



## Case Western Reserve Journal of International Law

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Volume 7 | Issue 1

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1974

# Recognition of the DDR: Some Legal Aspects of West Germany's Foreign Policy and the Quest for German Reunification

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### Recommended Citation

Karl M. Schwenkel, *Recognition of the DDR: Some Legal Aspects of West Germany's Foreign Policy and the Quest for German Reunification*, 7 Case W. Res. J. Int'l L. 94 (1974)

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## NOTES

### *Recognition of the DDR: Some Legal Aspects of West Germany's Foreign Policy and the Quest for German Reunification*

#### *Introduction*

IT IS PROBABLY SAFE to assert that the key to *détente* in Europe lies in resolution of the German situation, for it is Germany, located in the heart of Europe, where East abruptly meets West. For almost twenty-five years the German situation has remained a highly volatile center of controversy. In many instances, it has been the scene of traumatic confrontations marked by displays of deep emotionalism and drama. Both East as well as West understood the significance of a post-war Germany; each tried to strengthen their positions by attempting to bring Germany within their respective orbits. The stakes were obviously high, yet throughout the post-war period, the result was stalemate. As one commentator correctly phrased it, Germany was the *stable crisis*.<sup>1</sup> But within the past two years there has been some movement and progress in the German situation, a reconciliation of differences.

The German problem has basically revolved around the recognition of the German Democratic Republic.<sup>2</sup> For approximately twenty-five years both the Federal Republic and the United States remained adamant in their repeated refusals to recognize the DDR. However, when Willy Brandt assumed control over West German foreign policy, originally as Foreign Minister under the Kiesinger administration in the days of the *Grand Coalition*, the Federal Republic's attitude toward the DDR was at first modified, then it developed into a new *Ostpolitik* based upon the underlying concept that it was time for Bonn to recognize the realities of existing social and political conditions in Eastern Europe. At first, West Germans viewed this new *Ostpolitik* with great reticence and circumspection, and rightly so. For the West Germans were accustomed to the callous and malevolent position which Konrad Adenauer and succeeding chancellors had taken vis-à-vis relations with the East. And

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<sup>1</sup> W. HANRIEDER, *THE STABLE CRISIS, TWO DECADES OF GERMAN FOREIGN POLICY* (1970).

<sup>2</sup> Hereinafter referred to as the DDR (*Deutsche Demokratische Republik*).

for many, Adenauer symbolized strength, prosperity, and security. Therefore, Brandt's initial task was to convince the West German population that the Adenauer approach toward the DDR and the East was anachronistic. As time progressed, Brandt was very successful in mollifying these misanthropic attitudes.

But even after Willy Brandt succeeded in becoming Chancellor of the Federal Republic, the *rapprochement* with the East as well as the DDR never came to fruition due to a variety of reasons, three of which were very obtuse, namely, (i) internal discontentment within his own party, the SPD,<sup>3</sup> (ii) general disappointment among the population at the lack of success achieved in his domestic policies and (iii) the incessant diatribes launched by ultra-conservatives within the CDU/CSU<sup>4</sup> who asserted that Brandt had given up too much, too soon and had received nothing in return.

However, the Brandt administration was not completely frustrated in its ability to create a new *Ostpolitik*. On the contrary, the former chancellor made great advancements not only in the Federal Republic's relations with the DDR but with other Eastern European countries as well. The various non-aggression treaties as well as the recognition of the Eastern boundaries were serious departures from the fervidly supported policies of Konrad Adenauer. Yet, Brandt ultimately won the favorable approval from other Western nations as well as from his own people who viewed his efforts as an attempt to significantly reduce tension in Central Europe.

The 1970 meetings between Willy Brandt and Willi Stoph, of the DDR, at Erfurt and Kassel marked the initiation of a new dialogue between the two Germanies. It was a dialogue which eventually increased in frequency as the years passed: a dialogue which finally resulted in the recognition of the DDR as a separate German state in 1972. Although the opposition, the Christian Democrats, argued that Brandt had proceeded much too swiftly, other Western powers thought to the contrary, as evidenced by their early recognition of the DDR as an entity which had achieved the status of a state through the operation of time.

Recognition of the DDR from the West has basically evolved from three approaches: the first, based upon an appreciation of *realpolitik* which conceivably could fall within the Lauterpachtian concept of recognition, the second, essentially a compromise approach originally formulated by Winston Churchill admitting the exist-

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<sup>3</sup> Sozialdemokratische Partei Deutschlands.

<sup>4</sup> Christliche Demokratische Union/ Christliche Sozial Union.

tence of a state but declaring with great reservation that recognition does not necessarily connote approval and third, the American approach, better known as the *Wilsonian* view, which mixes recognition with general principles of morality, viewing it as a privilege and basically a question of policy rather than an absolute right.<sup>5</sup> Although recognition is the sovereign decision of a nation, many countries base their refusal to recognize another entity on a concurrent claim exerted by either a government in exile or another entity claiming to be the sole representative government of either a defined geographical area or of a specific population group. While many Western nations proceeded to recognize the DDR unilaterally, the United States adopted this latter position, *i.e.*, denying recognition to the DDR because of the Federal Republic's insistence that it was the sole representative government of all the German people.<sup>6</sup> However, when the Federal Republic abandoned this concept in the Basic Treaty with the DDR on December 21, 1972, the United States was obligated, according to principles of international law, to recognize the DDR, for the West German claim upon which the former American position rested, had been extinguished. The United States was extremely lethargic and did not recognize the DDR until September of 1974, almost two years later. It could be strongly argued that the United States had violated basic principles of international law by this unwonted delay. The situation, nevertheless, graphically illustrates a confrontation between the right of a sovereign to determine for itself whether it will officially recognize another entity<sup>7</sup> with the fundamental maxims of international law.

<sup>5</sup> See BISHOP, INTERNATIONAL LAW 300-393 (1969).

<sup>6</sup> Although the modern trend supports the view that once the characteristics of a state have been achieved a state has an affirmative duty to recognize it, the traditional view, which appears to still be the majority view, contends that international law has not developed a rule whereby recognition is obligatory, even when all the characteristics of a state are met and hence, recognition still remains discretionary with the recognizing state. See A Preparatory Study Concerning a Draft Declaration on the Rights and Duties of States, UN Doc. No. A/CN. 4/2 at 192-194. See also LAUTERPACHT, RECOGNITION IN INTERNATIONAL LAW 32 (1947) for a contrary view.

<sup>7</sup> Before recognizing an entity as a state, the recognizing state in good faith is required to make an honest determination based upon fact that the entity:

- (a) has a defined territory and population,
  - (b) is under the auspices of a regime that satisfies the recognition of a government, *i.e.*,
    - (i) it is currently in control of a defined territory and population,
    - (ii) it has a legitimate claim to the territory it controls,
    - (iii) it maintains some effective control over the population and,
    - (iv) the population is generally supportive of the present government,
  - (c) has the capacity to enter into foreign relations,
  - (d) reasonably shows it will sustain throughout a reasonable period of time
- and,

While it is very meritorious and noble for the United States to repeatedly display good faith toward its allies and their respective claims, such a policy can be very embarrassing as well as self-defeating. The long awaited recognition of Communist China is such an example.

