

A legal view of Germany's wartime occupation loan

The unlawful taking of property is considered 'conversion,' a civil wrong whose remedy is restitution, as opposed to reparations



Members of the Hamburg-based activist group Arbeitskreis Distomo marching in Syntagma Square in central Athens last Friday. The protest march marked the 71st anniversary of the Distomo massacre on June 10, 1944, when Nazi troops killed 218 people – including infants and pregnant women – a quarter of the village's population.

By Nicholas G. Karambelas *

In some of the darkest hours of the Second World War, the Axis powers massacred the people of Distomo, Kalavryta and other parts of Greece. The Germans deported Greek Jews to the death camps in Poland and made them pay for their rail tickets. The Greek Jews are seeking reparations from Germany for these atrocities. Greece, like any nation that is made the victim of death and destruction by an aggressor nation during wartime, is entitled to reparations. Reparations is a financial remedy paid to the victim nation by the aggressor nation, after the aggressor nation loses the war. Reparations are meant to compensate the people of the victim nation, in this case Greece, for the death and destruction caused by the aggressor nation, which was Germany. The concept of reparations has been a principle of international law ever since the creation of the nation state in 1648 after the 30 Years' War.

In addition to the massacres, Germany perpetrated another atrocity, which was the occupation loan. By 1942, the Axis powers had invaded and occupied Greece. Germany forced Greece to "lend" money to Germany, purportedly to pay for the costs of occupying Greece. The amount of the loan was about 500 million reichsmarks, which, reportedly, was equal to one-third of Germany's gross national product in 1938. The purpose of this article is to present a different legal perspective on how the occupation loan should be characterized.

Under the London Debt Agreement of 1953, the Allies suspended Germany's wartime obligations until East and West Germany were reunited. Germany asserts that it paid reparations to Greece in 1963. It was not until 1990 that East and West Germany reunited under a treaty to which Greece was not a signatory. Germany makes the dubious legal argument that because Greece did not claim any wartime damages when Germany reunited, all claims of Greece for compensation, including the occupation loan, were extinguished.

Greece's legal rights with respect to the occupation loan depend on whether the loan is characterized as a commercial loan or as an unlawful taking of property under the guise of a commercial loan. To be a commercial loan, it must have the attributes of a commercial loan. There must be a voluntary lender, a voluntary borrower, terms for repayment, and an interest rate.

This occupation loan did have a voluntary borrower and, possibly, some terms for repayment, but it did not have a voluntary lender. Greece, the lender, had been invaded and occupied by the borrower. Also, because the representatives of the Greek government collaborated with Germany, the borrower actually controlled the lender. Moreover, it was foreseeable that the occupation loan would devastate the Greek economy, which it did. Consequently, Greece was not a voluntary lender in any sense. In addition, the occupation loan did not carry an interest rate. The occupation loan may have had one, possibly two, of the attributes of a commercial loan. However, it did not have all of the necessary attributes so it cannot be characterized as a commercial loan.

Since the occupation loan is not a commercial loan it can only be an unlawful taking of property. The legal term for this taking is "conversion." In other words, once a property is unlawfully taken, it is considered to be converted. Conversion is a civil wrong not a criminal offense. The remedy for conversion is restitution not reparations. Restitution means that the taker returns the converted property to the rightful owner.

If the taker does not return the property, the law imposes a constructive trust (referred to as a usufructuary in civil law systems) on the converted property. The taker is deemed to be the trustee. The taker-trustee must preserve, protect and enhance the value of the property for the benefit of the rightful owner. These are the obligations of any trustee with respect to any property. The nature of these obligations depends on the type of property. The property in this case is money. Germany did not borrow the money but rather converted it. Germany, as the taker-trustee, is required to protect and preserve the money. This means that Germany must not cause or permit the money to be dissipated and is required to enhance the value of the money by allowing it to accrue interest. Since Germany dissipated the money and failed to allow the interest to accrue, it must reconstitute the money as well as any accrued interest and it must do so from its own sources.

The conversion-constructive trust concept has precedent in international law. The European Court of Human Rights (ECtHR) supports this concept in cases involving real property which Turkey took after it invaded the Republic of Cyprus in 1974. Turkey occupies about one-third of the territory of the Republic of Cyprus. Within the occupied territory, there is real property to which the rightful owners hold title under the laws of the Republic of Cyprus. Turkey forced the rightful owners from their real property and continues to exclude them from their real property. The ECtHR has effectively ruled that Turkey has illegally taken the real property from its rightful owners and that the real property is held in a constructive trust.

Germany argues that Greece relinquished any claims it had to the occupation loan in the aforementioned treaty of 1990. It argues that even though Greece is not a signatory, Greece implicitly acceded to the terms of the treaty. Leaving aside the law on treaties, whether or not Greece signed the treaty or implicitly acceded to the treaty is irrelevant. Germany is wrong. As with any trust, Greece could only relinquish its claims to the money of the occupation loan by a specific and affirmative release of claims. No such release appears in the public record.

The Greek government has calculated the current value of the occupation loan to be 279 billion euros, or \$303 billion. The problem with enforcing the conversion-constructive concept is that there is no legal forum at the international level in which Germany can be compelled to reconstitute the money. Determining whether the German courts would enforce the remedy of restitution against the German government is a complicated and probably fruitless inquiry. The Greek courts have considered attaching property located in Greece which the German government owns. The efforts of the current Greek government to resolve the matter through diplomatic means is the most practical way for Greece to seek and obtain restitution. Diplomacy works best when the issue is grounded in a legal principle which derives from a universal moral doctrine.

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