LITHUANIA'S BOUNDARIES AND TERRITORIAL CLAIMS BETWEEN LITHUANIA AND NEIGHBORING STATES

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I. INTRODUCTION **

After almost fifty years of Soviet occupation and annexation, the first free and democratic elections were held in Lithuania on February 24, 1990.¹ During its first meeting on March 11, 1990, the newly-elected Supreme Council, the legislative body of the country, adopted a declaration proclaiming the restoration of an independent Lithuania.²

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** The Author claims sole responsibility for the accuracy of the translations of all foreign sources.


2. The Supreme Council of the Republic of Lithuania, expressing the will of the nation, decrees and solemnly proclaims that the execution of the sovereign powers of the State of Lithuania, abolished by foreign forces in 1940, is reestablished, and henceforth Lithuania is again an independent state.

The Act of Independence of 16 February 1918 of the Council of Lithuania and the Constituent Assembly decree of 15 May 1920 on the re-established democratic State of Lithuania never lost their legal effect and comprise the constitutional foundation of the State of Lithuania.

The territory of Lithuania is whole and indivisible, and the constitution of no other State is valid on it.

The State of Lithuania stresses its adherence to universally recognized principles of international law, recognizes the principle of inviolability of borders as formulated in the Final Act of the Conference on Security and Cooperation in Europe in Helsinki in 1975, and guarantees human, civil, and ethnic community rights.

The Supreme Council of the Republic of Lithuania, expressing sovereign
The Congress of People's Deputies of the Soviet Union rejected this declaration on the grounds that there was no law on the procedure of secession from the Soviet Union and that the relevant political, economic, social, territorial, legal, and other problems were not resolved beforehand. On April 3, 1990, the Soviet Union adopted the Law on the Procedure for Resolving Questions Pertaining to the Secession of a Union Republic from the USSR. According to a USSR Supreme Soviet resolution published on the same day, no actions taken before the enactment of this law were to have any effect. Thus, it was an ex post facto law.

Lithuania denied that it was ever legally a part of the Soviet Union. It was occupied and annexed by the Soviet Union in 1940, pursuant to the illegal secret protocols signed by the Soviet Union and Nazi Germany on August 23 and September 28, 1939. The Act of March 11, 1990, power, by this Act begins to realize the complete sovereignty of the state.


6. In the event of a territorial and political rearrangement in the areas belonging to the Baltic States (Finland, Estonia, Latvia, Lithuania), the northern boundary of Lithuania shall represent the boundary of the spheres of influence of Germany and the U.S.S.R. In this connection the interest of Lithuania in the Vilna area is recognized by each party. Secret Additional Protocol (Moscow, Aug. 23, 1939), in NAZI-SOVET RELATIONS, 1939-1941, at 78 (1948) (R. Sontag & J. Beddie eds.) [hereinafter NAZI-SOVET RELATIONS].

The Secret Supplementary Protocol signed on August 23, 1939, shall be amended in item 1 to the effect that the territory of the Lithuanian state falls to the sphere of influence of the U.S.S.R., while, on the other hand, the province of Lublin and parts of the province of Warsaw fall to the sphere of influence of Germany (cf. the map attached to the Boundary and Friendship Treaty signed today). As soon as the Government of the USSR shall take special measures on Lithuanian territory to protect its interests, the present German-Lithuanian border, for the purpose of a natural and simple boundary delineation, shall be rectified in such a way that the Lithuanian territory situated to the southwest of the line marked on the attached map should fall to Germany.

Secret Supplementary Protocol (Moscow, Sept. 28, 1939), in NAZI-SOVET RELATIONS, supra,
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represented Lithuania's reassertion of its rightful independence, which had been illegally suppressed since 1940. Thus the Soviet constitution, the law on secession, and other laws did not apply to Lithuania.\(^7\)

A protracted impasse ensued between the Soviet Union and Lithuania over this issue. The Lithuanian government attempted to resolve the deadlock by holding a nonbinding plebiscite in Lithuania on February 9, 1991. The question posed by the plebiscite was: "Should the state of Lithuania be an independent and democratic republic?" Of the 2,652,738 registered voters, 2,241,992 or 84.52% voted; 2,028,339 or 90.47% of them voted for the proposition, 147,040 of 6.56% against it, and 66,614 or 2.97% of the ballots were invalid.\(^9\)

Before the vote, the president of the Soviet Union issued a decree that declared the plebiscite invalid.\(^10\) Such a position contradicts the concept of popular sovereignty because according to that concept, popular will is the basis of all legitimacy. For the same reason, there cannot be any nonbinding plebiscites. Once the Supreme Council of the Republic of Lithuania appealed to the people of Lithuania asking them to express their collective opinion on independence, it became duty-bound to accept and, to the best of its ability, to implement the popular verdict. Neither the Soviet government, nor the Congress of the People's Deputies of the Soviet Union, nor the Supreme Council of the Lithuanian Republic can place themselves above the sovereignty of the people; therefore, they cannot restrict, invalidate, or ignore the genuine expression of the popular will.

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\(^7\) Address from the Lithuanian Minister in Germany (Skirpa) to the Reich Foreign Minister, Berlin, July, 21, 1940, in NAZI-SOVET RELATIONS, supra, at 169-71 (description of the Soviet occupation and annexation of Lithuania in a note of the Lithuanian minister in Germany (Kazys Škirpa) to the Reich Foreign Minister).

\(^8\) Document 6: Reaction to the Resolutions of the Third Congress of People's Deputies [hereinafter Document 6], in THE ROAD TO NEGOTIATIONS, supra note 2, at 38.


\(^10\) Document 70: Decree by the President of the Union of the Soviet Socialist Republics [hereinafter Document 70], in THE ROAD TO NEGOTIATIONS, supra note 2, at 120.
The right of self-determination has been recognized in the Charter of the United Nations, as well as in the Helsinki Final Act. Therefore, all the members of the United Nations, including the Soviet Union, had an obligation under the Charter to respect the results of the February 9, 1991, plebiscite in Lithuania and to abstain from obstructing the reestablishment of Lithuania's independence. Since many countries have never recognized the forcible incorporation of the Baltic states of Lithuania, Latvia, and Estonia into the Soviet Union, their status has always been an international issue.

Finally, after the collapse of an attempted coup d'état in the Soviet Union on August 18-21, 1991, the State Council of the Soviet Union on September 6, 1991, recognized the independence of Lithuania, Latvia, and Estonia. The majority of the countries of the world had already recognized the independent governments of the three Baltic countries, and on September 17, 1991, they were admitted as full-fledged members to the United Nations.

According to the act of March 11, 1990, the Republic of Lithuania is the continuation of the Lithuanian state that existed from 1918 to 1940. Thus, it inherits the rights and obligations, as well as the territory and the boundaries, of that state.


12. The participating states will respect the equal rights of peoples and their right to self-determination, acting at all times in conformity with the purposes and principles of the Charter of the United Nations and with relevant norms of international law, including those relating to territorial integrity of States. By virtue of the principle of equal rights and self-determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish, their political, economic, social and cultural development.


II. LITHUANIA’S LEGAL AND ACTUAL BOUNDARIES

Lithuania’s legal boundaries have been determined by a series of treaties and other instruments. Its boundary with Latvia is the product of an arbitration decision of March 21, 1921.\(^{17}\) The boundary with the Soviet Union derives from the Soviet Russian-Lithuanian treaty of July 12, 1920 (the Moscow Peace Treaty).\(^{18}\) After the restoration of the independent states of Lithuania and Poland in 1918, these two countries did not establish a new boundary between them. Therefore, in the gap between the region that was formerly East Prussia and the boundary of the Moscow Peace Treaty, Lithuania’s legal boundary with Poland remains as it existed in 1795, before the final partition of the Polish-Lithuanian Commonwealth.\(^{19}\) It was established in 1569 by the decree of Sigismundus Augustus (Žygimantas Augustas), king of Poland and grand duke of Lithuania.\(^{20}\) Finally, Lithuania’s boundary with the Kaliningrad Region, also known as the territory of Königsberg, formerly East Prussia and now under the administration of the Soviet Union, was delineated under the German-Lithuanian treaty of January 29, 1928.\(^{21}\)

The German-Lithuanian treaty of March 22, 1939, on the cession of the Klaipėda Territory to the German Reich is invalid.\(^{22}\) The Lithuanian-Soviet treaty of October 10, 1939, (the Transfer of Vilnius Treaty), which dealt with the transfer of Vilnius and the Vilnius Territory to Lithuania, and the protocol on the Lithuanian-Soviet boundary of October 27, 1939, are also invalid.\(^{23}\) These were unequal treaties that were


\(^{19}\) Lietuva [Lithuania], 37 LIETUVIŲ ENCYKLOPEDIA [LITHUANIAN ENCYCLOPEDIA] 333 (Supp. 1985).

\(^{20}\) Id.

\(^{21}\) LIETUVOS SUTARTYS SU SVEITINOMIS VALSTYBĖMIS 1919-1929 [LITHUANIA’S TREATIES WITH FOREIGN STATES 1919-1929], at 499-500, 513 (P. Dailide ed. 1930) [hereinafter LITHUANIA’S TREATIES] (Vertrag zwischen der Republik Litauen und dem Deutschen Reich über die Regelung der Grenzverhältnisse [Treaty Between the Republic of Lithuania and the German Reich on Regulation of the Boundary Matters]).


imposed upon Lithuania by threats of either an imminent use of force in the case of Klaipėda or of Soviet annexation and retention of Vilnius, Lithuania's capital, in the case of the Transfer of Vilnius Treaty.\footnote{Gerutis, \textit{supra} note 17, at 247-49; Telegram of the German Minister in Karmas to the German Foreign Ministry, \textit{The USSR-German Aggression}, \textit{supra} note 18, at 164; R. Žepkaitė, \textit{Vilniaus istorijos atkarpas 1939 M.Spalio 27-d.-1940 M.Birželio 15-d.} [A Section of History of Vilnius Oct. 27, 1939-June 15, 1940], at 27-28 (1990).}

The actual boundaries of Lithuania differ from her legal frontiers. The present actual border with Poland was established as a line of demarcation along the Curzon Line by the Suwalki Agreement of October 7, 1920.\footnote{Law on the Admission of the Lithuanian Soviet Socialist Republic into the Union of Soviet Socialist Republics, in \textit{The USSR-German Aggression}, \textit{supra} note 18, at 246; Decree of the Supreme Soviet of the U.S.S.R., in \textit{The USSR-German Aggression}, \textit{supra} note 18, at 158-61.}

The present actual border with Byelorussia was established by the law of August 3, 1940, and the decree issued on November 6, 1940, by the Supreme Soviet of the Soviet Union after Lithuania's annexation.\footnote{Stiklotius, \textit{Lithuania Minor in International Treaties}, in \textit{Studia Lituanica} III, 12-13 (M. Brakas ed. 1976).} Since Lithuania's restoration of independence on March 11, 1990, this administrative boundary has functioned as her actual frontier with the Soviet Union.

