

Annex

A. Documents Relating to Germany's Unification in General

1. Treaty on the Final Settlement with respect to Germany*

The Federal Republic of Germany,
the German Democratic Republic,
the French Republic,
the Union of Soviet Socialist Republics,
the United Kingdom of Great Britain and Northern Ireland
and the United States of America,

Conscious of the fact that their peoples have been living together in peace since 1945;

Mindful of the recent historic changes in Europe which make it possible to overcome the division of the continent;

Having regard to the rights and responsibilities of the Four Powers relating to Berlin and to Germany as a whole, and the corresponding wartime and post-war agreements and decisions of the Four Powers;

Resolved in accordance with their obligations under the Charter of the United Nations to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

Recalling the principles of the Final Act of the Conference on Security and Cooperation in Europe, signed in Helsinki;

Recognizing that those principles have laid firm foundations for the establishment of a just and lasting peaceful order in Europe;

Determined to take account of everyone's security interests;

Convinced of the need finally to overcome antagonism and to develop cooperation in Europe;

* BGBl. 1990 II, 1318 = 29 ILM 1186 (1990).

Confirming their readiness to reinforce security, in particular by adopting effective arms control, disarmament and confidence-building measures; their willingness not to regard each other as adversaries but to work for a relationship of trust and cooperation; and accordingly their readiness to consider positively setting up appropriate institutional arrangements within the framework of the Conference on Security and Cooperation in Europe;

Welcoming the fact that the German people, freely exercising their right of self-determination, have expressed their will to bring about the unity of Germany as a state so that they will be able to serve the peace of the world as an equal and sovereign partner in a united Europe;

Convinced that the unification of Germany as a state with definitive borders is a significant contribution to peace and stability in Europe;

Intending to conclude the final settlement with respect to Germany;

Recognizing that thereby, and with the unification of Germany as a democratic and peaceful state, the rights and responsibilities of the Four Powers relating to Berlin and to Germany as a whole lose their function;

Represented by their Ministers for Foreign Affairs who, in accordance with the Ottawa Declaration of 13 February 1990, met in Bonn on 5 May 1990, in Berlin on 22 June 1990, in Paris on 17 July 1990 with the participation of the Minister for Foreign Affairs of the Republic of Poland, and in Moscow on 12 September 1990;

Have agreed as follows:

Article 1

(1) The united Germany shall comprise the territory of the Federal Republic of Germany, the German Democratic Republic and the whole of Berlin. Its external borders shall be the borders of the Federal Republic of Germany and the German Democratic Republic and shall be definitive from the date on which the present Treaty comes into force. The confirmation of the definitive nature of the borders of the united Germany is an essential element of the peaceful order in Europe.

(2) The united Germany and the Republic of Poland shall confirm the existing border between them in a treaty that is binding under international law.

(3) The united Germany has no territorial claims whatsoever against other states and shall not assert any in the future.

(4) The Governments of the Federal Republic of Germany and the German Democratic Republic shall ensure that the constitution of the united Germany does not contain any provision incompatible with these principles. This applies accordingly to the provisions laid down in the preamble, the second sentence of Article 23, and Article 146 of the Basic Law for the Federal Republic of Germany.

(5) The Governments of the French Republic, the Union of Soviet Socialist

Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America take formal note of the corresponding commitments and declarations by the Governments of the Federal Republic of Germany and the German Democratic Republic and declare that their implementation will confirm the definitive nature of the united Germany's borders.

Article 2

The Governments of the Federal Republic of Germany and the German Democratic Republic reaffirm their declarations that only peace will emanate from German soil. According to the constitution of the united Germany, acts tending to and undertaken with the intent to disturb the peaceful relations between nations, especially to prepare for aggressive war, are unconstitutional and a punishable offence. The Governments of the Federal Republic of Germany and the German Democratic Republic declare that the united Germany will never employ any of its weapons except in accordance with its constitution and the Charter of the United Nations.

Article 3

(1) The Governments of the Federal Republic of Germany and the German Democratic Republic reaffirm their renunciation of the manufacture and possession of and control over nuclear, biological and chemical weapons. They declare that the united Germany, too, will abide by these commitments. In particular, rights and obligations arising from the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968 will continue to apply to the united Germany.

(2) The Government of the Federal Republic of Germany, acting in full agreement with the Government of the German Democratic Republic, made the following statement on 30 August 1990 in Vienna at the Negotiations on Conventional Armed Forces in Europe:

“The Government of the Federal Republic of Germany undertakes to reduce the personnel strength of the armed forces of the united Germany to 370,000 (ground, air and naval forces) within three to four years. This reduction will commence on the entry into force of the first CFE agreement. Within the scope of this overall ceiling no more than 345,000 will belong to the ground and air forces which, pursuant to the agreed mandate, alone are the subject of the Negotiations on Conventional Armed Forces in Europe. The Federal Government regards its commitment to reduce ground and air forces as a significant German contribution to the reduction of conventional armed forces in Europe. It assumes that in follow-on negotiations the other participants in the negotiations, too, will render their contribution to enhancing security and stability in Europe, including measures to limit personnel strengths.”

The Government of the German Democratic Republic has expressly associated itself with this statement.

(3) The Governments of the French Republic, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America take note of these statements by the Governments of the Federal Republic of Germany and the German Democratic Republic.

Article 4

(1) The Governments of the Federal Republic of Germany, the German Democratic Republic and the Union of Soviet Socialist Republics state that the united Germany and the Union of Soviet Socialist Republics will settle by treaty the conditions for and the duration of the presence of Soviet armed forces on the territory of the present German Democratic Republic and of Berlin, as well as the conduct of the withdrawal of these armed forces which will be completed by the end of 1994, in connection with the implementation of the undertaking of the Federal Republic of Germany and the German Democratic Republic referred to in paragraph 2 of Article 3 of the present Treaty.

(2) The Governments of the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America take note of this statement.

Article 5

(1) Until the completion of the withdrawal of the Soviet armed forces from the territory of the present German Democratic Republic and of Berlin in accordance with Article 4 of the present Treaty, only German territorial defence units which are not integrated into the alliance structures to which German armed forces in the rest of German territory are assigned will be stationed in that territory as armed forces of the united Germany. During that period and subject to the provisions of paragraph 2 of this Article, armed forces of other states will not be stationed in that territory or carry out any other military activity there.

(2) For the duration of the presence of Soviet armed forces in the territory of the present German Democratic Republic and of Berlin, armed forces of the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America will, upon German request, remain stationed in Berlin by agreement to this effect between the Government of the united Germany and the Governments of the states concerned. The number of troops and the amount of equipment of all non-German armed forces stationed in Berlin will not be greater than at the time of signature of the present Treaty. New categories of weapons will not be introduced there by non-German armed forces. The Government of the united Germany will conclude with the Governments of those

states which have armed forces stationed in Berlin treaties with conditions which are fair taking account of the relations existing with the states concerned.

(3) Following the completion of the withdrawal of the Soviet armed forces from the territory of the present German Democratic Republic and of Berlin, units of German armed forces assigned to military alliance structures in the same way as those in the rest of German territory may also be stationed in that part of Germany, but without nuclear weapon carriers. This does not apply to conventional weapon systems which may have other capabilities in addition to conventional ones but which in that part of Germany are equipped for a conventional role and designated only for such. Foreign armed forces and nuclear weapons or their carriers will not be stationed in that part of Germany or deployed there.

Article 6

The right of the united Germany to belong to alliances, with all the rights and responsibilities arising therefrom, shall not be affected by the present Treaty.

