CHAPTER V

BERLIN AND THE REUNIFICATION PROBLEM

In the post-1945 world, Berlin, the former capital of Prussia and of the Reich, has become a microcosm of divided Germany. But it has fared even worse: it has become, with a special status, an isolated enclave in the center of East Germany. If Berlin were situated along the borderline of East and West Germany (as divided Jerusalem lies along the Israeli-Jordanian borderline), its problem would be comparatively simple. The continued existence of the remainder of four-power control, more so in the western part of the city than in the eastern but still in evidence, is another complication. If the over-all German problem is a mixture of constitutional-legal and political factors operating in the context of the Cold War, the problem of Berlin is even more tangled. The dual military and political


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confrontation lays Berlin open to the ever-threatening possibility of violent conflagration. After 1945 Berlin ceased to be the capital of Germany; the former Reich had been partitioned. Instead of being the political center of Germany, it has become the focus and symbol of the East-West conflict.\(^2\)

For the Germans, Berlin remains the visible sign and epitome of their predicament of division. In the post-1945 era the image of the Reich's former capital has changed: Bavarians, Rhinelanders, and other Germans in distant provinces no longer regard Berlin with envy, hatred, or disgust but with admiration for the struggle it has sustained. For the West Germans, Berlin is the frontier post of liberty; for the East Germans, a symbol of Germany's inevitable unity and their redemption from alien rule. And West Berlin is conscious of its role as an outpost of Western freedom in the sea of Soviet totalitarianism, extremely sensitive of events within and beyond its perimeter. Its sensitivity to any change or threat of change is caused by its highly complicated legal and political status—a status determined both by international enactments and by \textit{faits accomplis} and by the policies of its own leadership and of Bonn's. Berlin is of strategic value neither to the West nor to the East; but its political value is beyond estimation. Berlin is the Achilles tendon of the West: its loss would probably destroy the Western alliance and immensely strengthen the Soviet grip over East Europe. On the other hand, West Berlin's survival is a victory for the Western will, for the superiority of the Western way of life, and, last but not least, for German unity.

\textit{Status of Berlin in Theory and Practice}

The controversial status of Berlin lends itself to conflicting doctrinal interpretations: one may distinguish between West German, Communist, and Allied positions.

1) Under Article 23 of the Basic Law, its provisions apply in "Greater Berlin." According to the official West German view, sanctioned by the courts, Berlin is a \textit{Land} of the Federal Republic. It is admitted, however, in deference to actual practice, that the application of the Basic Law and of West German law in general, is

\(^2\)Former decentralization had provided secondary political, economic, and cultural centers (like Hamburg, Frankfurt, Munich, Cologne, etc.) for West Germany; thus, the loss of Berlin as a capital proved to be more expendable than would have been the loss of Paris for a truncated France, or that of London for a partitioned Britain; see Pierre Gaxotte, \textit{Histoire de l'Allemagne} (Paris, 1963), Vol. II, p. 535.
de jure restricted by the continued exercise of authority by the occupation powers in West Berlin. Territorially, these applications are also limited by the de facto division of Greater Berlin.

Just as the Federal government considers itself the only legitimate government of Germany, the Magistrate of (West) Berlin regards itself as the only legitimate municipal authority of Berlin. The Governing Mayor of Berlin claims to have jurisdiction over the entire Greater Berlin area, even if temporarily prevented from exercising such authority in the eastern sector of the city.\(^3\)

2) Article 2, paragraph 2, of the East German Constitution of October 7, 1949, provides that: “The capital of the Republic is Berlin.” The German Democratic Republic was formed on the territory of the Soviet zone of occupation; and Berlin was, under the agreement between the United States, Britain, and the Soviet Union of September 12, 1944 (to which, subsequently, France also adhered), an area to be administered jointly by the four occupation powers. The Communist doctrinal interpretation of Berlin’s status is not entirely consistent. It was, however, maintained that Berlin, as a whole, belonged to the D.D.R. until the Soviet-East German friendship treaty of June 12, 1964, introduced a new view by declaring that West Berlin is an “independent political unit.”

According to views set forth in East German publications, Greater Berlin originally belonged to the Soviet zone; the three Western powers were subsequently given a right of administration in their respective sectors but they failed to obtain “sovereignty.” The Western powers, by their violation of the Potsdam Agreement (or other agreements pertinent to the four-power status of Germany) forfeited their rights to be in Berlin. When the Soviet Union transferred its sovereign rights over the Soviet zone to the German Democratic Republic, the entire area of Berlin became part of this state. Consequently, the Western powers remain in their sectors of Berlin only “by sufferance” or “toleration” of the German Democratic Republic.\(^4\) Inconsistent with this opinion is Ulbricht’s view that the border between East and West Berlin is a “state frontier.”\(^5\)


\(^{5}\) See Walter Ulbricht’s speech at the XVIIth German Workers’ Conference, Leipzig, March 9, 1963; *Politische Studien*, May-June, 1963, p. 333.
The municipal authorities of East Berlin claim jurisdiction for the entire Berlin area, though their authority does not extend beyond the Wall. On the other hand, from 1955 on East Berlin has been integrated, though not completely, into the German Democratic Republic and considered as a special district (Bezirk). In October, 1958, Ulbricht stated that the “democratic” section of Berlin was no longer subject to any military occupation. On August 23, 1962, even the office of the Soviet Commandant in Berlin was abolished.

The second campaign for Berlin, initiated by Khrushchev in November, 1958, relied theoretically on the contention that all Greater Berlin is part of the D.D.R. The Soviet leader's address before the Polish state delegation inveighed against the violations of the “Potsdam Agreement” by the Western powers and insisted that the obligations derived from this agreement “had outlived themselves.” “The time has obviously arrived for the signatories of the Potsdam Agreement to renounce the remnants of the occupation regime in Berlin and thereby make it possible to create a normal situation in the capital of the German Democratic Republic.”

Khrushchev’s error in referring to the wrong document with re-


8 In referring to the Potsdam Agreement, Khrushchev committed a gaffe which was exploited by Secretary of State Dulles in his news conference when the latter stated:

it seemed as though Mr. Khrushchev had spoken initially without the benefit of legal advice which is, of course, a very bad thing to do [laughter] that he has based his case upon alleged breaches of the Potsdam Agreement.

Now, the rights and status of the allies in Berlin and the responsibilities and obligations of the Soviet Union do not in any way whatsoever derive from the Potsdam Agreements. Indeed that subject is, I am told by my own legal adviser, not even mentioned in the Potsdam Agreements. . .

. . . if the Soviet Union takes the position that the Potsdam Agreement is nonexistent, the consequences of that would be not to destroy our rights in Berlin, because they don’t rest upon the Potsdam Agreement at all, but it might greatly compromise the territorial claims of Poland which do rest upon the Potsdam Agreement primarily.


9 Ibid., p. 342. Italics have been added.
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gard to Berlin was corrected in the Soviet diplomatic note of November 27, 1958. Here the Soviet Union formally denounced the Agreement of September 12, 1944, concerning the zones of occupation and the administration of Greater Berlin and suggested that "the most correct and natural way to solve the problem would be for the Western part of Berlin, now actually detached from the German Democratic Republic, to be reunited with its eastern part and for Berlin to become a unified city within the state in whose territory it is situated."\(^{10}\)

But the Soviet note wished to acknowledge the development of West Berlin, so different from that of the eastern part of that city, and also the desire of the West Berliners to preserve their present way of life. Accordingly, the proposal of the Soviet government for West Berlin ran as follows:

In view of all these considerations, the Soviet Government on its part would consider it possible to solve the West Berlin question at the present time by the conversion of West Berlin into an independent political unit—a free city, without any state, including both existing German states, interfering in its life. Specifically, it might be possible to agree that the territory of the free city be demilitarized and that no armed forces be contained therein. The free city, West Berlin, could have its own government and run its own economic, administrative, and other affairs.\(^{11}\)

The Soviet note further expressed the view that "the German Democratic Republic's agreement to set up on its territory such an independent political organism as a free city of West Berlin would be a concession, a definite sacrifice on the part of the German Democratic Republic for the sake of strengthening peace in Europe, and for the sake of the national interest of the German people as a whole."\(^{12}\)

The West German and the Communist views on the status of West Berlin and of Berlin as a whole, are in direct conflict. And opposed to the Communist position is the Western view, itself not totally consistent with the official doctrine of the Federal Republic.

