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**INTERNATIONAL RECOGNITION AND THE
INTERNATIONAL LAW STATUS OF POLAND
IN THE 20th CENTURY**

Abstract: The article concerns international recognition of the Polish state established after World War I in the year 1918, the Polish state and the status of Poland in terms of international law during World War II and after its conclusion until the birth of the Third Polish Republic in the year 1989. A study of related issues confirmed the thesis of the identity and continuity of the Polish state by international law since the year 1918, as solidified in Polish international law teachings, and showed that the Third Polish Republic is, under international law, not a new state, but a continuation of both the Second Polish Republic as well as the People's Republic of Poland.

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1. The recognition of a state in international law – theoretical issues

The emergence of a new state is a fact, in the face of which the international community cannot remain oblivious. In case of its positive reaction we deal with recognition defined as an ‘act of law, in which a subject of international law (a state or international organisation) affirms the existence of certain facts and ascribes to them specific legal effects’.¹ The acquisition of subjectivity, however, is not a derivative of recognition,² but a consequence of having certain attributes foreseen by international law. Pursuant to Article 1 of the Montevideo Convention on the Rights and Duties of States

¹ R. Bierzanek, J. Symonides, *Prawo międzynarodowe publiczne* [International public law], Warszawa 1994, p. 131. Among unilateral acts by states distinguished can be in particular recognition, understood as an act accepting the existence of a certain state of affairs as being lawful. Doctrine states, according to practice and jurisprudence, that in certain cases unilateral acts are binding and in fact constitute a source of international law. This applies to following statements:

1) autonomous, i. e. such that are not related to any other unilateral, bilateral or multilateral acts;

2) made by a body authorised to represent the state in international relations;

3) with respect to which the will exists to remain bound by their content;

4) giving rise to unconditional and definitive (irrevocable) obligations;

5) made public and *erga omnes*;

6) free of flaws described in the Vienna Convention on the Law of Treaties of 1969.

If the listed conditions are jointly met, a unilateral state act must be considered a source of international law (J. Barcik, T. Srogosz, *Prawo międzynarodowe publiczne* [International public law], 3rd ed., Warszawa 2017, p. 155). See also: W. Czaplinski, A. Wyrozumska, *Prawo międzynarodowe publiczne. Zagadnienia systemowe* [International public law. Systemic issues], Warszawa 1999, pp. 97-101 and more broadly P. Saganek, *Akty jednostronne państw w prawie międzynarodowym* [Unilateral acts of states in international law], Warszawa 2010.

² The Montevideo Convention on the Rights and Duties of States signed on 26.12.1933 states in Article 3 among others that ‘political existence of the state is independent of recognition by the other states’. LNTS 1933, vol. 165, p. 19. This is also confirmed by Article 13 of the Charter of the Organization of American States, signed in Bogota on 30.04.1948, which states that ‘The political existence of the State is independent of recognition by other States. Even before being recognized, the State has the right to defend its integrity and independence, to provide for its preservation and prosperity, and consequently to organize itself as it sees fit (...)’. K. Kocot, K. Wolfke, *Wybór dokumentów do nauki prawa międzynarodowego* [Selection of documents for the study of international law], Wrocław-Warszawa 1978, p. 124.

of 26.12.1933: 'The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states'.³

The population, territory and government belong to components of a state that are unquestionable within international law. These components play a large part in the determination of a state from the standpoint of international law. The presence of a population as a fundamental component of the concept of a state is obvious.⁴ The same basically applies to territory, however, this does not describe the necessity of precise establishment of all borders.⁵ As for the criterion of the 'government', understood as governance over the territory and its population, then this should be the highest governance that is not subordinate to any other government, or, according to W. Góralczyk and S. Sawicki, sovereign governance.⁶ At the same time, this governance should be exercised in an efficient manner – the government must have actual control over the territory and the population.

The recognition of a state describes the acknowledgement of its entire legal personality along with the international rights and duties stemming from this.⁷ The core of recognition is a state in international law is expressed in the effects of this act. This encompasses effects in terms of international cooperation, participation in international organisations and the presence on the international scene in general. International recognition thus greatly influences the character and scope of relationships of the new state with

³ LNTS 1933, vol. 165, p. 19. Polish text of the Convention: L. Gelberg (ed.), *Prawo międzynarodowe i historia dyplomatyczna. Wybór dokumentów* [International law and diplomatic history. Selection of documents], vol. III, Warszawa 1958, pp. 356-359.

⁴ Whereby there are no particular requirements concerning the minimum population.

⁵ W. Czapliński and A. Wyrozumska provide the example of Poland after World War I. The proclamation of the Polish state took place on 11.11.1918, with the individual borders determined ultimately as follows: with Germany by the Geneva Convention of 15.03.1922 on Upper Silesia, with Lithuania by decision of the Conference of Ambassadors of 15.03.1923, with Soviet Russia by the Peace of Riga of 18.03.1921 (W. Czapliński, A. Wyrozumska, *Prawo międzynarodowe...*, p. 153).

⁶ W. Góralczyk, S. Sawicki, *Prawo międzynarodowe publiczne w zarysie* [Outline of public international law], 12th ed., Warszawa 2007, p. 119.

⁷ The OAS charter of 1948 states in Article 14: 'Recognition implies that the State granting it accepts the personality of the new State, with all the rights and duties that international law prescribes for the two States'. K. Kocot, K. Wolfke, *Wybór dokumentów...*, pp. 124-125.

other states, and the lack thereof makes such relations impossible or significantly limited.⁸

Evaluating recognition, G.I. Tunkin concludes that it possesses political and legal significance. In the first case, due to the fact that it is a necessary component of securing international peace and cooperation. In the other case, due to the fact that it establishes a permanent, normal legal basis for relations between two states.⁹ Hence, the meaning of recognition from the legal standpoint entails the fact that it facilitates the normalisation of relationships between states due to the fact that it allows them to rest on a legal basis. In addition, the provision of a new state with recognition significantly reduces the possibility of usage of the lack of recognition as a tool of political pressure to intervene its internal affairs.¹⁰ The institution of international recognition continues to play a crucial role in the shaping of the international community.

In recognitions, states may operate individually or jointly (collectively). In a situation, when the law provides states with the freedom to recognise, ever more significant becomes collective recognition by an international governmental organisation, a form of which may be the acceptance of a new state among its members. Newly established states are particularly interested in being accepted to such organisations, as the participation in these indicates that the member states making it up must be subjects of international law, and hence, they hold legal capacity and the capacity to execute legal actions. However, it is only recognition that permits them to fully use the capacity to perform legal actions, hence, to fully participate in international relations. It must be stressed that a state that was recognised by only a limited number of states has difficulty exercising certain rights due to it on the basis of international law, or only does this in a limited scope. The common lack of recognition of new states permits efficient reduction of their international activity.¹¹

⁸ E. Dynia, *Kolektywne nieuznanie państwa jako reakcja na naruszenie praw człowieka i zasad demokracji* [Collective non-recognition of the State as a reaction to a violation of human rights and democracy], [in:] G. Baranowska, A. Gliszczyńska-Grabias, A. Hernandez-Polczyńska, K. Sękowska-Kozłowska (eds.), 'O prawach człowieka. Księga jubileuszowa Profesora Romana Wieruszewskiego' [On human rights. Liber Amicorum in honour of Professor Roman Wieruszewski], Warszawa 2017, pp. 97-98.

