

BOHDAN KHMELNYTS'KY'S TREATY WITH THE TSAR OF MUSCOVY IN 1654

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The Tercentenary of the treaty of Hetman Bohdan Khmelnyts'ky with the tsar of Muscovy, Aleksei Mikhailovich, was observed in 1954. For 110 years (1654-1764) this Treaty of Pereyaslav was considered the formal basis of the relationship between the Ukraine and Muscovy, notwithstanding its many violations, amendments, and even forgeries. There is a wealth of historical and legal writing on it in Ukrainian and Russian; and, under normal conditions, the Tercentenary of the treaty should provoke new research and ideas, a new evaluation of its historical, political, and legal meaning. Unfortunately, there is no freedom of research, press, or speech in the present Soviet Ukraine. Ukrainian scholars living in the Free World can not forget nor ignore this important act. New studies of the treaty have been published which supplement earlier writings with critical observations, and new ideas and new studies of the treaty have been made from different points of view.

Without repeating what has already been written, I wish to offer a few explanations which, I believe, will help reveal the true contents of the legal aspects of the treaty. I would like to first call attention to the "diplomats" of the Treaty of 1654, i. e., a description and evaluation of the acts which contained the text of the treaty. The text is contained not in one, but in three acts of different origin and form.

(1) A draft of an agreement composed in Chyhryn during Khmelnyts'ky's conferences with his staff. The original of this draft, dated February 17, 1654, bears the signature of B. Khmelnyts'ky and the seal of the Zaporozhian Host. The envoys of the Host, Advocate General Samiylo Bohdanovych Zarudny and Colonel Pavlo Teterya of Poltava, took the draft to Moscow and

delivered it to the council of the tsar's boyars who were to draw up the treaty. In Moscow, this draft was translated by Muscovite clerks from the Ukrainian chancery language of the period (which the Muscovites called "Byelorussian") into the Russian language. After finishing the preliminaries, the translation of the draft was divided into twenty-three articles, and each article was subscribed with a resolution of the tsar and boyars. In this form, i. e., not in the original but in the translation from the "Byelorussian" language, *Spisok s beloruskago pisma*, it was delivered by the boyars to the envoys, who had brought it to Chyhryn. *The original draft of the agreement bearing the signature of B. Khmelnyts'ky remained in Moscow.* In 1870, when researching documents pertaining to the Treaty of 1654 in the Moscow archives, H. Karpov was unable to find this original in the Ukrainian language. He only found the *Spisok s beloruskago pisma* or, more accurately, a copy of the document delivered to the envoys of the Zaporozhians. Karpov published it in the tenth volume of *Akty, otnosyashchiesya k istorii Yuzhnoi i Zapadnoi Rossii*. What happened to the original draft is not known. It is possible that it was kept at one time in one of the Moscow archives or destroyed for some reason. We do not know. The *Spisok* brought by the envoys to Chyhryn has not been preserved either.

Thus, only the text of the draft, which was published by H. Karpov, remains. It is impossible to state with any degree of certainty to what extent this text corresponds to the original draft, since both the original draft and the copy brought from Moscow are missing. I will only state that the published text contains additions which were certainly not in the original delivered to the envoys. Thus, following the last article (23) on the Kodak fortress and the tsar's resolution, the following addition had been inserted: "The boyars told the sovereign to add, whoever of the sovereign's people [and whatever] their rank who start to go into the sovereign's Cherkassian cities and towns, should be sought and delivered." In the other acts pertaining to the treaty there was no mention of this. Moreover, the translated text reflects an imperfect command of the "Byelorussian" lan-

guage, i. e., the language of the original, on the part of the Muscovite translators; this created some confusion.¹

The tsar's title read: *vseya Velikiya i Malya Rusii samoderzhavets*. Moscow began to use the title *i Malya Rusii* after the Pereyaslav Council, i. e., after January 8, 1654. The Moscow clerks had to use this "newly-acquired title," but it is doubtful whether the hetman and his officers knew about it when they prepared the draft of February 17, 1654.

