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Czech-German Relations after the Fall of the Iron Curtain

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Abstract: The paper deals with Czech-German relations from 1989-90, i.e., the time of the fall of the Berlin Wall and the start of democratic reforms in former Czechoslovakia, up until the signing of the Czech-German declaration on mutual relations and their future development in January 1997. In the introduction, relations between these countries before 1989 are outlined, with emphasis on the meaning and practical implementation of the so-called Prague Agreement of 1973.

The period 1989-90 is seen in the light of the new historical chances and hopes that the political changes brought. However, soon after the mood turned more sober, in the period from German unification to the end of the Czechoslovak Federation. Negotiations on the Czechoslovak-German treaty signed in February 1992 clearly showed that relations were only very slowly emerging from their past captivity.

After the birth of the Czech Republic, relations became more intense in the economic sphere, but stagnated politically. The events that arose from the 1938 Munich Agreement, the consequences of German occupation and the post-war transfer of Sudeten Germans, were the subject of debate and controversy at the highest political level.

Negotiations on the Czech-German declaration clarified all aspects of bilateral problems and speeded up the dialogue between both societies. The quality and stability of Czech-German relations are directly linked to the creation of a new, unified and peaceful Europe.

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1. A Historical Introduction: A Brief Outline of Relations between West Germany and the former Czechoslovakia before 1989

The basically pragmatic relations between West Germany (the old FRG) and the former Czechoslovakia had already begun to change before 1989 with the start of a number of collaborative projects. In 1967 it was agreed to set up commercial representations with consular powers in both Prague and Frankfurt. This had a rather ambivalent effect as it contributed to a review of the Hallstein doctrine but at the same time reflected the entrenched Czech position which wanted to finally break with this doctrine – in the interests of East Germany (GDR) – by exclusively pressing for full diplomatic relations.

On 13 December 1966, Chancellor Kiesinger's so-called grand coalition of the CDU/CSU/SPD listed the normalisation of relations between Czechoslovakia and West Germany and the elimination of the effects of the Munich Agreement as one of its aims (following on from the so-called peace note of the Federal Government on 24 March that year). Even greater emphasis was put on this by Willy Brandt's social-liberal coalition in its foreign-policy platform announced on 28 October 1969.¹ Paradoxically this took place

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¹) Europa-Archiv, Folge 7/1966, pp. D 172-D 173. In the so-called peace note, the Federal Government had stated its view that the Munich Agreement (implicitly accepted as having been in

only a few days after the Czechoslovak government took unilateral measures to drastically limit the almost free movement of persons to Germany and other western countries (subject only to normal visa regulations).

The initial rather exploratory negotiations from the period of the Prague Spring, which the former Czechoslovak Foreign Minister, Jiří Hájek described in his memoirs,² could only be followed up in a completely new, i.e., multilateral framework. These were characterised by the relatively well-defined but unsophisticated standpoints of the then German opposition (CDU/CSU), in commenting on the ratification of the so-called Treaty of Prague between Czechoslovakia and West Germany (dating to the first quarter of 1974 and not, unfortunately, taken into account in Brach's otherwise very worthy 1973 work on the treaty),³ although the cutting edge of their criticisms was understandably directed at the main figures of the new German 'Ostpolitik', Egon Bahr and Willi Brandt. The so-called Heck Statement which represented the views of a minority of the foreign committee of the German *Bundestag*, on 11 June 1974, presented the following picture:⁴

According to it, the Federal Republic of Germany was being *de facto* "forced" by the Soviet Union – by promises of concessions on internal German relations, on Berlin, etc. – to respect the connections between the Czechoslovak-Soviet treaty of 6 May 1970, Article 6 of which states that the 1938 Munich Agreement was forced on Czechoslovakia under the threat of force and an aggressive war (...) and therefore that "all its consequences are invalid", and the Soviet-German treaty of August 1970, based on the so-called 'Bahr Plan' from late May of that year, as well as the even clearer consequences of the German-Soviet communiqué from Oreanda on 18 July 1971. This almost literally adopted into Czechoslovak-German affairs the relevant points of the Bahr Plan agreed between Bahr and Gromyko immediately after the latter's return from Prague, where he went for the signing of the new Czechoslovak-Soviet Treaty.

In Oreanda it was clearly stated that "the relevant treaties with the German Democratic Republic, the Polish People's Republic and the Czechoslovak Socialist Republic form an indivisible whole" and that "questions arising in negotiations between the Fed-

force up to 15. 3. 1939) was "torn up" by Hitler himself and had no territorial significance. As it had already stated on several occasions, the Federal Government therefore had no territorial claims to Czechoslovakia. It stressed, "...*dass dies die verantwortliche Darstellung der deutschen Politik ist*". In its answer to this note in May 1966, the Czechoslovak government insisted on an explicit declaration that the Munich Agreement had been invalid from the outset. C.f. Europa-Archiv, Folge 11/1966, pp. D 287-D 289 and Deutsche Politik 1966, Tätigkeitsbericht der Bundesregierung (17), Bonn 1967, p. XVI and pp. 10-11; Jahresbericht der Bundesregierung 1969 (20), Bonn 1970, pp. 39, 84-85. For a summary see e.g. Müller, A.: *Die Tschechoslowakei auf der Suche nach Sicherheit*, Berlin 1977, pp. 164-220, 361-381. C.f. also Müller, A., Utitz, B.: *Deutschland und die Tschechoslowakei*, Freudenstadt 1972.

²) Hájek, J.: *Begegnungen und Zusammenstöße. Erinnerungen des ehemaligen tschechoslowakischen Aussenministers*, Freiburg/Br. pp. 178-181, 210-211; Hájek, J.: *Paměti* (Memoirs), Prague 1997, pp. 278-279. See also Šnejdárk, A.: "Jaké vztahy k NSR?" (What Sort of Relations with Germany?), *Rudé právo*, 17. 4. 1968, or Müller, A.: "Die Haltung der ČSSR gegenüber der BRD während des Prager Demokratisierungsprozesses", *Osteuropa* 4/1969, and many others.

³) Břach, R.: *Smlouva o vzájemných vztazích mezi ČSSR a SRN z roku 1973* (The 1973 Treaty on Relations between the Czechoslovak Socialist Republic and the Federal Republic of Germany), Prague 1994.

⁴) Deutscher Bundestag (DBT) – 7 Wahlperiode, Drucksache 7/2270.

eral Republic of Germany and the Czechoslovak Socialist Republic which relate to the invalidity of the Munich Agreement must be resolved in a way that is acceptable to both parties.”

The 1973 Treaty of Prague did not however just resolve the problem of the Munich Agreement. Its fruits, in the form of humanitarian supplements, were further reinforced by the new demands and commitments arising from the Final Act of the CSCE in 1975. In the draft law relating to the Czechoslovak-German treaty of 20 March 1974, the Federal Government not only described the goal of this treaty as the normalisation of relations between the two countries, but also stressed its essentially regional and inter-bloc aspect – bringing to the forefront the creation of a series of new treaties with the countries of the Warsaw Pact with the renunciation of force and the perspective of progressively reducing tension with a new, real and improved level of relations between the two parts of Germany.⁵

The Federal Government said that the ‘highlights’ of this agreement (the annulation of Munich) was the “central issue in Czech eyes”, even though it had to determinedly resist the counter-arguments of the opposition CDU/CSU. The opposition did not consider the bridging of the nullity problem with the possibility of parallel interpretation “*ex tunc/ex nunc*” as acceptable, because of its multiple meanings, and also due to the then much stronger Sudeten German lobby in German public life. Some of the opposition’s other arguments were more blatantly propagandistic, although by no means accurate, caricatures of the well-known fact that “the relationship between the two treaties is one of satellites (...) the treaty with Czechoslovakia is a procedural agreement rooted in the (Oreanda) communiqué, (...) the style of Moscow can be recognised in individual formulations, etc.” The conclusion given in the Heck Statement was: “the treaty is nothing more or less than another block in the construction of Soviet policies in Europe”(!).

On the other hand, the “majority” report of the foreign committee, the Friedrich statement, operated with the same “building blocks” of German policy towards Czechoslovakia with a sober matter-of factness, and saw the treaty as a sign of a willingness to “draw a thick line” (*Schlussstrich*) under the unfortunate past.⁶ Who could then have guessed that the term ‘*Schlussstrichkenden*’ could become a pejorative political formula? This was one point on which the 1973 Treaty was far from fulfilling expectations and indeed was prevented from doing so by both its content and the possibility of ambiguity – and not only in relation to Munich.

The treaty did not deal with the unresolved questions on property rights, but the Federal Government put out feelers towards the ‘thick line’ on other occasions (compare, for example, the Federal Government’s answer to the so-called *Kleine Anfrage* (little enquiries) of the group of CDU/CSU deputies (which included known activists from organisations of displaced Germans – von Fircks, Czaja, Hupka, Becher sen., Wittmann, Reidl, Pieser), on 18 December 1973: “The Federal Government has always refused to enter into negotiations with the states of Eastern Europe on the claims put forward by

⁵) DBT – 7, Wahlperiode, Drucksache 7/1832.

