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The specific legal-international regime of peace treaties

Abstract: The presented material is an attempt at analyzing the specific legal position of peace treaties. The author argues with the opinion which is put forward (not too often, though), maintaining that such treaties – due to their not expressing the will of states in a classical way – cannot be considered to be agreements as such. He presents the basic similarities and – first of all – differences, especially concerning the so-called final provisions, with reference to both typical international agreements and peace treaties, respectively. In the study, he formulates the thesis of a special role, significance and evolution of peace treaties, despite frequent disrespect for the resolutions they contain. Instances of peace treaties which were concluded in the past are recalled and analyzed, and juxtaposed with ones made in the 20th century, particularly those following the First and the Second World Wars.

Keywords: INTERNATIONAL AGREEMENT, PEACE TREATY, WAR, *PACTA SUNT SERVANDA*, WILL OF STATE, EFFECTIVENESS OF AGREEMENTS

Questions dealing with the essence and the particular system of peace treaties do not normally – although they only too well deserve this because of their significance – make a subject that is discussed separately in studies on public international law. It needs observing that, for example, in academic handbooks and in chapters devoted to treaty law, among traditional analyses concerning formal requirements behind drawing agreements or all different kinds of clauses added to the final resolutions attached to agreements, there is a lack of separate paragraph – short as it could be – which would make reference to the specifics and the core of peace treaties. One can even say that the content dealing with such treaties is usually included incidentally or even marginally.

The material presented in this paper, in the author's opinion, should make the reader aware of the lack of a particular treatment of the prob-

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lem area connected with peace treaties as legal documents which – due to their specific nature – ought to contribute to defining the commitments of former belligerent parties, following the end of the military conflict between them. Thus, the author's intention was – on the one hand – to raise the consciousness of the existing void of studies in this respect, and – on the other one – to contribute to taking up deepened studies aimed to broaden the knowledge connected with the topic defined in the title of this paper.

As a matter of fact, wars cannot be treated exclusively from the point of view of history. Accordingly, peace treaties as agreements terminating military actions and defining the rights and obligations of the parties involved are the question which is still valid. They should find their appropriate place in academic considerations, which made the guiding aim for the author.

Perchance, a certain justification of this state of things, i.e. the marginalized role and significance peace treaties can be the fact that if we take into consideration (in the legal sense) the beginning of war through a declaration of one and the end of a war or a military conflict concluded through drawing a peace treaty, then we have to acknowledge explicitly that their legal regimes are different.

Commencement of military actions was regulated in the Third Hague Convention of October 1907. It is stated in its Art. 1 that wars "[…] must not be commenced without prior and simultaneous notification which shall have either the form of a well-motivated declaration of war or that of an ultimatum containing a conditional declaration of war."[1] We will not find this kind of procedure relating to the end of war in the international law of war in force. Therefore, it needs emphasizing, on the one hand, that there is no obligation to enter into peace treaties, but – on the other one – in principle, it is almost a natural practice that states apply this form of termination of military conflicts primarily because this form of agreement precisely defines the rights and obligations of the parties, thus determining their future mutual relationships.

Obviously, it is true that the lack of obligation to conclude peace treaties can cause a state of war to cease (though this does not happen frequently) in consequence of an armistice settlement, or through the actual stopping of military actions. In an equally effective manner, the questions of ending military conflicts can be settled by unilateral or bilateral agreements on ending the war.[2]

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[1] R. Bierzanek, *Międzynarodowe prawo wojenne. Zapobieganie konfliktom zbrojnym. Odpowiedzialność za przestępstwa wojenne. Zbiór dokumentów* [The international law of war. Prevention of military conflicts. Responsibility for war crimes. A collection of documents], Warszawa 1978, p. 23-24.

[2] Poland adopted the resolution which stated that "the state of war between Poland and Germany is acknowledged to be terminated" *Monitor Polski* [The Official Gazette of the Republic of

Wars that were fought in the past (and which, regrettably, are waged nowadays) make – unfortunately to a large extent – an immanent characteristic of mankind. From the historical and contemporary perspectives, they have played primarily a destructive role, being accompanied by human victims, looting and damage inflicted on people's possessions. The fundamental goal of nearly each of them was and still is, in the majority of cases, the wish to enlarge the range of power and governance reached through more or less bloody conquests, first of all territorial.[3] It needs observing that contemporarily the classical essence of wars, which is connected directly with territorial governance, does not hold such a significance as it used to have in the past. The epoch of cyberspace, the Internet and drones defines the essential targets of wars quite differently: they still mean a conquest, yet today it is not only that of a territory, but primarily a need for a peculiar "subordination-ordering" of citizens so that they should become exponents, executors of goals assumed by a modern aggressor.