⁹ G.I. Tunkin, *Основы современного международного права*, Moskwa 1956, p. 22.

¹⁰ E. Dynia, *Uznanie państwa w prawie międzynarodowym. Zarys problematyki* [Recognition of the state in international law. Outline of problems], Rzeszów 2017, p. 124.

¹¹ E. Dynia, *Kolektywne nieuznanie państwa...*, p. 98.

It must be noted that international law does not require for a state to be recognised in a particular manner. However, in international practice two modes of state recognition have emerged: express and implied (silent) recognition. In the first case, the state clearly expresses their recognition of a different state. This statement may take the form of a diplomatic note, government statement or the statement of an international contract. In the second case, recognition 'results from any act which implies the intention of recognizing the new state'.¹² Implied recognition is, hence, any situation, in which the recognising party would not expressly and clearly state their will with respect to recognition, but behaves on the international forum in a manner indicating that they recognise the new entity and that they will maintain with it specific international relations.¹³ As L. Antonowicz writes: 'For the avoidance of doubt, this should be an act which, according to international law, is only possible in interstate relations (...)'.¹⁴ In practice, implied recognition of a new state takes place by way of recognition of the government, the instigation of diplomatic or consular relations, the conclusion of an international contract and the acceptance into an international organisation.¹⁵ As L. Oppenheim and H. Lauterpacht state, silent recognition is effected by way of such acts that, even if they do not concern recognition directly, leave no doubt that recognition is the case.¹⁶

As international law does not require the recognition of a state to be effected in any particular mode, it is believed that implied recognition in the form of conclusive acts gives rise to the same international law effects as express recognition.¹⁷

¹² See Article 7 of the Convention on the Rights and Duties of States of 26.12.1933. L. Gelberg (ed.), *Prawo międzynarodowe i historia...*, p. 356.

¹³ E. Dynia, *Uznanie państwa...*, pp. 98-99.

¹⁴ L. Antonowicz, *Uznanie państwa w prawie międzynarodowym* [Recognition of the State in international law], 'Sprawy Międzynarodowe' 1969, no. 9, p. 61.

¹⁵ S. Talmon, *Recognition of governments: An analysis of the New British policy and practice*, 'BYIL' 1993, vol. 63, pp. 260-261.

¹⁶ According to the authors, the sole legal basis for implied recognition (in terms of mutual relations between states) are: 1) the conclusion of a bilateral contract, e.g. in trade, determining comprehensive mutual relations between both parties; 2) formal establishment of diplomatic relations; 3) the provision of a consular *exequatur*; 4) a declaration of neutrality in wartime. See L. Oppenheim, H. Lauterpacht, *International law, a Treatise*, vol. I, London – New York – Toronto 1955, p. 144 and pp. 154-155.

¹⁷ L. Antonowicz, *Uznanie przez Polskę państw postradzieckich (kilka uwag ze stanowiska prawa międzynarodowego)* [Recognition by Poland of post-Soviet states (a few remarks

2. The international community and the independence, sovereignty and the continuity of the Polish state in the 20th century

As was stressed earlier, the institution of international recognition applies to newly formed states. In order to allow a state full participation in international relations, its recognition by the international community is necessary. As M.N. Shaw notes, the capacity to enter into relations with other states is both an aspect of the existence of a particular state and a feature of the significance ascribed to recognition by a different state.¹⁸

Referring these comments to the Polish state, it must be noted that the issue of *de facto* and *de iure* recognition of its subjectivity emerged along with the regaining of independence on 11.11.1918¹⁹; in this light, from the very beginning, not only the date of formation of the Second Polish Republic was problematic,²⁰ but also the identity of Polish statehood in

from the position of international law)], [in:] J. Menkes (ed.), 'Prawo międzynarodowe. Księga pamiątkowa Profesor Renaty Szafarz' [International law. Liber Amicorum in honour of Professor Renata Szafarz], Warszawa 2007, p. 16.

¹⁸ M.N. Shaw, *Prawo międzynarodowe* [International Law], Warszawa 2006, p. 138.

¹⁹ Of decisive significance for the formation of the Polish state was the revolution in Russia and the recognition of the rights of nations of Russia to self-determination. In the peace treaty signed on 3.03.1918 in Brest, Soviet Russia abandoned its rights to the territory of former Congress Poland, and the decree of the Council of People's Commissars of 29.08.1918 stated that the contracts concerning the partitions of Poland are voided as contrary to the rule of self-determination of nations. However, the new sovereign Polish government could not emerge until the area of the former Kingdom of Poland remained under wartime occupation of the central powers. It was only the demise of the central powers and the conclusion of wartime occupation that permitted the emergence of the Polish state. The day of disarmament of the German forces in Warsaw – 11.11.1918 – is considered to be the date of formation of the Polish state, which also included areas taken during partitions by Austria and Germany as well. W Góralczyk, *Prawo międzynarodowe publiczne w zarysie* [Outline of public international law], Warszawa 1979, pp. 136-137.

²⁰ During the *interbellum*, the date of establishment of the Second Polish Republic was a point of controversy. Polish legal literature expressed opinions that the precise date of this event cannot be determined or that one may only point to a period of time, during which it took place, as well as those that quite precisely set this date forth. In this regard, it seems that L. Antonowicz is right indicating the dates when J. Piłsudski took power – in military (11.11.1918) as well as general state terms (14.11.1918), stressing that from the point of view of international law, the effectiveness of power is a key component both of emergence as well as of reestablishment of a state. It is also an indication of recognition by other states. L. Antonowicz, *Status prawnomiędzynarodowy*

international law. It must be explained up front that in the history of Polish law and state, the following are distinguished: the First Polish Republic (until the third partition), the Second Polish Republic (beginning in 1918), the People's Republic (1945-1989; on the basis of the constitution of 1952 – the People's Republic of Poland), the Third Polish Republic (since 1989).²¹

After Poland regained independence, controversy arose in terms of the determination of the international law status of then-contemporary Poland to Poland from before the partitions. In science, two views on this issue emerged. According to the first view, the Polish state was in the year 1918 the same subject of international law as the First Polish Republic, hence, the continuity and identity of the state was maintained despite the period of partitions.²² The second view states in turn that the Second Polish Republic was, in international law, a new state.²³ In this regard, explained must be the issue of the identity and international law continuity of the state.²⁴ This issue concerns the status of the state that undergoes transformations calling its continued existence as the same international law subject into question. In light of international law, the maintenance of identity in international law

Polski (1918-2018) [International legal status of Poland (1918-2018)], Lublin 2018, pp. 8-9. It must be added that the date of formation of the Second Polish Republic was also a component of a dispute concerning certain German interests in Upper Silesia as analysed by the Permanent Court of International Justice. See judgement of the PCIJ of 25.05.1926, PCIJ, Serie A, 1926, no. 7.

²¹ J. Barcik, T. Srogosz, *Prawo międzynarodowe publiczne* [Public International Law], 2nd ed., Warszawa 2014, p. 157.

²² In literature, the proponents of identity and continuity of the Polish State after 1918 were in particular L. Ehrlich and S. Hubert. See L. Ehrlich, *Prawo narodów* [Law of Nations], Lwów 1932, p. 147 and S. Hubert, *Rozbiory i odrodzenie Rzeczypospolitej Polskiej. Zagadnienie prawa międzynarodowego* [Partitions and rebirth of the Republic of Poland. The issue of international law], Lwów 1937, pp. 281-284.