⁶) DBT – 7, Wahlperiode, Drucksache 7/2270. The term ‘a thick line’ came to be used frequently in Czech politics after November 1989, including – but critically – in the oft-cited passage of President Václav Havel’s address to the German Federal Parliament on 24 April 1997 (Office of the President of the Republic – Press office, press release 24. 4. 1997).

these states as a result of the Second World War, particularly with respect to reparations and compensation. For this reason the German government avoided putting forward its own property claims towards these states.”⁷ Not even the Brandt government moved from the position established by the 1954 Settlement Treaty (particularly Part VI, art. 13), since it too applied the narrow interpretation of the overwhelming majority of German international law experts (Tomuschat, Blumenwitz, Kimminich, Mosler, Doehring, etc.) and sought to show that the relevant parts of this treaty could not be used to justify the confiscation of Sudeten German property.⁸ The German legal system, on the other hand, applied Part IX, article 1 of this treaty to Czechoslovakia and the Czech Republic as well, most recently and spectacularly in the case of the lime-kiln painting by Van Laer from the Lichtenstein collection (despite the German courts’ lack of jurisdiction in this case as determined by article 3 of the settlement treaty) and rejects the decisions relating to property law taken during the confiscation.⁹

The inter-bloc politics and ideological limits in relations between the two countries were gradually changed by the increasing strength of the Helsinki process, which later gained new impetus with the new formulation of Soviet internal and later foreign policy in 1985 (i.e. the launching of *perestroika* and its growing momentum, little expected even by those who originally conceived it).

At the same time, the frustration tolerance of the former Czechoslovak regime did not indicate a wholly unchanging symptomatology. President Gustáv Husák’s 1978 ‘excuse’ visit to West Germany, which the communist regime pushed through with some difficulty, and its practical consequences (particularly in terms of economic relations), was a visible landmark in the positive pragmatism which held sway amongst certain sections of the Prague political elite, particularly that part represented by the Premier Lubomír Štrougal (further research is needed to determine the concrete motivation). Both sides shared an interest in developing closer relations, and the very pragmatic interests of a number of industrialists and politicians in closer economic relations with Czechoslovakia and other states of Central and Eastern Europe played a significant role in this. (Particularly influential were the chairman of the so-called Eastern Committee, Wolf von Amerongen, Lothar Späth, and representatives of such major companies as BMW, Volkswagen, Siemens, Höchst and Bayer).¹⁰

⁷) DBT – 7. Wahlperiode, Drucksache 7/1455. For an overview of Germany’s treaties with its eastern neighbours see e.g. Zündorf, B.: *Die Ostverträge*, Munich 1979.

⁸) Blumenwitz, D.: *Der Prager Vertrag. Eine Einführung und Dokumentatiton zum Vertrag vom 11. Dezember 1973 unter besonderer Berücksichtigung des Münchner Abkommens und seiner Auswirkung auf Deutschland als Ganzes*, Bonn 1985, particularly p. 79 n. (“*Die Verpflichtungen der Bundesrepublik Deutschland aus dem Überleitungsvertrag*”). See also note 15 below.

⁹) Hon, J.: *Právní stanovisko institucí SRN ke konfiskacím 1945 (na základě řešení tzv. případu “Velká vápenka”)* [The Legal Standpoint of German Institutions to the 1945 Confiscation (on the basis of the resolution of the so-called “Velká vápenka” case)]. I would like to thank the author for providing access to this unpublished collection.

¹⁰) Svobodová-Herciková, S.: *Vztahy mezi ČSSR a SRN v letech 1973-1989* (Czechoslovak-German Relations 1973-1989), thesis defended at FSV Charles University Prague 1997, passim. See also Spáčil, D.: *My z Černína. Paměti československého diplomata* (The People from the Černín Palace. Memoirs of a Czechoslovak Diplomat), Prague 1995, esp. pp. 288-292.

Nowadays, the *Ostpolitik* of the Social-Liberal coalition in Germany is seen as having oscillated between the recognition (legitimation) of the post-1970 regime in Czechoslovakia and the practical expansion of possibilities for eroding it. This was not a linear process, particularly when the publication of Charter 77's founding document brought a new wave of isolationism (represented particularly by Biřak's wing of the leadership of the Communist Party Central Committee) and provided welcome political ammunition. The emergence of dissent in Czechoslovakia was however irreversible. Its foreign policy 'think-tank' (the quotes being somewhat ironic here in view of the limited reality) i.e. people like Jiří Hájek, Jiří Dienstbier, Jaroslav Šedivý and Luboš Dobrovský – almost prophetically anticipated the link between the resolution of the German question and that of Europe (explicitly stated in the so-called Prague Declaration of 1985).¹¹ Although Czech dissidents had a narrower base in society than did their Polish counterparts, the complementary basis of *Ostpolitik* (only changed slightly after the Bonn coalition changed in 1982) and its critical 'internal' reflections made it difficult for the Husák regime to effectively repress them, not even with its apparently all-powerful means of repression.

2. The Democratic Change of 1989 as an Opportunity for a New Type of Relations (i.e. the period between November 1989 and the unification of Germany on 3 October 1990)

The year 1989 brought a whole series of unexpected options which threw both politicians and political theorists off balance.¹² These also affected Czechoslovak-German relations, which were highlighted from the outset by a significant gesture towards the Sudeten Germans by Václav Havel, later President of Czechoslovakia. His various comments on this subject differ in detail and it is not easy to summarise them. The conflict between morality (with its metaphysical demands, which are independent of the time period) and the historical context meant that these were a political gesture rather than a historical reflection accepted by the whole of society. As time passed, the repeated description of these comments as mere "excuses" were substantiated by the perception of Havel's gesture on both sides. Havel's gesture in fact became something of a screen on which old and entirely new (hetero)stereotypes were projected; it was basically a blank cheque.¹³

From the point of view of internal politics, Havel's gesture was particularly daring – both risky and debatable. As the former Czech Prime Minister Petr Pithart noted with hindsight (at a conference in Jihlava in 1995), the leaders of Civic Forum at that time saw Havel's declaration as not only putting his presidential campaign at risk, but as endanger-

¹¹) Charter 77 document no. 5/1985. See also Dienstbier, J.: *Snění o Evropě* (Dreaming of Europe), p. 63 nn.

¹²) Břach, R.: *Die Aussenpolitik der Tschechoslowakei zur Zeit der "Regierung der nationalen Verständigung"*, Baden-Baden 1992, esp. pp. 51-71.

¹³) See in particular the quote from Václav Havel's letter to the German President Richard von Weizsäcker in his Christmas speech on 22. 12. 1989 (Bundespräsidialamt, Mitteilungen für die Presse, 22. 12. 1989). The most frequently quoted key sentence is: "*Ich persönlich verurteile die Vertreibung und Aussiedlung der Sudetendeutschen nach dem Zweiten Weltkrieg und halte sie für unmoralisch.*" A relatively faithful translation of the relevant passages of Weizsäcker's speech was published in *Rudé právo* on 4. 1. 1990. Considerable interest was aroused within Czechoslovakia by the opinions Václav Havel expressed on national television in answer to a question from a viewer, interpreted by M. Skarlandtová on 23. 12. 1989. See also *Rudé právo*, 3.1.1990 (transcription from a video cassette).

ing the whole course of development since November 1989.¹⁴ Most commentators now agree that Havel's gesture at the turn of 1990 has not been met by an equivalent echo from the German side.

Parallel with the development and cultivation of the 'symbolic language' of policy came further steps of long-term significance for the everyday lives of people in the country. In December 1989 the two Foreign Ministers, Dienstbier and Genscher, cut the barbed wire in Rozvadov/Waidhaus, and in February 1990 it was decided to set up a joint Czechoslovak-German commission of historians. The agreement to remove visa requirements followed soon after (earlier than with other countries of the EU), although errors on the Czech side meant that the conditions were less favourable and practical than the Germans had proposed. The question of Czechoslovak participation in the preparatory stages of negotiations on the '2+4' Treaty, a question that was often manipulated for political ends, did not receive any clear answer at this time. The nursing of Czechoslovak interests through the '1+3' Treaty (i.e. with different partners than the signatories to the '2+4') left in force those parts of the Settlement Treaty (*Überleitungsvertrag*) that ruled out future property claims on (not only) Czechoslovakia or the Czech Republic. A number of German or Austrian experts in international law (e.g. Tomuschat and Ermacora) have cast doubt on this in both merit and procedural terms.¹⁵

To sum up, Czechoslovak foreign policy in this period developed *sub specie revelationis*, i.e. from the angle of raising the iron curtain, while German policy towards Czechoslovakia was rather *sub specie unificationis*, i.e. from the point of view of the need to reunite Germany as rapidly and effectively as possible. Even though neither of these policies was free of euphoria, the measure of it was undoubtedly greater on the Czechoslovak side. In view of the future disagreements, however, the question of the responsibility of the major figures should be seen from the point of view of the bases which were laid down. These saw the normalisation of relations not in the spirit of the terminology of that time, i.e. as the reduction of tensions, but rather in a very positive sense. It was a case of establishing normal relations between two sovereign democratic states.

