

U.S. State Department Memorandum (December 20, 1958)

Abstract

In response to Khrushchev's speech of November 10, 1958, and the Soviet Union's Berlin Ultimatum of November 27, 1958, which demanded the Allies' withdrawal from Berlin, the U.S. State Department issued a detailed memorandum on the history of Allied occupation agreements since 1943. The memo made clear that the presence of the three Western powers in West Berlin and their rights as Allied Control Powers was not derived from the Potsdam Agreement of August 1945. Thus, Khrushchev's claim that the Western Allies had violated this agreement could not serve as the basis for Soviet demands for their withdrawal. The memo also stated that the Soviet Union could not unilaterally cancel the occupation agreements, which were binding under international law.

Source

Statement by the Department of State, on Legal Aspects of the Berlin Situation, December 20, 1958

[...]

The United States considers that the agreements denounced by the Soviet Union are in full force and effect, that the Soviet Union remains fully responsible for discharging the obligations which it assumed under the agreements, and that the attempts by the Soviet Union to undermine the rights of the United States to be in Berlin and to have access thereto are in violation of international law.

The legal dispute of the United States Government with the Soviet Government involves fundamental questions of international law. Among them are the respective rights acquired by the occupying authorities in Germany at the conclusion of World War II and the status of those rights pending a final peace settlement with Germany; the question whether a nation may unilaterally abrogate without cause international agreements to which it is a party in order to divest itself of responsibilities which it has voluntarily assumed; and what is the effect of a unilateral renunciation of jointly shared rights of military occupation by one of the occupiers.

During World War II the United States, the United Kingdom, and the Soviet Union, together with the forces of the Free French and of the other United Nations, formed a coalition of allied forces united in the common effort of defeating Nazi Germany. Several major international meetings were held between the heads of government of the Allied Powers at which the common objectives were outlined and plans for the securing of peace were mapped out.

The agreed communiqué of the Moscow Conference, held from October 19 to October 30, 1943, stated: The Conference agreed to set up machinery for ensuring the closest cooperation between the three Governments in the examination of European questions arising as the war develops. For this purpose the Conference decided to establish in London a European Advisory Commission to study these questions and to make joint recommendations to the three Governments.

The European Advisory Commission held its first meeting on January 14, 1944. Thereafter it discussed "European questions" including the anticipated surrender and occupation of Germany. The nature of the subsequent occupation of Germany and Greater Berlin is clearly reflected by the discussions held in the

European Advisory Commission and the agreements concluded as a result of the discussions.

On February 18, 1944, the Soviet representative submitted a document entitled "Conditions of Surrender for Germany" for consideration of the Commission, article 15 of which revealed the thinking of the Soviet Government at that time in regard to the establishment of zones of occupation in Germany. Paragraph (d) of article 15 of the document proposed the following with regard to Berlin:

d): There shall be established around Berlin a 10/15 kilometer zone which shall be occupied jointly by the armed forces of the Union of Soviet Socialist Republics, the United Kingdom and the United States of America.

In discussing the Soviet proposal, the British representative at a meeting on February 18, 1944, doubted the desirability of including in the terms of surrender a provision giving boundaries to such zones, since this appeared to him to be a domestic matter for the Three Powers themselves.

On March 17, 1944, at the Fifth Meeting of the European Advisory Commission, the Soviet representative, Mr. Gusev, stated that he would not insist upon the inclusion of article 15 in the Instrument of Surrender, which could thereby be made shorter. The delimitation could then be set forth in a separate document to be agreed on by the Allies. This separate document was worked out in a series of subsequent discussions, and, on September 12, 1944, the representatives of the three Governments signed a Protocol on the Zones of Occupation in Germany and the Administration of "Greater Berlin." On November 14, 1944, agreement was reached regarding certain amendments to the Protocol of September 12. The Soviet representative on the European Advisory Commission gave notification that the Soviet Government approved the agreement regarding amendments on February 6, 1945. The United Kingdom had previously approved on December 5, 1944, the Protocol and amendments, and the United States on February 2, 1945.