Matters are even worse when it comes to the second and third treaty documents: the act with eleven articles and the tsar's writ dated March 27, 1654. These documents were prepared in Moscow in Russian and immediately translated into the "Byelorussian" language; in this form they were delivered to the envoys of the Zaporozhian Host. These translations, which were to serve as *originals* (the writ bore the tsar's new seal with the inscription "newly-acquired titles"), perished along with the archives of B. Khmelnyts'ky. In the Moscow archives H. Karpov found the rough drafts of these acts in Russian with the many corrections, additions, and notes of the clerk of the council, Almaz Ivanov. The texts of these rough drafts were included in the first volume of *Polnoye sobraniye zakonov Rossiiskoi Imperii*. The texts could only be verified against the copies in the "Byelorussian" language which were handed to B. Khmelnyts'ky's envoys and which have disappeared. Researchers were compelled to study, elucidate, and make conclusions on the basis of these rough drafts. However, these documents are filled with crossed out words and phrases and with various notes; thus, there is no criteria for determining what part of the preliminary drafts was inserted into the text given to Khmelnyts'ky's envoys.

The rough drafts of the eleven article acts and of the tsar's writ were composed in Moscow by the Muscovite clerks and therefore filled with various forms of "Muscovite praise of the

¹ For example, article four reads: "Uryadniki iz nashikh lyudei budut poddannymi t. ts. v-va ispravlyati ili urezhati"; or article five: "Starestvo chigirinskoye chtob i nyne dlya vsevo ryadu prebyvalo"; or article twelve, "o zime, takozh i o stanekh." The Muscovite text is so obscure that it is impossible to translate it into English.

tsar," e. g., "the tsar's grace," "the tsar's mercy," "we bow our foreheads to the face of the earth," "grant us bounteously," "have mercy," and so forth. This contributed to a great extent to the incorrect interpretation of the treaty by Russian authors, even to their failure to recognize the bi-lateral nature of these acts.

So much for the text of the treaty from the standpoint of its documentary authenticity. It must be added that in the interpretation of treaties, the determination of the true intent and wishes of the contracting parties is of great, if not decisive, importance. And in this regard, prime significance is attached not only to the actual text of the treaty, but to all the notes on the preliminary negotiations and to the explanations of the signatories at the time of its composition. It is well known that Khmelnyts'ky and his officers spent over a month drawing up the draft of the treaty (January 14 to February 17); they must have kept notes on explanations, propositions, projected articles, which were accepted or rejected, etc. But no minutes of conferences, or notes have come down to us. The negotiations with the Muscovite envoys in Pereyaslav, the course of the Pereyaslav Council, the transactions of the Cossack envoys with the boyars in Moscow have been preserved in the notes of V. Buturlin, an envoy, in the Diplomatic Record and in the minutes of the Foreign Office in Moscow. They were also published in the tenth volume of *Akty Yuzhnoi i Zapadnoi Rossii* by H. Karpov. Some explanations of the Cossack envoys are of utmost importance, e. g., those which concerned the foreign relations of the Zaporozhian Host, the tsar's tribute, pay to the Zaporozhian Host, and they have been utilized in interpreting the treaty. But the authenticity of the Diplomatic Record has long been suspect. The well-known councilor of the Foreign Office, Kotoshikhin, a prototype of modern Soviet Russian official-escapees, very accurately characterized the veracity and objectivity of these documents in his work, *O Rossii v tsarstvovanii Alekseye Mikhailovicha*. He wrote: "They (the Muscovite envoys) write in the Diplomatic Record not what had been said, but beautifully, cleverly, using their intelligence for deceitful purposes, so that they can get honors from the tsar for themselves and many benefits. And they are not ashamed to do

this, for who would give them away in those deeds?" In all truth, who would give them away if all did the same?