**III. Lithuania's Claim to the Kaliningrad Region**

Beyond its legal and actual frontiers, Lithuania has a potential claim to the Kaliningrad Region. Since ancient times this territory was inhabited by Lithuanians and by Prussians, a group of Baltic tribes related in language and culture to the Lithuanians.\footnote{Id. at 13-19.}

In the thirteenth century, all Prussian lands and the western section of Lithuania were conquered by the Teutonic Knights.\footnote{Id. at 29-30.} In the sixteenth century, during the Reformation, the lands of the knights became the secular German state of Prussia.\footnote{Id.} During seven centuries of German rule, the Prussians and Lithuanians became, to a large extent, Germanized.\footnote{Id.} Still, in the northeastern section of the land, a significant portion of the population preserved the Lithuanian

\footnote{24. Gerutis, \textit{supra} note 17, at 247-49; Telegram of the German Minister in Karmas to the German Foreign Ministry, \textit{The USSR-German Aggression}, \textit{supra} note 18, at 164; R. Žepkaitė, \textit{Vilniaus istorijos atkarpas 1939 M.Spalio 27-d.-1940 M.Birželio 15-d.} [A Section of History of Vilnius Oct. 27, 1939-June 15, 1940], at 27-28 (1990).}


\footnote{27. Stiklorius, \textit{Lithuania Minor in International Treaties}, in \textit{Studia Lituanica} III, 12-13 (M. Brakas ed. 1976).}

\footnote{28. \textit{Id.} at 13-19.}

\footnote{29. \textit{Id.} at 29-30.}

\footnote{30. \textit{Id.}}
language and culture.\textsuperscript{31} That area was called Lithuania Minor or Prussian Lithuania.\textsuperscript{32}

After World War I, the National Council of Prussian Lithuania issued the following declaration in Tilsit\textsuperscript{33} on November 30, 1918:

Taking into account that everything that exists has a right to continue existing and that we, Lithuanians who live here in Prussian Lithuania, are the majority of the population of this land, we demand, on the basis of Wilson's right of national self-determination, that Lithuania Minor be joined to Lithuania Major. All these, who with their signatures have adopted this declaration, pledge to dedicate all their capabilities for implementation of this goal.\textsuperscript{34}

On the basis of this declaration, Lithuania raised her claim to Lithuania Minor.\textsuperscript{35} The Treaty of Versailles detached the northern portion of Lithuania Minor from Germany. This area, known under the German appellation of Memelland, was given the name of Klaipėda Territory and in 1923-1924 was transferred to Lithuania.\textsuperscript{36} The problem of Lithuania Minor was settled by the January 29, 1928, Lithuanian-German treaty, which confirmed the existing boundary between these two countries.\textsuperscript{37} This confirmation of the existing border implied German recognition of Lithuania's sovereignty over Klaipėda Territory and Lithuanian acceptance of German sovereignty over the remaining portion of Lithuania Minor.

After World War II, the Potsdam Conference in 1945 placed the northern portion of East Prussia, including the German part of Lithuania Minor, under Soviet administration pending the final determination of territorial questions at the peace settlement.\textsuperscript{38} The Soviets completely

\textsuperscript{31} 3 \textsc{encyclopedia lituanica} 373-81 (1973).
\textsuperscript{32} \textit{id}.
\textsuperscript{33} \textit{German name, Lithuanian Tilkė, since 1946 the official Russian name is Sovetsk, 10 \textsc{lietuviškoji tarybinė enciklopedija [lithuanian soviet encyclopedia]} 319 (1983).}
\textsuperscript{34} \textit{See a. rinkūnas, \textit{lietuva ir vlk-\textsc{as [lithuania and the scll]} 135 (1984) (the supreme committee for liberation of lithuania); 3 \textsc{encyclopedia lituanica} 381.}
\textsuperscript{35} \textit{Stiklius, supra note 27, at 41.}
\textsuperscript{36} \textit{id. at 42-43, 48.}
\textsuperscript{37} \textit{lithuania's treaties, supra note 21, at 499-500, 513.}
\textsuperscript{38} The conference examined a proposal by the Soviet Government that pending the final determination of territorial questions at the peace settlement the section of the western frontier of the Union of Soviet Socialist Republics which is adjacent to the Baltic Sea should pass from a point on the eastern shore of the Bay of Danzig to the east, north of Braunsberg-Goldap, to
annihilated the original population of that territory by mass executions, artificially induced starvation, and deportations and replaced the original inhabitants with settlers from the Soviet Union. 39 All of the original Prussian, Lithuanian, and German place names were replaced by newly devised Russian designations, and the territory itself was renamed the Kaliningrad Region. 40

On September 12, 1990, the Federal Republic of Germany and the German Democratic Republic signed a treaty with the four victorious powers of World War II on the final settlement with respect to Germany. 41 The treaty declared that "[t]he 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." 42 "The united Germany has no territorial claims whatsoever against other states and shall not assert any in the future." 43 Thus, Germany gave up its sovereignty over its eastern lands beyond the Oder-Neisse boundary and over the Kaliningrad Territory. Germany, however, did not transfer its sovereignty over the Kaliningrad Territory to the Soviet Union or to any other country. 44 Under such circumstances, it is possible to argue that in the treaty of January 29, 1928, Lithuania ceded its claim to Lithuania Minor to Germany, but not to any other country. It would have been constrained to recognize a transfer of German sovereignty over the meeting point of the frontiers of Lithuania, the Polish Republic and East Prussia.

The conference has agreed in principle to the proposal of the Soviet Government concerning the ultimate transfer to the Soviet Union of the City of Koenigsberg and the area adjacent to it as described above subject to expert examination of the actual frontier.

The President of the United States and the British Prime Minister have declared that they will support the proposal of the conference at the forthcoming peace settlement. 3 DIG. INT'L L., supra note 22, at 346; see id. at 347 (the Potsdam agreement on the western frontier of Poland).


40. 3 ENCYCLOPEDIA LITUANICA 382-83; Stiklorius, supra note 27, at 58.

41. Treaty on the Final Settlement with Respect to Germany, Moscow, Sept. 12, 1990, art. 1, § 3.

42. Id. art. 1, § 1.

43. Id. art. 1, § 3.

44. Id.
the Kaliningrad Territory to a third party, but since no such transfer ever took place, Lithuania could revive its claim based on the Declaration of Tilsit. The decision of the Potsdam Conference on the Königsberg area does not preclude such a claim since Lithuania was not a party to the Potsdam agreement.

On July 29, 1991, Lithuania and the Russian Soviet Federated Socialist Republic (RSFSR) signed a treaty on their mutual relations and an agreement on cooperation in development of the Kaliningrad Oblast. This agreement consistently refers to the Kaliningrad territory as an oblast of the RSFSR. It constitutes de facto recognition by Lithuania of the Russian possession of that territory. The preamble of the agreement states that the parties entered into the agreement on the Kaliningrad Oblast in order to put into effect the following Article 11 of the Lithuanian-Russian treaty signed on the same day: "The Russian Soviet Federated Socialist Republic expresses a special interest, while the Republic of Lithuania assumes the obligation to contribute to the preservation of favorable conditions for the economic and national-cultural development of the Kaliningrad Oblast. These conditions shall be regulated by special agreement between the High Contracting Parties."

The treaty does not provide any indication that Lithuania recognizes Russian sovereignty over the Kaliningrad Oblast or renounces Lithuanian claim to that territory. Indeed, the treaty does not deal with any claims to sovereignty, and the Russian Republic limits itself to an expression of a "special interest" in the development of the Oblast. It follows from the Lithuanian-Russian treaty and the agreement on the Kaliningrad Oblast that Lithuania recognized the Oblast as a possession of Russia de facto but not de jure.

The March 11, 1990, Act on Restoration of an Independent Lithuanian State declares that "the Lithuanian State . . . recognizes the principle of


46. Id.
47. Id.
inviolability of borders as formulated in Helsinki in 1975 in the Final Act of the Conference on Security and Cooperation in Europe . . . ."48

Therefore, any Lithuanian territorial claims, whether to the Kaliningrad Region or to the territories between its legal and factual boundaries, can be achieved only through negotiations and freely concluded treaties and international agreements.

IV. SOVIET TERRITORIAL CLAIMS AGAINST LITHUANIA

Early in 1990, when the Lithuanian popular movement, Sąjūdis, supported by the great majority of the people raised urgent demands for the termination of the fifty-year Soviet occupation and for the restoration of Lithuania’s independence, the president of the Soviet Union, Mikhail Gorbachev, retaliated with extensive territorial claims against Lithuania.49

The full extent of these claims has never been clearly defined, and the reasons advanced to support them appear contradictory and based on erroneous factual information. At times, President Gorbachev has stated that the Soviet Union should detach all territories that were added to Lithuania after her annexation in 1940.50 These areas consist of the four territories of Švenčionys, Šalčininkai, and Druskininkai, which were ceded to Lithuania by the Byelorussian SSR in 1940, and the territory of Klaipėda, which reverted to Lithuania in 1945 after the unconditional surrender of Germany and the restoration by the Allies of the German frontiers as they appeared on December 31, 1937. On other occasions, however, President Gorbachev has spoken about five or six areas that Lithuania allegedly received from Byelorussia.51 It is unclear what he specifically has in mind since Lithuania received only three territories from Byelorussia.

During his visit to Lithuania in 1990, President Gorbachev cautioned that if Lithuania proceeds with the reestablishment of her independence, Poland might demand Lithuania’s capital, Vilnius, also known as Vilna, since it was under Polish rule during the nineteen years of the interwar period, that is, from 1920 to 1939.52 Soon, however, it became apparent

48. Document 1, in THE ROAD TO NEGOTIATIONS, supra note 2, at 33.
51. News Conference of President Bush and President Mikhail Gorbachev of the Soviet Union, 26 WEEKLY COMP. PRES. DOC. 873, 874 (June 3, 1990).
52. Mūsu Problemos bendros, Kartu ir spreskime [Our Problems Are the Same, Let Us Solve
that the present government of Poland has no intention of raising any old or new territorial claims.\textsuperscript{53} When it became clear that Poland had abandoned her claim to Vilnius, President Gorbachev started hinting that he might support Byelorussian claims to that city.