Article 7

(1) The French Republic, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America hereby terminate their rights and responsibilities relating to Berlin and to Germany as a whole. As a result, the corresponding, related quadripartite agreements, decisions and practices are terminated and all related Four Power institutions are dissolved.

(2) The united Germany shall have accordingly full sovereignty over its internal and external affairs.

Article 8

(1) The present Treaty is subject to ratification or acceptance as soon as possible. On the German side it will be ratified by the united Germany. The Treaty will therefore apply to the united Germany.

(2) The instruments of ratification or acceptance shall be deposited with the Government of the united Germany. That Government shall inform the Governments of the other Contracting Parties of the deposit of each instrument of ratification or acceptance.

Article 9

The present Treaty shall enter into force for the united Germany, the French Republic, the Union of Soviet Socialist Republics, the United Kingdom of Great

Britain and Northern Ireland and the United States of America on the date of deposit of the last instrument of ratification or acceptance by these states.

Article 10

The original of the present Treaty, of which the English, French, German and Russian texts are equally authentic, shall be deposited with the Government of the Federal Republic of Germany, which shall transmit certified true copies to the Governments of the other Contracting Parties.

In witness whereof, the undersigned plenipotentiaries, duly authorized thereto, have signed this Treaty.

Done at Moscow this twelfth day of September 1990.

2. Declaration Suspending the Operation of Quadripartite Rights and Responsibilities*

The Governments of the French Republic, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America,

Represented by their Ministers for Foreign Affairs meeting at New York on 1 October 1990,

Having regard to the Treaty on the Final Settlement with respect to Germany signed at Moscow on 12 September 1990, which provides for the termination of their rights and responsibilities relating to Berlin and to Germany as a whole,

Declare that the operation of their rights and responsibilities relating to Berlin and to Germany as a whole shall be suspended upon the unification of Germany, pending the entry into force of the Treaty on the Final Settlement with respect to Germany. As a result, the operation of the corresponding, related quadripartite agreements, decisions and practices and all related Four Power institutions shall likewise be suspended upon the unification of Germany.

The Government of the Federal Republic of Germany, represented by its Minister for Foreign Affairs, and the Government of the German Democratic Republic, represented by its Minister for Education and Science, take note of this declaration.

* Document provided by the German Foreign Office = 30 ILM 555 (1991).

3. Exchange of Notes
("Relations Convention")*

Der Staatssekretär
des Auswärtigen Amtes
503-553.20

Bonn, 27 September 1990

Excellencies,

I have the honour to refer to the discussions which have taken place between representatives of the Governments of the Federal Republic of Germany, the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America, and on behalf of the Government of the Federal Republic of Germany to propose the following:

1. The Convention on Relations between the Three Powers and the Federal Republic of Germany of 26 May 1952 (as amended by Schedule I to the Protocol on the Termination of the Occupation Régime in the Federal Republic of Germany, signed at Paris on 23 October 1954) ("the Relations Convention") shall be suspended upon the suspension of the operation of quadripartite rights and responsibilities with respect to Berlin and to Germany as a whole, and shall terminate upon the entry into force of the Treaty on the Final Settlement with respect to Germany, signed at Moscow on 12 September 1990.
2. Subject to paragraph 3 below, the Convention on the Settlement of Matters Arising out of the War and the Occupation of 26 May 1952 (as amended by Schedule IV to the Protocol on the Termination of the Occupation Régime in the Federal Republic of Germany, signed at Paris on 23 October 1954) ("the Settlement Convention") shall be suspended and shall terminate at the same time as the Relations Convention; this also applies to the letters and exchanges of letters relating to the Relations Convention and the Settlement Convention.
3. The following provisions of the Settlement Convention shall, however, remain in force:

Chapter One:

Article 1, paragraph 1, first sentence up to and including "... legislation enacted by the Occupation Authorities", and paragraphs 3, 4 and 5

Article 2, paragraph 1

Article 3, paragraphs 2 and 3

Article 5, paragraphs 1 and 3

Article 7, paragraph 1

Article 8

Chapter Three:

Article 3, paragraph 5(a) of the Annex

* German Text in BGBl. 1990 II, 1386 = 30 ILM 454 (1991).

Article 6, paragraph 3 of the Annex

Chapter Six:

Article 3, paragraphs 1 and 3

Chapter Seven:

Article 1

Article 2

Chapter Nine:

Article 1

Chapter Ten:

Article 4

In addition, paragraph 7 of the letters of 23 October 1954 from the Federal Chancellor to each of the three High Commissioners relating to facilities for Embassies and Consulates, as well as the letters of 23 October 1954 in confirmation from the High Commissioners, shall remain in force.

4. (a) The Government of the Federal Republic of Germany declares that it shall take all adequate measures to ensure that the provisions of the Settlement Convention which remain in force shall not be circumvented in the territory of the present German Democratic Republic and in Berlin.
- (b) With regard to Article 11 of Chapter One of the Settlement Convention:
The Government of the Federal Republic of Germany is aware of the continued existence of I.G. Farbenindustrie A.G. i.L. under the original name and shall use its best endeavours to achieve a satisfactory solution consistent with the objectives which were expressed in Article 11 of Chapter One.
- (c) With regard to Chapters Three, Four and Five of the Settlement Convention:

The Government of the Federal Republic of Germany confirms that the deletion of Chapters Three, Four and Five shall not affect the continued application of the principles set forth therein in respect of internal restitution, compensation for victims of Nazi persecution and external restitution, as well as the continued application of the corresponding provisions of the Federal Restitution Law and the Federal Compensation Law. The compensation pensions awarded to the victims of Nazi persecution and to their descendants shall continue to be granted in accordance with the applicable provisions.

The Government of the Federal Republic of Germany shall ensure that upon suspension of the Settlement Convention the jurisdiction of the Supreme Restitution Courts is transferred to German courts.

The Government of the Federal Republic of Germany states that the Federal Restitution Law and the Federal Compensation Law will be extended to the territory of the present German Democratic Republic. In this respect further provisions that take account of the conditions prevailing there are required.

(d) With regard to Chapter Nine of the Settlement Convention:

Articles 2 and 3 of Chapter Nine have not been retained on the assumption that all questions dealt with therein have been settled as far as the Parties to the Settlement Convention are concerned.

The Government of the Federal Republic of Germany has assumed the responsibility for the determination and satisfaction of any claims by persons subject to its jurisdiction which are referred to in Article 3 and which may still be asserted under German law.

If the Governments of the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America agree to the content of this Note, this Note and the Notes in reply thereto expressing your Governments' agreement shall constitute an Agreement between our four Governments, which shall enter into force upon receipt of the last reply expressing agreement. The Government of the Federal Republic of Germany shall inform the other Governments of the receipt of that last reply.

The English and French texts of this Note are attached hereto, all three texts being equally authentic.

Please accept, Excellencies, the assurance of my highest consideration.

H. E.

the Ambassador of the French Republic

H. E.

the Ambassador of the United Kingdom of Great Britain and Northern Ireland

H. E.

the Ambassador of the United States of America

Bonn

*B. Protocol Concerning International Agreements**

Am ... fanden in ... Konsultationen zwischen Rechtsexperten der Auswärtigen Ämter der Bundesrepublik Deutschland und ... über die Behandlung völkerrechtlicher Verträge zwischen ... und der Deutschen Demokratischen Republik im Zusammenhang mit der Herstellung der Einheit Deutschlands statt.

Die Delegationen hatten einen Meinungsaustausch über grundsätzliche Aspekte des Problems und die Möglichkeit seiner praktischen Lösung. Beide Seiten stimmten überein, daß eine pragmatische Lösung gefunden werden kann, die ihrer Ansicht nach dem Völkerrecht entspricht.