The recognition of the DDR by the Federal Republic had, for some time, faded from the attention of the international community eclipsed largely by the successful achievements of the Nixon administration in its foreign policy endeavors. But as far as many theoreticians on *détente* are concerned, the recognition of the DDR was a major step forward in securing future stability in Central Europe.

Today both the Federal Republic and the United States have recognized the existence of the DDR as a separate German state, despite disagreements between East and West over the status of West Berlin, most recently illustrated by the West German attempt to establish an environmental protection agency in the city. This, in turns, leads to another serious issue. No matter how one analyzes the intricacies involved in the recognition of the DDR, the fact remains that Berlin is a problem which must be solved in the near future. The status of Berlin must be solidified in order to preclude further speculation over the city's future existence and its role in German politics.

An agreement on Berlin's future will be more difficult than the recognition issue due to its unique setting. Lack of historical precedent complicates the problem further. Berlin, for a considerable time, appeared to be a never ending stalemate. However, things changed in 1970 when the Berlin Quadripartite Agreement was reached among the Four Powers.<sup>8</sup> But this really was the beginning of another dialogue which must be continued in the future. Both East and West are now optimistic that a final settlement can be achieved over the city's future status. Such an agreement would, without a doubt, effectively remove the thorn which has plagued *détente* efforts throughout the last quarter century.

### *The West German Foreign Policy Debate*

Following World War II Germany was in shambles. The Thousand-Year Reich had crumbled under the onslaught of the Allied armies. But now there was a power vacuum in Central Europe

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(e) has asserted itself to be a state, that is, has asserted its own declaration of independence.

<sup>8</sup> Signed September 3, 1971, in Berlin.

and what Adolf Hitler had prophesied many years earlier now had come true. The clashing of ideologies between East and West was now to take place on the battlefields of Central Europe. What once was the *Grand Alliance* was now marked by mutual distrust and suspicion.

The West, which naively underplayed the projected role of the Soviet Union in post-war Europe, finally realized the strategem that the Kremlin leaders had adopted. Consequently, to prevent further Soviet expansion, the West, in particular the United States, dedicated itself to a global containment policy.<sup>9</sup>

On the other hand, the Soviet Union, cognizant of the historical fact that European armies had attacked her from the West, felt it imperative to her security to establish a buffer zone in Eastern Europe by creating a series of satellite nations whose political ideologies coincided with those of the Kremlin. The memory of the last invasion by the German Wehrmacht was still indelibly etched in the minds of every Soviet leader and the ubiquitous destruction of the entire country along with the indescribable hardships suffered by the Soviet populace were all too recent to be forgotten. Perhaps one of the greatest failures among Western analysts is their concerted refusal to fully appreciate the impact of the devastating German-Russian war on post-war Soviet policy objectives.<sup>10</sup>

Another issue which has largely been ignored by most analysts is whether the Federal Republic truly needed the assistance and support of the West in its post-war negotiations with the East. The thought of enormous quantities of economic aid and military protection which were pledged by the West at the end of the war, especially by the United States, was certainly appealing to German industrialists whose foremost thoughts were directed toward the re-establishment of production and reentry into the world market. These industrialists had a profound impact on the CDU and its leader, Konrad Adenauer. Adenauer and high level Christian Democratic leaders believed that economic recovery was essential to the new Republic and realized that the path to immediate industrialization could only be achieved through close cooperation with the

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<sup>9</sup> See generally, W. HANRIEDER, WEST GERMAN FOREIGN POLICY 1949-1963 at 130-139 (1967).

<sup>10</sup> See generally, A. ULAM, EXPANSION AND COEXISTENCE: THE HISTORY OF SOVIET FOREIGN POLICY 1917-67 at 408-539 (1969). See also A. Schlesinger, *Origins of the Cold War* in 46 FOREIGN AFFAIRS at 22 (1967) for an illuminating account of American and Soviet post-war foreign policy objectives in Central and Eastern Europe.

West. By aligning with the West, Germany would be the recipient of large quantities of economic aid which would effectively ignite the development of the new German economy. At the same time the Federal Republic would also be guaranteed military protection and, thus, would not have to divert any expenditures toward the establishment of a defense system. But so long as the United States held the key to the reestablishment of the German economy, the Federal Republic had to acquiesce to the desires of the American government. Adenauer realized this fact, yet reaffirmed time and again his country's desire to promote stronger relations with the West. He affirmatively placed economic recovery as the first goal to be achieved by the new West German government.

Throughout this period of reconstruction reunification with the East was considered a secondary goal in Bonn's foreign policy efforts. Although the West promised Bonn that it would help the latter achieve reunification, such support, when it manifested itself, served to alienate the Soviets. Washington had promised military support to Bonn with the assurance that a policy of strength would accelerate the Soviet's desire to reach a settlement on the reunification issue. The Germans were persuaded to re-arm, after having been instructed that their past militaristic tradition was inherently evil, and were cajoled into joining the North Atlantic Treaty Organization.<sup>11</sup> Western "internationalists" appeared to assign a higher priority to European integration and a recovery of German influence in Western councils than to reunification.<sup>11a</sup> Simultaneously, the Kremlin made it quite clear that such steps would render reunification efforts more difficult.<sup>12</sup>

A chronological accounting of the major events that transpired during this period is certainly beyond the scope of this article. A divided Germany serves to remind us how wrong Washington was in its assessment of Soviet reaction to these events. The Soviet Union, which had become a world power, certainly was not going to rush to the negotiating table out of fright. Instead, the Soviets took counter-measures and reacted with equal vigor to the Western plan. Not only was an autonomous East German government formed but a highly disciplined East German army was created as

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<sup>11</sup> HANRIEDER, *supra* note 9, at 68-77.

<sup>11a</sup> *Id.* at 108-109 and *see* Schlesinger, *supra* note 10, where the author examines the Western adherence to the "universalist" theory and the Soviet view of "balance of power" during the Cold War period.

<sup>12</sup> ULAM, *supra* note 10, at 496-572.

well. And like the path Bonn had chosen, the DDR similarly became a member of the Warsaw Pact.<sup>13</sup>

In retrospect one can see that the road to reunification was not through a policy of strength. The early 1950's revealed a German population deeply divided on the issues of rearmament and reunification chiefly along party lines. The CDU/CSU coalition favored the policy which Adenauer had chosen. The SPD, then under the tutelage of the dynamic Kurt Schumacher, favored a policy of strict neutrality. The differences between the two parties rested primarily in their selection of priorities in foreign policy. Schumacher felt that the primary goal of the new West German government was to achieve reunification as soon as possible and at any cost. The farsighted Schumacher realized that a pro-Western policy would serve to alienate the Soviets and render reunification as an unattainable goal.<sup>14</sup> Such perception was truly remarkable at that time.

