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PROTECTION OF GRAVES AND CEMETERIES  
IN TREATIES ON FRIENDSHIP AND COOPERATION  
SIGNED BY POLAND  
WITH STATES FORMED AFTER THE COLLAPSE OF THE USSR

1. INTRODUCTORY REMARKS

Treaties on friendship and cooperation (also called political treaties) take a special place in the treaty practice of every state and actually, as emphasized by A. Banaszkiwicz, they are “the most important agreements in terms of relevance for the implementation of a specified vision of foreign policy states may sign between each other” [BANASZKIEWICZ 2004, 35]. They point out, not only in a territorial scope, the area of interest of a given country, but also specify the shape of the relationships in mutual relations, exposing the subject of special interest in their mutual relations [PRZYBOROWSKA-KLIMCZAK and STASZEWSKI 2005b, 5; WÓJCIK 2010, 218]. At the moment Poland is bound by such agreements with twenty three countries.<sup>1</sup>

The aim of this paper, which analyses agreements on friendship and cooperation signed by Poland with states formed after the collapse of the USSR, is to answer the research question whether cooperation for the protection of graves and cemeteries was included in the provisions of political treaties signed by Poland with said countries and whether this cooperation was given an appropriate rank, taking into account the fact that “cemeteries and graves are a telling book and a picture of national history” [KOLBUSZEWSKI 1996, 247]. Thus, whether the treaties include an adequate legal

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<sup>1</sup> All such agreements were included in the study by PRZYBOROWSKA-KLIMCZAK and STASZEWSKI 2005a.

framework which appropriately guarantees the implementation of cooperation in the discussed area.

The area in question, taking into account various events in history, not only the history of Poland, is especially important in terms of protection of graves and cemeteries, as this is where numerous necropolises and other important places of burial of Poles are located.<sup>2</sup> One also needs to bear in mind that Poland's current as well as previous territory was an area of various historical events, also those associated with armed conflicts and regions' belonging to the territory of other countries.<sup>3</sup> For these reasons it is a region in which a lot of necropolises and other places of burial of human remains are located, including of persons coming from various countries, associated with historical events of a given land.<sup>4</sup>

Before proceeding to an analysis of the said agreements, a conclusion needs to be made that taking into account the geographical criterion, one may identify among them treaties signed with countries bordering Poland (neighbouring countries) and agreements signed with countries located further away (not bordering Poland). Poland has signed treaties on friendship and cooperation with nine countries formed after the collapse of the USSR, including four neighbour-states (with Belarus,<sup>5</sup> Lithuania,<sup>6</sup> Russia<sup>7</sup> and

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<sup>2</sup> See i.a.: LEOŃCZYK 2011, 17ff.; IDEM 2018, 9ff.; SKŁODOWSKI 2010, 197ff.; SWAT 1999, 83ff. See *Cierpieniu – prawdę, Umarłym – modlitwę. Miejsca polskiej pamięci w Rosji. Katalog wystawy*, Centrum Naukowo-Informacyjne “Memoriał” w Petersburgu, Instytut Pamięci Narodowej, Warsaw 2015; *Katalog polskich miejsc pamięci narodowej na Litwie. Cmentarze wojskowe, groby żołnierzy, pomniki, upamiętnienia*. Draft version, Embassy of the Republic of Poland in Vilnius, Vilnius, January 2017 (study available at: <https://www.msz.gov.pl/resource/069694e1-ccc5-4341-b392-5283bc313ad1:JCR> (access: 30 January 2020)).

<sup>3</sup> The subject matter of the protection of graves and cemeteries in treaties on friendship and cooperation signed by Poland with neighbouring countries are discussed in: STASZEWSKI 2017, 343ff.

<sup>4</sup> See i.a.: CZYŻAK 2011, 50; GRZYWACZ 2010, 386ff.; KRAJEWSKI 2010, 118ff.

<sup>5</sup> Treaty between the Republic of Poland and the Republic of Belarus on Good Neighbourliness and Friendly Cooperation, signed at Warsaw on 23 June 1992. It came into force—pursuant to provisions of Article 27 of the Treaty—on 30 March 1993. Text: Dz. U. (Journal of Laws) of 1993 no. 118 item 527.

<sup>6</sup> Treaty between the Republic of Lithuania and the Republic of Poland on Friendly Relations and Good Neighbourly Cooperation done at Vilnius on 26 April 1994. It came into force—pursuant to provisions of Article 27 of the Treaty—on 26 November 1994. Text: Dz. U. (Journal of Laws) of 1995 no. 15 item 71.

<sup>7</sup> Treaty between the Republic of Poland and the Russian Federation on Friendly Relations and Good-Neighbourly Cooperation, done at Moscow on 22 May 1992. It came into force—pursuant to provisions of Article 21(1) of the Treaty—on 8 May 1993. Text: Dz. U. (Journal of Laws) of 1993 no. 61 item 291.

Ukraine<sup>8</sup>) and five countries located further away (with Estonia,<sup>9</sup> Georgia,<sup>10</sup> Latvia,<sup>11</sup> Moldova<sup>12</sup> and Uzbekistan<sup>13</sup>).

## 2. TREATIES SIGNED WITH STATES THAT ARE BORDERING POLAND

The first country among the neighbouring countries—formed after the collapse of the USSR—with which Poland signed an agreement on friendship and cooperation was Ukraine. On 18 May 1992 in Warsaw the Treaty between the Republic of Poland and Ukraine on Good-Neighbourliness, Friendly Relations and Cooperation was signed.<sup>14</sup> In the preamble to the agreement, referring to the “[...] positive elements in the rich history of Polish–Ukrainian relations [...],” the Parties expressed a belief that they will “[...] favour expansion of cooperation between brotherly nations.” They also emphasized that “[...] Poles and Ukrainians inhabiting for centuries the territories of both Parties contribute significantly to the development of the two countries and the culture of both nations as well as Europe [...].” In Article 18 of the Agreement the Contracting Parties concluded that they shall pre-

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<sup>8</sup> Treaty between the Republic of Poland and Ukraine on Good-Neighbourliness, Friendly Relations and Cooperation done at Warsaw on 18 May 1992. It came into force—pursuant to provisions of Article 21(1) of the Treaty—on 30 December 1992. Text: Dz. U. (Journal of Laws) of 1993 no. 125 item 573.