Grundlage der Konsultationen war eine von ... Seite zusammengestellte Liste über Verträge zwischen ... und der Deutschen Demokratischen Republik ...

* Model of a protocol concluded in the first round of consultations with contracting partners of the former GDR.

Seite erklärte hierzu, daß die Liste möglicherweise nicht vollständig sei. Notwendige Ergänzungen werden auf diplomatischem Wege mitgeteilt.

Die deutsche Seite wies auf die Bedeutung des Art.12 des Vertrages vom 31. August 1990 zwischen der Bundesrepublik Deutschland und der Deutschen Demokratischen Republik über die Herstellung der Einheit Deutschlands hin, die ... notifiziert worden ist.

Bei den Konsultationen wurde Übereinstimmung darüber erzielt, daß die in Frage stehenden völkerrechtlichen Verträge zu erörtern seien, um ihre Fortgeltung, ihr Erlöschen oder die Notwendigkeit ihrer Anpassung festzustellen.

Die einzelnen Verträge wurden erörtert und es wurde ad referendum Übereinstimmung über folgende Vorschläge erzielt:

- Die Verträge in Liste 1 sind kraft Völkergewohnheitsrecht mit der Herstellung der Einheit Deutschlands erloschen (Anlage 1).
- Die Verträge in Liste 2 sollen bezüglich ihrer künftigen Behandlung von Experten geprüft werden (Anlage 2).

Es wurde beschlossen, daß zu weiteren Konsultationen Experten zugezogen werden sollen.

Die nächsten Konsultationen sollen in ... vom ... bis ... stattfinden.

..., den ...

Für die deutsche Seite

Für die ... Seite

.....

.....

Protocol*

On ..., consultations connected with the establishment of German unity were held in ... between legal experts of the Ministries for Foreign Affairs of the Federal Republic of Germany and ... concerning international agreements concluded between ... and the German Democratic Republic.

The delegations had an exchange of views on fundamental aspects of the matter, and on the possibilities for a practical solution. Both sides agreed that a pragmatic solution could be found which, in their opinion, corresponds to international law.

The consultations were based on a list of treaties concluded between ... and the German Democratic Republic drawn up by the ... side. The ... side declared that the list possibly could be incomplete. Necessary additions will be communicated through diplomatic channels.

The German side emphasized the significance of Art.12 of the Treaty of Au-

* Translation by the author.

gust 31, 1990, between the Federal Republic of Germany and the German Democratic Republic on the establishment of German unity, which has been notified to the Government of ...

It was agreed during the consultations that the treaties concerned have to be discussed in order to establish their continuation, their termination or the necessity for their adaptation.

The individual treaties were discussed and agreement was reached ad referendum on the following proposals:

- The treaties in list 1 have expired by virtue of customary international law with the establishment of German unity (annex 1).
- The treaties in list 2 shall be examined by experts with a view to their future treatment (annex 2).

It was decided that experts shall be called in for further consultations.

The next consultations shall take place in ... from ... to ...

..., dated ...

For the German side:

.....

For the ... side:

.....

*C. Documents Relating to East Germany's Integration into the EC**

1. COUNCIL REGULATION (EEC) No 2684/90 of 17 September 1990

on interim measures applicable after the unification of Germany, in anticipation of the adoption of transitional measures by the Council either in cooperation with, or after consultation of, the European Parliament¹

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 28, 42, 43, 75, 100a, 103, 113, 130s and 235 thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Whereas the Economic and Social Committee, having been consulted on the Commission proposal, has failed to issue its opinion within the time limit set by the Council in accordance with Article 198 of the Treaty; whereas it is necessary to proceed, notwithstanding the absence of an opinion from that Committee;

* Official Journal of the European Communities, No.L 263/1 of 26.9.90.

¹ Footnotes have been omitted.

Whereas, from the date of German unification onwards, Community law will be fully applicable to the territory of the former German Democratic Republic;

Whereas, to take account of the special situation obtaining in that territory, provision must be made for transitional measures for the implementation of a number of Community acts;

Whereas, in its communication of 21 August 1990, the Commission submitted a number of proposals for acts to be adopted by the Council either in cooperation with, or after consultation of, the European Parliament, which must be closely associated at all times in the decision-making process envisaged during the phase prior to the definitive entry into force of the transitional measures;

Whereas the Council will not be able to adopt those acts before the date of unification; whereas, taking account of the exceptional nature of the situation, interim measures must be introduced;

Whereas no such interim measures should pre-empt modifications to the Commission proposals during their consideration and final adoption,

HAD ADOPTED THIS REGULATION:

Article 1

As the Council was unable to act before the date of German unification on the transitional measures for the application to the territory of the former German Democratic Republic of acts of Community law as provided for in the Commission proposals submitted to the Council by the communication of 21 August 1990 and as set out in the Annex to this Regulation, interim measures shall apply by way of derogation from the acts of Community law covered by these proposals, subject to the limits and conditions laid down in this Regulation.

Article 2

1. The Commission may authorize the Federal Republic of Germany to maintain provisionally in force legislation applicable in the territory of the former German Democratic Republic which does not comply with a Community act as referred to in Article 1.

Such legislation maintained in force must not go beyond the limits of the Commission proposals in the Annex.

2. This authorization which is the result of exceptional circumstances and may not be subsequently cited as a precedent, shall remain in force until the date on which the Council takes a final decision on the Commission proposals referred to in Article 1 or, where appropriate, until the date on which the transitional measure in question enters into force and no later than 31 December 1990.

After this time limit, should the Council have failed to adopt the requisite transitional measures, Community law shall apply in full.

3. The Federal Republic of Germany shall notify the Commission forthwith of any use made of this authorization. The Commission shall in turn forthwith notify the European Parliament, the Council and the Economic and Social Committee.

The European Parliament may invite the Commission to give further information on the scope of this authorization so that it can give its views either on the specific use made of it or any related measures that may need to be taken at Community level.

Article 3

A decision may be taken in accordance with the procedure laid down in Article 5 to supplement or adapt Community rules on commercial, agricultural and fisheries policy to the minimum extent necessary to bring them into line with the authorization provided for in Article 2 and to lay down any other implementing rules which may be necessary. Such measures shall comply with the overall scheme and basic principles of the rules in question. They may not be decided after the date referred to in Article 2(2). They shall not apply beyond that date.

Article 4

1. The Commission and the Federal Republic of Germany shall consult each other on the measures to be taken to ensure that no difficulties arise from the fact that legislation maintained in force under this Regulation does not comply with Community law.

The Commission shall forthwith inform the European Parliament and the Council of the outcome of such consultations.

2. Any Member State may refer any difficulties to the Commission. The Commission shall, as a matter of urgency, examine the question and submit its conclusions, possibly accompanied by appropriate measures.

3. Measures to be taken at Community level on the basis of paragraphs 1 and 2 may not go beyond the limits of the Commission proposals listed in the Annex. They shall be adopted in accordance with the procedure laid down in Article 5.

Article 5

1. The implementing rules provided for in Articles 3 and 4 shall be adopted in accordance with the procedure laid down in Article 4 of Council Directive 90/476/EEC of 17 September 1990 on interim measures applicable after the unification of Germany, in anticipation of the adoption of transitional measures by the Council in cooperation with the European Parliament.

2. However, the implementing rules relating to the markets in agricultural and

fisheries products shall be adopted in accordance with the procedure laid down in Article 5 of Council Regulation (EEC) No. 2060/90 of 16 July 1990 on transitional measures concerning trade with the German Democratic Republic in the agriculture and fisheries sector.

