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THE POLISH-GERMAN BORDER IN THE LIGHT OF THE 2+4 TREATY AND THE POLISH-GERMAN TREATY ON THE CONFIRMATION OF THE BORDER BETWEEN THEM

Abstract: *The essence of the “border problem” between Poland and the FRG reaches back to the provisions of the Potsdam Agreement of 1945. The Polish position was unambiguous from the beginning: the border on the Odra and Nysa Łużycka rivers was established under international law in the Potsdam Agreement, while the subsequent actions undertaken within the framework of the “peace settlement” could only have complementary, declaratory significance. On the other hand, in the FRG an official legal position was developed according to which the former eastern German territories were only given to Poland (and the USSR) “under their administration”, and the final decision on the border was left to be taken by the future unified Germany in a “peace treaty” or a “peace settlement”. This position was not changed by the Normalization Treaty between Poland and the FRG of 1970, because it was interpreted in the FRG as only a “treaty about the renunciation of force”, an element of a *modus vivendi* which was to last until the unification of Germany. On the other hand, the Zgorzelec Treaty of 1950 between Poland and the GDR was interpreted as not binding for the future unified Germany. Such a position deeply destabilized political relations between the FRG and Poland in the post-war period and had a conflict-generating significance in a number of areas. At the beginning of 1990 the political changes in Poland coincided with the process of German unification. The democratic opposition in Poland, and thereafter the government of Tadeusz Mazowiecki, unequivocally supported the right of the German people to self-determination, at the same time expecting an unequivocal position on the Polish-German border. This fundamental problem was closed in 1990 under two international agreements: the Treaty on the Final Settlement with Respect to Germany (2+4 Treaty) and the Treaty between the*

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Federal Republic of Germany (united Germany) and the Republic of Poland on the confirmation of the border between them. Thus for thirty-plus years now the “border problem” has been removed from the agenda of political discussions in Polish-German relations, which proves the effectiveness and durability of the agreement reached, which was reflected in both treaties.

Keywords: Potsdam Agreement, 2+4 Conference, Polish-German relations, unification of Germany, Polish-German community of interests

INTRODUCTORY REMARKS

At the beginning of 1990, Polish Foreign Minister Krzysztof Skubiszewski drew attention to the need to build a “Polish-German community of interests” and stated that “there can’t be any border problem on the eve of German unification.”¹ This was a statement of fundamental importance, as the political changes in Poland coincided with the process of German unification. This fundamental problem was closed the same year under two international agreements: the Treaty on the Final Settlement with Respect to Germany, signed on 12 September 1990² (2+4 Treaty), which closed the 2+4 Conference (Poland participated in certain parts of this Conference and had an influence primarily on the substance of the border clauses concerning the united Germany); and the Treaty between the Federal Republic of Germany (united Germany) and the Republic of Poland on the confirmation of the border between them, signed on 14 November 1990.³

The essence of this problem reaches back to the provisions of the Potsdam Agreement of 2 August 1945, in which the Allied Powers, exercising their competences after taking over the highest power in Germany due to its unconditional surrender, handed over the eastern German territories to Poland (and part of East Prussia to the Union of Soviet Socialist Republics (USSR)), at the same time establishing the western border of Poland on the Odra and Nysa Łużycka rivers. The border was to be finally “delimited” or “determined” in the future “peace settlement” – a concept that went beyond the traditional understanding of a peace treaty.

Due to the deepening political conflict in Europe after the Second World War, such a “peace settlement” with Germany never happened (from 1949 there were two

¹ From the speech delivered on 22 February 1990 during the 6th Polish-German Forum.

² BGBl. 1990, Part II, pp. 1317.

³ Journal of Laws 1992, No. 14, item 54 (in Polish). See J. Barcz, K. Ruchniewicz (eds.), *Ein historischer Akt. 30 Jahre Vertrag über die Bestätigung der deutsch-polnischen Grenze an Oder und Lausitzer Neiße*, Elipsa, Wrocław-Warszawa: 2022.

German states – the Federal Republic of Germany (FRG) and the German Democratic Republic (GDR)). The Polish position was unambiguous from the beginning: the border on the Odra and Nysa Łużycka rivers was established under international law in the Potsdam Agreement, while the subsequent actions undertaken within the framework of the “peace settlement” could only have complementary, declaratory significance. This position was the subject of works of all the leading Polish experts in international law, including Alfons Klafkowski, Józef Kokot, Manfred Lachs, Bogdan Wiewióra, Ludwig Gelberg, Krzysztof Skubiszewski, Jerzy Tyranowski, and Lech Janicki.