<sup>9</sup> Treaty between the Republic of Poland the Republic of Estonia on Friendly Cooperation and Baltic Good-Neighbourliness, done at Tallinn on 2 July 1992. It came into force—pursuant to provisions of Article 19(1) of the Treaty—on 6 May 1993. Text: Dz. U. (Journal of Laws) of 1993 no. 121 item 536.

<sup>10</sup> Treaty of Friendship and Cooperation between the Republic of Poland and the Republic of Georgia, done at Tbilisi on 20 April 1993. It came into force—pursuant to provisions of Article 19(1) of the Treaty—on 5 November 1999. Text: Dz. U. (Journal of Laws) of 2000 no. 2 item 7.

<sup>11</sup> Treaty between the Republic of Poland and the Latvian Republic on Friendship and Cooperation, done at Riga on 1 July 1992. It came into force—pursuant to provisions of Article 19(1) of the Treaty—on 17 December 1992. Text: Dz. U. (Journal of Laws) of 1993 no. 114 item 502.

<sup>12</sup> Treaty between the Republic of Poland and the Republic of Moldova on Friendship and Cooperation, done at Warsaw on 15 November 1994. It came into force—pursuant to provisions of Article 20 of the Treaty—on 2 March 1996. Text: Dz. U. (Journal of Laws) of 1996 no. 76 item 363.

<sup>13</sup> Treaty of Friendship and Cooperation between the Republic of Poland and the Republic of Uzbekistan, done at Warsaw on 11 January 1995. It came into force—pursuant to provisions of Article 20(1) of the Treaty—on 20 November 1995. Text: Dz. U. (Journal of Laws) of 1996 no. 26 item 115.

<sup>14</sup> On the circumstances of signing the Treaty, see: CIEŚLIK 1994, 135ff. A vast analysis of provisions of this Treaty is included in the following study: SURMACZ 2002.

serve and provide legal protection to as well as maintain, in accordance with the rules of international law (humanitarian law including) and with national and religious customs, military and civil graves, cemeteries and burial sites located or discovered in the future on their territories, forming places of remembrance and worship of citizens of the other Party. It was also agreed that citizens of both Parties will have access to the graves, cemeteries and burial sites of compatriots located on the territory of the other Party. Additionally, in Article 13(4) the Parties undertook to provide the proper legal, material and other protection on their territories of values, monuments and facilities related to the cultural and historical heritage of the other Party, and will also endeavour to trace, preserve, consolidate and circulate them, including ensurance of easy access.

In order to implement the provisions of Article 18 of the Polish-Ukrainian Treaty both countries signed on 21 March 1994 the Agreement of the Protection of Memorials and Graves of Victims of War and Political Repressions.<sup>15</sup> It was signed by the Contracting Parties—as demonstrated in the Preamble—“[...] in accordance with the aspiration of their nations to honour the memorials and graves of the persons who died or were murdered both in the territory of the Republic of Poland and Ukraine as a result of wars and political repressions [...]”<sup>16</sup> This agreement, as emphasized in its Article 1, aims to solve all problems related to the disclosure, registration, arrangement, conservation and proper maintenance of memorials and graves of victims of war and political repressions, and exhumation of the remains and their reburial in a manner worthy of their memory. In turn, in 1999 the Protocol on the implementation of the Agreement between the Government of the Republic of Poland and the Government of Ukraine on the protection of memorials and graves of victims of war and political repressions of 21 March 1994 was signed,<sup>17</sup> which laid down assumed works for 1999–2001. This Protocol, pursuant to its point 8 is an annex to the 1994 Agreement.

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<sup>15</sup> Agreement between the Government of the Republic of Poland and the Government of Ukraine on the Protection of Memorials and Graves of Victims of War and Political Repressions, done at Warsaw on 21 March 1994. It came into force—pursuant to provisions of Article 12(1) of the Agreement—on 29 August 1994. Text: Dz.U. (Journal of Laws) of 1994, no. 112 item 545 and MIKOŁAJCZYK 1997, 78–81.

<sup>16</sup> It is worth noting that the preamble to the 1994 Agreement wrongly cites a provision of the Polish-Ukrainian Treaty of Good Neighbourship, Friendly Relations and Cooperation (Article 17 was quoted instead of Article 18).

<sup>17</sup> Protocol on the Implementation of the Agreement between the Government of the Republic of Poland and the Government of Ukraine on the Protection of Memorials and Graves of Victims

It is worth mentioning that Poland and Ukraine signed in 1997 the Agreement on Cooperation in the Sphere of Culture, Science and Education,<sup>18</sup> in which both countries guaranteed to preserve the cultural heritage, to protect historical monuments and buildings and cultural goods of each of the Counterparty, located in the territory of the other Party. They also undertook to cooperate in terms of stock-taking, research, preservation and restoration of cultural goods located in the territory of both Parties and to ensure access to them for specialists and research teams (Article 18).

The same year that the Polish-Ukrainian Agreement on Friendship and Cooperation was signed, that is 1992, political treaties with Russia and Belarus were signed.

The Polish-Russian treaty, signed on 22 May 1992,<sup>19</sup> includes a statement in the Preamble which shows that the Parties signed it “[...] desiring to develop positive values of the heritage of relations between Poland and Russia in order to build a lasting understanding between nations of both countries” and that they are “aware that friendly relations and good-neighbourly cooperation serve the interest of both Parties [...]”. Pursuant to Article 17 of the Treaty, the Contracting Parties committed that places of burial as well as monuments and other memorial sites which are items of commemoration and remembrance of citizens of one of them, both military and civilian, which are currently located or envisaged—on the basis of mutual agreements—to be placed in the future on the territory of the other Party will be preserved, maintained and given legal protection, in compliance with international norms and standards and national and religious customs. It was also agreed that the parties will ensure access for their citizens to places of burial of their compatriots and memorial sites which are located on the territory of the other party, and will also make it possible for them to look after the graves and memorial sites. Moreover, the Contracting Parties undertook to cooperate in establishing and registering places of burial of citizens of one of them

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of War and Political Repressions of 21 March 1994, done at Warsaw on 13 March 1999. The Protocol came into force on the date of signing it, that is 13 March 1999. Text: internet treaty base of the Ministry of Foreign Affairs of the Republic of Poland, <https://traktaty.msz.gov.pl/> (access: 30 January 2020).