The Crimean Conference was held February 4-11, 1945, and in consequence thereof the following significant statement was made by the Prime Minister of Great Britain, the President of the United States of America, and the Chairman of the Council of People's Commissars of the Union of Soviet Socialist Republics on the results of the Crimean Conference:

The Occupation and Control of Germany:

We have agreed on common policies and plans for enforcing the unconditional surrender terms which we shall impose together on Nazi Germany after German armed resistance has been finally crushed. These terms will not be made known until the final defeat of Germany has been accomplished. Under the agreed plan, the forces of the three powers will each occupy a separate zone of Germany. Coordinated administration and control has been provided for under the plan through a central control commission consisting of the Supreme Commanders of the three powers with headquarters in Berlin. It has been agreed that France should be invited by the three powers, if she should so desire, to take over a zone of occupation, and to participate as a fourth member of the control commission. The limits of the French zone will be agreed by the four governments concerned through their representatives on the European Advisory Commission.

On July 26, 1945, the United Kingdom, the United States, and the U.S.S.R. entered into an agreement with the Provisional Government of the French Republic regarding amendments to the Protocol of September 12, 1944, which served to include France in the occupation of Germany and the administration of "Greater Berlin." The Soviet representative on the European Advisory Commission gave notice that his Government approved this agreement on August 13, 1945. The United States approved on July 29, 1945, the United Kingdom approved on August 2, 1945, and the French Government approved on August 7, 1945.

The Protocol, in its final form, provides:

1. Germany, within her frontiers as they were on the 31st December, 1937, will, for the purposes of occupation, be divided into four zones, one of which will be allotted to each of the four Powers, and a special Berlin area, which will be under joint occupation by the four Powers.

The Protocol then specifies the geographical boundaries of each zone and provides for the division of the territory of Greater Berlin, which “will be jointly occupied by the armed forces” of the Four Powers, into four parts.

Paragraph 5 of the Protocol provides:

5. An Inter-Allied Governing Authority (Komendatura) consisting of four Commandants, appointed by their respective Commanders-in-Chief, will be established to direct jointly the administration of the “Greater Berlin” Area.

It should be borne in mind that the only changes in the Protocol subsequent to February 6, 1945, when it came into force, were the amendments relating to the French occupation rights. The French Zone of Occupation and French Sector of Berlin were carved out from the American and British Zones and Sectors so that the amendments did not effect any change as between the U.S.S.R. and the Western powers in the fundamental allocation of authority in Germany.

The relationship of the occupying powers in Germany was further clarified by the work of the European Advisory Commission in connection with the agreement on control machinery in Germany. On November 14, 1944, an agreement was reached in the Commission with regard to the organization of the allied control machinery in Germany in the period during which Germany would be carrying out the basic requirements of unconditional surrender. On May 1, 1945, agreement was reached to include the Provisional Government of the French Republic in the control agreement.

This agreement, in its final form, provides that:

Supreme authority in Germany will be exercised, on instructions from their respective Governments, by the Commanders-in-Chief of the armed forces of the United States of America, the United Kingdom and the Union of Soviet Socialist Republics, [and] the Provisional Government of the French Republic each in his own zone of occupation, and also jointly, in matters affecting Germany as a whole, in their capacity as members of the supreme organ of control constituted under the present Agreement.

It also provided, with respect to Berlin (article 7(a)):

An Inter-Allied Governing Authority (Komendatura) consisting of four Commandants, one from each Power, appointed by their respective Commanders-in-Chief, will be established to direct jointly the administration of the “Greater Berlin” area. Each of the Commandants will serve in rotation, in the position of Chief Commandant, as head of the Inter-Allied Governing Authority.

This agreement, unlike the Protocol on Zones of Occupation, contained a provision with respect to duration (article 10):

The allied organs for the control and administration of Germany outlined above will operate during the initial period of the occupation of Germany immediately following surrender, that is, the period when Germany is carrying out the basic requirements of unconditional surrender.

On May 7 and 8, 1945, the Acts of Military Surrender were signed, by which the German High Command surrendered “unconditionally to the Supreme Commander, Allied Expeditionary Force and

simultaneously to the Supreme High Command of the Red Army,” all forces under German control.