But the SPD could not gather sufficient support for its neutralistic platform due to the large segment of radical left-wing discontents within the party. Consequently, most Germans at this time eschewed SPD affiliation in the belief that it had been infiltrated by many communists.<sup>15</sup>

In a letter dated November 30, 1950 to Konrad Adenauer, the Minister-President of the DDR, Otto Grotewohl, proposed that an "All-German Constituent Council" be formed, consisting of an equal number of representatives from both Germanies. Its task would be to prepare a constitution for a provisional all-German government, to work in conjunction with the Four Powers in drafting a peace treaty, and finally, to organize and oversee all-German elections. Two months later Chancellor Adenauer rejected this proposal and demanded that free, general, equal, secret, and direct elections to an all-German Parliament be conducted in all four Zones under international supervision. In addition, Adenauer stressed the need to create preliminary conditions for free elections in the DDR by substantially changing the non-democratic political system which had developed there.

Grotewohl accepted Adenauer's demand for international supervision of all-German elections and further proposed that all-German consultations on this matter be commenced at once. Remarkably,

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<sup>13</sup> January, 1956.

<sup>14</sup> HANRIEDER, *supra* note 1, at 134-135.

<sup>15</sup> HANRIEDER, *supra* note 9, at 106.



Adenauer in an address to the Bundestag on October 16, 1951, rejected Grotewohl's plan by insisting that the Federal Republic would refrain from discussing the reunification issue unless the DDR was unreservedly willing to recognize and guaranty a political system based on the rule of law, a free form of government, the protection of human rights, and the preservation of peace.<sup>16</sup>

The opportunity for reunification came again in early 1952 when, after a basic agreement had been reached in the West on the formation of a European Defense Community, the Soviets directly intervened in the German problem by proffering a series of Notes to the Western Powers. In their first Note, the Soviets proposed that a peace treaty be signed with Germany, calling for the direct participation of an all-German government on the basis of armed neutrality. The formation of a peace treaty would be conditioned upon the establishment of a German army of limited strength and the evacuation of Germany by the Four Powers would take place no later than one year after the peace treaty had been signed. The West maintained that a pre-requisite for the conclusion of a peace treaty with Germany was the formation of an all-German government on the basis of free and internationally supervised elections.

In the Soviet's second Note it was suggested that a Four Power commission be formed to examine the conditions under which elections should be held instead of an examination conducted by a UN committee. The Western Powers in their second reply firmly rejected the Soviet proposal and adhered to their demand for UN supervision. There was a further exchange of Notes but no agreement was reached due to the divergencies of views centering on the questions of UN supervision of free elections, as demanded by the Western Powers, and the neutralization of a reunified Germany as suggested by the Soviet Union.<sup>17</sup>

Reunification, the primary objective of the Bonn government, according to the Basic Law,<sup>18</sup> was now lost. The Soviets, much to their chagrin, had to abandon their compromise efforts. Schumacher and many Germans were stunned at the news.<sup>19</sup> The United States, however, had doubts about the Soviet proposals throughout the negotiation period. Were the Soviet proposals seriously intended or

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<sup>16</sup> Press and Information Office of the Government of the Federal Republic of Germany, *The Development of the Relations between the Federal Republic and the German Democratic Republic* 11 (1973).

<sup>17</sup> HANDRIEDER, *supra* note 9, at 73.

<sup>18</sup> Known as *das Grundgesetz*, the equivalent of a constitution.

<sup>19</sup> HANRIEDER, *supra* note 9, at 71.

were they just an attempt to stall the formation of an European Defense Community? Also, would a reunified neutral Germany eventually fall into the Soviet orbit like the other Eastern European nations?

While the validity of the first question cannot be doubted, the same cannot be asserted for the second. Germany was very capable of remaining neutral in the mid-fifties.<sup>20</sup> Although many Western authorities seriously doubted the German ability to remain neutral, it was quite evident that if the Germans were to vacillate it would be toward their Western paladins.<sup>21</sup> Obviously, the Soviets would not have allowed such a drift toward the West to take place without implementing counter-measures, but it still is questionable whether the Kremlin's efforts would have been capable of abrogating the flow of Western sentiment, especially in view of the large number of German anti-communists. After all, from the German perspective the Second World War was a struggle to extinguish the expansion of Communism and to relegate the Soviet state to that of a docile German protectorate. This contemptuous hatred toward communist ideology and the Soviet state simply would not dissipate overnight.

On the other hand, if a neutral Germany developed a more conciliatory attitude toward the Soviets during this period, the West would have made every effort to stop any sort of *rapprochement* with the East, for the entire premise upon which Western European security depended was on a strong pro-Western Germany. The strategy of containment necessitated that the power vacuum in Central Europe be filled with a potent anti-communist ally of the West. Nothing less would suffice and the West was willing to pay any price for this result.<sup>22</sup> Whether the Soviets would have risked everything on Germany when they already had within their grasp all of Eastern Europe is rather doubtful. This is certainly reflected in her almost impetuous desire to come to a settlement on the German question. In fact, many commentators believed that the Soviets were rather astonished at the uncompromising and obdurate attitude displayed by the West in the 1950 to 1952 negotiations. This lack of flexibility on the part of the Western Powers indirectly strengthened the aggressive Soviet position. The Kremlin now re-

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<sup>20</sup> *Id.* at 74.

<sup>21</sup> HANRIEDER, *supra* note 1, at 131.

<sup>22</sup> HANRIEDER, *supra* note 9, at 52-72. See also Schlesinger, *supra* note 10.

alized that the West was content to keep its respective Western zones rather than risk a unified pro-Soviet Germany.<sup>23</sup>

Yet there is another possibility. The efforts and counter-efforts of the superpowers might have balanced each other, permitting Germany to remain neutral. This is assuming that the internal German situation would remain stable. There is authority suggesting that since Germany was in fact a *penetrated system*, it would react in conformity to the external pressures exerted on it. Hence, it was quite plausible that Germany could have remained neutral in view of the countervailing strategems of the two superpowers.<sup>24</sup>

As time progressed, however, the German attitude toward the accomplishments of Konrad Adenauer oscillated. Where at first the majority of the population supported his efforts vis-à-vis the DDR, as the *Wirtschaftswunder*<sup>25</sup> of the early 1950's came to an end and the economy leveled off during the Erhard administration, Germans reassessed the utility of the earlier Adenauer policies.

Although the Federal Republic had sustained remarkable economic growth in a relatively short period of time, Germans abruptly realized that placing the economy and security first might have been a mistake. While many acknowledged that economic prosperity might not have progressed as rapidly had a more pronounced pro-reunification policy been adopted, they now questioned whether economic growth and reunification could have taken place at the same time.<sup>26</sup> This was precisely what Kurt Schumacher advocated in the early 1950's. He appreciated the advantages of intimate relations with the West but realized that such a kinship would seriously endanger German efforts to achieve reunification. Thus, he would have been extremely recalcitrant in committing Germany to the Western alliance system. He felt instead that the road to reunification rested in neutrality between the superpowers. While Schumacher would have accepted American economic aid he would have resisted all efforts to rearm and incorporate Germany into the NATO framework. He knew that the latter course of action would doom all reunification efforts.<sup>27</sup>

Adenauer, on the other hand, overcommitted Germany to the

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<sup>23</sup> ULAM, *supra* note 10, at 511-514.