<sup>18</sup> Agreement between the Government of the Republic of Poland and the Government of Ukraine on Cooperation in the Sphere of Culture, Science and Education, done at Kiev on 20 May 1997. It came into force—pursuant to provisions of Article 26 of the Agreement—on 22 November 1999. Text: Dz. U. (Journal of Laws) of 2000 no. 3 item 29 and PRZYBOROWSKA-KLIMCZAK, STASZEWSKI and WRZOSEK 2002, 255–60.

<sup>19</sup> On the circumstances of signing the Treaty, see: ZAJĄCZKOWSKI 1992, 188 ff.

on the territory of the other and also to exchange information on dead or missing persons. In this agreement, as is the case in the Polish-Ukrainian political agreement, the Parties undertook, pursuant to the provisions of Article 13(3), to cooperate in order to trace, preserve and consolidate the values, historical buildings and objects associated with the historical and cultural heritage of the nations of the other Contracting Party, to circulate them and to ensure necessary legal, material and other protection, and also to ensure access to them.

In order to implement the provisions of the Polish-Russian Treaty of 1992, both countries signed on 22 February 1994 the Agreement on Graves and Memorials of Victims of War and Repressions.<sup>20</sup> It regulated, as results from Article 1(1), cooperation of the Contracting Parties in terms of settling all matters related to tracing, registering, arranging, preserving and due maintenance of memorials and final resting places of soldiers and civilians who died, were murdered or tortured to death as a result of wars and repressions (Polish ones in the territory of the Russian Federation and Russian ones in the territory of the Republic of Poland). Moreover, it covers issues concerning exhumation of remains and their reburial in a manner worthy of their memory. In addition, it was concluded in subsection 3 of the aforementioned Article that “provisions of this Agreement concern graves of soldiers and civilians which do not fall under the specification of subsection 1 of this Article, but which are located in the territory of final resting places referred to in subsection 1.” The Parties agreed that in implementing the cooperation they will be guided not only by the provisions of the 1994 Agreement or aims and principles of the Geneva Conventions for the Protection of War Victims of 12 August 1994<sup>21</sup> and Amendment protocols to these conven-

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<sup>20</sup> Agreement between the Government of the Republic of Poland and the Government of the Russian Federation on Graves and Memorials of Victims of War and Repressions, done at Cracow on 22 February 1994. It came into force—pursuant to provisions of Article 12(1) of the Agreement—on 9 September 1994. Text: Dz. U. (Journal of Laws) of 1994, no. 112 item 543 and MIKOŁAJCZYK 1997, 72-76.

<sup>21</sup> Geneva Conventions for the Protection of War Victims, signed at Geneva on 12 August 1949 (the First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; the Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; the Third Geneva Convention relative to the Treatment of Prisoners of War; the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War). Text: Dz. U. (Journal of Laws) of 1956 no. 38 item 171, annex.

tions,<sup>22</sup> but also by state, national and religious customs and traditions of both countries (Article 1(2)).<sup>23</sup>

It needs to be noted that both countries signed on 25 August 1993 the Agreement between the Government of the Republic of Poland and the Government of the Russian Federation on Co-operation in the Area of Culture, Science and Education,<sup>24</sup> in which they undertook to take efforts to

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<sup>22</sup> Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), done at Geneva on 8 June 1977 (text: Dz. U. (Journal of Laws) of 1992 no. 41 item 175, annex, correction of error: Dz. U. (Journal of Laws) of 2015 item 1056); Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem, adopted at Geneva on 8 December 2005 (Protocol III) (text: Dz. U. (Journal of Laws) of 2010 no. 70 item 447).

<sup>23</sup> One also needs to note that on the day of signing the Agreement the ministers of foreign affairs of the Republic of Poland and the Russian Federation, Andrzej Olechowski and Andrey Kozyrev, gave a Joint Statement (annexed to the signed Agreement) which reads as follows:

“Due to the signing on 22 February 1994 at Cracow of the Agreement between the Government of the Republic of Poland and the Government of the Russian Federation on graves and memorial on victims of wars and repressions and striving to build Polish-Russian relations on a qualitatively new basis, and also to overcome the negative legacy of the past, being aware of the vast suffering caused by the Stalin regime as well as remembering the irreparable losses sustained by the nations of Poland and Russia, the Ministries of Foreign Affairs of the Republic of Poland and the Russian Federation wish to express their conviction that the memorial sites and repose places of victims of warfare and repression, Polish citizens on the territory of the Russian Federation and Russian citizens on the territory of the Republic of Poland, should enjoy special care and protection.

Guided by good will and humanitarian values, the Russian Party intends to start in May 1994 in Katyń and Miednoje the exhumation of the remains of victims of the totalitarian regime, including Polish Army officers, and participate in their burial with due respect. The Russian Party declares that it is ready to cover the costs connected with the above and provide assistance in the arrangement of graveyards—monuments in Katyń and Miednoje.

The Russian Party intends also to provide further assistance in the places of martyrdom of the Polish citizens on the territory of the Russian Federation.

The Polish Party declares that it is ready to strictly co-operate with the Russian Party in order to ensure due care about the repose places of soldiers not covered by this agreement, which are located on the territory of Poland. Decisions involving change of status of such repose places shall be taken after prior notification of the Russian consular offices in Poland.

Both Parties shall develop co-operation in order to preserve on their territories the memorial sites connected with the history of Poland and Russia. Text: Dz. U. (Journal of Laws) of 1994 no. 112 item 543 and MIKOŁAJCZYK 1997, 76.

