

## **SURVEY OF THE GERMAN PROBLEM SINCE 1944**

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The German problem, as it stands to-day, can be understood properly only in historical perspective. After Germany had lost the First World War, the left bank of the Rhine was demilitarized and occupied by the Allies for a limited period. About one-and-a-half decade later, the occupied territory, having been evacuated before the time contractually scheduled, was in 1936 re-fortified again; three years later, World War II was launched. When, in Autumn 1944, the end of German military resistance was coming in sight, the Allies appeared to be faced with a problem similar to that of 1918-19: to impose a peace upon their unsuccessful adversary, at the same time, however, taking care that their conditions were faithfully complied with in the future. To safeguard this, two measures seemed essential which had not been taken at the end of World War I: this time, the Allies decided, it would not be left to the Germans themselves how to effectuate a thorough reconstruction of their constitutional system - for such a reconstruction appeared essential in order to safeguard that the democratic idea and system, for whose world - wide realization the Allies were professing to fight, could be introduced into, and maintained in Germany. To carry through this far-reaching Allied determination, however, not a partial, but the total military occupation of German national territory, coupled with the total eradication of the hitherto controlling constitutional forces, appeared to be the indispensable prerequisite.

Hence, the Inter-allied agreements, arrived at in September, to be slightly modified in November, 1944, have to be understood. They provided for the partition of Germany in four zones of military occupation, to be administered by each of the four Great Powers, as well as for a joint Four-Power Control system

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for the whole of Germany. Two points are significant: the original understanding of September 1944 was concluded only between the Soviet Union, Great Britain, and the United States. Its object was the whole of German territory as delimited by the Versailles Treaty of 1919. This territory-including the Saar region in the West and what later was to become the so-called "Oder-Neisse-territories" in the East-had been divided into three zones of occupation, carefully balanced against each other as to size, population, traffic installations, and agrarian as well as economic resources. When, shortly after the conclusion of this agreement, France demanded to be accorded a zone of occupation of her own, Russia refused to reconsider the delimitation of the three zones laid down shortly before and pointed to similar claims which might be raised by Poland. Eventually, it was decided that the zonal borders between the two Anglo-Saxon powers on the one hand, and the Soviet Union on the other hand, were left unchanged, but that the two Anglo-Saxon powers should, from their region of control, carve out a zone for France, whereas the Soviet Union undertook to satisfy Poland out of her own zone. The matter was complicated further as not the whole of the thus re-divided territory was to be placed under joint Four-Power Control; the Saar in the West was placed under a special régime under the exclusive responsibility of France which, however, was not permitted to integrate it into her national territory. In the East, the Oder-Neisse-line divided the Soviet zone of control roughly into two equal parts. Only the territory situated west of this line was brought under the supremacy of the Four-Power Control system. The rest of the Russian zone was divided again: the northern part of the province of East Prussia was immediately integrated into the Soviet Union, whereas the rest-a territory of considerable size with almost ten million inhabitants (thus roughly as much as the whole of Greece to-day)-was transferred to the authorities of re-emerged Poland which christened it "Recovered Territories" and integrated it formally into Polish national territory early in 1947. Strictly speaking, Germany had been divided into seven parts: the four zones of occupation as far as placed under Four-Power Control, the Saar, the Northern parts of East Prussia and the rest of the "Oder-Neisse-territories."



There remained, however, an eighth distinct territorial unit—the city of Berlin. According to the agreements of 1944, it belonged to neither zone of control and was to be divided into four sectors, but to be administered as one single administrative unit, headed by one central German local authority for the whole commune under a Four-Power “Kommandantura,” though each of the Allied military commanders within the four sectors was separately responsible for law, order and good government within his sector. As Berlin was geographically surrounded by the Soviet zone of control, the three Western powers were accorded certain, technically well defined rights of travel and transport by road, rail, water, and above all, by air, necessary to maintain the occupying forces. As it appeared later, the pertinent regulations for the access to Berlin from the West by air covered also the traffic necessary for the maintenance of the German civilian population in the three Western sectors of the city.

