations, especially the London Agreement on German External Debt in 1953, represented an evolution in political attitudes

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<sup>15</sup> Ibid., 91

<sup>16</sup> Ibid., 92

<sup>17</sup> Buxbaum, 2013, 329.

<sup>18</sup> Ibidem

towards post-WWII reconstruction and European unification. Finally, this article addresses the current debate on Reparations from the Greek, Polish and German positions, and the work by German historian Jürgen Kilian in support of the Federal Republic's position that the issue is closed. This work therefore distills a unified historical and legal timeline of the issue of World War II reparations. Its originality lies in this combination of diverse sources, authors and summaries of events related to reparations, in order to bring them together into a common narrative of the issue. The objective being, that a thorough, chronological and comprehensive examination of the issue of WWII reparations may clarify and correct some of the mistaken assumptions made about their historical and legal status.

To properly understand the progression of the assessment, allocation and suspension of WWII Axis reparations, an overview of the issue of reparations is presented, dealing first with the historical accounts of damages calculations shortly after the end of the Second World War, finishing with an examination of the issue of German/Greek relations in relations to reparations and the potential implications the raising of this issue has for the European Union. The paper will indicate the archival basis for amounts that are discussed today, in addition to the possible amount of their current value as estimated by different sources. The Conferences and treaties relating, or claimed to be relating to, reparations are examined, in order to provide a clear chronology of the facts relating to the current debate.

In 1949, the lack of resolution of the reparations' issue was a contributing factor to the formation of the European Coal and Steel Community (ECSC) in April 1951, the precursor to the European common market, and a key event in the progression of the Post WWII European Integration movement. Attempting to resolve the issue of WWII reparations has proven to be as difficult at the first allied conference formed to deal with it as it is today, with the participants competing to have their objectives met. Constant revisions over who would get what, and how much of it they would get, contributed to a

reparations schedule that once implemented, lasted less time than the conferences established to implement it.

Before the war had ended, the Allies had already begun to discuss seeking reparations from the Axis, and between 1946 and 1953, there were numerous international conferences that dealt with reparations for the damages caused by the Axis during the Second World War: Yalta; 4-11 February 1945, Potsdam, 17 July to 2 August 1945, the Inter-Allied Reparations Agency (IARA) conference, November 1945 to January 1946, the Paris Peace Conference, 29 July to 15 October 1946, and the London Conference on German External Debts, 27 February to 8 August 1953. Additionally, the Council of Foreign Ministers, created at Potsdam, would meet repeatedly throughout the mid to late 1940s (twice in 1945, once in 1946, twice in 1947, once in 1948 and 1949, and multiple times in the 1950s) and also dealt with German reparations, most notably, the first 1947 session in Moscow. However, the estimation and delivery of reparations was also affected by the onset of the Cold War. Redressing wartime damages assumed lower priority for the British and Americans as they perceived a growing threat from the USSR. Additionally, since the 'Big Three' had already managed to claim the lions' share of reparations from Germany, there was less incentive for British and Americans to pursue the issue further.

## **2.- The legacy of WWI reparations, and Interwar debt plans**

The treaty of Versailles stipulated that cash reparations would be paid, but the amounts were so great that the Weimar republic was unable to make the payments. In 1921 the total cost of these reparations was assessed at 132 billion marks (then \$31.4 billion or £6.6 billion, equivalent to US \$442 billion or UK £284 billion in 2017). Two noteworthy international agreements were reached in order to try and find a solution, not only for Germany but for its creditors. Under the Dawes Plan of 1924, Germany's currency had been put back on the gold standard after the Weimar government received loans from the US and

British governments.<sup>19</sup> However, with the ensuing growth, Germany borrowed massively, and so the Young Plan of 1929 made it riskier to lend to Germany<sup>20</sup>, and the ensuing deflation and recession soon became self-defeating, ending in political chaos and German debt default. In 1930s, Hitler repudiated these debts, leaving foreign banks and governments holding them.<sup>21</sup> The allies, fully aware of the realities of German debt up to the end of WWII, and having planned for German reparations during it, postponed the settlement of the issue of outstanding WWI, Interwar and Nazi debt until the Marshallplan eliminated most of it, which by some estimations 300% of 1938 German GDP.<sup>22</sup>

### **3.- The International Conferences on Axis Reparations:**

At the Yalta Conference (4-11 February 1945), the Big Three decided that Germany should be obliged to compensate the Allies for war damage. The highest estimates reached \$320,000,000,000, (5.5 trillion in 2015)<sup>23</sup> but it was recognized that Germany could never pay this total. Instead, the preliminary amount set for reparations at Yalta was around 23 billion USD, to which the USSR would be entitled a fifty percent stake. Additionally, the solution proposed by the Allied Commission on Reparations, established at Yalta, which met in

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<sup>19</sup> Dawes, Rufus C. *The Dawes Plan In The Making*, (Indianapolis: The Bobbs-Merrill Company.1925)

<sup>20</sup> *The International Bank and the Young plan*. (1929). Editorial research reports 1929 (Vol. III). Washington, DC: CQ Press. Retrieved from <http://library.cqpress.com/cqresearcher/cqresrre1929091700>

<sup>21</sup> Ritschl, Albrecht “Reparations, deficits, and debt default: the Great Depression in Germany” In: Crafts, Nicholas and Fearon, Peter, (eds.) *The Great Depression of the 1930s: Lessons for Today*. (Oxford University Press, Oxford, UK, 2013) pp. 110-139.

<sup>22</sup> *Ibidem*

<sup>23</sup> Site used: <http://www.usinflationcalculator.com/>

Moscow in June and July, 1945, was to agree on a plan providing the following<sup>24</sup>:

- Greatest possible compensation in goods would be made to the Allies on the basis of their contributions and losses in bringing about Germany's defeat.

- The German economy would be limited to the capacity required to meet minimum civilian needs.

- Enough German industry would be maintained to supply those needs without additional Allied support.

Next, the Three-Power conference at Potsdam approved the plans set out at Yalta, with the following reservations<sup>25</sup>:

- Reparations were to be obtained only from the various occupation zones,

- No country was to draw from other than its own area.

- The Soviet Union was to receive, in addition to reparations from the eastern zone, 10 per cent of the industrial equipment removed from the western zones, plus an additional 15 per cent that the Soviets would pay for with food, coal, and other products.

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<sup>24</sup> The text of the agreements reached at the Crimea (Yalta) Conference between President Roosevelt, Prime Minister Churchill and Generalissimo Stalin, as released by the State Department, February 1945, Available online at: <http://avalon.law.yale.edu/wwii/yalta.asp>.

<sup>25</sup> The Berlin (Potsdam) Conference, July 17-August 2, 1945, (a) Protocol of the Proceedings, August 1, 1945. Published by the US Department of State, August 1945. Available online at: [http://avalon.law.yale.edu/20th\\_century/decade17.asp](http://avalon.law.yale.edu/20th_century/decade17.asp).

At Potsdam the Big Three also decided to form the Council of foreign Ministers, an organization composed of the Foreign Ministers of the United Kingdom, the Union of Soviet Socialist Republics, China, France, and the United States. It was to meet in London, and its immediate task, was to draft peace treaties with Italy, Romania, Bulgaria, Hungary and Finland. It was also intended to propose settlements for outstanding territorial disputes once the War was over. In relation to reparations specifically, the Council would draft a Peace Treaty with Germany, once it had elected a suitable government. The first meetings took place in 1945, first in London and then in Moscow, and then in 1946 in Paris. In Moscow the Allies agreed to prepare peace treaties with Japan, and the other Axis members, Italy, Bulgaria, Hungary, Finland, Romania, and a key component of the respective treaties would be reparations for war damages.

Next, the Allied Control Council was then tasked with the supervision of the removal and delivery of reparations from Germany to the Allies.<sup>26</sup> The percentage of reparations which each country was to receive was decided at an 18-nation conference on reparations, held in Paris in November and December, 1945. The conference established the Inter-Allied Reparations Agency (IARA) to allocate German reparations payments, which in turn was composed of a representative of each of the treaty's signatories.<sup>27</sup> The preliminary amount set for reparations at Yalta was around 23 billion USD, to which the USSR would be entitled a fifty percent stake. However, at Potsdam, President Truman revised the proposed amount downward, to about 10 billion USD, and decided that German industrial production would be scaled back to 1932 levels.<sup>28</sup> However, the issue of axis reparations was still

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<sup>26</sup> The allied control council was responsible for administering Germany as a whole, and the reparations issue, when seen against that whole, may appear to be an insignificant issue. However, as this paper will show, reparations remained a sensitive subject and an important issue to resolve.

<sup>27</sup> <https://history.state.gov/milestones/1937-1945/potsdam-conf>,

<sup>28</sup> Charles S. Maier, "The World Economy and the Cold War in the middle of the Twentieth Century,"(pp, 44-66) in *The Cambridge History of the Cold*

not settled, and an additional conference was organized at which the composition of axis reparations would be determined.

The purpose of the IARA conference, November 1945 to January 1946, was not to calculate the total reparations owed. That would be done yet again at the upcoming Paris conference. It was to establish the percentages of reparations of a still unspecified reparations pool to which the allies would be entitled.<sup>29</sup> Rather than awarding each country an amount outright, the Inter-Allied Commission on reparations awarded countries a percentage of the total amount that Germany would be required to pay.<sup>30</sup>

The types of reparations owed were divided into two categories. Category B reparations "which shall include industrial and other capital equipment removed from Germany, and merchant ships and inland water transport," and Category A reparations, " which shall include all forms of German reparation except those included in Category B," and "exclusive of the funds to be allocated under Article 8 of Part I of this Agreement."<sup>31</sup> The USSR was guaranteed 25 % of the pool, with the

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War, Vol 1, Origins, Edited by Melvin P. Leffler and Odd Arne Westad (Cambridge: Cambridge University Press, 2010) p.56.