This is a radical reversal of the Soviet position on Vilnius. Heretofore, the Soviet Union has never claimed Vilnius—or Klaipėda for that matter—in isolation from Lithuania in its entirety. The Soviets have consistently recognized Vilnius as the capital of Lithuania, and twice in this century, in 1920 and in 1939, the Soviets returned the city to Lithuania after capturing it from the Poles.\textsuperscript{54}

\section*{V. Vilnius}

\subsection*{A. Lithuania's Right to Vilnius}

Lithuania's rights to Vilnius are based on the ethnic composition of the city's population, on history, and on the Moscow Peace Treaty. According to the last census in January 1989, Lithuanians constitute a majority of the total population of the Vilnius area and an absolute majority in the city of Vilnius.\textsuperscript{55} (Tables 2-1, 2-2, and 2-3).

In addition, Lithuania claims a historical right to Vilnius because it was the capital of both the Kingdom and Grand Duchy of Lithuania from 1253 to 1386 and from 1387 to 1795, respectively. The Council of


\textsuperscript{54} See Gerutis, supra note 17, at 167, 231.

\textsuperscript{55} Budrys, \textit{Vilnius ir nepriklausomybė [Vilnius and Independence]}, Tėviškės žiburai [The Lights of Homeland], Apr. 24, 1990, at 3, col. 2; Statistikos Departamentas prie Lietuvos Respublikos Vyriausybės [Department of Statistics at the Government of the Republic of Lithuania] and Lietuvos gyventojų tautinė sudėtis respublikinio pavaldumo miestuose ir rajonuose [National Composition of the Population of Lithuania in the Cities under the Jurisdiction of the Republic and in the Districts (Rayons)] (with an attachment Apie Lietuvos Respublikos gyventojų tautinė sudėtis [On the National Composition of the Population of Lithuania]) 3 (1990) (These documents are on file at \textit{New York Law School Journal of International and Comparative Law}.) (The attachment provides detailed results of the January 12, 1989, census in the eastern districts of Lithuania. An analysis of the results confirms the percentages of nationalities in the Vilnius territory reported in the above article in \textit{Tėviškės Žiburai}.)
Lithuania proclaimed the restoration of the Lithuanian state on December 11, 1917, and reiterated its proclamation in the Declaration of Independence on February 16, 1918. The restored Lithuanian state considered itself the primary legal successor and heir to the Grand Duchy of Lithuania, which had been a member state of the Polish-Lithuanian Commonwealth that was partitioned out of existence in 1795. The reconstituted Lithuania therefore claimed the territory, boundaries, capital, and national traditions of the defunct Grand Duchy. Antanas Smetona, the president of the Council of Lithuania, expressed the position of the restored Lithuanian state on this issue in his memorandum of October 8, 1918, to Prince Maximillan von Baden, the chancellor of Germany:

The Council of Lithuania on 11 December 1917 proclaimed the restoration of the Lithuanian State without specifying its boundaries in any detail. The Council assumed that the new state should have the borders which Lithuania had before its dissolution as a state. At the same time it understood that the boundaries implied in the proclamation were not final and that the problem of borders could be resolved only by their general recognition.

The Moscow Peace Treaty of 1920 is also of great importance to Lithuania because, in this treaty, Russia recognized Lithuania's independence:

Proceeding from the right, proclaimed by the Russian Socialist Federated Soviet Republic, of all nations to free self-determination up to their complete separation from the State into the

56. See Gerutis, supra note 17, at 154.
57. The Council of Lithuania, as the only representative of the Lithuanian people, basing itself on the recognized principle of self-determination, and the decision of the Lithuanian conference in Vilnius September 18-23, 1917, proclaims restoration of an independent Lithuanian nation based on democratic foundations with its capital in Vilnius; and furthermore, this nation is to be freed from any unions with other nations which previously had existed. Id. at 155-56.

The Council of Lithuania also proclaims that the foundations of the Lithuanian nation and its relations with other nations will be finally decided by the Constitutional Assembly to be convened as soon as possible, its delegates to be elected democratically by all the people. Id. at 109-10.
58. Id. at 193 (P. Klimas ed. 1919) (no. LXXXI).
composition of which they enter, Russia recognizes without reservation the sovereign rights and independence of the Lithuanian State, with all the juridical consequences arising from such recognition, and voluntarily and for all time abandons all the sovereign rights of Russia over Lithuanian people and their territory. The fact of the past subjection of Lithuania to Russia does not impose on the Lithuanian nation and its territory any liabilities whatsoever towards Russia.60

The treaty determined a new boundary between Lithuania and Russia, which left Vilnius and the entire Vilnius Territory to Lithuania.61

B. The Polish-Lithuanian Conflict over Vilnius

The problem of Vilnius arose in 1918 when the reconstituted Poland claimed to be the only heir to the defunct Polish-Lithuanian Commonwealth and rejected the claim of the restored Lithuanian state to the legacy of the Grand Duchy of Lithuania that had been a member state of the Commonwealth. Consequently, Poland claimed Lithuania in its entirety or at least a large portion of her territory, including the capital city of Vilnius.62

During the Polish-Soviet War of 1919 to 1920, these conflicting claims led to armed clashes between Lithuanian and Polish forces that developed into a full scale, albeit undeclared, war in 1920.63 On October 7, 1920, a Polish-Lithuanian armistice agreement was signed at Suwałki. It established a line of demarcation that left Vilnius to Lithuania.64 The armistice agreement specified that “[t]he present agreement . . . remains in force until all litigious questions between the Poles and the Lithuanians shall be definitely settled.”65 Two days later, however, on October 9, 1920, Polish forces suddenly attacked the Lithuanians and seized Vilnius.66 At that time, the Polish government claimed that Vilnius was taken by mutinous troops, but later the Chief of State and Commander-in-


61. Id.


63. Gerutis, supra note 17, at 165-67.

64. EASTERN LITHUANIA, supra note 25, at 511.

65. Id. at 513.

Chief of the Polish Armed Forces marshal Józef Piłsudski publicly acknowledged that General Lucjan Żeligowski, who staged the mutiny, acted under Piłsudski’s direct orders.  

On January 8, 1922, elections to the Vilnius Diet were held in the part of Lithuania occupied by General Żeligowski’s troops. The League of Nations Military Control Commission observed the elections. Colonel Auguste Pierre Chardigny, the president of the Commission, came to the following conclusion in his report:

As the Lithuanians and Jews and a large proportion of the White Russians officially abstained from taking part in the elections, and that, moreover, the elections were carried out under military occupation, where the Polish element had all the government machinery at its disposal, it would seem impossible to regard the present Diet of Vilna as the real and sincere expression of the whole population of the electoral territory.

Nevertheless, on the basis of the decision of the Vilnius Diet, Poland annexed Vilnius and its territory on March 24, 1922. The Conference of Ambassadors assumed the role of an arbitrator and on March 15, 1923, recognized the then existing Lithuanian-Polish demarcation line as the permanent boundary between the two countries. This left Vilnius and the entire Vilnius Territory to Poland.

Lithuania never recognized the Polish occupation and annexation of Vilnius and it rejected the decision of the Conference of Ambassadors. Ernestas Galvanauskas, president of the Council of Ministers and minister...
for foreign affairs of Lithuania, concluded in his April 16, 1923, reply to the president of the Conference of Ambassadors by stating that “[t]he Lithuanian Government solemnly declares that it does not recognize any authority in the decision of the Conference of Ambassadors, and that it maintains in all their integrity the rights of Lithuania over her ancient capital and the entire Vilna Territory.”

Lithuania consistently maintained this position until it recovered Vilnius and a portion of the Vilnius Territory in 1939. During the period of the Polish occupation of Vilnius, the 1928 and 1938 Constitutions of Lithuania designated Vilnius as the capital of the country.

C. The Soviet Position

Lithuania was not alone concerning its position on Vilnius. During the Polish occupation, which lasted from 1920 to 1939, Soviet Russia, and since 1922 the Soviet Union, consistently recognized the validity of the Moscow Peace Treaty and upheld Lithuania’s right to her capital and the surrounding territory. “[T]he sovereign power in Vilnius and its district belongs to Lithuania, to which it was transferred by the Russo-Lithuania treaty,” wrote George Chicherin, people’s commissar of foreign affairs, in his note of January 30, 1921, to the Lithuanian minister in Moscow, Jurgis Baltrušaitis.

Article 1 of the Treaty of Non-Aggression between Lithuania and the Soviet Union, which was signed in Moscow on September 28, 1926, confirmed that “the relations between the Union of the Soviet Socialist Republics and the Lithuanian Republic shall continue to be based on the Treaty of Peace between Lithuania and Russia, concluded at Moscow on

75. Id.

76. “The Capital of Lithuania is the City of Vilnius. It can be transferred temporarily in accordance with a special law.” 1928 metu Konstitucija [Constitution of 1928], in K. RAČKAUSKAS, LIETUVOS KONSTITUCINĖS TEISĖS KLAUSIMAI [ON THE PROBLEMS OF THE LITHUANIAN CONSTITUTIONAL LAW] [hereinafter LITHUANIAN CONSTITUTIONAL LAW] 138, art. 5 (1967). “The Capital of Lithuania is the City of Vilnius. It can be transferred elsewhere temporarily in accordance with a law.” 1938 metu Konstitucija [Constitution of 1938], in LITHUANIAN CONSTITUTIONAL LAW, supra, at 154.

77. Union of Soviet Socialist Republics (the Soviet Union) was formed on December 30, 1922, by the Treaty of Union concluded between the RSFSR (Russian Soviet Federated Socialist Republic), the Soviet Republics of Ukraine, Byelorussia, and the Federated Republic of Transcaucasia. Cf. H. CARRÈRE D’ENCHAUSSÉ, DECLINE OF AN EMPIRE 22-23 (M. Sokolinsky & H. LaFarge trans. ed. 1979).