Seen superficially, the difference between Berlin on the one hand, and the whole of Germany, on the other hand, seemed—at least with respect to the structure of public administration—to lie in the fact that Greater Berlin was left in the possession of an autochthone, German central authority, albeit it had to work under the close surveillance of the four foreign controlling powers, whereas Germany as a whole seemed to be decapitated and parcellated, finding herself devoid of an autochthone central authority even for the four zones of Inter-allied control. If the pertinent international instrument, the Protocol of the Conference of Berlin (August 2, 1945) is looked into, however, it emerges that this, at least *de iure*, is not the case. The Protocol—an agreement which, whatever may be its character with regard to the constitutional authority of the persons who signed it—is internationally binding for the three original signatories (the two Anglo-Saxon powers and the Soviet Union). It provided for a number of German central administrative agencies responsible for those spheres where Germany should continue to be treated as a single whole—i.e. industry, agrarian economy, traffic, postal services, financial and currency matters, foreign trade. In fact, immediately before the close of the Berlin Conference, the Soviet military authorities announced that they had already nominated single-handed the necessary German “Secretaries



of State", staffed their departments with German civil servants of their own choice and were ready to place the whole mechanism at the common disposal. When the two Anglo-Saxon powers, taken by surprise, hesitated to accept, France, for her part not admitted to participate in the Conference, but later requested to abide by its results as embodied in the above - mentioned Protocol, declined to accept this part of the agreement altogether. Thus, no autochthone central German authorities came into being-not even for the four zones of inter-allied control-which later could have formed the nucleus of an autochthone central German government. The historical importance of this fact must not be underestimated.

In those days, Germany suffered from the vast destructions caused especially during the last phase of hostilities, traffic was difficult, agrarian production was extremely low, industry had come to a practical standstill. This situation was made even more severe by the expulsion of practically the whole population of the German territories East of the "Oder-Neisse-line" - whether Soviet or Polish administrated - as well as most Germans living in Eastern and South Eastern Europe (Poland proper, Czechoslovakia, Yugoslavia, Hungary - the Germans from Rumania being partly sent to Russia as manual labourers, partly being allowed to continue at home, though in a stringently reduced personal status). This involuntary mass-transplantation affected about 14-15 million people of whom about 2.8 million died during the transaction. The rest- between 11.8 and 12.3 million people - were crammed into the destitute Soviet, British, and American zones of control; the French authorities refused to admit expellees into their zone. The social effect of this transaction was remarkable: the German land situated in the extreme North, Schleswig-Holstein, found itself in 1950 with a population which, since 1945, had swollen by about 75 %; of the total in 1950, roughly 45% were German expellees, mostly coming from the "Oder-Neisse-territories" and adjacent regions. Looking back, the range and depth of the human and social, as well as hygienic and technical problems raised within an almost destitute society by a sudden thrust-in of compact masses of almost completely destitute, helpless and despairing human creatures, are hardly imaginable. It should be added that the problem did lose nothing of its urgency and bitterness



if it is duly realized that mass-expellations of a much lesser size—namely, of Polish nationals living in the Western parts of their own subjugated Republic—had been denounced rightfully in 1939-40 as contrary to International Law when perpetrated from the German side.

To the hitherto-mentioned two dominant factors of the German developments after 1945 - the first constitutional and the second social - must be added a third, perhaps the paramount problem: the question of the political, Allied-directed reconstruction of the country. The professed purpose was Democratization, and it is natural and necessary to enquire into the material contents of the democracy-concept represented by the Four Powers. Germany, risking an armed conflict with two Western democracies in 1939, had understood herself to be the champion in the fight against democracy as conceived in the West; under this aspect, her close alliance with Stalin's Soviet Russia seemed the natural thing. The year 1941 had brought the well-known "*bouleversement des alliances*"; from now on, Stalin was no longer an ally of Hitler, fighting Western democracy by warring with its foremost representatives—Great Britain, France, the United States - but had become the ally of these very powers. To assume that this new diplomatic and military constellation should have repercussions on Soviet Russia in the sense of converting that power to the ideals and practice of a Western-oriented type of democracy was a misunderstanding. On the other hand, Stalin has been careful during the years 1942-45 - one might remember the spectacular manner in which he dissolved the Cominform in 1943, and the high-spirited comments from prominent Western statesmen (e. g. the American Secretary of State) on this event—to foster and intensify erroneous imaginations to this effect in Western circles. However this may be—it is this misunderstanding that contributed much to bring about the German situation as it has evolved since about 1946.

