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Soviet Union

*Memo¹ by the Ambassador of the Soviet Union in East Berlin,
Vyacheslav Kochemasov²*

RIGHTS, RESPONSIBILITIES AND APPROACHES OF THE USSR
IN GERMAN AFFAIRS

East Berlin, 29 March 1990

1. The Four Powers' responsibilities relating to Germany

The rights and responsibilities of the Four Powers in relation to Germany have been conditioned by the defeat of the fascist Reich and its unconditional surrender, as well as by the occupation of German territory by the troops of the USSR, USA, Great Britain and France.

The annexation of Germany was not part of the allies' intentions (Declaration on the Defeat of Germany, 5.6.1945): the responsibility of the Four Powers means their obligations as agreed in particular at the Yalta (4.12.1945) and Potsdam (17.7–2.8.1945) conferences "to guarantee that Germany will no longer be able to disrupt peace in the world" (Yalta) and provide it with the chance "in due time to take a place among free and peaceful peoples of the world" (Potsdam).

The responsibilities of the occupation authorities meant the implementation of the principles of demilitarization, denazification, decartelization and democratization of Germany, so that the German people would be ready for the "reconstruction of their life on a democratic and peaceful basis" (Potsdam). The Four Powers assumed the obligation to establish the "borders of Germany or any part of it", and to determine the "status of Germany or any region being at that moment part of the German territory" (Declaration of 5.6.1945), which clearly refers to the preparation for "a peaceful settlement for Germany" as envisaged by the Allies.

This responsibility of the Allies has been completely preserved until now. It has not been affected by treaties and agreements of the USSR and the Three Powers on the established German states and has been regularly confirmed by statements of all Four Powers. The allies' decisions and agreements affirming this responsibility also remain fully in force (Yalta, Potsdam, the Declaration of 5.6.1945 and others).

¹ *Memo (translated from Russian)*: Archive of the Foreign Ministry of the Russian Federation ABII PΦ, ф. 742, оп. 35, п. 147, л. 6, л. 8–30.

² *Vyacheslav Kochemasov (1918–1998)*, dodis.ch/P57389, *Ambassador of the Soviet Union in East Berlin 1983–1.6.1990*.



2. *The Four Powers rights in relation to Germany*

The rights of the Four Powers in relation to the defeated Germany in 1945–49 were almost unlimited, since the occupation authorities assumed the supreme authority in the German territory and the German people were to obey them unconditionally (Declaration of 5.6.1945). Following the Agreement on the Control Mechanism in Germany dated 14.2.1944, the exercise of supreme Power was entrusted both to the commanders-in-chief of all Four Powers (within their zones of occupation) and to the Control Council in Germany, which consisted of all four commanders-in-chief (on questions regarding Germany on the whole).

The Powers of other governing bodies have been of a secondary nature, stemming from the supreme authorities.

Considering that special attention was paid to the provision of “peace and security in the future” the Four Powers particularly underscored their right to take measures on the “complete disarmament and demilitarization of Germany” and to “deploy armed forces and civil structures in any part of Germany or in all parts of Germany at their discretion” (Declaration of 5.6.45).

Over time, the military administrations of the occupation zones have delegated their authorities, though not fully, to the German self-governing bodies. In connection with the formation in 1949 of the two German states, the administrations of the respective occupation zones transferred their authorities to them, albeit not completely.

On this issue the Soviet Union went much further than the three western Powers in relation to the FRG. According to the statement made by the Chief of the Soviet Military Administration in Germany (SMAG) on 10.10.1949 on behalf of the Soviet government the SMAG’s “governing functions” were transferred to the Provisional Government of the GDR, and the SMAG was replaced by the Soviet Control Commission (SCC). It was envisaged that SCC’s “objective would be to monitor the implementation of Potsdam and other joint decisions of the Four Powers in relation to Germany” and we took notice of the commitment of the GDR to these decisions. The Constitution of the GDR has not been authorized by us. However, the Statement was not the act of recognition of the GDR for its functions as the Powers reserved to the USSR had not yet been fully defined, which left plenty of opportunities both for the restoration of our rights and for the strengthening of the GDR’s self-dependence. At that point, this depended upon the Soviet side which in general preferred the second option.