3) Under the "Protocol on Zones of Occupation and Administration of the 'Greater Berlin' area" of September 12, 1944, the United States, Britain, and the Soviet Union (and, subsequently, France) agreed that Germany would, for the purposes of occupation, be divided into three (subsequently, four) zones, to be allotted

\(^{10}\) *Ibid.*, p. 359. Italics have been added.
\(^{12}\) *Ibid.*, p. 361. Italics have been added.
to each of the three (four) powers, and “a special Berlin area, which will be under joint occupation by the three [four] Powers.” The four-power statement of June 5, 1945, on zones of occupation in Germany further clarified the situation of Berlin: “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 the basis of these unequivocal texts, the Western powers have denied that any part of Berlin was ever part of the Soviet zone of occupation. The Western powers gained occupancy of their sectors in Berlin in return for the withdrawal of their forces from the zone allotted to the Soviets in July, 1945. In addition to their treaty rights, the Western powers also derive their status in Berlin from a right of conquest—that is, their right to participate in Germany’s occupation with sovereign authority as a result of Germany’s military defeat and unconditional surrender. This would imply that the Allied status in Berlin is not derivative (transmitted by either the Germans or the Russians) but, under international law, an original right of sovereign power. Such a right can neither be forfeited nor lapse, except by voluntary relinquishment or mutual agreement. The Western powers maintain that their right to stay in Berlin is independent of the survival or efficaciousness of the Potsdam Agreement or any other inter-Allied agreement. They also deny that any of their actions have given cause for the denunciation of these agreements.

The Soviet–East German contention which attempts to differentiate between “exercise of supreme authority” and “administration,” the first being vested in the Commanders-in-Chief of the zones of occupation, the latter carried out by the Berlin Kommandatura, is based on a one-sided reading of the relevant texts and rejected by the Western powers.
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In the view of the Western powers, the Soviet withdrawal from the Kommandatura in 1948 did not destroy the authority of this organ; according to this view, the administrative machinery under the quadripartite agreements cannot be abolished without the approval of the three Western powers. The Kommandatura, reduced to the representatives of the three Western Allies and de facto limited in its exercise of functions to the three Western sectors of Berlin, continues to act under the wartime and postwar arrangements. It considers the Soviet seat vacant and to be filled at the will of the Soviet Commandant of Berlin. When, on August 23, 1962, the Soviet government announced the abolition of the office of Soviet Commandant in Berlin (though certain “limited functions” were still to be continued by the Soviet Army), the three Western powers protested and declared that such a unilateral renunciation could not impair the rights of the Allies in the city. Furthermore, the Western statement emphasized that “the Soviet announcement can in no way affect the unity of Berlin as a whole. Despite the illegality of the wall and the brutality of the East German authorities in preventing the inhabitants of East Berlin from leaving that area, Berlin remains a single city. No unilateral action by the Soviet Government can change this.”

From the Western point of view, the administrative incorporation of East Berlin into the German Democratic Republic was illegal and a breach of the Berlin Agreements. Similarly, the entry of East German armed forces (which raised and protected the Berlin Wall) was a violation of these agreements. Though a threat to allow the entry of West German forces into Berlin (they could have been transported by air without being subject to Soviet or East German control) might have prevented the stationing of the Volksarmee in East Berlin; the timidity of Western conduct can be explained by a desire to maintain the fiction of a Berlin controlled directly by the

by the same instrument, to exercise supreme authority. However, the Allied statement of the same day (see above) spoke of occupation by the Allied forces of Berlin, the same term used for the taking over of the zones by the Allies. The Soviet argument is also refuted by the text of the September 12, 1944, agreement on the occupation of Germany. See R. Legien, The Four Power Agreements on Berlin (Berlin, 1961), pp. 11–22.

18 New York Times, August 24, 1962. Italics have been added.

19 The Soviet government lodged protests against alleged recruitment of West Berliners into the West German Bundeswehr, protests rejected as unwarranted by the Allies. Similar protests were launched by the West against recruitment into the East German Volksarmee in Berlin and the entry of such forces into East Berlin. Dokumente zur Berlin-Frage, pp. 442–46.
Four-Power Inter-Allied Governing Authority (Kommandatura) and its armed forces.

At times the Soviet military authorities attempted to regain a foothold in the administration of West Berlin, but the Western Allies would agree only if the Soviet Union acknowledged that East Berlin, too, was subject to four-power control.\textsuperscript{20}

The Allied persistence in holding strictly to the letter of occupation rights in Berlin has occasionally created friction between the Western Commandants and the Berlin and Bonn authorities. To safeguard their authority the Western powers refused to recognize Berlin as the twelfth Land of the Federal Republic of Germany. Thus, the Three-Partite Kommandatura refused on August 29, 1950, to approve paragraphs 2 and 3 of Article 1 of the Constitution of Berlin. The two paragraphs declared, respectively, that “Berlin is a Land of the Federal Republic of Germany” and that “the Basic Law and Laws of the Federal Republic of Germany are binding in Berlin.”\textsuperscript{21} Any act passed by the Berlin House of Representatives had required approval by the Kommandatura before becoming effective. Under the practice developed as a consequence of the Allied refusal to accept Berlin as part of the Federal Republic, the Berlin Parliament now formally endorses the laws passed by the legislature in Bonn, which thereafter obtain the approval of the Allied Kommandatura.

Before 1958 the Bundestag held sessions in Berlin once in each legislative term in order to demonstrate the city’s symbolic significance as the historical capital of Germany. After the opening of Khrushchev’s campaign against Berlin, Allied intervention temporarily prevented the holding of further parliamentary sessions in Berlin. But the “right” of the Bundestag to sit in Berlin was formally upheld,\textsuperscript{22} and the Federal government undertook to reconstruct the Reichstag building, destroyed first by fire in 1933 and again during the siege of Berlin in 1945.\textsuperscript{23}

West Berlin is represented by twenty-two deputies in the Bundestag of Bonn; they exercise a consultative function.\textsuperscript{24} Strangely enough, despite the total integration of East Berlin into the German


\textsuperscript{22} When in April, 1965, the Bundestag again met in Berlin in full session, the Communist side retaliated by interrupting land communications and by flying planes low over the parliamentary buildings. Bundestag committees regularly meet in West Berlin. \textit{New York Times}, January 23, 1966.


\textsuperscript{24} Electoral Law of May 7, 1956; \textit{Dokumente zur Berlin-Frage}, p. 137.
Democratic Republic, the thirteen deputies of Berlin have no voting rights in the Volkskammer which holds its sessions in East Berlin.\(^{25}\)

Although the Soviet Union has at different times proposed to clear away "the residue of World War II" and has moved in this direction, the Russians have still been reluctant to eliminate certain remnants of the defunct quadripartite occupation regime. These are:

1) The Inter-Allied Air-Safety Center which regulates air traffic between West Berlin and the Federal Republic;

2) The International War Crimes Prison in Spandau (West Berlin) where soldiers of the four powers take turns guarding the remaining prisoners;\(^{26}\)

3) The Soviet cenotaph in the British sector of West Berlin guarded by Soviet detachments;

4) The Allied Military Commission in Potsdam (East Germany) and the Soviet Military Commission in Frankfurt/M in the Federal Republic.

Other, more important souvenirs of the postwar military regime affect the field of transportation and travel. Besides the access rights to Berlin (see ahead), Allied military personnel still exercise their right of free circulation in East Berlin; conversely, the Russians have similar rights in West Berlin.

In a declaration of 1952, reiterated at the time of the Paris Agreements of 1954, the Federal Republic promised financial assistance and economic aid to Berlin. It pledged further "to ensure the representation of Berlin and of the Berlin population outside Berlin, and to facilitate the inclusion of Berlin in the international agreements concluded by the Federal Republic, provided that this is not precluded by the nature of the agreements concerned."\(^{27}\)

By virtue of this agreement, the Federal government represents the interests of (West) Berlin internationally as well as those of its

\(^{25}\) Law concerning the elections to the Volkskammer of August 9, 1950, Article 49; subsequent electoral laws did not reiterate expressly that Berlin representatives have consultative rights only, but they are still separately elected. Since there is in practice no voting in the Volkskammer, the voting rights play no role whatsoever; \textit{Dokumente zur Berlin-Frage}, pp. 199, 291; Mampel, \textit{Die Verfassung der sowjetischen Besatzungs-zone Deutschlands}, pp. 24–25. See also \textit{Neue Zürcher Zeitung}, August 3, 1963.