<sup>24</sup> Agreement between the Government of the Republic of Poland and the Government of the Russian Federation on Cooperation in the Sphere of Culture, Science and Education, done at Warsaw on 25 August 1993. It came into force—pursuant to provisions of Article 30 of the Agreement—on 15 December 1993. Text: Dz. U. (Journal of Laws) of 1994 no. 36 item 133 and PRZYBOROWSKA-KLIMCZAK, STASZEWSKI and WRZOSEK 2002, 221–25.

preserve cultural and historical monuments and buildings and other object of material and spiritual culture of one of the Contracting Parties on the territory of the other. Both Parties concluded that special focus will be placed on preserving monuments and memorials associated with the culture of both nations as well as assurance of free access to them (Article 9).

In the Polish-Belarusian Treaty signed on 23 June 1992, the Parties emphasized in the Preamble that both countries “[...] to a large extent have shared history, whose best tradition involves the co-existence and mutual enrichment of cultures” and pointed to the “[...] ethnic and cultural proximity [...]” of both countries as well as “[...] the fact that Polish and Belarusian people residing on the territories of both Contracting Parties contribute significantly to the development of both Countries and to the culture of both nations [...].” It was also highlighted that they will strive “[...] to strengthen the basis of good neighbourly cooperation between the Republic of Poland and the Republic of Belarus and to enhance mutual understanding between the Polish and Belarusian nations [...].” The Contracting Parties undertook—as results from the provisions of Article 25 of the Treaty—to afford legal protection and well as to maintain, according to the norms of international law (including humanitarian law) and national and religious customs, military and civilian cemeteries, graves and places of burial which are currently located or will be discovered in the future on their territory which is the object of commemoration of the citizens of the other Contracting Party. They also agreed that citizens of both Contracting Parties will have access to graves and places of burial of their compatriots located on the territory of the other party and that they will be allowed to look after these places. Moreover, it was agreed that the Contracting Parties will cooperate in tracing and registering places of burial of citizens of the other Contracting Party on its territory.

The Treaty also includes, similar to the Polish-Ukrainian and Polish-Russian agreements, a provision which stipulates that each of the Contracting Parties will provide proper legal, material and other protection on their territories of values, monuments and facilities related to the cultural and historical heritage of the other Party or shared heritage, and will also endeavour to trace, preserve, consolidate and circulate them, including the creation of easy access to them (Article 22(5)). It is worth noting that the provision refers not only to the values, historical buildings and facilities associated with the cultural and historical heritage of the other Contracting Party located on the territory of the Party, but also to those that are shared by both of the Contracting Parties.

Following the Polish-Belarusian 1992 political treaty, the Parties signed on 21 January 1995 the Agreement of the Protection of Graves and Memorial Sites of Victims of Wars and Repressions.<sup>25</sup> It was signed—as emphasized in the Preamble—“[...] wishing to commemorate, with due respect, memorial sites and final resting places of soldiers and civilians who died, were killed and murdered as a result of struggle for independence, warfare or repression [...]” This Act regulates, pursuant to its Article 2, Parties’ cooperation in the resolution of matters related to the identification, registration, arrangement,<sup>26</sup> maintenance and due preservation<sup>27</sup> of memorial sites and final resting places—Polish ones in the Republic of Belarus and Belarusian ones in the Republic of Poland—of soldiers and civilians that died, were killed or murdered as a result of struggle for independence, warfare or repression. Moreover, it applies to matters related to the exhumation of remains of the dead and their repeated burial with due respect. It was also agreed that the Parties shall exchange any information they may have related to the location of memorial sites and final resting places, their number and size and personal data of the dead, killed and murdered as well as any other information related to those persons, connected with the realisation of this agreement. Each of the Contracting Parties undertook to prepare and submit to the other Party lists of all memorial sites and final resting places. The Agreement also stipulates that in the case of identification of new memorial sites and final resting places, the Party on whose territory they are located, shall undertake immediate measures aimed at their protection and such places, against the Parties’ mutual agreement, shall be included in the lists of all memorial places and final resting places.

Moreover, Poland and Belarus signed on 25 March 1995 the Agreement on Cooperation in Protection of the Cultural Heritage<sup>28</sup> and on 27 November

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<sup>25</sup> Agreement between the Government of the Republic of Poland and the Government of the Republic of Belarus on the Protection of Graveyards and Memorial Sites of Victims of Wars and Repressions, done at Brest on 21 January 1995. It came into force—pursuant to provisions of Article 11(1) of the Agreement—on 8 March 1995. Text: *Dz. U. (Journal of Laws)* of 1997, no. 32 item 185 and *MIKOŁAJCZYK* 1997, 85–88.

<sup>26</sup> It needs to be noted, that—pursuant to the provisions of the Agreement—“arrangement of memorial sites and final resting places” shall mean fixing of their limits, raising of tombstones, monuments and commemorating burial places and displaying of commemorative plaques.”

<sup>27</sup> It should also be noted that—pursuant to the provisions of the Agreement—“preservation of memorial sites and final resting places” shall mean maintenance, in due order, of graves, tombstones, monuments, commemorating burial places and commemorative plaques.

<sup>28</sup> Agreement between the Government of the Republic of Poland and the Government of the Republic of Belarus on Cooperation in Protection of the Cultural Heritage, done at Warsaw on 25

1995 on Cooperation in the Area of Culture, Science and Education.<sup>29</sup> In the 1995 Agreement the Contracting Parties agreed to undertake joint registration, stock-taking and research aimed at establishing the quantity, value and condition of the movable and immovable cultural property located in the territory of their States which is connected with the history and culture of the other Contracting Party. It was also agreed that the results of these activities will be made public by each of the Contracting Parties at least once a year (Article 1). In turn, in the 1997 Agreement, the Contracting Parties understood to preserve the cultural heritage, to protect historical monuments and buildings and cultural goods of each of the Contracting Parties, located in the territory of the other Contracting Party (Article 20) and also to cooperate in terms of stock-taking, research, preservation and restoration of cultural goods and also to make it possible for specialists, research teams and interested citizens of the other Party to access the cultural goods located in the territory of each of the Contracting Parties as well as information about them (Article 21).