On the other hand,⁴ in the FRG an official legal position (*Rechtsposition*) was developed according to which the former eastern German territories were only given to Poland (and in part to the USSR) under their “administration”, and the final decision on the border was to be taken by the future unified Germany in a “peace treaty” or a “peace settlement” (*Friedensvertragsvorbehalt*). This position was not changed by the Normalization Treaty between Poland and the FRG of 7 December 1970,⁵ because it was interpreted in the FRG as only a “treaty about the renunciation of force”, an element of a *modus vivendi* until the unification of Germany. On the other hand, the Zgorzelec Treaty of 6 July 1950⁶ between Poland and the GDR was at first ignored by the FRG, and the FRG, after establishing diplomatic relations in the early 1970s with the GDR, interpreted it as not binding for the future unified Germany. Such a position deeply destabilized political relations between the FRG and Poland in the post-war period and had a conflict-generating significance in a number of areas, such as citizenship, property relations, legal cooperation, place names, minority protection issues, etc.

In the fall of 1989, at the beginning of the process of unification of Germany, this was thus the “legal position” of the FRG. The democratic opposition in Poland, and thereafter the government of Tadeusz Mazowiecki, unequivocally supported the right of the German people to self-determination, while at the same time expecting an unequivocal position on the Polish-German border. Nevertheless, during his visit to Poland in November 1989 (during which the Berlin Wall fell in the night of 9-10 November), Chancellor Helmut Kohl referred consistently to the

⁴ The legal positions of both parties – Poland and the FRG were described in J. Barcz, J.A. Frowein, *Gutachten zu Ansprüchen aus Deutschland gegen Polen in Zusammenhang mit dem Zweiten Weltkrieg*, 65 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 625 (2005).

⁵ Agreement between Poland and Federal Republic of Germany concerning the basis for normalization of their mutual relations (signed on 7 December 1970), 830 UNTS 327. See J. Barcz, K. Ruchniewicz (eds.), *Akt normalizacyjny. 50 lat Układu o podstawach normalizacji stosunków PRL-RFN z 7 grudnia 1970 roku* [The normalization act. 50 years of the Normalization Treaty between PPR and FRG], Elipsa, Wrocław-Warszawa: 2021.

⁶ Treaty between the Polish Republic and the Democratic Republic of Germany on the delimitation of the existing Polish-German border, signed on 6 July 1950 in Zgorzelec, Journal of Laws 1950, No. 51, item 465.

above-mentioned “legal position” of the FRG and avoided taking an unequivocal position on the status of the Polish-German border under international law; the ten-point plan of German unification announced by him on 28 November 1989 did not contain any references to the border with Poland. In the face of such circumstances, the government of Tadeusz Mazowiecki took steps to include Poland in the relevant parts of the 2+4 Conference (which – with the participation of four powers – dealt with the “external aspects” of the unification of Germany). In parallel, the confirmation of the Polish-German border on the Odra and Nysa Łużycka rivers was discussed in both trilateral relations (Poland, the FRG and GDR) and bilateral relations (Poland-FRG). These actions were aimed at putting an end to all reservations about the legal status of this border (raised previously in the FRG) in the relations between Poland and the united Germany. This was all the more important because in this case – in view of the arguments arising from the “legal position” of the FRG – the principles on succession of states in treaties establishing borders (which by law should be binding on the successor) may have turned out to be insufficient, especially since the unification of Germany took the form of the accession (incorporation) of the GDR into the FRG.

1. THE POLISH-GERMAN BORDER IN THE LIGHT OF THE 2+4 CONFERENCE

For the confirmation of the Polish-German border as the final border under international law, the Treaty on the Final Settlement with Respect to Germany, signed on 12 September 1990 (entered into force on 15 March 1991), was of fundamental importance. It was negotiated during a conference attended by the United States, Great Britain, France and the USSR as well as the two German states (2+4 Conference), which – exercising the right to self-determination – restored “German state unity.” The participation of the above-mentioned four states was necessary because they had – as the Allied Powers of the Second World War – “rights and responsibilities for Berlin and Germany as a whole” resulting from the unconditional surrender of the Third Reich and their assumption of supreme power in Germany. While the extent of these “rights and responsibilities” was contested between the USSR and the three Western powers, their existence on the eve of German unification was not in question.