Viewed from the angle of Soviet interests - if they are understood as flowing from an implacable determination to act in the interest of Communist world-expansion-, the position of Germany (i.e. the Germany of the four zones of occupation) was opening up two possibilities: one direct and imminent, the other indirect and potential; the first in the Soviet zone of cont-



rol and the Soviet sector of Berlin; the other in the three Western zones of control and the three Western sectors of the city. To Stalin's mind, it was beyond any reasonable doubt that the Soviet Union was not only entitled, but obliged to impose her system of government and economy upon those parts of Germany where the Soviet authorities were able to wield direct control. It has been said that they expected to succeed without trespassing against the fundamental rules of Democracy in the Western sense; hence, e. g., the repeated exchanges with their Western allies on the meaning of such concepts as "free elections", "freedom of the Press" etc. - also with regard to Poland or Austria. The first turning point of development seems to have been reached when, in December 1945 and during the spring of 1946, general elections were held in Austria, Hungary, and Czechoslovakia which, despite massive encouragement from official Soviet quarters, seemed to reveal that the Communist parties of these countries were unable to swing the electorates towards clear majorities in their favour. This impression was corroborated in Germany herself when in the course of the first free elections, organized in the Autumn of 1946 in order to obtain democratically legitimated representatives on the local level, the Communists suffered crushing defeats in the Western zones and, despite multiple and energetic interventions from official Soviet quarters into the electioneering process, won only very limited success in the Soviet zone itself and in Berlin. Here, the Communist-controlled SED (*Sozialistische Einheitspartei Deutschlands* - United Socialist Party of Germany) polled only 19.8% of the total votes cast, the major towns in the Soviet-occupied land of Thüringen (geographical centre of Germany) elected non-Communist mayors, etc. Hence the Soviet authorities were- at least so it seemed for Western eyes as well as in the eyes of the German population, eager to re-familiarize themselves with democratic standards-placed in the dilemma whether to continue imposing their system on the population under their immediate control or whether to uphold democracy at the expense of this desire. It must be realized that this dilemma existed only in non-Communist eyes; for the Soviet authorities it was self-evident that, if one of the two principles at variance had to be sacrificed, certainly it was not the principle that the world had to be re-modelled according to



Marxist-Leninist patterns. This is not said in a spirit of antipathy or resentment - it is stated as a fact which must be understood, if ensuing German developments are to be grasped properly.

Seen from this angle, two consequences emerged: the inherent resistance of the German population against the system to be imposed on it had to be overcome by means which, if necessary, were not in accord with established standards of democracy; secondly, every interference from without had to be forestalled efficiently. Interference from without, i.e. from the other three allies of the Soviet Union, could be based juridically only upon the Four-Power Control Agreement, especially the Potsdam Protocol. To seal off the Soviet zone of occupation against every interference from without was tantamount to two things: (1) the refusal to cooperate with the Western powers towards the organization of a unified German economic, monetary, and traffic system; (2) the dismantling of the administrative machinery for the whole of Germany as provided for by the Four-Power Control Agreement, as well as the unitary local authority for the city of Berlin. This was achieved in the course of diplomatic events-which cannot be narrated in detail here - during 1948. Three instances deserve mentioning above all: (a) the end of the Paris Conference of the Foreign Ministers of the Four Powers where the final statement of the Russian delegate removed every doubt that the Soviet Union would not tolerate Germany's reconstruction as one economic whole (May 15); (b) the unilateral Soviet declaration that the Inter-Allied Control Council for Germany, the highest common authority for the occupied country, had ceased to exist and that Russian representatives would not take part in further meetings, nor consider themselves bound by resolutions henceforth to be passed by that truncated body (June 24); (c) the splitting of the local administration for Berlin into two parts (November 30). It is from this last-mentioned event that the denomination "West Berlin" for the three sectors of the city has been brought into being; it must not be overlooked, however, that it had to be created to meet a situation whose origins are tainted with the above-narrated legal irregularities.