\(^{26}\) After October 1, 1966, when Baldur von Schirach and Albert Speer were released, Rudolf Hess, the Deputy Führer, remained the only prisoner.

residents. The Federal Republic’s trade agreements invariably include a “Berlin clause” which, not surprisingly, has created difficulties with Bonn’s Communist trade partners. However, upon the Federal government’s insistence, Poland, Rumania, Hungary, and Bulgaria have agreed to a text which, instead of directly mentioning Berlin, recognizes Bonn’s right to represent the “Deutsche Mark (West) area.” Since such a clause is a practical recognition of West Germany’s rights over Berlin, the Soviet refusal to accept this formula has impeded Moscow’s trade and cultural relations with Bonn.

Inhabitants of West Berlin use passports of the Federal Republic when traveling abroad; but they cannot identify themselves with such passports when entering or passing through East Germany or East Berlin. Federal Republic passports of West Berliners have frequently been confiscated by agents of the German Democratic Republic. East Berliners use D.D.R. passports, but only outside West Germany or West Berlin where they need only to show their identification papers and require no special entry or exit permits.

It should also be remembered that West German trade pacts (concluded on behalf of West German trade interests by the “unofficial” Treuhandstelle für Interzonenhandel in West Berlin) with the German Democratic Republic also include West Berlin. East German negotiators have tried several times to exclude West Berlin from such agreements and conclude conventions directly with representatives of West Berlin. Occasionally, the Federal Republic has had to make sacrifices in the bargaining procedure for retaining the Berlin clause. The trade agreements also provide guarantees for the travel of West Germans to and from West Berlin; but thus far it has not been possible to extend similar general safeguards for the inhabitants of the western sections of Berlin.

The theoretical and practical problems of Germany’s partition are compounded by involved conflicts between theory and practice in Berlin. Both East and West Berlin pretend to be Greater

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28 In November, 1964, the Soviet government refused to accept the West German ratification documents of the Nuclear Test Ban Treaty because they provided for the inclusion of Berlin in the operational area of the treaty. *New York Times*, November 29, 1964.

29 *New York Times*, June 6, 1964. Since 1961, in order to oppose Moscow’s three-German-states theory, Bonn insisted that a cultural agreement must cover West Berlin. When in 1964 the Bolshoi Ballet was invited to the Federal Republic, it refused to play in West Berlin; thereupon, the visit to West Germany was cancelled. *Stuttgarter Zeitung*, January 30, 1965.

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Berlin; the Federal Republic claims to be the sovereign power of all Berlin, while the German Democratic Republic claims the same sovereignty for itself. And the Western Allies consider all of Berlin to be under the control of the Kommandatura a three-power agency in reality, a four-power agency in theory. These theoretical divisions and their fictional character were accentuated when the city became physically divided by the Wall in 1961.

The Second Battle for Berlin and the Wall

After the end of the blockade of 1948–49 there was a relative lull in Berlin until Khrushchev opened the second Soviet campaign against the city in November, 1958. By that date the Soviet leader, having defeated his internal opposition, restored order in the Soviet camp (Poland and Hungary) and thus consolidated his power, considered the time ripe to resume the offensive. Khrushchev's objectives were, essentially, the same as those of Stalin: to gain advantages over the city, over West Germany, and, eventually, to obtain control over both. Whatever the net gain of this operation might be, it would strengthen the D.D.R., demoralize West Germany, disrupt and possibly destroy NATO, and pave the way for a Soviet conquest of Germany by peaceful means. The Berlin position of the West was so vulnerable that it presented latitude for a great variety of Soviet pressures and the opportunity to charge the West with inflexibility. The Berlin situation demonstrated that meticulous infringement on even those concepts that were largely fictitious might reap real benefit in terms of literal power.

Khrushchev's opening gambit, the speech of November 10, 1958, appeared to be an extempore performance, followed up later by a more carefully worded note. Improvisations, skillful and artless declarations, honey and vinegar, deadlines and postponements marked the second Berlin campaign. The Soviet leader had created this “crisis,” and he wished to keep it under his control; while probing the opponent's will to resist, he was always careful to avoid escalating the conflict into physical acts of violence.

After the unilateral abrogation of the four-power agreements on Berlin, the Soviets intended to create a “free city of West Berlin,” demilitarized but guaranteed by the four powers, perhaps also by the United Nations, and the “two German states.” The occupation

status would thus come to an end, together with other residue of the last war: this meant, first of all, handing over to the authorities of the German Democratic Republic the control of access routes to Berlin. The Soviet note of November 27, 1958, also intimated that, in return for West Berlin's commitment not to allow subversion or other hostile activities against the D.D.R., Ulbricht's government would guarantee freedom of traffic to and from the city. In January, 1959, the Soviet government submitted its draft peace treaty and again threatened to sign a separate peace treaty with East Germany should the Western powers be unwilling to discuss and, eventually, sign such a document.\textsuperscript{32}

The developments of the Geneva Foreign Ministers Conference in May-August, 1959, have already been reviewed. The Western powers were sufficiently impressed by the Soviet threats that they were on the verge of compromising with the Soviets on the separate status of West Berlin (disregarding both the official "unity" of Berlin and the dependence of the Berlin issue on the wider problem of German unity). To the enormous relief of the West German government, the Russians declined the last compromise offer of the Allies, the so-called "interim proposals for Germany and Berlin."

The invitation of Khrushchev to the United States promised to remove the impasse of Geneva. Under the mellowing "spirit of Camp David," President Eisenhower agreed that negotiations "would be reopened" on the "specific Berlin question" (and not the German question); Khrushchev agreed that there should be no time limit for these negotiations but they "should not be prolonged indefinitely.\textsuperscript{33} Some furor was aroused in West Germany by the President's admission that the situation of Berlin was "abnormal." It was felt that he should rather have said that divided Germany was abnormal and that the "abnormality" of Berlin was just a consequence of this even greater abnormality.\textsuperscript{34}

Another result of the Camp David negotiations was the Summit Conference, coveted by Khrushchev, to be held in Paris in May, 1960. The Berlin question was to be one of the items of this conference. This time the Americans preferred to have an overt fiasco

\textsuperscript{32} For the Soviet diplomatic offensive in 1958 and 1959, see also Chapter I, pp. 44-66 above.
\textsuperscript{33} For the Joint Communiqué by the United States and the Soviet Union regarding Camp David conversations, the statements of President Eisenhower and of Premier Khrushchev, see U.S. Senate, \textit{Documents on Germany}, pp. 584-86.
\textsuperscript{34} Khrushchev in his letter to Adenauer dated January 28, 1960, referred to this admission that the "situation in West Berlin is abnormal." \textit{Ibid.}, p. 591.
instead of a second Geneva, and Secretary of State Christian Herter and Under Secretary of State Douglas Dillon gave warnings to Khrushchev that he should not expect any agreement on his terms.\textsuperscript{35} These warnings did not remain unnoticed in Moscow! Khrushchev in his speech delivered in Baku on April 25, 1960, not only castigated these statements as "out of tune with the tenor" of the Camp David conversations but returned to his erstwhile threats: the signing of a peace treaty with the German Democratic Republic, the forfeiture of the right of access of Western powers to West Berlin "by land, water and air."\textsuperscript{36}

It appeared as though the Western heads of government might at last be ready to call Khrushchev's bluff. Evidently, he could sign his peace treaty with Ulbricht only once; if the Western powers' access rights to Berlin thereafter remained in vigor, the Soviets would lose much of their leverage in Berlin. Rather than face such a setback, Khrushchev exploded the U-2 incident into an \textit{affaire} to cause the collapse of the Summit Conference. Internal pressures or pressures by the Chinese may also have been among his reasons. But there is no proof to show that any of these causes were decisive.\textsuperscript{37}

After the violent outbursts of the Soviet Premier in Paris, the world might have expected a new flare-up of the Berlin crisis when he addressed a meeting in East Berlin three days later. However, Khrushchev merely advised his audience that the "existing situation will apparently be preserved till the Heads of Government meeting, which, it is to be hoped, will take place in six or eight months."\textsuperscript{38}

For more than a year there was a diplomatic standstill on Berlin. Khrushchev gave the appearance of wishing to abstain from any interference in the American presidential elections and, after their outcome, to give sufficient respite to the new President. However, he reverted to this question when he met President Kennedy in Vienna on June 4, 1961.

At Vienna Khrushchev presented the American President with

\textsuperscript{35}See the address by Secretary of State Herter at Chicago, April 4, 1960, and that of Under Secretary of State Dillon at New York, April 20, 1960. \textit{Ibid.}, 594–98.

