

Behind the Reports of Growing Tension Between France and Germany Lies the 1963 Cooperation Treaty Designed to Keep the Neighbors on Friendly Terms

Suggested Citation: *Behind the Reports of Growing Tension Between France and Germany Lies the 1963 Cooperation Treaty Designed to Keep the Neighbors on Friendly Terms*, 2 German Law Journal (2001), available at <http://www.germanlawjournal.com/index.php?pageID=11&artID=52>

A. Introduction: All Is Not Quiet on the Western Front.

[1] Part of the fallout from what appears to have been a flawed, if not disastrous, EU treaty summit in Nice at the end of last year is the rank acknowledgment that relations between Germany and France are strained. To believe the international press, it's as bad as can be. *The Economist* titled its recent story on the Franco-German rift "Divorce after all these years?" The headlines in the Paris based, American edited *International Herald Tribune* have been even more alarmist: "Germans Try to Ease Friction with French," "Paris-Berlin Tensions Worry Two Old Hands," and "The French-German Question. Leaders Talk of Relationship That Remains Undefined."

[2] The falling-out seems to have its epi-center in the struggle over a vision for the future of the European Union. Simply said, a reunified Germany is the biggest EU player (in terms of population and economy) and it is now seeking to enjoy the benefits of this stature in the EU. Not only has Germany expressed its desire for proportional weight in the EU, thus tearing free of its mutually enforced parity with France, but Germany seems poised to throw that weight behind a federal Europe (with a European Constitution and a popularly elected European President as the goal) that eagerly embraces eastward expansion and openly embraces a U.S. role in the evolution of Europe. The French leadership does not share this vision; preferring instead a confederation of European nation-states with a slower approach to expansion and only marginal (i.e. NATO) involvement of the U.S.

[3] The worst of the tempest may have already passed. The two sides met and made nice for the press at a recent, informal meeting in Strasbourg. Germany has especially gone out of its way to soften its tone. But what if this is only the calm at the eye of the storm? What guarantees are there that the last 50 years of Franco-German amity and peace are not the exception to the rule of nearly unbroken animosity and war between the two that characterized most of the preceding century. While it is absurd to suggest that war might break out between Germany and France, few would deny that a genuine moment of importance has presented itself with nothing less than the fate and future of European unity at stake. And at the moment, Germany and France do not see eye-to-eye.

[4] The architects of the post-war European order anticipated such differences of opinion, having laid down in the years after WWII a treaty regime that seeks to prevent France and Germany from ever going to war again by tying the people of the two lands together in such a way that their shared sense of identity would make the prospect of divergence untenable. In the light of the current division between the France and Germany it is fair to ask: what is the 1963 Cooperation Treaty and has it failed?

B. Locarno: If at First You Do Not Succeed.

[5] Binding France and Germany together in a treaty regime, in the hopes of securing peace, had been tried before. The Locarno Treaties, negotiated and signed in 1925, were necessary beyond the terms imposed on the defeated powers after WWI, in part because of the animosity encouraged by the severity of the Versailles agreement. The Locarno Treaty Conference followed the French and Belgian occupation of Germany's industrial Ruhr Valley in 1923, after Germany claimed it could not meet its Versailles reparations obligations. A group of agreements resulted including the "Treaty of Mutual Guarantee" (also known as the Rhineland Pact), by which France, Germany and Belgium promised to respect each other's borders. The treaty committed the states to a full system of dispute settlement in the case disagreements arose among or between them. In separate agreements France insured the integrity of Poland and Czechoslovakia against German aggression. Britain and Italy signed as the guarantors of the treaties. The agreements were seen to be so significant and inspired such hope that the French foreign minister, Aristide Briand, was led to rhapsodize: "I went there, they came there and we spoke European. That is a new language and people will have to learn it."⁽¹⁾ Of course, less than 15 years after the conference at Locarno, the European language (again especially between France and Germany) was the language of war.