The last country among the neighbouring countries—formed after the collapse of the USSR—with which Poland signed an agreement on friendship and cooperation was Lithuania. The Treaty between the Republic of Poland and the Republic of Lithuania on Friendly Relations and Good-Neighbourly Cooperation was signed, after long and difficult negotiations associated with the discrepancies as to the historical assessment of mutual relations and problems with agreeing on the final wording of the Preamble,<sup>30</sup> at Vilnius on 26 April 1994. In the Treaty the Contracting Parties emphasized in the Preamble that they bear “[...] in mind the complexity of the history of our Nations and the long closeness of Poles and Lithuanians, taking into account the possibility of different interpretations of their common history by both Nations” and they demonstrated that “[...] the knowledge of the good and bad pages in the history of our States has to serve consolidation of mutual understanding between the Polish and Lithuanian Nations in a unifying and

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March 1995. It came into force—pursuant to the provision of Article 11 of the Agreement—on 5 March 1997. Text: internet treaty data base of the Ministry of Foreign Affairs of the Republic of Poland, <https://traktaty.msz.gov.pl/> (access: 30 January 2020).

<sup>29</sup> Agreement between the Government of the Republic of Poland and the Government of the Republic of Belarus on Cooperation in the Area of Culture, Science and Education, done at Warsaw on 27 November 1995. It came into force—pursuant to provisions of Article 33 of the Agreement—on 29 April 1996. Text: Dz. U. (Journal of Laws) of 1996 no. 76 item 365.

<sup>30</sup> On the negotiations see BRODOWSKI 1995, 115–16; WIDACKI 1997, 153–54. See also: KAWĘCKI 2013, 237ff.

democratic Europe” and they also expressed “[...] regret for the conflicts between both States after World War One when the Poles and Lithuanians embarked on the construction of a new independent life after a long period of servitude and condemning the use of force which took place in relations between both Nations [...].” Moreover, they deplored “[...] the tragedy and immense losses [that] visited our nations at the hands of totalitarian systems in the 20th century[...].” and aimed “[...] at the comprehensive development of mutual relations and friendly cooperation on the basis of the principle of good neighbourship [...],” “[...] taking into account that Poles and Lithuanians who have lived for many centuries in the territories of both States contributed and are contributing solid values to the culture of both nations and States and have made significant contribution to the development of European civilization [...].”

In Article 23 of the Polish-Lithuanian Treaty the Contracting Parties undertook to preserve and protect legally and to maintain according to international law, national and religious customs, military and civilian cemeteries, graves and burial places together with monuments and other places and objects of commemoration currently located or discovered in the future in its territory that constitute the object of commemoration and remembrance of the citizens of the other Party. The Contracting Parties also ensured that citizens of both States will have access to and possibility of care of graves, cemeteries and burial places, and sites of remembrance of their compatriots, located in the territory of the other Party. Moreover, they agreed to cooperate in disclosure and registration of burial places of citizens of the other Party located in its territory.

It also needs to be added, that in Article 18(1) the Contracting Parties took on an obligation to extend special care to places and cultural goods in their territory that bear witness to historical events and the cultural and scientific achievements and traditions of the other party and will promote their cultural circulation and ensure proper legal, material and other kinds of protection, and will ensure free and unobstructed access to them, or to provide for such access in cases when its provision is beyond the competences of that State. They agreed to appoint Plenipotentiaries of the Governments of the Parties for implementation of these tasks.<sup>31</sup>

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<sup>31</sup> They must also carry out obligations under Article 18(2) which stipulates that the Parties will make efforts to trace, identify and restore cultural goods removed from the territory of the other Party in violation of international rules.

These two countries—which needs to be emphasized—did not sign a separate agreement on the protection of graves and cemeteries. They signed on 17 December 1998 the Agreement on Cooperation in the Area of Culture, Science and Education,<sup>32</sup> which in fact repeated what was specified in Article 18(1) of the 1994 Treaty and concluded that the parties will look after cultural monuments and cultural goods in their territory that bear witness to historical events and the cultural and scientific achievements and traditions of the other party and will take steps to include them in the cultural process and will ensure proper legal, material and other kinds of protection, and will ensure free and unobstructed access to them, also in cases when looking after them is beyond the competences of that State (Article 16). It was also agreed that the Parties will cooperate in terms of stock-taking, research, preservation and restoration of cultural and historical goods and also that they will make it possible for specialists and researchers of the other Party to conduct research on the cultural goods, in accordance with the applicable laws in each of the Contracting Parties (Article 17). The Agreement also stipulates that implementation of these provisions<sup>33</sup> is vested in Plenipotentiaries of the Governments who will directly sign a separate agreement.

Guided by the provisions of the 1994 Treaty and the 1998 Agreement, both states signed on 16 December 1999 the Agreement on Cooperation of Plenipotentiaries of the Governments in the areas of protection of the cultural heritage.<sup>34</sup> It was also agreed therein that the Parties will carry out works in terms of recording, stock-taking, researching and protection of cultural heritage objects associated with the common history and culture of both Parties. Unfortunately, this Agreement has not come into force to date.<sup>35</sup>

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<sup>32</sup> Agreement between the Government of the Republic of Poland and the Government of the Republic of Lithuania on Cooperation in the Area of Culture, Science and Education, done at Vilnius on 17 December 1998. It came into force—pursuant to provisions of Article 25 of the Agreement—on 5 January 2000. Text: M.P. (Polish Monitor) of 2002 no. 31 item 491.

<sup>33</sup> And also those resulting from Article 18 of the Agreement, which stipulated that the Parties will take steps to trace, identify the place of storing and restore cultural goods removed from the territory of the other party in violation of international rules.

<sup>34</sup> Agreement between the Government of the Republic of Poland and the Government of the Republic of Lithuania on Cooperation of the Plenipotentiaries of the Governments in the Area of Protection of Cultural Heritage, signed at Warsaw on 16 December 1999. Text: internet treaty data base of the Ministry of Foreign Affairs of the Republic of Poland, <https://traktaty.msz.gov.pl/> (access: 30 January 2020).