²³ Such a view was represented, among others, by C. Berezowski. See *Powstanie Państwa Polskiego w świetle prawa międzynarodowego* [Establishment of the Polish State in the light of international law], Warszawa 1934, pp. 78-108. More on the views of indicated as well as other authors – see L. Antonowicz, *Rzecz o państwach w prawie międzynarodowym* [The issue of states in international law], Lublin 2012, pp. 149-154.

²⁴ As J. Barcik and T. Srogosz write: 'The identity of a state is static and means that despite territorial, social, systemic or population changes, a state remains the same subject of international law. Whereas the continuity of a state is dynamic and says that despite territorial, social, systemic or population changes, the state continues with its subjectivity in international law, hence, it continues its rights and duties in international law (e.g. it continues to be bound or entitled by way of historically concluded international contracts)', J. Barcik, T. Srogosz, *Prawo międzynarodowe...*, 3rd ed., p. 177.

will be expressed in the continuation of international rights and duties of the state (primarily stemming from international agreements). It must also be stressed that within international law, one may speak of the supposition of state identity and continuity that may be disproved exclusively through proof of emergence of circumstances leading to the downfall of a state in light of international law.²⁵ However, this does not settle the dispute as to whether the collapse of a state is related to the cessation of at least one of its constituent components (in practice – state governance), or whether one cannot speak of the collapse of a state if even one of its components continues to persist after the cessation of events questioning the existence of the state. Usually, all transformations are related to each other and emerge jointly.²⁶

Referring these remarks to the Second Polish Republic, as L. Antonowicz states, there are no international agreements from the 18th century that would bind it. Additionally, the content of the note of the Polish delegation to the Paris conference of 28.2.1919²⁷ ‘was not an expression of international law claims to the reestablishment of the Polish state from before the partitions’. In addition, the substantiation of the legal title concerning the reestablishment of independence by Poland may not be sought in self-determination.²⁸ Self-determination of nations emerged as a moral and political principle in the final period of World War I. This rule had found its legal substantiation only after World War II. Being expressed in the charter of the United Nations Organisation, it became a standard of fundamental significance in international law. There is no doubt that the rule of self-determination of nations is presently commonly known in international law, however, even now its content is not unequivocal. There arise controversies as to whether and in what circumstances and in what manner this rule may be utilised.²⁹

²⁵ J. Symonides, D. Pyć (ed.), *Wielka Encyklopedia Prawa* [The Great Encyclopedia of Law], vol. IV, *Prawo międzynarodowe publiczne* [Public International Law], Warszawa 2014, p. 480. See also W. Czapliński, A. Wyrozumska, *Prawo...*, p. 239.

²⁶ W. Czapliński, A. Wyrozumska, *Prawo...*, pp. 239-240.

²⁷ The note indicated the suggestion that the borders from before the first partition were to be taken as a vantage point for diplomatic discussions on the borders of Poland after World War I. See H. Janowska, T. Jędruszczak (ed.), *Powstanie II Rzeczypospolitej. Wybór dokumentów 1866-1925* [Establishment of the Second Republic of Poland. Selection of documents 1866-1925], Warszawa 1984, p. 481.

²⁸ L. Antonowicz, *Status...*, p. 19.

²⁹ E. Dynia, *Prawo do samostanowienia a integralność terytorialna państwa* [The right to self-determination and the territorial integrity of the State], [in:] J. Menkes,

The concept, according to which the Polish state established in the year 1918 was a continuation of the First Polish Republic was also not substantiated in then-contemporary international law. As a result of the partitions, Poland lost independence, and irrespective of the political or moral evaluation of this fact, the takeover of its territory by force or through sanctions against it and its representatives was permitted in the 18th century. At that time, international law did not yet include the rule banning the use of force in inter-state relations.³⁰

A confirmation of the treatment of Poland as a new state was also found in contemporary practice. The preamble to the Treaty of Versailles of 28.6.1919, includes the statement on the 'reestablishment of an independent Polish state', suggesting that this state did not exist until that time for a while at least.³¹ Noted must be also the advisory opinions of the Permanent Court of International Justice from the years 1923 and 1931, in which the Court described Poland as a new state.³²

As L. Antonowicz notes: 'the dispute surrounding the issue of the international law status of the Second Polish Republic against the Polish-Lithuanian Commonwealth lost practical significance after World War II'.³³ Hence, one must agree with R. Kwiecień that 'the relationship between the First and the Second Polish Republic does not influence the contemporary international law status of the Polish State' and that in this context the issue of identity and continuity of the Polish state after the year 1918 is

E. Cała-Wacinkiewicz, J. Nowakowska-Małusecka, W. Pęksa, W.Sz. Staszewski (ed.), 'Idee, normy i instytucje Kongresu wiedeńskiego – 200 lat później – perspektywa prawnomiędzynarodowa' [Ideas, norms and institutions of the Vienna Congress – 200 years later – international legal perspective], Warszawa 2016, p. 145 and 163. See also M. Perkowski, *Samostanowienie narodów w prawie międzynarodowym* [Self-determination of nations in international law], Warszawa 2001, p. 117; R. Andrzejczuk, *Uzasadnienie prawa narodów do samostanowienia* [Justification of the right of the nations to self-determination], Lublin 2002, pp. 143-154.

³⁰ Sz. Zaręba, *Ciągłość państwa polskiego od 1918 r. z punktu widzenia prawa międzynarodowego* [Continuity of the Polish state since 1918 from the point of view of international law], 'Sprawy Międzynarodowe' 2018, no. 3, p. 271.

³¹ Treaty of Peace between the Allied and Associated Powers and Poland, signed in Versailles, France, on 28.06.1919, Polish OJ 1920, no. 110, item 728.

³² See Acquisition of Polish nationality, Advisory opinion of 15.09.1923, PCIJ Reports 1923, Series B, No. 7, pp. 14-15 and 20, also Railway traffic between Lithuania and Poland, Advisory opinion of 15.10.1931, PCIJ Reports 1931, Series A/B, No. 42, pp. 111-112.

³³ L. Antonowicz, *Tożsamość państwa polskiego w prawie międzynarodowym* [The identity of the Polish state in international law], 'Państwo i Prawo' 1993, no. 10, p. 4.

an issue of historic significance.³⁴ There emerged as current, however, the issue of continuity of the international law subject status of the Second Polish Republic by the People's Republic of Poland and the continuity of subjectivity in international law of the People's Republic of Poland by the Third Polish Republic.

As was already mentioned, the issue of identity and continuity of statehood concerns the status of the state. In international law, the issue of state identity sets out the circumstances, in which the state – contrary to suppositions – does not collapse as the subject of this law. These circumstances describe diverse more or less thorough changes in the life of a state, which, however, do not destroy its existence in international law. The state maintains its identity as a subject of international law, despite the fact of changes in its internal system, population, territory or even the international status,³⁵ if this status does not destroy a state's sovereignty.³⁶ In the opinion of L. Antonowicz, the set of these changes should be implemented as an expansion of the fact that supposition speaks in favour of the continuity of the state in international law. The power of this supposition may be brought down solely by circumstances which, according to international law, cause the downfall of the state.³⁷ The author concludes that:

The People's Republic of Poland is the same subject of international law as the Second Polish Republic, and the Third Polish Republic is, in light of international law, a continuation of the People's Republic

³⁴ R. Kwiecień, *Tożsamość i ciągłość prawnomiędzynarodowa państwa polskiego* [International legal identity and continuity of the Polish state], 'Państwo i Prawo' 1998, no. 8, pp. 16-17.