<sup>29</sup> The participants were the governments of Albania, the United States of America, Australia, Belgium, Canada, Denmark, Egypt, France, the United Kingdom of Great Britain and Northern Ireland, Greece, India, Luxembourg, Norway, New Zealand, the Netherlands, Czechoslovakia, the Union of South Africa and Yugoslavia.

<sup>30</sup> "Agreement On Reparation from Germany, On The Establishment Of An Inter-Allied Reparation Agency And On The Restitution Of Monetary Gold." Inter-Allied on Reparations Agency, (Paris, January 14th 1946) pp. 1-3.

<sup>31</sup> *Ibid.*, p. 1. Article 8 part I had to do with "A share of reparation consisting of all the non-monetary gold found by the Allied Armed Forces in Germany and in addition a sum not exceeding 25 million dollars shall be allocated for the rehabilitation and resettlement of non-reparable victims of German action. I.e., non-monetary gold, not exceeding 25 million dollars, to help resettle refugees." pp7-8.

remaining 75% being allocated to the rest.<sup>32</sup> Each Signatory Government was entitled to the percentage share of the total value of Category A and the percentage share of the total value of Category B, set out for that Government in the following, Table of Shares.<sup>33</sup>

Figure 1:

Country	Category A	Category B
Albania	.05	.35
USA	28.00	11.80
Australia	.70	.95
Belgium	2.70	4.50
Canada	3.50	1.50
Denmark	.25	.35
Egypt	.05	.20
France	16.00	22.80
UK	28.00	27.80
Greece	2.70	4.35
India	2.00	2.90
Luxembourg	.15	.40
Norway	1.30	1.90
New Zealand	.40	.60
Netherlands	3.90	5.60
Czechoslovakia	3.00	4.30
South Africa	.70	.10

<sup>32</sup> The protocol is summarized in: "Press Release," United States Department of State, No. 919 (Nov. 24, 1949) see also: Agreement On Reparation from Germany, On The Establishment Of An Inter-Allied Reparation Agency And On The Restitution Of Monetary Gold." Inter-Allied on Reparations Agency, (Paris, January 14th 1946) pp.1-2, for a full breakdown of the percentages awarded to the signatory states.

<sup>33</sup> "Agreement On Reparation from Germany, On The Establishment Of An Inter-Allied Reparation Agency And On The Restitution Of Monetary Gold, p.11.

Yugoslavia	6.60	9.60
Total	100%	100% <sup>34</sup>

However, the way in which the pool would be divided worked in favor of the Great powers, rather than the smaller allied states. It was decided that compensation would be awarded based on each ally's overall contributions to the war effort, and, that contribution, would be compensated more than suffering, death, destruction and resistance efforts.<sup>35</sup> It was therefore the 'big' allies who first of all reduced the amount of reparations that Germany would be required to provide, and it was the same allied who claimed the most and the best of that which was claimed. Therefore, the 'small' allies, which in the case of those from Europe were also those most devastated by Axis occupation, who would find themselves left out in the mid to late 1940s when reparations were being extracted. It is also important to note that Poland was not included at this conference, despite being one of the most heavily devastated countries of the War. It is also important to note that Poland was not listed as a country eligible for reparations.

#### **4.- The Paris Peace Conference: (29 July - 15 October 1946)**

The IARA set the total amount for the reparations' pool at about 10 billion us dollars (about 175 billion USD today), mainly in machinery and manufacturing plants. The general consensus however, is that the amount of reparations awarded to the smaller allies was much less than what had been expected, due to the fact that the 'big' allies wished to preserve for themselves the greatest share of post-war

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<sup>34</sup> Ibidem.

<sup>35</sup>Hagen Fleischer, "Germany owes Greece money for the war – but morality needn't come into it." (the Guardian, February 10th 2015) <http://www.theguardian.com/commentisfree/2015/feb/10/germany-greece-second-world-war-reparations>

reparations. By the time that reparations were suspended in 1949, the Allies had dismantled more than 300 plants, taking parts and industrial equipment valued at approximately \$413,000,000. The US, UK and France received most of this amount, the rest being divided between the smaller allies, more or less in relation to their allocated Category A reparations.<sup>36</sup> Furthermore, at Paris, the other axis members signed separate peace treaties with the allies. The impact of this on Greece was significant, since the Greek government was awarded and received 100 million pre-war USD in reparations from Italy, and 45 million pre-war USD from Bulgaria.<sup>37</sup> Combined, this was more than Greece received from Germany, and may be considered as a contributing factor for Greece's continuing pursuit of reparations from Germany. As Richard Bauxbaum writes, the amounts of reparations received by the 'smaller' allies from Germany were so small, they cannot be considered as representing the fulfillment of Germany obligations in this area.<sup>38</sup>

## **5.- The Allied Occupation of Germany and Post 1946 developments**

Published in 1945, US Secretary of the treasury Henry Morgenthau's book entitled "Germany is our problem" outlined his plan to punish Germany for the outbreak of the Second World war and to prevent it from having the industrial and economic capacity to begin another.<sup>39</sup> Though not fully implemented, the Morgenthau Plan called

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<sup>36</sup> Fleisher states "We might estimate that it was between 25 and 80 million dollars' worth [in 1938 dollars]," - roughly equivalent to the 2.7 percent share Greece was awarded.

<sup>37</sup> (Paris Peace Agreement, 1946).

<sup>38</sup> Buxbaum, Richard M. "From Paris to London: A Legal History of European Reparations Claims: 1946 to 1953." (Berkeley Journal of International Law, Vol. 31, Issue 2, 2013) pp. 8-10 generally about Paris agreement, p. 9 for size of the claims.

<sup>39</sup> Henry Morgenthau, "Germany is our problem," (Harper & brothers; 1st edition 1945)

for the demilitarization, deindustrialization, division and occupation of Germany. Reparations to the Allies, particularly to the Soviet Union, were a key component of the Plan. However, the fact that punishing Germany would be largely decided by the US, also meant that the duration of the period of its punishment would be decided by the US as well, and it is mainly here where the debate over whether or not reparations are still owed arises.

As tensions continued to rise between the USSR and the West in the years immediately following the end of WWII, domestic forces within the US government began to protest the limiting of German economic recovery. Furthermore, by May 1946, US General Lucius Clay, among whose other duties included overseeing the distribution of Reparations, ordered all reparations deliveries from the West to the USSR to cease.<sup>40</sup> The US also sought to gain greater influence over policy decisions in the British Zone, which was becoming more and more expensive to maintain, and therefore was increasingly difficult for the British to justify maintaining the reparations agreements.<sup>41</sup> Furthermore, as per the arrangement of the USSR's 'drawing rights' of goods from the Western zones of occupation, the US and UK found themselves paying for Soviet reparations, as they administered their Zones. The US therefore moved to cancel all reparations indefinitely, and the issue of reparations was suspended, however, not without protests from the 'small' allies.

At the meeting of the Consultative Council of the Western Union in London in January 1949, Belgian Prime minister Paul Henri Spaak made an official request to the British to inquire about specific factories that had been marked to be dismantled in Germany and shipped to

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<sup>40</sup> Aaron Forsberg, *America and the Japanese Miracle: The Cold War Context of Japan's Postwar Economic Revival, 1950-1960* (University of North Carolina Press, 2003) p. 57 and, Howard Jones, *Crucible of Power: A History of U.S. Foreign Relations Since 1897* (Rowman & Littlefield, 2001) p. 233.

<sup>41</sup> Maier, " pp. 56-57.

Belgium.<sup>42</sup> The British informed the Belgians that the United States was ‘not in favour of pursuing dismantlement.’ The British chairman of the Council stated that the UK had attempted to carry out the reparations program, but that the US chairman of the European Economic Recovery Program, Mr. Humphrey, had compiled a list of German factories which had been labeled for dismantling, but would now remain intact. While acknowledging that the United States may not have taken the ‘feeling and situation of the Allies into account,’ the UK minister stated that he could not comment any further, and suggested that the BENELUX and France make a ‘very formal demarche on the subject in Washington.’<sup>43</sup>

French Foreign Minister Robert Schuman replied that France was extremely interested in the issue of reparations, both “in occupying Germany,” and from ‘the simple point of view of reparations’.<sup>44</sup> He further stated that the French had not officially received the Humphrey report, and that communications with the Americans on the issues of reparations were ‘fragmentary’.<sup>45</sup> They had learned unofficially however that the report in question listed 600 factories to be disassembled, 107 of which were now to be exempted. One of the factories listed was the Hamborn Steel factory which had been listed for dismantling. Minister Schuman stated that should it no longer be dismantled the effect would be doubled by denying the Allies concerned of their expected reparations, while also increasing the potential of Germany to produce steel, something which at the time was political anathema in France.<sup>46</sup> The Chairman stressed the need of the Brussels powers to hold a common position on the issue of reparations

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<sup>42</sup> Brussels Treaty Permanent Commission, “Record of the Fourth Meeting of the Consultative Council held in London,” (London, 27-28 January 1949), Metric Document number 217, pp. 9 File: ANLux – BTO 2

<sup>43</sup> Brussels Treaty Permanent Commission, “Record of the Fourth Meeting of the Consultative Council held in London,” (London, 27-28 January 1949), Metric Document number 217, p. 10 File: ANLux BTO-2

<sup>44</sup> *Ibidem*

<sup>45</sup> *Ibidem*

<sup>46</sup> *Ibidem*.

in the face of the Germans, so as not to present the appearance of ‘divergence between the five (Brussels Treaty Members) and the Americans which they, the Germans, could exploit. It was therefore concluded that the UK would adopt a common position on reparations with the remaining ‘Brussels Powers,’ and the French agreed to coordinate the BENELUX to make a common demarche on the issue in Washington.<sup>47</sup>

The debate over these factories highlights an important development in the history of European Integration, since a consistent concern of France was regarding German Coal and steel production, and reconciling that with more general Western European economic recovery. The dilemma faced by Schuman, was how to support the American desire encourage German economic recovery, and the French desire to limit it and to control their steel production. The issue also highlighted a divergence between the Brussels Treaty member and the United States over reparations. Robert Schuman’s solution to this issue proved to be a significant development in the history of the European Integration movement, since he was inspired, for lack of a better word, to propose the formation of the European Coal and Steel Commission , which, while controlling German steel production, also served as a prototype for way in which the European Economic Community (EEC) would operate.<sup>48</sup>

For the United States, Western European economic recovery would now be based on the Marshall Plan, not reparations. Between

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<sup>47</sup> Ididem. Statement in parentheses added.