<sup>35</sup> One cannot forget the fact that before the signing of the 1994 Treaty, the Polish Party in 1992 gained permission from the Lithuanian authorities to order the military part of the Rasos Cemetery. See more in: WIDACKI 1997, 154.

### 3. TREATIES SIGNED WITH STATES THAT ARE NOT BORDERING POLAND

The first agreements on friendship and cooperation that Poland signed with countries formed after the collapse of the USSR among countries it is not bordering were treaties signed with Latvia on 1 July 1992 and Estonia on 2 July 1992. These treaties refer in their Preambles i.a. to the historic ties between the Contracting Parties and the friendship between the Contracting Parties, and in the Polish-Latvian agreement were worded as follows: “[...] bearing in mind the historic ties between Poland and Latvia and friendly relations in the twenties and thirties of the 20th century and recalling the traditional friendship linking the two States and peoples [...],” whereas in the Polish-Estonian agreement it was concluded that the Parties desire “[...] to restore and comprehensively develop valuable elements [...]” of relations. The Agreements do not include provisions which mention *expressis verbis* cooperation in terms of protection of graves and cemeteries. However, it is worth noting provisions of Article 11(1) of both Agreements, in which the Parties undertook to encourage all-round development of cooperation in the field of culture, science and education and to apply the existing international and European standards defined in particular in UNESCO conventions and in the Document of the Cracow CSCE Symposium on the European cultural heritage.

Moreover, in the Polish-Latvian Agreement the Contracting Parties agreed to conclude an inter-governmental agreement on cultural and scientific cooperation between them and that they will cooperate, intensify and expand—on the basis of agreements already in force between them—cultural exchange in all spheres and at all levels. Implementing the provisions of the Treaty of 1 July 1992, on the same day Poland and Latvia signed the Agreement on Cultural, Scientific and Educational Cooperation.<sup>36</sup> It stipulated that the Parties shall ensure protection of the cultural heritage of both States and will take efforts to maintain and preserve in their territory historical objects and cultural values of the other Party (Article 14). The said Agreement was replaced with the Polish-Latvian Agreement on Cultural and Educational

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<sup>36</sup> Agreement between the Government of the Republic of Poland and the Government of the Republic of Latvia on Cultural, Scientific and Educational Cooperation, done at Riga on 1 July 1992. It came into force—pursuant to provisions of Article 19 of the Agreement—on 30 December 1992. Text: Dz. U. (Journal of Laws) of 1993 no. 114 item 504.

Cooperation signed on 29 March 2006.<sup>37</sup> The 2006 Agreement included a provision similar to the one in the 1992 Agreement. Article 18 of the 2006 Agreement stipulates that the Parties shall ensure the protection of the national cultural heritage of the other Party on their territories and that they shall undertake joint efforts for the preservation and conservation of movable and immovable, valuable objects as well as archaeological monuments of the other party on their territories.

In turn, in the Polish-Estonian Treaty it was additionally concluded that the Contracting Parties will intensify and expand—on the basis of the already existing agreements and programmes between them—cultural exchange in all spheres and at all levels (Article 11(2)). It needs to be borne in mind that the Agreement on Cultural and Educational Cooperation<sup>38</sup> between both States was signed on the same day as the Treaty on Friendship and Cooperation, that is 2 July 1992. It provides in Article 12 that the Contracting Parties shall take efforts to protect national integrity of the cultural heritage of both States and to maintain and preserve on its territory historical objects and cultural values of the other Contracting Party.<sup>39</sup>

The following year, on 20 April 1993, the Treaty on Friendship and Cooperation between the Republic of Poland and the Republic of Georgia was signed. These countries, by analogy to the Polish-Estonian Agreement, agreed that they signed it “wishing to reconstruct and comprehensively develop the precious Polish-Georgian relations, invoking the traditional friendship between the two peoples” and also “seeking to lay foundations for friendly coexistence and development of close cooperation [...]” Provisions directly referring to cooperation in terms of protection of graves and cemeteries were also included in this Agreement. Whereas the Treaty includes also almost identical provisions to this of the Polish-Estonian political agreement which refer to cultural cooperation. Article 11 stipulates that the Par-

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<sup>37</sup> Agreement between the Government of the Republic of Poland and the Government of the Republic of Latvia on Cultural and Educational Cooperation done at Riga on 29 March 2006. It came into force—pursuant to provisions of Article 25 of the Agreement—on 19 July 2007. Text: Dz. U. (Journal of Laws) of 2008 no. 161 item 1000.

<sup>38</sup> Agreement between the Government of the Republic of Poland and the Government of the Republic of Estonia on Cultural and Scientific Cooperation, done at Tallinn on 2 July 1992. It came into force—pursuant to provisions of Article 15 of the Agreement—on 28 January 1993. Text: Dz. U. (Journal of Laws) of 1995 no. 15 item 75.

<sup>39</sup> Both countries also signed: Agreement on Cultural Cooperation between the Minister of Culture and National Heritage of the Republic of Poland and the Ministry of Culture of the Republic of Estonia, signed at Tallinn on 30 March 2006. It came into force—pursuant to provisions of Article 18 of the Agreement—on 4 August 2006. text: M.P. (Polish Monitor) of 2006 no. 79 item 789.

ties will encourage all-round development of cooperation in the field of culture, science and education and apply the existing international and European standards defined in particular in UNESCO conventions and in the Document of the Cracow CSCE Symposium on the European cultural heritage. It was also agreed that on the basis of existing agreements and programmes between them the Parties will intensify and expand cultural exchange at all levels—in particular they will promote cooperation between literary and artistic associations and cultural institutions and organizations and direct contacts between Polish and Georgian writers and artists.

Both countries, Poland and Georgia, signed on 20 April 1993 the Agreement on Cultural and Scientific Cooperation, in which they agreed—similar to what is the case in the Polish-Estonian Agreement on Cultural and Scientific Cooperation<sup>40</sup>—that they will take efforts for the protection of the integrity of the national cultural heritage of both States and to maintain and preserve on its territory historical objects and cultural values of the other Contracting Party.