3. From German Unification to the End of the Czechoslovak Federation (October 1990-December 1992)

The signing of the '2+4' Treaty, the unification of Germany and the changed situation throughout Europe as a whole required Germany to conclude a series of new bilateral agreements with its eastern neighbours. Those with Poland and Czechoslovakia were of particular importance. While the basic framework of relations between Germany and

¹⁴) Pithart, P.: "O gestech v politice" (On Gestures in Politics). In: *Češi a Němci – ztracené dějiny* (Czechs and Germans – A Lost History), Prague 1995, pp. 67-70.

¹⁵) Břach, R.: *Die Aussenpolitik der Tschechoslowakei*, pp. 69-70; Ermacora, F.: *Die sudetendeutschen Fragen*, Munich 1992, pp. 188-189; Tomuschat, C.: *Zur Frage des Bestehens von Rechtsansprüchen der vertriebenen Sudetendeutschen gegen die Tschechische Republik, gegen Einzelpersonen in der Tschechischen Republik und gegen die Bundesrepublik Deutschland*, Manuscript Berlin 1995, pp. 66-72 (I would like to thank the Coalition 90/Greens group in the German Federal Parliament for access to this document, on the basis of which an expert judgement was prepared). The official Czechoslovak position on the preparatory talks for the '2+4' treaty is partly explained in the memoirs of Šedivý, J.: *Černínský palác v roce nula* (The Černínský Palace in the Year Dot). Prague 1997, pp. 73-80 and pass.

Poland was defined by two bilateral treaties (that of 14 November 1990 giving definitive recognition to the border along the Oder and Neisse rivers and the basic treaty of 17 June 1991),¹⁶ there was only one treaty between Germany and Czechoslovakia, which was for various reasons not signed until 27 February 1992 and was ratified by both parliaments on the very eve of the Czechoslovak elections in June that year.¹⁷ In comparison with the short Prague Treaty of 1973, many aspects of which reflected the division of the continent (although not in every respect, even the Prague Treaty addressed general ‘national’ interests which did not necessarily reflect the characteristics of the communist regime), the new treaty represented a new qualitative shift. Even despite the lack of access to primary archival sources, the history of the negotiations has already shown that many of the expectations for this treaty were exaggerated and unrealistic, particularly on the Czechoslovak side. With hindsight the question must be asked as to how far the real and geopolitical viewpoints were taken into account in the decisive year of the negotiations, i.e. 1991. It seems now, several years on, that these were much more important than they appeared in 1992, if quickly compared with the following policies of the conservative coalition in power after 1992.

A comparison of the contents of the two treaties – the 1973 Prague Treaty consists of six articles, while the 1992 Treaty has 35 – shows a definite shift in emphasis. The new treaty establishes the basis for developing a wide range of political (including “Euro-political”), economic, cultural and humanitarian areas, to a degree that would have been virtually unthinkable before 1989. The negotiations were not, however, without their dramatic moments – as indeed in 1973 – although one fundamental difference was that the negotiations of the 1992 Treaty were followed with interest by the free media in Czechoslovakia and became a divisive factor in the electoral campaign there. Bonn’s procrastination in signing and ratifying the treaty (which was basically ready as early as summer 1991) seemingly played a role in the poor electoral results of Dienstbier’s Civic Movement (OH), which was the natural partner (albeit *sub conditione*) of the governing FDP in Bonn (consider the involvement of Count Otto Lambsdorff in the OH campaign, although the main reasons for the party’s failure must be sought primarily in internal politics). The tensions around the ratification of the treaty in Bonn and in Prague meant minor disturbances in the German coalition, but were far more significant in Czechoslovakia. They were a correlated factor in the failure of the constitutional negotiations on the form and substance of an “authentic federation” (Václav Havel),¹⁸ and contributed to the nervous atmosphere of pre-electoral jousting (compare, the reservations of some Slovak politicians as to the continuity formulations of the new treaty).

The most difficult points which Czechoslovak diplomats had to resolve during the negotiations over the new treaty can be summarised as follows.

- a) The preamble evaluating the common past, particularly the second paragraph (“is aware of the high number of victims of the reign of violence, war and expulsions, and the great suffering inflicted on many innocent people”), which aroused lively and often

¹⁶) *Deutsche Aussenpolitik nach der Einheit 1990-1993*. Eine Dokumentation des Auswärtigen Amtes (hrsg. vom Auswärtigen Amt), Bonn 1993, pp. 670-72.

¹⁷) Laws of the Czech and Slovak Federative Republic, no. 521/1992. The Czech and German versions were published in parallel as DBT-12. Wahlperiode, Drucksache 12/2468, pp. 6-16.

¹⁸) Havel, V.: *Letní přemítání* (Summer Reflections), Praha 1991, pp. 28-34 and pass.

hysterical discussion particularly of the interpretation of the word 'expulsion' and its hypothetical legal consequences.

- b) The legal evaluation of the 1938 Munich Agreement, when Czechoslovak demands for a declaration of its invalidity were not pushed through from the very beginning (instead the nullity formulation used in the 1973 Prague Treaty was confirmed – one which was open to two possible interpretations by the German side).
- c) The resolution of the property rights issue, which was in fact not achieved (only in an exchange of letters between the foreign ministers of both countries, in which it was stated that the treaty did not deal with questions of property, leaving space for an implication that the question remained 'open', which appeared in the one-sided accompanying resolution of the German *Bundestag*).
- d) The form in which the existing state borders of the two countries were confirmed in article 3 of the treaty (some Czech critics maintain that the term "*bestehende Grenze*" in the German text of the treaty contains hidden potential for revisionist claims).
- e) The statement of continuity in paragraph 7 of the preamble ("...recognising the fact that the Czechoslovak state has never ceased to exist since its establishment in 1918") which did not meet the Czechoslovak demands (Czechoslovakia originally proposed a more extensive formulation which would have explicitly confirmed the continuity of common borders since 1918. It should still be borne in mind that any such expression of continuity was completely lacking in the 1973 Prague Treaty – the Czechoslovak negotiators had asked for it only in connection with the continuity of the borders.)

Rather less attention was aroused by certain counter-moves by the Czechoslovaks in 1991 concerning many formerly controversial questions and their proposals relating to these (which would be politically unacceptable today). There was no immediate official reaction from Bonn and when it did come it was negative (the Germans only gave a detailed "justification" of their position in 1995). The Czech moves concerned such issues as the simplification of laws and the possibility of former ethnic German citizens of Czechoslovakia settling there (dual citizenship was not ruled out by Czechoslovakia and there was a more extensive interpretation of it than is in force today). They also considered the possibility of these individuals participating in the privatisation process in Czechoslovakia, particularly in the system of coupon privatisation. Prague obviously expected an equivalent gesture from Bonn (including the recognition of the continuity of the Czechoslovak state and its borders, compensation for victims of Nazism, and perhaps some form of rejection of individual property claims on the part of Sudeten Germans – after the model of the earlier resolution of the expropriation of German property in the Soviet occupation zone after 1945).

Despite frequent scepticism, the new treaty was something more than just a "piece of paper" which should be revised (which was in fact the devout hope of many Sudeten Germans and other circles), and in fact offered a solid foundation for the building up of relations between the two countries and for an increasing degree of normality in everyday life on many levels. There are of course many reservations about it, as for example with the indirect formulation (with extensive explanations) of obligations for the future institutionalisation of Czech-German '*jugendwerk*' (youth exchange programme) (in the treaty with Poland this was spelt out) or the necessary means of communication at the non-governmental level, although there was an express recommendation – for example, a

Czech-German forum, analogous to that laid down in the treaty with Poland. It was this 'blank space' which was 'filled in' with more or less success by the Czech-German Declaration in January 1997 (c.f. Articles VII and VIII of the Czech-German Declaration) and by political initiatives around its acceptance.

In 1992 the German side summarised their approach to the treaty negotiations and to Czechoslovak-German relations as a whole in a preamble.¹⁹ As aims they listed the future orientation of relations, the reconciliation of the German and nations of Czechoslovakia, etc. – and once again they stressed its role as a building block in the system “of harmoniously interacting bilateral treaties with other neighbours and partners in Europe, all of whom share the fact that they link bilateral relations with a European perspective. In the commentary to the preamble the German side repeated the main points of the German position as to how legal and historical problems should be addressed without bringing anything new to them. It also dwelt on the position of the ethnic German minority and its development “*in der angestammten Heimat*”, even though there was an indirectly expressed regret in relation to Articles 20 and 21 of the treaty that the rights of the German minority could not be negotiated in as extensive a form as in the 1991 German-Polish Treaty. (After the split of the federation the principle of protection for the rights of a minority, as derived from those of individual members of a minority, became more strongly fixed in Czech policy on minorities, i.e. the reverse situation).