<sup>48</sup> Treaty establishing the European Coal and Steel Community (ECSC) (18.4.1951) available at:  
<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:xy0022>

1948 and 1952, would invest over 14 billion USD in Western Europe.<sup>49</sup> Therefore, in return for the French accepting German economic recovery, the Americans supported Schuman's proposal to place all German Coals and Steel production under a supra-governmental high authority. However, while the French accepted German economic recovery, General Clay's decision had increased tensions with the USSR, and created the necessity for a more formal structure through which the issue of WWII reparations could be settled.

## **6.- 1947 Moscow Council of Foreign Ministers**

One of the issues addressed at the 1947 Moscow meeting, was how to resolve the imbalance in reparations being drawn from the Western zones by the USSR. At Potsdam the Allies had agreed to Soviet drawing rights from the Western occupation zones. However, by the end of 1946, the British view, expressed explicitly by Foreign Minister Bevin, was that the Soviets had to be kept out of the Ruhr, that reparations could not continue in perpetuity, and that communist influence in Germany had to be prevented.<sup>50</sup> The Americans followed the British line of reasoning, and supported a division of Germany into Eastern and Western spheres of influence. Therefore, the British obstructed proceedings at the Council of Foreign ministers, and waited for the United States government to assume the same position on Germany as they had.<sup>51</sup> Meanwhile, in the West German Zones, the

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<sup>49</sup>Brussels Treaty Permanent Commission, "Record of the Fourth Meeting of the Consultative Council held in London," (London, 27-28 January 1949), Metric Document number 217, p. 57. File: ANLux BTO-2p.

<sup>50</sup> Edmund Spevack, "The Allied Council of Foreign ministers and the German Question," in Detlef Junker, ed., *The United States and Germany in the Era of the Cold War, 1945-1990: A Handbook* (Cambridge University Press, 2004) pp. 46-47.

<sup>51</sup> Anne Deighton, *The Impossible Peace: Britain, The Division of Germany, And The Origin of the Cold War* (Oxford: Oxford University press, 1990) pp. 70-71.

'punishment' owed to Germany outlined in directive JCS 1067, based on the Morgenthau plan, had been replaced by the Allied control council with a plan which instead focused on German economic recovery.<sup>52</sup> The objective of the suspension was to force the soviets to open their zone economically and to increase the integration between them. When this failed, the US moved to the UK position and supported partition.<sup>53</sup> Therefore, not only did the question of German reparations contribute significantly to the division of Germany, but also to the beginning, or at least the formalization of the Cold War. This development did not however settle the issue of German war debt, it simply delayed its consideration.

## **7.- The 1953 London Agreement on German External Debts:**

The London Agreement on German External debts, held from February to August 1953, was a significant event in the development of the European Economic Community (EEC). Belgium, Canada, Denmark, France, Great Britain, Greece, Iran, Ireland, Italy, Liechtenstein, Luxembourg, Norway, Spain, Sweden, Switzerland, South Africa, the United States, Yugoslavia and West Germany participated in the conference, which, as has happened at Paris in 1946, also excluded Poland. This was due not only to Poland being a communist country, but also to the fact that the same year, the USSR had the Polish government disavow the pursuit of any reparations

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<sup>52</sup> Gunther Mai, "the United States and the Allied Control Council," in, Detlef Junker, ed., *The United States and Germany in the Era of the Cold War, 1945-1990: A Handbook* (Cambridge University Press, 2004) pp. 52-53. For a transcript of an interview with US General Lucius Clay, and his recollections of the events in questions, see: "Oral History Interview with Lucius D. Clay New York, New York July 16, 1974," interviewed by, Richard D. McKinzie. (the Truman Library, Independence, Missouri, 1979) Available online at: <https://www.trumanlibrary.org/oralhist/clay1.htm>.

<sup>53</sup> Mai, p. 53.

claims against Germany in the future, a move which plays into the current Polish position on the issue of WWII reparations' claims.

The London Agreement provided a framework through which Germany, at the time viewed as a debtor and a burden on the rest of Europe, nonetheless with huge potential, could re-enter international markets, re-stabilize its currency and economy, and begin the process of re-integration into the Western European community.<sup>54</sup> The United States initiated the conference in order to settle outstanding German debts owing from WWI (to private banks in the US, UK, and France) and to settle future German WWII reparations. The insistence of the United States on settling the issue of outstanding German debts from the First World War and the Interwar period, also allowed the Federal Republic of Germany to join the Brussels Pact and NATO the following year, thus solidifying West Germany's attachment to the West.

Notwithstanding the objectives for settling the question of German debt, under Konrad Adenauer, the CDU dealt with responsibility for the Second World War in a way which contributed to confusing the state or reparations. His government began a series of '*ex gratia*' payments to "Victims of National Socialism," in order to satisfy Western governments and Israel, without admitting responsibility for

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<sup>54</sup> At this time a division arose between the US and UK over the US objective to repudiate the Yalta declaration and the UK's maintenance of it. See: INTERNATIONAL AGREEMENTS (UNITED STATES) HC Deb 16 February 1953 vol. 511 cc871-2, available online at: <http://hansard.millbanksystems.com/commons/1953/feb/16/international-agreements-united-states>. Additionally, concerns were raised in the House of Commons about Alfred Krupp's attempts to recover his industrial possessions, the forfeiture of which (due to his conviction for crimes against humanity during WWII) had recently been overturned by John J. McCloy, the American High Commissioner for Germany. see: GERMANY (HERR KRUPP) HC Deb 16 February 1953 vol 511 cc872-3, available online at: <http://hansard.millbanksystems.com/commons/1953/feb/16/germany-herr-krupp>

them on the part of the new German government. For example, immediately prior to the London Conference, in late 1952, German Chancellor Konrad Adenauer held a secret meeting in London with representatives of the Israeli government, and agreed to a four billion Mark payment for reparations for WWII. This was after the Israelis had rejected a November 1949 German offer of 10 million.<sup>55</sup> The objective of the CDU was essentially to 'de-couple' Germany from Nazism, and to de-couple formal reparations from these financial 'gifts,' marked as attempts at redress and labelled as compensation.

The key parts of the Agreement involved the remaining WWI debt being cut by 50%, only payable while the Federal Republic ran a trade surplus of 3%, and that the *consideration* of any claims for WWII reparations would be postponed until East and West Germany were reunited. Paragraph 2 of Article 5 stated:

Consideration of claims arising out of the second World War by countries which were at war with or were occupied by Germany during that war, and by nationals of such countries, against the Reich and agencies of the Reich, including costs of German occupation, credits acquired during occupation on clearing accounts and claims against the *Reichskreditkassen* shall be deferred until the final settlement of the problem of reparation.<sup>56</sup>

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<sup>55</sup> Pross, Christian, "Paying for the Past: The Struggle over Reparations for Surviving Victims of the Nazi Terror." (Johns Hopkins University Press; First Edition (June 25, 1998) pp. 22-31. Timothy W. Guinnane assigns responsibility for the first offer of compensation to the Israeli government to West German finance minister Herman Abs, who had served in the Wartime Nazi government. see: Timothy W. Guinnane, "Financial Vergangenheitsbewältigung: The 1953 London Debt Agreement," (Economic Growth Centre: Yale University, January 2004) pp 32-33. Available on SSRN: <http://ssrn.com/abstract=493802>

<sup>56</sup> London Agreement on German External Debt: Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/269824/German\\_Ext\\_Debts\\_Pt\\_1.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/269824/German_Ext_Debts_Pt_1.pdf)

However, annex VIII of the London Agreement entitled the "Agreed Interpretation Concerning Paragraph (2) Of Article 5 Of The Agreement On German External Debts,' states '

Nothing in paragraph (2) of Article 5 of the Agreement on German External Debts shall be construed as affecting any rights under existing legislation in the Federal Republic of Germany, or which are provided for in any agreement which has been signed, prior to the signature of the Agreement on German External Debts, between the Federal Republic of Germany and any of the other Parties to the last mentioned Agreement.' (Text of the London Debt Agreement)<sup>57</sup>

With these conditions entrenched in the wording of the Agreement, it was signed and the issue of WWII reparations more or less remained closed. Here we come to an interesting point with the phrase 'consideration of reparations' claims.

Though the IARA conference (Nov '45 to Jan '46) and the Paris Peace Conference (July to October '46) established the percentages and amounts of reparations the former Axis countries would have to pay, by 1953, the language relating to reparations had changed to 'considering future claims'.<sup>58</sup> The signatories of the London Agreement would no longer guarantee the amounts and percentages previously established, and by signing the London Agreement, the signatories agreed to a change in the procedure for claiming reparations. However, the door was left open for the issue to be pursued in the future. The language indicated a fundamental change in how the wartime allies, particularly the US and UK, saw the future of reparations, and West Germany, due to the favorable terms established for its debt repayment, accepted.