According to the Ottawa communiqué of 13 February 1990, the subject of the 2+4 Conference was to be “the external aspects of the establishment of German unity, including the issues of security of the neighboring states.” In fact however, the Conference was the proverbial “tip of the iceberg”, because the problems discussed within it were at the centre of the debate on the geopolitical future of the European

continent, and the 2+4 Treaty was accompanied by a network of multilateral and bilateral international agreements which became the basis for the “new political architecture” of Europe. Needless to say, the arrangements reached at that time had a direct impact on the place of the “new democracies” of Central and Eastern Europe (CEE) in the emerging European “political architecture”, and for Poland were of existential significance.⁷

While the formal goal of the 2+4 Conference was to end the “rights and responsibilities of the four powers for Berlin and Germany as a whole”, nevertheless it was necessary to regulate in parallel the membership of the united Germany in the (political, military and economic) alliances, and to regulate the presence of foreign troops on the territory of unified Germany and the status of Berlin. The political goal of the three Western powers and the FRG (and in the final phase also of the GDR) was to ensure the membership of the united Germany in NATO and in the European Community. The negotiation of the USSR’s consent to such a scenario of German unification also required understanding on the rules for the withdrawal of Soviet troops from the territory of the then-GDR and the withdrawal of the GDR from the Warsaw Pact and COMECON. The undisputed condition for reaching such groundbreaking decisions was to put an end to all doubts raised previously in the FRG about the final nature of the border on the Odra and Nysa Łużycka rivers under international law, and (which is usually forgotten) the borders of the USSR on the territory of the former East Prussia. Following Polish diplomatic activities, this issue was included in the main agenda of the 2+4 Conference.

The provisions of the 2+4 Treaty confirmed that the borders of the united Germany are final in the light of international law, put an end to the “rights and responsibilities” of the four powers (on the day of unification, on 3 October 1990, Germany became a fully sovereign state, and until the 2+4 Treaty entered into force the four powers suspended their “rights and responsibilities”); regulated the political and military status of the united Germany – including above all opening the way for its membership in NATO and the European Communities; and agreed on the withdrawal of Soviet troops from (former) territory of the GDR by the end of 1994 (which was implemented despite the dissolution of the USSR). These groundbreaking decisions were a consequence of the arrangements made, in particular, during the meeting of M. Gorbachev and G. Bush in Washington (31 May – 3 June 1990), and above all during the visit of Chancellor H. Kohl to the USSR (in Moscow and the Caucasus) (14-16 July 1990).

⁷ See J. Barcz, *Sprawy polskie podczas Konferencji „2+4”. Potwierdzenie granicy polsko-niemieckiej i odszkodowania od Niemiec. Studium z historii dyplomacji i prawa międzynarodowego* [Polish affairs during the “2+4” Conference. Confirmation of the Polish-German border and reparations from Germany. A study on the history of diplomacy and international law], Elipsa, Warszawa: 2021.

The common denominator for the decisions taken at that time was the pace of German unification. When analyzing the course and results of the 2+4 Conference, one must be aware that between the fall of the Berlin Wall on the night on 9-10 November 1989, the signing of the 2+4 Treaty (12 September 1990), and the formal unification of Germany (3 October 1990), less than a year had passed. The 2+4 Conference itself, the formal beginning of which was the Ottawa Communiqué published on 13 February 1990, and which ended with the signing of the 2+4 Treaty on 12 September 1990, thus lasted almost exactly seven months. At that time, the political fate of Europe was decided. For Poland, the 2+4 Treaty meant a direct neighborhood with unified Germany and at the same time an end (along with the bilateral treaty on the confirmation of the Polish-German border, signed shortly thereafter, on 14 November 1990) of the reservations previously made by the FRG regarding the status of the border on the Odra and Nysa Łużycka rivers. Thus, the fundamental status problem was eliminated, opening the way to building a Polish-German "community of interests" (as proposed by Minister Krzysztof Skubiszewski). The decision to withdraw the Soviet troops from the territory of the (former) GDR also facilitated the withdrawal of Soviet troops from Poland, and the direct neighborhood with a NATO member state and the European Community (united Germany) created favourable conditions for Poland's negotiations on membership in both of these organizations, i.e. for Poland to join the European group of democratic states.