The German government *de facto* expressed its satisfaction with the Czechoslovak respect for the double standard in minority questions (“minority” as opposed to “circle of persons”), which meant the constitutional absence of protection for minorities in the constitution of the Federal Republic of Germany. In many people’s view, this is of course only partly counterbalanced by the anti-discriminatory foundations contained in Article 3 of Paragraph III of the Constitution of the Federal Republic of Germany, or the protection of minorities purely on the basis of regional constitutions in areas where there are autochthonous minorities (Frisians, Danes, Sorbians), which do not of course guarantee the rights of minorities throughout Germany.²⁰ During the negotiations on the new major treaties with Germany, Czech and even more particularly Polish diplomats did not sufficiently well present the legal arguments in favour of country-wide protection of minorities and of an increased understanding of the autochthonous principle, which is obvious in the Polish case – in Brandenburg, Berlin or Upper Rhineland-Westphalia.

In a commentary on the exchange of letters between the foreign ministers, the Federal Government noted a certain lack of reality, that the possibility of German citizens settling in Czechoslovakia in the future was expressed less concretely and less amply than in the treaty with Poland (“the German request that the Czechoslovak government express its readiness to allow settlement even before the expected entry into the European Communities was not met”). This point could have been more amply formulated in the 1997 Czech-German Declaration, although clearly only as an expression of common political will of the two governments, in the 1997 Czech-German Declaration (for the Czechs, this problem was apparently a relatively acceptable point of retreat in the difficult negotia-

¹⁹) DBT – 12. Wahlperiode, Drucksache 12/2468.

²⁰) Röper, H.: “Minderheitenschutz im Vielvölkerstaat Deutschland”. In: Deutschland-Archiv 6/95, p. 625, nn.; Kozel, H.: *Skizze zur rechtlichen Frage der nationalen Minderheiten seit der Reichsgründung 1871 bis zur Gegenwart*, manuscript Bautzen 1995 (in print, I would like to thank the authors for kindly making the manuscript available).

tions). The preamble by the Federal Government and particularly the subsequent resolutions of factions of the CDU/CSU and FDP expanded on the German position on the second announcement of an exchange of letters (i.e. that “Both sides declare that this treaty does not deal with questions of property”), in the sense that it was left open. It was clearly spelt out that during the negotiations the Federal Government had “repeatedly expressed its standpoint that it sees the expulsion of Germans from Czechoslovakia and the confiscation of German property without compensation as a breach of international law”.²¹

At first glance the relations of the separate Czech and Slovak republics of the former federation with various of the German states seemed to develop more smoothly. This period saw a solid body of treaties between the Czech Republic and four of the states, Baden-Württemberg, Upper Rhineland-Westphalia, Bavaria and Saxony.²² Even in the case of Bavaria pragmatic collaboration prevailed, as the completion of the Ingolstadt-Kralupy oil pipeline in 1996 showed (despite Stoiber’s disquieting reference to “Pipeline-Aussage” on the Sudeten German days in 1993 which bordered on a threat, or the almost border-revisionist hints of the Bavarian Minister of Social Affairs, Gebhard Glück on that occasion).²³ In the following years the demands of Bavarian politicians were more moderate, but certain sensitive subjects (such as the Beneš decrees) arose less frequently, being often – understandably – replaced by the resounding dramaturgy of speeches by certain politicians who specialised in this genre. Edmund Stoiber became a virtuoso in this area, expertly shifting the position of Bavarian policy onto a more realistic position, in a hardly imitable smokescreen of would-be ‘uncompromising demands’. A number of observers have in fact credited Stoiber with a key role in the search for a new dynamic in Czech German relations.²⁴

* * *

After the elections in June 1992, Czechoslovak diplomats concentrated on “a campaign of explanation” of the constitutional decisions which had led to the dismemberment of Czechoslovakia. In view of the events in the former Yugoslavia, their German counterparts, led by Genscher’s successor, Klaus Kinkel, followed this process with a far from

²¹) DBT – 12. Wahlperiode, Drucksache 12/2623; see also *Materialien zu Deutschlandfragen* (hrsg. von der Kulturstiftung der deutschen Vertriebenen), Bonn 1993, pp. 170-173. For the Czech version of the resolution of the Federal Parliament see e.g. *Lidové noviny*, 21. 5. 1992.

²²) For a summary see e.g. Vadrot, T.: “Die deutsche Aussenpolitik gegenüber der Tschechoslowakei bzw. der Tschechischen Republik seit der deutschen Vereinigung”. Master’s thesis presented at the University of Trier 1995, pp. 128-135; Götze, A.: “Einseitiges Entgegenkommen schafft keine Versöhnung”. Thesis presented at the Berlin Freie Universität, Berlin 1994, pp. 54-59.

²³) *Mitteilungsblatt der Sudetendeutschen Landsmannschaft* 7/1993, pp. 168-182.

²⁴) In the debate in the Federal Parliament on the acceptance of the Czech-German declaration on 30 January 1997, the Deputy Leader of the House Antje Vollmer (Coalition 90/Greens) did not hesitate to thank Edmund Stoiber for his personal contribution, “bei allen Irritationen, die ich manchmal angesichts Ihrer Positionen hatte” – see DBT – 13. Wahlperiode, Plenarprotokoll 13/154, which contains Edmund Stoiber’s speech on the declaration, which is also the typical essence of his realistic outlook and ‘radical’ statements in favour of the expelled Sudeten Germans and their organisation.

complacent understanding. At the same time they were on their guard against any commentary which could have had a negative effect.²⁵

In September 1992 there was an exchange of ratification papers for the new Czechoslovak-German treaty (there were repeated references in the press to the mysterious circumstances surrounding this occasion, which will certainly be the subject of further research in the future). The treaty therefore came into force at the twilight of Czechoslovakia's existence. In diplomatic circles it was taken for granted that Bonn was interested in completing the exchange of ratification papers before it was too late. The destabilising pronouncements of the Slovak Premier Vladimír Mečiar on the signing of a new Slovak-German Treaty after the 1992 elections were rejected outright by Bonn after very brief discussions in the Federal Chancellery.²⁶ The two separate countries emerging from the Czechoslovak federation were successors to the treaty after 1 January 1993.

4. Czech-German Relations after the End of Czechoslovakia -Functional Normality in Squaring the Circles

Seen from a geo-political point of view and from that of practical politics, both successor states of Czechoslovakia lost importance. The changed geo-political situation called for certain corrections of course on both sides. While relations between the Czech Republic and Germany clearly have a central role, from the beginning of 1992, it was already clear that the interests of Czechs and Germans need not always agree (e.g. in the speech of the Minister of Foreign Relations, later Czech Foreign Minister, Josef Zieleniec in the Foreign Committee of the Czech National Council, and even more so in his explanation of the concept behind Czech foreign policy in the Czech Parliament in spring 1993).²⁷ While Czech diplomacy officially noted and repeatedly declared that relations between the two countries were progressing well, the possible growth of national and nationalistic components in Bonn's, and later Berlin's foreign policy "pro futuro" cannot be ruled out. (Zieleniec has repeatedly spoken of "Germany's return to the logic of its own history", later rephrasing this in speaking to the Committee of Foreign Affairs of the Chamber of Deputies of Czech Parliament on 12 September 1996: "Since reunification, Germany is returning to the logic of its geopolitical position, of its interests, of its outward effect").²⁸

²⁵) This development was, however, understandably followed by legal and political historians. See, e.g. Hartmann-Schmidt, Eva: "Eine Scheidung aus der Ratlosigkeit", *Das Parlament* 28/1992, and Altmann, F.-L.: "Tschechische und Slowakische Republik(en). Von der samtenen Revolution zur sanften Scheidung". In Altmann, R.-L. Hoensch, E. (hrsg.): *Reformen und Reformer in Osteuropa*, Regensburg 1994. There were also characteristically triumphant reactions from some leading representatives of the Sudeten Germans, as expressed in, for example, the collection by Eibicht, Rolf-J. (hrsg.): *Die Tschechoslowakei. Das Ende einer Fehlkonstruktion. Die sudetendeutsche Frage bleibt offen*, Berg 1992.

²⁶) Obrman, J.: "Perspektívy nezávislého Slovenska" (The Prospects of Independent Slovakia). *Medzinárodné otázky* 1-2/1993, p. 85.

²⁷) "Zahraniční politika České republiky" (Foreign Policy of the Czech Republic) – *Data*, 4/1993, p. 172nn.

²⁸) "Zahraniční politika České republiky" (Foreign Policy of the Czech Republic) – *Data*, 9/1996, p. 27nn. On the discussion which produced the formulation last cited, see also the shorthand record of the relevant meeting of the Foreign Affairs Committee of the Czech Parliament.

Official German policy on Czech-German relations is formulated each year in the Annual Report of the Federal Ministry of Foreign Affairs or in a more condensed form (from more detailed reports of the activities of the individual ministries) in the Federal Government's annual report. An analysis of these sources reveals that – unlike other eastern European states – they are limited to a dry description of treaty activities, contacts, etc., often without any global evaluation of the relations such as that which often appears in passages concerning Poland, Hungary and – only seemingly paradoxically – to Slovakia. (In 1993, speaking of Hungary: “the traditionally good German-Hungarian relations have developed greatly in the past year, reaching a point that may be taken as a model, not only for this region” or on Slovakia in the same year: “German-Slovak relations developed well in the first year of the Slovak Republic's existence”, and again on Slovakia in 1994: “There were further developments in the support for the German minority (Carpathian Germans) in 1994 and this can be described as exemplary, mainly regarding the co-operation between German and Slovak public offices ”. There are no such passages evaluating Czech-German relations, even though on other occasions these have been more highly esteemed.²⁹

As has already been said, Germany noted of the split of Czechoslovakia with quiet caution. The reluctant approach of the relevant German politicians towards questions arising out of the past, which often bordered on opportunist jostling, did however contribute – together with many improvised or uncoordinated steps by those involved in Czech foreign policy – to an undeniable worsening of the atmosphere of relations between the two countries (despite the repeated assertions that this was not the case).