Article 6

The Commission shall present to the European Parliament and to the Council, before the European Parliament states its views on the transitional measures, a further communication:

- listing the legislative and administrative measures already taken in respect of the territory of the former German Democratic Republic by the Community and by the competent German authorities:
 - (a) to verify and enforce the application of Community law;
and
 - (b) to assure the full receipt of the Community's own resources and the proper management of Community expenditure,
- describing the further legislative and administrative measures which it considers necessary to achieve the above objectives,
and
- proposing, where appropriate, the texts of further legislative measures where they are Community measures.

Article 7

1. This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

2. Measures adopted pursuant to Articles 2(1), 3 and 4(2) shall be published immediately in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 17 September 1990.

For the Council
The President
G. DE MICHELIS

2. COUNCIL DIRECTIVE
of 17 September 1990*

on interim measures applicable after the unification of Germany in anticipation
of the adoption of transitional measures by the Council in cooperation
with the European Parliament

(90/476/EEC)¹

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,
and in particular Articles 49, 57, 66, 100a and 118a thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Whereas the Economic and Social Committee, having been consulted on the
Commission proposal, has failed to issue its opinion within the time limit set by
the Council in accordance with Article 198 of the Treaty; whereas it is necessary
to proceed, notwithstanding the absence of an opinion from that Committee;

Whereas, from the date of German unification onwards, Community law will
be fully applicable to the territory of the former German Democratic Republic;

Whereas, to take account of the special situation obtaining in that territory,
provision must be made for transitional measures for the implementation of a
number of Community acts;

Whereas, in its communication of 21 August 1990, the Commission submitted
a number of proposals for Directives to be adopted by the Council in coopera-
tion with the European Parliament, which must be closely associated at all times
in the decision-making process envisaged during the phase prior to the definitive
entry into force of the interim measures;

Whereas the Council will not be able to adopt those acts before the date of
unification; whereas, taking account of the exceptional nature of the situation,
interim measures must be introduced;

Whereas no such interim measures should pre-empt modifications to the pro-
posals for Directives during their consideration and final adoption,

HAD ADOPTED THIS DIRECTIVE:

Article 1

As the Council was unable to act before the date of German unification on the
transitional measures for the application to the territory of the former German
Democratic Republic of Community Directives as provided for in the Commis-

* Official Journal of the European Communities, No.L 266/1 of 28.9.90.

¹ Footnotes and Annex have been omitted.

sion proposals submitted to the Council by the communication of 21 August 1990 and as set out in the Annex to this Directive, interim measures shall apply by way of derogation from the Directives covered by those proposals, subject to the limits and conditions laid down in this Directive.

Article 2

1. The Commission may authorize the Federal Republic of Germany to maintain provisionally in force, legislation applicable in the territory of the former German Democratic Republic which does not comply with a Community act as referred to in Article 1.

Such legislation maintained in force must not go beyond the limits of the Commission proposals in the Annex.

2. This authorization, which is the result of exceptional circumstances and may not be subsequently cited as a precedent, shall remain in force until the date on which the Council takes a final decision on the Commission proposals referred to in Article 1 or, where appropriate, until the date on which the transitional measure in question enters into force and no later than 31 December 1990.

After this time limit, should the Council have failed to adopt the requisite transitional measures, Community law shall apply in full.

3. The Federal Republic of Germany shall notify the Commission forthwith of any use made of this authorization. The Commission shall in turn forthwith notify the European Parliament, the Council and the Economic and Social Committee.

The European Parliament may invite the Commission to give further information on the scope of this authorization, so that it can give its views either on the specific use made of it or any related measures that may need to be taken at Community level.

Article 3

1. The Commission and the Federal Republic of Germany shall consult each other on the measures to be taken to ensure that no difficulties arise from the fact that legislation maintained in force under this Directive does not comply with Community law.

The Commission shall forthwith inform the European Parliament and the Council of the outcome of such consultations.

2. Any Member State may refer any difficulties to the Commission. The Commission shall, as a matter of urgency, examine the question and submit its conclusions, possibly accompanied by appropriate measures.

3. Measures to be taken at Community level on the basis of paragraphs 1 and 2 may not go beyond the limits of the Commission proposals listed in the Annex. They shall be adopted in accordance with the procedure laid down in Article 4.

Article 4

1. The measures provided for in Article 3 and any other necessary implementing arrangements shall be adopted in accordance with the following procedure.

The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt measures which shall be immediately applicable. However, if they are not in accordance with the opinion of the committee, the Commission shall forthwith communicate the measures to the Council.

In that event, the Commission may delay application of the measures it has decided by up to one month from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within the period laid down in the preceding subparagraph.

2. The measures provided for in paragraph 1 may not be decided after the date referred to in Article 2(2). They shall not apply beyond that date.

Article 5

The Commission shall present to the European Parliament and to the Council, before the European Parliament states its views on the transitional measures, a further communication:

- listing the legislative and administrative measures already taken in respect of the territory of the former German Democratic Republic by the Community and by the competent German authorities:
 - (a) to verify and enforce the application of Community law; and
 - (b) to assure the full receipt of the Community's own resources and the proper management of Community expenditure,
- describing the further legislative and administrative measures which it considers necessary to achieve the above objectives, and
- proposing, where appropriate, the texts of further legislative measures where they are Community measures.

Article 6

1. The measures provided for in Articles 2(1), 3(2) and 4(1) may be taken from the date of notification of this Directive.

2. Measures adopted pursuant to Articles 2(1), 3(2) and 4(1) shall be published immediately in the *Official Journal of the European Communities*.

Article 7

This Directive is addressed to the Member States.

Done at Brussels, 17 September 1990.

For the Council
The President
G. DE MICHELIS

3. COMMISSION DECISION
of 27 September 1990*

introducing interim measures relating to the unification of Germany
(Only the German text is authentic)

(90/481/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2684/90 of 17 September 1990 on interim measures applicable after the unification of Germany, in anticipation of the adoption of transitional measures by the Council either in cooperation with, or after consultation of, the European Parliament¹, and in particular Article 2 thereof,

Having regard to Council Directive 90/476/EEC of 17 September 1990 on interim measures applicable after the unification of Germany, in anticipation of the adoption of transitional measures by the Council after consultation of the European Parliament², and in particular Article 2 thereof,

Whereas under these provisions the Commission may, under certain conditions, authorize Germany provisionally to keep in force in the territory of the

* Official Journal of the European Communities, No.L 267/37 of 29.9.90.

¹ OJ No L 263, 26.9.1990, p.1.

² OJ No L 266, 28.9.1990, p.1.

former German Democratic Republic legislation which does not comply with a Community act pending the entry into force of the transitional measures proposed on 21 August 1990 by the Commission to the Council;

Whereas the Commission should make use of this possibility when the specific situation in that territory is such that it is not possible to wait for the entry into force of the transitional measures; whereas these measures must therefore enter into force with effect from 3 October 1990, the date of the unification of Germany;

Whereas the measures adopted in this Decision apply without prejudice to the decisions to be taken by the Council acting on the Commission's proposals on transitional measures and without prejudice to the measures taken or to be taken by the Commission under the other provisions of the abovementioned Regulation and Directive,

HAS ADOPTED THIS DECISION:

Article 1

1. Germany is authorized provisionally to maintain in force in the territory of the former German Democratic Republic legislation which does not comply with the Community acts referred to in the Annex* and as specified therein.

2. Germany shall take all the measures necessary to ensure that products which do not comply with the Community acts referred to in the Annex under II.2, III and IX.1.a are not placed on the market in the territory of the Community except in the territory of the former German Democratic Republic; these measures shall be compatible with the Treaty, in particular the objectives of Article 8a, and shall not give rise to controls and formalities at the frontiers between the Member States.