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<sup>57</sup> Ibidem

<sup>58</sup> London Agreement on German External Debt, Part 1, up to page 143 Available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/269824/German\\_Ext\\_Debts\\_Pt\\_1.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/269824/German_Ext_Debts_Pt_1.pdf)

However, there are remaining questions in regards to the London Agreement. If the signatories of the London Agreement did not surrender their rights to claim reparations, did they surrender their rights to claim the amounts and composition of reparations they were awarded immediately after the Second World War? How would their claims be considered at reunification? The issue of WWII reparations remained closed until it was raised again in the late 1950s, with an event known as the Merten's Affair.

## **8.- The Merten's Affair and the resurgence of the issue of WWII Reparations**

Maximailan Merten was the *Wehrmacht* administrator of Thessaloniki during the German occupation of Greece, and under his direction, the Greek Jewish population of Thessaloniki was decimated by 90%. He profited personally from their extermination, by charging the Jewish community ransoms for the return of Jews that had been conscripted for forced labor, only to turn around, send them to Auschwitz, making them pay for their train tickets, and keeping most of the money collected. After the war, he was apprehended by the United States army, and, according to the Potsdam agreement, suspected war criminals were to be turned over to the authorities of the countries in which they had committed their crimes. However, the Greek military envoy in Berlin, General Andreas Ypsalantis, and who would later become the Greek ambassador to Bonn, had the Americans to release Merten, telling them that Merten had actually done much to mitigate the suffering of Greek citizens during the occupation.<sup>59</sup>

Escaping justice at the time, Merten remained in Germany and established himself as a businessman, making extensive contacts within

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<sup>59</sup> Susanne-Sophia Spiliotis, "An affair of Politics, Not Justice": The Merten trial (-1959) and Greek-German Relations, in, Mark Mazower, *After the War Was Over: Reconstructing The Family, Nation, And State In Greece, 1943-1960* (Princeton: Princeton University Press, 2000) p.294.

the CDU. In 1958/1957, a wartime colleague of Merten was on trial for war crimes in Greece, and called Merten as a witness. After having verified with the German embassy in Athens that the Greek authorities were not after him, Merten came to Greece, and arrived in court to testify. One of the presiding judges recognized Merten, and, after passing his shock, excused himself from the courtroom, went to the office of the general prosecutor, and had an arrest warrant drawn up for Merten. He then gave the warrant to the military police, who arrested Merten on the spot.<sup>60</sup>

The arrest of Merten enraged the West German government, who stated publicly that the arrest was a matter of 'politics, not justice,' and Adenauer contacted Greek PM Karamanlis, threatening that the conviction of Merten would seriously damage Greco-German economic relations. Karamanlis reassured Adenauer that regardless of the verdict, he would pardon Merten and return him to Germany, which is exactly what occurred two years later. When Merten returned to Germany, the two years he spent in custody were credited to his pension.<sup>61</sup>

Though the Merten's Affair caused a row in Greco-German relations, it also reignited the issue of WWII reparations internationally, and the USSR and East Germany used the event to their advantage. In May 1959, stating that it accepted responsibility for crimes committed in Greece during the occupation, East Germany offered reparations to Greece, focusing mainly on victims of Wehrmacht reprisals. However, if Greece accepted the offer, it would have also entailed de facto recognition of East-Germany, and the Federal Republic of Germany had threatened to cut off diplomatic relations with any state that did so.<sup>62</sup> Therefore, Greece refused the East German offer, and a year later,

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<sup>60</sup> Spiliotis, pp. 293-302.

<sup>61</sup> *Ibidem*, and James Angelos, *The Full Catastrophe: Travels Among the New Greek Ruins* (New York: Crown, 2015), 111-2.

<sup>62</sup> This event was brought to the forefront by the trial of the WWII SS administrator of Thessaloniki, who had been responsible for the deportation of

it and West Germany finalized a 'compensation' treaty (FRG law 4178/14 August 1961) and the last payment made under the treaty was labeled as a 'voluntary payment' of 115 million DM in 1960.<sup>63</sup> To label the payment as reparations would have placed the CDU in a difficult position, since they had signed the London Agreement, which postponed the consideration of reparations' claims until the reunification of East and West Germany.<sup>64</sup>

However, this point of view is countered by Andrea Gattini, who represented Germany in its case against Italy over the claims for reparations by victims of the Dystomo massacre in Greece during WWII.<sup>65</sup> Gattini argues that the 'ex gratia' payments were in fact planned by the British and Americans, and are explained by Annex VIII of the London Agreement, as part of the federal republic's promise to

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91% of the city's Jewish population to Concentration Camps. See: Spiliotis, pp. 293-302.

<sup>63</sup> This payment was made under rising international pressure towards the ends of the 1950s, but was worded carefully in order to not trigger claims that reparations were still due, hence the use of the term 'voluntary.'

<sup>64</sup> British Archives FO 371/153018, C683818, RG 1661/2, "Greece: the Merten Case", 21 October

1960. (see MA dissertation. Pp. 41-42) CIAFOIAERR, "Max Merten," accessed 3 December 2015, [http://www.foia.cia.gov/sites/default/files/document\\_conversions/1705143/MERTEN\\_MAX\\_0041.pdf](http://www.foia.cia.gov/sites/default/files/document_conversions/1705143/MERTEN_MAX_0041.pdf). Following standard CIA

<sup>65</sup> <http://www.mpi.lu/the-institute/external-scientific-fellows/professor-andrea-gattini/>. Ironically, pursuing temporary resolution to the issue of WWII reparations, provided momentum to the European Integration Movement (London Agreement 1953), but the Dystomo case, triggered by a lack of definitive resolution to the issue of WWII reparations, may contribute to dis-integration. Also, highlighting an effect of the European Integration Movement allowing citizens of one member state to pursue just satisfaction in another member state's courts, may contribute to EU dis-integration.

'make good' on the crimes committed by Nazi Germany.<sup>66</sup> Gattini also argues against a lingering right for Greece (and by implication other potential claimants) to claim reparations, that since Greece had an opportunity, prior to signing the London Agreement, and again prior to ratifying the 2+4 treaty at the OCSE conference on 21 November 1990, to voice its opinion if it felt that its interests in claiming WWII reparations were being overlooked. He argues that by doing so in 1990, it in effect forfeited its right to do so in the future.<sup>67</sup> Gattini also argues that the Western Powers had the right under the general principles of international law to 'dispose of the issue or reparations'.<sup>68</sup>

However, the London Conference of 1953 was not called *only* to settle Germany's outstanding WWI debt, though that was the key objective of the agreement, but also to deal with WWII debts. It proposed doing so by postponing the consideration of reparations until Reunification could take place. Therefore, it is not clear from the text of the Agreement or the Annex cited, that such rights were surrendered, nor is it clear from the text of the 2+4 treaty that the legality of the Western Powers' legal right as of 1990 to 'dispose of the issue of reparations,' was clearly established.

## **9.- Recent analyses and developments**

Hagen Fleischer points out how the Adenauer government was pressured into accepting responsibility for the crimes committed by Nazi Germany, leading thereby to the 'domestic measures' that the Federal Republic was to undertake to "make good" 'on the damages

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<sup>66</sup> Andrea Gattini, "To What Extent Are State Immunity and Non-Justicability Major Hurdles to Individuals' Claims For War Damages?" (Oxford University Press, 2003) Notes 34 to 35.

<sup>67</sup> Ibid., Notes 37 - 43. Regarding the interpretation of: Article 5 paragraph 2, and Annex VIII of the London Agreement and Citing Annex VIII, of the text of the London Agreement.

<sup>68</sup>Ibid., Notes 42-43.

suffered by individuals as a result of Nazi persecution.<sup>69</sup> Ironically, in the 1950s and 60s, when the German government alleges that the Greek government settled the issue of WWII reparations with Germany, the Karamanlis administration, dogged by allegations that many of its officials had collaborated with the Nazis during the occupation, was not anxious to further pursue the issue of WWII reparations at the time. The Greek government therefore freed Max Merten, and accepted the 115 million DM payment in 1961.<sup>70</sup>

From the 115 million mark payment in 1961 until German reunification in 1990, the most significant development in terms of the Greek-German dispute over WWI and WWII reparations. The London Agreement had stipulated that any debts not covered by the 1953 agreement, had to be solved through negotiation, and that an arbitral tribunal should be called in order to solve any disputes that could arise. In 1972, an arbitral tribunal ruling was delivered in order to deal with the sinking of Greek merchant ships and the destruction of other property belonging to Greek nationals, by the German armed forces prior to the entry of Greece into WWI.<sup>71</sup> The tribunal ruled also that because the destruction of property occurred in violation of Greece's neutrality, it was not considered with the rest of WWI reparations covered under article 19 of the London Agreement, and could only be settled by negotiations (as defined on page 453) between the two states. The Mixed Graeco-German Arbitral Tribunal, set up under Article 304 in Part X of the Treaty of Versailles, ruled that the German government: 'is under an obligation to enter into negotiations (defined as both sides entering into a discussion with the objective of agreeing upon the terms of a settlement)<sup>72</sup> ...in the course of which, the parties are obliged to make every reasonable effort, within a reasonable time, to reach an

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<sup>69</sup> Hagen Fleisher, "Germany owes Greece money for the war," and; Gattini, Notes 34 to 37.

<sup>70</sup> Spiliotis, pp. 292-303, and; Gattini, Note 37.