Poland was the only country outside the 2+4 group that participated in some parts of the 2+4 Conference, on matters "related to its security, especially the border", and as a country that was expressly mentioned in the 2+4 Treaty. The treaty was officially notified to Poland, and Poland responded officially to the content of the notification. Apart from the essential aspects of European security policy, two issues were particularly important from the Polish point of view: to put an end to the reservations put forward previously by the FRG about the status of the Polish-German border under international law; and the problem of compensation from Germany for the victims of Nazi crimes.

- The first issue, of existential importance for Poland, became one of the four main topics of the 2+4 Conference. Thanks to the decisive support of the four Allied Powers from Second World War (and the GDR), the various reservations expressed by Chancellor Helmut Kohl were overcome and satisfactory agreements were achieved: the 2+4 Treaty directly referred to the borders of the united Germany and, along with the provisions of the so-called Protocol

of Paris,⁸ put an end to the doubts raised previously in the FRG about the ultimate character of the Polish-German border under international law. Moreover, this issue was the subject of a “complementary” regulation in the Agreement of 27-28 September 1990 (between the FRG and the three Western powers), pursuant to which, *inter alia*, Art. 7(1) of the so-called *Deutschlandvertrag*, to which the FRG previously referred when constructing its so-called reservation related to the “peace treaty” (*Friedensvertragvorbehalt*), was abrogated. Finally, the 2+4 Treaty announced the conclusion of a bilateral treaty between Poland and the united Germany. It was signed on 14 November 1990 and confirmed the Polish-German border.

- The second issue, reparations from Germany, was resolved differently. The four powers, as parties to the Potsdam Agreement, had the legitimacy to revert to the matter of interstate reparations (only such were the subject of the Potsdam formula). However, due to the pace of the unification process of Germany, the potential number of countries involved (the Third Reich was at war with about a hundred countries), and the importance of the political challenges related to the unification of Germany, the Western powers decided from the beginning – to which the USSR agreed after some tactical hesitations in the first stage of the 2+4 Conference – to reject the possibility of including this issue in the “final settlement”. Poland could effectively raise the issue of inter-state reparations (we should keep in mind that in the Potsdam formula Poland satisfied its claims exclusively from the part of reparations falling to the USSR) only if the four powers included this matter on the agenda of the Conference. This however did not happen. Nevertheless, there was still the matter of the claims of individual victims of Nazi crimes, which was the subject of careful attention and provided an important context for the deliberations of the Conference and the 2+4 Treaty (mainly due to Poland, Jewish organizations, the USA and the USSR). Parallel to the 2+4 Conference, bilateral talks on a “pragmatic solution” were held (which were stimulated by the talks between Prime Minister Tadeusz Mazowiecki and Chancellor Helmut Kohl during Kohl’s visit to Warsaw in

⁸ The so-called Paris Protocol of 17 July 1990:

- 4. The Four Allied Powers declare that the borders of the united Germany shall be of definitive nature, which cannot be impaired by any external event or circumstance.
- The Minister of Foreign Affairs of the Polish Republic states that, in the Polish Government’s opinion, this declaration does not constitute the Four Powers’ guarantee of borders.
- The Minister of the Federal Republic of Germany states that he accepted the fact that the Polish Government did not perceive this declaration as a guarantee of borders. The FRG joins the Four Allied Powers’ declaration and stresses that the events or circumstances the declaration refers to, shall not take place – that is it provides for neither a peace treaty nor a peace settlement.
- The GDR subscribes to this declaration of the FRG.