The following year, on 15 November 1994, the Treaty on Friendship and Cooperation between Poland and Moldova was signed. The Parties, as concluded in the Preamble to the Agreement, signed the Treaty “bearing in mind historical linkages and traditions of friendship between Poland and Moldova” and “aiming at creation of good-neighbourly relations and development of fruitful co-operation.” The Agreement includes (in its Article 11) a provision which is very similar to the one included in the Polish-Georgian Treaty. The said Article 11 stipulates that the Parties will encourage all-round development of cooperation in the field of culture, science and education on the basis of existing international and European standards defined in particular in UNESCO conventions and in the CSCE documents. It was also agreed that the Parties will sign inter-governmental agreements on cooperation in terms of culture, science and education, and that they will intensify and expand cultural exchange in all fields and at all levels. They will especially support cooperation between the associations of authors and artists as well as cultural institutions and organizations, and also direct contacts between Polish and Moldavian representatives of arts, culture and science.

Implementing the 1994 Treaty on Friendship and Cooperation, Poland and Moldova signed on 10 December 1997 the Agreement of cultural and

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<sup>40</sup> Agreement between the Government of the Republic of Poland and the Government of the Republic of Georgia on Cultural and Scientific Cooperation, done at Tbilisi on 20 April 1993. It came into force—pursuant to provisions of Article 20 of the Agreement—on 5 July 1993. Text: *Dz. U. (Journal of Laws)* of 1993 no. 117 item 525.

scientific cooperation,<sup>41</sup> in which both States committed to reciprocal support in terms of protection and preservation of historical objects and ensuring integrity of the cultural heritage (Article 2 sentence 1).

Poland and Uzbekistan signed the Agreement on Friendship and Cooperation on 11 January 1995, referring, as stated in the Preamble, to the traditional friendship linking both nations. This Agreement, in the provision addressing cultural cooperation, apart from one similar to the provision of the Polish-Moldavian agreement which stipulated that the Contracting Parties will encourage all-round development of cooperation in the field of culture, science and education and that they commit to mutual protection of cultural goods of both nations, on the basis of existing international and European standards defined in UNESCO conventions, CSCE documents and other international agreements, it was also agreed, which needs to be emphasized and which was not included in the Polish-Moldavian, Polish-Georgian or Polish-Estonian agreement, that the Contracting Parties will provide special care to historical places and cultural goods associated with the history and traditions of the other State-Contracting Party. The Parties also agreed, similar to the Polish-Georgian Agreement, that they will, on the basis of existing agreements and programmes between them, intensify and expand cultural exchange at all levels—in particular they will promote cooperation between literary and artistic associations and cultural institutions and organizations and direct contacts between Polish and Uzbek writers and artists.

On 11 January 1995 Poland and Uzbekistan signed the Agreement on Cultural and Scientific Cooperation<sup>42</sup> and the Agreement on the Protection of Final Resting Places and Memorial Sites of Victims of War and Repression.<sup>43</sup>

The Agreement on Cultural and Scientific Cooperation includes, like the agreements on cultural cooperation of Poland with Estonia and Georgia, an obligation on the parties to take efforts for the protection of territorial integ-

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<sup>41</sup> Agreement between the Government of the Republic of Poland and the Government of the Republic of Moldova on Cultural and Scientific Cooperation, done at Chisinau on 10 December 1997. It came into force—pursuant to provisions of Article 14 of the Agreement—on 1 February 1999. Text: *Dz. U. (Journal of Laws)* of 1999 no. 39 item 381.

<sup>42</sup> Agreement between the Government of the Republic of Poland and the Government of the Republic of Uzbekistan on Cultural and Scientific Cooperation, done at Warsaw on 11 January 1995. It came into force—pursuant to provisions of Article 19 of the Agreement—on 22 May 1996. Text: *Dz. U. (Journal of Laws)* of 1996 no. 114 item 543.

<sup>43</sup> Agreement between the Government of the Republic of Poland and the Government of the Republic of Uzbekistan on the Protection of Final Resting Places and Memorial Sites of Victims of War and Repressions, done at Warsaw on 11 January 1995. It came into force—pursuant to provisions of Article 8(1) of the Agreement—on 30 June 1995. Text: STASZEWSKI 2019, 214–17.

rity of the national cultural heritage of both States and to maintain and preserve in its territory historical objects and cultural values of the other Contracting Party.

In the Agreement on Mutual Protection of Final Resting Places and Commemoration of Victims of War and Repressions, the Parties emphasized in the Preamble that they agreed it “[...] fulfilling the will of their nations, who always, with due commemoration and respect, preserved resting places of those who died or were murdered and the memory about their actions” and also “wishing to commemorate with due respect the final resting places of both civilian and military persons buried in the State territories of both Contracting Parties [...]”. Article 1 of the Agreement specified principles that the Parties are to be guided by when solving all problems associated with tracing, registering, arranging and preserving in due condition and maintaining for the future burial and memorial sites of soldiers and civilians, and also with possible exhumations and reburial of the discovered remains. The Contracting Parties also agreed that they will exchange through authorised representatives of civilian and military authorities full information they may have about the location of final resting places and memorial sites, their number and size and about the personal data of those who died or were murdered, as well as all information concerning these people. Moreover, the Parties concluded that they will establish a list of final resting places and memorial sites, where they undertake to maintain these places in due order, according to international norms and standards and national and religious customs. It was also agreed that when tracing new resting places they will be protected by each Contracting Party and entering these places into official lists will be done upon mutual consent of authorized representatives of the Parties.<sup>44</sup>

#### 4. FINAL NOTES

The analysis of treaties on friendship and cooperation signed by Poland with countries formed after the collapse of the USSR shows that all of these political agreements concluded with neighbouring countries (Belarus, Lithuania, Ukraine, Russia) included provisions concerning cooperation in terms of protection of graves and cemeteries, which without a doubt proves that

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<sup>44</sup> More on the provisions of the Polish-Uzbek Agreement on the protection of graves and cemeteries, see ŚMIDOWSKI 2001, 394–95.