On the Czech side, on the other hand, the initial phase of policy on Germany showed a certain perplexity, vagueness and sometimes even apparent passiveness that can only partly be understood or excused. The atmosphere of immobility was sometimes disturbed as with the storm in a teacup over the ‘litmus test’ – euphemistically speaking – of the so-called semi-official commission for the Sudeten German question, unfortunately announced by Premier Klaus after the ultimatory course of the Sudeten German Whitsuntide in 1993 (see above) or the unfortunate impression of the visit of a Czech parliamentary delegation to Bonn at the end of November 1993. This was marked by a selective, even paranoid, understanding of the comment of the Chair of the German Federal Parliament, Rita Süßmuth, on the need for dialogue with Sudeten Germans and on the need to find a suitable platform for negotiation between Czech and German parliamentarians.

In the troubled state of Czech-German relations at that time, relatively little attention was paid to the overall qualitative improvement of the treaty basis between the two countries, which concealed the less visible but nonetheless meticulous work of the two foreign ministries and the other ministries working with them (although the negotiation of some bilateral treaties from this period was fairly drawn-out). The most important section dates back to the period after the beginning of democratic changes in Central and Eastern Europe. There is no reason to pretend that the demise of Czechoslovakia did not complicate this process, which was in fact repeatedly and authoritatively noted in 1992, (e.g. in

²⁹) *Jahresbericht der Bundesregierung* 1993 (pp. 55-56), 1994 (pp. 61-62), 1995 (p. 65). On the development of Slovak-German relations after 1989 and particularly after the Slovak Republic became independent, see Lukáč, P.: *Súčasná podoba slovensko-nemeckých bilaterálnych vzťahov* (Slovak-German Bilateral Relations Today), Bratislava 1996.

the need to renegotiate the succession of the Czech Republic into the treaties between Germany and Czechoslovak Federative Republic).

In the period between November 1989 and the end of October 1997, 51 bilateral treaty documents were signed between Czechoslovakia/the Czech Republic and the Federal Republic of Germany, not to mention treaties and agreements with individual German states in the framework of their competencies to the *Bundestag* (particularly with Saxony, Bavaria, Baden-Württemberg and Upper Rhineland-Westphalia). This can be compared with the 28 treaty documents signed with Austria during the same period (although a number of important treaties are still under negotiation). It should also be remembered that, for reasons that are well known, the treaty basis between Germany and Czechoslovakia (pre- and post-1989) and the Czech Republic was definitely less than it should have been, even in comparison with other state socialist countries.

The treaty basis between Germany and the Czech Republic consists of almost 100 different documents. Between November 1989 and the end of September 1997, 53 inter-state, inter-governmental and inter-departmental documents were signed, i.e. more than half the total. The most important of these – the Treaty of Good Neighbours and Friendly Collaboration of 27 February 1992 – has been dealt with in detail elsewhere.

Agreements that are of particular significance and direct relevance to the lives of both Czechs and Germans include, for example, the agreement on the removal of visa requirements (27. 2. 1990), the agreement on the establishment of cultural and information centres (2. 2. 1990), the agreements on the setting-up of new border crossing points (the first by an exchange of notes on 18. 4 and 27. 6. 1990), the agreement on support for and mutual protection of investments (2. 10. 1990), an agreement on scientific collaboration (2. 11. 1990), an agreement on collaboration to combat organised crime (13. 9. 1991), a series of agreements relating to the environment (the first of which related to the cleaning of smoke emissions from the four blocks of the Pruněřov I power station and was signed on 27. 11. 1992, a general agreement on co-operation in environmental matters on 24.10.1997), an agreement between the respective defence ministries on military collaboration (24. 5. 1993), which was followed by other agreements on aspects of this co-operation, a very important treaty on common state borders, which also clarified the terminology concerning the common borders (3. 1. 1994), a set of treaty documents relating to the change or tightening up of German asylum laws (particularly the agreement on collaboration relating to the results of migration and that on the return of persons on the common state borders, both signed on 3. 11. 1994), the agreement on small-scale border movements (3. 11. 1994), the treaty on mutual assistance of customs services (19. 5. 1995), and a number of agreements relating to transport etc.³⁰

The relatively transparent and homogeneous approach of Czech policy towards Germany between 1993 and 1995 was unfortunately not helped by such supportive and co-ordinating bodies as the coalition group of eleven. This was partly due to a lack of continuity in personnel and also to the excessive tendencies of political leaders from the 1992 elections to make themselves more visible. A new impetus was given to Czech-

³⁰ I would like to thank the International Law Department of the Czech Ministry of Foreign Affairs and its former director, JUDr. Jaroslav Horák, for information on the formulation and amendment of the treaty base between Czechoslovakia/the Czech Republic and Germany between 1989 and 1997.

German relations by President Havel's speech on 17 February 1995, "Czechs and Germans are on the road to being good neighbours", which was seen by commentators as a successful attempt to "balance the records" and to lay down the fundamentals of the position, not only in the negative sense ("a position from which we cannot move") but primarily by formulating the basic political axioms of relations between the two countries.³¹

This speech, together with subsequent and better co-ordinated moves (such as the so-called Zieleniec plan) gave the 'unresolved' Czech question a much greater prominence on the German scene and underlined its multilateral aspect. His credo of the democratic Germany was not entirely unqualified, and was by no means a blank cheque for some German politicians or the German government, who did not hide a certain irritation. Havel's speech offered a key formulation of past Czech-German relations and of the Czech view of their future – ideas which summed up the views of the majority of Czech politicians. It set clear limits on the repeated revisionist and restorative demands that were from time to time put forward (not only) from the Sudeten German side or its easily recognisable lobby.

Therefore 1995 brought new space for political manoeuvring in order to resolve the outstanding problems. There was also a clear will to negotiate and accept a so-called Czech-German declaration, which was to represent – albeit as a compromise – a certain political and legal 'end' to the unhappy past. Even though this was quite clearly due to the initiative of the earlier rather obscure Czech side, it was eventually accepted by Bonn. Although much has been said of the scepticism of the two leaders – Helmut Kohl and Václav Klaus – towards this document, it came to be seen that the '*Chefsache*' could not stay in a drawer in the Chancellery for ever. An important role in the new political space created by Havel's and Zieleniec's 1995 initiatives was played by the German media and by a number of politicians, who took up this cause, whether from personal motivations or (particularly in the case of a number of opposition politicians) for purely pragmatic-instrumental reasons. Among the most obvious were the then German President Richard von Weizsäcker, the new President Roman Herzog, the Vice-Chair of the *Bundestag*, Antje Vollmer, the deputy leader of the SPD faction in Parliament, Günther Verheugen, the former Foreign Minister Hans-Dietrich Genscher. The German government was repeatedly forced to comment in Parliament on the state of Czech-German relations, for example, in the Foreign Affairs Committee on December 1993 or in the house itself, most markedly and controversially in Foreign Minister Klaus Kinkel's reaction to Havel's speech on 17 March 1995. This statement by the German government on Czech-German relations can serve as a valuable example.³²

It was made (symbolically?) exactly one month after Havel's speech. According to some sources, the work on this statement was done at the last minute, showing that the announced systems of consultation with the opposition could not be fully functional. There were also differences in detail from the version which journalists received in advance, something which is not exactly common in Bonn.

³¹) Czech Press Office (ČTK), 17. 2. 1995; the speech is printed in the original and in the official translation in: *Rozhovory o sousedství. Cyklus projevů přednesených v Karolinu v roce 1995* (Speaking of Neighbours. A Cycle of Lectures at the Karolinum in 1995), Prague 1997, pp. 33-54.

³²) DBT – 13. Wahlperiode, Plenarprotokoll 13/28; Czech translation (unfortunately without the following discussion) in e.g. *Lidové noviny*, 21. 3. 1995.

This was evident both from the quality, tone and political resonance of the government statement and from the reaction of the opposition, for whom this difficult text represented a golden chance to inflict a blow (SPD, Greens, not to speak of the PDS). There were also clear signs of dissatisfaction and criticism of the Chancellor and government from deputies from the governing coalition such as Karl Lamers (CDU) and Ulrich Irmer (FDP).

Almost two-thirds of the text can be considered as a contribution to the success of the Federal Government in the development of Czech-German relations (the Czechoslovak-German treaty, German assistance for the Czech application for EU membership, economic co-operation, collaboration in the ROB of the United Nations, etc.).