November 1989). United Germany was obliged (in the context of the 2+4 Treaty) to continue the compensations paid so far and to negotiate compensations for previously-omitted victims (Art. 2 of the Implementing Agreement to the Unification Treaty and the Agreement of 27-28 September 1990). This led to the conclusion by the FRG (i.e. United Germany) of a network of agreements with the CEE countries, Jewish organizations, and the USA in the following years. This bloc included the 1991 agreement with Poland and the participation of Poland in the 2000 agreement, under which the victims of Nazi crimes in Poland received about PLN 6 billion (the largest sum received by any of the CEE countries). While these payments were modest in comparison with the magnitude of the harm, they nevertheless provided concrete support to the surviving victims. Until today, this “pragmatic solution” still enables various types of support to be provided to victims of Nazi crimes, which is coordinated by the Foundation for Polish-German Reconciliation (established under the agreement of 1991).⁹

To sum up the activities of Polish diplomacy from the period of the 2+4 Conference, it can be said that they ended with full success. The 2+4 Treaty, signed on 12 September 1990, confirmed in Art. 1 the final nature of the borders of united Germany; obliged united Germany to conclude a bilateral treaty with Poland with the aim to confirm the Polish-German border in bilateral relations; and – most importantly – closed the issue of a “peace settlement” by emphasizing (see the statement contained in the so-called Paris Protocol of 17 July 1990, which constituted the context of the 2+4 Treaty within the meaning of the Vienna Convention on the Law of Treaties) that a “peace treaty” and a “peace settlement” were out of the question.¹⁰

Thus, the basic argument used in the “legal position” of the FRG in order to challenge the final nature of the Potsdam Agreement decision concerning the border on the Odra and Nysa Łużycka rivers under international law has become irrelevant. The participation of the four powers in bringing about such a general decision was necessary (it was ensured by the 2+4 Treaty). With the expiration of their “rights and responsibilities” they also lost all competences in this context,

⁹ See J. Barcz, *The 1989-1991 Watershed in Polish-German relations and the issue of compensation for victims of Nazi crimes living in Poland (the Agreement of 16 October 1991)*, *Przegląd Zachodni* 203 (2019).

¹⁰ See J. Barcz, *Das Pariser Protokoll vom 17. Juli 1990 und die Grenze zwischen Polen und dem vereinten Deutschland*, in: Ch. Koch (ed.), *Politik ist die Praxis der Wissenschaft vom Notwendigen. Helmut Ridder (1919-2007)*, Peter Lang, München: 2010, pp. 317 et seq.

and the Polish-German border became a normal border between two states, not encumbered by any reservations or guarantees.¹¹

2. THE BILATERAL TREATY BETWEEN POLAND AND GERMANY ON THE CONFIRMATION OF THE BORDER BETWEEN THEM

This Treaty, signed on 14 November 1990, is brief. It consists of a preamble and four articles. From a legal point of view, the Treaty does not establish the border between Poland and the unified Germany, but confirms the “existing” border. So it is of a declaratory nature. As mentioned, this corresponds to the consistent Polish position that the constitutive act establishing the border was the Potsdam Agreement. The declarative nature of the provisions of the Treaty is clearly indicated by its name and the provisions of Art. 1, in which the “existing border” was “confirmed” in reference to its course defined in the treaties previously concluded by Poland with the GDR and the FRG.¹²

The Treaty no longer referred to the Potsdam Agreement, as its provisions on the “peace settlement” had become obsolete, which should be taken into account and emphasized. The provisions of Art. 2 contain at first glance the traditional formula concerning the inviolability of the border “now and in the future”, but in addition to the obligation to unconditional respect for territorial integrity, they also include an obligation to unconditionally respect the “sovereignty” of both parties. Such an obligation was not included in the provisions of the Normalization Treaty of 7 December 1970. It is particularly important due to the fact that in the past, in the FRG’s “legal position” Poland’s sovereignty in the Western and Northern Territories (former eastern territories of Germany) was questioned.

¹¹ Commenting on this issue, Minister Krzysztof Skubiszewski stated (speech delivered on 26 July 1990 in the Polish Sejm): “The Powers’ involvement in ensuring the definitive character of Germany’s existing boundaries is not equal to guarantees in terms of international law. In particular the Polish-German boundary is not the subject of such a guarantee. From the beginning, the Polish government held the view that assurances from the Powers in the matter of the boundaries’ lasting nature and the removal of all doubts directed at us is necessary. The participation of the Powers is necessary. But a guarantee is something else. After the experience of Yalta, we prefer not to have anyone’s guarantee. It often has the opposite effect than the certainty and peace that the word ‘guarantee’ implies. Let the Polish-German boundary in its present course be a normal boundary, one like all others, without creating a special situation and a special position of the Powers in connection with this territorial regulation. This could lead to undesirable developments. A guarantor is at times owed something and at times takes advantage of this special status. Polish experiences in this respect are not good. In Paris we have reached the appropriate balance between necessary assurances and our independence.”