From the historical point of view, wars lasting a few days, seven years (the Treaty of Paris of 1763), thirty years (the Peace of Westphalia of 1648), or a hundred years, typically ended in armistices, settlements, agreements, alliances concluded between monarchs, paradoxically in the name of God. What is a characteristic regularity, the covenants which were signed, sooner or later were basically not respected.

It needs remembering that it was already earlier that peace treaties had had their unquestionable influence on the evolution of international law. In the resolutions of the Peace of Augsburg of 1555, as a result of the settlement concluded by Emperor Charles V with German princes, which ended the Second Religious War, the principle *cuius regio eius religio* was introduced. This principle, as a matter of fact, did not appear in the history of Christianity as a clearly formulated legal norm, yet it cannot be denied a special role and significance.[4] Similarly, the Treaty of Westphalia mentioned earlier, also made a contribution of paramount importance to the development of this law, as – on the one hand – it weakened the Empire, but – on the other one – increased the number of subjects of international law to a considerable degree.[5]

Poland] of 1955, No. 17, item 172. Also, Poland, not being a party to the treaty concluded with Japan, made a bilateral agreement which restored the state of peace (A. Górbiel, *Instytucje prawa międzynarodowego* [Institutions of international law], Katowice 1972, p. 340; L. Antonowicz, *Podręcznik prawa międzynarodowego* [Handbook of international law], Warszawa 1993, p. 234.

[3] H. Dembiński, *Wojna jako narzędzie prawa i przewrotu* [War as a tool of law and subversion], Lublin 1936, p. 13-39.

[4] Z. Zieliński C*uius regio eius religio – Principium regnandi, Saeculum Christianum: pismo historyczno-społeczne*, 1-2, 1994, p. 83.

[5] W. Góralczyk, S Sawicki, *Prawo międzynarodowe w zarysie* [An outline of international law], Warszawa 2004, p. 41.

At the same time, one must draw attention to the fact that straight after concluding a peace treaty – as I. Kant wrote, "no peace treaty which, by means of an implicit provision, contains seeds of a future war, can be acknowledged to be one" – it is difficult to state and discern "the hidden thought of commencing a prospective war. One must look at today's peace treaties with trust, believing in the sincerity of the states that have come to agreement and heeding that no treaty which we deem uncertain, will give a guarantee of peace. It is only after years that we are able to realize the true intentions of the parties involved and their long-term plans."[6]

Summing up the above considerations, it needs stating that the practice of concluding peace treaties as a way towards ultimate termination of the state of war was used in the distant past and is still applied as regards the majority of conflicts today. Peace treaties, in relation to possible settlements, undergo evolution which matches the changing situations and principles of international law in force. Contemporarily, it is not possible for the party who has suffered a complete defeat to have to rely on "the total mercy or no mercy of the winning party": annexing its territories, depriving the defeated state of sovereignty, or liquidating it as an international subject, cannot take place. Fortunately, the cases of annexing Algeria by France in 1831 or the Boer Republics by England in 1902 belong to the past.[7]

An analysis of the so-called Treaty of Versailles of 1918, which put an end to the First World War – called in this way due to its unprecedented territorial range and the number of engaged belligerent states, should be seen here as particularly relevant to the discussion of the problem addressed in the present study.

That war, in view of the military experience of mankind to date, rather short because lasting only four years, in its global dimension had brought along an unimaginable loss of life, amounting to about 10 million killed and over 20 million maimed, qualifying as war invalids. It also led to immense material damage. Obviously, in consequence of the above, the peace treaty concluded with the Germans in June 1919 enforced a new treatment of the defeated, new establishments defining peace and innovatory solutions building a completely new quality of relations between the subjects of law. The First World War, decidedly departing from the war experience to date, could not end in making traditional, classical establishments, a mere post-war agreement between the defeated party and the

[6] K. Marulewska, *Idea „wiecznego pokoju" Kanta a współczesny porządek międzynarodowy* [Kant's idea of 'an eternal peace' and the modern international order], „Dialogi Polityczne" No. 5-6, p. 176.