The Western Powers settled their relations and the distribution of authorities with the FRG rather scrupulously. When approving the FRG Constitution worked out by the Germans they made a few reservations to retain certain important rights – the approval of future changes in the FRG Constitution, boundaries of the Federal provinces, control over the external contacts of the FRG, activities of the police structures, taking measures on demilitarization and decartelization, and monitoring the “implementation” of “the very big Powers” of the Federal state to prevent “the excessive concentration of Power” (The letter of military governors of the Western occupation zones of Germany to the Chairman of the Parliamentary Council of Germany

168 K. Adenauer³ 12.5.1949 and Occupational Statute 10.4.1949, entered in force 21.9.1949).

Except for these and some other limitations, the FRG had the right “to exercise... full legislative, executive and judicial Power” (Occupation statute). The provisions “on the protection, prestige and security” of the troops of the Three Powers and covering occupational expenses were also approved.

Technically, the USA, Great Britain and France preserved the occupation regime on FRG territory. The FRG authorities were regarded as self-governing bodies, and the Three Powers were represented by the Supreme Allied Commission that replaced military administrations, reserving the right “to exercise sovereign Power fully or partially, if they find it necessary to provide security and maintain democratic order in Germany or to fulfill their governments’ international obligations” (Occupation Statute). Despite the abolition or mitigation of the effects of certain restrictions the aforementioned legal order remained in force in the FRG until 1955.

In 1954–55 the USSR and the three Western Powers officially granted sovereignty to the GDR and the FRG, respectively. In May 1953, the Soviet control bodies (SCC) transferred their control functions to the USSR High Commissioner, who was instructed to “represent interests of the Soviet Union in Germany and to monitor the activities of the GDR government bodies in terms of their efforts to fulfill their obligations stemming from the decisions taken by the Allied Powers in Potsdam” (The Order of the Council of Ministers of the USSR, published 29.5.1953).

In 1954 the Soviet Government made a Statement on relations between the GDR and the USSR, declaring these relations to be “the same as with other sovereign states”, and granting the GDR the ability “to be free to settle all its external and internal affairs, including the relations with Western Germany, at its discretion”. We reserved “functions related to the provision of security, proceeding from the USSR’s obligations that stemmed from the Four Powers agreements” (which also limited the functions of the USSR High Commissioner in Germany). The Soviet Government “took note” of the GDR statement on the observation by this Republic of “the obligations imposed on the GDR considering the Potsdam agreement, on the development of Germany as a democratic and peace-loving state, as well as the obligations related to the temporary deployment of Soviet troops on the territory of the GDR” (The Statement was published 26.3.1954).

The Treaty on the relations between the USSR and the GDR of 20.9.1955 ended the state of war with Germany, with a reservation that this “would not change its international obligations and would not affect rights and obligations of the Soviet Union, stemming from the current obligations of the Four Powers related to Germany at large”.

The Treaty on the relations between the USSR and the GDR of 20.9.1955 reiterated that these were equitable and based on the “mutual respect of sovereignty and non-interference in the internal affairs” and the GDR’s right to be free to decide all its political issues. Clause 4 of the Treaty fixed the temporary deploy-

3 Konrad Adenauer (1876–1967), dodis.ch/P2008, Chancellor of the FRG, 1949–1963.

ment of our troops in GDR “with the consent of its Government”, particularly on the condition that these troops would not interfere in the GDR’s internal affairs. According to the letters exchanged between the Deputy Foreign Minister of the USSR⁴ and the Foreign Minister of the GDR⁵ the GDR reserved the right to monitor the movement of the “military personnel and the garrison shipments” of the Three Powers in West Berlin between this town and the FRG “on the base of the existing quadripartite decisions”. The USSR High Commissioner and his administration were transformed into the Soviet Embassy in the GDR. The operation of the 1955 Treaty has been limited only by the fact of the “restoration of the unified Germany as a peace-loving and democratic state” or any changes made or its termination following the voluntary stipulation of the parties.