At the time of the surrender of the German military forces, British and United States military forces held by force of arms all of Germany west of a line running from Wismar to Magdeburg to Torgau to Dresden. This area included practically all of the German territory which has been allotted to the Western powers under the Protocol of Zones of Occupation, and a very substantial portion of the territory allocated to the Soviet Zone. Of interest also is that the Western powers had, in the weeks prior to the German surrender, rejected German offers to surrender or withdraw German forces on the western front while holding on the east against the Soviet forces and thus permit the Western Allies to occupy all of Germany. Faithful to their agreements with the Soviet Union respecting the joint nature of the defeat of the Nazi regime and joint assumption of supreme authority in Germany, the Western powers repulsed these proposals.

On June 5, 1945, the Allied Representatives in Germany issued a Declaration Regarding the Defeat of Germany and the Assumption of Supreme Authority with Respect to Germany.

The declaration provided:

The Governments of the United States of America, the Union of Soviet Socialist Republics and the United Kingdom, and the Provisional Government of the French Republic, hereby assume supreme authority with respect to Germany, including all the powers possessed by the German Government, the High Command and any state, municipal, or local government or authority. The assumption, for the purposes stated above, of the said authority and powers does not effect the annexation of Germany.

The Governments of the United States of America, the Union of Soviet Socialist Republics and the United Kingdom, and the Provisional Government of the French Republic, will hereafter determine the boundaries of Germany or any part thereof and the status of Germany or of any area at present being part of German territory.

On June 5, 1945, the four Allied Governments also issued a statement on control machinery in Germany. This statement is substantially identical with the Agreement on Control Machinery in Germany.

Likewise, on June 5, 1945, the four Allied Governments issued a statement on the zones of occupation in Germany. The statement announced the areas agreed previously in the European Advisory Commission in 1944. Article 2 of the statement provides that:

The area of “Greater Berlin” will be occupied by forces of each of the four Powers. An Inter-Allied Governing Authority (in Russian, Komendatura) consisting of four Commandants, appointed by their respective Commanders-in-Chief, will be established to direct jointly its administration.

On June 14, 1945, the President of the United States wrote a letter to Marshal Stalin concerning the withdrawal of American troops from the Soviet Zone into the United States Zone of Occupation, to be carried out [“]in accordance with arrangements between the respective commanders,[”] including in these arrangements simultaneous movement of the national garrisons into Greater Berlin and provision of free access by air, road, and rail from Frankfurt and Bremen to Berlin for United States forces.

Stalin replied by letter dated June 18, 1945, stating:

On our part all necessary measures will be taken in Germany and Austria in accordance with the above-stated plan.

On July 1, 1945, United States forces entered Berlin and withdrew from their advanced position in Eastern Germany.

In accordance with the proposal concerning the withdrawal of United States forces from Thuringia and Saxony and entry into Berlin, a conference was held on June 29, 1945, between Marshal Zhukov, General Clay, and General Weeks. General arrangements were made for use by the Western powers of specific roads, rail lines, and air lines for the purpose of exercising their rights of access to Berlin.

The general arrangements were further defined through actions of the Allied control machinery in Germany—the Control Council, the Coordinating Committee, which was the Council's principal subordinate body, and the interested functional committees and directorates. Certain of these specific arrangements were incorporated in approved papers, such as Directorate of Transport paper CONL/P (45) 27 regarding rail access, Minute (110) (a) of the Allied Control Council regarding air corridors to Berlin, the Air Directorate paper on air safety in Berlin, DAIR/P (45) 67 second revision, and the Air Directorate paper on rules of flight in the corridors, DAIR/P (45) 71 second revision.

In addition, a variety of working practices and arrangements developed with respect to the exercise by the Western powers of their rights of access. The arrangements, however, related merely to the orderly exercise of the rights of access.