78. Note of the Soviet Commissar for Foreign Affairs, Chicherin, to the Lithuanian Minister in Moscow, Baltrušaitis, in THE USSR-GERMAN AGGRESSION, supra note 18, at 81-84.
July 12, 1920, all the provisions of which shall retain their force and inviolability. It also stated that "[t]he present treaty . . . shall remain in force for five years, except Articles 1 and 2, the duration of the validity of which is not limited . . ." Moreover, in a letter of September 28, 1926, to Mykolas Sleževičius, prime minister and acting foreign minister of Lithuania, Commissar Chicherin wrote that

\[\text{The Government of the [Soviet Union] . . . declares that the } de facto \text{ violation of the Lithuanian frontiers committed against the will of the Lithuanian nation has not shaken its attitude with regard to the territorial sovereignty defined in Article 2 of the Treaty of Peace, concluded between Russia and Lithuania on July 12, 1920.}\]

It seems that initially the Soviets avoided the issue of Lithuania's historical rights to Vilnius, which were derived from the restoration of the Lithuanian state in 1918. After the return of Vilnius to Lithuania in 1939, however, Vyacheslav Molotov, chairman of the Council of People's Commissars and the People's Commissar for Foreign Affairs, acknowledged Lithuania's historical right to Vilnius in his statement to the Supreme Soviet:

\[\text{The Soviet Government took into consideration the fact that the city of Vilnius, which was forcibly wrested from Lithuania by Poland, ought to belong to Lithuania as a city with which are associated on the one hand the historical past of the Lithuanian State and on the other hand the national aspirations of the Lithuanian people.}\]

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80. Id. at 91.
81. Letter of G.V. Chicherin, Soviet Commissar for Foreign Affairs, to Mykolas Sleževičius, Prime Minister and Acting Foreign Minister of Lithuania, in The USSR-German Aggression, supra note 18, at 94-95.
82. There is no reference in the Peace Treaty of 1920 to the restoration of the Lithuanian state that existed as the Grand Duchy of Lithuania prior to the 1795 final partition of the Polish-Lithuanian Commonwealth. Treaty of Peace Between Lithuania and the Russian Socialist Federal Soviet Republic, in The USSR-German Aggression, supra note 18, at 68-81.
83. Statement of the People's Commissar for Foreign Affairs, Molotov, to the Supreme Soviet, in The USSR-German Aggression, supra note 18, at 174.
LITHUANIA'S BOUNDARIES

D. The German Position

Germany also never recognized the Polish occupation and annexation of Vilnius. This German position was confirmed by Gustav Stresemann, the foreign minister of the Weimar Republic, in the following protocol to article 1 of the German-Lithuanian boundary treaty signed on January 29, 1928: “The Government of Lithuania states that the boundary between Lithuania and Poland has not yet been determined and that, therefore, the end point for the marking of the Lithuanian-German boundary cannot yet be designated. The Government of Germany acknowledges this statement.”

E. The Molotov-Ribbentrop Agreements

Vilnius was mentioned in the Molotov-Ribbentrop secret protocol of August 23, 1939, which provided for the division of the spheres of influence between Germany and the Soviet Union. The protocol stipulated that “in this connection the interest of Lithuania in the Vilna [Vilnius] area is recognized by each party [Germany and the USSR].” The Lithuanian government, however, knew nothing about the secret protocol and its provisions. It was an agreement made between Germany and the Soviet Union without Lithuania’s knowledge and consent. Therefore, it could not and did not affect Lithuania’s rights to Vilnius in any way.

Since neither Germany nor the Soviet Union recognized the Polish occupation and annexation of Vilnius, the Molotov-Ribbentrop secret protocol of August 23, 1939, did not constitute any change in their position on this issue. It simply confirmed existing German and Soviet policy. The only reason the secret protocol mentioned Vilnius at all was stated in the phrase “in this connection,” that is, in connection with the drawing of a demarcation line between the German and Soviet spheres of influence. The clause on Vilnius made clear that all of Lithuania, including the part

84. See Sena, supra note 62, at 195-97.
85. LITHUANIA’S TREATIES, supra note 21, at 513.
86. Secret Additional Protocol (Moscow, Aug. 23, 1939), in NAZI-SOVET RELATIONS, supra note 6, at 78.
87. The German Foreign Minister, Ribbentrop, to the German Embassy in Moscow, in THE USSR-GERMAN AGGRESSION, supra note 18, at 123-24; Memorandum of the Director of the Political Department of the German Foreign Ministry, Woermann, in THE USSR-GERMAN AGGRESSION, supra note 18, at 129.
88. Secret Additional Protocol (Moscow, Aug. 23, 1939), in NAZI-SOVET RELATIONS, supra note 6, at 78.
under Polish occupation, was included in the German sphere. Thus, the first line of demarcation between the German and Soviet spheres followed the Lithuanian boundary that was determined by the Moscow Peace Treaty since at that time there was no other border delimiting and defining the Vilnius Territory.

The German-Soviet secret protocol of September 28, 1939, changed the respective German and Soviet spheres of influence. Most of Lithuania, including the entire Vilnius area, was transferred from the German to the Soviet sphere. Only a sector of southwestern Lithuania was reserved for Germany.

F. Transfer of Vilnius to Lithuania in 1939

On October 10, 1939, the Treaty on the Transfer of the City of Vilnius and the Vilnius Province to the Lithuanian Republic and on Mutual Assistance Between the Soviet Union and Lithuania (the Transfer of Vilnius Treaty) was signed. The transfer of Vilnius and the Vilnius Province for inclusion into the territory of the Lithuanian state was the primary subject of this treaty. Mutual assistance clauses of the treaty were set to expire in 15 years with a provision for an automatic extension for the next ten years, a total maximum period of 25 years. The preamble of the treaty emphasizes that it is based on the Moscow Peace Treaty and states that “the Treaty of Peace of July 12, 1920, and the Pact on Non-Aggression and the Peaceful Settlement of Conflicts of September 28, 1926, form as heretofore a firm basis for their mutual relations and undertakings . . . .” Moreover, Chairman Molotov, in his speech of October 31, 1939, before the Supreme Soviet of the Soviet Union, acknowledged Lithuania’s historical right to its capital city. This right and the Moscow Peace Treaty were the only grounds for the transfer of Vilnius to Lithuania by the Soviet Union in 1939. During the negotiations that preceded the Transfer of Vilnius Treaty, Joseph Stalin informed the

89. Id.
90. Secret Supplementary Protocol (Moscow, Sept. 28, 1939), in Nazi-Soviet Relations, supra note 6, at 107.
91. Id.
92. The USSR-German Aggression, supra note 18, at 149-51.
93. Id. at 149-150.
94. Id. at 151.
95. Id. at 149.
96. See supra note 83.
Lithuanian delegation that a strip in the southwest corner of Lithuania was assigned to Germany, but the Soviets did not disclose that Vilnius was ever mentioned in any German-Soviet agreements.\textsuperscript{97} From the Soviet viewpoint, the disposal of Vilnius at that time was a concern exclusively between themselves and the Lithuanians because the rearrangement of German-Soviet spheres of influence that had been effected by the German-Soviet secret protocol of September 28, 1939, superseded the agreements on Lithuania and Vilnius that were stated in the Molotov-Ribbentrop secret protocol of August 23.\textsuperscript{98}

Both Lithuania and the Soviet Union considered all clauses of the Moscow Peace Treaty as remaining fully in effect. In that treaty, the Soviet Union had recognized that the Vilnius area was a part of Lithuania's territory.\textsuperscript{99} Therefore, there was no need for a treaty to transfer Vilnius to Lithuania. All that was needed was an actual transfer of the Vilnius Territory in accordance with the existing treaty. Stalin, however, was not willing to comply fully with the treaty and to return the entire territory to Lithuania as defined by the peace treaty. He decided to retain most of that area and to return to Lithuania the city of Vilnius with about twenty-one percent of the Lithuanian territory previously under Polish occupation.\textsuperscript{100} The Lithuanian government was distressed by the unexpected loss of so much of Lithuania's territory—the population of which was substantially Lithuanian or of Lithuanian origin.\textsuperscript{101} Nevertheless, the Lithuanian

\textsuperscript{97} The German Ambassador in Moscow, Schulenburg, to the German Foreign Ministry, in THE USSR-GERMAN AGGRESSION, supra note 18, at 139-40; J. URBYS, ATSIMINIMAI [MEMOIR] 64-65 (1988); E. TURAUJKAS, LIETUVOS NEPRIKLAUSOMYBĖS NETENKANT-IVYKIAI [LOSING LITHUANIA'S INDEPENDENCE—EVENTS] 79-81 (1939).

\textsuperscript{98} See generally NAZI-SOViet RELATIONS, supra note 6.


\textsuperscript{100} E. TURAUJKAS, supra note 97, at 132-33

\textsuperscript{101} Lietuvos TSR Mokslo Akademija, Lietuviu kalbos ir literatūros institutas [Academy of Sciences of the Lithuanian SSR, Institute of Lithuanian Language and Literature], Lietuviu Kalbos Atlasas II [Atlas of Lithuanian Language] 9-17 (1982) [hereinafter Atlas of Lithuanian Language] (Map No. 90 and a list of localities that indicates the following Lithuanian areas retained by the Soviet Union due to the October 10, 1939, Transfer of Vilnius Treaty: #350 Medėžiai, #351 Vėliūnai, #384 - Kačergiškė, #417 - Ceikinėliai, #418 - Mielagėnai, #419 - Šiulėnai, #420 - Tverčiūnai, #421 - Sekonys, #422 - Vosinai, #423 - Lazinkos, #456 - Gražuliai, #457 - Jurgeliškė, #458 - Pirm Lukščiškė, #459 Rudiškė, #460 - Kavalučiškė, #483 - Švenčionys, #484 - Trečiūnai, #485 - Adutiškis, #508 - Ziboliškė, #509 - Ropiškė, #527 - Šutai, #665 - Kaniūkai, #666 Šaltininkai, #667 - Dailidės, #668 Daulenai, #669 - Mielionys, #670 - Maciūnai, #689 - Puvočiai, #690 - Kaniava, #694 - Druskininkai, #695 - Mašnyčios, #696 - Darželiškė, #697 - M parallel p. 698 - Rudnia, #699 - Dubičiai, #702 - Ratųčiai, #703 - Škėliai, #704 - Kabeliai. The following Lithuanian speaking areas are shown within the present Byelorussian territory:
government was helpless in the face of this crisis. The Soviets threatened that they would refuse to return Vilnius if the Lithuanians did not accept the new border, which the Soviet delegation traced. Thus, the Transfer of Vilnius Treaty was in effect an instrument of involuntary cession of a large portion of territory that the Soviet government theretofore had recognized as rightfully belonging to Lithuania.

The retention of a large portion of the Vilnius Territory by the Soviets and in particular their threat that, if faced with Lithuanian intransigence, they would not transfer Vilnius to Lithuania, indicated that the Soviet government considered the clause on Vilnius in the Molotov-Ribbentrop secret protocol as no longer being in effect. Resultantly, the Soviets felt free to solve this question on their own without considering Germany and its wishes.

After the transfer of Vilnius, the city remained an integral part of Lithuania during the remaining period of her independence and shared her fate during the subsequent Soviet and German occupations.