\textsuperscript{36}\textit{Ibid.}, pp. 598–603.


\textsuperscript{38}U.S. Senate, \textit{Documents on Germany}, pp. 604–6.
an aide méméoire on the German and Berlin problems. The document stated that a peace treaty with Germany was long overdue and that a peace conference should be convoked "immediately, without delay." The Soviet proposal did not tie the conclusion of a peace treaty to the recognition of the German Democratic Republic (this was a new approach), and it stated that "a peaceful settlement could be achieved on the basis of two treaties." The important provisions of both treaties were, however, to be identical. The aide méméoire then reiterated the well-known Soviet project for West Berlin as a demilitarized and neutral free city. As a guarantee of the city's freedom "token contingents of the United States, the United Kingdom, France and the U.S.S.R. could be stationed in West Berlin." Also, contingents from neutral states under the aegis of the United Nations could participate. The four powers should invite the two German states to agree on reunification; in the Soviet view only six months would be needed for the completion of such talks. In case of a failure to agree, the two peace treaties were to be signed.39

The Soviet aide méméoire, supplemented by Khrushchev's intransigence at Vienna, was interpreted in the West as a renewed threat against the safety of West Berlin. It was particularly that part of the Soviet document which again claimed for the Russians a right to participate in the occupation of West Berlin which provoked alarm. In the eyes of the West, the whole of Berlin was under the special occupation regime, and it had been illegal for the Soviets to hand over their sector to the D.D.R. Now the Soviet government, after having excluded the West from any interference in the eastern sector, wished to participate in the stationing of forces within the three western sectors.40 Secretary of State Dean Rusk gave a precise definition of Washington's appraisal of the situation: "Due to the de facto division of Germany, the entire situation in that country is abnormal. The Soviet position in regard to this matter is predicated on the belief that the division of Germany is normal, that the division of Berlin is normal, and that the sole abnormality that persists is West Berlin. This is not a formulation of the problem which is acceptable to the United States."41

The United States replied on July 17, 1961, to Khrushchev's aide méméoire. The note sought to restore the logical priorities of the

39 Ibid., pp. 642-45; for details on the Vienna talks, see Arthur M. Schlesinger, Jr., A Thousand Days (Boston, 1965), pp. 358-74.
40 Speier, Divided Berlin, p. 133.
41 From statements made by Dean Rusk at his news conference on June 22, 1961, U.S. Senate, Documents on Germany, p. 666.
Western approach to the problem by insisting that “there will be no real solution of the German problem, nor any real tranquility in Central Europe, until the German people are re-unified in peace and freedom on the basis of the universally recognized principle of self-determination.”

The note undertook to refute, one by one, the arguments advanced in the aide mémoire by pointing out their inaccuracy or impracticability. It ended by stating that “there is no reason for a crisis over Berlin. If one develops it is because the Soviet Union is attempting to invade the basic rights of others.”

Two days later, on July 19, 1961, President Kennedy in a news conference emphasized the three vital interests of West Berlin which, even at the price of war, must be preserved: (1) Western military presence, (2) freedom and viability of West Berlin’s population, and (3) security of the access routes to and from West Berlin.

It thus became clear that the Western powers were unwilling to discuss anything beyond some provisional arrangements to improve the status of West Berlin and eliminate certain differences; no final or fundamental alteration of Berlin’s political and military position could be undertaken without simultaneous steps for the solution of the problem of German unity. The speeches of the American leaders were accompanied by certain military moves, reinforcement of the garrison of Berlin and of the forces stationed in West Germany. All these gestures were intended to impress the Soviet leadership with the Western determination to defend the status of West Berlin against any aggression.

The motives that led Khrushchev to permit Ulbricht to raise the Wall between East and West Berlin can only be assumed. We are not sure whether the initiative for this move came originally from Pan­kow or from Moscow. The Berlin crisis created by the Soviets had increased considerably the economic and political difficulties of the East German regime. The number of refugees from East Germany flowing through the Berlin exit had risen significantly after the new Soviet offensive. This exodus reached a peak of 4,000 persons on August 8. For Ulbricht the outflow of valuable manpower was a first-class catastrophe; had the exodus not been stopped, it might

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42 Ibid., pp. 681-87.
43 Ibid., pp. 687-89; for the interpretation of this statement, see Dalma, Hintergründe der Berlin-Krise, pp. 17-24.
have led to the loss of several million more persons, disrupting the economic and cultural life of East Germany and leading to the downfall of the regime. This, of course, was a development which the Soviet Union could not tolerate.45

In West Germany there was less concern about the economic and social consequences of the refugees than about the demographic depletion of the D.D.R. It was feared that Germanism would lose additional “living space” to the Slavs, that Ulbricht might be compelled to engage Polish or Russian labor, and that the German element might be driven back even further than the Oder-Neisse Line.

In Washington and London the avalanche of refugees making use of the Berlin escape hatch strengthened those critics of Western intransigence toward Soviet demands over Berlin. Senator Fulbright, Chairman of the Senate Foreign Relations Committee, suggested that the German Democratic Republic close the yawning gap of Berlin to prevent the outflow of its population by maintaining that every state had the right to control the movement of its people.46

The East German regime had for years taken measures to check the flight of its population to West Germany. All along the demarcation line separating the D.D.R. from the Federal Republic, barbed wire, minefields, and watchtowers—the usual paraphernalia of the Iron Curtain—already presented formidable obstacles to would-be refugees. The periphery of West Berlin was equally well guarded; but the boundary between the western sectors and the Soviet sector of the city cut across streets, squares, gardens, or open areas. Residents from more distant parts of Berlin or from East Germany made use of the city’s traffic network where the legitimate movement of passengers could not be distinguished from the flight of refugees. The S-Bahn (city railway), using the elevated tracks of the Reichsbahn, the East German state railroad system, and run by

45 The impact on East Germany’s economy of the refugee exodus can be measured by Ulbricht’s admissions in an article written for Pravda. The East German leader said that the westward flight had cost to the economy of the D.D.R. thirty billion marks (40 per cent of the national income in 1961). He also said that the flight had been promoted by “wrong conceptions of the national question.” The refugees had thought that they were going from one Germany into another Germany but, in fact, “they were escaping the Socialist camp and going to the imperialist camp.” New York Times, December 31, 1961.
46 Windsor, City on Leave, p. 238. Senator Fulbright was reproached by West German writers of having encouraged the East German regime to set up the Berlin Wall. Klaus-Peter Schulz, Berlin zwischen Freiheit und Diktatur (Berlin, 1962), pp. 536–37.
the East German railroad administration, maintained many lines and stations in West Berlin. The U-Bahn (subway), run by the municipality of (West) Berlin, had lines and stations in East Berlin. Escapees had merely to buy tickets to some station beyond West Berlin (which they could produce as evidence if suspected of being fugitives) and get off at any stop within West Berlin. They would then be flown into West Germany.

During the night of August 12, the East German authorities placed barbed wire along the border of the western sectors of Greater Berlin and, within a few days, protected by armed forces of the D.D.R., erected a wall which allowed only a few gateways for traffic between East and West Berlin. On August 13, 1961, the government of the German Democratic Republic issued a decree which provided that: “To put an end to the hostile activities of the revisionist and militarist forces of Western Germany and West Berlin, such control is to be introduced on the borders of the German Democratic Republic, including the border with the Western sectors of Greater Berlin, which is usually introduced along the borders of every sovereign state.”

The decree, furthermore, forbade citizens of the German Democratic Republic (including the residents of East Berlin) from crossing into West Berlin without special permission. West Berlin civilians were to present their identity cards when crossing into East Berlin; in practice, however, they were turned back unless they had received special permits. The decree did not alter existing regulations concerning the movements of West Germans into or across East Germany; nor did it touch upon the rights of Allied military personnel (the decree speaks of “West Berlin civilians”) to enter East Berlin or to travel along the access routes on land to and from West Berlin.

The construction of a wall physically dividing the city of Berlin had a double objective: first, to stop the human outflow and, secondly, to terrorize and browbeat the people of West Berlin into obedience. In order to give the Wall an aura of collective approval, a declaration of the Warsaw Pact Powers on August 13, 1961, endorsed the measures taken by the German Democratic Republic against the subversive activities of the Federal Republic.

Fritz Schenk, a high-standing Party member, in order to escape, first traveled around West Berlin to Potsdam, then took a train from there back to East Berlin but left the train at a West Berlin station. Schenk, *Im Vorzimmer der Diktatur*, pp. 411-12.