<sup>24</sup> For a discussion of penetrated systems, see J. Rosenau, *Pre-theories and Theories of Foreign Policy*, in *APPROACHES TO COMPARATIVE AND INTERNATIONAL POLITICS*, 65 (Farrell ed. 1966).

<sup>25</sup> Economic Miracle.

<sup>26</sup> See generally, HANRIEDER, *supra* note, 1, at 136-146.

<sup>27</sup> *Id.* at 134-135.

West. Reunification, implemented through a policy of strength, had failed and served instead to deepen the schism between the two Germanies. Germans on both sides realized for the first time that different life styles and political systems had developed and were now realities, and as time progressed many feared, and still do today, that the division would remain permanent.<sup>28</sup> Nevertheless, if there is a constant in Germanic history it is the quest for unity.<sup>29</sup> In many instances this inherent desire for national unification has had to overcome almost insurmountable obstacles both internally created by the German people through their petty regional jealousies and externally created by hostile neighbors.<sup>30</sup> The latter probably has been the most difficult to overcome, for just as the Germans have always desired unity among themselves, Europeans in general, have feared a unified Germany. Yet in spite of these difficulties, German efforts to unify into one German nation have succeeded. The question today is whether the Germans can succeed again in view of the recent recognition and acceptance of the DDR as a separate and independent German state, coupled with the apparent contentment among the Four Powers to maintain the status quo.

### *Willy Brandt's Ostpolitik and the Creation of the Intra-German Dialogue*

Willy Brandt, upon taking office as Chancellor of the Federal Republic was not oblivious to the fact that West German efforts in the past had consistently failed to draw the two Germanies closer together. Reunification, the avowed objective of West German foreign policy, was certainly not drawing any closer and the estrangement of the two Germanies was no longer a myth but a reality. The social orders of the two Germanies had become more and more divergent. Germans were living apart and by the mid-sixties no one seriously believed reunification would be forthcoming.

At the same time the international situation had undergone a fundamental change. It was now evident that any claim of a policy through strength was unrealistic.<sup>31</sup> Brandt, upon taking office, realized that adherence to former policy could very well result in the isolation of the Bonn government in international politics<sup>32</sup> espe-

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<sup>28</sup> A. HEIDENHEIMER, *THE GOVERNMENTS OF GERMANY* 287-313 (1971).

<sup>29</sup> J. RHODES, *THE QUEST FOR UNITY* 48-115, 229-284 (1971).

<sup>30</sup> R. DAHRENDORF, *SOCIETY AND DEMOCRACY IN GERMANY* 348-362 (1969).

<sup>31</sup> A. GROSSER, *GERMANY IN OUR TIME* 325 (1971).

<sup>32</sup> See generally, F. Allemann, *A Guide to German Politics*, in *MEET GERMANY*, 22 (Atlantik-Brücke ed. 1971).

cially at a time when European nations were looking through ideological differences in search for opportunities to reduce tensions.

At the time Willy Brandt took office, there was little hope that the German problem would be solved.<sup>33</sup> International support for Bonn's reunification through strength policy had diminished to its lowest point. Abroad, people were fatigued at the repetitive illusory demands both Germanies were advancing toward each other. Hence, a new policy was needed and created — it was called *Ostpolitik*.

The new administration's *Ostpolitik*, which initially came as something of a surprise, was greeted with great enthusiasm by German liberals and was bitterly opposed by German conservatives. In short, Brandt's *Ostpolitik* was an attempt to normalize Bonn's relations with the Eastern European countries, including the DDR, by adopting a realistic attitude toward existing social and political conditions in these respective areas.<sup>34</sup>

The first commitment of the Brandt government was its basic aim in its foreign policy efforts, namely, the desire for peace and a reconciliation among nations. The cornerstone of Bonn's new *Ostpolitik* was officially put on paper when Chancellor Brandt traveled to Moscow to sign the Soviet-West German treaty renouncing the use of force.<sup>35</sup> Through this treaty, both countries agreed to respect without any restrictions, the territorial integrity of all states in Europe including their present frontiers by specifically mentioning the Oder-Neisse line as well as the frontier between the Federal Republic and the DDR. In return, Moscow renounced some legal bases, such as Articles 53 and 107<sup>36</sup> of the United Nations Charter, which they had earlier claimed gave them special powers to intervene in German affairs, and further recognized the legitimacy of Bonn's adherence to the NATO Alliance. Although Bonn obviously relinquished its legal claim with regard to the recoverability of the Eastern territories and to modes of implementing German reunification, Brandt was quick to point out in a television broadcast from Moscow that nothing was lost with the signing of this treaty that was not

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<sup>33</sup> *Id.* at 21.

<sup>34</sup> *Id.*

<sup>35</sup> Signed August 12, 1970.

<sup>36</sup> Article 107 of the UN Charter reads: "Nothing in the present Charter shall invalidate or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the governments having responsibility for such action."

<sup>37</sup> HEIDENHEIMER, *supra* note 28, at 308.

lost a long time ago.<sup>37</sup> The subsequent treaty with Poland,<sup>38</sup> also settling the controversial German-Polish frontier problem, the Basic Treaty<sup>39</sup> with the DDR, and the Treaty of Prague<sup>40</sup> all have demonstrated Bonn's dramatic desire to affect a *détente* with the East.

Brandt's *Ostpolitik* obviously was a serious departure from the fundamental tenets of Bonn's former foreign policy under Konrad Adenauer. It quickly drew the criticism of the CDU/CSU which depicted Brandt's efforts as an outright capitulation to the Soviets. Although the CDU/CSU reluctantly gave its approval to the renunciation of force treaty with the Soviets, the subsequent steps that were taken by Brandt went far beyond the contemplation of most conservatives.

Until the recognition of the DDR, all previous German administrations adhered to the assertion that the Federal Republic, being the only freely elected German government, was the only legitimate representative of the entire German people.<sup>41</sup> This fortuitous claim of being the so-called "sole representative," which was indorsed by the Western Powers in the Paris Treaties of 1955, eventually gave birth to the Hallstein Doctrine. This fatuous doctrine considered any recognition of the DDR by other states, as an unfriendly act toward the Federal Republic. In many instances, Bonn would retaliate by going so far as severing all diplomatic relations with such recognizing states.

Until recently, most of the political parties in the Federal Republic rejected any conclusive settlement of the Eastern borders, which, since the termination of the Second World War, run through the territory of the former Greater German Reich. And despite the fact that even the conservatives in the CDU/CSU were willing to renounce the use of force, they were not prepared to enter into an agreement altering these former borders by peaceful means. The CDU/CSU under the aegis of Adenauer had adopted a position insisting that only a formal peace treaty with the Reich's former enemies could conclusively settle the controversy over the Eastern borders and this could only take place after the reunification; the existing territorial boundaries of Germany were, therefore, merely provisional in nature.<sup>42</sup>

Since the departure of Adenauer, these legalistic arguments ad-

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<sup>38</sup> Signed December 7, 1970.

<sup>39</sup> Signed December 21, 1972.

<sup>40</sup> Signed December 11, 1973.