G. Byelorussian Claim to Vilnius

Byelorussians constitute only 5.2% of Vilnius' population and 5.0% of the population in the portion of the former Vilnius Territory returned to Lithuania. Moreover, a great majority of them are recent immigrants from Byelorussia. Despite these facts, after the Declaration of

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1. Braslaw [Brēšlauja], II. Opsa [Apsas], III. Komai [Kamojys], IV. Gervyaty [Gervēčiai], V. Lazduny [Lazūnai], VI. Veronovo [Varanavas], VII. Nacha [Nočia], VIII. Radun' [Rodūnė], IX. Pelyasa [Pelesa], X. Ozerki [Azierkai], XI. N. Gerniki [Nauji Gernyki], XII. Dyatlovo [Zietė].

102. Telegram of the German Minister in Kaunas to the German Foreign Ministry, in THE USSR-GERMAN AGGRESSION, supra note 18, at 164; E. Turauskas, supra note 97, at 132-33; R. Žepkaite, supra note 24, at 27-28, 34, & 36-37.

103. Gerutis, supra note 17, at 231-32; Senn, supra note 62, at 236.


105. See generally 6 LIETUVIŠKOJI TARYBINĖ ENCYKLOPEDija [LITHUANIAN SOVIET ENCYCLOPEDIA] 570 (1980) (table 7). See 12 ID. at 275 (1984) (table 2) (The relatively high percentages of Byelorussians in Vilnius and in entire Lithuania in 1897 (4.2% and 4.7% respectively) are due to numerous Byelorussians in the Russian imperial administration, the low percentages in 1916, 1923, and 1931 (1.4% and 0.4%) reflect the native Byelorussian population. The marked increases since 1945 (to 6.4% and 1.7%) are due to the new settlers.). See also THE POPULATION OF THE MAIN NATIONALITIES, supra note 104, 8-11.
Restoration of Lithuania's Independence of March 11, 1990, the Presidium of the Supreme Soviet of the Byelorussian SSR and several Byelorussian deputies in the Congress of People's Deputies of the Soviet Union raised a Byelorussian claim to Vilnius. However, such a claim has no legal, historical, or ethnic basis.

The Presidium of the Byelorussian Supreme Soviet asserted that the portion of the territory of Vilnius that was later transferred to Lithuania "was under Soviet jurisdiction from the second half of September 1939." It further maintained that the treaty to transfer Vilnius "was concluded without the Byelorussian SSR's knowledge and consent." These statements imply that on September 19, 1939, while under Soviet occupation, Vilnius was either included in the Byelorussian SSR or at least was subject to Byelorussian control and administration. This, however, was not the case. After the conclusion of the Boundary and Friendship Treaty of September 28, 1939, with Germany, the Soviets did not immediately change the status of the conquered Polish territories although the treaty established the boundary of the respective German and Soviet interests in Poland. In other words, during the months of September and October 1939, the Soviets did not yet claim sovereignty over their share of Poland. Thus, the transfer of Vilnius was based on the Moscow Peace Treaty and actual Soviet possession of the Vilnius Territory, not on the German-Soviet treaty of September 28, 1939. The new Soviet-Lithuanian boundary was drawn entirely inside the Vilnius Territory, which both parties recognized as rightfully belonging to Lithuania. Obviously, Lithuania had the right to receive part of that territory without any reference to the German-Soviet partition of Poland.

The Soviets annexed the Polish territory that had been assigned to them in the partition agreement only after the Transfer of Vilnius Treaty was signed on October 10, 1939. On October 22, Soviet-style
elections were held in Western Byelorussia for a National Assembly, and on October 29, the National Assembly met in Białystok and voted for the inclusion of Western Byelorussia into the Soviet Union. At that time, Vilnius had already been reintegrated into Lithuania. On November 2, 1939, the Supreme Soviet of the Soviet Union adopted a law incorporating Western Byelorussia into the Soviet Union, and on November 12, it was incorporated into the Byelorussian SSR.

During the Soviet occupation in 1939, Vilnius was neither annexed by the Soviet Union nor incorporated into Byelorussia. Thus, Vilnius could not be, and was not, detached from Byelorussia and ceded to Lithuania. It simply was transferred to Lithuania as a city that came into Soviet possession as a result of the Soviet invasion of Poland but was recognized by the Soviets as rightfully belonging to Lithuania. It therefore follows that the Byelorussian claim to Vilnius has no merit. Indeed, on April 11, 1990, the Byelorussian Popular Front delegation signed a joint statement with the Lithuanian popular movement, Sąjūdis, denouncing the Byelorussian government's claim to Lithuanian territory as "political blackmail." Finally, on October 24, 1991, the President of the Supreme Council of Byelorussia and the President of the Supreme Council of Lithuania signed a declaration of principles of good-neighborly relations between their countries. In that declaration they affirmed the principle of territorial integrity of states and the Helsinki principle of inviolability of frontiers. There have been three Lithuanian-Soviet boundaries since the signing of the Moscow Peace Treaty. The first boundary was established under article 2 of the treaty. The second was the boundary of the Transfer of Vilnius Treaty. The third, and last, was the administrative boundary between Byelorussia and Soviet occupied Lithuania, which was established on November 6, 1940. This became the factual boundary of the Republic of Lithuania on March 11, 1990. Each of these boundaries has
assigned Vilnius to Lithuania. There were no other boundaries between Lithuania and the Soviet Union. If the Soviet government, in order to claim Vilnius for itself or for any of its republics, repudiates each of these boundaries, then it can claim, with equal justification, any city or any part of Lithuania.

**H. Position of Other Countries on the Vilnius Problem**

In addition to Germany and the Soviet Union, there were other countries that refused to recognize the Polish occupation of Vilnius in 1920 and its subsequent annexation in 1922. The prime minister of the United Kingdom, Winston Churchill, stated in the House of Commons on February 22, 1944:

Here I may remind the House that we ourselves have never in the past guaranteed, on behalf of His Majesty's Government, any particular frontier line to Poland. We did not approve of the Polish occupation of Vilna in 1920. The British view in 1919 stands expressed in the so-called Curzon line which attempted to deal, at any rate partially, with the problem.\(^\text{117}\)

The United States Secretary of State, Charles Evans Hughes, defined the United States position in an April 10, 1923, letter to all American diplomatic officers.\(^\text{118}\) The Polish minister in Washington was trying to obtain an American statement of approval and support for the decision of the Conference of Ambassadors of March 15, 1923, that confirmed the Polish possession of Vilnius. Secretary Hughes stated that "it was the general policy of the Department to avoid participating in purely European territorial adjustments and to accept such adjustments, when effected by the governments concerned, as facts with respect to which this Government was not called upon to express either approval or disapproval."\(^\text{119}\) The decision of the Conference of Ambassadors on Vilnius did not satisfy the requirements of the State Department on the acceptance of new territorial arrangements since it was not "effected by the governments concerned."\(^\text{120}\) Lithuania never recognized the Polish occupation of Vilnius,
and Lithuania and Poland never agreed on a boundary.\textsuperscript{121}

At the beginning of World War II, the United States refused to recognize any territorial changes without a peace treaty.\textsuperscript{122} At the Yalta Conference in February 1945, however, the United States changed its view and agreed with Great Britain and the Soviet Union concerning the eastern boundary of Poland. Its new position was that "[t]he eastern frontier of Poland should follow the Curzon Line with digressions from it in some regions of five to eight kilometers in favor of Poland."\textsuperscript{123}

On August 16, 1945, a Polish-Soviet boundary treaty was signed.\textsuperscript{124} The boundary was drawn according to the Yalta agreement.\textsuperscript{125} Subsequently, the United States has not recognized any Polish claim to Vilnius, Western Byelorussia, or Western Ukraine.\textsuperscript{126} The Yalta agreement did not specify which country or countries should receive sovereignty over the territories detached from Poland to the east of the Curzon Line. Therefore, the United States State Department maintained that the precise status of these territories was not yet definitively settled.\textsuperscript{127}

This position changed when Ronald Reagan became the president of the United States. He insisted that the United States had no intention of challenging the existing territorial arrangements in Europe: "Why is Yalta important today? Not because we in the West want to reopen old disputes over boundaries; far from it. . . . Those who claim the issue is boundaries or territory are hoping that the real issues—democracy and independence—will somehow go away."\textsuperscript{128}

Consistent with this policy, on February 11, 1988, President Reagan,

\textsuperscript{121} Gružininas, \textit{supra} note 25, at 514-515; Memorandum by the Assistant Chief of the Division of European Affairs (Henderson), \textit{Foreign Relations of the United States}, Diplomatic Papers: The Soviet Union 1933-1939, at 947 (1952) [hereinafter \textit{Foreign Relations}].

\textsuperscript{122} \textit{Foreign Relations}, \textit{supra} note 121, at 946-48.

\textsuperscript{123} \textit{3 Treaties and Other International Agreements of the United States of America} 1776-1949, at 1010 (C. Bevans ed. 1969) [hereinafter \textit{Treaties}].

\textsuperscript{124} \textit{3 Dig. Int'l L.}, \textit{supra} note 22, at 274-75.

\textsuperscript{125} \textit{id. at} 274.

\textsuperscript{126} The United States Government recognizes the Curzon Line with digressions from it, in some regions, of five to eight kilometers in favor of Poland as the Eastern Frontier of Poland. \textit{See} map of U.S. Foreign Service Posts and Department of State Jurisdictions (1988) (map on file at the New York Law School Journal of International and Comparative Law). \textit{See generally} Letter from Ted A. Borek, Assistant Legal Adviser for European Affairs of the U.S. Department of State, to Vytautas Kutkus (Sept. 16, 1982) [hereinafter Borek].

\textsuperscript{127} \textit{See} Borek, \textit{supra} note 126, at 2.

in a proclamation concerning Lithuanian Independence Day, specifically mentioned Vilnius as the capital of Lithuania by declaring that “among the Lithuanian people the spirit of liberty remains unbroken . . . the spirit of the freedom marchers of Vilnius, Lithuania’s capital, and of Kaunas . . .” With this presidential proclamation, the United States recognized Vilnius as part of Lithuania. On October 2, 1991, the United States opened its embassy at Vilnius.

VI. THE THREE TERRITORIES OF ŠVENČIONYS, ŠALČININKAI, AND DRUSKININKAI

A. Lithuanian Areas Included in Byelorussia: 1939-1940

Lithuania’s government had little choice but to agree to a cession of its rights to a large portion of the Vilnius Territory to the Soviet Union. The Lithuanian population of that territory, however, was not willing to accept its separation from Lithuania. The Soviet-imposed boundary, which ignored the geographical distribution of nationalities in the Vilnius Territory, was perceived as arbitrary and intolerable. A spontaneous movement for revision of the Lithuanian-Soviet boundary therefore developed among the local population.