[7] L Gelberg, *Zarys prawa międzynarodowego* [An outline of international law], Warszawa 1979, p. 301.

victorious one, or – generally speaking – a classical peace treaty. What determined the innovatory character of that treaty was, among others, the first time ever statement on punishing the guilty in an international mode, special securing of resolutions, perceiving rights of national minorities and particular treatment of the principle of self-determination of nations, unprecedented detailed nature of the settlements, the institution of ratification and establishment of the first organization of common character – the League of Nations.[8]

Termination of a war between at least two states ought to be distinguished from cessation of military actions. The latter can take on the forms of a truce – suspending military operations between the fighting parties, a cease-fire – holding up actions over a given territory of the military operations theatre, a capitulation – that is a total suspension of military operations in consequence of the surrender.[9] Capitulation, as an agreement dealing with surrendering of certain military detachments, a stronghold or another defended fortress or place, should be distinguished from an unconditional surrender.[10]

It would be worth commenting briefly on what, in the legal and practical sense, an unconditional surrender consists in? Taking as an example the total capitulation of the Third Reich on 8 May 1945, in the opinion of Professor A. Klafkowski, "in the first place, in abandoning any thought of negotiable peace. Thus, an unconditional surrender excludes absolutely any agreement, it excludes even a peace treaty. An unconditional surrender means that victorious states want to be totally free to use the defeated state."[11] Hence, following the total capitulation, the whole territory of Germany was subjected to occupation (not annexation), over which – due to the lack of German government – four powers took over the supreme authority under Berlin Declaration of June 1945. The act of unconditional surrender was also drawn with the Empire of Japan on 2 September 1945. It preceded the peace treaty concluded in 1951, in the signing of which, however, many states being at war with Japan, did not take part. Instead, those states concluded bilateral agreements with Japan, which ended the state of war and restored diplomatic relations.

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[8] S.M. Grochalski, *Traktat Wersalski – traktat nowatorski – traktat progresywny*, referat wygłoszony na międzynarodowej konferencji [The Treaty of Versailles – an innovatory treaty – a progressive treaty", paper delivered at the international conference], Colloquium Opole 2019.

[9] A. Łazowski, A. Zawidzka, *Prawo międzynarodowe publiczne* [The public international law] Warszawa 2001, p. 266-267.

[10] R. Bierzanek, *Wojna a prawo międzynarodowe* [War and international law] Warszawa 1982, p. 150.

[11] A. Klafkowski, *Trudności prawne Traktatu pokojowego dla Niemiec* [The legal difficulties of the peace treaty for Germany], „Przegląd Zachodni", No. 1, 1948, p. 7.

Summing up: all kinds of possible truces (ordinary or of the capitulation type) do not terminate the state of war. On principle, such a state lasts most often until conclusion of a relevant peace treaty, and precisely speaking – till the moment it comes into force. It can happen, though, that the state of war can be terminated without signing a peace treaty, but only "upon making unilateral declarations or even by actual making peace relations between states at war with each other. It is in this very way that the state of war ceased between Poland and Sweden in 1716 and that between France and Mexico in 1867."[12]

The question which ought to be asked in the context of the basic subject, should therefore run as follows: Is, in view of the fact that the majority of rights designed for states – parties to a peace treaty – are clearly not fulfilled, such a treaty a regular agreement?

If one is to take into consideration the classic definition of an agreement, especially its fundamental element which is the consistent expression of will of the parties, then despite possible polemics, signed, ratified peace treaties are undeniably agreements as far as the doctrine is concerned. It is thus not necessarily possible to wholly agree with the view contained in the doctrine that "a peace treaty cannot be regarded as an agreement since the differences between a peace treaty and an agreement are so vital that international law ought to impose a quick and categoric revisal of this issue."[13]

What is vital with reference to peace treaties is that such covenants are often drawn and signed under the conditions of compulsion. This is an important issue inasmuch as application of coercion in the form of real use of force or a threat of using force absolutely requires a deeper reflection, particularly in this case. In the law of international agreements, precisely speaking – as regards the question of invalidity of agreements drawn under coercion, the compulsion towards a representative of the state, finding himself in a situation of using force against him or being under a threat of using force against him is distinguished from the coercion against the state. In the classic international law, this kind of coercion does not affect the validity of the agreement, since as a rule and in principle, peace treaties are signed by the winning and defeated states in a situation of coercion (*coactus voluit tamen voluit*). This question, as it seems, was precisely defined in Art. 2, point 4 of the Charter of the United Nations, which says: "All the members should, in their international relationships, abstain from using a threat or force against any state's territorial immunity or political independence, or any other way not compliant with the principles of the

[12] W. Góralczyk, *Prawo międzynarodowe publiczne w zarysie* [Public international law – an outline], Warszawa 1977, p. 438.