¹² Minister Krzysztof Skubiszewski stated in this context: “The treaty which we have just signed confirms the Polish-German border existing at the moment of the treaty’s signing; that is a border delimited and demarcated in the field in keeping with the agreements mentioned in Article 1 of the treaty.” *See 5 Zeszyty Niemcoznawcze PISM* 27 (1990).

Art. 3 states that both states “have no territorial claims against each other and that they will not put forward any such claims in the future.” Art. 4 contains the so-called “final clauses”. The Treaty does not contain a reservation that the parties may not infringe other international agreements concluded by or relating to them. Such reservations, contained in Art. IV of the Normalization Treaty of 7 December 1970, opened the way for the interpretation of the Treaty in the FRG, at least according to its “legal position”.

In Germany, the ultimate nature of the border between Poland and reunified Germany is, as understood by international law, fully respected. However, this does not mean a departure from the above-mentioned “legal position” in relation to the past, i.e. the post-war period. In Germany, the position which denies that the Potsdam Agreement is of a constitutive character as regards the establishment of the border on the Odra and Nysa Łużycka rivers is dominant (incidentally, such an effect is associated with the Treaty of 7 December 1970). The consequence of this are disputes in the German doctrine of international law as to the act under which such a constitutive decision was made in relation to the united Germany: some representatives of the doctrine see the constitutive act in the 2+4 Treaty; others in the bilateral treaty confirming the Polish-German border.

However, contrary to the post-war period, when the “legal position” of the Federal Republic of Germany had extremely destabilizing consequences in the field of political, diplomatic and legal relations with Poland, after the conclusion of the 2+4 Treaty and the bilateral treaty confirming the existing border, these types of consequences “died out” due to the fact that the status of the Polish-German border under international law is no longer being questioned by Germany.¹³

Finally, attention should also be paid to the moral and emotional aspects of the Treaty. It should be realized that from the German point of view, the Treaty finally closed the “border issue” with Poland, and thus confirmed that part of the former eastern German territories belong to Poland. This was related to the emotions of the German population which was displaced from these territories.¹⁴ This was reflected in the negotiations and in the text of the Treaty (see the fifth recital in the preamble).

¹³ A good example is putting an end to the claims of former German property owners in the Polish Western and Northern Territories, which were declared non-existent in the Barcz-Frowein Expertise of 2004 (J. Barcz, J.A. Frowein, *Gutachten zu Ansprüchen aus Deutschland gegen Polen in Zusammenhang mit dem Zweiten Weltkrieg*, 65 Zeitschrift für ausländisches, öffentliches Recht und Völkerrecht 625 (2006). Such a position was accepted by both governments, and finally by the European Court of Human Rights (ECtHR), rejecting the claims of the Prussian Trust in its ruling (ECtHR, *Preussische Treuhand GmbH & Co. KG a.A. v. Poland* (App. No. 47550/06), 7 October 2008. For more details, see J. Barcz, K. Podstawa, *Long Shadow of History: on the Decision of the European Court of Human Rights of October 2008*, 18(1) The Polish Quarterly of International Affairs 43 (2009).

¹⁴ See considerations of Minister H.-D. Genscher on this (H.-D. Genscher, *Erinnerungen*, Siedler, Berlin: 1995, pp. 890 et seq.).

In his speech immediately after signing the Treaty on November 14, 1990, Prime Minister Tadeusz Mazowiecki said in this context:

Our nation's suffering during the war was immense and immeasurable. Even the number of victims will not account for them. How monstrous were the sufferings suffered in our land, if we add to the victims of Poland the victims of the Jewish people. In the aftermath of the war, as a result of the decisions of the great powers, Poland, deprived of its pre-war eastern territories, received lands in the west as compensation. We found this decision righteous. We consider it inevitable, indisputable. Today, together with Minister Skubiszewski, on behalf of Germany, you [Minister Genscher] signed the act of irreversibility of this decision. But recalling the words of the bishops "we ask for forgiveness", one must also speak of the suffering of the German nation, which was related to the shift of Poland from the East to the West. We underline that there is no arithmetic in the calculations of the victims. Every harm remains harm, every misfortune – misfortune; no matter what harm, what misfortunes we have suffered.¹⁵

CONCLUSIONS

For over thirty years now, the "border problem" has been removed from the agenda of political discussions in Polish-German relations, which proves the effectiveness and durability of the agreements reached, which was reflected in both the 2+4 Treaty and the Treaty of 14 November 1990.