In the National Assembly of Western Byelorussia, which was elected on October 22, 1939, in a Soviet-style single candidate election, Ona Kilimoncildene, a deputy from Marcinkonys in the Porech’ye district, demanded that the districts inhabited by Lithuanians be transferred to Lithuania. Her demand was ignored, and she was forcibly returned to her home in Marcinkonys. On October 29, 1939, the Assembly voted to join Western Byelorussia to the Byelorussian SSR together with the entire portion of Vilnius Territory retained by the Soviet Union on the basis of the Transfer of Vilnius Treaty. The people of the Lithuanian districts then sent delegations with petitions demanding revision of the new
Lithuanian-Soviet boundary so that these districts be returned to Lithuania. The delegations were arrested and their members disappeared without a trace. The people subsequently adopted a tactic of non-cooperation with the Byelorussian authorities.

The Soviet government remained adamant. It insisted that there could be no revision of the 1939 Lithuanian-Soviet boundary. In the early spring of 1940, it proposed to resolve the problem by a resettlement of Lithuanians from Byelorussia. The government of Lithuania agreed to the Soviet proposal. However, the preparations for the transfer of the Lithuanian population became an acute embarrassment to the Soviets since a great number of Byelorussian and Polish speaking people in the nationally mixed border districts claimed to be of Lithuanian descent and applied for resettlement in Lithuania. Such a resettlement would have resulted in a virtual depopulation of the border districts.

B. Transfer of the Three Territories to Lithuania

The resettlement was scheduled to start on June 15, 1940, but on that day the Soviet Red Army invaded and occupied Lithuania. The proposed transfer of the population was not carried out. Instead, the three separate territories of Švenčionys, Šalčininkai, and Druskininkai were ceded by the Byelorussian SSR and added to Lithuania in 1940, after the Soviet occupation and annexation of Lithuania. These were ethnically Lithuanian areas of the former Vilnius territory that were not returned to Lithuania in 1939 but were instead included in the Byelorussian SSR. The following clause was inserted into the law that was promulgated on August 3, 1940, by the Supreme Soviet concerning the incorporation of Lithuania into the Soviet Union:

\[\text{id.}\]
\[\text{id.}\]
\[\text{id.}\]
\[\text{id.}\]
\[\text{id.}\]
\[\text{id.}\]
\[\text{id.}\]
\[\text{id.}\]
\[\text{Supra note 128.}\]
\[\text{Appeal to Lithuaniens Abroad, supra note 138.}\]
\[\text{id.}\]
[T]he Supreme Soviet of the Union of Soviet Socialist Republics has decided:

\[\ldots\]

2. to accept the proposal of the Supreme Soviet of the Byelorussian SSR on the cession of the rayon of Švenčionys and parts of the rayons of Vidzin [sic], Godutiskiu, Ostrovecki, Varonovski and Rodunes of the Byelorussian SSR, territories with a predominantly Lithuanian population, to the Federal Lithuanian Soviet Socialist Republic;


\[\ldots\] 144

This transfer was only partially implemented. No land whatsoever was transferred to Lithuania from the Ostrovets (Ostrovecki) district.145 The sizeable Lithuanian ethnic area of seventeen villages in the district around Gervyaty (Gervėčiai) was retained by the Byelorussian SSR.146 Another Lithuanian area, however, in the Porech'ye district, north of Grodno, was transferred to Lithuania although it was not mentioned in the law.147

On February 7, 1990, the Supreme Soviet of the Lithuanian SSR declared that the law of incorporation "is illegal and legally not binding on Lithuania."148 This decision repudiated the entire law, including articles

144. Law on the Admission of the Lithuanian Soviet Socialist Republic into the Union of the Soviet Socialist Republics, in THE USSR-GERMAN AGGRESSION, supra note 18, at 245-47.


147. THE USSR-GERMAN AGGRESSION, supra note 18, at 158-61.

The Validity of the Transfer of Vilnius Treaty

The validity of the Soviet claim to the three territories depends primarily on the status of the Transfer of Vilnius Treaty. This document is a classical example of an unequal treaty. The Soviet side forced Lithuania to cede a large portion of the Vilnius Territory under threats that otherwise it would retain the entire territory, including Vilnius, Lithuania's capital.\(^{150}\)

The Soviets entered into the agreement in bad faith. For example, in the treaty, they promised to respect Lithuania's sovereign rights, but in 1939, they had already started to make plans to occupy and annex that country. A military map of Lithuania was confidentially issued in 1939 by the General Staff of the Red Army in which Lithuania and Latvia were already designated as the Lithuanian SSR and the Latvian SSR.\(^{151}\)

Finally, on June 15, 1940, the Soviets invaded, occupied, and annexed Lithuania in complete disregard of the promises to respect Lithuania's sovereign rights that were stated in the Transfer of Vilnius Treaty.\(^{152}\) Resultantly, with this violation, they voided this unequal treaty. Lithuania has no obligation to reinstate or to agree to the reinstatement of the treaty that was forced upon her and which was part of a perfidious plan to forcibly annex her to the Soviet Union. Lithuania's refusal to reinstate the treaty would not void the legal basis of the transfer of Vilnius to Lithuania because its right to Vilnius rested on the Moscow Peace Treaty.\(^{153}\)

Given the violation of the unequal Transfer of Vilnius Treaty by the Soviets, the only valid basis of Soviet-Lithuanian relations is the Moscow Peace Treaty, as well as articles 1 and 2 of unlimited duration of the September 28, 1926, Treaty of Non-Aggression. This is also true with respect to the issue of boundaries. Lithuania has no obligation to agree to

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149. Lithuanian Liquidation, supra note 148, art. 2.

150. Telegram of the German Minister in Kaunas to the German Foreign Ministry, in THE USSR-GERMAN AGGRESSION, supra note 18, at 164; E. Turauskas, supra note 90, at 132-33; R. Žepkaite, supra note 24, at 27-28, 34, & 36-37.


153. Id. at 149.
the reinstatement of the 1939 boundary imposed by the Soviets. The valid boundary then remains the previous Soviet Russian-Lithuanian frontier that was established by the Moscow Peace Treaty.

In addition to the Lithuanian ethnic area in the Ostrovets district, there are other sizable Lithuanian areas in the Braslav, Postavy, Voronovo, and Iv'yе districts, which are located in the Byelorussian territory between Lithuania's present border and the boundary of the Moscow Peace Treaty. Moreover, there are Lithuanian villages in the Grodno and Shchuchin districts, as well as in the Dyatlovo district beyond the July 12, 1920, Lithuanian-Soviet Russian boundary. After World War II, the Lithuanian population in Byelorussia was subjected to a policy of forcible assimilation. In the process, both the national and human rights of Lithuanians were disregarded and violated. They suffered ruthless discrimination merely because of their ethnic origin and language. On several occasions they appealed to the leaders of the Soviet Union protesting this national persecution and discrimination and requesting that the Lithuanian areas be separated from Byelorussia and transferred to Lithuania. These pleas yielded no results.

At the present time, Lithuania is not pressing its claim to the entire Vilnius Territory or to the remaining Lithuanian areas beyond her present boundary, although it retains its rights based on the Moscow Peace Treaty. Neither the July 29, 1991, Lithuanian-Russian treaty on their mutual relations nor the October 24, 1991, Byelorussian-Lithuanian declaration abrogates or supersedes the Moscow Peace Treaty; they do not refer to the peace treaty at all. Thus, Lithuania can invoke the peace treaty in the case of the three territories of Švenčionys, Šaltininkai, and Druskininkai. It has a right to keep these territories since they are sections of the Vilnius area that, according to the peace treaty should belong to Lithuania. This treaty is thus the legal basis of Lithuania's right to retain the three territories that have been administratively attached to Soviet-occupied Lithuania since November 6, 1940.

155. Id.
156. A Memorandum to the Madrid Conference Reviewing the Helsinki Agreements, in Violations of Human Rights 1979, supra note 39, at 120.

157. Id. at 119-23.
158. Id. at 122.
159. Id.
160. Lithuanian-Russian Treaty, supra note 45; Good-Neighborly Relations, supra note 115.
D. Helsinki Principle on Boundaries

In the Declaration of Restoration of Independence on March 11, 1990, the Supreme Council of Lithuania stated that “[t]he Lithuanian state ... recognizes the principle of the inviolability of borders as formulated in Helsinki in 1975 in the Final Act of the Conference on Security and Cooperation in Europe ...” With the restoration of Lithuania’s independence, the administrative boundary between Soviet-occupied Lithuania and the Byelorussian SSR became the actual border between the Republic of Lithuania and the Soviet Union, although it has never before constituted a frontier between independent states.

It should be noted that since the restoration of Lithuania’s independence, the Soviet Union has in fact accepted her present actual borders. Thus, all Soviet measures during the ten-week economic embargo of April 19 to June 30, 1990, were applied to the entire territory of Lithuania inside her present actual borders, which are guarded by the Lithuanian border control posts. No attempt was made by the Soviets to exclude any part of Lithuania’s territory from the economic blockade or to differentiate between her territories in any other way.

At the present time, the administration of the independent Lithuanian government extends throughout the entire territory of the former Lithuanian Soviet Socialist Republic, including the territories of Švenčionys, Šalčininkai, Druskininkai, and Klaipėda. The local elections in 1990 and

161. Document 1, in The Road to Negotiations, supra note 2, at 33.

162. Document 11: Resolution of the Presidium of the Supreme Council of the Republic of Lithuania on the Formation of the Border Guard Posts of the Republic of Lithuania, in The Road to Negotiations, supra note 2, at 69. For a list of the border guard posts, see Dep’t Defense Gov’t Republic Lithuania, Summary of Activity of Border Guard Service Control and Border Guard Posts 1-4 (Vilnius 1991) (unofficial transcript on file at the New York Law School Journal of International and Comparative Law). The following posts are located on the November 6, 1940, boundary that leaves Švenčionys, Šalčininkai, and Druskininkai on the Lithuanian side: Druskininku-Slonimo, Druskininku-Gardino, Druskininku gelež. stoties [railroad station], Kabeliu, Didžiasalio, Tverėčios, Naviku, Dieveniškio, Klevyčios, Krakėnų, Šalčininku, Adutiskio, Adutiskio gelež. stoties [railroad station], Strižiūnų. Id. The following parts are on the December 31, 1937, Lithuania’s boundary with Germany that leaves the Territory of Klaipėda on the Lithuanian side: Klaipėdos gelež. stoties [railroad station], Klaipėdos nosto [port of Klaipėda], Nidos, Pagėgiu gelež. stoties [railroad station], Panemunės, Rusnės. Id.