Article 2

This Decision shall take effect on 3 October 1990; it shall apply until the entry into force of the transitional measures to be adopted by the Council acting on the Commission's proposals, and until no later than 31 December 1990.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 27 September 1990.

For the Commission
The President
Jacques DELORS

* Annex has been omitted.

*D. Documents Relating to Military and Security Questions**1. Exchange of Notes ("Presence Convention")**

Der Staatssekretär
des Auswärtigen Amtes
500-330.00/11

Bonn, 25 September 1990

Excellencies,

I have the honour to refer to the discussions which have taken place between representatives of the Governments of the Federal Republic of Germany, the Kingdom of Belgium, Canada, the French Republic, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland and the United States of America concerning the Convention on the Presence of Foreign Forces in the Federal Republic of Germany of 23 October 1954 ("the Convention") and, on behalf of the Government of the Federal Republic of Germany, to propose to the Governments of the Kingdom of Belgium, Canada, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland and the United States of America the following:

1. The Convention shall remain in force, subject to paragraphs 2 and 3 below, following the establishment of German unity and the conclusion of the Treaty on the Final Settlement with respect to Germany, signed on 12 September 1990.

The existing territorial application of the Convention shall remain unaffected by the establishment of German unity.

2. The Convention will be reviewed by the Parties at the request of any Party.
3. Any stationing Party may withdraw from the Convention upon two years' notice to the other Parties. The Federal Republic of Germany may terminate the Convention in respect of one or more Parties upon two years' notice to the Parties.

If the Governments of the Kingdom of Belgium, Canada, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland and the United States of America agree to the content of this Note, this Note and the Notes in reply thereto expressing your Governments' agreement shall constitute an Agreement between our Governments.

The English and French texts of this Note are attached hereto, all three texts being equally authentic.

Please accept, Excellencies, the assurances of my highest consideration.

H. E.

The Ambassador of the Kingdom of Belgium

* BGBl. 1990 II, 1392 = 30 ILM 417 (1991).

H. E.

The Ambassador of Canada

H. E.

The Ambassador of the Kingdom of the Netherlands

H. E.

The Ambassador of the United States of America

H. E.

The Ambassador of the United Kingdom of Great Britain and Northern Ireland

Bonn

2. Exchange of Notes

(NATO Status of Forces Agreement and Supplementary Agreement)*

DER STAATSEKRETÄR
DES AUSWÄRTIGEN AMTS

500-330.00/11

BONN, 25 September 1990

Excellencies,

I have the honour to refer to the discussions which have taken place between representatives of the Governments of the Federal Republic of Germany, the Kingdom of Belgium, Canada, the French Republic, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland and the United States of America concerning the Agreement of 19 June 1951 between the Parties to the North Atlantic Treaty regarding the Status of their Forces, the Agreement of 3 August 1959 to supplement that Agreement with respect to foreign forces stationed in the Federal Republic of Germany ("the Supplementary Agreement"), and the Agreements related thereto. I have the honour to propose on behalf of the Government of the Federal Republic of Germany that your Governments note that:

1. Following the establishment of German unity and the conclusion of the Treaty on the Final Settlement with respect to Germany, signed on 12 September 1990, the above-mentioned Agreements remain in force, subject to paragraphs 2 and 4 below.
2. According to Article 82 of the Supplementary Agreement, any Party may request a review of that Agreement; in this case such a review shall be opened within a period not to exceed three months after submission of the request.

¹ German Text in BGBl. 1990 II, 1250 = 30 ILM 415 (1991).

The Parties are currently studying this matter, bearing in mind developments in Europe and in Germany, notably the implementation of force reductions and the attainment of German unity.

3. In the application of these Agreements due account will be taken of the developments mentioned in the previous paragraph.
4. a) Taking account of the fact that the existing territorial application of these Agreements shall remain unaffected by the establishment of German unity, any official activity by the forces of the sending States, their civilian components, their members and dependents in the Länder Brandenburg, Mecklenburg-Vorpommern, Saxony, Saxony-Anhalt and Thuringia, with the exception of travel to and from Berlin, shall only occur with the express consent of the German authorities. Private activities by any member of their forces or civilian components or by any dependent shall not require consent.
- b) The forces of the sending States, their civilian components, their members and dependents shall enjoy in the above-mentioned Länder the same status as that accorded to them in the Länder Baden-Württemberg, Bavaria, Bremen, Hamburg, Hesse, Lower Saxony, North-Rhine/Westphalia, Rhineland-Palatinate, Saarland and Schleswig-Holstein.
- c) The provisions of this paragraph shall apply in Berlin for the Belgian, Canadian and Netherlands' forces, their civilian components, their members and dependents when Quadripartite rights and responsibilities cease to have effect. The Federal Republic of Germany, the Kingdom of Belgium, Canada, and the Kingdom of the Netherlands shall develop as soon as possible additional arrangements in the spirit of this Agreement.
- d) If differences arise between the Parties to this Agreement relating to the practical application of this paragraph, they shall be settled by a consultative group consisting of representatives from the Federal Republic of Germany and any other Party directly concerned.
- e) The provisions of this paragraph shall be reviewed at the expiry of the period referred to in Article 4, paragraph 1, of the Treaty on the Final Settlement with respect to Germany, or earlier, should the Parties to this Agreement so agree.

If the Governments of the Kingdom of Belgium, Canada, the French Republic, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland and the United States of America agree to the content of this Note, this Note and the Notes in reply thereto expressing your Governments' agreement shall constitute an Agreement between our Governments, which shall enter into force, following completion of the necessary constitutional requirements in the Federal Republic of Germany, when German unity is established.

The English and French texts of this Note are attached hereto, all three texts being equally authentic.

Please accept, Excellencies, the assurances of my highest consideration.

H. E.
The Ambassador of the Kingdom of Belgium
H. E.
The Ambassador of Canada
H. E.
The Ambassador of the French Republic
H. E.
The Ambassador of the Kingdom of the Netherlands
H. E.
The Ambassador of the United Kingdom of Great Britain and Northern Ireland
H. E.
The Ambassador of the United States of America
Bonn

3. Future Presence of Allied Forces in Berlin*

DER STAATSSSEKRETÄR
DES AUSWÄRTIGEN AMTS
503.330.00/12

BONN, 25 September 1990

Excellencies,

I have the honour to refer to the discussions which have taken place recently between representatives of the Governments of the Federal Republic of Germany, the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America. These discussions took place following the request by the Government of the Federal Republic of Germany that armed forces of the other three States should remain in Berlin. The presence of these forces will demonstrate the continued solidarity of the other three States with the Federal Republic of Germany and especially with the city of Berlin and its inhabitants in contributing to the security of Berlin. I accordingly have the honour to propose on behalf of the Government of the Federal Republic of Germany the following:

1. The Federal Republic of Germany, the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America agree to the presence, for a limited period, of forces of the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America in Berlin.
2. The French, United Kingdom and United States forces may be present in

* German Text in BGBI. 1990 II, 1250 = 30 ILM 450 (1991).