From the Czech point of view, the most interesting and also most difficult passages were those which ‘analyse’ (if this can be said of such a superficial text) the historical projections into the nature of current relations. The statement announced an attempt to break out of the vicious circle of mutual wrong-doing but does not make any concrete contribution towards doing so. It sees Václav Havel’s speech as an outstretched hand which should be taken, but also expresses clear disappointment at “certain passages”, which are clearly those parts of Havel’s speech in which his earlier statements on the wrong done by Czechs to the Sudeten Germans are set in a wider historical context in which the wreck of the “unique history of the coexistence of Czechs and Germans” can be assessed from a neutral standpoint.

As a “counterweight” to Havel’s speech Kinkel cites the joint statement by Czech and German bishops, a text with undeniably honourable intentions, but which did not respect the primarily historical and political criteria, but rather pastoral or morally and pastorally theological ones. They saw the reconciliation of the two nations as a primarily spiritual process rather than a political one.³³ It was clearly not by chance that Kinkel – in what was partly conscious and determined politicising – chose this text: it weighs up Czech and German guilt as if on medical scales which give an unambiguous result, i.e. the degree of guilt and not the bishops’ position on the causal and historical connections.

The statement of the Federal cabinet therefore included an indirectly critical but clearly understandable linking of the compensation of Czech victims of Nazism (the Federal Government apparently intended to treat this case the same as other comparable ones) and a more conciliatory attitude to Sudeten Germans on the part of the Czechs. The latter was, however, closer to unspecified discussions with them – in connection with the findings of the Czech Constitutional Court on 8 March 1995 in the Dreithaler case – “with a clear expression of distance” from the principles of collective guilt and from Czech amnesty law (no. 115/1946).³⁴ One sentence did however stand out: “We must

³³) The statement by Czech and German bishops on the 50th anniversary of the end of the Second World War had been signed in Münster one week earlier (9 March 1995) by the chairmen of the Czech and German Conferences of Bishops, the Archbishop of Prague, Miloslav Cardinal Vlk, and Bishop of Mainz, Karl Lehmann. The full text was published in e.g. *Český deník* on 21. 3. 1995. See also Cardinal Vlk’s lecture at the Karolinum, “Stavět mosty důvěry” (Building Bridges of Trust), 16. 6. 1995, in: *Rozhovory o sousedství*, pp. 130-131.

³⁴) The finding of the Constitutional Court on 8 March 1995 on the planned annulment of the presidential decree no. 108/2/1945, published no. 55/1995 Sb. This also reconfirmed the legality and legitimacy of the post-war confiscation without compensation and that these were in accor-

respect the decision of an independent court. We do however call on the Czech government to ensure that this decision does not arouse new unrest.” Many saw this as a veiled agreement with the traditional Sudeten German claim that anyone agreeing with the so-called Beneš decrees (Kinkel spoke of the “Benesch”-Dekrete, a spelling which was in some circles seen as highly significant) agreed also with the ethnic cleansing of the former Yugoslavia and is capable of accepting similar occurrences in the future. This rather less than diplomatically expressed concern that the Czech Republic should not become ‘a Central European Serbia’ was linked with a somewhat curious and ironic reference to Václav Havel’s statement that it is necessary for the time of monologues to give way to “real dialogue” (not by accident is this in quotes in Kinkel’s text).

When the Federal Government spoke on Czech-German relations in Parliament (in the so-called *Aktuelle Stunde*) almost one year later (31 January 1996), the tone was rather different.³⁵ The crux of their answer was their trust that the Czech-German Declaration would soon be completed, while references to the legal system of the neighbouring country were surprisingly reduced to a minimum (“...For this reason it would not be helpful to ask the Czech Republic to annul legal acts that are more than fifty years old”). Part of this statement can already be considered as a summary of the admittedly partial results of the negotiations with their Czech counterparts on the Czech-German Declaration. For a regular reader of the shorthand records of the Federal Parliament however, it was not surprising that some passages of Kinkel’s speech were taken almost word for word from the government statement of almost a year earlier. Even if some people asked how far such details showed the importance that the Federal Government placed (or did not place) on relations with the Czech Republic, the very fact that the subject of Czech-German relations was again raised, and this time in a European context, indicated a certain qualitative shift.

Many German politicians saw ever more clearly that the Czech Republic was the last of Germany’s neighbours with which considerable work was still necessary if a veil was to be drawn over the past and a degree of reconciliation achieved. (The Vice-Chair of the Federal Parliament, Dr. Antje Vollmer, said on 31 January 1996, “The Federal Chancellor (...) is responsible for the fact that the final stone in German policy on the East has not yet been laid and with it the last remaining question in German foreign policy solved.”)

Dialogue at the governmental and non-governmental level, which had been going on in many, often chaotic and uncoordinated forms since 1990, was complemented by a cycle of lectures “Speaking of Neighbours” at the Prague Karolinum (1995), in which prominent Czech and German politicians and other public figures offered many highly stimulating ideas. The cycle was opened by Václav Havel with the speech already referred to and continued with Kurt Biedenkopf, Miloslav Cardinal Vlk, Josef Zieleniec, Antje Vollmer and Richard von Weizsäcker.³⁶

The quality of the dialogue and the actual process of negotiating the Czech-German Declaration (held back largely by the Bavarian CSU) was very badly affected by com-

dance with international law. The legal opinion contained in this is also in virtual accordance with the official Polish legal position on this question.

³⁵) DBT – 13. Wahlperiode, Plenarprotokoll 1382.

³⁶) See note 30.

ments by Klaus Kinkel on the validity of the Potsdam Agreement, comments that were unfortunately timed, from the Czech point of view tactless, and for many observers poor tactics. After his controversial meeting with Josef Zieleniec at Petersberg and particularly in his reaction to the latter's press conference in the Czech Ministry of Foreign Affairs on 16 January 1996, Kinkel once again said in an interview with the *Frankfurter Allgemeine Zeitung* – in accordance with the earlier and already traditional German legal position (and so in accordance with both the majority of German legal analysts and with the Federal Government) that the Potsdam Agreement was merely a political statement which had no legal bearing on the expulsion of the Sudeten Germans.³⁷

This was a clear case of German policy seeking to shift the blame for the delays with the negotiations on the declaration on to the shoulders of the Czech side. In view of the subsequent feverish Czech discussions on the subject of Germany and Potsdam, this was a very unfortunate attempt, which threw considerable doubt on the meaning of the declaration itself and on the viability of the path to achieving it.³⁸ If, however, it was a case of a revisionist experiment by the German side, as some people suspected, then the rapidly following pronouncements placed Germany alongside the governments of the victorious powers which were present at Potsdam. This was clearly confirmed by the fixing of the negotiations in international law.³⁹

Even though this discussion was prior to the Czech parliamentary elections, it was clear that the Czech Social Democrats (ČSSD) in particular, would not agree with a declaration which would obscure the constants of the Czech position in international law on the basis of Potsdam. In this respect the ČSSD played a similar role in the Czech Republic as did the CSU in Germany: despite being in opposition, it joined in a more or less functional co-ordination with official Czech diplomats in setting the limits beyond which the country would not go. Thanks to this, the declaration was not an issue in the electoral

³⁷) “C. G.: Kinkel wehrt sich gegen die Vorwürfe aus Prag”. *Frankfurter Allgemeine Zeitung*, 18. 1. 1996. For an adequate interpretation it is necessary to start from the German text (one important point is the correct distinction between subjunctive and indicative sentences – the incriminating sentence is neither in direct speech nor in the so-called subjunctive of other opinions), not from the inexact translation from the Czech Press Office. See also the news service of the German agency DPA on 21. 1. 1996, noting this passage from the editorial interpretation of FAZ. An article in the well-informed Bonn daily, *General-Anzeiger* on 24 January 1996, comments that Kinkel did in fact say the relevant sentence off the record. The Federal Government confirmed its position on Potsdam in its answer to a question by Ulla Jepke of PDS on 22. 4. 1996. See DBT – 13. Wahlperiode, Drucksache 13/4280.

³⁸) On the German interpretation of Potsdam see, e.g. Faust, F.: *Das Potsdamer Abkommen und seine völkerrechtliche Bedeutung*, 4th ed., p. 75 nn.; Meissner, B., Veiter, T.: “Das Potsdamer Abkommen und die Deutschlandfrage, Part 2: Berliner Deklaration und die Sonderfragen”, in: *Völkerrechtliche Abhandlungen*, vol. 4/II, 1987; Ermacora, F.: *Die sudetendeutschen Fragen*, München 1992, pp. 51-55, 111-114; Tomuschat, C.: *Zur Frage des Bestehens von Rechtsansprüchen der vertriebenen Sudetendeutschen* (see note 15), pp. 46-54.