C. 1963 Treaty of Cooperation.

[6] It wasn't until 1963 that the French and Germans returned to a negotiating table, again with the objective of fashioning an agreement that would deepen the peace secured by the terms that ended a world war. The nearly twenty years that lapsed since Potsdam were not, of course, void of contact. From the end of the war, France was present in Germany as one of the four occupying authorities and in 1948, the French/German Institute at Ludwigsburg was founded. There was, as early as 1950, a French proposal that the states should form a steel and

coal union. In 1954, France and Germany entered into a cultural exchange agreement and in 1956, the states agreed to cooperate in matters of nuclear technology. It was not, however, until 1962, that de Gaulle and Adenauer exchanged state visits.

[7] The 1963 "Treaty Between the Federal Republic of Germany and the French Republic Regarding German-French Cooperation" has two clear goals. First, it seeks to bind the two nations political and defense efforts to prevent discord between the two and (considering the time-frame during which the treaty was drafted) to present a unified front to the threat of Soviet expansion and/or aggression in Europe. This direction is articulated in the Treaty's "Program I." and Parts A. (foreign affairs) and B. (defense) of "Program II." Second, the Treaty seeks to lay the seeds for future harmony between France and Germany by undertaking in Part C. of "Program II." a series of educational and youth-exchange programs.

[8] Central to both objectives is the frequent contact encouraged and/or required, by the Treaty. In the political arena, the Treaty requires the heads of government or state to meet "as often as necessary" to achieve the cooperative objectives of the Treaty, and at least twice each year. (1963 Cooperation Treaty, I.1). The foreign ministers are required to meet every three months and their under-secretaries for political, economic and cultural affairs are compelled by the treaty to meet every month. (1963 Cooperation Treaty, I.2). The defense ministers are required to meet at least once every three months. (1963 Cooperation Treaty, I.3(a)). The ministers responsible for education and youth issues are required to meet every two months. (1963 Cooperation Treaty, I.3(c)).

[9] Aside from these bilateral, ministerial contacts, the Treaty provides for the establishment of a joint commission responsible for supervising the cooperation between the two states and for routinely reporting on the status of the cooperative efforts. (1963 Cooperation Treaty, I.4).

D. The Role of the 1963 Treaty in the Current Debate over the Future of the EU

[10] The Cooperation Treaty sets out clear expectations with respect to cooperation in foreign affairs, requiring that the governments "consult with one another over every decision in all important questions of foreign policy, especially such questions involving common interests, in order to arrive at, to the degree possible, a common posture." (1963 Cooperation Treaty, II.1). Specifically, the states are to seek such common posture on (1) "questions of the European Community [EU] and the cooperation among the European states," and (2) "East-West relations both in political and economic matters." (1963 Cooperation Treaty, II.1).

[11] The ordinary meaning of the Cooperation Treaty, the controlling element of any interpretation of the treaty,(2) requires only that France and Germany "consult" with one another on the relevant issues with the objective of achieving agreement. Significantly, only the consultation is guaranteed and not the unanimity. The parties are in full compliance with such a narrow reading of the Cooperation Treaty. In fact, after the Strasbourg meeting between Chancellor Schroeder and President Chirac, the parties scheduled more regular contacts to improve the dialogue.

[12] Is it possible to claim, however, that the Cooperation Treaty established an obligation for the parties to undertake the difficult work of hammering out consensus; that is to say, to do more than just talk? An argument for such an aggressive reading of the Cooperation Treaty can be drawn from the "context" of the 1963 Treaty and the subsequent practice of the parties, especially with respect to questions regarding the European Community. Both the context and the subsequent practice of the parties are devices recognized by customary international law as informative of the ordinary meaning of a treaty.(3)

[13] The preamble to the German law ratifying the Cooperation Treaty may be expressive of the "context." The preamble emphasized the importance of French-German unity on foreign policy matters with the Bundestag declaring that the Cooperation Treaty articulated the will of the two states to integrate Germany into the community of European states by encouraging "the unanimity of Europe by way of the path begun under the European Community [EU] and with the goal of (1) including the United Kingdom and other states willing to join and (2) further strengthening the Community." (BGBl. 1963 II. S. 705). This description of the relationship intended by the Cooperation Treaty is considerably stronger than the mere consultation required by the plain language of the treaty and it speaks directly to the central issues in the current Franco-German split: the deepening of the European Union and the simultaneous eastward expansion.