<sup>71</sup> 1972 Arbitral tribunal, p. 418

<sup>72</sup> 1972 Arbitral tribunal, p. 459

agreement with respect to the settlement of the claims in dispute.<sup>73</sup> Dr. Herman Abs, who had headed the German Delegation and was the West German finance minister responsible for the initial low offer of reparations to Israel in 1949, was named by the Respondent as a witness to support its account of the course of negotiations at the London Debt Conference. He was called and testified that it was not the task of the Conference to settle debts but rather to ascertain their volume and, if possible, to bring the creditors and debtors to terms.<sup>74</sup> However, throughout the period, the position of the federal republic is that only a reunited Germany can examine the issue of WWII reparations. Therefore, many of the countries which had been most devastated by the prolonged presence of German troops during WWII, especially Greece, prepared for and anxiously awaited German re-unification.

## **10.- The 2+4 Treaty and The Future of Reparations**

With this exception, from then on Germany denied any further claims for reparations / compensation to Greece on the grounds that only a reunified Germany could address the issue. In May 1990 the German foreign minister, Hans-Dietrich Genscher, supplied German embassies potentially affected by claims for WWII reparations (including the one in Athens) with secret memorandums containing instructions on how calls for reparations could be dealt with.<sup>75</sup> These memoranda were sent in preparation for the impending reunification of East and West Germany. The 2+4 Treaty was signed between East and West Germany, the United States, the United Kingdom, France and the USSR. It recognized the re-unification of Germany, allowed the reunified state to enter into treaties, and established its borders and the composition and size of its armed forces. Since signing the 2+4 Treaty, the German government has argued that this treaty represents the

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<sup>73</sup> 1972 Arbitral tribunal, p. 462

<sup>74</sup> 1972 Arbitral tribunal, Cited in: Lauterpacht, QC, Editor, International Law Reports, Volume 47 (London, Buttersworth, 1974) (para., 44).

<sup>75</sup> Fleischer, 2013.

settling of all outstanding issues from WWII, including reparations. They cite as further support of their position that at the Organisation for Economic Co-operation and Development (OECD) conference in Paris in October 1990, where all of the members' heads of state, including Greece, unanimously approved the treaty. However, since neither the 2+4 treaty, nor the approval of the OECD the following month, mention reparations, this could be interpreted as a weak position for Germany to hold. The fact that the 2+4 Treaty was unanimously approved, could be also be interpreted in the light of the 1953 London Agreement of German External debt, where the *consideration of reparations' claims*, was deferred until German reunification. Throughout the 1990s and 2000s, Germany continued to deny claims for WWII reparations, citing among other things, the lapse of time, and the fact that Greece had received support through the EU and NATO, to whom Germany was the largest contributor.<sup>76</sup> However, the most consistent position of the Federal republic since 1990, was that had countries such as Greece desired to pursue WWII reparations claims, the signing of the treaty was their chance to do so. Having forgone that opportunity, the chance had now passed.<sup>77</sup> However, the item which has continued to defy classification as war damage, and therefore being subject to whatever reparations' agreement is cited, is the loan extracted from the National Bank of Greece by the *Wehrmacht* in 1941. The issue of the 'Forced Loan' may provide some leeway for reigniting discussion between the Greek and German governments in regards to the more general issue of WWII reparations, and contribute to finding a resolution satisfactory to all interested parties. Therefore, it is necessary to return to the beginning of the Axis occupation of Greece, in order to illustrate the progression of the issue between the two states, until the present.

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<sup>76</sup> Fleisher, "Germany owes Greece money for the war."

-Fleischer points out that the German argument relating to time lapse, is contradicted by a German-allied court of arbitration decision of 1974, where Germany was ordered to pay 47 million Marks' compensation for first world war damages ... 60 years after the start of the war.

<sup>77</sup> Fleischer, 2013 and 2015, Sigmar Gabriel, DW, 2015

## **11.- The Axis Occupation of Greece: A short case study for the resolution of the Issue of WWII Reparations**

Almost a year after the fall of France, the only Allied country left fighting in Europe was Greece, but its status as such came to an end on June 1st 1941, when the German army captured the last free part of the country, the island of Crete. The prolonged struggle against the Axis and their status and Britain's lone remaining ally, were facts not lost on the Greek people who were overwhelmingly supportive of the war effort, and believed that it would be remembered after the War, whenever that may be.<sup>78</sup>

The country was divided into occupation zones between the Italians, Bulgarians and Germans, which very quickly proceeded to strip the country of whatever resources remained to it. The groups that formed to resist to occupying forces, among the most numerous and well-armed in Europe, were divided ideologically, setting the stage for the so called "three rounds" of the Greek Civil War, that would take place during and after the Axis Occupation. The destruction caused by the occupation is widely acknowledged as having acted as a multiplier for the violence that would follow it, due to the complete economic and social chaos left in its wake.<sup>79</sup>

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<sup>78</sup> Mark Mazower, *After the War Was Over: Reconstructing The Family, Nation, And State In Greece, 1943-1960.*

<sup>79</sup> Paravantes, Spero Simeon Z. *Britain the US and Greece after WWII: Anglo-American Relations and the Cold War* (London: IB Tauris, 2018) Chapters 2 and 3. By the time the Axis withdrew from Greece in October 1944, the three Axis powers had raided 1,339 towns, boroughs and villages, of which 879, or two-thirds, were completely wiped out, leaving more than a million people homeless. Between 550,000 and 800,000 people were dead, which was 8-10 percent of the population, including at least 81% (around 60,000) of Greece's total pre-war Jewish population, with the percentage ranging from 91% in Thessaloniki's to 50% in Athens. In the Bulgarian zone, death rates surpassed

Not only was Greece economic recovery severely delayed by the Occupation and Civil War, but so too was its social and political stabilization. As far as Greek political development was concerned, the occupation set Greece back a decade or more. Describing the Greek governments during the occupation, Mark Mazower said that 'in effect, Greece ceased to exist as a political entity.'<sup>80</sup> The rapid succession of government after government following the occupation prevented the development of political stability. This in turn virtually guaranteed that there would be great difficulties in developing and implementing policies which could deal with the ongoing economic, social, and political crises. Mirroring the political crises of the present, the crises of the mid to late 1940s, continued to splinter the political spectrum, preventing unity of policy and action.

At the Paris Peace conference, the pre-war US dollar value associated with the level of destruction and loss, was set at 7 billion dollars though it is important to point out that this number was not used as the amount of reparations that were owed to Greece, but rather as a starting point from which Greece's percentage of the reparations pool

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90%. In terms of material damage, 34% of national wealth (gold, cash and resource reserves) were lost, 401,500 homes were destroyed, all of the large infrastructure (Railways, ports, bridges, airports, telephone lines, steam engines) were destroyed, 73 % of Greece's merchant fleet and 94% of its passenger ships had been sunk, 56% of the national roads and in terms of vehicles, 65% of cars, 60 % of trucks and 80% of busses were lost. Agriculturally, 60% of large animals (cattle and horses) and 80% of small livestock had died, 24% of the forests were burned. Cereal production was decreased by 40%, tobacco (the main export crop at the time) was down by 90% and fruit production by 66%. Industrially, by the end of 1945, Greece was below 1930 levels of production. For more detail of the destruction caused by the German Occupation of Greece see: Tsoucalas, Constantine, *The Greek Tragedy*, (London, Penguin Books, 1966) pp. 91-92.

<sup>80</sup> Mark Mazower, "Introduction," in Mark Mazower, ed. *After the War Was Over: Reconstructing The Family, Nation, And State in Greece, 1943-1960*. (Princeton: Princeton University Press, 2000), p.4.

that would be due to all Allies would be determined later.<sup>81</sup> However, in order to understand the reasons for this issue to have remained so long a part of Greek politics and culture, it is also important to keep in mind the lingering cultural memory of the occupation among Greeks individually and collectively. In light of the crippling economic conditions and resulting social misery caused by the occupation, and the fact that Greece had joined the allies very early in the war, led the government and people to believe post-occupation, rightly or wrongly, that they would be receive just consideration.

The Inter-Allied Reparations Agency (IARA) set the total amount for the reparations' pool at about 10 billion us dollars (about 175 billion USD today), mainly in machinery and manufacturing plants. By the formula outlined in the treaty, Greece should have received approximately 1.02 billion USD (17.5 billion today). Additionally, at Paris it was agreed that Greece should receive 105,000,000 USD from Italy and 45,000,000 USD from Bulgaria as reparations for damages arising in their zones of occupation. Additionally, Italy had to cede the Dodecanese Islands to Greece. However, shortly after the handover, the US also began pressuring the Greek government to drop further reparations' claims against Italy, in light of the growing communist influence leading up to the Italian elections of 1947, and shortly before they were held, the US cancelled all remaining Italian reparations to

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<sup>81</sup> Hagen Fleischer, "Germany turns a deaf ear to claims" (10 February, 2015) Tagesschau, Transcript of

German language interview at:

<http://www.tagesschau.de/ausland/nsbesatzung-griechenland-101.html>.

English translation at:

<http://analyzegreece.gr/topics/time-of-crisis/item/153-hagen-fleischer-germany-turns-a-deaf-ear-to-claims>.

see also: Hagen Fleisher, "Germany owes Greece money for the war – but morality needn't come into it" the guardian (10 February 2015), available online at: <http://www.theguardian.com/commentisfree/2015/feb/10/germany-greece-second-world-war-reparations>

Greece, due to the perceived threat they posed in the upcoming elections (Lovett to US Embassy in Greece (411) April 3rd 1948).<sup>82</sup>

In the years immediately following the IARA Conference, Greece received compensations from the Inter-Allied Reparations Agency (IARA) with goods according to varying claims, amounting to between 25 and 80 million US dollars (423 million to 1.5 billion in 2017), far short of the estimated 7 billion (122 billion in 2017) estimates of the damage, and far less than they were originally offered by the IARA. The general consensus however, is that the amount of reparations awarded to Greece was much smaller than what had been expected.<sup>83</sup> Not only does this partially explain the lingering belief that Reparations are still owed, but it also highlights the absence in the debate so far, of the instrument which may contribute to the settlement of the Issue of WWII reparations, at least from a Greco-German standpoint, once and for all.