[13] Ibidem, p. 5.

United Nations."[14] This rule was developed further in Art. 52 of the Vienna Convention on the Law of Treaties, dealing with coercion against a state in the form of a threat or use of force: "A treaty is invalid if the concluding of it was a consequence of a threat or use of force, with violation of the rules of international law expressed in the Charter of the United Nations."[15] By signing a peace treaty, the defeated party consciously accepts conditions which are not easy to approve or satisfy. They are also aware of the specifics of such an agreement, excluding the traditional rights they are entitled to as a party concluding the agreement.

Therefore, in view of the specificity of the circumstances, it does not seem possible to apply "expression of will" typical of civil law and one used in the law of international agreements here. It appears that in the case of a peace treaty, the emphasis of this specific covenant gets shifted towards the criminal sphere: there is a verdict of guilt, the aggressor is found guilty, a defined punishment is sanctioned, with a simultaneously expressed hope of excluding the possibility of repeating the aggression. Thus, this is a kind of accepted "judgement of conviction".

Peace treaties, though it may appear semantically paradoxical, follow the end of a war. The end of a war means the victorious and the defeated, whose rights and obligations were defined by peace treaties in their decisive majority. The formal and substantial pragmatics of such agreements is generally brought down to the following formula: the treaties are normally expected to compensate to the victorious party the losses suffered, bring territorial gains to this country as well as eliminate potential danger on the part of the defeated party.[16]

In the past, the defeated state, proportionally to the "benefits" of the victorious party, typically used to be deprived of a certain territory, was forced to pay financial dues defined in the agreement, took upon itself obligations which – in the opinion of the victorious party – prevented the defeated state from being a party in a potential prospective conflict.[17]

It is also possible to see a practice consisting in that peace treaties are concluded with states which are successors of those which were at war. A good example here can be the separate peace treaty concluded between the Allied Forces and Austria, as a successor of the Austro-Hungarian Em-

[14] Dz.U.1947.23.90 [Journal of Laws, 1947] – The Charter of the United Nations. The Statute of the International Court of Justice and the Agreement on establishing Preparatory Commission of the UN.

[15] Dz.U.1990.74.439 [Journal of Laws, 1990] – The Vienna Convention of the Law of Treaties drawn in Vienna on 23 May 1969.

[16] Z. Cybichowski, *Prawo międzynarodowe publiczne i prywatne* [International public and private law], Warszawa 1928, p. 355-356.

[17] A. Łazowski, A. Zawidzka, op. cit., p. 267.

pire, in Saint-Germain in September 1919 and the peace agreement with Hungary signed in Trianon in June 1920.[18]

As history shows, peace treaties are characterized by their unstable and impermanent nature. Neither is there much left of the records they contain. This may be a shocking and debatable statement, but it has its justification in both the historical, political and pragmatical dimensions. As to the very principle itself, in contrast to other classical international agreements, the so-called "final provisions" of peace treaties – apart from determining the date and mode of the ratifying clause and the language clause entering into life – exclude the possibility of accession clause, denunciation clause, prolongation clause, revision clause or the possibility of submitting formal stipulations or applying *clausula rebus sic stantibus*.

Peace treaties, in compliance with the title of the agreement, contain primarily provisions dealing with the conclusion of the war and restoration of peaceful relationships resulting from this. The treaties regulate also the questions concerning liquidation of effects of the war. Besides, they include the above-mentioned territorial clauses determining possible cession of territory, or military clauses aiming at restriction of the military potential of the defeated party.[19]

Undoubtedly, an important issue is also the category of invalidity of the agreement. According to the Convention on the Law of Treaties, premises of invalidity can be connected with violation of the internal law of the parties concluding the agreement in the conditions of fundamental significance, evident violation, ones connected with the contradictoriness of the norm of *ius cogens*, as well as connected with flaws in the statement of will, among which, apart from exceeding one's powers to grant agreement, or due to a mistake, stratagem, bribery, we can find the question of utmost importance to peace treaties: the coercion applied towards the state. In its essence, compulsion refers to use of force, which is not applicable in the situation of concluding a peace treaty, since such covenants are imposed on states which committed aggression.

The issue of coercion, with reference to peace treaties, without a doubt, will concern solely these which are made basically soon after the capitulation or disarmament. The compulsion does not take place in the case of peace treaties concluded "after many years". A proof of the above-mentioned regularity can be agreements supposed to conclude a peace treaty between Russia and Japan (the conflict over the Kuril Islands), or covenants meant to lead to the conclusion of a peace treaty between North Korea and South Korea.

