

■ Treaty on Good Neighborly Relations and Friendly Cooperation of June 17, 1991

By prof. dr hab. Krzysztof Malinowski

The Treaty on Good Neighborly Relations and Friendly Cooperation marked a watershed change in Polish-German relations in historical terms. It became the first instrument of international law to regulate mutual relations so comprehensively in hopes of setting a new course for the foreseeable future. Poland's strategic pivot towards the West and, in particular, the new neighborhood of both countries, defined the Polish-German agreement, whose provisions laid the groundwork for its implementation in the new European setting. The instrument set the scene for cooperation in all major areas ranging from security to economy, Germany's support for Poland's accession to the European Communities, cross-border and regional relations, agriculture, social security, science and technology, environmental protection, transport, national minorities, to culture and youth.

The rationale

Following the reunification of Germany and the conclusion of the Border Treaty of November 14, 1990 reaffirming the border between Poland and the reunified Germany along the Odra and Nysa Łużycka rivers, both states sought to achieve a historic rapprochement and agreement, as set forth in the Joint Statement issued by Prime Minister Tadeusz Mazowiecki and Chancellor Helmut Kohl on 14 November 1989. At a time when change in the geopolitics and politics of Central and Eastern Europe accelerated uncharacteristically, this goal became all the more relevant. For the reunified Germany, support for strengthening Poland's democratic and economic transition and for stabilizing the entire region was a pressing priority. For Helmut Kohl's government, eliminating divisions across Europe, tightening relations, and finally bringing Poland closer and eventually into the fold of the European community, was of paramount importance. Even before signing the Border Treaty, Chancellor Kohl assured Prime Minister Mazowiecki that "Poland should be afforded every opportunity to associate itself with the European Communities at the earliest possible time" (ZDF 8.11.1990). He saw the rapprochement between Poland and the Communities as a factor for improving Polish-German relations. Against this background, he envisioned Germany in the role of an advocate for Poland's interests vis-à-vis Western partners. The Chancellor often emphasized the important historical rationale behind his policy on Poland. He wished to model reconciliation between the two nations on a similar process conducted to improve German-French relations, all the while gradually overcoming the belief in the eternal enmity between Poland and Germany. Poland shared this view.

Even as early as the time of his address to the Bundestag on the occasion of adopting a resolution to reaffirm the Polish-German border on June 21, 1990, the Chancellor spoke



of the need to conclude a treaty on friendly relations. The key factor in Kohl's calculations was to achieve a joint ratification of both treaties with a view to creating the widest possible support for an agreement with Poland on the part of the Christian Democrats, whose right wing found the final confirmation of the border along the Odra and Nysa Łużycka Rivers difficult to swallow, and was of the opinion that the only worthy compensation for the loss would be Poland's commitment to protect the rights of the German minority in its country.

The negotiations

The treaty negotiation turned out to take as many as six sittings grouped into two rounds of tedious talks spread over almost six months from October 1990 to April 1991. The treaty was initiated on June 6, 1991 and signed into law on June 17, 1991 in Bonn by Prime Minister Jan Krzysztof Bielecki and Chancellor Kohl.

The single contentious issue that caused the greatest delay to the negotiations was the status of the German minority in Poland. The German side insisted on expressly stipulating the rights of that minority, while the Poles believed it would be sufficient to invoke international standards. The issue impeded the negotiations from the very start due to the maximalist approach of the CSU, the Christian Democratic party of Bavaria, without whose support it would be impossible to jointly ratify the treaty reaffirming the border and the negotiated Treaty on Good Neighborly Relations, as previously agreed by Prime Minister Mazowiecki and Chancellor Kohl. The CSU's postulates reflected the position of the Federation of Expellees (Bund der Vertriebenen), which demanded that the German minority in Poland be granted broad rights akin to those of the German minority in South Tyrol. This would include treaty provisions establishing dual citizenship, protecting minority rights in domestic legislation, and ensuring the so-called right of return for "the expellees", the use of bilingual names, the adoption of German as an official language, and even the settlement of the property claims of the expellees. The negotiations hit a snag in their early days caused by a row over the transit through Poland of Soviet troops pulling out of Germany without prior arrangements with the former. The issue was resolved during the March 4-5, 1991 visit to Bonn of Prime Minister Bielecki, who strived to clear away contentious issues and secure Chancellor Kohl's support for his effort to reduce the Polish debt in the so-called Paris Club (which associated state creditors) in recognition of the prevailing importance of protecting Poland's strategic interests in the process of the country's Western reorientation and of the urgency of its economic transformation. The decision to restructure and reduce debt in the Paris Club (April 22, 1991), the Germany-influenced decision of the Schengen states to abolish visa requirements for Polish citizens (April 8, 1991), and Germany's involvement in the talks on Poland's association with the European Communities greatly improved the atmosphere and facilitated the negotiations. Specifically, headway was made by securing the consent of the Polish side to having the term "minority" included in the text of the treaty and to stipulate minority rights, although the German side failed to reciprocate by affording similar treatment to the Polish population living in Germany.