On March 20, 1948, the Soviet representatives walked out of the Allied Control Council for Germany after the Soviet representative, who was in the chair, arbitrarily declared the meeting closed. On March 30, 1948, the Soviet Deputy Military Governor, General Dratvin, stated in a letter to the United States Military Government that supplementary provisions regarding communications between the Soviet and U.S. Zones of Occupation in Germany would go into effect on April 1, 1948. These provisions, which were contrary to practice established since the quadripartite occupation of Berlin, set forth that:

- (1) U.S. personnel traveling through the Soviet Zone by rail and highway must present documentary evidence of identity and affiliation with the U.S. Military Administration of Germany;
- (2) Military freight shipments from Berlin to the Western zones must be clear through Soviet check points by means of a Soviet permit; freight shipments into Berlin would be cleared by accompanying documents;
- (3) All baggage must be inspected at Soviet check points, with the exception of personal belongings of U.S. personnel carried in a passenger railway car or a passenger automobile.

Similar letters were delivered to the British and French Military Government authorities.

On March 31 the Chief of Staff, U.S. Military Government, replied that the new provisions were not acceptable and that such unilateral changes of policy could not be recognized.

The Soviets then commenced the series of restrictions on traffic to and from Berlin which ultimately culminated in the Berlin blockade. The facts regarding the effort of the Soviet Union to starve the population of Berlin in order to force the Western powers to surrender their rights in the city are too well known to require reiteration.

The airlift mounted by the Western powers defeated this Soviet effort. On May 4, 1949, the Governments of the United States, U.S.S.R., United Kingdom, and France reached an agreement at New York which provided in part as follows:

1. All the restrictions imposed since March 1, 1948, by the Government of the Union of Soviet Socialist Republics on communications, transportation, and trade between Berlin and the Western zones of Germany and between the Eastern zone and the Western zones will be removed on May 12, 1949.

The Council of Foreign Ministers which convened at Paris subsequent to the New York agreement of May

4, 1949, agreed as follows:

5. The Governments of France, the Union of Soviet Socialist Republics, the United Kingdom, and the United States agree that the New York agreement of May 4, 1949, shall be maintained. Moreover, in order to promote further the aims set forth in the preceding paragraphs and in order to improve and supplement this and other arrangements and agreements as regards the movement of persons and goods and communications between the Eastern zone and the Western zones and between the zones and Berlin and also in regard to transit, the occupation authorities, each in his own zone, will have an obligation to take the measures necessary to insure the normal functioning and utilization of rail, water, and road transport for such movement of persons and goods and such communications by post, telephone, and telegraph.

Article 1 of the New York agreement of May 4, 1949, was implemented by Order Number 56 of the Soviet Military Government and Commander in Chief of the Soviet occupation forces in Germany, dated May 9, 1949. The order provides that the regulations which were in effect prior to 1 March 1948 concerning communications between Berlin and the Western zones were reestablished. Specifically, paragraph 4 of the Soviet Order provides, "The procedure in effect prior to 1 March 1948 for military and civilian personnel of the British, American, and French occupation forces permitting them to cross the demarcation line at the control points of Marienborn and Nowawes without special passes and requiring passes authorized by the SMA staff for all other control points is to be reestablished."

The foregoing historical summary establishes beyond question that the rights of the United States in Germany and in Berlin do not depend in any respect upon the sufferance or acquiescence of the Soviet Union. Those rights derive from the total defeat of the Third Reich and the subsequent assumption of supreme authority in Germany. This defeat and assumption of authority were carried out as joint undertakings in which the participants were deemed to have equal standing. The rights of each occupying power exist independently and underlie the series of agreements which specify the areas and the methods in which those rights are to be exercised. From this fact two important consequences are derived.

In the first place, the specific rights which flow from the Agreement on Zones of Occupation and the Status of Berlin do not vary in either kind or degree. The right of each power to be in occupation of Berlin is of the same standing as the right of each power to be in occupation of its zone. Further, the rights of the three Western powers to free access to Berlin as an essential corollary of their right of occupation there is of the same stature as the right of occupation itself. The Soviet Union did not bestow upon the Western powers rights of access to Berlin. It accepted its zone of occupation subject to those rights of access. If this were not true and the doctrine of joint and equal rights is not applicable, then, for example, the United States would now be free to require the Soviet Union to withdraw from that portion of the Soviet Zone originally occupied by American forces and to assume control of the area.