Thus, the scene was set for a development which unfolded almost by the strength of inherent logic. On May 23, 1949, the



so-called "Bonn Basic Law", i.e. the Constitutional Charter of the Federal Republic of Germany, tentatively consisting of the three Western zones, was passed, and on October 7 of the same year, the first Constitution of the so-called "German Democratic Republic", consisting of the Soviet zone of control, went into operation. The Federal Republic's Constitutional Charter was voted upon by freely elected representatives of freely elected *Landtage* (regional assemblies) in the three Western zones; there was free competition between a plurality of mutually independent political parties, no interference from the side of Allied or German authorities in the electioneering process, votes were cast in secret and properly counted. The constitution of the "German Democratic Republic" was voted upon by a body whose members had been nominated before by the authorities and presented to the people which could only accept or reject the list placed before them without even being able to strike out names. Oppositional groups had been strongly discouraged from canvassing, in many places the polling was practically conducted in public and it is known that in numerous cases clandestine alterations of the results occurred. Despite all these efforts, there could be counted no more than 66% affirmative votes, in East Berlin only 51%. Thus doubts may be entertained whether the political life in this part of Germany is resting on a sound, democratically legitimate basis.

Both constitutions are designed to apply for the whole of Germany-as to the constitution of the Federal Republic, it speaks *expressis verbis* of the Germans' right of self-determination, i.e. the right to accomplish German unity which, though transitorily rendered impossible by the arbitrary decision of one of the four occupying powers, continues to be the legitimate goal of political life; the text of the Bonn Basic Law formally applies also to the whole of Greater Berlin. For obvious reasons, it has been impossible so far to extend its applicability to the Soviet sector of the city, and the three Western Control Powers have also deemed it expedient to suspend its automatic operation in their own sectors; "Berlin" - so the official formula goes - "must not be reigned by the Government of the Federal Republic." However, according to Article 87 of the City's Statute of September 1, 1950, the Berlin Legislative Assembly may resolve "during the transitional period" (i.e. as existing



facts render it inadvisable to treat West Berlin like any other part of the Federal Republic) that Acts passed by the Federal Diet in Bonn may become operative also in West Berlin. With the consent of the three Western powers, this procedure has been observed almost without exception since that time; West Berlin, thus, is not reigned by the Federal Government, but is governed according to the law of the Federal Republic of Germany: legally, if not constitutionally, Berlin firmly is integrated into the Federal Republic. A characteristic example for this high degree of integration is e.g. that one of the highest judicial authorities of the Federal Republic, the Supreme Court of Administrative Appeal (*Bundesverwaltungsgericht*) is sitting in Berlin.

This status has a double aspect: it not only signifies the voluntary attachment towards the Federal Republic, but is also symbolic for the loyalty and gratitude of the West Berlin population towards the three Western powers, especially the United States and Great Britain who, during a period of dangerous stresses and strains, maintained the liberty of the Western parts of the town. This period is the so-called "Berlin blockade" during the years 1948-49. After having rendered the interchange of persons and of goods between the West and West Berlin more and more difficult for some time, the Soviet authorities used the opportunity of their unilateral denouncement of the Four-Power Control mechanism for Germany in 1948 to interrupt this traffic completely - first by road (June 19), then by rail (June 24) and finally by water (July 8). It must be assumed that they hoped, by threatening the population of the Western sectors of the city with a hunger-catastrophe, to be able to force the military contingents of their Western allies out of the town. The two Anglo-Saxon powers answered this challenge by organizing the so-called "Berlin Air Lift" - a gigantic undertaking by which, when it could be discounted in Spring 1949, about 8000 tons of goods - medicaments, food and even coal - were daily transported into the threatened city: the same quantity which had been carried there formerly on a normal day. Nevertheless, very many weeks of acutest anxiousness had to be endured during Summer, Autumn, and Winter. The population of the three Western sectors - about 2.3 million people - was exposed to a double strain: on the one hand, their loyalty



towards the Western powers and the cause they represented involved the compulsion to put up with various emergencies (during the winter months, there were weeks when, apart from hospitals, electric current for private purposes was available only during two hours of the day); on the other hand, the Eastern parts of the city were still freely accessible and the authorities there offered jobs for workers who had become unemployed, order for plants having to idle because of lack of raw-material or power, milk and fresh vegetables for pregnant women, babies and aged persons. These authorities went such lengths as to offer to the West Berlin population to supply their full rations and all their daily needs in Eastern Berlin; by accepting this offer, it was said to them, they could contribute towards by-passing and finally "eliminating" the Western authorities.\*