- Berlin up to their respective levels (personnel and military equipment) in effect on 12 September 1990.
3. The French, United Kingdom and United States forces, their civilian components, their members and dependents in Berlin or moving between Berlin and the Länder Baden-Württemberg, Bavaria, Bremen, Hamburg, Hesse, Lower Saxony, North-Rhine/Westphalia, Rhineland-Palatinate, Saarland and Schleswig-Holstein shall enjoy the same status as that accorded to them in those Länder.
 4. The Federal Republic of Germany shall guarantee to the French, United Kingdom and United States forces in Berlin in accordance with the relevant German legislation the continued availability at no cost of facilities and accommodation which are necessary for the fulfilment of their mission. Facilities and accommodation used until now, but no longer necessary for the fulfilment of this mission, shall be released to the German authorities as soon as possible.
 5. The French, United Kingdom and United States forces in Berlin shall closely coordinate all activities with the competent German authorities on the understanding that primary responsibility for ensuring the security of Berlin rests with German authorities. For this purpose, they shall establish appropriate liaison arrangements.
 6. The Federal Republic of Germany shall provide facilities for the training of the French, United Kingdom and United States forces in accordance with respective national training standards and with the principles in Annex 1 to this Agreement.
 7. The Federal Republic of Germany shall provide for costs of the French, United Kingdom and United States forces related to the fulfilment of their mission, in accordance with the principles in Annex 2 to this Agreement and as may subsequently be agreed between the Parties concerned.
 8. The Federal Republic of Germany shall guarantee and facilitate air movements to and from Berlin and surface movements between Berlin and the Länder Baden-Württemberg, Bavaria, Bremen, Hamburg, Hesse, Lower Saxony, North-Rhine/Westphalia, Rhineland-Palatinate, Saarland and Schleswig-Holstein by French, United Kingdom and United States forces.
 9. The Federal Republic of Germany, the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America agree to develop, as soon as possible, any additional arrangements that may be needed to carry out the provisions of this Agreement.
 10. This Agreement may be reviewed by the Parties thereto at the request of any Party for the purpose of reaching agreement on modification or amendment at any time after an initial period of twelve months after its entry into force.
 11. This Agreement may be terminated upon twelve months' written notice by any Party to the other Parties.

If the Governments of the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America agree to the content of this Note, this Note, including its Annexes, and the Notes in reply thereto expressing your Governments' agreement shall constitute an Agreement between our four Governments, which shall enter into force, following completion of any necessary constitutional requirements, when Quadripartite rights and responsibilities cease to have effect. Each Government shall notify the others of the completion of its constitutional requirements.

The English and French texts of this Note and its Annexes are attached hereto, all three texts being equally authentic.

Please accept, Excellencies, the assurances of my highest consideration.

H. E.

The Ambassador of the French Republic

H. E.

The Ambassador of the United Kingdom of Great Britain and Northern Ireland

H. E.

The Ambassador of the United States of America

Bonn

Annex 1

Principles for Training

1. The French, United Kingdom and United States forces in Berlin shall continue to control and maintain training facilities for which they were responsible on 12 September 1990. In addition, they shall, subject to paragraph 4 of this Annex, continue to enjoy the use of training areas in Berlin which were available to them on 12 September 1990.
2. Individual training and collective training up to and including battalion task force/battalion group level shall continue to be accomplished utilising the existing training facilities and areas inside Berlin.
3. The future training area requirements shall take into account the size and composition of the French, United Kingdom and United States forces in Berlin.
4. Any reductions in the times, places and types of training in Berlin for French, United Kingdom and United States forces shall be effected by bilateral agreement between authorities of the respective forces and the competent German authorities.
5. The competent German authorities shall facilitate the use of replacement training facilities and areas by the forces of France, the United Kingdom and the United States stationed in Berlin. Their suitability shall be determined by bilateral agreement between the competent German authorities and the authorities

- of the forces of France, the United Kingdom and the United States respectively.
6. Should the use of required replacement training facilities and areas involve additional costs, the competent German authorities shall provide sufficient funds to offset such costs to the forces of France, the United Kingdom and the United States in Berlin in accordance with the Principles for Funding in Annex 2 to this Agreement.

Annex 2

Principles for Funding

1. The Federal Republic of Germany shall continue to pay for the same categories of expenditure as at present, the funding to be adjusted as appropriate to take account of the termination of Quadripartite rights and responsibilities, and of any reductions in force levels and civilian employees.
2. The expenditure requirements of the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America ("the three States") shall be established annually on a bilateral basis and the funding confirmed by the Federal Republic of Germany following completion of its budgetary procedures. The three States accept that their requirements may need to be presented in greater detail. They shall estimate their costs, in accordance with their national standards, at the lowest level consistent with the mission of their forces. The agreed principles of budgetary management shall otherwise be applied. Expenditure shall be audited according to national standards. The three States shall as appropriate take into consideration the requirements of the Bundesrechnungshof (the Federal Audit Agency), as communicated through the relevant channels.
3. Expenditure on individual institutions associated with Quadripartite rights and responsibilities, including the missions of the three States, shall be phased out over agreed transitional periods by no later than 31 December 1991.
4. The Federal Republic of Germany shall bear the costs of dissolving the institutions of the three States whose functions cease to exist, and for the continuation of any functions requested by the Federal Republic of Germany. Separate arrangements shall apply for the latter.
5. During the transitional periods referred to in paragraph 3, the Federal Republic of Germany guarantees the continued availability at no cost of property hitherto associated with the exercise of Quadripartite rights and responsibilities.
6. The Federal Republic of Germany accepts that during the transitional periods the present Berlin Tariff Agreement arrangements shall continue for those employees to whom they apply at present. Non-Berlin Tariff Agreement employees who are made redundant shall be treated as sympathetically as possible.

7. The three States are prepared in individual cases to examine, in addition to their regular reviews, their requirements for properties in which the German side has a particular interest. This applies especially in the periods during which institutions are being dissolved.
8. The 1991 estimates already consulted bilaterally, adjusted as appropriate to take account of the termination of Quadripartite rights and responsibilities and of any reductions in force levels, shall be reviewed on a bilateral basis.

E. Related Foreign Documents

1. Mitteilung der österreichischen Bundesregierung betreffend einige Bestimmungen des Staatsvertrages vom 15. Mai 1955 von Wien (BGBl. 1955/152) an die vier Signatarstaaten des Staatsvertrags samt Erläuterung, Wien, am 6. November 1990:*

„Mitteilung an die vier Signatarstaaten des Staatsvertrags

1. Der Staatsvertrag von Wien vom 15. Mai 1955 ist für Österreich von großer Bedeutung; er bildet eine Grundlage für die Stellung Österreichs als freier und unabhängiger Staat und gleichberechtigtes Mitglied der internationalen Gemeinschaft. Der Staatsvertrag war darüber hinaus ein Meilenstein auf dem Weg zur Errichtung einer neuen europäischen Friedensordnung nach dem Ende des 2. Weltkriegs, dem 35 Jahre später die Unterzeichnung des ‚Vertrags über die abschließende Regelung in bezug auf Deutschland‘ am 12. September 1990 folgte. Als gleichberechtigter Partner der europäischen Friedensordnung begrüßt Österreich den Abschluß dieses Vertrags.

2. Der Staatsvertrag vom 15. Mai 1955 enthält in seinem Teil II ‚Militärische und Luftfahrt-Bestimmungen‘ (Artikel 12–16), Regelungen, die Bestimmungen der Friedensverträge von 1947 mit Italien, Rumänien, Bulgarien, Ungarn und Finnland nachgebildet sind. Derartige Regelungen werden von allen diesen Staaten, und zwar größtenteils schon seit langem, als obsolet betrachtet.

3. Seit dem Abschluß des Staatsvertrags sind grundlegende Veränderungen in Europa eingetreten, die sich in der Anwendungspraxis bezüglich einzelner der angeführten Bestimmungen sowie in der im Abschluß des zitierten Vertrags vom 12. September 1990 zum Ausdruck kommenden geänderten Rechtsüberzeugung auch der Signatarstaaten manifestieren. Österreich ist daher der Auffassung, daß die Artikel 12–16 des Staatsvertrags obsolet sind. Dies gilt ebenfalls für die von einer analogen Zielsetzung wie die erwähnten Bestimmungen getragene Regelung des Artikels 22 Z. 13 dieses Vertrags.