## **12.- The Forced Loan:**

Shortly after the occupation of Greece began, the German army took out a zero-percent loan from the National Bank of Greece in order

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<sup>82</sup> Lovett to US Embassy in Greece (411) April 3<sup>rd</sup> 1948, FRUS 1948, Vol. IV, Eastern Europe and the Soviet Union (Multilateral Relations, pp. 1-732) p. 69. cited in: *The Politics of Fear: Anglo-American Policy in Greece (1946-50) and the Origins of the Cold War*, (2016) p. 127.

<sup>83</sup> The protocol is summarized in: "Press Release," United States Department of State, No. 919 (Nov. 24, 1949) see also: *Agreement On Reparation from Germany, On The Establishment Of An Inter-Allied Reparation Agency And On The Restitution Of Monetary Gold.*" Inter-Allied on Reparations Agency, (Paris, January 14th 1946) pp.1-2, for a full breakdown of the percentages awarded to the signatory states.

to provide the German army with interest-free funds for the maintenance of German occupying forces in Greece.<sup>84</sup> Under the terms of the loan, the Collaborationist Greek Government agreed to pay the Germans and Italians 1.5bn drachmas per month, which was raised to 8 billion drachma nine months later, and the loan was supposed to be repaid later at zero percent interest.<sup>85</sup> The loan bankrupted Greece, but, just before the German army withdrew, the Nazi forces began to repay the loan. The documents discovered by professor Hagen Fleischer in both the German and National bank of Greece archives agree on the amount remaining on the loan as being approximately 476 million Reichmarks (Fleischer, 2013).<sup>86</sup> Fleischer also argues that the loan is a separate issue from reparations, since the repayments that were started, indicate that the funds were acknowledged as loans, as opposed to goods considered to be 'war damages' such as industrial, food and medical products, of which no attempt was made by the occupiers to return such goods to Greece prior to their withdrawal.<sup>87</sup>

However, perhaps the greatest support for the repayment of the forced loan is that it is regarded as separate from war damages, and therefore separate from reparations (Fleischer, 2015, Neumann, 2016, 90-92).<sup>88</sup> If it holds, as Andrea Gattini argues, that the Western Powers had the right under the general principles of international law to 'dispose

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<sup>84</sup> In 1942, the Greek Central Bank was forced by the occupying Nazi regime to loan 476 million Reichsmarks at 0% interest to Nazi Germany. Greece had to pay the cost of the occupation and the central bank had to make an interest free loan to Nazi Germany to cover the costs of the stolen goods in the national statistics. This loan totaled some 500 million Reichsmarks by the end of the war. Germany paid 115 million mark in 1960 that the Greek government saw as a down payment and the Germans as a settlement.

<sup>85</sup> Hagen Fleischer, "Claims for wartime compensation justified."

<sup>86</sup> Hagen Fleischer, "Germany turns a deaf ear to claims."

<sup>87</sup> See also Christodolakis, Nicos, Germany's War Debt to Greece: A Burden Unsettled (Palgrave Macmillan, April 2014. Christodolakis also supports this view, and argues that Greece has a legitimate claim to pursue repayment of the Forced Loan.

<sup>88</sup> Hagen Fleischer, "Claims for wartime compensation justified"

of the issue or reparations,' then the case to pursue the repayment of the forced loan is strengthened, since it was clearly not considered during the Paris peace conference.<sup>89</sup> Fleischer argues that:

From the second occupation year on, the occupiers demanded from the National Bank of Greece – over and above the regular occupation costs ‘authorized’ by The Hague Convention respecting the Laws and Customs of War on Land – additional amounts for their war operations in the Mediterranean area. From March 1942 until the German withdrawal in October 1944, the National Bank had to act as “creditor,” and make monthly transfers – often multiple – of considerable amounts in the form of ‘loans’ to a special account of the Wehrmacht. The inflation, however, galloped higher and the currency exchange rate varied from day to day. This makes it very difficult today to calculate the current value of these ‘loans.’ The next element of uncertainty is that the occupying force transferred almost every month remaining sums back to a repayment account of the National Bank. In other words, it was de facto recognized that it had been indeed a case of lending. A repayment, albeit with no interest, was bindingly promised in agreements leaving the exact date undetermined. These occupation loans were a singular case and are not to be compared to German war debt in other countries (Fleischer, 2013).<sup>90</sup>

In light of these statements, and the clear historical differences between the events classified as falling under and / or exempt from consideration as reparations or indemnities discussed during the London Agreement, and the Loan extracted and repaid by the Nazis between 1942 and October 1944, then it seems that the best chance for the Greek and German governments to reach a final settlement repaying WWII debts is to settle the Forced Loan. As Fleischer points out, the issue of WWII reparations is a 'non-starter' for the German government, and Gattini states, "grievance and aversion are human feelings that,

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<sup>89</sup> Gattini, Notes 42-43.

<sup>90</sup> Fleischer, "Germany turns a deaf ear to claims"

unless accompanied by reason and generosity, even time's great lenitive power fails to soothe.<sup>91</sup> Perhaps then that the Loan, being insulated somewhat from the emotional connotation that Reparations entails, may be the item that is capable of bringing closure to the issue.

The most recent study on the Forced Loan however, has come from historian Jurgen Killian. He has published a number of works on reparations recently, including an official statement for the Federal German Government, about the Nazi Ministry of Finance.<sup>92</sup> Regarding Greece, he reaches the conclusion that, notwithstanding the “numerous war crimes” the Germans committed in Greece during the occupation, Greece is not entitled to any payments from Germany today.<sup>93</sup> He has based this claim on several different sources, which we will examine in detail below.

First, he claims that the forced loan did not exist, since in his surveys of Nazi ministries of finance, he claims to have found no reference to any loan from Greece to Germany during the occupation, but rather a credit.<sup>94</sup> He states that credits, being less formal than a loan, do not automatically imply the obligation of the receiver to repay the amount taken.<sup>95</sup> He also states that this credit was similar to ones extracted from Norway and Denmark, neither of which were repaid.<sup>96</sup>

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<sup>91</sup> Gattini, Notes 45-46.

<sup>92</sup> Jurgen Killian, “The Reich Finance Ministry and the Mobilization of Europe for Hitler’s war” (5 July 2018) Website of the Federal Ministry of Finance.

<sup>93</sup> Killian, Jurgen, “The Greek ‘forced loan’ during the second world war. Demand for Reparations or restitution,” *SudostEuropa, Journal of Politics and Society* (2016) Vol. 64, 1, p.107.

<sup>94</sup> Killian, 2016, 4-6.

<sup>95</sup> Killian, Jurgen, “The Greek ‘forced loan’ during the second world war. Demand for Reparations or restitution,” *SudostEuropa, Journal of Politics and Society* (2016) Vol. 64, 1, pp. 101-103.

<sup>96</sup> Killian, Jurgen, “The Greek ‘forced loan’ during the second world war. Demand for Reparations or restitution,” *SudostEuropa, Journal of Politics and Society* (2016) Vol. 64, 1, p. 103.

In any case, according to Kilian, the ‘loan / credit’ would fall under the category of ‘restitution’ rather than ‘reparation’ and due to the terms of the 1953 London Agreement, Germany was not required to provide such restitution.<sup>97</sup> Kilian also argues that under general principles of International Law, the Wehrmacht was entitled to seize whatever goods they required in order to support the occupation and war effort.<sup>98</sup> He cites the following passage to support his position that as occupiers, they were not required to offer reparations.

‘A belligerent is entitled to seize not only the money and funds of the hostile state, munitions of war, depots of arms, stores and supplies, but also the rolling stock of public railways and other means of transport, and everything and anything that he can directly or indirectly make use of for military operations.’<sup>99</sup>

Regarding Oppenheim, he quotes page 399, par. 137 that seems to support his claim, however, Oppenheim and Lauterpacht continued:

“In the second world war, Germany embarked on a systemic campaign of plunder and economic exploitation in complete disregard of Article 56 – and other articles- of the Hague regulations. The International military tribunal at Nuremberg found that the ‘territories occupied by Germany were exploited for the German war effort in the most ruthless

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<sup>97</sup> Killian, Jurgen, “The Greek ‘forced loan’ during the second world war. Demand for Reparations or restitution,” *SudostEuropa, Journal of Politics and Society* (2016) Vol. 64, 1, p. 107.

<sup>98</sup> Killian, Jurgen, “The Greek ‘forced loan’ during the second world war. Demand for Reparations or restitution,” *SudostEuropa, Journal of Politics and Society* (2016) Vol. 64, 1, pp 96-108

<sup>99</sup> Oppenheim / LAuterpacht, *International Law*, Vol. II, 399, Killian also refers to Frederick Honig “Beutercht im Landkrieg (Right of Plunder in Land War) in: Schlochauer, ed., *Wörterbuch des Völkerrechts*, Vol. I, Berlin, 2<sup>nd</sup> Ed. 1960, p. 198.

way without consideration of the local economy, and in consequence of a deliberate design and policy.’ In pursuance of orders issued by the German Government agricultural products, raw materials needed by German factories, machine tools, transport equipment and **even foreign securities and holdings of foreign exchange** (emphasis added) were sent to Germany. In the words of the judgment of the Tribunal, ‘these resources were requisitioned in a manner out of all proportion to the economic resources of these countries, and resulted in famine, inflation, and active black market...The Tribunal put on record its interpretation of Articles 48, 52, 53, 55, and 56 of the Hague Regulations...implying that the economy of an occupied territory can only be required to bear the expense of the occupation in a measure not greater than it can **reasonably expect to bear.**”<sup>100</sup> (Emphasis added).