[18] L Gelberg, op. cit., p. 302.

[19] W Góralczyk, op. cit., p. 438.

Another most relevant issue to pay attention to while discussing international agreements, including peace treaties, is that of the language used in them. States have experienced serious changes in this respect. In the Ancient times, in the Middle Ages or in the epoch of Renaissance, it was primarily Latin which was commonly used while drawing up agreements, the more so peace treaties. Modern times saw the French language used for such purposes as that language was omnipresent, both in diplomacy and legal matters.

It is worth remembering, though, that with reference to drawing up agreements, all the relevant questions are regulated by the Vienna Convention on the Law of Treaties, accepted in 1969. This peculiar constitution for international agreements allows the interested states to themselves select the language in which the given agreement is to be concluded. This is inasmuch significant as the language indicated in the agreement acquires the category of the "genuine language" of the agreement. What is obvious, such an agreement can be translated into any other languages; nevertheless, interpretation of the provisions contained in the given agreement can be executed by the parties exclusively on the basis of the language accepted by the states.

As regards bilateral agreements concluded between states, the Convention mentioned above treats the languages of the parties as genuine languages under the equality of sovereign subjects. The case looks different when it comes to multilateral agreements in which, apart from other languages, it is the English language that is indicated as the genuine one. Its role and significance increased considerably following the signing of the Treaty of Versailles.

Another important question is the following regularity: it is characteristic of normative defining of rights and obligations of the parties in the political, trading and population-related aspects that agreements which regulate, for instance, the political sphere, also may (beside this sphere) contain the above-mentioned regulations concerning trade, social issues and communications. On the other hand, a peace treaty – in its essence – is always a political one. In a narrower traditional dimension, such a treaty used to include solely questions dealing with direct relationships between the victorious and the defeated parties.

A peace treaty, beginning with the Treaty of Versailles, can have a fairly broad dimension, too. It contains, apart from settlements that – which is understandable – the victorious party imposes on the defeated one, also various establishments pertaining to other "civilian" spheres of life. Thus, a peace treaty can be a multifaceted agreement, whereas – for instance – a strictly trade agreement will not settle the questions related to compensation or war reparations, which are so typical of a peace treaty. Still, one

can observe that, unfortunately, peace treaties being expected to basically regulate a precisely defined range of subjects, have not always managed to play their role successfully. The compensation awarded under them usually remained unpaid, the territorial gains proved conflict-generating and often – despite the established weaknesses of the defeated party being clearly defined in substantial provisions – all the records relating to them remained ineffective.

We have known peace treaties in history which proved to be completely ineffective. The treaties signed by Napoleon (among others with Austria or with the Pope) offer a very good example of such agreements. The life of those treaties very often did not last longer than a few months at the most. If one were to analyze the effectiveness and stability of agreements termed peace treaties nowadays, with the exclusion of just a few of them (e.g. the peace treaty concluded with Austria in 1952, or that concluded with Japan in 1945), one would have to conclude that basically all fall into the category of ones not satisfying the paradigm of effectiveness in the dimension of expectations which the victorious party had with regard to the defeated state. Here, a proof of the fact that peace treaties are the most frequent instances of breaching the principle of *pacta sunt servanda*, is the rhetorical question: What has remained of the peace treaties concluded after the First World War: that with Austria, called the Treaty of Saint-Germain-en-Laye of 1919, that with Hungary of 1920, that with Bulgaria of 1919, with Turkey of 1923, or the Peace Treaty concluded between Russia and Germany, Austro-Hungary, Bulgaria and Turkey in 1918?[20]

The provisions of a peace treaty should be characterized by rationality: such a document must not be a kind of act of "total revenge" of the victors taken on the defeated, even if for the simple reason that this kind of attitude does not exclude, or – even on the contrary – does provide an apparent source of future tensions and conflicts. Consequently, peace treaties ought to define goals, but also real possibilities for the defeated party to fulfil the range of established settlements and conditions. For instance, the Treaty of Versailles did not represent this sort of rationality in its realization of reparations. Fewer politicians but many more economists often claimed that the demands from the Germans were exorbitant and impossible to satisfy. Here, the famous study presented by J.M. Keynes in his work under the title *The Economic Consequences of the Peace* should readily be mentioned, in which the economist proved in an unambiguous way that "with reference to reparations, the Peace Treaty was bad, repa-