<sup>41</sup> Allemann, *supra* note 32, at 22.

<sup>42</sup> *Id.*

vanced by the CDU/CSU, all of which were based upon post-war agreements with the Four Powers, have become more of a fiction than a reality for a number of reasons. First, the discussions concerning reunification of Germany have become a dead issue. Second, the Western Powers have considered German reunification as too complex and controversial a subject to be placed on the negotiating table again.<sup>43</sup> Third, the rapid consolidation and economic growth of the DDR since the building of the Berlin Wall in 1961 has eliminated the hope that the East German regime would collapse internally. All of these factors raised the issue whether continued protest over the maintenance of the status-quo had any practical significance and whether such insistence on revision restricted the scope and maneuverability of Bonn's foreign policy. Brandt's administration faced these issues squarely and resolved them by abolishing the Hallstein Doctrine and declaring existing borders as "invio-  
lable." A total renouncement of all Eastern territorial claims followed shortly thereafter.

In the negotiations in Warsaw, Bonn gave the Poles the assurance that the Federal Republic was no longer going to attempt any revision of the Oder-Neisse frontier. In return, Warsaw tacitly agreed that it would make it somewhat easier for Germans residing in these areas to emigrate to the Federal Republic and the DDR. And in his initial relations with the DDR, which Bonn at first refused to recognize as a "foreign country," Brandt believed that treaties and agreements which would be binding under international law, should, nevertheless, be promulgated between the two Germanies so that both could find a *rapprochement* with each other via an orderly and peaceful coexistence.<sup>44</sup>

Although these new policies of the Brandt administration were more than a mere modification of the old Adenauer positions, the new *Ostpolitik* carried with it a profound determination to create a state of peace in Europe in which the German people could eventually regain their unity in free self-determination.<sup>45</sup> What Brandt ingeniously accomplished was to divorce the reunification issue from Bonn's endeavors to create an intra-German dialogue and *détente* in Eastern Europe. Previous administrations had accom-

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<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> Press and Information Office of the Government of the Federal Republic of Germany, Speech given by Federal Chancellor Brandt before the General Assembly of the United Nations on the Accession of the Federal Republic of Germany to the United Nations, September 26, 1973, 12 (1973).

plished little by steadfastly insisting that reunification was an integral part of West German foreign policy. Brandt now succeeded in regaining the mobility and initiative in foreign affairs that had been lost by previous administrations. Reunification was no longer viewed as a pre-requisite for the normalization of relations with the East. Where Adenauer, Erhard, and Kiesinger had refused to even speak of the DDR as a German state, Brandt emphatically voiced his administration's desire to enter into discussions with the DDR on any subject. There was no longer any reason to ignore the existence of a separate entity to the East and Brandt was prepared, once recognition of the DDR had been achieved coupled with the latter's own desire to improve German relations, to seek entry into the United Nations.

Although Brandt's *Ostpolitik* was considered experimental and tentative at first, it was evident from the outset that the Chancellor was planning to modify and in some cases, completely abandon former principles which had previously guided the Federal Republic's foreign policy efforts toward the East. Despite the carefully worded reservations inserted in the Treaties of Moscow, Warsaw, and Prague, most of which were implanted to placate the bogus fears of many conservatives in the CDU/CSU, nothing could alter the fact that Bonn had finally accepted the status quo. The basis of peaceful relations with all European countries would be rebuilt from a fundamental appreciation of *realpolitik* and pragmatism. By designating that the agreements reached with the Soviets, Poles, Czechs, and the DDR were integral parts of a uniform policy, Bonn reiterated that its goal was to advance on a broad front toward the Warsaw Pact countries.<sup>46</sup>

The opposition CDU/CSU was skeptical of Brandt's new formula of *détente* in Eastern Europe. Frequently calling this consistent relinquishment of German interests as akin to a second unconditional surrender, the CDU/CSU maintained that the effect of Brandt's efforts with the East was a renunciation of the fundamental goal of reunification and, thus, an outright betrayal to the seventeen million enslaved Germans in the DDR who no longer had any chance of expressing their future political desires. The ultimate result, the conservatives argued, was that Brandt's *Ostpolitik* indirectly aided the Soviets by guaranteeing the final incarceration of all the oppressed peoples in Eastern Europe.

Brandt's reply to this criticism rested in his belief that consistent

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<sup>46</sup> Allemann, *supra* note 32, at 23.



repetition of verbal claims which long ago were recognized as illusory, served to aggravate the German problem and deepen the animosities between the Federal Republic and Eastern European nations. The balance of power in Europe necessitated the discarding of untenable claims if one hoped to avert the further estrangement between the two Germanies and among Europeans in general.<sup>47</sup>

The attempt to isolate the DDR internationally by means of the Hallstein Doctrine became more ludicrous as time progressed. In many instances governments flatly ignored Bonn's warnings and established diplomatic relations with the DDR. Other third world governments, notably the poorer nations, realized they could get additional foreign aid from Bonn if they announced their future intention to recognize the DDR. In these latter cases, Bonn found that adherence to the doctrine could be quite expensive.

It also appeared to Brandt that it was fruitless to expect the DDR to come to an agreement expanding the travel and visitation rights of its own people to the Federal Republic when Bonn repeatedly refused to recognize it as a state. The discussions with Willi Stoph in 1970 at Erfurt<sup>48</sup> and Kassel<sup>49</sup> were efforts on Brandt's part to resolve this question by conceding that the two states were "equals," not the same as outright recognition of the DDR, which the latter insisted upon, but indeed very close to it. Moscow suddenly became willing to discuss the vexing Berlin question on a more amicable basis; the result was the Quadripartite Agreement of 1971. Seven months later the Federal Republic and the DDR signed the Traffic Treaty,<sup>50</sup> the first State treaty to be concluded between the two states.

The latter treaty regularized the traffic between the Federal Republic and the DDR and provided access to a number of new traffic facilities. For the first time, West Germans were now permitted to travel to the DDR at the invitation of friends as well as relatives. Tourist travel was liberalized and inhabitants of the DDR could now visit the Federal Republic for urgent family reasons.

The outcome of the negotiations on the Traffic Treaty proved that despite the different political and legal arguments presented by both sides, the two German states were capable of agreeing on a difficult matter. But perhaps the greatest triumph for both the

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<sup>47</sup> *Id.*

<sup>48</sup> March 19, 1970.

<sup>49</sup> May 21, 1970.

<sup>50</sup> Signed May 26, 1972.