³⁹) A statement by the US government, for example, said, “The decisions made at Potsdam by the Governments of the United States, United Kingdom and the then-Soviet Union in July/August of 1945 were soundly based in international law. The conference conclusions have been endorsed many times since in various multilateral and bilateral contexts. (...) The conclusions of Potsdam are historical fact and the United States is confident that no country wishes to call them into question.” See USA Embassy in Prague, Press guidance, 7. 2. 1996.

campaign and in the eyes of the German SPD, “The Czech Social Democrats acted as could be expected in view of their European responsibilities, even though this may have lost them those few percent of votes by which they fell short of a victory” (G. Verheugen).⁴⁰

This phase of the dialogue, too, came to a conclusion with the signing and acceptance of the joint Czech-German Declaration of Mutual Relations and their Future Development. The declaration was signed by Premier Václav Klaus and Chancellor Helmut Kohl in Prague on 21 January 1997. The German Federal Parliament accepted it on 30 January, the lower house of the Czech Parliament followed suit on 15 February after a dramatic debate, and the Czech Senate voted to accept it on 5 March. The consent of both parliaments underlined the political will of the governments expressed in the declaration, even though from a purely formal point of view it was not necessary (the idea was to show the broadest possible support for the content of the declaration among the relevant political forces, particularly the parliamentary political parties in both countries).

The negotiations leading up to the declaration were neither short nor straightforward and it was not just a case of “breaking through the elevated semantics of squaring the circle” (B. Kohler),⁴¹ but rather of working out a text which above all would be historically correct and acceptable to both sides (Roman Herzog at a press conference in Dresden on 30 October 1995). Whether the text, so determinedly prepared at the cost of many difficult compromises, will be a real force will be shown not by the first months or years after its acceptance but primarily by the way it works out in the long term.⁴² An analogous form of declaration (the Bonn-Copenhagen Declarations) brought a difficult chapter in modern German-Danish relations to a close in 1955, and forty years later both states were able to express full satisfaction with this document.

The basic aim of both governments was the same: to rid Czech-German relations of the chronic tensions of the past and to show a political will to break totally with that past. While the protocols from the declaration negotiations will not be available to historians for many years, it is clear even from the bits and pieces of news that did appear that the starting positions in July 1995 were very different. The German side was not prepared to write a “political and legal full stop” (even if it was not binding in international law) unless the Czechs were willing to reconsider the events relating to the expulsion of the Sudeten Germans from Czechoslovakia. The more explicit these Czech reflections and self-criticism were, the more concrete and politically binding the “political and legal full stop” could be from the point of view of Bonn, as it would necessarily become something of a precedent – e.g. in relations with Poland. If we consider the difference between the Czech and German legal position on questions of property (both at the outset and in the

⁴⁰) DBT – 13. Wahlperiode, Plenarprotokoll 13/154.

⁴¹) Kohler, B.: “Höhere Semantik bei der Quadratur des Kreises: Bonn und Prag immer noch uneins”. *Frankfurter Allgemeine Zeitung*, 3. 1. 1996.

⁴²) The text of the Czech-German declaration was published by the Czech Press Agency on 20 December 1996; for the German text see “Auswärtiges Amt informiert”, *Mitteilung für die Presse* Nr. 1175/96 on the same date. For the definitive German version (with more exact information on the sums to be contributed to set up the Fund for the Future) with the text of the letters of the foreign ministers signed at the same time as the declaration see DBT – 13. Wahlperiode, Drucksache 13/6787.

longer term), it was necessary to find a formulation appropriate for unifying both sides. This also applied to the other articles, although in a lesser degree.

Article IV of the declaration was undoubtedly the key passage. It explicitly expressed the will of both parties that “they will not burden their relations with political and legal questions arising out of the past”, while (as shown above) “each side will be bound by its own system of laws and respect that the other side has different opinions”. It was no accident that the Czechs stressed this most (Václav Klaus and Josef Zieleniec in Parliament on 15 February 1997), while the Germans tended to see it in more relative terms (particularly Helmut Kohl after signing the declaration on 21 January 1997, with his highly criticised words on the fact that the property issue was left open). However, whether we are assessing the declaration as such, or the German discussions on it, it is possible to agree with the sober judgement of the conservative legal specialist, Ulrich Fastenrath, who considers it doubtful that the Federal Government will play false in this respect and so strain its relations with the Czech Republic. He added that “It will hardly be possible to deny the indirect legal effects of the joint declaration on the rights to property and compensation (i.e. of Sudeten Germans)”.⁴³

For both German and Czech media, including specialists in the subject, the main focus of interest was understandably the historical sections of the declaration (articles 2 and 3). In their “recognition of guilt” the German side, for the first time, officially recognised a causal connection between the events of 1938/39 and those of 1945/46. This made it possible for the Czech side to undertake a relatively serious self-criticism on the question of the removal and expulsion of the Sudeten Germans, formulated in such a way that it was finally acceptable to virtually the whole spectrum of German politics, including the CSU. Nevertheless, the German negotiators did not succeed in obtaining a Czech recognition that the transfer of Czechoslovak Germans as such was illegal. Even the chosen terminology, taken from chapter XIII of the protocol of the Potsdam Conference and distinguishing between organised transfer/removal and forced expulsion. There was not even any doubt cast on the post-war Czechoslovak and allied legislation in this respect, as there was a certain distance from the way in which certain norms were met. It was the German public, however, which could hardly believe the Sudeten German organisations’ rejection of the declaration in view of the Czechs’ official self-criticism, and Chancellor Kohl was certainly aware of this in the final stages of work on the declaration at the coalition level. Kohl gave much greater space and emphasis to the Czech self-image in his government statement on 30 January 1997 than to the “legal and political full stop” of article IV, which was mentioned virtually in passing.⁴⁴

The ‘reconciliatory geometry’ of the declaration is evident in the close interconnection of all its articles. The expected practical consequences of this statement could not be dismissed – the establishment of the Czech-German Future Fund (article 7) and the Czech-German discussion forum (article 8). These articles, in their formulation, are similar to a binding international treaty, though in fact they only refer to one. Their formulation also made it easier for the Kohl government to postpone the discussion of the concrete form of their action on the Czech victims of Nazism and on the formation and

⁴³) Fastenrath, U.: “Was die Gemeinsame Erklärung rechtlich bedeutet”. *Frankfurter Allgemeine Zeitung*, 29. 1. 1997.

⁴⁴) DBT – 13. Wahlperiode, Plenarprotokoll 13/154.

functioning of the discussion forum until a later (although not late) date. Both governments were able postpone at least part of the complex agenda and place it in a binding political framework.

As with other serious foreign-political events, the final decision on the Czech-German Declaration rested with the Federal Chancellor. The earlier term '*Chefsache*', often used in this connection, represented a clear delimitation of the boundaries within which the German negotiators moved (particularly the Deputy Foreign Minister, Peter Hartmann, but also the Foreign Minister, Klaus Kinkel). They must have been more limited in certain practical questions, more subject to the retrospective mechanisms of consultation and approbation, than were their Czech counterparts. The fact that the '*Chefsache*' was referred to as a matter of course in connection with Czech-German relations aroused criticism and some signs of concern as to the constitutional clarity of the contemporary practice of the Chancellor, who used his right to have the final word to monopolise the whole field of foreign policy (and not only foreign policy). Richard von Weizsäcker wrote in his memoirs of his doubts about the "neo-democratic" manner which the Chancellor adopted and used in the case of Czech-German relations.⁴⁵

His position was however far from simple. Internal stresses on coalitions are a fact of everyday life in Bonn, even if the majority of controversial subjects take place between the CDU/CSU on the one hand and the FDP on the other. In the case of the Czech-German declaration, the stumbling block was the position of the Bavarian CSU, which wanted to meet the demands of its Sudeten German voters as far as possible. This was dependent not only on the resistance from Munich, but also on the heavy pressure which Chancellor Kohl exerted on the CSU and particularly on the Bavarian Premier Edmund Stoiber. It was not, therefore, Kinkel, but rather Kohl and Stoiber who could sign the text of the declaration on behalf of the German side and thus give imprimatur. This could not, of course, happen without lively debate within Germany and without considerable pressure from the coalition, from the various states (not only Bavaria, but also Saxony), and from outside the political sphere etc.⁴⁶

The stance of the Sudeten Germans was certainly very important for Bonn (both the government and Parliament repeatedly declared their intention to protect their interests), but Bonn's need for a comprehensive policy towards its eastern neighbours and to limit mutual Czech-German irritation was even greater. In addition, Sudeten Germans were not united in their position on the subject. Their various groupings were obviously unprepared for the possibility of a declaration as such and their reactions were improvised. The ability to communicate (even among themselves) was clearly lacking. Sudeten Germans did however know that they were playing for time, but they did not realise that the catalogue of their demands could not be left without revisions until the Czech Republic's planned entry into the European Union. The generally rigid position was characteris-

⁴⁵) Weizsäcker, R. von: *Vier Zeiten*. München 1997, p. 389. The increase of the Federal Chancellor's influence in foreign policy over the long term has also aroused the interest of foreign analysts, see, e.g. Paterson, W. E., "The Chancellor and Foreign Policy". In: Padgett, S. (ed.), *Adenauer to Kohl, The Development of the German Chancellorship*, London 1994, esp. pp. 136-139, 151-156.