It stands to the credit of the West-Berliners that they turned a deaf ear to these allurements; never there were more than 4% of them who entered their names into the lists laid out in East Berlin shops for those ready to accept their rations there. After eleven months, during which also the U.N. World Security Council had been seized by the Western Powers against the Soviet Union, Stalin gave in: on May 12, 1949, all traffic barriers were removed. Two points of juridical consequence, however, were established by this otherwise unpleasant interlude: (1) the irrestrictability of the Western rights to be and stay in the three Western sectors; (2) the availability of the air-ways to Berlin (air-corridors leading across the Soviet zone of control) also for the needs of the civilian population in the Western sectors.

Viewed in historical perspective, the manner in which the population of West Berlin responded to the crisis of 1948-49 has done more than perhaps anything else to restore confidence in Western circles as to the German readiness and capability towards moral and spiritual reintegration into the West. In those days, Berlin became, in the eyes of the world, a symbol of democratic resistance against attempts of totalitarian en-

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\* This has been the argumentation of Herr Matern, then a foremost servant in the Propaganda Department of the Government of the "German Democratic Republic." H. Riklin, *The Berlin Problem* (in German), Cologne, 1964, p. 94 n. 5.



croachment. The ensuing diplomatic and international developments - the unilateral termination from the side of the Western powers of the state of war "with Germany", notified to the Government of the Federal Republic which thus once again was recognized as representing Germany as a whole (May 26, 1952); the formal integration of the Federal Republic of Germany, along with Italy, into the Western defence system by the London and Paris agreements (October 3-23, 1954); last not least the restoration of the Saar Valley into German sovereignty according to the freely expressed self-determination desire of the population (1954-56) - must be seen against this background.

The historical meaning and importance of the Berlin blockade must be seen in still another aspect. It is perhaps no exaggeration to say that during this period the Germans, as a nation, have realized the full range and value of the Human Rights idea. Few of them failed to feel that this idea was one of the moving forces beneath the surface of daily political life and strife within their country as well as between East and West in general. It appears singularly appropriate to recollect this at the present juncture - in the year of world-wide celebrations for the 20 th anniversary of the UN Declaration of Human Rights. Whatever the future may hold - it cannot be denied that the years since 1949-50 have been marked, at least for Europe, by the deep rift on this issue. The conflict has divided the European continent into two parts sharply differentiated from each other. The differentiating line is cutting Germany into two parts until to-day. Its existence has been accentuated by the constant stream of fugitives from the Soviet-controlled zone, the "German Democratic Republic", into the West. It has to be borne in mind that the "German Democratic Republic" is the only land on the globe whose population has been steadily decreasing between 1950 and 1960 - on the other hand, the Federal Republic has admitted more than 2 million of fugitives from there during that period. They were persons of every age and from practically every walk of life: peasants whom their ancestral land had been collectivized; young workers and artisans who could not see a decent future for themselves and their families; members of the educated and liberal professions or soldiers faced with insoluble conflicts of conscience. Not all



of them managed to get over the sharply guarded demarcation line. Countless are the tragedies which ended in death, behind the walls of the huge penal installations or in silent frustration under a régime which must be reproached of utter callousness towards the idea of individual liberty and human rights. Those who contrived getting out found their way in most cases via West Berlin from where these persons were flown into the Federal Republic. The arteries of the city, connecting it with the West, were at that time the last loop-hole to liberty. It is conceivable that the very fact of this constant stream of fugitives - to say nothing of events like the abortive insurrection of June 17, 1953 (when the embittered unrest culminated into the passionate demand for "free elections") which may be regarded as a prelude to the Hungarian events three years later - was an unending source of political as well as economic embarrassment for those in control on the other side of the demarcation line.