[14] The claim that the Cooperation Treaty imposes a deeper obligation to achieve unanimity may also be drawn from the practice of the parties regarding questions concerning the development of the European Community. France and Germany have generally moved together in lock-step with regard to the development of the Union, so much so that their partnership has been called the "motor of Europe." It was the shared French-German vision that made Maastricht and European monetary union possible. Further evidence of the practice of deeper unanimity between the two states on the European question can be found in the EU treaties themselves, which call for "an ever closer

union." (Art. 1, Consolidated EU Treaty).

[15] Support for this interpretation of the Cooperation Treaty, based on the subsequent practice of the parties, can also be found in the comments and speeches of French and German leaders. It may be that the public expressions of codependence and unanimity may now estopp the states from claiming the right to "agree to disagree." In a speech before the French National Assembly in November, 1999, German Chancellor Schroeder declared: "Europe is stamped with the German-French cooperation. This work [European Unity], however, springs from its beginnings as a bilateral effort . . . The German-French togetherness was, is and will continue to be indispensable. The cooperation between Germany and France is the foundation for a shared responsibility of the German and French people for the future of Europe."(4) In 1997, at a Harvard University sponsored discussion, the French Ambassador to the United States, Francois Bujon de l'Estang, described the French-German relationship and its importance to the development of the European Union in this way: "The Franco-German relationship is intimately and irreversibly enmeshed in the European European project. The European project's greatest achievement is the reconciliation of France and Germany. In turn, the European project wouldn't be where it is without the Franco-German push." In 1998, an article published in the German mass circulation newspaper *Bild*, French President Chirac celebrated the 35th anniversary of the Cooperation Treaty with the following comments: "It is the community of vision and objectives which Germany and France share which has made the European enterprise possible. At every stage, it's the common will of our two countries which has built Europe. Without it, there would have been no single market, no common foreign and security policy or economic and monetary union." As recently as this month German foreign minister Joschka Fischer referred to the cohesive relationship as the "flywheel of European progress."

E. Conclusion

[16] What sense does it make to promote a stricter interpretation of the 1963 Cooperation Treaty? If Europe is ever going to move beyond the traditional conflict between the interests of sovereign nation-states, it will be because European nations embrace the fact that they have/must surrendered part of that sovereignty through various international agreements. No other device, aside from war and totalitarian control, has succeeded in uniting Europe's diverse nations and peoples. If, however, France and Germany can evade such a surrender of sovereignty in their bilateral Cooperation Treaty, retreating instead to be bound by the Treaty's lowest and least intrusive common denominator, what hope can there be of 15 or 27 European states embracing more demanding obligations from the European Union treaties? If it's true that France and Germany will lead the Union, then they might best do so by example and they could start by acting as if the 1963 Cooperation Treaty prohibits them from acting unilaterally.

(1) <http://www.unog.ch/library/culture/loca6.htm>.

(2) Art. 31 of the 1969 Vienna Convention on the Law of Treaties, though not retroactive, has been recognized by the International Court of Justice as customary international law. Art. 31.1 states: "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. See *Case Concerning Kasikili/Sedudu Island (Botswana/Namibia)*, ICJ 13 Dec. 1999, <http://www.lawschool.cornell.edu/library/cijwww/icjwww>.

(3) Art. 31.2 of the 1969 Vienna convention on the law of Treaties states: "The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty." Customary international law also accepts that the subsequent practice of the parties serves to inform the meaning of a Treaty. Article 31.3 of the 1969 Vienna Convention on the Law of Treaties states: "There shall be taken into account, together with the context: (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretations." See *Case Concerning Kasikili/Sedudu Island (Botswana/Namibia)*, ICJ 13 Dec. 1999, <http://www.lawschool.cornell.edu/library/cijwww/icjwww>.

(4) <http://www.amb-allemande.fr/de-fr/starter.htm>