The compromise was reaffirmed during the visit of Foreign Minister Krzysztof Skubiszewski to Weimar on May 26-27, 1991. An integral part of the compromise was to include in the treaty a special list of issues that remained unresolved or had been excluded from the negotiations. Even this compromise was contested in early May 1991 by the CSU, which adhered to the spirit of the above-mentioned postulates of the Federation of Expellees. Their opposition sparked a short-lived dispute with the co-ruling FDP (Free Democrats), led by Hans-Dietrich Genscher, Vice-Chancellor and head of the Ministry of Foreign Affairs, who stood up in defense of the agreement.

The signing and ratification

After the treaty was signed by Prime Minister Bielecki and Chancellor Kohl in Bonn on June 17, 1991, the ratification of both treaties was finalized in the Bundestag (October 17) and the Bundesrat (November 8). The Bundestag additionally adopted a special resolution that expressed the expectations of the Germans regarding Poland's concessions on the minority issue (which were to include allowing German citizens, including the expellees, to settle down in Poland as well as the use of German topographical names in that country). The Bundestag vote showed broad-based support for the agreement with Poland. On the border treaty, only thirteen CDU/CSU MPs voted against with ten further MPs abstaining. Moreover, four more deputies opposed both treaties, and two abstained from voting on the treaty of 17 June 1991.

The treaty was additionally accompanied by special identical five-point letters from the two foreign ministers, which provided a background for the treaty's interpretation. The Polish government chose to deny the "expellees" the right of return, pointing out that only the prospect of Poland's accession to the European Communities would open up avenues for Polish citizens to settle down in Poland (p. 2). Poland also rejected the idea of adopting dual-language topographical names (p. 4). The final paragraph of the letter noted that the parties to the treaty declined to address citizenship and property claims. This meant that Poland indirectly agreed to tolerate the granting of German citizenship to its own citizens of German descent in pursuance with Art. 116 of the German Constitution. On the other hand, the emphasis on excluding property matters from the negotiations could suggest that any possible compensation claims by the German population made in connection with their expulsion or displacement were either outside the scope of the matters to be settled either at that time or at a later date or indicated an agreement to keep the question open.

With regard to compensation for victims of the Nazi regime, fundamental divergences in the legal positions of the parties prevented a solution to the legal claims issue. On October 16, 1991, by virtue of a separate agreement, 500 million marks' worth of German aid was provided to victims of persecution. The funds were to be transferred successively to a specially-established Foundation for "the Polish-German Reconciliation". The funds were not reparations in legal terms. Poland proclaimed that no further claims would be filed on behalf of Polish citizens. Thus, the issue of paying the compensation was not included in the treaty. It was part of an earlier political agreement between Prime Ministers Mazowiecki and Bielecki and Chancellor Kohl, all of whom agreed it would be



resolved no later than the treaty's entry into force. In addition, along with the treaty, three key agreements were concluded that complemented its provisions. They were the Agreement on the Cooperation of Polish-German Youth, the Agreement on the Polish-German Council for Environmental Protection and the Agreement on the Polish-German Commission for Regional and Border Cooperation.

The provisions

The treaty can be classified as a normalization instrument that seeks to end abnormalities in bilateral relations by changing the legal framework that governs the current state of affairs. The treaty comprised an extensive preamble, 38 articles and the aforementioned letters from foreign ministers.

The preamble sets forth the intentions of both parties, which are to arrange their mutual relations in keeping with the good traditions and friendly coexistence in the centuries-old history of Poland and Germany. The drafters pointed, *inter alia*, to the need to ensure fair lasting peace-based order in Europe and build a united Europe based on respect for human rights, democracy and the rule of law. It should be noted that the preamble offers predominantly statements that are clearly aligned with Polish interests but makes no reference to the German minority. One of the passages states that economic cooperation is indispensable for broad bilateral relations (...) and for reducing developmental disparities. Another suggests that the parties are aware of the importance of Germany's membership in the European Communities and the political and economic accession of the Republic of Poland to this Community for the future relations between both states.