163. “The economic blockade was imposed by the Soviet Union during the months of April-June 1990 on the entire territory of Lithuania in its present boundaries without exceptions for any territorial units. The only exceptions were the enterprises under the direct authority of the Soviet Union, which received the required material and technical resources.” Letter by M. Gasišiene, Section Chief of Food Supply Management, Ministry of Economics, Republic of Lithuania, to A. Gureckas (July 17, 1991).
the plebiscite on February 9, 1991, were conducted in those territories on the same basis as in all other parts of the country. It follows that the present actual frontiers of Lithuania exist as factual borders and therefore should be regarded as the inviolable existing frontiers according to the principles of the Helsinki Final Act. Despite the claims of both sides—the potential Lithuanian claim to the entire Vilnius Territory as defined by the Moscow Peace Treaty and the Soviet claim to the three territories of Švenčionys, Šalčininkai, and Druskininkai—the existing borders must be maintained. They can be changed only by a free agreement of both parties.

In conformity with the Helsinki principles, Lithuania does not challenge the existing borders. Rather, it continues to hold its claims to the July 12, 1920, Soviet-Lithuanian boundary, as well as its other territorial claims in abeyance until they can be discussed and resolved in a negotiated general settlement of all outstanding issues between Lithuania and the Soviet Union.

VII. KLAIPĖDA

In the Treaty of Versailles on June 28, 1919, Germany ceded all rights to Klaipėda Territory to the principal allied and associated powers.

164. The summary of the results of the February 9, 1991, plebiscite lists the cities of Klaipėda (No. 3), Druskininkai (No. 8), and Neringa (No. 11) and also the districts (rayons) of Klaipėda (No. 24), Šalčininkai (No. 41), Šilutė (No. 44), and Švenčionys (No. 46). The territories of Švenčionys, Šalčininkai, and Druskininkai extended also to the districts of Ignalina (No. 16) and Varėna (No. 52). The territory of Klaipėda extends to the districts of Jurbarkas (No. 19), Kretinga (No. 25), and Tauragė (No. 47). See Resolution of the Electoral Commission, supra note 9.

165. The aforementioned Decree of the Third Extraordinary Congress of People's Deputies of the USSR also alleged that Lithuania 'ignored' certain unspecified political, economic, social, territorial, legal, and other problems connected with the reestablishment of Lithuanian independence. The Government of the Lithuanian Republic wishes to remind the members of the Supreme Soviet of the USSR that Lithuania has underscored on many occasions its sincere hope that immediate negotiations would commence with the Government of the USSR so that both parties might openly and rationally discuss all issues currently arising between them. The Government of Lithuania has set no preconditions for such negotiations.

166. Germany renounces, in favor of the Principal Allied and Associated Powers, all rights and title over the Territories included between the Baltic sea, the Northeastern frontier of East Prussia as defined in Article 28 of Part II of the present Treaty and the former frontier between Germany and Russia. Germany agrees to accept the settlement made by the Principal Allied and Associated
From 1920 to 1922, Klaipėda, also known as Memel, was occupied by French troops and administered by a French High Commissioner on behalf of the Entente powers. Lithuania demanded that Klaipėda should be transferred to her. On February 16, 1923, after the seizure of Klaipėda by Lithuanian volunteers, the Conference of Ambassadors agreed that Lithuania should have Klaipėda and Klaipėda Territory. The transfer of sovereign rights was completed with the signing of the Convention of Klaipėda in Paris on May 8, 1924. Nevertheless, the Convention granted considerable internal autonomy to Klaipėda Territory.

A. German Ultimatum

Germany recognized Klaipėda Territory as part of Lithuania in the German-Lithuanian treaty on boundaries, which was signed on January 29, 1928. On March 20, 1939, however, the German foreign minister Joachim von Ribbentrop, during a meeting with the Lithuanian foreign minister Juozas Urbšys in Berlin, demanded that Lithuania immediately return Klaipėda to the German Reich under the threat that "the situation in the Klaipėda Territory is such that any minute German blood may be spilled there, and if that happens the German army will march into Lithuania and nobody can predict where it may halt." The demand was an ultimatum. It was backed up by concentrations of considerable land forces at the German-Lithuanian border and naval forces at sea near the Lithuanian shore. Lithuania's government yielded to the German threats of the imminent use of force and on March 23, 1939, signed a treaty transferring Klaipėda to the German Reich. The treaty contained a provision that "both parties pledge themselves neither to resort to force against one another nor to support the use of force against one of the

Powers in regard to these territories, particularly in so far as concerns the nationality of the inhabitants.

See Gerutis, supra note 17, at 204.

167. See id. at 205.
168. See id. at 205-06.
169. See id. at 208-11.
170. Stikliūnas, supra note 27, at 48.
172. LITHUANIA'S TREATIES, supra note 21, at 499-500, 513.
173. J. Urbšys, supra note 97, at 36-37; E. Turauskas, supra note 97, at 30-32.
174. J. Urbšys, supra note 97, at 37-38; see Gerutis, supra note 17, at 249.
175. See supra note 22.
parties by a third party.” Nevertheless, just five months later, the German government violated this guarantee when on August 23 and September 28, 1939, it entered into secret agreements with the Soviet government on the division of spheres of influence. In the September 28 secret protocol, Germany agreed that Lithuania be included in the Soviet sphere. This agreement, however, did not include a strip of land in southwestern Lithuania, which was to be reserved for Germany. These arrangements implied the use of Soviet force against Lithuania and actually led to the Soviet invasion and occupation in 1940.

B. German Boundaries After World War II

Even before the surrender of the German Reich in World War II, the Allies had decided to restore the borders of Germany as they existed on December 31, 1937. A protocol was signed on September 12, 1944, among the governments of the United States, the United Kingdom, and the Union of Soviet Socialist Republics on the zones of occupation in Germany and on the administration of Greater Berlin. It was agreed that “Germany within her frontiers as they were on December 31, 1937, will, for the purposes of occupation be divided into three zones one of which will be allotted to the Powers, and a special Berlin area which will be under joint occupation by the three Powers.” A map (Map A) was attached to the protocol with the heading: “Germany: Zones of Occupation, International frontiers 1937, Internal boundaries 1941.” Map A

176. Id. art. 4.

177. Secret Additional Protocol (Moscow, Aug. 23, 1939), in NAZI-SOVIEt RELATIONS, supra note 6, at 78; Secret Supplementary Protocol (Moscow, Sept. 28, 1939), in NAZI-SOVIEt RELATIONS, supra note 6, at 107.

178. As soon as the Government of the USSR shall take special measures on Lithuanian territory to protect its interests, the present German-Lithuanian boarder, for the purpose of a natural and simple boundary delineation, shall be rectified in such a way that the Lithuanian territory situated to the southwest of the line marked on the attached map should fall to Germany. Secret Supplemental Protocol (Moscow, Sept. 28, 1939), in NAZI-SOVIEt RELATIONS, supra note 6, at 107.


180. Id. at 2078-82.

181. Id. at 2079.

erroneously illustrated the territory of Klaipėda as a part of Germany in 1937 although at that time Klaipėda Territory was a part of Lithuania. The error was corrected in the subsequent agreement on November 14, 1944, concerning changes in the zones of occupation. A corrected map (Map C) was attached to this agreement and initialed by Philip E. Mosely for the United States, William Strang for the United Kingdom, and F. Gousev for the Soviet Union. Map C and a subsequent map (Map D), which was attached to the July 26, 1945, agreement on the zones of occupation, depicted Germany without Klaipėda Territory.

The principle of the restoration of the German boundaries of December 31, 1937, was reiterated in several agreements before and after the Potsdam Conference, which took place from July 17, 1945, to August 2, 1945. The Declaration Regarding the Defeat of Germany and the Assumption of Supreme Authority with Respect to Germany of the Governments of the United States of America, the Union of Soviet Socialist Republics and the United Kingdom, and the Provisional Government of the French Republic, which was signed on June 5, 1945, demanded evacuation “of all territories outside the frontiers of Germany as they existed on the December 31, 1937.” After the Potsdam Conference, an agreement was signed between these same governments on September 20, 1945, on additional requirements to be imposed on Germany. This agreement states that “German authorities and officials in all territories outside the frontiers of Germany as they existed on 31 December 1937 . . . will comply with such instructions as to withdrawing therefrom as they may receive from the Allied Representatives.”

The Allied annulment of all German annexations was apparently based on a conviction that they were accomplished by force or a threat of force and therefore possessed no validity. Thus, although there was no specific stipulation for the reversion of the territories taken by Germany after December 31, 1937, to their previous status, such a general reversion was implied in the principle of the restoration of German boundaries. Indeed,

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183. Id.
184. Zones of Occupation, supra note 179, at 2087-89.
186. Id. (Map D annexed to the agreement of the 26th July, 1945) (Map D located on file at New York Law School Journal of International and Comparative Law).
187. See TREATIES, supra note 123, at 1141.
188. Id. at 1254-64.
189. Id. at 1255.
with the unconditional surrender, previous Allied decisions on Germany's frontiers became operative and all affected states immediately took possession of the territories that were under their sovereignty before that date. Since at the end of the war Lithuania was occupied and annexed by the Soviet Union, the Soviets claimed to be a successor to Lithuania's sovereign rights and on that basis took over Klaipėda as a part of Lithuania's territory. Nevertheless, after the unconditional surrender of Germany, Klaipėda and Klaipėda Territory reverted to Lithuania, to which they had belonged prior to 1937, and not to the Soviet Union because the Soviet annexation of Lithuania was illegal and not recognized by the other three powers—United States of America, Great Britain, and France.

C. Potsdam Conference

The Potsdam Conference placed the city and the territory of Königsberg in East Prussia under the temporary administration of the Soviet Union. The ultimate disposition of that territory was to be decided at a future peace conference.

The decision on Königsberg described the southern boundary of the territory with Poland but did not indicate the northern and eastern boundaries with Lithuania. The principals of the conference, Winston Churchill, Joseph Stalin, and Harry Truman agreed that the German boundaries of 1937 should be the starting position for any territorial changes that might be decided upon during the conference. On July 18, 1945, during the second plenary meeting of the conference, the following discussion took place:

_The President_ said he still suggested that 1937 Germany be taken as a point from which to operate in considering this matter [the territorial changes].

_Stalin_ replied that of course they would have to base themselves on some starting point and from this point of view the Germany

190. *Id.*
193. *See supra* note 38.
194. *Id.*
of 1937 was satisfactory.