It is absolutely clear from the entire set of documents for the period 1954–1955 (which are still in force) that in fact recognition of the GDR sovereignty was not as full and unconditional as it appeared in the text of the 20.09.1955 Treaty. The USSR functions in the GDR, as defined by the 1954 Statement, allow us more space as well as the reservation on the USSR’s obligations following the 1955 Decree. When signing the 20.09.1955 Treaty, the GDR had to proceed from these previous documents, so following the formal and judicial logic its sovereignty and our obligations not to interfere in the domestic affairs of the Republic cannot be considered absolute. It is not excluded that in the current situation in the GDR and in German affairs at large we will have to influence the events in one form or another. Thus, already it would be expedient when talking about GDR sovereignty to refer to the Soviet Statement of 1955 and the Decree of 1954 to bring these documents back in political circulation.

(It should be taken into account that the Agreement on the issues relating to the temporary stationing of Soviet troops on GDR territory authorizes the Soviet Command to take measures to address threats to our troops, after “corresponding consultations with the GDR Government, considering the current situation and measures taken by the GDR authorities”. This provision limits the freedom of our troops to act if necessary. However it could be valid only when there is a “security threat” to our troops. The obligations and rights of the USSR, as stipulated in the Order of 25.1.1955, are much broader than those needed as a legal base of our actions).

The Western Powers also agreed to abandon the occupation regime in the FRG, giving Bonn practically full sovereignty. The Paris Agreements signed 23.10.1954 and entering into force on 5.5.1955 envisaged that the FRG “will be empowered with the complete authority of a sovereign state in domestic and foreign affairs”(article 1 of the Treaty on the relations between the FRG and the Three Powers). The Three Powers reserved “the rights and responsibilities in relation of Berlin and Germany as a whole which they had previously had, including the reunification of Germany and peace treaty settlement” as well as the deployment of their troops and provisions for their security (Article 2 of the said treaty). At the same time a wide range of issues was settled relating to conflict resolution

⁴ Nikolai Fedorenko (1912–2000), dodis.ch/P40671, Deputy Foreign Minister of the Soviet Union, 1955–1958.

⁵ Lothar Bolz (1903–1986), dodis.ch/P12756, Minister of Foreign Affairs of the GDR, 1953–1965.

between the Western Powers and the FRG according to the Treaty, the legal status of the military personnel deployed in Germany, their financing, reparations and restitution, the decartelization and limitations imposed earlier on industrial production and research, as well as on the FRG military forces (in the context of demilitarization), and the obligation of Bonn not to produce weapons of mass destruction was reaffirmed.

Considering their responsibility for Germany the US, Great Britain and France reserved the right to take the necessary measures to provide security for their troops in the FRG right up to the use of weapons on instructions from the military authorities of the Three Powers (stipulated in in the 1952 Treaty on the relations between the FRG and Three Powers, although abolished in 1968 because of the adoption in the FRG of the so-called Emergency Legislation) and to monitor Soviet flights in FRG airspace, as well as providing for mandatory “consultation” with the FRG on the cancellation of the Control Council laws and on any issues related to the implementation by the Three Powers of their “rights concerning Germany as a whole”. The most important objectives of the US, Great Britain and France have been fixed by the treaties, particularly the Peaceful Settlement, “which should become the basis for the sustainable peace” as well as determining the final borders of Germany. Before such an objective was achieved the Three Powers decided to focus their efforts on “the reunification of Germany, integrated in the European community and enjoying a free and democratic constitution like that existing in the FRG.”