³⁵ See e.g. P. Łaski, *Uwagi na temat sukcesji państw i sukcesji rządów w świetle prawa międzynarodowego* [Comments on State and Government succession under international law], 'Zeszyty Naukowe. Nauki Społeczne' 1996, no. 201, pp. 22-23.

³⁶ According to R. Kwiecień, 'this thesis brings forth two significant consequences. First, sovereignty is a fundamental criterion for a state's identity and continuity in international law, and second, a state cannot be identical with a non-sovereign geopolitical body, even if these two entities have the same territory and population' (op.cit., pp. 14-15).

³⁷ L. Antonowicz, *Tożsamość państwa...*, p. 3. See also J. Tyranowski, *Upadek a identyczność i ciągłość państwa w prawie międzynarodowym* [Fall vs identity and continuity of the State in international law], [in:] 'Status prawny Niemiec w latach 1945-1949' [Legal status of Germany in the years 1945-1949], Warszawa 1986, pp. 4 and subsequent pages.

of Poland. Hence, the Polish state exists as the same subject of international law since the Autumn of 1918.³⁸

Agreeing with this statement, W. Czapliński considers the issue of additional criteria that could be used to determine the identity of a state. As a consequence, he concludes that in practice this issue of identity (identity) is settled by the opinion of the international community expressed through recognition.³⁹ He reserves, however, that the form of considering a state to be identical may be difficult to determine. According to the author, in practice such is the significance of the recognition of a government, which equals the description of changes to the state structure exclusively in categories of government succession. This may also be the further application of all international agreements concluded by this state, without exceptions, without additional notifications or reservations, as well as the permission to participate in the work of international organisations (e.g. recognition of uninterrupted membership in the UNO). He notes at that, that recognition brings with itself the issue as to the extent, when making this decision, the opinion (statement) of the interested state with respect to their own continuity and identity should be taken into account, as well as whether one could ascribe a particular significance to certain specific states (e.g. great powers or neighbouring countries).⁴⁰

³⁸ L. Antonowicz, *Podręcznik prawa międzynarodowego* [Handbook on International Law], 14th ed., Warszawa 2015, p. 74. The opinion is shared by e.g. R. Kwiecień, *Tożsamość i ciągłość prawnomiędzynarodowa państwa polskiego* [International legal identity and continuity of the Polish state], 'Państwo i Prawo' 1998, no. 8, and W. Czapliński, *Raz jeszcze o problemie ciągłości i identyzacji państwa polskiego* [Once again, on the problem of continuity and identity of the Polish state], 'Państwo i Prawo' 1999, no. 9.

³⁹ This opinion, congruent with international practice, is represented, among others, by Karol Karski (*Kontynuacja prawnomiędzynarodowej podmiotowości ZSRR i jego części składowych przez państwa istniejące na obszarze postradzieckim* [Continuation of the international legal subjectivity of the USSR and its components by the states existing in the post-Soviet area], 'Studia Iuridica' 2006, vol. 45, pp. 76-77), R. Kwiecień (*Tożsamość i ciągłość...*, p. 24) and M. Muszyński (*Prawnomiędzynarodowa istota i prawnokrajowe skutki sukcesji państw. Wybrane zagadnienia teoretyczne* [International legal nature and legal consequences of state succession. Selected theoretical issues], 'Zeszyty Prawnicze' 2013, no. 13(1), p. 53).

⁴⁰ See W. Czapliński, *Zmiany terytorialne w Europie Środkowej i Wschodniej i ich skutki międzynarodowoprawne (1990-1992)* [Territorial changes in Central and Eastern Europe and their international legal effects (1990-1992)], Warszawa 1998, pp. 25-27. As for the recognition of uninterrupted UNO membership, Poland may be an example. The fundamental change of the system after 1989 did not influence the status of Poland in

3. The recognition of the Polish state after World War I

As for the issue of recognition of the Polish state that was established following World War I, then beside the fundamental question as to whether the case concerned the recognition of a new state or a reborn state, differences in opinions in international law studies concerned come issues related to the type, mode or date of recognition of the Polish state by other states.⁴¹

It should be noted that the process of recognition of the Polish state proceeded both in the sphere of bilateral relations between states as well as at the international conference in Paris, hence, it is not always possible to precisely state, when the individual members of the contemporary international community recognised the Polish state.

Following 14.11.1918, the entirety of executive power in Poland was held by the Chief of State, Józef Piłsudski,⁴² who already on 16.11.1918, addressed an information notice to the governments of victorious and neutral states informing them of the existence of an independent Polish state covering all the lands of unified Poland.⁴³ According to L. Antonowicz,

this organisation. The membership did not expire and the Third Polish Republic did not need to try to become a member of the UNO. Russia can also be an example. After the collapse of the USSR, the commonwealth of independent states emerged on 8.12.1991, and it negotiated on 21.12.1991 that Russia will take place of the USSR in the UNO and other international organisations ('Europe', no. 5636/N.S/23/24 December 1991, p. 4). Ukraine and Belarus that made up the USSR as republics were already UNO members, hence they continue their memberships.

⁴¹ L. Antonowicz, *Rzecz o państwach...*, p. 155.

⁴² After J. Piłsudski arrived in Warsaw on 11.11.1918, the Regency Council called into existence by occupying forces on 12.09.1917 transferred full military and civilian power to him, and disbanded. the resolution of the Cabinet of Ministers of the Republic of Poland of 22.11.1918, stated that J. Piłsudski was provided with the right to the title of 'Chief of the Polish State'. See document in *Odrodzenie polskiej służby zagranicznej 1917-1921* [Rebirth of the Polish foreign service 1917-1921], MSZ, Warszawa 2018, p. 52.

⁴³ The note was addressed to the president of the United States of America and the governments of the United Kingdom, France, Italy, Japan and Germany, as well as the governments of other fighting and neutral states. R. Długołęcki, K. Szczepanik (ed.), *Ministerstwo Spraw Zagranicznych II Rzeczypospolitej. Organizacja, polityka, ministrowie* [Ministry of Foreign Affairs of the Second Republic of Poland. Organisation, politics, ministers], Warszawa 2017, pp. 20-21. Note text in: *ibidem*, p. 106.

‘the territorial scope of the Polish state was given in a slight exaggeration,⁴⁴ but describing Poland as an independent state was congruent with the actual state of affairs. The note did not motion for the international recognition of the Polish state, it did, however, constitute an offer going in just this direction’⁴⁵

At the earliest, the act of recognition was performed by Germany by way of establishment of diplomatic relations, on 20.11.1918.⁴⁶ It must be stressed that the establishment of diplomatic relations is always equal to the recognition of a state, as pursuant to Article 2 of the Vienna Convention on Diplomatic Relations of 18.04.1961, they are only possible between states.⁴⁷ In international practice, the establishment of diplomatic relations is treated as a form of implied recognition. In line with this practice, it takes place without any formal notes or other statements, but by way of sending and receiving diplomatic representatives with the new state. C. Berezowski indicates as an example of such recognition the delegation to Warsaw by the German people’s delegates committee an emissary on a special mission, who on 21.11.1918, submitted letters of credence to the Chief of State, Józef Piłsudski. The confirmation of this recognition was the German response, expressed during the Paris peace conference, to the transfer to Germany the conditions of the peace treaty, in which Germany stated that they agree to the establishment of an independent Polish state.⁴⁸ The express confirmation of these acts was the provision of the Treaty of Versailles

⁴⁴ The Polish state did not regain all historically Polish lands formerly taken by Prussia. Poland was also not provided with all land from before the first partition, nor Upper Silesia and the Mazury.