Hingegen erachtet sich Österreich weiterhin als völkerrechtlich verpflichtet, keine atomaren, biologischen oder chemischen Waffen herzustellen, zu besitzen oder zu Versuchen zu verwenden.

* Österreichische außenpolitische Dokumentation Dezember 1990, Texte und Dokumente, 28 et seq.

Erläuterung zur Mitteilung an die vier Signatarstaaten des Staatsvertrags

Bereits in der Anwendungspraxis der letzten Jahre in bezug auf einzelne Bestimmungen der Artikel 12–16 sowie den Artikel 22 Z.13 des Staatsvertrags von Wien vom 15. Mai 1955 kam die Rechtsmeinung der Vertragsparteien zum Ausdruck, daß diese nicht mehr wirksam sind. Diese Praxis reflektiert eine grundlegende Änderung der Umstände, die sich u. a. in den durch die KSZE-Prinzipien geschaffenen Grundlagen für eine dauerhafte europäische Friedensordnung manifestierte.

Im Artikel 11 des Staatsvertrags hat sich Österreich verpflichtet, die volle Geltung von Abkommen oder Regelungen anzuerkennen, die von den Alliierten und Assoziierten Mächten bezüglich Deutschlands zur Wiederherstellung des Friedens herbeigeführt werden. Im Abschluß des ‚Vertrags über die abschließende Regelung in bezug auf Deutschland‘ vom 12. September 1990, des sogenannten 2+4-Vertrags, durch die Signatarstaaten des Staatsvertrags ist somit der Ausdruck eines Rechtsverständnisses auch im Hinblick auf diesen zu erblicken, wonach die Verpflichtungen Österreichs insbesondere im Zusammenhang mit der ‚Verhinderung der deutschen Wiederaufrüstung‘ hinfällig geworden sind. Daraus folgt, daß die Signatarstaaten die Erfüllung der Österreich mit den genannten Bestimmungen auferlegten Verpflichtungen nicht mehr einfordern können.

Da diese Haltung auch der diesbezüglichen österreichischen Auffassung entspricht, liegt eine Übereinstimmung in der Rechtsüberzeugung vor, die bewirkt, daß die angeführten Bestimmungen des Staatsvertrags nicht länger gelten, weil sie obsolet sind. Das Verbot atomarer, biologischer und chemischer Waffen, auf die Österreich auch in anderen völkerrechtlichen Verträgen verzichtet hat, ist von dieser Rechtsüberzeugung nicht erfaßt.“

2. Antworten der Signatarstaaten des österreichischen Staatsvertrags auf die österreichische Erklärung:

a) Aide-Mémoire der UdSSR: Moskau, am 6. November 1990 (inoffizielle, von der UdSSR angefertigte Übersetzung):

„Im Zusammenhang mit der Überreichung der Mitteilung der Regierung der Republik Österreich bezüglich der Auslegung der Artikel 12–16 und des Paragraphen 13 des Artikels 22 des Staatsvertrages betreffend die Wiederherstellung eines unabhängigen und demokratischen Österreich vom 15. Mai 1955 betont die Sowjetische Regierung, daß der Staatsvertrag nach wie vor ein wichtiger Bestandteil der Nachkriegsregelung in Europa ist und bleibt und seine grundlegenden Bestimmungen auch jetzt für die Erhaltung des Friedens und der Stabilität auf dem Kontinent von Bedeutung sind.

Im Hinblick auf die sich in Europa geänderte Lage und unter Berücksichtigung der mit den Regierungen der USA, Großbritanniens, Frankreichs sowie mit der Regierung Österreichs zustande gekommenen Kontakte erklärt die Sowjetische Regierung, daß sie keine Einwände gegen Auslegung der oben erwähnten Artikel des Staatsvertrages als obsolet hat.

Gleichzeitig wird die Genugtuung zum Ausdruck gebracht, daß die Republik Österreich auch weiterhin bereit ist, sich an den Staatsvertrag sowie an ihre Verpflichtungen zu halten, atomare, biologische oder chemische Waffen weder zu besitzen noch herzustellen noch zu Versuchen zu verwenden.

Die Sowjetische Regierung bringt ihre Zuversicht zum Ausdruck, daß die Beziehungen der UdSSR zu Republik Österreich auch weiterhin im Geiste des Vertrauens und der gegenseitigen Verständigung aufgebaut werden.

Moskau, den 6. November 1990“

**b) Schreiben des Botschafters der Vereinigten Staaten von Amerika
in Österreich an den Generalsekretär des Bundesministeriums
für auswärtige Angelegenheiten, Wien, am 9. November 1990:**

“EMBASSY OF THE UNITED STATES OF AMERICA

Vienna, Austria

Office of The Ambassador

November 9, 1990

Your Excellency:

I am authorized by the Department of State to convey the following message to you concerning the 1955 State Treaty.

- We have carefully reviewed the communication which Ambassador Hoess presented to Assistant Secretary Seitz in Washington on November 6.
- We understand, and are sympathetic with, Austria's desire to clarify the status of certain Treaty provisions, in the light of the changed situation in Europe.
- The United States concurs with the Austrian Government view that Articles 12–16 and Article 22, No.13, of the 1955 State Treaty have become obsolete.

Sincerely,

Roy M. Huffington

His Excellency
Thomas Klestil,
Secretary General,
Ministry for Foreign Affairs,
Wien”

c) Note der Botschaft Frankreichs in Österreich an das Bundesministerium für auswärtige Angelegenheiten (No.290/0), Wien, am 13. November 1990:

«AMBASSADE DE FRANCE EN AUTRICHE

N° 290/0

L'Ambassade de France présente ses compliments au Département Fédéral des Affaires Etrangères de la République d'Autriche et a l'honneur de porter à sa connaissance ce qui suit:

Le Gouvernement de la République française a pris note de la «communication aux quatre Etats signataires du traité d'Etat autrichien», relative aux articles 12 à 16 et à l'article 22 alinea 13 du traité portant rétablissement d'une Autriche indépendante et démocratique, qui a été remise le 6 novembre 1990 au Secrétaire général du Ministère des Affaires Etrangères par l'Ambassadeur d'Autriche.

La France considère que le traité d'Etat qui, le 15 mai 1955, a permis à l'Autriche de recouvrer sa liberté et son indépendance, conserve, dans ses dispositions fondamentales, toute son importance pour le maintien de la paix et de la sécurité en Europe.

Toutefois, ayant à l'esprit les changements historiques survenus récemment en Europe et se référant aux contacts qui ont eu lieu récemment entre le Gouvernement français et le Gouvernement autrichien, ainsi qu'entre celui-ci et les Gouvernements des Etats-Unis d'Amérique, du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord, et de l'Union des Républiques Socialistes Soviétiques, le Gouvernement de la République française donne son consentement à la communication autrichienne.

En même temps le Gouvernement de la République française prend acte avec satisfaction du fait que la communication autrichienne ne concerne pas l'interdiction de la fabrication, de la possession ou de l'expérimentation des armes nucléaires, biologiques et chimiques auxquelles l'Autriche a également renoncé dans d'autres accords internationaux.

L'Ambassade de France saisit cette occasion pour renouveler au Département Fédéral des Affaires Etrangères de la République d'Autriche les assurances de sa haute considération.