Since researchers of the Treaty of 1654 never saw the original, nor any additional explanatory documents except those mentioned above, it is not surprising that the opinions of researchers were uneven and contradictory. The disagreements and errors of scholars also resulted from their failure to analyze not all three acts, which constituted the treaty, but only the eleven article act drawn up by the boyars in Moscow on March 27, 1654. More frequently they studied a forged version of the latter with fourteen articles which made its appearance in 1659 after the death of Khmelnyts'ky. This was considered to be the authentic Treaty of 1654 until almost the beginning of the twentieth century. This forgery was introduced into the first volume of *Polnoye sobraniye zakonov* under the date of 1659. It contained essential restrictions on the rights of the Ukraine which were not included in the Act of 1654, e. g., the complete prohibition of diplomatic relations with foreign states, subjection of the Kiev Metropolitan to the Moscow Patriarch, introduction of Muscovite *voyevody* in Kiev and Pereyaslav (who were granted the right of financial control over the Ukraine), and some changes of lesser importance. The forgery of the Treaty of 1654 was executed in Moscow; this is evident in the fact that *Belyya Rusii* was added to the tsar's title of *Malyya Rusii* (*vseya Velikiya i Malyya i Belyya Rusii samodержavets*). This very point gave rise to a controversy between the late Professor V. Shcherbyna and myself concerning this additional title. He asserted that the fourteen article act was authentic and that the title *i Belyya Rusii* made its appearance simultaneously with *i Malyya Rusii*. To support his position he referred to the tsar's seal on his writ to B. Khmelnyts'ky in Hadyach, March 27, 1654, the legend of which supposedly contained the title *i Belyya Rusii*.²

In opposing this conclusion, I referred to the text of the entire writ in which the tsar's title was spelled without *i Belyya Rusii*,

² V. Shcherbyna, "Do pytannya pro statti B. Khmelnyts'koho," *Yubil. zbirnyk VUAN na poshanu ak. Mykhayla Hrushevs'koho*, (Kiev 1928), Vol. I.

which made the seal contradict the text of the writ. The tsar's chancery would never have permitted this. Subsequently, V. Prokopovych proved that Shcherbyna had been the victim of an error which occurred in the publication of the book, *Snimki drevnikh russkikh pechatei* [Pictures of Old Russian Seals].³ This book contains a picture (No. 50) of the seal used in the writ to Hadyach; it does not contain the title *i Belyya Rusii*. However, another picture (No. 51) shows another type of seal with the legend *i Belyya Rusii*. Shcherbyna picked the second seal, but Prokopovych proved that this seal was made in 1667 after the Treaty of Andrusiv. Still, our controversy was not decided by seals, but by the tsar's decree of September 3, 1655. This decree that henceforward the tsar's title was to carry the addition *i Belyya Rusii*.⁴ In Moscow, any mistake in the tsar's title committed by a clerk was very severely punished. Therefore, when the treaty was being forged in Moscow in 1659, changes in the text of the real treaty were in order; since it was inadmissible to write the tsar's title as it had been written in the Act of 1654, i. e., without *i Belyya Rusii*, this title had to be added. This is precise evidence of the fact that the Treaty of 1654 in the eleven article version was forged after the decree of 1655.⁵

Another major error occurred when scholars, in interpreting this seventeenth century treaty, used legal theories, concepts and terms of the nineteenth and twentieth centuries, or the hindsight of historical events which took place after the Treaty of 1654.

In my earlier studies of the Treaty of 1654⁶ and in a more recent work,⁷ I had the opportunity to review and critically evaluate the conclusion of almost all Ukrainian and Russian authors

³ V. Prokopovych, *Sfragistychni anekdoty*, "Pratsi istorychno-filolohichnoho t-va v Prazi," (Prague 1938), pp. 15-16.

⁴ *PSZ*, Vol. I, No. 164.

⁵ A. Yakovliv, *Ukrains'ko-moskovs'ki dohovory XVII-XVIII st.*, (Warsaw 1934), pp. 68-70.

⁶ *Ibid.*, pp. 49-52.

⁷ A. Yakovliv, *Dohovir B. Khmelnyts'koho z Moskvoyu 1654 r.*, (New York 1954), pp. 64-69.

on the juridical nature of this treaty. Therefore, at this point I will only resume my conclusions.