Under similar circumstances, a problem of this kind had been done away by the Soviet authorities in Germany by attempting to seal off their region of control efficiently against the influx of politically undesired ideas and the parallel discharge of disgruntled subjects into the free part of Germany even if this "sealing off" could not be accomplished otherwise than under breach of valid international undertakings. Accordingly, the Soviet Government, on November 27, 1958, by diplomatic notes dispatched to the three Western powers, the Federal Republic of Germany-with which official diplomatic relations had been established in September, 1955 - and the Government of the "German Democratic Republic" declared that it considered the agreements of 1944 and 1945 on the Four Power Control system in Germany as "no longer operative". A new settlement was proposed. Germany should cease - also *pro forma* - to form a juridical whole. It should be divided into three, mutually independent parts: the Federal Republic of Germany, the German Democratic Republic, and - this is the novelty - West Berlin, to be organized into a Free City, guaranteed by all the four powers as well as "the two German States", eventually under U.N. participation. In a draft for a German peace treaty, submitted shortly afterwards (January 10, 1959), the picture was completed by the demand to legalize



formally the take-over of the "Oder-Neisse territories" by Soviet Russia and Poland, respectively, and moreover, the expellation and total expropriation of almost 10 million people who had lived there permanently. Already on December 31, 1958, the three Western powers had declined to give up their rights in West Berlin - which, it will be recalled, the Soviet Union had explicitly recognized in 1949 - or to agree to a transfer of the responsibility to safeguard the Western rights of access to the city to the "German Democratic Republic" which they never had recognized to constitute a "State" in the sense of International Law, because it did not dispose of a government lawfully formed and sustained by free elections. Specifically, the Western powers rejected the Soviet argument that the whole of Greater Berlin - of which West Berlin only forms a part - was "situated on the territory of the German Democratic Republic" and that, consequently, the Soviet proposal to transform West Berlin into a "Free City", was "an obliging attitude, voluntarily taken on the part of the German Democratic Republic." The Western powers emphasized the special character of the city's territory which did not belong to any of the four occupation-zones, was subject to common Inter-allied control only and could not therefore lawfully be transferred, either as a whole or in part, to any zone. According to this view - which is fully sustained by the pertinent international documents already cited - neither the whole of Greater Berlin, nor its Eastern sector belonged to the Soviet zone of control and therefore could not be transferred to the "German Democratic Republic" by an unilateral Russian decision; on the other hand, the prudence of the former Western decision was proved not to allow the constitutional amalgamation of West Berlin with the Federal Republic of Germany, as this would have created a precedent which could have been used by Eastern diplomats and jurists.

The ensuing diplomatic exchanges between the Great Powers created new feelings of insecurity and bewilderment in wide circles of the population of the "German Democratic Republic"; an ever-increasing stream of fugitives was the result. Especially annoying for the Eastern authorities was the constantly growing share of young, industrially-trained workers besides masses of people from other social strata who left the "German Democratic Republic." The number of people daily



crossing over to West Berlin assumed colossal proportions during mid-Summer 1961 - it reached the 10.000 - mark by August 11. Faced with what threatened to develop into an economic and, above all, a political and psychological crisis of similar dimensions as in 1953, the authorities took a desperate measure: during the night of August 12-14, the ignominiously famous "Berlin wall" was thrown up - since then, the last loop-hole to liberty has been sealed for the inhabitants of the "German Democratic Republic"; practically a rigorous prohibition to travel or to emigrate into the other part of Germany was going to be enforced, and it is maintained on a "shoot on sight" basis ever since. Slightly more than 200 years ago, a Neapolitan criminologist wrote: "What have we to think of a government which seems to have no other means but Fear to hold people back in their Fatherland?" If these words are compared to the present-day situation in the "German Democratic Republic" and if it is recalled that "Freedom from Fear" constituted one of the principal war-aims against Germany, it may be guessed how deep the feelings involved in this issue are.