In the second place, inasmuch as the rights of occupation and of access do not stem from the Soviet Union, the Soviets are without any authority to repeal those rights by denunciation of agreements or by purported transfer of control over them to third parties. The Soviet Union cannot affect the rights by declaring agreements null and void because the rights exist independently of the Soviet Union. The Soviet Union cannot affect the rights by declaring them subject to the sovereignty it claims to have bestowed upon its puppet regime in East Germany, because, again, the rights remain in being irrespective of any act of the Soviets. Whatever relationship the East German regime may have vis-a-vis the Soviets, it cannot acquire a power in the Soviet Zone which the Soviets are powerless to give. The foregoing discussion is, of course, without reference to the legality of the purported Soviet action in denouncing its solemn commitments, which is discussed in the succeeding section.

The Soviet Government, in its note of November 27, 1958, states:

[...] The Soviet Government can no longer consider itself bound by that part of the Allied agreements on Germany that has assumed an inequitable character and is being used for the purpose of maintaining the occupation regime in West Berlin and interfering in the internal affairs of the GDR.

In this connection, the Government of the USSR hereby notifies the United States Government that the Soviet Union regards as null and void the "Protocol of the Agreement between the Governments of the Union of Soviet Socialist Republics, the United States of America, and the United Kingdom on the zones of occupation in Germany and on the administration of Greater Berlin," of September 12, 1944, and the related supplementary agreements, including the agreement on the control machinery in Germany, concluded between the governments of the USSR, the USA, Great Britain, and France on May 1, 1945, i. e., the agreements that were intended to be in effect during the first years after the capitulation of Germany.

In an attempt to justify this action, the Soviet Government alleges:

(1) that such action is legal because of alleged violations by the Western powers of the Potsdam Agreement;

(2) that the agreements were intended to be in effect only during the first years after the capitulation of Germany;

(3) that alleged activities of the Western powers in their sector of Berlin have resulted in a forfeiture of their rights to occupy those sectors and to have free access thereto.

[a)] *Relationship of the Potsdam Agreement to U.S. Occupation Rights With Respect to Berlin*

The so-called Potsdam Agreement was issued at the conclusion of the Berlin Conference of July 17 to August 2, 1945. The Protocol of the Proceedings which embodied the points of agreement reached by the Heads of Government of the United States of America, United Kingdom, and Union of Soviet Socialist Republics is dated August 1, 1945. From this mere statement of the time factor it is apparent that the Agreement on Zones of Occupation and the Status of Berlin which had entered into force on February 6, 1945, approximately 6 months earlier, does not depend for its validity upon the Potsdam Protocol of Proceedings. Moreover, there is nothing in the Potsdam Protocol which specifically subjects the prior agreement to any of its terms or which can be interpreted as having that effect. Nor is there any evidence that the subsequent agreements on the exercise of the rights of access relate to or are connected in any way with the Potsdam Protocol.

Violations (alleged or real) of the Potsdam Agreement could not, therefore, have any legal effect upon the validity either of the basic occupation rights of the Western powers or upon the agreements which define the rights of the Western powers to be in occupation of their zones and of their sectors of Berlin and to have free access to Berlin.

Moreover, the Potsdam Agreement, insofar as Germany is concerned, is related to the common objectives of the occupation authorities in Germany. The attainment of these objectives was designed to further the purposes of the occupation of Germany, but there is no indication anywhere in the Protocol that the right of occupation depended upon attainment of the objectives. Further, to the extent that these objectives were not realized, the failure resulted from violations by the Soviet Union of the provisions of the Potsdam Protocol. The major violations were the refusal of the Soviet Union to treat Germany as an economic unit and the continuing attempts of the Soviet Union to obtain reparation payments to which it was not entitled under the terms of the Protocol. The United States is prepared to document violations of the Potsdam Agreement by the Soviet Union. It has never contended, however, that such violations affect the right of the Soviet Government to occupy its zone of Germany and sector of Berlin.