On the basis of studies of the text of the treaty in the 1654 version, relevant documents, historical facts of the period of the treaty, and formal declarations of neighboring states and their diplomatic representatives, I have come to the conclusion that the Ukrainian state organized by Hetman B. Khmelnyts'ky under the name of the Zaporozhian Host (*Voys'ko Zaporoz'ke*) was both before the treaty with the tsar of Muscovy as well as after (until the death of B. Khmelnyts'ky in 1657), an independent, sovereign state—sovereign in its internal affairs and in its relations with other nations.

In regard to the internal organization, the Ukrainian state had its supreme national government, headed by a "supreme master," the hetman, who was freely elected by the Ukrainian people at a General Elective Council. It possessed central and local administrative offices and institutions, its own army, courts, and codes of laws, treasury and financial institutions, and, finally, national boundaries and custom offices. Therefore, the Ukraine possessed all the elements of an independent nation: territory, people, and governmental authority.

In the international forum, the Ukraine acted as a sovereign and independent nation in its relations with foreign powers. It was a competent subject of international law, a fact recognized by other nations. In the name of the Ukrainian state Hetman B. Khmelnyts'ky maintained diplomatic relations with foreign states, including Poland and Muscovy; he sent ambassadors abroad and received foreign diplomatic representatives. Count Parchevich, the ambassador of Ferdinand III, the Holy Roman Emperor, stated that early in 1657 in addition to himself there were the following people in Chyhryn accredited to the hetman: the envoys from the Swedish king; the two Princes Rakoczy; an envoy from the Turkish Sultan; one from the Crimean Khan; three envoys from Moldavia; three, from Wallachia; an envoy from the Polish king; a representative from Lithuania; and the envoys from the tsar who had just arrived. B. Khmelnyts'ky concluded treaties and conventions with foreign nations in the

Ukrainian name; in addition to an alliance with the Khan of the Crimea, Khmelnyts'ky concluded a treaty with the Turkish Sultan in 1655. In this same year he signed a military convention with the Swedish king and joined the Baltic League against Poland which was under the protection of the Swedish king and the Lord Protector of England, Oliver Cromwell. Relations with the tsar of Muscovy were maintained by the Ukraine through diplomatic envoys and the tsar sent his own envoys to the hetman. The Muscovite Foreign Office administered the relations between Muscovy and the Ukraine and they were on the same terms as the relations of Moscow with other nations. During the hetmanate of B. Khmelnyts'ky, the Ukraine was recognized by other nations as a competent subject of international law.

The Treaty of 1654 had no effect on the international position of the Ukraine, which was indicated in the letter from the Swedish king to Khmelnyts'ky, dated July 15, 1656. "We know," wrote the king, "that a certain agreement has been made between the Grand Duke of Muscovy and the Zaporozhian nation, but one which has reserved to the nation a complete and inviolate freedom. With reference to this freedom of yours, we desire to enter into correspondence with your highness quite openly, even with the knowledge of the Grand Duke of Muscovy."⁸

From the standpoint of national as well as international law, the Ukraine was *formally* and in fact an independent and sovereign nation of Ukrainian people. The Treaty of 1654 did not introduce any essential changes in the status of the Ukrainian state. It had a special object: a defensive alliance between the Ukraine and Muscovy. As a result it imposed obligations upon both signatories, e. g., mutual military aid, exchange of information concerning relations with foreign states, payment of tribute to the tsar for military aid, and pay to the Zaporozhian soldiers when they had to go beyond the borders of their state to aid Muscovy. These mutual obligations flowed from the nature and objects of the treaty and had no bearing on the sovereignty of the contracting parties, the Ukraine and Muscovy.

⁸ M. Hrushevs'ky, *Istoriya Ukrayiny-Rusi*, IX, 1280.