Brandt administration as well as the DDR was the signing in East Berlin of the Treaty on the Basis of Relations Between the Federal Republic and the DDR. As Willy Brandt so adroitly stated, "We have organized the *modus vivendi* and will have to learn the coexistence."<sup>51</sup> It was the culmination of a realistic policy which was designed to prevent the further alienation between the two states by reducing tensions and by strengthening the German people's feeling of belonging together. In their mutual relationship, both German States agreed to be guided by the purposes and principles of the United Nations Charter. These included the reciprocal renunciation of force, the right of self-determination and the preservation of human rights. Moreover, the Treaty did not conflict with any provision in the Federal Republic's Basic Law or affect any of the rights or responsibilities of the Four Powers.<sup>52</sup>

One aspect of the Treaty which is often overlooked is the retention of the Brandt concept of *two German States within one German nation*. Although the Federal Republic recognizes the DDR as an independent state with autonomy in her internal and external affairs, the Federal Republic does not consider the DDR as a "foreign country." This is evidenced by the agreement not to exchange ambassadors but rather permanent missions.<sup>53</sup> It is a unique concept in international law, to say the least. International legal scholars would be hard pressed to find precedent whereby one country recognized another entity as a separate, self-governing state, yet refused to concede that this same entity was a foreign country. Bonn's position seems to be a semantical contradiction in itself, conceding

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<sup>51</sup> Federal Chancellor Brandt, Statement on the Conclusion of the Negotiations, November 7, 1972, in East Berlin.

<sup>52</sup> The Development of Relations, *supra* note 16, at 45.

<sup>53</sup> *Id.* See also W. Geck, *Germany and Contemporary International Law* in 9 TEXAS INTERNATIONAL LAW JOURNAL 3 at 263 for a general discussion and analysis of the Basic Treaty including the interpretation placed upon such by the Federal Constitutional Court.

The treaty was not, however, an unqualified victory for the German Democratic Republic. The preamble mentioned the different views of both states 'on fundamental questions, including the national question.' Geck at 272.

The Court viewed the recognition of the German Democratic Republic as a mere de facto recognition of a special character. . . . For the Constitutional Court, the [Basic] Treaty had a dual character: in form it was an international treaty, but in content, a treaty regulating *inter-se* relations. . . . To the Court, the treaty left no doubt that the frontier between the two states was a *staatrechtliche Grenze*, that is a frontier not of international character, but rather, similar to the boundaries between the member states in the Federal Republic. . . . In essence, the Court interpreted the treaty in a matter conforming to its own strict constitutional standards by playing down the agreement reached in the treaty and playing up the disagreement in the national question. Geck at 274.

full recognition to the DDR, *i.e.*, in its relations with other nations within the international community, yet denying it full diplomatic recognition in its relationship with the Federal Republic. Or does the Basic Treaty really confer full diplomatic recognition on the DDR? Can it be argued that the exchange of permanent missions is equivalent to the exchange of ambassadors? If it isn't full recognition, it certainly is pretty close. On the other hand, international law doesn't create an affirmative duty on the recognizing state to consider the newly acknowledged state as a foreign country.<sup>54</sup> However, there is legal authority which suggests that once the characteristics of a state have been achieved, it must be afforded full recognition in all respects.<sup>55</sup> This is a gray area which has consistently been the focus of debate among legal scholars and as a consequence, there is really no definitive answer.

The Basic Treaty can best be described as a great compromise. From the DDR's viewpoint, the Treaty granted something it had been trying to achieve for years, notably international recognition by the Federal Republic. Concurrently, Brandt continued to follow the mandate of the Basic Law, that is, to continue to work for peace in which the German nation can recover its unity through self-determination<sup>56</sup> while at the same time realistically recognizing the existence of a separate political and social system within the DDR. By refusing to concede that the DDR is a "foreign state," Brandt left open the possibility of future reunification. With the signing of the Basic Treaty, he succeeded in breaching the communication gap between the two Germanies; he successfully initiated the development of a viable intra-German dialogue. Brandt reasoned that as time progresses, and as relations between the two German States gradually intensify, it is inevitable that the German people will demand reunification.<sup>57</sup> It is psychologically irresistible; the quest for unity among Germans simply is a historical fact of life.<sup>58</sup> Just when reunification will occur is still too speculative a question to answer. It seems to this writer, nevertheless, a brilliant strategy conceived by a most gifted statesman.

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<sup>54</sup> See note 6.

<sup>55</sup> LAUTERPACHT, *supra* note 6, at 32.

<sup>56</sup> Press and Information Office of the Government of the Federal Republic of Germany, Speech given by Foreign Minister Scheel before the General Assembly of the United Nations on the Accession of the Federal Republic of Germany to the United Nations, September 19, 1973, at 4 (1973).

<sup>57</sup> See Brandt Speech, *supra* note 45, at 12.

<sup>58</sup> See generally, DAHRENDORF, *supra* note 30, at 17-31, 188-207, 381-397.

What the international community has witnessed within the past five years is a drastic face-lifting of West German foreign policy. Although his strategy and tactics were diametrically the opposite of those employed by former administrations, Brandt accomplished more in a shorter period of time than his three predecessors put together. He regained the initiative and mobility in foreign affairs that had previously been lost. Reconciliation had replaced confrontation. Respect within the international community had once more been achieved. But most important, West German foreign policy had finally matured and *détente* in Central Europe advanced significantly.

### *Berlin*

The Berlin problem has always been an acrimonious issue for the Federal Republic. Part of the frustration is that Bonn can negotiate neither with the Soviets nor the DDR. Since the city is still governed by the Four Powers in accordance with the Potsdam Agreement,<sup>59</sup> Bonn must negotiate with all four nations. Bonn has insisted throughout the years that West Berlin is a legitimate concern of the Federal Republic. The Soviets and the DDR contend, on the other hand, that the city is an independent political entity over which Bonn has no control.<sup>60</sup> To a certain degree, the Western Powers have also considered West Berlin as a separate entity apart from the Federal Republic, nevertheless, they have accepted and acquiesced in the extensive economic and political contacts which Bonn has made with the city.

These contacts have been declared illegal by the Soviets. Bonn, on the other hand, believes these close ties with West Berlin are as much a reality as the existence of the DDR and its eastern borders. It expects the Soviets to adopt a realistic attitude on Berlin just as Bonn has done with the existence of the DDR and in its other relations with the Warsaw Pact countries.

A compromise on this controversial issue was finally reached with the signing of the Quadripartite Agreement in 1971 when the Kremlin finally agreed to guarantee and respect the present situation in Berlin. The Soviets further agreed to allow uninterrupted access to the city in return for Bonn's assurances that it would curtail its efforts to create further political ties with West Berlin.

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<sup>59</sup> Signed August 2, 1945.

<sup>60</sup> Allemann, *supra* note 32, at 24; Press and Information Office of the Government of the Federal Republic of Germany, *The Quadripartite Agreement on Berlin of September 3, 1971*, at 65 (1971).

Bonn welcomed the fact that it was possible to arrive at a practical arrangement without altering the status of Berlin and without upsetting the legal positions of the Four Powers responsible for the city.<sup>61</sup> Among the substantial improvements for West Berlin were (i) that civilian traffic between the Federal Republic and West Berlin would be unimpeded and its clearance at crossing points simplified, (ii) that freedom of movement of the inhabitants of West Berlin would be enlarged by providing visitation rights to the eastern portions of the city as well as to the DDR and, (iii) West Berlin could properly be represented by Bonn in international agreements and conferences together with the guarantee that residents of the city would be able to enjoy consular protection from the Federal Republic.