Kilian disregards par. 138b on page 400 seq. that states that Nuremberg found Germans guilty of looting and that the appropriation was not proportional to the military cause. Furthermore, in citing the tribunal, Oppenheim/Lauterpacht clearly show that, contrary to Killian’s argument and the German government’s position, the Tribunal considered “Foreign securities and holdings of foreign exchange” as part of the assets German occupiers seized. This interpretation flatly contradicts Kilian’s position that the forced loan/credit was separate from reparations and therefore not included in the London Agreement’s settlement of WWII reparations. In so arguing, Kilian weakens the Federal German position on reparations / restitution.

Arguing that Greece is not entitled to ‘restitution’ because similar credits that were extracted from other occupied states were not repaid, may simply encourage other states to make claims for repayment, especially if such credits / loans were out of proportion to the occupied country’s economic capabilities, which was especially the case for Greece. Additionally, once Greece had been defeated, they were no

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<sup>100</sup> Oppenheim / LAuterpacht, International Law, Vol. II, pp. 400-401.

longer a hostile state, but an occupied one, and therefore the “right to plunder in land war” cited by Kilian as justification for the occupiers seizing and keeping what they did, may no longer have applied once Greece ceased to be a belligerent in April 1940. Aside from the moral / logical contradiction to be highlighted, that it is indeed immoral and illogical to argue that a thief may keep that which he or she stole, because they never had the intention of giving it back, or because others from whom they stole were not seeking redress, there is another obvious problem in Kilian’s position. Either the forced loan / credit was a part of German plunder as articulated by the Hague Tribunal cited by Oppenheim / Lauterpacht, and as such is therefore part of WWII reparations considerations, which were put aside in 1953 only until German reunification, or it is not. If it is not, then as a separate issue, taken completely out of proportion to the Greek economy’s ability to sustain, and is not provided for under the “right to plunder in land war.” It would seem therefore that it is not a closed issue as the German government would like it to be, and that the legal history of both WWII reparations and the Forced loans / credits extracted by the Nazis, points to an open issue which is still in need of resolution.

However, perhaps the most glaring error lies in his assertion of the competence of the Nazi ministry of finance over all occupied territories, and neglects to take into consideration how the Nazi government operated as a whole. It has been likened to a Mafia state, where each sub-boss and lieutenant jealously guarded his realm of authority, to the point where various parts of the government and armed forces were working against each other, or at least not cooperating.<sup>101</sup> It also neglects the vital division in the Nazi state between civil matters,

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<sup>101</sup> Jürgen Kilian, "War on Other Costs: "Reich Ministry of Finance and the Economic Mobilization of Europe for Hitler's War" (2017) In later years, former Nazi Minister of Finance Schwerin von Krosigk wrote several books on economic policy and two versions of his memoirs. His Granddaughter is Alternative for Germany (AFD) Member of the European Parliament Beatrix von Storch, whom, in another twist of historical irony, is related through the male line, to the deposed royal family of Greece.

headed by Martin Bormann, and Military matters, headed by Hitler himself, until personal divisions in that area forced even more disagreement and chaos.<sup>102</sup>

The division therefore between lieutenants in the Nazi Regime, contributed to much infighting and working against each other. In his book, *Inside the Third Reich*, Albert Speer painted an unflattering portrait of the Nazi government. Hitler's general tendency to be indecisive, and his belief that struggle led to strength, the government was not formally coordinated. Different ministries and individuals were sometimes assigned to the same task and Hitler refused to clarify jurisdictions. Speer quoted Hitler as saying, "That way, the stronger one does the job." Speer also wrote, "After only nine years of rule the leadership was so corrupt that even in the critical phase of the war it could not cut back on its luxurious style of living. I was outraged that the leaders continued to exempt themselves from any of the sacrifices they expected of the people; that they recklessly expended lives and property; that they pursued their sordid intrigues; showing themselves as totally unethical even toward each other."<sup>103</sup>

### **13.- Conclusions:**

Though the timing of Greek PM Tsipras' declaration that Greece would be pursuing WWII reparations from Germany caused many to see it as an attempt by the SYRIZA government to 'get out of jail free card,' raising the issue of reparations to Greece is not a new one. Since

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<sup>102</sup> Other excellent works on the operation of the Nazi Regime include Albert Speer's *Inside the Third Reich*, p. 230, Evans, Richard J. (2005), *The Third Reich in Power* (New York: Penguin) or Kershaw's *Biography of Hitler*, and *The Nazi Dictatorship: Problems and Perspectives of Interpretation* (2015). Each of the works highlight how Hitler fostered competition and infighting amongst his subordinates in order to keep any one of them from getting too strong, and because he believed that struggle brought out the best in them.

<sup>103</sup> Speer's *Inside the Third Reich*, p. 230

1945 Greeks have steadily carried this claim forward, but to no avail.<sup>104</sup> Since German re-unification occurred, successive Greek governments have prepared estimations of the reparations still owed, or made steps to address the claims of individuals, yet the results of successive judgments have not been favorable.<sup>105</sup>

What is shown is that the lack of a resolution to the question of reparations is a symptom of the language of the agreements. None of the conferences or treaties, from Yalta in 1945 to the 2 Plus 4 Treaty of 1990, contain clear definitions about reparations or the final amounts to be paid / delivered / invested, or when the period during which claims could be made would expire. Additionally, percentages were set before final amounts were known. Additionally, the Big Allies received most of what Germany was forced to give, including scientific and intellectual property, the value of which may be even more difficult to ascertain. Furthermore, the issue of national and private gold and cash reserves was never properly settled, as most of the gold that was recovered, found its way into US, UK and Soviet treasuries.

Germany undoubtedly benefitted from the 1953 London Agreement, and the resulting write down of previous WWI debts and the delay of consideration of WWII reparations were major factors in Germany's economic recovery after WWII. There is also no doubt that Greece suffered greatly because of the Axis Occupation, and that the destruction wrought upon the country during WWII was surpassed proportionally only by the USSR.<sup>106</sup> However, it can be argued that much of the explanation for not solving the ongoing debate about WWII

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<sup>104</sup> Fleischer, "Germany turns a deaf ear to claims."

<sup>105</sup> At the time of the submission of this article, the Tsipras government has accepted a controversial 'third bailout' from international creditors, and since doing so, the government has yet to raise the issue of reparations or the forced loan again.

<sup>106</sup> Poland and Yugoslavia suffered more devastation than Greece in actual terms. Greece was devastated more proportionally. (see UN damage estimates, published in 1946 at Paris)

reparations lies with an analysis of the decisions of the Big Three, who had the opportunity to set clear definitions, amounts and schedules for reparations, and did not. Instead they seized the lion's share of what post-war Germany had to offer.

The compensation that has been made since 1990, has been offered to individuals (and are therefore labelled as compensation rather than reparations) who were harmed by the Third Reich, and it is perhaps along this avenue that all countries who were devastated by the Axis in WWII, not only Greece, should seek redress. However, the longer they wait, the fewer and fewer will be left on whose behalf a claim can be launched, and it likely that this is the objective of the German government; To delay / reject claims as long as possible so that the remaining individuals affected by Nazi Germany die off. Additionally, of the numerous programs funded by Germany to redress individuals, almost none of the money has been delivered to victims in Greece, but rather to victims from Poland, Belarus the Ukraine, and Israel. This is not to say that Greek victims are more deserving of compensation than the others, but simply that the contrast between that which Germany has paid to non-Greeks, vastly outweighs, in real and relative terms, the amounts paid out to Greeks. Perhaps the most glaring statistic is that Italy and Bulgaria have paid more to Greece than has Germany, even though the two countries combined did much less damage to Greece than did the German forces.

So, where does responsibility lie in terms of WWII reparations? The Greek and Polish people may have a right to feel cheated. They received only a fraction of what was lost, and a fraction of what was offered to help their recovery. That which they did receive, was not well suited to their economic needs and abilities. But the fault for this does not lie only with West Germany. Problems arose when it came time to allocate Category A or B reparations, since those that were given (A - factories, blast furnaces) were often obsolete, irrelevant or remained undelivered at all, while those that were desperately needed (B-ships, trains, building supplies) were also in extremely short supply in

Germany, i.e; there weren't enough to go around. Therefore, the Big Three plus France claimed the best and most of those reparations which remained. In the case of Poland, they received nothing whatsoever.

Not only were reparations unbalanced in terms of those who suffered the greatest losses being given less than those who provided the greatest contribution, but the reparations that were given, were very seldom chosen based on being able to make a significant contribution to the reconstruction efforts taking place in their country of destination. Was the delivery of several Ruhr blast furnaces going to turn Greece into a steel producer? Even if she had the mineral reserves to produce significant quantities of steel (which she did not) would she ever be able to export enough to benefit her economy and use it to overcome wartime losses? Would not the delivery (or guarantee of future delivery) of merchant vessels or modern harvesting machines, been more useful? The responsibility for these decisions lies not on West German shoulders, but on the decision-makers of the IARA, i.e, Britain, France, the US and the USSR.

A review of the London Agreement and the Clause in Annex VII, clearly shows that the smaller allies in no way signed away their rights to future reparations' considerations. This view is confirm by Richar Buxbaum of Berkeley. It is also clear that the signing of the London Agreement did not mention 'forced Loans / credits' specifically, rendering their current status at best, up for debate. It is also clear from the testimony of Dr, Herman Abs in 1972, that the German position on the London Conference was not to settle debts, but rather to establish their amounts, and a framework through which they could be resolved. It is the current position of the SYRIZA government, and previous PASOK and New Democracy administrations, that the Greek government had only agreed to postpone their claims, not to surrender them, and in the case of the Law and Justice party in Poland, their positon is that the USSR had no right to sign away Polish claims.