The Treaty of 1654 was defined as "perpetual," and yet its legal effect was to end immediately with the death or resignation of the hetman of the Zaporozhian Host. According to the concept of the times, he personified the Ukraine as the contracting party. In order to re-establish the force of the treaty, it was necessary for a newly-elected hetman to proclaim it to the General Elective Council and to reaffirm it under oath. The Ukraine ceased to be a party to the treaty with the death or resignation of the hetman. After the death of Hetman B. Khmelnyts'ky, the Hetman-elect, Ivan Vyhovsky, proclaimed the Treaty of 1654 and reaffirmed it under oath at the General Council of 1657, but he refused to accept the addendum, the so-called "new articles." Starting with Yuriy Khmelnyts'ky, who was elected hetman at the General Council of 1659, all succeeding hetmans had to proclaim and reaffirm under oath the text forged in Moscow; this was not the authentic Treaty of 1654, but the fourteen article act known by the name of "Treaty of Pereyaslav."

The proclamation and reaffirmation of the "Treaty of Pereyaslav," the so-called "articles of B. Khmelnyts'ky," eventually became an empty formality, since relations between the Ukraine and Muscovy were not determined by these "articles of B. Khmelnyts'ky," but by new agreements, "new articles." With the aid of such articles, Moscow began to realize its plan of gradually ("with imperceptible progression"⁹) depriving the Ukraine of those rights which had been established by the Treaty of 1654. Hetman Cyril Razumovsky, following the usurpation of tsarist power by Catherine II, presented new articles to the Empress for approval in 1763 for the last time. He demanded in these articles the restoration to the Ukraine of all the rights accorded by the Treaty of 1654; Catherine would not approve them and compelled the hetman under the threat of death for "treason" to abdicate his office. She then turned the administration of the Ukraine over to a Little Russian College at whose head she placed Count P. Rumyantsev as the "Governor General of Little Russia." The principles of Catherine's new policy towards the Ukraine were

⁹ Vladimírski-Budanov, *Obzor istorii russkago prava*, p. 112.

expressed in her secret order of 1764 to the Attorney General, Prince Vyazemski.¹⁰

In another document, "Secret Instructions," which was written in her own hand, Catherine expressed her views and intentions in regard to the Ukraine openly and with determination. Writing to P. Rumyantsev, she emphasized the importance of the Ukraine—its fertile soil, good climate, numerous population, natural resources—and noted the difficulty of ruling it because of the "alien laws and rights," the "inappropriate mixture of military and civil government," the privileges and freedoms of the population, and, most important, the *inner hatred against the Great Russians*. Therefore the Empress advised Rumyantsev not to apply "the power of authority entrusted" to him in all cases, but sometimes to show "a variety of kindness and tolerance." In general he was advised in his rule of the Ukraine "to have the teeth of a wolf and the tail of a fox."¹¹

Rumyantsev sincerely attempted to carry out the Empress' orders, but his acts did not only not alleviate the "inner hatred" of the Ukrainians for the Russians, but, on the contrary, revived the longing for lost rights and privileges and the desire to regain what had been lost. Rumyantsev, himself, in his letters to Catherine expressed resentment at the Ukrainian people for their stubborn refusal to understand her intentions "to lift the Little Russian people to a higher level of happiness" and, furthermore, "many Little Russians have acquired such a taste for capricious action that any law or imperial decree seems nothing else but a violation of their rights and freedom." Rumyantsev wrote further: "Blinded by love for their little patch of land, this small fraction of humanity says nothing else but that they are people distinguished from the rest of the world and that there are none stronger, braver, wiser than they and there is nothing more beautiful, more desirable and as free anywhere that might be

¹⁰ This secret order was made public only in the beginning of the century. See, *Sbornik imp. russ. istoricheskago obshchestva*, VII, 348.

¹¹ *Ibid.*, pp. 376-91.

suitable for them, because everything they have is the best."¹² The contemptuous tone, a Muscovite habit, employed by Rumyantsev in his letters to Catherine in regard to the Ukrainians, reflects the fact that they had no use for her "higher levels of happiness" and is the best evidence of the complete failure of her orders and their execution.