Whether the close ties which exist between West Berlin and the Federal Republic have been underlined and reaffirmed as to their existence and further development remains to be seen, especially in view of the interpretation the Soviets place on Part II, Subsection B of the Agreement.<sup>62</sup>

Bonn, however, believes the Quadripartite Agreement has not altered the basic legal relationship between the Federal Republic and West Berlin. This can be seen in Bonn's repeated belief that German constitutional law, *i.e.*, the relevant portions of the Basic Law pertaining to West Berlin, remains unaltered, except where preempted by the reserved rights retained by the Western Powers.<sup>63</sup> Since Bonn has always considered these preceding rights of the Allied Powers to be in the best interests of Berlin's security, the Federal Republic has deferred to the responsibility incumbent on the Powers.<sup>64</sup> The latter, by virtue of precedent, maintain that Berlin cannot, in accordance with these reserved powers, be considered a *Land* of the Federal Republic.<sup>65</sup> Hence, the Western Powers have referred to the city in such a manner that it is neither fully included in the constitutional organization of the Federal Republic nor governed directly by West German law. As a consequence, the city

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<sup>61</sup> *Id.* at 45.

<sup>62</sup> Part II, Subsection B of the Berlin Quadripartite Agreement reads: "The Governments of the French Republic, the United Kingdom and the United States of America declare that the ties between the Western Sectors of Berlin and the Federal of Germany will be maintained and developed, taking into account that these Sectors continue not to be a constituent part of the Federal Republic of Germany and not to be governed by it."

<sup>63</sup> Quadripartite Agreement, *supra* note 60, at 46.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 62.

does not have the same status as the Federal *Länder*. Therefore, the relevant portions of German constitutional law are not nullified, but remain suspended so long as the three Western Powers, in exercising their rights and responsibilities pursuant to Article 1 on the Convention on the Relations between the Federal Republic and the Three Powers,<sup>66</sup> adhere to this view.

The controversy and disagreement over the Quadripartite Agreement rests in Bonn's belief that existing ties between the Federal Republic and Berlin can not only be maintained but expanded as well. Within this interpretation, Bonn believes that Federal organs will be able to make their appearance in West Berlin; that established procedures concerning the applicability to West Berlin of legislation of the Federal Republic as well as the application of its laws by administrative and court authorities, remain unchanged and might be further developed in the future.

The Soviets read the Agreement differently, asserting that political ties with the Federal Republic must remain at their present level. This is reflected in the recent controversy whereby the Soviets delayed traffic to and from West Berlin in retaliation to Bonn's establishment of an environmental protection agency in West Berlin. It appears that the Soviets, in interpreting Part II(B) of the Quadripartite Agreement, make a fine distinction between the development of social and governmental ties between Bonn and West Berlin. While acknowledging that social ties might be intensified in the future, Moscow firmly believes that the development of governmental ties is clearly negated by the explicit language used in the section. Otherwise the latter portion of the section is verbose and meaningless. From an omniscient view, this writer believes the Soviets to be on sound footing in their interpretation of this particular section of the Agreement. Nevertheless, the controversy raises a most interesting construction problem.

The mechanics of the Agreement, to say the least, need to be thoroughly analyzed and explored by all parties. Bonn is well aware that this Berlin agreement, the first stage of which is now in existence, cannot solve the entire Berlin problem. But it believes that this Agreement provides a framework upon which further agreements may be built and developed with the ultimate aim of freeing Berlin as a center of controversy as well as strengthening the city's viability.

Further progress on the issue of West Berlin was reached during

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<sup>66</sup> Signed May 26, 1952.

the three days of summit-level negotiations with Soviet leaders in Moscow by Chancellor Schmidt on October 30, 1974. Indications reveal that Kremlin leaders might be making some adjustments in their intransigence over West Berlin. Despite the fact that the issue of West Berlin was treated obliquely in a joint *communiqué* by Chancellor Schmidt and Soviet party leader Brezhnev, it appeared that Moscow has finally recognized West Berlin's link to the Federal Republic in a limited economic context, although not yet in a political one.

### Conclusion

The primary aim of Bonn's foreign policy today continues to remain the same as it did in 1949: the Federal Republic will continue to work for a state of peace in Europe in which the German nation will recover its unity in free self-determination. The only significant difference today is the adoption of different tactics to achieve these goals. A more realistic attitude now guides Bonn's foreign policy efforts: it is more flexible where it used to be mechanical; it is more innovative where it used to be unimaginative; and it is more conciliatory where it used to be bellicose.

The man who succeeded in turning around Bonn's foreign policy was Willy Brandt, former anti-Nazi and mayor of West Berlin. Under his guidance Bonn quickly won respect within the international community and became a leader in European *détente* efforts. But the path he chose wasn't an easy one. Throughout his term as chancellor he was consistently attacked by the opposition CDU/CSU; he challenged concepts and policies that were sacred to previous administrations. In order for his *Ostpolitik* to perform properly, he had to change the attitudes not only of his fellow Germans, but other European countries as well. Although met with great criticism at first, Brandt proved resilient to these vicissitudes and demonstrated to the world that he was the great statesman that many thought he was.

Although the Federal Republic recognized the DDR as a separate German entity, Brandt adhered to the doctrine of two German States within one German nation. In several passages of his speech before the General Assembly of the United Nations he specifically states, "my people live in two States, but they have not ceased to regard themselves as one nation."<sup>87</sup> This was the basic premise from which Brandt advanced his *Ostpolitik*. He correctly knew that

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<sup>87</sup> Brandt Speech, *supra* note 45, at 10.

reunification, if it ever is to occur, could only be achieved through the creation of an intra-German dialogue and intensifying contacts to such a degree that unification must naturally follow. Instead of viewing the DDR from a hostile vantage point, Brandt sought out amity. The DDR was not an enemy but part of a nation, the German nation. In Brandt's view there could be no real capitulation to the DDR in a theoretical sense, for one could never capitulate to one's own people. His mission was not to disparage the DDR, but instead to help it and at the same time assist its people.

In his attempt to place relations with the East on a firmer basis by approaching problems from a realistic viewpoint, Brandt at the outset indicated his desire to strengthen ties with the West. Upon assuming office, Brandt made it quite clear that in order for his *Ostpolitik* to achieve any success, strong ties with the West were essential. Bonn could only achieve the flexibility and maneuverability it sought by cementing itself firmly within the framework of the NATO Alliance.

Although the Western Powers at first viewed Brandt's *Ostpolitik* with much suspicion, as time progressed they completely indorsed his efforts. After two decades of denying its existence and refusing to call it by its official name, the United States, the last and most important Western holdout, finally recognized the DDR. The recognition of the DDR is really the end of the beginning. It signifies a step in the process of *détente* and in the relaxation of tension in Europe.

Both the Federal Republic and the United States are in substantial agreement that the establishment of diplomatic relations between the United States and the DDR neither will nor could change the special legal situation in Germany. The rights and responsibilities which the Four Powers exercise with regard to Berlin and Germany as a whole remain unaffected. Bonn links the American recognition of East Germany with the hope that direct contacts between the two countries will produce advantages in all areas — politically, economically, and culturally — for the people in the DDR.