⁴⁵ L. Antonowicz, *Rzecz o państwach...*, p. 156.

⁴⁶ Germany was obligated to recognise Poland by Article 87 of the Treaty of Versailles of 28.06.1919. See Polish Polish OJ 1920, no. 110, item 728.

⁴⁷ Article 2 of the Convention states: ‘The establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent’. A. Przyborowska-Klimczak, *Prawo międzynarodowe. Wybór dokumentów* [International Law. Selection of Documents], 7th ed., Lublin 2005, p. 101.

⁴⁸ C. Berezowski, *Prawo międzynarodowe publiczne* [Public international law], part I, Warszawa 1966, p. 100.

(Article 87),⁴⁹ wherein Germany recognised the complete independence of Poland, as was done by the Allied and Associated Powers.⁵⁰

Frequently, the establishment of diplomatic relations is indicated as the fundamental condition of recognition. The establishment of diplomatic relations equals the recognition of the other government as the sole body representing the given state with respect to other entities of international law, and the permit to establish in both countries permanent diplomatic missions, and usually consular offices as well.⁵¹

In international law, there also exists the notion that suggests that not only the commencement of diplomatic relations, but also suggestions, meaning, intentions of establishment of such relations should be considered an unequivocal sign of recognition of the state,⁵² in particular the implicit recognition of this state. Such a form of recognition of the Polish state was used by soviet Russia, when a note was sent on 27.11.1918, to the Polish minister of foreign affairs, containing the suggestion of establishment of diplomatic representatives in both states.⁵³ According to J.P. De Andrade Barroso, the lack of acceptance of such a proposal does not change the fact that the recognising state states the existence of the subjectiveness in international law of the recognised state, and that it becomes bound by commonly valid standards of international law with respect to the recognised state. There emerges only the issue of direct legal relations between the state suggesting recognition and the recognised state. These relations cannot emerge earlier, until the other party consents to this.⁵⁴

⁴⁹ The provisions of Article 87 of the Treaty of Versailles are referred to by L. Ehrlich as auxiliary recognition in relation to the fact of prior delegation and acceptance of the German emissary. L. Ehrlich, *Prawo międzynarodowe* [International law], Warszawa 1958, p. 154.

⁵⁰ As W. Biliński writes, Germany recognised Poland *de iure* only at the Conference of Paris. The arrival in Warsaw of the emissary Harry Kessler was *de facto* recognition by Germany of Poland in view of the Ministry of Foreign Affairs of the Republic of Poland. See W. Biliński, *Ustanowienie stosunków dyplomatycznych przez Polskę w latach 1918 – 1939* [Establishment of diplomatic relations by Poland in the years 1918-1939], 'Sprawy Międzynarodowe' 2017, no. 2, p. 120.

⁵¹ J. Sutor, *Prawo dyplomatyczne i konsularne* [Diplomatic and consular law], 4th ed., Warszawa 1993, p. 57.

⁵² See e.g. H. Lauterpacht, *Recognition in international law*, Cambridge 1947, p. 371.

⁵³ E. J. Pałyga, *Stosunki konsularne Drugiej Rzeczypospolitej* [Consular relations of the Second Republic of Poland], Warszawa 1970, p. 94.

⁵⁴ J.P. De Andrade Barroso, *Uznanie państwa w świetle prawa międzynarodowego* [Recognition of a State under international law], Warszawa 1994, pp. 41-42.

In the years 1919-1922, the Polish state was recognised by many countries.⁵⁵ As W. Biliński states, until the end of 1919 the government of Ignacy Paderewski was recognised by over 20 states, among which only Holland informed about the establishment of diplomatic relations with Poland. He notes additionally that the *de iure* recognition of Poland by the individual states did not at the same time mean the establishment of diplomatic relations if this was not *explicite* included in the wording of the relevant note.⁵⁶ It should be stressed, however, that the recognition of a state does not imply the establishment of official, meaning, consular relations with it as well, as these remain in the area of good will and are not necessary, and are furthermore established by way of a special agreement between the parties.⁵⁷ Recognition hence comprises a precondition necessary for the establishment of diplomatic relations.⁵⁸

As for the recognition of Poland as a state by the Allied and Associated Powers, this took place by way of allowing its representatives as participants at the peace conference in Paris. However, there exist differences in opinion as to the date of this act of collective recognition.⁵⁹ For instance, J. Makowski assumes that 15.01.1919 is this date – the day representatives of Poland were invited to the meeting of the Paris Peace Conference, where the Covenant of the League of Nations was passed.⁶⁰ He indicates at the same time that ‘through the fact of membership in the League of Nations, Poland *implicite* recognised all of its members and was recognised by them’.⁶¹

It must be added that the achievement of membership in an international organisation does not eliminate the practice of individual

⁵⁵ List of states, see L. Antonowicz, *Rzecz o państwach...*, p. 158.

⁵⁶ W. Biliński, *Ustanowienie stosunków dyplomatycznych...*, pp. 118-119.

⁵⁷ See E. Dynia, *Uznanie państwa...*, pp. 102-103 and the examples given therein.

⁵⁸ E. Denza, *Diplomatic law. Commentary on the Vienna Convention on Diplomatic Relations*, Oxford 2008, p. 31.

⁵⁹ More on the subject see L. Antonowicz, *Rzecz o państwach...*, pp. 156-157.

⁶⁰ According to C. Berezowski, the invitation was addressed on 15.01.1919 to the Polish National Committee. This committee, however, only became a representative of the Polish government on 23.01.1919, and before that it represented neither the interests of the new state nor was present in this character during the first meeting of the conference on 18.01.1919. The invitation could hence only be considered joint recognition effective 23.01.1919. This recognition was then confirmed by the preamble to the treaty signed by the principal allied and associated powers with Poland on 28.06.1919. C. Berezowski, *Prawo międzynarodowe...*, p. 101.

⁶¹ J. Makowski, *Umowy międzynarodowe Polski 1919-1934* [Poland's International Agreements 1919-1934], Warszawa 1935, p. 324.

recognition. So, beside the collective recognition of Poland acts of individual recognition also prevailed.⁶² Hence, it can be stated that from the very beginning of the 1920s, Poland was recognised by the entire international community as a state and subject of international law.⁶³

4. The international law status of Poland during World War II and after its conclusion

Towards the end of the interbellum, Germany (on 1.09.1939) and the soviet Union (17.09.1939) opposed the independent existence of the Polish state, as part of the execution of the secret protocol attached to the Treaty of Non-aggression between Germany and the Soviet Union of 23.08.1939 (Molotov-Ribbentrop Pact).⁶⁴ As a result of this aggression, the majority of Polish territory was under military occupation. German and Russian authorities believed the Polish state ceased to exist⁶⁵ and that in the territory of Poland occupied as a result of military activities they shall enjoy unlimited territorial sovereignty, and, as a consequence, all rights to this territory stemming from this.⁶⁶

⁶² Individual explicit recognition was performed by, among others, the United States (2.01.1919), France (24.02), the UK (25.02), Italy (27.02), Japan (22.03). J. Kolasa, *Odzyskanie przez Polskę niepodległości w 1918 r. w świetle prawa międzynarodowego* [Poland's regaining of independence in 1918 in the light of international law], 'Przegląd Sejmowy' 2008, no. 5, pp. 21-23.