[20] For broader discussion see: A. Bartnicki, *Traktat Wersalski (Narodziny systemu wersalsko – „waszyngtońskiego")* [The Treaty of Versailles (the birth of the "Versaille-Washington" system)], Warszawa 1967, p. 99-111.

ration clauses unworkable and the Reparations Commission made a tool of pressure and extortion."[21]

Analyzing the course of history with reference to the aspect discussed above, it seems worth – somehow "for the future" – concluding that potential nuclear wars or wars in cyberspace with the use of outer space, because of the possibility of their taking on a planetary, global, dimension, will cause likely subsequent peace treaties to be totally illusory, first and foremost due to the fact that after such a conflict has ended, it will be difficult to define the victorious and the defeated parties, and – at the same time – the core of such agreements may turn to be completely matterless.

Bibliography

Antonowicz L., *Podręcznik prawa międzynarodowego*, Warszawa 1993.

Bartnicki A., *Traktat Wersalski (Narodziny systemu wersalsko-„waszyngtońskiego")*, Warszawa 1967.

Bierzanek R., *Międzynarodowe prawo wojenne. Zapobieganie konfliktom zbrojnym. Odpowiedzialność za przestępstwa wojenne. Zbiór dokumentów*, Warszawa 1978.

Bierzanek R., *Wojna a prawo międzynarodowe*, Warszawa 1982.

Cybichowski Z., *Prawo międzynarodowe publiczne i prywatne*, Warszawa 1928.

Dembiński H., *Wojna jako narzędzie prawa i przewrotu*, Lublin 1936.

Gelberg L., *Zarys prawa międzynarodowego*, Warszawa 1979.

Góralczyk W., *Prawo międzynarodowe publiczne w zarysie*, Warszawa 1977.

Góralczyk W., Sawicki S., *Prawo międzynarodowe w zarysie,* Warszawa 2004.

Górbiel A., *Instytucje prawa międzynarodowego*, Katowice 1972.

Grochalski S.M., *Traktat Wersalski – traktat nowatorski – traktat progresywny. Colloquium Opole*, Opole 2019.

Kant I., *O porzekadle… Do wiecznego pokoju*, Toruń 1995.

Klafkowski A., *Trudności prawne Traktatu pokojowego dla Niemiec*, „Przegląd Zachodni" Nr 1, 1948.

Łazowski A., Zawidzka A., *Prawo międzynarodowe publiczne*, Warszawa 2001.

Marulewska K., *Idea „wiecznego pokoju" Kanta a współczesny porządek międzynarodowy*, „Dialogi Polityczne" Nr 5–6.

Szwaykowski T., *Odszkodowania niemieckie na tle Traktatu Wiedeńskiego*, Poznań 1948.

Zieliński Z., C*uius regio eius religio – Principium regnandi, Saeculum Christianum*, „Pismo Historyczno-Społeczne", 1994.

SZCZEGÓLNY, PRAWNO-MIĘDZYNARODOWY REŻIM TRAKTATÓW POKOJOWYCH

Streszczenie: Prezentowany materiał jest próbą analizy dotyczącej szczególnej pozycji prawnej traktatów pokojowych. Autor polemizuje z występującym (co prawda nieczęsto) stanowiskiem, że owe traktaty, z racji niewyrażania w sposób klasyczny woli państwa, umowami, jako takimi, być nie mogą.

[21] T. Szwaykowski, *Odszkodowania niemieckie na tle Traktatu Wiedeńskiego* [German reparations against the background of the Vienna Treaty], Poznań 1948, p. 22.

W artykule ukazuje się podstawowe podobieństwa i przede wszystkim dające się określić różnice, zwłaszcza w tzw. postanowieniach końcowych, w odniesieniu do umów międzynarodowych oraz traktatów pokojowych. W opracowaniu stawia się tezę o szczególnej roli, znaczeniu i ewoluowaniu traktatów pokojowych, pomimo częstego nieprzestrzegania ich postanowień. Przywołuje się, analizuje się przykłady z historii zawieranych traktatów pokojowych, zderzając je z traktatami zawieranymi w XX wieku, zwłaszcza tych, które zostały zawarte po pierwszej i drugiej wojnie światowej.

Słowa kluczowe: UMOWA MIĘDZYNARODOWA, TRAKTAT POKOJOWY, WOJNA, PACTA SUNT SERVANDA, WOLA PAŃSTWA, SKUTECZNOŚĆ UMÓW