The upcoming task for Chancellor Schmidt is not an easy one. Although he has stated that he intends to follow the policies laid down by Willy Brandt, this may prove quite difficult. Schmidt's strength rests in economics and finance. It is doubtful that he possesses the acumen in foreign affairs that his predecessor had. Whether he will pursue Brandt's *Ostpolitik* with the same vigor as the former chancellor remains to be seen. Brandt was able to command



a great deal of respect within diplomatic circles; he had that charismatic quality and personality which seems to be an inherent trademark among great leaders. While Schmidt has proven his capacity to lead, he lacks the dynamic, intense personality of his predecessor.

If Bonn's relations with the DDR are to improve, the intra-German dialogue must continue but with even more enthusiasm than before. Trade, cultural and social ties must be strengthened. Travel restrictions between the two Germanies must be relaxed and improved. Whether Helmut Schmidt can surpass the achievements of Willy Brandt is rather doubtful. His success in bettering relations with the DDR will depend on his tenure as chancellor, and this in turn will depend on the success of his domestic policies.

In order to effectuate *Ostpolitik* further, West German leaders should give serious consideration to the prospect of steering the Federal Republic's foreign policy efforts in still a new direction. Linkage with the West in the fifties to many was out of necessity. Economic aid and security were the overriding concerns of many Germans and to a large extent, were legitimate reasons for aligning with the West. But today in this age of *détente* these considerations are no longer tenable arguments for the overly pro-Western attitude to which Bonn adheres, especially in view of the reunification issue. The Federal Republic has demonstrated beyond question that its economy is the strongest among European nations. Moreover, West Germany has the capacity to create its own defense system apart from the Western Powers. These factors indicate that those basic premises upon which the Federal Republic entered the Western Alliance no longer exist.

In addition, history has revealed that the reticence exhibited by the Soviet Union on the issue of reunification has revolved around the intimate ties which the Federal Republic maintains with the West. It seems logical that if the Federal Republic truly desires to accelerate the reunification process, it should consider gradually withdrawing from the Atlantic Alliance. West Germany no longer needs the assistance of the West either economically or militarily as it did in the post-war period, and it has been shown that association with the West has served to impede reunification efforts.<sup>68</sup> This suggestion is assuming, of course, that the Federal Republic still considers reunification the principal objective of its foreign policy efforts. The credibility of West German leadership certainly should be questioned if circumstances disclose the converse.

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<sup>68</sup> HANREIDER, *supra* note 1, at 129.

An indication of Bonn's desire to disengage from the Western Alliance could further prompt the withdrawal of the DDR from the Warsaw Pact, provided the Soviet Union is still serious in its intention to reach a final settlement on the German question. And today if the superpowers suggested that a reunified neutral Germany be created in much the same manner as the Soviets suggested in the early fifties, there is no reason to believe that Germans would oppose such a plan. Those resisting such a proposal, specifically those countries which have historically feared a reunified Germany, would obviously indicate their vehement disapproval. But it is highly dubious whether their concerted actions would have a decisive impact on the ultimate arbiters.

Granted the disengaging from the respective camps by both Germanies might be a painfully slow and complicated process, but it cannot be denied that from the German viewpoint the end result would be most gratifying. Leaders of both Germanies should seriously reexamine the merits of a plan calling for the reunification of a neutral Germany, for it is this writer's belief that stability in Europe would then be insured for generations to come.

KARL M. SCHWENKEL

#### APPENDIX

TREATY ON THE BASIS OF RELATIONS BETWEEN  
THE FEDERAL REPUBLIC OF GERMANY AND THE  
GERMAN DEMOCRATIC REPUBLIC\*

The High Contracting Parties,

In consideration of their responsibility for the preservation of peace,  
Anxious to contribute to detente and security in Europe,

Conscious that the inviolability of frontiers and respect for the territorial integrity and sovereignty of all States in Europe within their present frontiers are a fundamental condition for peace,

Recognizing that therefore the two German States are to refrain from the threat or use of force in their relations,

Proceeding from the historical facts and without prejudice to the differing views of the Federal Republic of Germany and the German Democratic Republic on questions of principle, including the national question,

Guided by the desire to create the conditions for cooperation between the Federal Republic of Germany and the German Democratic Republic for the benefit of the people in the two German States, have agreed as follows:

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\* Source: Treaty on the Basis of Relations between the Federal Republic of Germany and the German Democratic Republic, published by the Press and Information Office of the Government of the Federal Republic of Germany (1973).

*Article 1*

The Federal Republic of Germany and the German Democratic Republic shall develop normal good-neighbourly relations with each other on the basis of equal rights.

*Article 2*

The Federal Republic of Germany and the German Democratic Republic will be guided by the purposes and principles embodied in the United Nations Charter, in particular the sovereign equality of all States, respect for independence, autonomy and territorial integrity, the right of self-determination, the preservation of human rights, and non-discrimination.

*Article 3*

In accordance with the United Nations Charter, the Federal Republic of Germany and the German Democratic Republic shall settle their disputes exclusively by peaceful means and refrain from the threat or use of force.

They reaffirm the inviolability now and in the future of the border existing between them and undertake fully to respect their territorial integrity.

*Article 4*

The Federal Republic of Germany and the German Democratic Republic proceed on the assumption that neither of the two States can represent the other internationally or act in its name.

*Article 5*

The Federal Republic of Germany and the German Democratic Republic will promote peaceful relations between the European States and contribute to security and co-operation in Europe.

They shall support the efforts to reduce armed forces and armaments in Europe without disadvantages being allowed to arise therefrom for the security of those concerned.

With the aim of general and complete disarmament under effective international control, the Federal Republic of Germany and the German Democratic Republic will support efforts serving international security to achieve armaments limitation and disarmament, especially with regard to nuclear weapons and other weapons of mass destruction.

*Article 6*

The Federal Republic of Germany and the German Democratic Republic proceed on the principle that the jurisdiction of each of the two States is confined to its own territory. They shall each respect the other's independence and autonomy in its internal and external affairs.

*Article 7*

The Federal Republic of Germany and the German Democratic Republic state their readiness to regulate practical and humanitarian questions in the process of the normalization of their relations. They will conclude agreements with a view to developing and promoting cooperation in the fields

of economics, science and technology, traffic, judicial relations, posts and telecommunications, health, culture, sport, environmental protection, and in other fields, on the basis of the present Treaty and for their mutual benefit. The details have been agreed in the Supplementary Protocol.

*Article 8*

The Federal Republic of Germany and the German Democratic Republic will exchange permanent missions.

They will be established at the respective seat of government.

Practical questions relating to the establishment of the missions will be dealt with separately.

*Article 9*

The Federal Republic of Germany and the German Democratic Republic are agreed that the present Treaty does not affect the bilateral and multilateral international treaties and agreements previously concluded by them or concerning them.

*Article 10*

The present Treaty is subject to ratification and shall enter into force on the day after the exchange of appropriate notes.

IN WITNESS WHEREOF, the plenipotentiaries of the High Contracting Parties have signed this Treaty.

DONE at Berlin, on 21 December 1972, in two originals in the German language.

For the  
Federal Republic  
of Germany  
Egon Bahr

For the  
German Democratic  
Republic  
Michael Kohl