The United States denies, and is prepared to document the correctness of its position, that it has violated the Potsdam Agreement as alleged by the Soviet Government. The United States submits, however, that the issue is irrelevant to the question of whether the Soviet Union may unilaterally declare null and void an international agreement such as the Protocol of September 12, 1944, since the two agreements related to different subjects and were in no way interdependent.

It should also be noted that the Soviet Union has not, in its note, alleged that it considers the Potsdam Protocol as null and void by reason of these asserted violations by the Western powers. If the Potsdam Protocol remains in force and effect then, accepting for the sake of argument that these other distinct and independent agreements are in fact contingent upon that Protocol, how can it be maintained either logically or legally that the subsidiary agreements are voided by violation of the principal agreement although the principal agreement is not so voided? The position is, on its face, completely untenable.

[b)] Duration of Agreements Relating to Occupation of Germany

The United States considers that the Soviet Government is notably vague in its references in its note of November 27, 1958, to the specific agreements relating to Germany which it considers “were intended to be in effect during the first years after the capitulation of Germany.”

The United States believes that an examination of the various documents referred to above, taken in the historical context in which they were agreed, makes entirely clear the nature of the commitments undertaken by the four occupation authorities. Certain of the documents, or portions thereof, referred to immediate goals of the occupation, or to the administrative arrangements between the occupation authorities. Understandably, express provision was made in such cases for review after a reasonable period of time. Specifically, the statement on control machinery in Germany of June 5, 1945, is a case where such arrangements were made. Paragraph 1 of the agreement stated, “In the period when Germany is carrying out the basic requirements of unconditional surrender *** [asterisks in original].” Paragraph 8 is even more specific as to the intention of the parties: 8. The arrangements outlined above will operate during the period of occupation following German surrender, when Germany is carrying out the basic requirements of unconditional surrender. Arrangements for the subsequent period will be the subject of a separate agreement.

There has never been any doubt on the part of the United States that a “two step” occupation period for Germany had been envisaged in the pre-occupation planning. Further, the United States is fully in accord with the position that the “period when Germany is carrying out the basic requirements of unconditional surrender” has long since passed. A similar introductory qualification was made in connection with the items contained in Part II of the Potsdam Protocol entitled “The Principles to Govern the Treatment of Germany in the Initial Control Period.” Just as the Control Machinery Agreement was recognized as an arrangement to cover a relatively short period, the Potsdam “Principles” in Part II were to govern in the immediate postwar period prior to the reestablishment of a central German authority when the Allied Powers would administer Germany under military government. Secretary of State Acheson pointed this out in his statement made to the Council of Foreign Ministers on May 24, 1949. A few days later, on May 28, Mr. Bevin told the Council that the Western powers considered the “initial control period” as over. Secretary Acheson said he heartily concurred in this statement of Mr. Bevin. Mr. Vyshinsky did not meet the argument squarely or counter the line of reasoning implied. He said on May 27:

[...] the [Control] Council was established for definite purposes. If these purposes were already attained, then this fact should be taken into account and new aims formulated.

Accordingly the United States does not contest that the Control Agreement and Part II of the Potsdam Agreement were limited to an “initial control period.” The record is entirely clear, however, that the limitations in these documents did not indicate that the basic occupation rights and the other

occupation agreements were to terminate after the initial control period. No such proviso is contained in the Protocol of September 12, 1944; the Act of Military Surrender; the Declaration of June 5, 1945, regarding the defeat of Germany and the assumption of supreme authority; the statement of June 5, 1945, on zones of occupation in Germany; the statement of June 5, 1945, on Consultation with the Governments of other United Nations; the provisions of the Potsdam Agreement other than Part II; or any of the specific arrangements relating to access to Berlin.

The weakness in an argument that the September 12, 1944, Protocol became ineffective after the initial control period because of some implied relationship to the time proviso in the Control Machinery Agreement of June 5, 1945, is clearly seen by the fact that the Control Machinery Agreement, in the sentence following the one which the Soviets seek to spread to all other occupation agreements, provides "Arrangements for the subsequent period will be the subject of a separate agreement." Accordingly, the Soviet effort to assert, at this late date, that agreements relating to the occupation of Germany were all intended to be effective only "during the first years after the capitulation of Germany" is without substance.