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Taking everything together, it is now almost one decade that the afore-characterized deadlock prevails. The only German problem which could have been solved since 1945 by way of mutual understanding between Germany and her immediately interested neighbour and in a manner in accord with the freely expressed self-determination desire of the population immediately concerned, has been the Saar question: The solution arrived at in 1954-56 has been mentioned already. As to the "Oder-Neisse-territories" - whether Soviet or Polish administrated-, nothing has changed; the original population has been expelled, the country has been partly re-populated with nationals of the occupying powers - which is explicitly prohibited by Article 49, Section 6 of the Geneva Red Cross Convention for the Protection of Civilians During War Times of 1949 - and it is treated as an integral part of the occupying powers' national territory, though a transfer of sovereignty has not contractually been agreed upon. The position might be characterized by a general statement made not long ago by the Argentine U.N. Delegation pursuing to a General Assembly Resolution on Principles of



International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the U.N. On the principle of equal rights and self-determination of peoples (Article 1, Section 2 of the U.N. Charter) the Delegation had this to say: "There is no justice where an occupying power has dispersed the existing population by force and groups of colonists have settled illegally in the territory. Such situations are abhorrent to a real spirit of justice"\*. With respect to the case under consideration, certainly nobody in Germany advocates, nor even contemplates other settlements than those fully respecting the human rights of the immigrants; but care ought to be taken not to allow a precedent to the effect that unilateral mass-expulsions of people might be accepted as a normal procedure, unprohibited by valid International Law.

As to the problems of the other parts of Germany-the three Western zones, forming the Federal Republic (to which now also the Saar Valley belongs), the Eastern zone, forming the "German Democratic Republic", and especially Berlin (whose Western sectors are separated from the Eastern sector since 1949 administratively and since 1961 physically, as already narrated)-the stalemate outlined above has not been solved meanwhile. The Soviet Union which at first threatened the Western powers with a *fait accompli* in terms of power policy, i.e., the attempt to liquidate the Western garrisons and the constitutional institutions of the Federal Republic in West Berlin by military force, has shrunk from facing the issue squarely, while the Western powers and the Federal Republic have confined themselves to hold their own. The position of West Berlin has not changed juridically; on the other hand, it has not been possible to rescue the city from the uneasy twilight of its "transitorial" position characterized above. The Eastern powers have made it their habit to describe West Berlin as "an independent territorial unit," and the Soviet Union seldom forgets to lodge her formal protest if constitutional institutions of the Federal Republic are acting in West Berlin-e.g., the Federal President (who almost regularly comes there, attending to his regular duties), Committees of the Federal Diet, etc.

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\* U.N., Document A/5725 (July 22, 1964), Printed in *UNGAOR*, 20th Sess., agenda item 90 and 94, annexes, p. 54.



One might be inclined to say that here again one of those situations has evolved which seem to be characteristic for the general state of International Law developments at present: either of the two contending parties-on the one hand the United States, on the other hand the Soviet Union- is denouncing the acts and opinions of the other as contrary to existing treaty obligations (in which respect it must be stated, however, that the Soviet accusations are unfounded), but none seems inclined to press for a solution in his sense at any price; in the meantime either is acting as if his opinion is unchallenged and unchallengeable, and either does so in the knowledge that present-day International Law does not seem to provide for a superior authority competent and capable to solve such conflicts impartially. Thus, conflicts of this or similar kind are allowed to drag on interminably-at least, for an immeasurable period.

However -if it is permitted to venture upon a historical prediction- it may be expected that for the same immeasurable period (and perhaps even longer) the German nation will continue to exist (as it has in fact done since hundreds of years) as one single whole in spiritual and cultural respect. It was and is entitled, therefore, to political and constitutional unity. This is the idea if it is said that Germany is claiming her right of self-determination-it has nothing to do with out-moded imperialist schemes which, copying unhealthy models, Germany had been hunting after before her well-deserved set-back in 1945. For the time being, however, Germany is denied her right of self-determination. She will not try to recover it by violence; in fact, she has incurred an explicit international obligation to observe strictly Article 2 of the U.N. Charter, even as the honour of membership in the world organization is denied to her still. On the other hand, she trusts that her self-determination claim cannot be withheld from her forever. Examples -especially recent examples within the Third World- indicate that populations desirous to merge or re-merge their territories in a lawful manner, have, in a longer or shorter run, invariably succeeded, provided that two vital preconditions be fulfilled: (1) in *both* territories it must be legally permitted and materially possible to discuss the cause for union or re-union (as the case may be) and to canvass freely for it-which means that in both territories democratic conditions of public life must be established, maintained, and safegu-