The sentiments of the Ukrainian people during the rule of Rumyantsev and their attitude to the abolition of the hetmanate are illustrated by the numerous instructions issued to the representatives of the nobility, Cossacks, and townspeople, who had been elected as deputies to the Commission of 1767.¹³ One idea and one wish are expressed in these instructions: the restoration of the rights and freedom, by which "Bohdan Khmelnyts'ky with the entire body of the Little Russian nation entered the Great Russian state." More details were contained in the joint petition of the deputies to Catherine, which read: "We (the deputies) have the temerity to remind the Empress of the 'circumstances' known to the entire world that the Ukrainian people, having thrown off the Polish yoke, voluntarily joined the Muscovite state on the condition that all their liberties, freedom, and customs would be reserved to them forever, without any violation or change."¹⁴ The instructions, declarations, and petitions did not have the desired effect, but only accelerated the end of Ukrainian autonomy. However, they provide convincing evidence that the Ukrainian people, having endured for 110 years the "Ruin," the Russo-Swedish War, the destructive regime of Peter I, and the many attempts at Russification, still emerged victorious, with every right to call themselves a *Ukrainian nation*.

Finally, a few words in defense of the creator of the re-established Ukrainian state of the seventeenth century, Hetman Bohdan Khmelnyts'ky. At the present time, when the Soviet government in its orders and propaganda on the "celebration of the

¹² I. Telychenko, "Soslovnyya nuzhdy i zhelaniya Malorossii," *Kiyevskaya starina*, VIII, 1890, 167, 170.

¹³ *Kommissiya novago ulozheniya*.

¹⁴ Telychenko, *op. cit.*, IX, 249.

re-union" praises Hetman B. Khmelnyts'ky as a great leader, statesman, and strategist, here in New York in the Ukrainian press and at Ukrainian public affairs, our great Hetman is not spoken of with kindness. He is accused of committing a "fatal error" which brought about the Ukraine's loss of statehood and threw it into the Russian prison of nations for hundreds of years. Attempts are made to support these accusations by excerpts from the poems of T. Shevchenko. To me, as an historian, lawyer, and Ukrainian, it was frequently very unpleasant to listen to, or read, these unexpected attacks upon one of our great national leaders, and, particularly so, since according to my deepest convictions, the attacks are entirely unjustified.

During his lifetime, B. Khmelnyts'ky did not permit a single violation of the Ukraine's sovereign rights by Moscow and, when the tsar concluded an armistice with Poland in 1656 and ceased fighting, Khmelnyts'ky protested vigorously; from that time on, he treated Muscovy merely as a neighboring state and did not admit any obligations established by the Treaty of 1654. At the same time, the Ukraine was land of freedom and prosperity in comparison with Moscow and, like a magnet, it attracted people from neighboring lands who sought freedom; and this included many fugitives from Muscovy of all classes. "We do not refuse anyone, we do not chase anyone away of those who come to us," was the reply of B. Khmelnyts'ky's government to the demands of the tsar that fugitives from Muscovy be extradited. The Ukraine of that time was free, rich, and happy, and, thus it was when B. Khmelnyts'ky died in 1657. For everything that happened after his death, the blame should fall, not on B. Khmelnyts'ky, but upon his inept successors and upon the tsars of Muscovy who broke the "tsar's word" which had been solemnly given.

Reading the material on these "jubilee days," works of historical research, different documents, including the acts pertaining to the Treaty of 1654 and other treaties concluded by B. Khmelnyts'ky's successors with the Muscovite tsars, and works of our own historians, I lean more and more to the opinion that the 110 year symbiosis of the Ukraine and Moscow and of the Ukra-

inian people with the Muscovite people—alien to them in origin, culture, language, customs, and even religious beliefs—greatly helped the Ukrainian people in the process of their unceasing struggle for their national “Ego”; it helped them pass through a period of apprenticeship and become truly a *Ukrainian nation*. And having become a nation, it will sooner or later win “its own rights and its own freedom.”