Since then the USSR’s rights related to the GDR, the rights of the Three Powers related to the FRG and the rights of all Four Powers related to Germany as a whole have remained unchanged. Though the Soviet Union stated in its official notes dated 27.11.1958 and addressed to the US, Great Britain, France and the GDR that the Protocol of Agreement on the zones of occupation in Germany and administration of Greater Berlin dated 12.9.1944, along with associated additional agreements including the Agreement on the Control Mechanism in Germany dated 1.5.1945, were “considered currently null and void” (note addressed to the GDR) and “were null and void” (note addressed to Three Powers). These documents defined the borders of the occupational zones, established the Control Council and Inter-Allied Commandant’s Office in Berlin as well as military liaison missions under the Commanders-in-Chief. Besides the last question and the provisions related to Berlin, the settlement of these issues became meaningless after the cancellation of the occupation regime and the termination of the activities of the specified allied bodies on a quadripartite basis in 1948–1949, and our withdrawal from the said agreements did not affect the rights and responsibilities of the Soviet Union in German affairs. However the notes dated 27.11.1958 gave us the chance to interpret our wording in a certain way – and that was pointed out in the notes addressed to Three Powers (not GDR) – that we “only observed the following situation”, which should not be considered as an act of formal denunciation. The statement also incorporated in these documents says that “the Soviet Union can no longer consider itself bound with that part of the alliance obligations, which became unequal and is used to strengthen the occupation regime in West Berlin and to interfere in the GDR internal affairs.” In regard of the present

171 situation in Berlin we might consider this statement as untrue and irrelevant. The USSR's intention mentioned in the said note to conclude a separate peace treaty with the GDR has never been realized, and this fact also could be a weighty argument for the legal justification of our return to the said quadripartite agreements if necessary. Besides, the Three Powers have never recognized the refusal of the Soviet side with regard to its rights and obligations which facilitates our task.

As for our note addressed to the GDR, despite the categorical character of most of its statements, it also does not preclude us from the restoration of our rights, because the issue was only our (unrealized) intention to "transfer to the GDR authorities all the functions temporarily executed by the Soviet authorities on the basis of the said allied agreements and following the Agreement between the USSR and the GDR from 20 September 1955 giving the GDR the right to manage issues related to its territory, which means exercising its sovereignty on the land, in water and in airspace". This abstract shows that the Republic did not have such sovereignty, and Soviet authorities maintained their functions. Since then the situation has not changed.

It is important to take into account that the transfer of rights from all Four Powers to the corresponding German states took place with the GDR and the FRG designated as law subjects at every stage. If one or a few new German state entities were to emerge, and considering the solution of the legal succession issue, any corresponding bilateral or unilateral acts either become irrelevant, thus restoring the previous legal regime, or are passed to the new legal subject. In this context, formal aspects of possible unification are only growing in importance.

3. Rights and responsibilities of Four Powers towards Berlin

The USSR and the three Western Powers follow fundamentally different legal approaches in Berlin affairs. This explains the difference in their understanding of the nature, scope and range of allied rights and responsibilities in relation to Berlin. The legal reasoning here is built on the contradictory interpretations of the respective wartime agreements and arrangements of the Four Powers. Here we mean primarily the Protocol of the Agreement of the USSR, the United States and the United Kingdom on the zones of occupation of Germany and the administration of "Greater Berlin" from 12.9.1944. The Protocol, inter alia, stipulates that "Germany will be divided for the purposes of occupation in three zones, ... and a special area in Berlin will be selected to be occupied jointly by the Three Powers".

In the understanding of the Soviet side, this and other rulings on Berlin have given the city a special status within the zone of occupation of the USSR, establishing the regime of joint quadripartite administration (France subsequently acceded to the Protocol) in the city solely because of the placement of the Supreme Allied Authority, the Control Council, in the capital of the defeated Germany. This did not mean that the city became a type of fifth occupational zone, still remaining in the occupation area of the USSR, but being detached from the rest of it only in so far as was required by the practical needs of the administrative functions of each of the Four Powers separately (in their sectors) or jointly (in Berlin as a whole).

Having decided to split Germany, the Three Powers blocked the functioning of the quadripartite control bodies, which, in connection with our withdrawal

from them actually ceased to exist. Thus, the further presence of the United States, Britain and France in the western sectors of Berlin lost their legal basis, and Berlin as a whole, being originally a part of the Soviet occupation zone, had to be re-integrated into it administratively and was thus subsequently transferred to the GDR, which was created in 1949. However, by that time the Three Powers were firmly established in West Berlin and added the split of Berlin to the split of Germany. Therefore the USSR, unwilling to engage in open conflict, "tolerates" their presence in the Western sectors, as well as the implementation by the administrations of the United States, Britain and France of their occupation Powers in this part of the city. We retain, however, in principle, our rights to Berlin as a whole to the extent that they have not been transferred by us to the GDR.