Churchill said he agreed and The President noted that Germany of 1937 was agreed to.\textsuperscript{196}

Thus, there was no need to describe the boundary between the Königsberg area and Lithuania since it was clear that this was the German-Lithuanian boundary of 1937. At that time, Klaipėda and Klaipėda Territory belonged to Lithuania.\textsuperscript{197} The unequal treaty of March 22, 1939, which was imposed on Lithuania by the threat of an imminent use of force, was invalid from its inception and therefore when the German occupation ended Klaipėda Territory again became part of Lithuania. Immediately after the city of Klaipėda was taken by the Soviet army on January 28, 1945 (the entire territory was cleared of German forces on February 4, 1945),\textsuperscript{198} the January 28, 1945, Order of the Supreme Commander of the Soviet Armed Forces stated that “on January 28, the troops of the First Baltic Army Group went on the offensive and took the Lithuanian city of Klaipėda (Memel), an important port and stronghold of the Germans on the Baltic, thus rounding off the liberation of Soviet Lithuania from the Nazi invaders.”\textsuperscript{199} It was obvious that Stalin, the Supreme Commander of the Soviet Armed Forces, considered Klaipėda to be a part of Lithuania, not of Germany. It therefore follows that the Potsdam agreement concerning Königsberg, which had been a part of Germany before 1937,\textsuperscript{200} did not include Klaipėda in the territory that was placed under the temporary Soviet administration.

There was no specific agreement on Klaipėda between the Soviet Union and its allies. In addition, the United States, Great Britain, and France do not recognize Lithuania’s incorporation into the Soviet Union.\textsuperscript{201} It can further be assumed that they adhere to the agreements on the occupation of Germany of September 12 and November 14, 1944, and the declaration of June 5, 1945, which reestablished the German borders of December 31, 1937, and consequently regard Klaipėda as a part of Lithuania’s territory both when it was occupied illegally by the

\textsuperscript{196} \textit{id.} at 316.
\textsuperscript{197} \textsc{LithuaniA’s TreatieS}, \textit{supra} note 21; 3 Dig. Int’l L., \textit{supra} note 22, at 177-78; Germany Zones of Occupation, \textit{supra} note 182 (Map C and Map D).
\textsuperscript{198} 5 \textsc{Lietuviškoji Tarybinė Enciklopedija [Lithuanian Soviet Encyclopedia]} 551 (1979).
\textsuperscript{199} \textit{The Lithuanian Problem}, \textit{supra} note 106, at 51.
\textsuperscript{200} Germany Zones of Occupation, \textit{supra} note 182.
\textsuperscript{201} Note, \textit{supra} note 13, at 391-424, 430.
Soviet Union and after it declared the restoration of its independence.

President Gorbachev, in his joint news conference with President George Bush at the White House on June 3, 1990, stated that "Stalin ceded Klaipėda, which the Soviet Union, as the basis of the results of World War II, received just as it did Kaliningrad [Königsberg] in Eastern Prussia. It received Lithuanian territories. So they raise this question to return to Russia these lands." 202

The Soviets did not receive Klaipėda on the same basis as Königsberg. Klaipėda reverted to Lithuania with the general restoration of the 1937 German boundaries, the legality of which has never previously been questioned, whereas Königsberg was placed under temporary Soviet administration by the Potsdam Conference. 203 It is true, however, that both the Klaipėda and Königsberg areas are Lithuanian territories since they are two sections of historic Lithuania Minor, an ancient ethnic Lithuanian and Prussian land. 204 Thus, there is no legal or historical justification for the demand that these Lithuanian lands be given to Russia.

Until recently, the Soviet Union claimed Klaipėda only as an integral part of Lithuania. A separate Soviet claim to Klaipėda was raised for the first time last year. This action was undoubtedly taken, not on its own merits, but in retaliation against Lithuania's determined efforts to terminate the Soviet occupation and to reestablish her independence.

The Russian Republic did not support the Soviet claim to Klapieda, and on July 29, 1991, in its agreement with Lithuania on the Kaliningrad Oblast, it recognized the inviolability of the present borders between Lithuania and itself. 205

VIII. CONCLUSION

The Soviet Union, since it is a vastly stronger country, has dominated the establishment of its present boundaries with Lithuania. The territorial arrangements imposed by the Soviet Union always had a tendency to favor Russian and Byelorussian interests since the Russians were the dominant nation of the Soviet Union, and the Byelorussians, as a closely related nation, shared to a large extent in the preference accorded to the Russians. Consequently, Russia and Byelorussia have already taken those Lithuanian

202. See supra note 51.
203. See supra note 38.
204. See supra notes 27-32, 34-35, & 166.
205. Lithuanian-Russian Agreement, supra note 45, art. 1.
territories to which they might have had any plausible claim whatsoever. Moreover, in the case of the Kaliningrad Region, Soviet actions went beyond any conceivable justification. Thus, it is not surprising that the newly invented Soviet territorial claims to Vilnius, Klaipėda, and the three territories of Švenčionys, Šalčininkai, and Druskininkai have no legal merit and no ethnic or historical basis.
**APPENDIX 1**

German-Soviet Spheres of Influence 1939-1941
According to Molotov-Ribbentrop Secret Protocols
1937 Boundaries

---------- Demarcation line of the 23 August 1939 Protocol
'/'/'/'/'/ Demarcation Line of the 28 September 1939 Protocol
'/'/'/'/'/ Strip of southwestern Lithuania reserved for Germany in the 28 September 1939 Protocol
'/'/'/'/'/ Northern Bukovina seized by the Soviets on 28 June 1940
Boundary according to the 1920 Peace Treaty between Lithuania and Soviet Russia with sections of the 1569 Lithuania-Polish border and the 1919 frontier of Germany in East Prussia.

Vilnius Territory under the Polish occupation 1920-1939.

Part of Vilnius Territory returned to Lithuania 10 October 1939.

Annexed to the Soviet Union 2 November 1939.

Transferred from the Byelorussian SSR to Soviet occupied Lithuania 6 November 1940.

Braslav-Grodno (Brēsļauja-Gardinas) section of the Territory of Vilnius attached to the Byelorussian SSR.

Klaipėda Territory: Lithuania 1923-1939, German 1939-1945, Lithuanian since 1945.

Lithuania in 1940, before the Soviet occupation and annexation.

## Appendix 2

Table 1 -- Lithuania's Population and Nationalities

<table>
<thead>
<tr>
<th>Nationality</th>
<th>Population in Thousands</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lithuanians</td>
<td>2,924</td>
<td>79.6</td>
</tr>
<tr>
<td>Russians</td>
<td>345</td>
<td>9.4</td>
</tr>
<tr>
<td>Poles</td>
<td>258</td>
<td>7.0</td>
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<tr>
<td>Byelorussians</td>
<td>63</td>
<td>1.7</td>
</tr>
<tr>
<td>Ukranians</td>
<td>45</td>
<td>1.2</td>
</tr>
<tr>
<td>Jews</td>
<td>12</td>
<td>1.2</td>
</tr>
<tr>
<td>Tatars</td>
<td>5</td>
<td>0.3</td>
</tr>
<tr>
<td>Latvians</td>
<td>4</td>
<td>0.1</td>
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<tr>
<td>Gypsies</td>
<td>3</td>
<td>0.1</td>
</tr>
<tr>
<td>Germans</td>
<td>2</td>
<td>0.1</td>
</tr>
<tr>
<td><strong>Other Nationalities</strong></td>
<td><strong>14</strong></td>
<td><strong>0.4</strong></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>3,675</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

1.1 Census 12 January 1989
Table 2 -- City of Vilnius (Vilna) and Vilnius Territory
Population and Nationalities

<table>
<thead>
<tr>
<th></th>
<th>Population in Thousands</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>2.1 City of Vilnius</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Census 12 January 1989</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lithuanians</td>
<td>292</td>
<td>50.6</td>
</tr>
<tr>
<td>Russians</td>
<td>117</td>
<td>20.3</td>
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<tr>
<td>Poles</td>
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<td>18.7</td>
</tr>
<tr>
<td>Byelorussians</td>
<td>30</td>
<td>5.2</td>
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<tr>
<td>Other Nationalities</td>
<td>30</td>
<td>5.2</td>
</tr>
<tr>
<td>Total</td>
<td>577</td>
<td>100.0</td>
</tr>
</tbody>
</table>

|                          |                         |      |
| **2.2 Vilnius Territory (including Švenčionys-Šalčininkai-Druskininkai)** |                         |      |
| Census 12 January 1989    |                         |      |
| Lithuanians              | 135                     | 39.4 |
| Poles                    | 133                     | 38.7 |
| Russians                 | 48                      | 14.0 |
| Byelorussians            | 17                      | 5.0  |
| Other Nationalities      | 10                      | 2.9  |
| Total                    | 343                     | 100.0|

|                          |                         |      |
| **2.3 Vilnius, City, and Territory (including Švenčionys-Šalčininkai-Druskininkai)** |                         |      |
| Census 12 January 1989    |                         |      |
| Lithuanians              | 427                     | 46.0 |
| Poles                    | 241                     | 26.0 |
| Russians                 | 165                     | 18.0 |
| Byelorussians            | 47                      | 5.0  |
| Other Nationalities      | 40                      | 5.0  |
| Total                    | 920                     | 100.0|

<p>| | | |
|                          |                         |      |
| <strong>2.4. Švenčionys-Šalčininkai-Druskininkai</strong> |                         |      |
| Census 6 November 1940    |                         |      |
| Lithuanians              | 54                      | 65.8 |
| Byelorussians            | 9                       | 11.0 |
| Poles                    | 4                       | 4.9  |
| Jews, Russians, and Other Nationalities | 15 | 18.3 |
| Total                    | 82                      | 100.0|</p>
<table>
<thead>
<tr>
<th>Nationality</th>
<th>City of Klaipėda</th>
<th>Klaipėda Territory</th>
<th>Klaipėda, City and Territory</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lithuanians</td>
<td>128 (63.0)</td>
<td>68 (94.4)</td>
<td>196 (71.3)</td>
</tr>
<tr>
<td>Russians</td>
<td>57 (28.1)</td>
<td>3 (4.2)</td>
<td>60 (21.8)</td>
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<tr>
<td>Byelorussians</td>
<td>6 (3.0)</td>
<td></td>
<td>6 (2.2)</td>
</tr>
<tr>
<td>Germans</td>
<td>1 (0.5)</td>
<td></td>
<td>1 (0.4)</td>
</tr>
<tr>
<td>Poles</td>
<td>1 (0.5)</td>
<td></td>
<td>1 (0.3)</td>
</tr>
<tr>
<td>Other Nationalities</td>
<td>10 (4.9)</td>
<td>1 (1.4)</td>
<td>11 (4.0)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>203 (100.0)</strong></td>
<td><strong>72 (100.0)</strong></td>
<td><strong>275 (100.0)</strong></td>
</tr>
</tbody>
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