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Foreign and Commonwealth Office

London SW1A 2AH

26 March 1990

Dear Charles,

German Unification: Treaties

Thank you for your letter of 20 February about the German-Polish borders and the question of a general Peace Treaty.

Chancellor Kohl's agreement on 6 March, subsequently endorsed by the Bundestag, that there should be a Treaty on borders between Poland and a united Germany gives the Poles most of what they say they want - a bilateral treaty, to be ratified after unification. The first round of the Two plus Four negotiations will have helped to ensure that the Germans stick to this. We played a large part in securing agreement that the Poles should be involved in any discussion of their borders.

Mr Mazowiecki's letter to the Prime Minister of 21 February also suggests that the FRG has in the past stated that the borders could only be settled by a "treaty of peace". He says that Poland would be prepared to take part in work on such a treaty. But he does not insist upon a Peace Treaty, and indeed refers in the same paragraph to a "peace settlement", as if he makes no distinction between the two.

The Foreign Secretary believes that there is in fact an important distinction. There are three main difficulties with a Peace Treaty, if by that we mean a single, legally binding instrument settling all matters outstanding after the war. First, it might need to include all the States involved in the war (in which there were 57 belligerents). This would greatly complicate negotiations, drawing out the uncertainty surrounding unification and increasing the risk of precipitate action by the Germans. Second - and more important in terms of getting what we want - the process of drawing up a Peace Treaty with so many states would reduce the influence and significance of the Four Powers, making it more difficult for us to use the leverage that our remaining Four Power rights and responsibilities give us. Third, the US and FRG strongly oppose a Peace Treaty.

Fortunately, a peace settlement does not need to take the form of a general Peace Treaty. It need not be a single instrument. It could instead consist of a series of agreements which would allow each of a wide range of topics to be dealt with by those directly involved, using legally binding instruments where necessary but avoiding them where not.

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Further work is being done on this, with the help of Legal Advisers, within the FCO as part of the Two plus Four process. In addition to the legal guarantees of this settlement, the CSCE framework could provide political endorsement. We see no reason to doubt that this would satisfy the Poles, provided their bilateral treaty with the Germans were in the bag. This bilateral treaty could in turn be "under-written" by the Four Powers when they relinquish their status; we are giving more thought to just how this could best be done.

I am copying this letter and your own to Juliet Wheldon in the Legal Secretariat to the Law Officers.

Jan.

Stephen Wall

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