The quadripartite Agreement of 3.9.1971, which was concluded in the light of the "existing situation in the respective areas", has fixed this situation "regardless of differences in legal views". Thus it did not provide the solution of legal disputes and its clause on mutual respect of "individual and joint rights and responsibilities" of the Four Powers meant recognition of these rights and responsibility only de facto, not de jure.

The United States, the United Kingdom and France are of the opinion that Greater Berlin has never belonged to the Soviet zone of occupation. In this connection they cite the provisions of the Protocol of 12.9.1944, which established when dividing the occupation zones, that the Eastern zone is "occupied by the armed forces of the USSR, except for the Berlin area, for which a special occupation order is envisaged". In support of the western viewpoint they refer to the maps attached to the Protocol on which the borders of Berlin are marked in the same way as the boundaries of the occupation zones. Thus the conclusion is drawn that the presence of the United States, Britain and France in Berlin is based on the same principles as in their respective zones of occupation proceeding directly from the fact of their victory in the war.

The withdrawal of the Soviet Union from the quadripartite control bodies did not entail their liquidation, which in the case of Berlin meant the preservation of the quadripartite Inter-Allied Commandants' Office, which only due to factual circumstances is now compelled to function only on a tripartite basis, limiting the territorial sphere of its Powers to the western sectors of Berlin. The steps taken by the Soviet Union in no way abolish the special quadripartite status of "Greater Berlin". The city still does not belong to any of the German states, and the Soviet side bears full responsibility for the Eastern sector of Berlin, including the implementation of allied decisions and agreements, which are still fully in force. The USSR also has the right to return any time to the inter-allied Commandant's office, restoring its appropriate functioning in relation to Berlin as a whole.

In accordance with such an understanding of the status of Berlin and the judicial interpretation of the current situation, the Three Powers retain their military presence and occupational regime in the western part of the city. In connection with the adoption of the Constitution of West Berlin in 1950 and with the entry in force of the Paris Agreements in 1955, they handed over a significant portion of their Power to the German municipal authorities. The Declaration of the Inter-allied Commandant's office on Berlin dated 5.5.1955 leaves absolute suprem-

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acy over the authorities to the Three Powers. This is in addition to the exclusive competence of the United States, Britain and France in matters relating to the deployment of troops, occupational costs, disarmament, demilitarization and external relations (as far as it is not provided to the German authorities), as well as police control to provide security and reserves the right to intervene in areas such as restitution, reparations, decartelization, foreign property, displaced persons and refugees and persons convicted by union courts (tribunals); the occupation authorities have also retained the right to revoke any laws of West Berlin and to accept, "if deemed necessary, such measures as may be required to fulfill its international obligations, to secure order and maintain the status and security of Berlin and its economy, trade and communications".

In the case of Berlin (Eastern and Western parts) the three signatories exercise those rights that have been directly introduced or were mutually recognized in practice by all four parties. These include, for example, the freedom of movement of military personnel, as well as officers of the administrations and military liaison missions of the United States, Great Britain and France over the entire territory of "Greater Berlin", their immunity from the control of German authorities (in the GDR capital as well), military patrols etc., up to the right to freely operate flights within the Berlin control zone.

The quadripartite responsibility also remains, in the western sense, a common one with regard to Berlin as a whole. As for its content, according to the documents of the wartime and post-war periods, it was not singled out from responsibility for Germany and is identical with it. The specific element was introduced only by the Quadripartite agreement, which envisages the obligations of its participants to contribute to the "elimination of tension and prevention of complications in the relevant area", and a renunciation of the use of force, as well as unilateral changes in the prevailing situation (part I).

This joint responsibility under the 1971 agreement is also seen by us as being necessary due to existing realities, which does not change, however, the legal position of the USSR, on which the responsibility for Berlin as a whole should in principle coincide with the responsibility for the territory of the former Soviet zone of occupation of Germany.