U.S. Senate, *Documents on Germany*, pp. 723-25.
It will probably remain a moot question whether the Western powers could have prevented the building of the Wall either by the threatening presence of their Berlin garrison or, as was suggested, by sending their tanks through the concrete slabs.\textsuperscript{49} There were no Soviet tanks present; had Allied military actions provoked their appearance, the Soviet responsibility for erecting the Wall would have become blatantly apparent. Later, at the end of October, 1961, American and Russian tanks faced each other at one of the crossing points; this “game of chicken” ended with the withdrawal of the Soviet vehicles.\textsuperscript{50}

Beyond protests (which were rejected outright by both the Soviet Commandant of Berlin and the Soviet Ministry of Foreign Affairs) the Western powers and the Federal government found no suitable form of retaliation. Although Willy Brandt, the Governing Mayor of Berlin, had made various suggestions to both the Allied powers and the Bonn government, including troop movements along the Autobahn, the taking over of the West Berlin section of the Reichsbahn and the S-Bahn, and a ban on West German exports to the German Democratic Republic,\textsuperscript{51} the visit of Vice-President Johnson and the mission of General Clay, together with minor demonstrations by the Allied military in West Berlin were the only soothing gestures which the West could afford to make for the highly disturbed and demoralized West Berlin people.

The erection of the Wall had greater material effect on the inhabitants of East Berlin than on the people of the West. It closed before their eyes the possibility of escape; it deprived persons of even a hasty visit to the resplendent “West” Berlin, a stimulant so badly needed in the drab everyday drudgery of Communist East Germany. The exasperation felt in the East was manifested by the hazardous and often fatal attempts to defy the Wall. With the Berlin Wall, Khrushchev certainly put the lid on the boiling kettle of East Germany and successfully prevented the evaporation of her manpower. But once the door had been closed, it could hardly be opened again without causing an explosion disastrous to the regime.

For the West Germans the shock of August 13, 1961, resembled that of June 17, 1953. Helplessness and reluctance to take risks increased bitterness, and these feelings were expressed in the returns

\textsuperscript{49} For the various plans considered in the White House, see Schlesinger, \textit{A Thousand Days}, pp. 394–400.
of the September, 1961, elections.\textsuperscript{52} For the first time the Berlin issue had directly affected West German elections by turning the electorare against the party of the Chancellor.

The Wall has considerably increased the personal and individual hardships caused by the division of Germany. While the East German Revolt of 1953 shocked and grossly offended popular feeling in the Federal Republic, its memory has slowly faded over the years. But the humiliating and exasperating experience of the Wall has remained a constant source of repulsion in the political life of Germany and the thoughts of her people. Although the future impact of the Wall is not yet foreseeable, it promises to revive nationalistic sentiments and to foment latent hostility toward the Western powers, especially the United States, whose inaction dismayed the public.

The second, but by no means secondary, objective of the Wall—the demoralization and ensuing capitulation of West Berlin—failed. Like Stalin, Khrushchev and Ulbricht had under-rated the mettle of the battle-hardened people of West Berlin. Although their morale was low during the months following their severance from the East and many left the city for West Germany which caused economic relapse, they slowly recovered their sense of mission for the German cause. After the second Cuban crisis, their spirit for survival and ultimate victory gained strength. President Kennedy’s visit to the city in June, 1963, gave greater impetus to their quest. West Berlin now realized that, despite the hardships of separation, it could survive despite the Wall if its communications with West Germany remained intact.

In the aftermath of the Wall the main concern of the Western powers was the security of the access routes to Berlin. After a partial success with the Wall, the Soviets now seemed to shift their offensive against these routes; the harassments and situations of risk that followed were designed to obtain wider recognition for the German Democratic Republic, whose “sovereignty”—as it was repeatedly said—was being impaired by the Western use of land, water, and air routes to Berlin. The Berlin question now became largely identified with this delicate problem.

\textit{The Question of Access Routes to Berlin}

The problem of Berlin is a product of the larger German problem; the question of access routes to Berlin reflected Berlin’s pecul-

\textsuperscript{52} See Chapter I, p. 47 above.
iarian status, its location 110 miles from the dividing line of East and West Germany. We recalled earlier how a separate Berlin area, to be jointly administered by the four powers, had been established within, but not as part of, the Soviet zone of occupation, and how the Western powers had failed to ask for definite access routes by rail and road.\textsuperscript{53} But in order to ensure safety of flights, the Four-Power Control Council approved the establishment of three air corridors, each twenty miles wide, along the lines: Berlin-Hamburg, Berlin-Hanover (Buckeburg), and Berlin-Frankfurt/M, on November 30, 1945. Flights along these routes (corridors) were to be "conducted without previous notice being given, by aircraft of the nations governing Germany."\textsuperscript{54} These transit rights were not restricted to military aircraft, an important circumstance which was not true of the land routes.

Under these provisions all the movements of American, British, and French airliners, military and civilian alike, are completely outside Soviet and East German control. The Inter-Allied Air Safety Center, in which the Russians have continued to participate, serves only for co-ordinating flights in order to insure their safety and does not exercise any rights of control.

During the Berlin blockade of 1948-49, the Soviet authorities did not seriously interfere with the "air lift" of the Allies, except for a few harassments. These interferences have continued; the Soviet government has also endeavored to restrict the use of the air corridors, partly by limiting the heights of the flights, partly by trying to exclude civilian aircraft or certain types of passengers, but to no avail.\textsuperscript{55}

When by the Treaty with the German Democratic Republic of

\textsuperscript{53} Chapter I, pp. 12–13 above.

\textsuperscript{54} U.S. Senate, \textit{Documents on Germany}, pp. 41–49. Italics have been added.

\textsuperscript{55} Some of these attempts were made by the Soviet personnel in the Berlin Air-Safety Center. On September 2, 1961, the Soviet government, in a note addressed to the three Western powers, protested against the use of the air corridors by commercial airlines and against transportation of West German "spies," "militarists," and "revanchists." The three Western powers replied on September 8, 1961, in identical notes refuting Soviet allegations and rejecting the protests. See U.S. Senate, \textit{Documents on Germany}, pp. 784–91; \textit{Dokumente zur Berlin-Frage}, pp. 525–30; \textit{New York Times}, September 9, 1961. The right to use unrestricted heights in the corridors was maintained in an American note of protest on February 15, 1962; \textit{Dokumente zur Berlin-Frage}, pp. 532–34.

In May, 1964, the Soviet government protested against direct flights between New York and West Berlin; its contention was that under existing agreements foreign airlines were allowed to fly to West Berlin from West German airfields only; \textit{New York Times}, June 23, 1964.
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September 20, 1955, the Soviet Union recognized the complete sovereignty of the latter, surrendering to them the control and surveillance of lines of communication between the Federal Republic and the D.D.R., the three air corridors were expressly exempted from the application of the Treaty. The East German Law for Civilian Air Traffic of August 1, 1963, also excluded from its scope those flights which were subject to “conflicting international treaties.”

The three air corridors for American, British, and French (but no West German) military and civilian aircraft have thus been effectively used since 1945 as extraterritorial access routes. These airlanes are, therefore, the most reliable links between West Germany and West Berlin; in 1948-49 they had been the lifelines of West Berlin’s freedom and survival. The Western powers constantly use these airlanes; as far as the definition runs, they actually control them. Any obstruction of their use would be construed as an aggression by the Soviet Union or the German Democratic Republic, involving the probability of legitimate self-defense. In this case the Western powers might have the civilian aircraft passing through the corridors accompanied by fighter planes and perhaps also with bombers to take out anti-aircraft batteries on the ground. Thus, the security of air communications has two bases: legal clarity and actual possession. Only overt violence could change the situation.

On land the problem is different. Only “oral” and “temporary” arrangements had been made between General Clay and Marshal Zhukov for the allocation of one main highway and rail line. No record was kept of this meeting which was held before the Western Allied forces moved into Berlin. The significance of a formal agreement in dealings with the Soviet Union, let alone any foreign government, was completely overlooked. The military leaders felt at that time that access to Berlin was a purely “military matter”

66 U.S. Senate, Documents on Germany, pp. 187–89; Dokumente zur Berlin-Frage, pp. 239–41.
68 Clay, Decision in Germany, pp. 25–27. See Chapter I, p. 13 above.
69 General Clay writes: “I think now that I was mistaken in not at this time making free access to Berlin a condition to our withdrawal into our occupation zones. . . . However, I doubt very much if anything in writing would have done any more to prevent the events which took place than the verbal agreement which we made. The Soviet Government seems to be able to find technical reasons at will to justify the violation of understandings whether verbal or written.” Clay, Decision in Germany, p. 26. See also by same author, “Berlin,” Foreign Affairs, October, 1962, pp. 47–58.
and that *de facto* recognition was more important than any definite written understanding. Under the Potsdam Agreement and subsequent understandings, zonal borders were not to be closed to civilian passenger and goods traffic.