The position of the German government is that since the signing of the 2+4 Treaty, the issue of reparations has been settled, but this is a problematic position to hold, since the 2+4 treaty makes no mention of WWII reparations and / or loans / credits. Here, it may be useful to examine in greater detail the Vienna Convention on the law of treaties, and how it may come to play on this issue? Does a third party, in this case the USA, UK and France, and currently the former USSR and Poland, have the right to sign an agreement which would do away with the rights of Greece (or the rest of the 'smaller' allies for that matter) to seek future compensation, either in regards to reparations, or in seeking repayment of the Forced Loan. Though the issue of reparations may have been pushed aside during the 2015 summer Greek debt and referendum crisis, and it had certainly been overshadowed by the ongoing Refugee/Migrant crisis, nonetheless an issue has just been raised again. As those familiar with contemporary European history, all that is required to start a blaze, is a spark.

Perhaps most unconvincing in relation to the issue is the insistence on the part of both the Federal Republic and historians like Jürgen Kilian, is that the issue is closed. From the Federal Republic's perspective, this may be understandable in terms of *Realpolitik*, since to negotiate with Greece could and likely would trigger renewed calls from other countries for consideration of their outstanding claims. Furthermore, as stated above, since WWII Germany has done much to make up for the atrocities committed by the Nazis, from building monuments, to laws outlawing denial of the holocaust, chancellors attending commemorations at Auschwitz, and to funding schemes to compensate individuals. Germany has (by benefit of its rapid reconstruction and re-integration in the aftermath of WWII, due to the favorable economic and political conditions provided to it by the Allies) also helped Western Europe develop and integrate. However, the economic crisis and ongoing economic stagnation in Europe, and the measures imposed on Eurozone members under the banner of austerity, have re-ignited demands for consideration of long-held beliefs that

Germany has profited more from than it has contributed to European reconstruction post WWII.

It is also telling how both the German government and Kilian state that, while they accept that the Nazi's committed horrible offences / war crimes, Germany's financial responsibility to redress the country's most devastated has been fulfilled, as though simply acknowledging these crimes is redress enough. This is not the case. As the most powerful country in Europe economically, and among the strongest militarily, Germany can in no way be forced to the negotiating table. However, legal historians, political and economic historians, and lawyers can call attention to the issue, and to the inconsistencies in the German arguments. Indeed, the 1953 London conference and resulting agreement, were called not to settle 'once and for all' the issue of reparations, but, in the words of the German chief negotiator Herman Abs, 'to bring both parties together, to establish the amount to be discussed, and to establish a framework to bring both parties together to resolve it.'<sup>107</sup>

To show the ruling of the 1972 Arbitral tribunal, established under the provisions laid on in 1953, on the agreement on German external debt:

“However, a *Pactum de negotiando* is also not without legal consequences. It means that both sides would make an effort, in good faith, to bring about a mutually satisfactory solution by way of a compromise, even if that meant the relinquishment of strongly held positions earlier taken. It implies a willingness for the purpose of negotiation to abandon earlier positions and to meet the other side part way. The language of the Agreement (London Agreement 1953) cannot be construed to mean that either sides intends to adhere to its previous stand and to insist upon the complete capitulation of the other side.

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<sup>107</sup> 1972 Arbitral tribunal, Cited in: Lauterpacht, QC, Editor, International Law Reports, Volume 47 (London, Buttersworth, 1974) paragraph 44.

Such a concept would be incompatible with the term ‘negotiation’. It would be the very opposite of what was intended. An undertaking to negotiate involves an understanding to deal with the other side with a view to coming to terms. Though the Tribunal does not conclude that Article 19 in connection with paragraph II of Annex I absolutely obligates each side to reach an agreement, it is of the opinion that the terms of the provisions require the parties to negotiate, bargain and in good faith attempt to reach a result acceptable to both parties and thus bring an end to this long drawn out controversy. The desirability of such a positive result is necessarily much greater in relationships between states than between individuals, if for no other reason that the stakes are infinitely higher. When States have solemnly undertaken to resolve their differences then fail to do so, incalculable harm can follow. The need for the peaceful solution of differences between states is so great and so essential to the well-being of the community of nations that, when disputants have reached a point of signifying their agreement to negotiate an outstanding dispute, the subsequent negotiations normally ought to lead to a satisfactory and equitable result.”<sup>108</sup>

If leaders in the EU truly believe that the Union is worth fighting for, that is had an intrinsic value for Europeans and non-Europeans alike beyond the material benefits it had brought forth, then perhaps negotiations leading to a result acceptable to all parties involved may help re-forge international solidarity in Europe. However, it remains to be seen whether anyone in the European Union has the courage to do just that.

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## APPENDICES

### Appendix 1

Other claims / investigation for German Compensation / Reparations:

**March 2015** - Thessaloniki Jews (58,585) sent to Auschwitz and other camps, fees extracted from them exceeded 2 million Reichsmark (25 million euros today) - The Jewish community is planning to sue for it. In addition to repayment of some 1.9 billion drachmas, around 50 million euros (\$55 million today), that the Jewish community paid as ransom to occupying authorities in 1942 in return for 10,000 Jewish men being held as slave laborers.<sup>1</sup> The men were released only to be sent to concentration camps the following year by Thessaloniki SS Administrator Maximilian Merten.

**2013** - Ministry of finance of the Samaras government secretly prepared a report to estimate the amount of reparations to be asked, should a claim be made.<sup>1</sup>

**2011**- Greek government indicated that it will be taking the Distomo Case to the ICJ.

**2004 - September**, Polish parliament votes in favor of pursuing WWII reparations' claims from Germany

**2003**, Simitis government "quietly" begins a new round of academic inquiry into the questions of reparations still owed to Greece.

**1997** - 1st Dystomo decision issued in Greece

## Appendix 2

### **Chronology of Distomo massacre case. Germany is represented by Andrea Gattini:**

**Mid 1990s** - Four relatives of victims brought legal proceedings against the German government to court in Livadeia, Greece, demanding reparations. October 30, 1997, the court ruled in favor of the plaintiffs and awarded damages of 28 million Euros.

**May 2000**, the Areopagos, the Greek High court, confirmed this ruling.

**2000** - Chancellor Gerhard Schroeder telephoned his Greek opposite number Kostas Simitis to protest the sale. Fearing a precedent may have been set, the German government reacted in an openly threatening manner. The Greek ambassador in Berlin was summoned to the Foreign Ministry. The protest note he was handed lacked the usual diplomatic language, stating baldly that the actions of the Greek authorities could “disrupt years of good Greco-German relations.”

The judgment then not enforced in Greece because, as necessary under Greek law, the execution of a judgment against a sovereign State is subject to the prior consent of the Minister of Justice, which was not given.

The plaintiffs bring case to court in Germany, demanding the aforementioned damages be paid to them. The claim was rejected at all levels of German court, citing the *1961 bilateral agreement concerning enforcement and recognition of judgments* between Germany and Greece, and *Section 328 of the German Code of Civil Procedure*. German Court states that both require Greece to have jurisdiction, which it was judged not to have, as the actions in question were sovereign acts by a state.

**November 2008**, an Italian court ruled that the plaintiffs could take German property in Italy as compensation that was awarded by the Greek courts.

**December 2008**, the German government files a claim at the International Court of Justice. The German claim is that the Italian courts should have dismissed the case under the international law of sovereign immunity.

**In January 2011**, the Prime Minister of Greece, George Papandreou, announced that the Greek Government will be represented at the International Court of Justice in relation to the claim for reparations by relatives of victims.

**2012** - ICJ final judgment, the court ruled that Italy had violated Germany's state immunity, and directed that the judgment by the Italian courts be retracted.

### **Appendix 3**

#### **Post-1990 Compensation:**

**1992** - re-united Germany pays Poland 4.7 billion Zlot<sup>1</sup> (500 million Marks)

Additionally, individual claims have been accepted by Germany, since German reunification, such as:

**1995**, Germany negotiates an agreement with the United States to compensate victims who were U.S. nationals at the time they suffered persecution, including the well-known claimant, Hugo Princz.<sup>1</sup>

**2001**, the German government sets up the foundation "Remembering, Responsibility and Future"<sup>1</sup> to provide financial compensation through seven partner organizations all over the world, to former forced laborers as well as those who suffered injustices during the reign of the National Socialists in Germany. By 2003, 1,5 billion euro (\$ 1.48 billion) had been paid to 817,000 claimants, mostly from Poland, Belarus and the Ukraine.<sup>109</sup>

## Appendix 4

### 1942: The Forced Loan

Problem: Germany has switched currency 3 times in the last 70 years.

Solution, switch all amounts to USD, and then calculate for inflation.

Estimated 1944 value of 0 % interest loan from the National bank of Greece to Germany, made in 1942, after receiving re-payments. <sup>1</sup>	Value in pre-war US \$ according to contemporary Greek and NAZI sources	Value Today, estimated by German and Greek sources in Euros, without interest	Whether or not interest should also be Interest, running from 3 to 6% (standard in Germany in the post war years)
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<sup>109</sup>“Over 800,000 Former Forced Labourers Compensated”  
<http://www.dw.com/en/over-800000-former-forced-labourers-compensated/a-591026>

See also: “German Court Rejects Greek Reparation Claim for Nazi Massacre”;

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476 million Reichsmarks	228 million USD	7-11 billion Euros	95 billion Euros to about 260 billion USD
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