⁴⁶) A solid overview of the issues, events and positions linked with the Czech-German declaration has been given by Handl, V.: "Czech German Declaration on Reconciliation". *German Politics*, Vol. 6, No. 2 (August 1997), pp. 150-167.

tic not only of the Sudeten German *Landsmannschaft*, but also of the leadership of the Ackermann and Seliger community. The Sudeten leaders were increasingly less able to communicate with German politicians and German society as a whole (although this could not be said of individual Sudeten Germans). It was as if they felt overly protected by the old official ‘protection’ of the state of Bavaria (1954). It may be because of this that the signing of the declaration aroused a sense of being abandoned or even spurned.⁴⁷ It should be borne in mind that the leadership of the CSU was ultimately driven by the need for practical collaboration with the Czechs and by a will not to block the European perspective in Czech-German neighbourly relations. From the CSU’s point of view, the ultimately more or less satisfactory formulation of the fate of the Sudeten Germans (article 3 of the declaration) and the planned official participation of the latter in the discussion forum (article 8) allowed the CSU to rather elegantly amputate their unrealistic demands.

The declaration, whether as a carefully formulated legal and political full stop to the past or as a colon before the future, provided a definite hope for long-term healing on both sides in various dynamic relations. This expectation was appropriately included in the official foreign attitude to the declaration and that of the international organisations. On the day it was signed, the European Union called the declaration a “decisive and historical step in the formation of good relations and partnership between a member state of the EU and an associate partner.”⁴⁸ The government of the USA issued a statement on 22 January which not only welcomed the declaration but also added an “interpretational” paragraph which was in total accordance with the Czech view of the significance and priorities of the declaration, seeing it as first and foremost a step into the future, thanks to the declaration by both governments that their relations would not be held back by political and legal questions arising out of the past.⁴⁹ The declaration was warmly welcomed by the British Minister for Foreign Affairs, Malcolm Rifkind, his French counterpart, Hervé de Charette, and the Hungarian and Polish Presidents, Árpád Göncz and Alexander Kwasniewski. Kwasniewski ranked the declaration with the bilateral agreements between Hungary and Romania and Poland and Ukraine, as part of a complex of documents which contributed to the improvement of the situation in “this part of Europe”.⁵⁰ The Austrian government also commented with satisfaction “that both parties will not be held back by

⁴⁷) A resume of these feelings is given in an article by the well-known Sudeten German activist and publicist, Rudolf Hilf, in the *Frankfurter Allgemeine Zeitung*, 10. 2. 1997: “There was no lack of praise or protest. The praise was of course self-praise. Those who had planned and engineered the whole affair basked in it: the Czech Foreign Ministry and the Prague Castle, together with their counterparts on the German side, the German Foreign Ministry, the politicians from the CDU and FDP, the Deputy Chair of the Federal Parliament, Antje Vollmer and the social democratic opposition. In the end the CDU and CSU lined up with the decision of the Federal Chancellor, even if not everyone had a clear conscience as far as the Sudeten Germans were concerned, as decisions relating to them and made without whom can only be seen as undemocratic.” See Hilf, R.: “Deklarace chtěných a nechtěných nedorozumění” (A Declaration of Intentional and Unintentional Misunderstandings), *Nová Přítomnost* 3/1997, p. 26-27.

⁴⁸) EU (Presse 14-G), No. 5328/97, 21. 1. 1997.

⁴⁹) U.S. Department of State, Office of the Spokesman. Statement by Nicholas Burns, Spokesman: Signing of the Czech-German Declaration, 22. 1. 1997.

⁵⁰) Czech Press Office, 21. 1. 1997.

political and legal questions arising out of the past".⁵¹ According to the General Secretary of the Council of Europe, Daniel Tarschys, the declaration should be "a stimulus for those who have not yet managed to throw off the chains of history and return to the society of democratic European nations."⁵²

The successful 'internal' acceptance of the Czech-German declaration (not just the consent of the respective governments and parliaments) and its application in a series of practical steps will undoubtedly be a positive signal for the world, both as far as the Czech Republic is concerned (especially as Czech public opinion has shown pronounced swings as shown by, for example, the survey by IVVM in spring 1996 which was influenced by a passionate debate on the nature and validity of the Potsdam Agreement, but, after the declaration was accepted, public opinion was to some degree stabilised) and to a lesser degree of the united Germany and its not always unquestioned credibility (by Margaret Thatcher among others). It opened a much greater space for fulfilling serious 'European tasks' facing both countries. The quality of their relation as neighbours is still one of these and is an obligation *par excellence*.

5. Conclusions

1. German policy towards the former Czechoslovakia and later the Czech Republic has always been a segment of its policy towards the countries of Central and East-central Europe. There are only a few subjects that are 'specifically Czech', which have their roots in the past and have until recently been monopolised by certain 'disadvantaged' groups, i.e. some Sudeten Germans, their organisations and their sometimes under, sometimes over-estimated but never ignorable lobby. Since 1989, this specific Czech issue has fortunately become ever more integrated into the wider political and historical context, as is shown by the text of the 1997 Czech-German Declaration and by an analysis of the main currents of the German media.

2. The specifics of bilateral relations have limits in German policy towards the region east of its borders and in Germany's undeniable attempt to bring stability to this region by anchoring it in traditional western integration structures. The place of the Czech Republic in German integration policies cannot be seen as a 'special case'. The progress of transformation in the Czech Republic in relation to the whole region provides no reason for it (and in any case this possible 'reason' disappeared when 1997 was relatively unsuccessful in economic terms and unstable politically). There is rather a certain possibility for the German side to create a 'negative feature' in connection with a possible future realisation or articulation of certain unresolved or unresolvable questions from the past. However, the German government is hardly interested in this. Even Chancellor Kohl's rather lukewarm enthusiasm (like that of Premier Klaus) for the Czech-German Declaration can be interpreted in this light, with respect to a certain paradoxical potential possibility of opening a Pandora's box by closing it (which would be a scenario of undoubted horror). Without the initiative of President Havel and Foreign Minister Josef Zieleniec, on the Czech side the declaration might never have seen the light of day. German policy in the near future will show whether the negative features of Czech-German relations need only be tranquillised or whether they call for other more effective therapy. Kohl's chosen term of "*Zwischenstation*" to describe the declaration (*Frankfurter Allgemeine Zeitung* 7. 1.

⁵¹) Austrian Embassy in Prague, Press Department, 21. 1. 1997.

⁵²) Council of Europe, press release 22. 1. 1997.

1997) or Zieleniec's "colon" (at a speech at the Czech Ministry of Foreign Affairs on 20. 12. 1996) show clearly that the tranquilliser must be followed by concrete practical political moves, if possible in close succession, which will help keep Czech-German relations within the common integrational aims of the region as a whole.

3. From the point of view of the value hierarchy of the Bonn republic and united Germany, Czech-German bilateral issues and the way they are perceived in Germany are somewhat different to the way that the other Central European states are viewed. This is due to the foreign policy implications of certain features of Czech politics and political culture since 1992. Namely:

a) The way in which political parties have made positive (ČSSD) or negative (ODS) use of the constitutive elements and concepts of the Bonn republic (social welfare, a social market economy, the idea of a Christian tradition, human rights and property in the legal philosophy of the basic laws of Federal Germany) was never seen in Germany as a contribution to the continuing discussion on the reform of Germany from within. Rather it was a strange and impertinent echo, either of intentional transformational or post-transformational post-communist demagoguery, or of an ideological tangle of quotes from the insular surroundings of the English-speaking world, i.e. at best as a 'Czech transformational convulsion', logically associated with an idea of isolationism within the region and a lack of transparency and trustworthiness in Czech attempts at integration.

The references to 'Europe' by some Czech politicians had a greater effect on the way in which the Czech Republic was perceived on the German political scene than did – indirectly and negatively – the historical evergreen of Czech-German relations (as with, for example, the repeated media references to the Czech Republic as "*Musterknabe*" [star pupil], with definitely pejorative implications).

b) If Christian tradition plays an important role in German political culture and its scale of values (secularisation in Germany had and still has rather different features to that in the Czech Republic!), then the Czech policy towards the church has visible effects. It is no accident that Sudeten German circles follow it closely as a sign of the so-called European maturity of the Czech Republic. This is very important for Chancellor Kohl and the conservative CDU and CSU (*ad illustrandum*: Kohl is a loyal member of the Mainz bishopric of Karl Lehmann, who is among other things Miloslav Cardinal Vlk's deputy as Chair of the Council of the Conference of European Bishops).

In summary, German policy towards the Czech Republic is the result of a complex regional approach, primarily as a sub-chapter of German integrational policy. The bilateral specifics have a wider register than is generally acknowledged. The number of such features (as above) mean that openly discussed issues – like the Sudeten German question – are generally seen in a different context within German politics than is admitted on the Czech side. The strength of this factor in German policy towards the Czech Republic is thus in objective connection to factors that, although they have not yet been bilaterally articulated, have long been in effect. These include Czech policy on Europe and the specific features of its '*Sonderweg*' (special path), Czech relations to traditional and conservative values (such as Christianity and the church), minority policies consistently derived from the individual rights of each citizen (in the concrete form therefore slightly below the optimum level recommended by the Council of Europe), and so forth. Czech foreign policy in the face of fundamental European decisions on integration should show a greater respect and awareness that the bilateral relations with all its neighbours, the em-

phasis of its policies on integration and its post-transformation political culture as a whole project themselves significantly into Czech-German relations and reinforce (or in some cases weaken) their new 'post-1989' quality.

Translated by April Retter

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