The Western military forces were given the use of the Helmstedt-Berlin railroad track and the Marienborn-Berlin Autobahn highway across the Soviet zone. Barge traffic on rivers and canals was covered by various technical agreements. These rail, road, and water access routes were successively closed after March 30, 1948, by the Soviet forces of occupation. After the lifting of the blockade, the Soviet Commander of the Soviet zone enumerated in an order of May 9, 1949, all the access routes (including points of entry and exit) which might be used both for military and for civilian passenger and freight (including mail) traffic to and from Berlin.

Under the Treaty and simultaneous exchange of letters between the Soviet and East German governments of September 20, 1955, the German Democratic Republic was to exercise general control of the lines of communication between the Federal Republic and West Berlin, including rail, road, and barge traffic. While civilian traffic thus became subject to East German supervision and control, the movement of American, British, and French forces and their supplies continued to be exempt from East German control "on the basis of existing Four Power decisions." The Treaty provided that the control of Western military traffic was, as before, to be exercised "temporarily" by the Command of Soviet troops in East Germany. The agreement lists the Autobahn Berlin-Marienborn and the railroad line Berlin-Helmstedt (with empty rolling stock to be routed back on the Berlin-Oebisfelde line) as the authorized routes of access.

The subjection of civilian traffic to the control of the German Democratic Republic elicited protests and reservations by the three Western powers but, henceforth, D.D.R. officials undertook the tasks of civilian inspection while Western military transports continued to be checked by Soviet military personnel.

On August 23, 1962, the Soviet government abolished the office

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60 See the interesting discussion of this point in The Hammarskjold Forums, *The Issues in the Berlin-German Crisis*, pp. 34–37.

61 See the several technical agreements and the Soviet Order of May 9, 1949; *Dokumente zur Berlin-Frage*, pp. 38–42, 64–65, 109–11.

of Soviet commandant of (East) Berlin, thereby demonstrating the final transfer of East Berlin to the German Democratic Republic and the end of the occupation status of Berlin.⁶³ But, de facto, nothing had changed: the Soviet Defense Ministry was eager to announce to representatives of the Allied military authorities in West Berlin that “matters relating to control over the movement of personnel and supplies of the garrisons of the United States, Britain and France into and out of West Berlin, the guarding of the prison of chief German war criminals in Spandau and sentry duty at the monument to Soviet troops in Tiergarten temporarily are within the jurisdiction of the Headquarters of the group of Soviet forces in Germany.”⁶⁴

While the Soviet government adjusted to the notion that East Berlin was part of the D.D.R. by abolishing its military command, it was careful to maintain all the remaining privileges of this office in West Berlin. The characteristic Western response was to declare that, irrespective of organization, the Soviet Union would be held responsible for carrying out its obligations in Berlin.

The Soviet-East German Treaty of Friendship, Mutual Assistance and Co-operation of June 12, 1964, also refrained from introducing any changes concerning the access routes to Berlin by stating that the treaty “does not affect the rights and commitments of the Parties under the bilateral and other international agreements which are in force, including the Potsdam Agreement.”⁶⁵

The absence of clear written agreement concerning the rights of transit on land are a matter of constant anxiety and irritation to the Western Allies and West Germans. This lack of detailed regulations has created the need for developing certain usages or “procedures.” Because these procedures have not received official acceptancy by both parties and because (like all customary rules) they are somewhat vague themselves, they offer a fruitful field for “salami” tactics or “incidents” that whittle down Western privileges.

A good example of how the vagueness of working procedures provides opportunities for Soviet harassment was the detention for

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⁶³ Until the erection of the Wall on August 13, 1961, the Western Allied Kommandatur maintained contacts with the Commandant of the Soviet forces in East Berlin, whom they considered a nonparticipating member of the original four-power Kommandatur. After the Wall, when members of Allied forces occasionally were barred from entering East Berlin, the West resorted to retaliations by refusing, temporarily, the entry of the Soviet Commandant into West Berlin.


fifty-two hours of United States military convoy on October 10 and 11, 1963, at the Babelsberg checkpoint at the exit of the Autobahn from Berlin. By unwritten convention the personnel of American convoys dismounted to show their number to the Russian guards whenever they exceeded thirty—not counting the plainly visible drivers and their assistants. This was a convoy of less than thirty passengers, and, therefore, the officer in command refused the Soviet invitation to dismount. The convoy was obstructed by Soviet military vehicles. Finally, the Russians gave in and the convoy was able to proceed. Similar incidents have been created to remind the Western Allies of their dependence on Soviet goodwill for maintaining their overland links with West Berlin and also to recall that West Berlin "is a bone in the throat" of East German and Soviet power.

There is little doubt that the Western powers also possess legal rights of access on land to Berlin. It may, however, be questioned whether such rights are based on customary international law concerning enclaves, on the "verbal" agreement between the wartime military commanders later confirmed by various technical arrangements, or, finally, on local custom observed and thus developed into compulsory rules during the past twenty years. Transit rights across the territories of foreign states are not an unusual feature of international life; Germany, from 1919 to 1939, enjoyed a right of passage, originally conceded by the Treaty of Versailles, across the so-called Polish Corridor in order to maintain secure communications on land with the East Prussian area.

The legal aspect of the Western access rights to Berlin (except...
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for the air corridors) is, however, obscured by the uncertainty of their origin, by the absence of detailed written agreements covering the exact nature and content of these rights, and also by the quasi-exclusiveness of control exercised by Soviet authorities, which has largely reduced the claimed “unrestrictedness” of the access rights. Many of the original rights (e.g., civilian traffic) have been eroded or subjected to the control of the legally uncommitted East German partner.

But the legal aspect of access rights, though by no means inconsequential, has had only a limited bearing on the continued durability of these rights; their survival for twenty years is rather a result of the existing balance of power and the fear of violent conflict.

Nevertheless, the somewhat threadbare character of Allied access rights on land to Berlin has exposed the Western powers and the Federal Republic to the “blackmail” of a separate peace treaty with East Germany whereby the control of communications with Berlin would be handed over to the mercy of the German Democratic Republic. This threat, as well as the view held by many in the West that a detailed and formal agreement would forestall frictions and contribute toward the easing of the tensions over Berlin, persuaded the United States and Britain to seek a limited arrangement of the Berlin issue by concentrating on the problem of access routes.

On land—unlike the air corridors—the Soviet and East German forces are in possession. When these forces obstruct rail or road routes, Western Allied traffic may proceed only by using force. In such a case, the West would be the attacker and could be stigmatized as an aggressor. Still, plans of breaking through the Berlin blockade were weighed in 1948, and such contingencies have never been ruled out entirely.70

The informal conversations on Berlin conducted in Moscow and Washington in 1962 and 1963 were undertaken by the United States mainly for the purpose of strengthening the Allied access rights. The American attempt to establish the access rights on a firm and regular basis had to be bargained against Soviet endeavors to remove the Western garrisons in Berlin or lower them to a token force and to “upgrade” the East German regime by giving her an opportunity to participate in the control of army traffic on the access routes.

In November, 1958, when Khrushchev first voiced his threats, 70 The Ambassadors’ Steering Committees, in Washington and Bonn, considered to be in permanent session to watch and advise on developments on Berlin, have worked out contingency plans with support by the military. Advocates of more militant reactions are said to be suffering from “Berlinitis,” in the current phraseology of these committees.
Secretary of State Dulles suggested that the Western powers might deal with D.D.R. functionaries as "agents" of the Soviet Union.\textsuperscript{71} This concept was, however, rejected by the Russians. In March, 1962, the Soviet Union launched the idea of an "arbitration authority" on disputes over access to West Berlin which would decide conflicts between East German authorities (who would be in charge of the control) and the Western powers. The price to be paid for the "normalization" of access rights was to be the limited or full recognition of the German Democratic Republic and its exercise of control over access routes together with the reduction of Western garrisons in West Berlin to a "symbolic" force and their replacement by "neutral" forces. Even if the United States had been ready to negotiate improved communications with Berlin on such a basis, the Federal government would have strongly opposed any such deal.\textsuperscript{72}

It is not in the interest of the Soviet Union to change the present vague status of access routes on land unless a more valuable \textit{quid pro quo} is given in exchange. In view of the potential tensions between communism and the Western world, a really satisfactory solution of land access to West Berlin could only be achieved if the control of movements by rail and road routes were ceded to the Western powers. Unless there is a guarantee of co-operation between the interested powers, transit rights on foreign territory cannot be reliably exercised when the users of these rights belong to states different from the organs of control.\textsuperscript{73} The Western Allies would enjoy a really "unrestricted" right only if their movements along the indicated routes were not subject to Soviet or East German control.\textsuperscript{74} But there is no likelihood that agreement could be reached along these lines.