arded; (2) third powers wielding control over one or both territories must be susceptible to democratically expressed wishes of the population even if this means that their own control over that population be restricted or will have to be lifted from it altogether -which means that they must be susceptible to the democratic idea as such. (In this respect, the French conduct towards the Saar problem has been exemplary: it has contributed greatly towards the good neighbourly relations which have been established ever since between the two "hereditary enemies", France and Germany.)

Democracy in the above sense, however -and here, again, the Saar example provides excellent material for comparison- is tantamount to the reign of the Human Rights Idea. The core of the German problem can thus be said to lie in two points: (1) freedom for the population of the "German Democratic Republic" to express itself openly and (which appears equally important) in the reasonable expectation that its desire will be adequately met by the competent authorities, on the issue of German reunion in the form of a peaceful, law-abiding State- which means that, also for the purpose of discussing the problem of the re-establishment of such a State, the right of assembly, of opinion, of freedom of the press and all other public media, to free reception of information and free exchange of ideas, etc. be established, maintained, and safeguarded; (2) readiness on the part of the Soviet Union to comply with this democratically expressed desire which is sustained by the Human Rights Idea-insofar as there is no "democratic Public Opinion" which has not been formed by freely using human rights. In this sense, it is safe to say that the cause of the German unity is identical with the question whether the German nation, as a whole, is to be denied the rights which, according to their professed aims, the Great Powers, the Soviet Union included, had to defend against Germany by the force of arms-in a war from which these powers emerged as victors.

To put the question like this brings us back to the conceptual misunderstanding between the Western powers and Stalin as to the structure and essence of the inter-Allied war-aims. The Soviet Union has been willing to sacrifice its political aim-i.e., the widest possible expansion of her system of economy and



government- to the idea of a Human Rights' Democracy neither in 1948-49 nor in 1958-61. But is this diametrically conceived contrast to continue interminably? In 1946 or 1947, one of the then leading German politicians has coined the phrase that the West will have to open its mind to certain social schemes envisaged by the East, whereas the East will have to open its mind to certain liberal and democratic traditions and values evolved in the West. It is in accord with this phrase if the Federal Republic of Germany understands itself to be a *social* State under the Rule of Law ("*sozialer Rechtsstaat*"). On the other hand, are we simply to overlook certain developments in the East since Stalin's death which appear to open, however slowly and hesitatingly, the gates to larger freedom and better founded security for individual rights? True, that at present conditions in the "German Democratic Republic" do not -or not yet- seem to be susceptible to material changes in this respect. On the contrary-the new Constitution which has been prepared in East Berlin shows very few signs of improvement with regard to human rights, if any at all\*. However, are we to assume that repercussions upon the internal structure of this part of Germany are excluded and will remain so in perpetuity?

To answer these questions rough and ready would entail a responsibility which this observer, for one, does not feel ready to shoulder. Indeed, his task has been a much more modest one. Being a jurist, he had to try to elucidate the structure of the German problem, above all, in terms of international, constitutional and administrative law. In the course of this, the remarkable weight which must be assigned to the Human Rights issue within this context has, it is hoped, become discernible. The German problem of to-day thus appears to provide no mean example for the power as well as the shortcomings of the Human Rights Idea in our time. And in these days, when the 20th anniversary of the U.N. General Declaration of Human Rights and Basic Liberties provides ample opportunity for thoughtful stock-taking in this regard, a case-study like the one tried above is perhaps not wholly devoid of general interest.

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\* e.g. the new Constitution (of April 5, 1968) carries no prescription comparable to Article 10, Section 1, Article 11, Section 2, or Article 20, Section 2 of the Turkish Constitution of 1961. The former Constitution (of October 7, 1949) provided at least for conformity between administrative measures and the general spirit of the Constitution (Art. 4. 1) and entrenched the fundamental rights at least in their essence (Art. 49). Both provisions are conspicuously missing in the new enactment.