Vienne, le 13 novembre 1990

Département Fédéral
des Affaires Etrangères
de la République d'Autriche, Vienne»

3. Decision of the Government of Finland on Stipulations of the Paris Peace Treaty Concerning Germany and Limiting the Sovereignty of Finland*

After Germany has been united and its sovereignty reinstated, the Government of Finland considers the stipulations concerning Germany in Part III of the Paris Peace Treaty to have lost their meaning.

The other stipulations in Part III of the Peace Treaty limiting Finland's sovereignty do not correspond to Finland's status as a Member State of the United Nations and Participating State in the Conference on Security and Cooperation in Europe. Therefore the Government states that also they have lost their meaning.

The only exception is formed by atomic weapons, the acquisition of which is prohibited under Article 17 of the Peace Treaty. Finland has undertaken not to acquire nuclear weapons also by becoming Party to the Non-Proliferation Treaty in 1969.

Stating that the stipulations in Part III of the Peace Treaty have lost their meaning does not alter the basis of Finland's security and defence policy.

Treaty of Peace with Finland.

PART III.

Military, Naval and Air Clauses.

Article 13.

The maintenance of land, sea and air armaments and fortifications shall be closely restricted to meeting tasks of an internal character and local defence of frontiers. In accordance with the foregoing, Finland is authorized to have armed forces consisting of not more than:

(a) A land army, including frontier troops and anti-aircraft artillery, with a total strength of 34,400 personnel;

(b) A navy with a personnel strength of 4,500 and a total tonnage of 10,100 tons;

(c) An air force, including any naval air arm, of 60 aircraft, including reserves, with a total personnel strength of 3,000. Finland shall not possess or acquire any aircraft designed primarily as bombers with internal bomb-carrying facilities.

These strengths shall in each case include combat, service and overhead personnel.

* Finnish Yearbook of International Law, Vol.1 (1990), 567.

Article 14.

The personnel of the Finnish Army, Navy and Air Force in excess of the respective strengths permitted under Article 13, shall be disbanded within six months from the coming into force of the present Treaty.

Article 15.

Personnel not included in the Finnish Army, Navy or Air Force shall not receive any form of military training, naval training or military air training as defined in Annex II.

Article 16.

1. As from the coming into force of the present Treaty, Finland will be invited to join the Barents, Baltic, and Black Sea Zone Board of the International Organisation for Mine Clearance of European Waters, and shall maintain at the disposal of the Central Mine Clearance Board all Finnish minesweeping forces until the end of the post-war mine clearance period, as determined by the Central Board.

2. During this post-war mine clearance period, Finland may retain additional naval units employed only for the specific purpose of minesweeping, over and above the tonnage permitted in Article 13.

Within two months of the end of the said period, such of these vessels as are on loan to the Finnish Navy from other Powers shall be returned to those Powers, and all other additional units shall be disarmed and converted to civilian use.

3. Finland is also authorised to employ 1.500 additional officers and men for minesweeping over and above the numbers permitted in Article 13. Two months after the completion of minesweeping by the Finnish Navy, the excess personnel shall be disbanded or absorbed within the numbers permitted in the said Article.

Article 17.

Finland shall not possess, construct or experiment with any atomic weapon, any self-propelled or guided missiles or apparatus connected with their discharge (other than torpedoes and torpedo-launching gear comprising the normal armament of naval vessels permitted by the present Treaty), sea-mines or torpedoes of non-contact types actuated by influence mechanisms, torpedoes capable of being manned, submarines or other submersible craft, motor torpedo boats, or specialised types of assault craft.

Article 18.

Finland shall not retain, produce or otherwise acquire, or maintain facilities for the manufacture of war material in excess of that required for the maintenance of the armed forces permitted under Article 13 of the present Treaty.

Article 19.

1. Excess war material of Allied origin shall be placed at the disposal of the Allied Power concerned according to the instructions given by that Power. Excess Finnish war material shall be placed at the disposal of the Governments of the Soviet Union and the United Kingdom. Finland shall renounce all rights to this material.

2. War material of German origin or design in excess of that required for the armed forces permitted under the present Treaty shall be placed at the disposal of the Two Governments. Finland shall not acquire or manufacture any war material of German origin or design, or employ or train any technicians, including military and civil aviation personnel, who are or have been nationals of Germany.

3. Excess war material mentioned in paragraphs 1 and 2 of this Article shall be handed over or destroyed within one year from the coming into force of the present Treaty.

4. A definition and list of war material for the purposes of the present Treaty are contained in Annex III.

Article 20.

Finland shall co-operate fully with the Allied and Associated Powers with a view to ensuring that Germany may not be able to take steps outside German territory towards rearmament.

Article 21.

Finland shall not acquire or manufacture civil aircraft which are of German or Japanese design or which embody major assemblies of German or Japanese manufacture or design.

Article 22.

Each of the military, naval and air clauses of the present Treaty shall remain in force until modified in whole or in part by agreement between the Allied and Associated Powers and Finland or, after Finland becomes a member of the United Nations, by agreement between the Security Council and Finland.

Statement by the President of the Republic Concerning the Finnish-Soviet Treaty of Friendship, Co-Operation and Mutual Assistance, Nr.278
21 September 1990.

President Koivisto has recorded a statement in the protocol of the session of the Council of State on 21 September 1990 concerning the reference to Germany in the Finnish-Soviet Treaty of 1948 on Friendship, Co-operation and Mutual Assistance (FCMA). Its background is the following:

The unification of Germany takes place on 3 October 1990. The external aspects of the unification were agreed upon in a Treaty concluded by the two German states and the four victorious powers in Moscow on 12 September 1990. This Treaty signifies a final settlement of the Second World War and the restoration of full sovereignty for Germany. It resolves the central problem of East-West confrontation.

The Foreign Ministers of the Soviet Union and the Federal Republic of Germany initialled on 12 September 1990 a bilateral Treaty on good neighbourliness, partnership and co-operation. This Treaty is expected to be signed during President Gorbachev's visit to Germany later this autumn.

The reference to Germany as a possible aggressor, contained in the first Article of the 1948 Treaty, has for long been considered to reflect the situation existing at the time it was signed. The changed circumstances have rendered it obsolete.

In Finland, the standard interpretation of the Treaty has focused on Finland's duty as a sovereign State to repel any attack rather than on the question of a possible aggressor.

The Finnish-Soviet declaration of 26 October 1989 sets as a goal the dismantling of the "threat perceptions of the past".

The reference to Germany in the Treaties between the Soviet Union and its allies (with the exception of Poland) was removed in the 1960's and 1970's.

When the Finnish Government stated on 21 September 1990 that the provisions concerning Germany in the Paris Peace Treaty have lost their meaning, the question may arise concerning the reference to Germany in the Treaty of Friendship, Co-operation and Mutual Assistance. It is therefore necessary that the above interpretation is recorded.

The intention of the Finnish Government is not to open a discussion about modifying the FCMA Treaty. The Treaty functions well also under changing circumstances.

The President of the Republic Recorded in the Protocol of the Council of State on 21 September 1990 the Following Statement:

The reference to Germany as a possible aggressor contained in the 1948 Treaty of Friendship, Co-operation and Mutual Assistance (FCMA) between Finland

and the Soviet Union reflects a historical appraisal of the situation prevailing at the time of its signing. Such a situation no longer exists. Recent developments, in particular the relaxation of confrontation in Europe, the unification of Germany and the international agreements relating to it signify that the said reference in the FCMA Treaty has become obsolete.

In stating the above, the Finnish Government reaffirms that in the changing circumstances the essential purpose of the FCMA Treaty remains unchanged, i. e. Finland will not allow her territory to be used for an attack against the Soviet Union. The Treaty continues to serve Finnish security interests.