In all probability, the Western rights of access to Berlin will remain a constant source of irritation and danger unless the Soviet Union abandons its campaign to convert West Berlin into a "free

\textsuperscript{71} News conference by Secretary of State John Foster Dulles in Berlin on November 26, 1958, Documents, p. 344. See also Mander, \textit{Berlin: Hostage for the West}, pp. 83, 102.


\textsuperscript{73} Váli, \textit{Servitudes of International Law}, pp. 314-317.

\textsuperscript{74} Senator Claiborne Pell of Rhode Island proposed that the Berlin-Helmstedt Autobahn be ceded to West Germany as an "unlimited corridor of access to West Berlin." In exchange, the United States was to recognize the D.D.R., as well as the Oder-Neisse frontier; \textit{New York Times}, December 22, 1963. It is very unlikely that either the Soviets should consent to such a territorial corridor across East Germany or that West Germany, even at that price, would agree to the recognition of the D.D.R.
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city” and to “blackmail” the West into recognizing the East German state. The present access rights are by no means secure; nevertheless, they critically affect the status and destiny of Berlin. They cannot be strengthened, except for a price: recognition of the D.D.R. or a deterioration of the status of West Berlin. The main thing not to be lost sight of is that the access rights are a means—crucial, to be sure—but that the integrity of West Berlin is an end, both for the West and for the free Germans.

After the Wall—Future of the Berlin Problem

The Wall did not lead to the demoralization or capitulation of West Berlin; it probably saved East Germany from economic collapse, but it created human problems which, in their turn, grew into weighty political problems. The physical separation of two parts of Berlin caused bitterness on both sides of the Wall; it was an admission of the weakness by the German Democratic Republic before its own citizens. Not only those 50,000 East Berliners who daily commuted to work in West Berlin but workers, in general, called for a removal of the “Wall of Shame.”

But the Ulbricht regime seemed little concerned with public pressures in the West or in the East. It wished to exploit the Wall for recognition purposes. Before Christmas, 1963, Pankow announced its willingness to issue day passes to West Berliners to enable them to visit relatives in East Berlin at the Christmas season. The Federal government suggested that the plan should be negotiated by Dr. Kurt Leopold, then head of the Interzonal Trade Office (who negotiates East-West German trade agreements); the East German government, however, insisted that the arrangements should be made by the West Berlin municipality. Bonn gave reluctant consent that the agreement should be made by the Governing Mayor of Berlin with the East German authorities. In order to “de-politicize” the issue, East German postal officials were to come to West Berlin to issue the border passes.

From December 22 to January 5, 1964, 1.3 million West Berliners

75 For reports about discontent in East Berlin factories because of the Wall, after the 1963 Christmas visits, see New York Times, January 3, 1964.
76 The East German regime wished to convey the impression that West Berlin is a political entity, separate from the Federal Republic, thereby creating a precedent for the future. See the reports in New York Times, December 7, 8, and 14, 1963.
77 East Germany’s press, nevertheless, was jubilant in declaring that the arrangement was a political deal instead of a nonpolitical, humanitarian one. Ibid., December 23, 1963.
out of a total population of 2.2 million visited the eastern section of the city to meet relatives.\textsuperscript{78} This mass pilgrimage from one part of Berlin to the other was a significant demonstration of the sentiment of unity.

The 1963 Christmas pass agreement was concluded by the West Berlin city government with the approval of both Bonn and the Allied occupation powers. Nonetheless, it elicited violent criticism by supporters of the “hard” line in the Federal capital, who charged Berlin with helping to erode the Western position on German unity. The Berlin magistrate was reproached with trying to have the best of all worlds, “security from the Americans, money from Bonn and passes from Ulbricht.”\textsuperscript{79} On the other hand, members of the Free Democratic party and also some CDU leaders approved of the arrangements, which they considered merely technical and well substantiated on humanitarian grounds. Even Governing Mayor Willy Brandt agreed, however, that this agreement should not be taken as a model. The United States, in afterthought, felt some misgivings about the pass deal when “humanitarian haste overshadowed political policy.” Official spokesmen also pointed out that in any case occupied West Berlin has no legal status to “recognize” any state.\textsuperscript{80} And West German official circles made it clear that with the agreement in question the Federal Republic had reached its extreme of sacrifice in the face of Communist inhumanities; no further gestures could be made without political harm to the well-known Western position about Berlin.\textsuperscript{81}

Soon both the Bonn government and the West Berlin Magistrate came to the conclusion that the East German design was to exploit the humanitarian need to bring relatives together; they agreed that no temporary agreement should be concluded and that negotiations should be held strictly at a technical level. No East German officials (not even postmen) should come to West Berlin to distribute entry permits, which could be handled just as easily by mail.\textsuperscript{82}

In February, the East German government renewed its offer to permit the entry of West Berliners for the Easter and Pentecost

\textsuperscript{78} Polls conducted before the border pass agreement revealed that 80 per cent of all West Berliners maintain personal ties with residents of East Germany and East Berlin, and 66 per cent have relatives in those areas. \textit{Bulletin} of the Press and Information Office of the Federal Government, January 14, 1964.


\textsuperscript{80} \textit{Ibid.}, January 3, 1964.

\textsuperscript{81} \textit{Frankfurter Allgemeine Zeitung}, December 18, 1963.

holidays. Previously, an invitation to Willy Brandt by Alexander Abusch, East German Deputy Prime Minister, to discuss the question of border passes and "related matters" had been rejected. It appeared at that time that Pankow was trying to push a wedge between West Berlin and Bonn. The aim of the new offer was evidently to raise the level of contact between East and West, and to establish permanent East German offices in West Berlin. One of the conditions set by Pankow was that henceforth East Berlin was to be referred to as "the capital of the German Democratic Republic." The rejection of this offer was announced in a joint statement by the Federal government and the West Berlin Magistrate.83

The contacts between West Berlin authorities and the officials of the D.D.R. were, however, not discontinued. After negotiations lasting almost nine months between Horst Korber, councillor of the (West) Berlin Senate, and Erich Wendt, East German state secretary, on September 24, 1964, another "pass" agreement was signed to apply for a period of one year. The Federal government, in agreement with West Berlin, consented to a formula which differed little from the earlier one. The D.D.R. insisted that (East) Berlin should receive the epithet: "Capital of the German Democratic Republic." Earlier, Bonn had suggested that the West Berlin negotiator should sign "on behalf of the responsible authorities," to avoid the implication that West Berlin was a political entity, entitled to sign an agreement. But the Western Commandants objected against such vague terminology because it might have been interpreted as having committed the occupation powers, ultimately responsible for West Berlin.84 Eventually, Horst Korber signed, "on instructions by the Chief of the Senate's Chancellery, directed by the Governing Mayor of Berlin."85 The only apparent concession by Pankow had been to agree that the entry permits were to be handled jointly by both East German postal clerks and West Berlin officials.

The Federal Chancellor, in order to counteract criticism against the form of the agreement, issued a declaration emphasizing that "the significance of the agreement is in the human sphere"; that it "in no way affects or changes the status of the German capital, Berlin"; that, despite the agreement, "the democratically not legit-

83 Ibid., February 14 and 15, 1964.
84 Ibid., September 7, 1964.
85 Ibid., September 24, 1964. The full text of the agreement of September 24, 1964, was made public by the Federal Press and Information Office on September 25 for the purpose of radio transmissions.
imized regime of the Soviet-occupied zone is not a subject of international law." Therefore, no importance should be attached to what name it gives itself.86

Bonn continued to be unhappy with the border pass agreement. In August, 1965, it refused to agree to an extension of the earlier agreement for another year because it considered the East German offer too narrow. Nevertheless, in November, 1965, a new agreement opened the gates of the Wall for visiting relatives during the Christmas season, and another renewal took place in the spring of 1966 for Easter and Whitsuntide visits.87 No such agreement was, however, concluded for Christmas 1966.