In conclusion I would like to mention two issues that have acquired a certain meaning in the present political discussion in Poland.

Firstly, even in serious works in the field of Polish political history, the question is raised whether so many efforts should have been devoted in 1989/1990 to the matter of the Polish-German border.¹⁶ For a lawyer dealing with international law, this question is more than rhetorical. Krzysztof Skubiszewski, in his fundamental work,¹⁷ emphasized that if the state border is questioned, one of the pillars of statehood is being questioned. The unification of Germany was the moment when it was possible to put an end to various reservations on the part of the Federal Republic

¹⁵ Minister Krzysztof Skubiszewski also referred to this problem in his speech: "In his highly constructive speeches in recent months, the Federal Chancellor, Mr. Kohl has repeatedly pointed to the plight of people who have lost their homes and their homelands as a result of border changes in this part of Europe. This is what the aggression and destruction of the European order, which existed until 1939, led to. Today, however, Poles and Germans need peace in their hearts and minds. We must look not backwards but towards the future. We have to get along with each other." The text of both speeches in 5 Zeszyty Niemcoznawcze PISM 15 (1991).

¹⁶ See A. Dudek, *Od Mazowieckiego do Suchockiej. Pierwsze rządy wolnej Polski* [From Mazowiecki to Suchocka. First governments of free Poland], Znak, Kraków: 2019, p. 98.

¹⁷ K. Skubiszewski, *Zachodnia granica polski w świetle traktatów* [The Western Polish border in the light of the treaties], Instytut Zachodni, Poznań: 1975.

of Germany in relation to the border on the Odra and Nysa Łużycka rivers. This was successfully achieved by drawing conclusions both from the interwar period and after 1945.

Secondly, there are also accusations, in the context of the current ruling PiS government, about returning to the “matter of reparations from Germany” by arguing that during the 2+4 Conference this matter was neglected and that there was thus an “opportunity” to effectively pursue “reparations”.¹⁸ It takes a great deal of ignorance and ill will to make such accusations. In view of the decisive position of the four powers, there were no chances of a return to inter-state claims (in the Potsdam formula), and forcing the matter against the position of the great powers could only weaken Poland’s position on the fundamental issue, i.e. putting an end to doubts about the Polish-German border. Then – as has been mentioned – in the context of the 2+4 Treaty a reunified Germany was obliged to make payments to forgotten victims of Nazi crimes. The adopted “pragmatic formula” (mainly due to Polish efforts) made it possible (and still enables) to provide concrete support to the still living victims of Nazi crimes. This is what the measures taken now should focus on, and not on unrealistic mirages about the possibility of receiving astronomical sums from Germany almost 80 years after the end of the Second World War.

The designation of the Treaty of 14 November 1990 as a “historical act” is perfectly justified. It put an end – together with the 2+4 Treaty – to the Federal Republic of Germany’s previous reservations about the finality of the Polish-German border under international law. At the same time, it opened the way to building a Polish-German “community of interests” in a united Europe, as postulated by Minister Krzysztof Skubiszewski. It should be recalled that the negotiations on the 2+4 Treaty and the Border Confirmation Treaty contributed to the development of the concept of a “big” Polish-German Treaty on good neighborhood and friendly cooperation; which was signed on 17 June 1991 and which set the stage for such a “community of interests”, paving Poland’s way to the European Union.¹⁹

¹⁸ See especially A. Mularczyk, PiS politician and chairman of the parliamentary committee for reparations (the committee has ceased to exist in the term of the Sejm since 2019). See sources given, among others in: A. Leszczyński, *Jak Mazowiecki ugiął się przed Niemcami, czyli baśń o straconych reparacjach. Pamięć Mularczyka wymaga reparacji* [How Mazowiecki bowed to the Germans, or a fairy tale about lost reparations. Mularczyk’s memory requires reparations], OkoPress, 17 October 2017, available at: <https://bit.ly/3L2e1YE> (accessed 30 June 2022).

¹⁹ See Barcz, Ruchniewicz, *supra* note 3.