⁶³ L. Antonowicz, *Tożsamość państwa...*, p. 4.

⁶⁴ W. T. Kowalski (ed.), *Polska w polityce międzynarodowej (1939-1945). Zbiór dokumentów 1939* [Poland in international politics (1939-1945). Collection of documents 1939], Warszawa 1989, p. 462-463.

⁶⁵ The erroneous thesis of the collapse of the Polish state is expressed in the diplomatic note by V. Molotov of 17.09.1939 handed to the Polish ambassador in Moscow on the day of the Russian aggression. Initiating diplomatic relations with the Polish government in London on 30.07.1941, the government of Russia definitively abandoned this thesis. L. Antonowicz, *Z problematyki statusu prawnomiędzynarodowego PRL* [Problems related to the international legal status of the People's Republic of Poland], 'Studia Nauk Politycznych' 1975, no. 3 (21), p. 72. Nazi Germany did not change its official attitude in this regard until the unconditional surrender of 8.05.1945. L. Antonowicz, *Tożsamość państwa...*, p. 7.

⁶⁶ P. Łaski, *Nabycie i utrata terytorium w świetle prawa międzynarodowego. Zarys problematyki* [Acquisition and loss of territory under international law. Outline of the problems], Szczecin 2013, p. 74.

One must agree with P. Łaski that despite the militarily tragic situation of Poland in September of 1939, this position did not correspond to reality, and was also not substantiated in any way by international law. The author notes that towards the end of September of 1939, before the entire occupation of the territory of Poland was effected by the armed forces of the aggressor states,⁶⁷ new superior authorities of the Republic of Poland formed,⁶⁸ which, being forced into exile, effectively continued the operation of the pre-war Polish government, shining through, among others, in the fact of control of the resistance movement in occupied Polish territory, using the active and passive right of legation or being party to international treaties aimed at fighting the occupational forces as well as reclaiming the territory lost alongside independence.⁶⁹ The emigration government hence represented the Polish state and acted in its name on the international scene, being authorised through the support of the main political powers in Poland and abroad and recognised by the majority of then-contemporary states.

Hence, the conquest of Poland as a result of its lost September campaign cannot be described as being true due to the presence of the government-in-exile. In line with prevailing international law, the occupier – due to the temporary character of their authority – cannot act as a body of the occupied state.⁷⁰ This state continues to exist, as military

⁶⁷ As L. Antonowicz writes: ‘on 17.09.1939, Poland was left with more than half of Polish territory. Warsaw continued to defend itself for ten days, and the government left the territory of Poland only after gaining the message of the aggression by the army of soviet Russia’. L. Antonowicz, *Tożsamość państwa...*, p. 6.

⁶⁸ On 30.09.1939, the post of the President of the Republic of Poland was assumed by the former marshal (speaker) of the senate, Władysław Raczkiewicz, as designated successor by the former president. The president of the Republic of Poland called into existence the government of the Republic of Poland in exile with general Władysław Sikorski as prime minister. By decree of the President of the Republic of Poland of 9.12.1939, the National Council was called into existence as an advisory body for the President, whereby its chairman was Ignacy Jan Paderewski. On the basis of the decree of 21.12.1939, its name was changed to the National Council of the Republic of Poland. See documents in ‘Sprawa polska w czasie drugiej wojny światowej na arenie międzynarodowej. Zbiór dokumentów’ [The Polish case during the Second World War in the international arena. Collection of documents], Warszawa 1965, pp. 98-103 and pp. 126-127.

⁶⁹ P. Łaski, *Nabycie i utrata terytorium...*, p. 74.

⁷⁰ The fourth Hague Convention governs in section III entitled ‘military authority over the territory of the hostile state’ the position of occupying forces, as only entitled

occupation does not remove its existence.⁷¹ The loss of state territory due to the occupation does not mean the loss of subjectivity by the state, if an effective government continued to exist, even abroad. International law, however, does require not only the presence of government in internal, but also in external affairs, which should be understood as the capacity to independently and sovereignly from any other entity act in international relations.⁷² Hence, a *de iure* government, even in exile, may still be considered to be the government of that state and has the right to represent the state on condition of effective actions aimed at the reclaiming of the occupied territory.⁷³

As for the Polish government in exile, despite the fact that it did not exercise effective (actual) superiority over the territory occupied by Germany and the USSR, it still enjoyed great authority in society and headed the so-called underground state.⁷⁴

The government-in-exile has competences to act so long as the occupation persists. If as it ends, the government-in-exile would not regain actual authority over the territory previously occupied, it loses its competence and cannot be further considered to be the government of this state. This takes place when on the territory of the occupied state

as ‘administrator and usufructuary’ of the property of the occupied state, ensuring legal protection of its interests. See K. Kocot, K. Wolfke, *Wybór dokumentów...*, p. 348. In relation to this, L. Antonowicz notes that ‘to the extent that German power over the state territory of Poland denoted doubtless wartime occupation, less clear was the character of the Russian occupation due to the fact that the state of war between Poland and the USSR was never officially announced by Poland or soviet Russia. It is without a doubt, however, that this was occupation due to the very grave violation of international law. Hence, the soviet administration in the – larger – part of the territory of Poland in the years 1939-1941 must be treated as an actual state of affairs not giving rise to permanent and effective effects in international law’. L. Antonowicz, *Tożsamość państwa...*, p. 6.

⁷¹ I. Brownlie, *Principles of public international law*, Oxford 2008, p. 78.

⁷² E. Dynia, *Uznanie państwa...*, p. 56.

⁷³ E. Dynia, *Uznanie rządu w prawie międzynarodowym*, Lublin 1997, p. 98. See also J. Symonides, *Kryteria uznania państwa i rządu w teorii i praktyce międzynarodowej* [Criteria for recognition of a state and government in international theory and practice], ‘Zeszyty Naukowe Uniwersytetu M. Kopernika w Toruniu’, Nauki Humanistyczno-Społeczne, Nauki Polityczne III, Toruń 1969, vol. 36, pp. 52-53.