As a result of these agreements, West Berliners were enabled to meet their relatives during holiday seasons in East Berlin, widely referred to as visits "to relatives in prison." The evident hesitations of the Bonn cabinet reflect the peculiar implications of these arrangements: humanitarian considerations compete with political viewpoints. While the SPD, the majority party in West Berlin, considered these arrangements as one of the "small steps" suggested by its leader, Willy Brandt, opponents of the "soft" approach objected for reasons of principle. Other political leaders, especially those of the FDP, while approving the contacts, would have preferred to have them between some Federal agency and the East German authorities rather than between the Social Democrats of West Berlin and Pankow.88 Ultimately, however, the humanitarian principle won over political strife and punctilious legalism for the benefit of millions of West Berliners.

Like the Federal government, the Western occupation powers refused to acknowledge any change in the status of Berlin, as they conceived it, despite the Wall and the liquidation of the office of Soviet commandant in Berlin on August 23, 1962. The three occupation powers promptly issued a communiqué stating that the abolition of the post of Soviet commandant did not destroy the authority of the Kommandatura and asserting that:

the commandants in the Western sectors of Berlin will continue to exercise their rights and discharge their responsibilities both in their individual sectors and jointly in the Kommandatura in accordance with long established procedures and agreements. They will continue to consider the Soviet officials as responsible for carrying out their obligations regarding the Soviet Sector of Berlin.

Moreover, the Soviet announcement can in no way affect the unity of Berlin as a whole. Despite the illegality of the wall and the brutality of the East German authorities in preventing the inhabitants of East Berlin from leaving that area, Berlin remains a single city. No unilateral action by the Soviet Government can change this.89

The Soviet campaign against West Berlin abated by 1964. After the second Cuban crisis no major move took place, no new deadlines were set, and little was heard of the threat to conclude a separate peace treaty with the German Democratic Republic. The final anticlimax came in June, 1964, when the Soviet Union concluded a Treaty of Friendship, Mutual Assistance and Co-operation with East Germany. Before the signature of this instrument in Moscow, the Kremlin gave official notice to the Western powers that the treaty to be signed would not be the oft-threatened “Peace Treaty” abolishing Western rights in Berlin, including the access rights.90

The treaty signed by Khrushchev and Ulbricht on June 12, 1964, contained nothing of a revolutionary nature. The signatories promised to work “for the elimination of the remnants of World War II, for the conclusion of a German Peace Treaty and for the normalization of the situation in West Berlin on this basis.”

The Treaty, once more, guaranteed the “inviolability” of the borders of the D.D.R. (which had already been guaranteed by the Warsaw Treaty of 1955) and confirmed the opinion that “the creation of a peace-loving democratic united German state can be achieved only through negotiations on an equal footing and agreement between both sovereign German states.”

As for Berlin, the Treaty merely affirmed that “the High Contracting Parties will regard West Berlin as an independent political unit.”

Thus, the Treaty in no way suggested that West Berlin was part of the German Democratic Republic. That Khrushchev had no intention of conferring further rights on the East German state and that no de facto change in existing arrangements was planned is made evident by this provision: “The present Treaty does not affect the rights and commitments of the Parties under the bilateral and other international agreements which are in force, including the Potsdam Agreement.”91

It may be assumed that this text relates to the rights of control

89 New York Times, August 24, 1962. Italics have been added.
90 Ibid., June 12, 1964.
which the Soviet Union had reserved for itself when the German Democratic Republic was granted sovereignty. Thus, the Treaty has implicitly given up the earlier thought of extending East German rights to the Western access routes to Berlin. It is not likely, after having concluded this rather anodyne diplomatic instrument, that the Kremlin will revert to its earlier menacing attitude in the near future.

With the conclusion of the Treaty of June 12, 1964, the second long and drawn-out battle for Berlin appeared to have ended. The net gain of this campaign was the Wall, the sealing off of East Germany's border to save her from bleeding to death. If we consider that Khrushchev's broader objective may have been not West Berlin alone but the disruption of the Western alliance and disorientation of Western Germany, his offensive failed both in the narrower and broader perspectives. Despite hardships and bitterness caused to the German people on both sides of the Wall, this arbitrary act did not change the essentials of the delicate balance in Berlin. Soviet provocations only hardened Western determination to defend the city and also stiffened the spirit of resistance among the Berliners. The Soviet Union was given to understand that any attack on Berlin or interference with Allied rights in Berlin would eventually be resisted by force.⁹²

On the other hand, there seems little chance at present of doing away with the monstrosity of the Wall. Should this barrier be lifted suddenly, the ensuing mass exodus would certainly be a deadly blow to the German Democratic Republic. Only after a significant decompression of the East German regime's totalitarian and terrorist rule could the Wall be torn down without extreme risk. Of course, in view of popular sentiment in East Germany, decompression itself could be hazardous. And so, the people of West Berlin will have to live—however difficult it may be—with the Wall.

West Berlin will also continue to endure various kinds of harassment, attempts to whittle down Allied and West German rights and to create precedents that weaken the Western doctrinal and practical positions. In all likelihood, West Berlin will take all these dangers in stride. After a few months of frustration and dependency it appears that the city has regained its resilience; after some signs of economic decline, productivity has been recovered.⁹³ Naturally,

⁹² See the joint communiqué issued on June 12, 1964 (on the day when the Soviet–East German Treaty was signed) on the meeting of President Johnson and Chancellor Erhard in Washington. Ibid., June 13, 1964.
⁹³ For an appraisal of West Berlin's economy after the erection of the Wall,
the mood of the city is a very sensitive barometer of international and local tensions. Every event on the home or international front is related to its own situation and future.\textsuperscript{94} However, Berliners can cultivate optimism by comparing their situation with that of their fellow-citizens on the other side of the Wall.

The Berliners are much encouraged by any sign manifesting the intention to restore this city as capital of a united Germany. All major government construction in Bonn is interpreted as a tacit admission of the permanency of Germany's division, while the restoration of the former Reichstag building was viewed with satisfaction.\textsuperscript{95} Gestures to reassure Berlin are not infrequent; the Federal Convention (Bundesversammlung), which elects the Federal President, has, since 1954, met every fifth year in Berlin despite protests by East Germany and the Soviets and the misgivings of the occupation powers.\textsuperscript{96}

As Berlin has to go on living with the Wall, so the world will have to live with the Berlin situation, dangerous and unsettled as it may be. This writer foresees no realistic possibility for solving the Berlin problem without a settlement of the total German question. The settlement of controversial points of the Berlin imbroglio would necessarily upset the delicate legal and political equation by which the city has lived during the past twenty years. While the Federal Republic may be reproached by its Allies for being too doctrinal and rigid, the occupation powers themselves are compelled to be scrupulously "legalistic" when defending their rights in Berlin against Soviet and East German "nibbles."

Internationalization of the Berlin area, placing it under United Nations protection with international garrisons, would not, as we have suggested, be considered equivalent to the present three-power

\textsuperscript{94} For instance, the statement by Richard Nixon on July 23, 1963, that he was going to show his passport to the East German guards at the Wall, as when he crossed the Hungarian or other Communist borders, was unfavorably commented upon. He should have emphasized that he was entering as a private citizen (in an official capacity he would not have had to show a passport), and his reference to other "real" state borders appeared to the Berliners to be misplaced. When, for reasons of finance, the American Ambassador gave up his special train (with which he could travel to West Berlin without passport and customs examination), anxiety was felt in Berlin that he was giving up some of his "rights."

\textsuperscript{95} see Karl Schiller, "Berlin, Germany and Europe," \textit{Europa-Archiv}, October, 1965. The author was Senator for Economic Affairs in the Berlin Senate.

\textsuperscript{96} New York Times, June 14, 1964.

\textsuperscript{96} Elmer Plischke, \textit{Government and Politics of Contemporary Berlin}, pp. 70--71.
protection. The Soviet “Free City” concept would leave Berlin disarmed and defenseless. This proposal as well as other plans, like the project of McDermott or of Senator Pell, would involve recognition of the German Democratic Republic, a move which would not be acceptable to West Germany. Any of these changes would be construed as a further perpetuation of Germany’s division and would, therefore, be anathema to Bonn. Only the status quo, manifestly anomalous despite its twenty years’ duration, is consistent with the political and sentimental demand of the Germans for an eventual reunification of their country. Berlin is not only a microcosm of partitioned Germany; it is also a symbol of its hopes for unity.