[c] *Forfeiture of the Occupation Rights of the Western Powers by Their Activities in Western Berlin*

The United States does not consider it necessary to disprove the Soviet charges which are made in the note of November 27, 1958, regarding United States activities as an occupying authority in Berlin. It can and will do so if such action should appear desirable. The well-known fact that there is a constant stream of refugees from the Soviet-controlled areas of Germany into West Berlin is by itself compelling evidence as to which powers are properly discharging their occupation responsibilities. But no discussion of the facts is required because the Soviet charges do not relate in any way to obligations assumed by the United States in any of the agreements which the Soviet Union has denounced.

The Soviet position that one party to a multilateral agreement which is declaratory of existing rights can denounce that agreement and thus unilaterally relieve itself of its obligations thereunder and void such rights is untenable. In the absence of agreement by the other parties to terminate the agreement, or in the absence of a specified duration in the agreement itself, the question of termination must be justified in terms of international law.

International law does not recognize any right of unilateral denunciation under such circumstances.

In order to place its position on this matter in correct perspective, the United States wishes to note that while, as stated above, there was no agreement or limitation on the duration of the allied occupation of Germany, the duration of which it was recognized would depend on the length of time it took to accomplish the purposes of the occupation and might be many years, the United States recognized an obligation of the Allied Governments under international law to reach a peace settlement with Germany and not to prolong the occupation of Germany unnecessarily. It is believed that the public record of efforts on the part of the Western powers to reach agreement with the Soviet Government on the terms of such a peace settlement are well known and speak for themselves.

(1) At the first meeting of the Second Session of the Council of Foreign Ministers (Paris, 1946) Secretary of State Byrnes suggested that a special commission be appointed to consider a German peace treaty. On May 15, 1946, he proposed the appointment of special deputies to prepare a draft peace settlement for Germany which the Council could submit to a peace conference to be convened on November 12, 1946.

(2) At the Third Council of Foreign Ministers Session (New York, 1946) Secretary Byrnes insisted that the Council should immediately appoint its deputies for Germany and that these deputies should explore the problem prior to the Moscow session.

(3) The proposed peace treaty was debated at the Moscow Council of Foreign Ministers in March 1947; at

London in 1947; at Paris in 1949. The position consistently taken by the United States in favor of a final peace settlement with Germany is thus a matter of public record.

(4) At the Paris session of the deputies of the Council of Foreign Ministers, efforts were made from March 5 to June 22, 1951, without success just to agree on the agenda for a meeting to consider the German question.

The fact of the matter was that during the period of the debates between the Soviet Union and the Western occupation powers between 1946 and 1951 the Soviet Union had initiated a system of government in its zone of control based on armed force and police state methods. The Western Allied Powers could not accept the individuals put forward as representing East Germany as other than instruments of the Soviet Union. The Western powers accordingly have insisted on German reunification based on free elections as a prerequisite for negotiation of a peace treaty with Germany. The Soviet Union has insisted upon acceptance of its hand-picked East German representatives as having an equal voice with the freely elected representatives of West Germany in any reunification. Thus, this Soviet rejection of democratic principles has vitiated efforts to reach agreement on the peace settlement with Germany envisaged during the war and during the immediate postwar period.

The fact remains that the Western powers have supported and support now the right of Germany to have a final peace settlement and the termination of the occupation period. It is the position of the United States that, being thus ready in good faith to bring the occupation period to a close by legitimate means, there can be no legal or moral doubt of the right of the United States to maintain its right of occupation in Berlin and its corollary right of access thereto and that efforts of the Soviet Union to assail and interfere with those rights are in violation of international law.

Source: Statement by the Department of State, on Legal Aspects of the Berlin Situation, December 20, 1958; reprinted in *Documents on Germany, 1944-1959: Background Documents on Germany, 1944-1959, and a Chronology of Political Developments affecting Berlin, 1945-1956*. Washington, DC: General Printing Office, 1959, pp. 336-47.

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