Parties to these agreements recognize the significant role of this type of cooperation in shaping friendly relationships between them. It needs to be noted that Poland signed separate agreements with three of them (with Belarus, Ukraine and Russia) in this regards which specified legal framework of the implemented cooperation. Unfortunately, no such agreement was signed with Lithuania, which may be surprising given that there are a lot of burial sites of Polish people in the territory of Lithuania, as well as necropolises which are related to the history of both nations.

In reference to political treaties signed by Poland with non-neighbouring countries and those formed after the collapse of the USSR, that is agreements concluded (in the chronological order) with Estonia, Latvia, Georgia, Moldova and Uzbekistan, only the political agreement with Uzbekistan had provisions directly referring to cooperation in terms of protection of graves and cemeteries and it is with this country that Poland signed a separate agreement on cooperation for the protection of graves and cemeteries. It seems reasonable as there are a number of places on which remains of Poles rest in the territory of Uzbekistan.<sup>45</sup> It needs to be noted here that the other agreements include provisions concerning cultural cooperation which were elaborated in bilateral agreements on cultural cooperation that addressed the protection of the cultural heritage of the Parties. These provisions without a doubt may be considered a basis for development of cooperation in terms of protection of graves and cemeteries.

It is worth mentioning that a political treaty in Polish-Kyrgyz relations was supposed to be signed, too. It was initialled in June 1993 by representatives of both Parties, but no further steps were taken in order to execute it [FEDOROWICZ 2004, 762]. What is interesting, provisions of the Treaty on Friendship and Cooperation between both countries were referred to in the Preamble of the Polish-Kyrgyz Agreement on Mutual Protection of Graves and Places of Remembrance of Victims of War and Repressions,<sup>46</sup> in which both parties specified the framework of cooperation in terms of protection of graves and cemeteries.

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<sup>45</sup> See i.a.: PIĄTEK and PLATAJS 2011; HEJKE 2011. See also: PIRIMKUDOV 2001, 51ff.

<sup>46</sup> Agreement between the Government of the Republic of Poland and the Government of the Republic of Kyrgyzstan on Mutual Protection of Graves and Places of Remembrance of Victims of War and Repressions, done at Warsaw on 5 June 1993. It came into force—pursuant to provisions of Article 8(1) of the Agreement—on 18 November 1993. Text: PRZYBOROWSKA-KLIMCZAK and STASZEWSKI 2006, 26–30. See FEDOROWICZ 2004, 765-66.

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PROTECTION OF GRAVES AND CEMETERIES IN TREATIES ON FRIENDSHIP  
AND COOPERATION SIGNED BY POLAND WITH STATES  
FORMED AFTER THE COLLAPSE OF THE USSR

Summary

Cooperation of states in terms of protection of graves and cemeteries is an important factor of building mutual respect and trust between countries and encourages the creation of a basis of understanding and rapprochement between nations. This article analyses agreements on friendship and cooperation signed by Poland, which play a special role in state treaty relations. The personal scope of the study was limited to agreements signed with states formed after the collapse of the USSR—this area, taking into account various events shaped historically (and not only in the scope of the history of Poland) is especially important in the context of protection of graves and cemeteries. It is where numerous necropolises and places of burial of Poles are located. It also needs to be taken into account that a number of places of burial of remains of persons coming from various countries are located in the territory of Poland. The aim of the study is to provide an answer to the research question of whether cooperation in terms of protection of graves and cemeteries was taken into account in the provisions of political treaties signed by Poland with the aforementioned states and if this cooperation was given an appropriate rank, thus, whether there was an adequate legal framework guaranteeing implementation of the cooperation in an appropriate way in the discussed scope.

**Keywords:** treaties on friendship and cooperation; political treaties; Polish treaty practice; graves; cemeteries; final resting place; protection of graves and cemeteries; treaties signed by Poland with states formed after the collapse of the USSR

OCHRONA GROBÓW I CMENTARZY W TRAKTATACH O PRZYJAŹNI I WSPÓŁPRACY  
ZAWARTYCH PRZEZ POLSKĘ  
Z PAŃSTWAMI UKSZTAŁTOWANYMI PO ROZPADZIE ZSRR

Streszczenie

Współdziałanie państw w zakresie ochrony grobów i cmentarzy stanowi ważny czynnik budowy wzajemnego poszanowania i zaufania między państwami oraz sprzyja tworzeniu podstaw zrozumienia i zbliżenia między narodami. W niniejszym artykule dokonano analizy zawartych przez Polskę umów o przyjaźni i współpracy, które odgrywają szczególną rolę w stosunkach traktatowych państw. Zakres podmiotowy opracowania ograniczony został do umów podpisanych z państwami ukształtowanymi po rozpadzie ZSRR – obszar ten, biorąc pod uwagę różne wydarzenia ukształtowane historycznie (i to nie tylko w zakresie historii Polski), jest szczególnie ważny w kontekście ochrony grobów i cmentarzy. To tam znajdują się liczne nekropolie i miejsca pochówku Polaków. Należy także mieć na względzie, że na terytorium Polski zlokalizowanych jest też wiele miejsc pochówku szczątków ludzkich osób pochodzących z różnych państw. Celem opracowania jest udzielenie odpowiedzi na pytanie badawcze, czy współpraca w zakresie ochrony grobów i cmentarzy została uwzględniona w postanowieniach traktatów politycznych zawartych przez Polskę ze wspomnianymi państwami oraz czy współpracy tej nadano odpowiednią rangę, a tym samym, czy znalazły się odpowiednie ramy prawne gwarantujące we właściwy sposób realizację współpracy we wskazanym obszarze.

**Słowa kluczowe:** traktaty o przyjaźni i współpracy; traktaty polityczne; polska praktyka traktatowa; groby; cmentarze; miejsca spoczynku; ochrona grobów i cmentarzy; traktaty zawarte przez Polskę z państwami ukształtowanymi po rozpadzie ZSRR