⁷⁴ R. Jastrzębski, *Ciągłość państwa polskiego – publikacja dzienników urzędowych wydanych przez władze Rzeczypospolitej Polskiej na uchodźctwie w latach 1939-1990* [Continuity of the Polish State – publication of official journals issued by the authorities of the Republic of Poland in exile in 1939-1990], ‘Zeszyty Prawnicze BAS’ 2017, no. 2, p. 19.

a government is formed having effective control with the support of the people. Such was the case with the Polish government in London, which lost its competence, was stripped of effective authority and international recognition the moment the Provisional Government of National Unity was established.⁷⁵ Hence, a significant component of the international situation of Poland in the years 1944-1945 was the case of recognition of the government, and not the new state.⁷⁶

In the years 1944-1945, two governments vied to represent the Polish state in international relations – the Provisional Government of the Republic of Poland, established on 31.12.1944, and the government-in-exile in London. This situation should be resolved considering the rules of international law concerning the recognition of governments. Of fundamental significance in this situation is the rule of effectiveness, whereby the government that effectively controls the entire or the majority of the territory of the given state should be recognised. This rule, however, cannot always be easily applied in complex situations, in which a foreign component is at play. A significant component of the discussed rule is the national character of the government, not only in the sense of the origins of its members, but the support by the population of the state as well. The verification of this last property is hindered if there are armed forces of a different state in the territory of that state. Such was the situation in Poland in the years 1944-1945, when armed forces of the USSR remained in Polish territory. This hindered the resolution of the issue as to the time, when the government-in-exile lost, and the domestic government gained, the right to represent the Polish state in the international community.⁷⁷

The State National Council, founded towards the end of 1943 and in the beginning of 1944, acting in close cooperation with the USSR, established on 21.07.1944, the Polish Committee of National Liberation

⁷⁵ R. Bierzanek, J. Jakubowski, J. Symonides, *Prawo międzynarodowe i stosunki międzynarodowe* [International law and international relations], Warszawa 1980, p. 155. The Polish government in exile was in fact entitled by international law to take over power in Poland, however, the intervention of the USSR in the internal affairs of Poland prevented this.

⁷⁶ The USSR and the majority of states in the then-contemporary international community recognised the subsequent governments (the Polish Committee of National Liberation, the Provisional Government, the Provisional Government of National Unity) and not the Polish state.

⁷⁷ E. Dynia, *Uznanie rządu...*, p. 110.

(Polish: PKWN).⁷⁸ On 22.07.1944, the PKWN Manifesto to the Polish nation was announced, and this day is considered to be the day of formation of the People's Republic.⁷⁹ On 31.12.1944, the State National Council replaced the Committee with the Provisional Government of the Republic of Poland,⁸⁰ which already on 4.01.1945, was recognised by the USSR. This caused justified protests both of political factors in exile in London, as well as governments of western powers, because this government, just like the State National Council and the Committee, could not, under the conditions of German wartime occupation, exercise effective control as understood by international law,⁸¹ hence, its recognition was not justified in light of international law. As L. Antonowicz concludes, 'it is obvious that the Polish government in exile retained the *ius representationis* of the Polish state after the Polish Committee of National Liberation was formed on 21.07.1944, later treated as the first government of the People's Republic. Due to the circumstances of establishment and its character, the Committee did not officially declare itself to be the government. It did establish *quasi*-diplomatic relations with the Soviet Union, it questioned in general the legality of the Polish government in exile, but it did not expressly question of its international competences. It was only after the Committee was transformed into the Provisional Government, its head, still Edward Osóbka-Morawski, made a statement of non-recognition of transactions and obligations made by the government-in-exile in London.⁸² Hence, until the first half of 1945, the Provisional Government could only be treated as the *de facto* government, just like the Committee, as the *de iure* government continued to be the Polish government in exile in London. This signifies that both could acquire rights and make international obligations in name of the Polish state. In view of L. Antonowicz, from the point of view of international law, the situation may be described as follows: international acts of the *de facto* government that remains in power become legally binding due to the retroactive effect of international recognition, whereas international acts of the *de iure* government from before loss of power require the recognition by the subsequent government.⁸³

⁷⁸ Polish OJ 1944, no. 1, item 1.

⁷⁹ More on this see L. Antonowicz, *Status...*, pp. 55-56.

⁸⁰ Polish OJ 1944, no. 19, item 99.

⁸¹ Only gradually, as the liberation of Polish lands from the occupation progressed, did the Provisional Government become the general domestic government.

⁸² L. Antonowicz, *Status...*, pp. 57-58.

⁸³ *Ibidem*, p. 58.

In the period between the Yalta conference (4-11.02.1945), and the Potsdam conference (17.07-2.08.1945), effects unfavourable for Poland emerged that stemmed from the temporary existence of two governments, which was the cause of Poland failing to be present at the San Francisco conference called to establish the charter of the United Nations Organisation.⁸⁴ However, despite this, the Republic of Poland was considered during this conference to be a founding state of the UNO. A place was reserved for Poland to sign the Charter of the United Nations Organisation, which provided it with the rights of founding members.⁸⁵ The Moment the Provisional Government of National Unity was called into existence (28.06.1945), recognised by all great powers, Poland could affix its signature under the UN charter. This signature was affixed on 15.10.1945, by the Minister of Foreign Affairs of the Republic of Poland, Wincenty Rzymowski.⁸⁶ So, even though the Declaration of United Nations of 1.01.1942, was signed in the name of Poland by a representative of the London government, the UN charter was already signed by a representative of the Provisional Government. By signing and ratifying (on 24.10.1945) the Charter of the United Nations, Poland became a founding member of the UNO,⁸⁷ confirming that both governments successively represented

⁸⁴ It must be stressed that the London government-in-exile actively participated in work of the international community to organise following the conclusion of the war a new organisation to replace the League of Nations that would be global, common and universal in character and that would be signatory to practically all treaties and declarations aimed at bringing the world to order after the war, beginning with the signing of the Inter-Allied Declaration drawn up in London on 12.06.1941, through the acceptance of the rules of the Atlantic Charter of 14.08.1941 all the way to the Declaration of the UNO of 01.01.1942. See documents in J. Staszków (ed.), *Polska w procesie tworzenia Organizacji Narodów Zjednoczonych, Katalog dokumentów* [Poland in the process of creating the United Nations, Catalogue of documents], Kraków 2005, pp. 4-6.

⁸⁵ See statement by the Provisional Government of the Republic of Poland on the San Francisco conference of 22.03.1945 in *Współpraca międzynarodowa w latach 1941-1945...*, pp. 58-60.

⁸⁶ See authorisation to sign the text of the UN Charter and the declaration of the government of the Republic of Poland on the United Nations Organisation of 16.10.1945 [in:] J. Staszków (ed.), *Polska w procesie tworzenia...*, p. 23 and p. 22.

⁸⁷ More on this J. Staszków (ed.), *Karta Narodów Zjednoczonych 1945-2005* [United Nations Charter 1945-2005], 'Krakowskie Studia Międzynarodowe' 2005, special edition, no. 1 (11), pp. 105-109. See also the Statement of the Government of the Republic of Poland on the ratification of the United Nations Charter of 8.07.1946, p. 116-117.

one and the same state.⁸⁸ From the point of view of international law, this is proof of continuity of Polish statehood.

On 28.06.1945, pursuant to agreements between the governments of the United States, Great Britain and Soviet Union made during the Yalta conference in February of 1945, the Provisional Government was transformed into the Provisional Government of National Unity.⁸⁹ International legitimation of the new government was expressed in the Potsdam Agreement of 02.08.1945, under chapter IX entitled 'Poland', which stated, among others, that:

The establishment by the British and United States Governments of diplomatic relations with the Polish Provisional Government of National Unity has resulted in the withdrawal of their recognition from the former Polish Government in London, which no longer exists.⁹⁰

The western powers, driven by the fulfilment of the conditions agreed upon during the Yalta conference concerning the establishment of the Polish government recognised the newly established government, at the same time withdrawing its recognition of the government in exile.⁹¹

⁸⁸ Sz. Zaręba, *Ciągłość państwa...*, p. 282.