Several thematic sections can be distinguished in the treaty. The first one contains provisions on the aims, principles and procedures for mutual relations. Article 1 commits to shape such relations in the spirit of good neighborly relations and friendship, and to strive for partnership-based cooperation. Article 2 outlines the principles to be followed by both parties with references made to the United Nations Charter, the Final Act of the CSCE, and the Paris Charter. Emphasis is placed on respect for mutual territorial integrity, the inviolability of borders, the prohibition of the use and threats to use force, and the right of self-determination of other nations. Article 3 establishes a procedure for regular intergovernmental consultations, while Article 4 refers to support for interparliamentary relations.

Three main concerns were addressed in the field of security and disarmament. The treaty reaffirmed the principle of prohibiting the use of force and threats to use force and the principle of peaceful settlement of disputes. It stated the common goal of striving to bolster stability and security across Europe (Article 6) and committed to reduce the size of the armed forces. Moreover, it adopted the obligation to establish contact in the event of a threat or breach of peace (Article 7).

Several references are made in the treaty regarding Poland's future in Europe. In Article 8, Germany welcomes the prospect of Poland's accession to the European Community as soon as the circumstances are appropriate. This wording signaled vital support for the aspirations and goals of Poland's foreign policy. Article 9 refers to economic relations and



includes a commitment to extend them. On that point, Germany expressed willingness to join the international community in its support for Poland's economic transition. Article 10, which relates to financial cooperation and the willingness of both states to establish such cooperation within the framework of international financial institutions, also recognizes that solving the problem of Polish debt was a critical prerequisite for the success of Poland's reforms. It commits to continue cooperation in this field.

The treaty laid legal and political foundations for mutual relations in such areas as agriculture, regional and cross-border cooperation, spatial planning, social security, environmental protection, transport, telecommunications, passenger traffic and tourism. One of the key themes was culture and science. In Article 15, the parties proclaimed their support for scientific and technical cooperation and information exchange. In Article 26, they agreed to additionally support cooperation in education and, in Articles 23-24, the expansion of cultural exchanges in all areas and at all levels. Articles 28 and 34, which regulate the legal standing of German cultural heritage in Poland, was of particular importance. Both parties committed to work together to preserve and care for European cultural heritage and declared their willingness to preserve their monuments. Article 32 adopted the principle of reciprocity with regard to care for graves.

Another set of provisions concerned the establishment of closer relations between the two societies as a necessary prerequisite for mutual understanding and reconciliation between them (Article 29). Particular emphasis was placed on youth exchanges (Article 30). Article 35 established a common award for special contributions to the development of Polish-German relations.

The minorities issue is governed by Articles 20-22. The first two of the three articles (Articles 20 and 21) define the rights of members of minorities and the respective obligations of both states to be implemented in keeping with international standards. Article 22 clearly defines the requirements of loyalty on the part of members of minorities towards the state of which they are citizens. Article 20 defines members of minorities in Poland as persons with Polish citizenship, who are either of German descent or identify with the German language, culture and/or traditions. Despite what was expected from the principle of reciprocity, such treatment was not afforded to Poles living in Germany, which was due to opposition from that country. As a consequence, the Treaty spoke of persons in the Federal Republic of Germany, holding German citizenship, who are of Polish origin and identify with the Polish language, culture and/or traditions. The asymmetry in the treatment of the two groups resulted from Germany's reluctance to equate the rights of the German minority, considered to be indigenous in Poland, with those of the Polish community in Germany, which, despite its presence there since the 19th century, was seen as immigrant. In the above-mentioned correspondence, point 1 states that the Government of the Federal Republic of Germany commits to strive to enable such persons of Polish origin living in the Republic of Germany or identifying with the Polish language, culture and/or traditions, as are not covered by the provisions of Article 20.1, to exercise broadly the rights set out in Article 20 and to use the opportunities set out in Article 21. In Article 21, the parties undertake to protect the



identities of the concerned communities by providing them with access to the teaching of the Polish language and education in their mother tongue in public institutions of education and the option to use the Polish language in dealings with public authorities.

The Treaty on good neighborly relations and friendly cooperation completed the laying of a foundation for relations between free and independent Poland and reunified Germany. For the first time in history, both states regulated their mutual relations in such a comprehensive manner amidst broad support by the public and political elites in both countries. For Poland, the fundamental importance of the treaty lied in strengthening Poland's pro-Western European foreign policy and the country's pivot towards the European Communities. The Treaty significantly increased the rank of bilateral relations as key to overcoming divisions on the continent and creating a new European democratic order grounded in the principles of democracy and cooperation.