⁸⁹ See statement by the representatives of the governments of the USSR, UK and the United States on the results of the Crimea Conference in *Współpraca międzynarodowa w latach 1941-1945. Dokumenty i Materiały* [International cooperation in 1941-1945. Documents and Materials], 'Zbiór Dokumentów' 1954, vol. 5, pp. 50-52. It must be noted here that the Yalta agreement on the establishment of the Provisional Government of National Unity was made without participation and authorisation of then-contemporary Polish governments acting on the basis of the April Constitution. Hence, in the opinion of R. Kwiecień, the change of the Polish government was contrary to the April Constitution. From the point of view of the rule of legalism, hence, the statement of the government of the Republic of Poland in exile was not unfounded in that it questioned the legality of the Yalta agreement and the legitimation of the Provisional Government. R. Kwiecień, *Tożsamość i ciągłość...*, p. 23.

⁹⁰ K. Kocot, K. Wolfke (ed.), *Wybór dokumentów...*, p. 60.

⁹¹ Establishment of diplomatic relations was a form of recognition of the Provisional Government of National Unity by the United States on 5.07.1945 (archives of the Polish Ministry of Foreign Affairs, team six, vol. 1303, no. 84) and other states (France and Sweden 29.06, China and the UK 5.07), which at the same time severed ties with the London government in exile. More on this see E.J. Pałyga, *Uznanie Polski Ludowej jako pełnoprawnego podmiotu stosunków dyplomatycznych (1944-1946)* [Recognition of the People's Republic of Poland as a fully-fledged subject of diplomatic relations (1944-1946)], 'Studia Nauk Politycznych' 1978, no. 5, p. 150-160 and L. Gelberg, *Powstanie*

The Polish government in exile hence ceased to be a body of the Polish state, and its actions, even though they played a positive political role, had no significance in international law. The fact of the Provisional Government of National Unity being recognised until halfway through 1946 by 46 states settled the issue of international representation of the Polish state.⁹² By way of common recognition by states making up the international community, the international legalisation of the government of the People's Republic came to be.

To sum up, one must agree with P. Łaski that the Polish state, despite the German (1.09.1939) and Russian (17.09.1939) aggression, and then the occupation of the Polish territory by the armed forces of two aggressors, lost at that time neither its existence as a subject of international law, nor did it collapse, as its highest authorities did not surrender power to the enemies in a permanent, complete and ultimate manner.⁹³ L. Gelberg this concludes that the People's Republic of Poland, in terms of international law, is a continuation of the state that existed in the interbellum as the Second Polish Republic, also stating that neither wartime occupation nor the change of borders caused the collapse of the Polish state as a subject in international law. This effect was also not caused by the change of the government connected with a fundamental change in the social and political order of Poland. It is the author's view that an additional argument in favour of the continuity of the Polish state was the historic legal system basically remaining.⁹⁴

The People's Republic of Poland existed only until the time of systemic changes initiated in the year 1989. However, as L. Antonowicz notes, the birth of the Third Polish Republic does not describe the emergence of a new state as a subject of international law. From the point of view of international law, it was a systemic change describing the removal of political limitations in the execution by the Polish state of sovereign rights due to it,⁹⁵ which were doubtless the case in the years 1944-1989.⁹⁶

Polski Ludowej; Problemy prawa międzynarodowego [Establishment of the People's Republic of Poland: Problems of international law], Warszawa 1970, p. 70.

⁹² L. Antonowicz, *Status...*, p. 60.

⁹³ P. Łaski, *Nabycie i utrata terytorium...*, p. 75.

⁹⁴ L. Gelberg, *Powstanie Polski Ludowej...*, p. 139-140. Opinion shared by L. Antonowicz, *Z problematyki statusu...*, p. 75.

⁹⁵ L. Antonowicz, *Tożsamość państwa...*, pp. 9-10.

⁹⁶ One must add that despite the fact that the territory of Poland saw, throughout the existence of the People's Republic, precisely until 18.09.1993, the presence of Soviet

After the year 1989, in practice, the issue of identity of the Polish state did not exist at all, as the issue did not emerge of the collapse of the state existing under the name of the People's Republic of Poland. Hence, the issue of international recognition of Poland as a new entity did not arise, the issue of recognition of the Polish government did not even emerge – due to the constitutional change of government.⁹⁷ In the opinion of R. Kwiecień, this means that the contemporary Polish state, despite political and systemic changes as well as the change of its name, is the same entity of international law as the People's Republic.⁹⁸ Stressed must also be the fact that subsequent non-communist governments took the position of maintaining the power from all international agreements concluded in the period of the People's Republic, whereas in case of the Warsaw Pact, the bylaws of the Council for Mutual Economic Assistance or other international agreements binding states of the so-called socialist community, their dissolution took place by way of mutual agreements between the parties.⁹⁹ The Polish state also continued the memberships in international organisations that were the case until the present, including for instance the original membership in the UNO. The common international recognition hence clearly indicated the continued existence of Polish statehood, including the period of communist rule.¹⁰⁰ One must thus agree with L. Antonowicz that the "Third Polish Republic, in terms of international law, is not a new state, but a continuation of the Second Polish Republic (1918-1939), the Republic in struggle (1939-1944/1945), as well as the People's Republic of Poland (1944/1945-1989)."¹⁰¹

Forces, their presence was not akin to military occupation. These forces were stationed on the basis of a treaty signed between Poland and the USSR on the legal status of soviet armed forces temporarily remaining in Poland, of 17.12.1956; Polish OJ 1957, no. 29, item 127.

⁹⁷ Being the effect of the agreement reached in 1989 between the government and the opposition during 'Round Table' talks.

⁹⁸ R. Kwiecień, *Tożsamość i ciągłość...*, p. 23.

⁹⁹ L. Antonowicz, *Status...*, p. 86.

¹⁰⁰ Sz. Zaręba, *Ciągłość państwa...*, p. 286.

¹⁰¹ L. Antonowicz, *Status...*, p. 87.

5. Conclusions

To summarise, one must agree that in light of international law, the Polish state retains its identity uninterruptedly since the year 1918. The institution of international recognition could hence be applied with respect to Poland only directly after it regained independence in the year 1918. From the very beginning of the 1920s, Poland was commonly considered a state and a subject in international law. Numerous changes that took place in Poland during and following World War II did not collapse this subjectivity. International practice after World War II confirms all rules of state continuity in force until that time – in particular without consideration of changes to the name, system or government. Any new government, even if they gain power in violation of the existing legal order, as was the case in Poland in the year 1944 with the Provisional Government of National Unity, does not interrupt the continuity of the state by international law. The emergence of the People's Republic of Poland in the year 1944 hence meant the continuation of Poland as a subject in international law.

The birth of the Third Polish Republic also did not describe the emergence of a new state as a subject in international law, as the constitutional character of changes in the year 1989 precluded the emergence of the issue of international recognition of the new, non-communist Polish government.

To conclude, it must be stated that in light of international law, the People's Republic of Poland and the Second Polish Republic, despite the political, systemic as well as territorial and population differences between them were identical subjects. The continuation of their subjectivity today is held by the Third Polish Republic.

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