In connection with this formulation of the question of responsibility, we have not tried to work out any specific and exhaustive definition of Soviet rights in relation to Berlin. If we follow the logic of our legal position, then the city as a whole should theoretically belong to the GDR, while only its eastern part is actually integrated into the territory of the Republic. However, we did not formally commit to any actions designed to transfer to the GDR the specific sovereignty over Berlin or at least its eastern sector. It was implied at the time that our rights relating to the GDR and Berlin were delegated to Germans in equal measure. It was no coincidence that one of the notes sent by the USSR to the Three Powers stipulated that "in accordance with the Treaty dated 20 September 1955 on relations between the USSR and the GDR and related agreements, the GDR enjoys full powers in the territory under its sovereignty, including its capital" (note of 26.9.1960). Consequently, the issue of the rights of the USSR in the whole of Berlin should be settled on the same basis as for the rest of the GDR (see para. 2).

On the other hand, there remains some legal uncertainty. This is related to the fact that de jure, the GDR's possession of Berlin and its Eastern part has not been directly fixed de facto in any document. This circumstance allows us in principle to vary our legal position. It would be acceptable, in particular, to take the view that the cessation of the functioning of the principal organs and elements of the quadrilateral responsibility does not "automatically" lead to the return of the city as a whole to the GDR. This view is supported by real circumstances (the activities of the Berlin Air Safety Centre, the preservation of the unified airspace in the Berlin control zone, the interaction of representatives of the Four Powers in Berlin, their competence in matters of the Allies' immunity, freedom of movement in both parts of Berlin, presence of forces from the Three Powers in West Berlin and Soviet forces in East Berlin), all of which testify to the special status of Berlin, including the part that is de facto linked to the GDR.

Proceeding from these formal and legal considerations, even the above-mentioned passage from the note from 26.9.1960 cannot be regarded (given its approach to the question) as a withdrawal of the USSR from its rights in relation to Berlin or even just the Eastern part of it. First of all, it means that the GDR only "uses" the highest authority, and does not in fact possess it. The term "use" does not indicate any final state of affairs and implies only a temporary transfer of rights and their derivative nature. The fact that the "user" has such rights depends, in principle, on the decision of the party, in this case the USSR, that granted these rights to the "user". Secondly, the reference to the 1955 Treaty and the "Zorin⁶-Bolz⁷" exchange of letters in connection with it are of great importance here. The fact is that in the text of the treaty itself, Berlin is not mentioned at all (the exchange of ratification instruments is not considered here). The exchange of letters only agreed that the GDR would carry out "guard and control at the borders of the GDR, on the demarcation between the GDR and the FRG, on the outer edge of Greater Berlin, as well as on the traffic between the FRG and West Berlin on the territory of the GDR" (with the exception of the already mentioned movements between the FRG and West Berlin of military personnel and military cargo of the Three Powers). This covers only the functions of border guard and control, as specifically recorded in a communication of the ADN agency from 9.12.1955, which explicitly referred to this exchange of letters as "the Agreement on protection and control of borders of the GDR". The delegation of authorities relating to the guard and control at borders does not mean the transfer of "full Power". Starting from the statement by the chief of SMAG from 10.10.1949 and up to the Treaty of 20.9.1955, there are no agreements or unilateral acts of the USSR that directly recognize that East Berlin belongs to the GDR, nor on the rights of the Republic in this city. It is known that in the note from 27.11.1958, in which the USSR proposed to give Berlin the status of "the demilitarized Free City", we underscored when outlining our position that "the most correct and natural solution of the question would be that which would let the western part of Berlin be reunited with the eastern part, making Berlin a consolidated city within the boundaries of the state on whose land it is located". At the moment, however, the Soviet side is consistently referring to "East Berlin

⁶ Valerian Zorin (1902–1986), dodis.ch/P11993, Soviet diplomat.

⁷ Lothar Bolz (1903–1986), dodis.ch/P12756, Foreign Minister of the GDR 1953–1958.

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and the GDR", which indicates that the status of these territories is not defined by us as identical. This is also confirmed by some facts – the preservation until the 1970s of the guard service on the outer edge of Berlin (including the Eastern part), the special order of dispatch for the representatives of the capital of the GDR to enter the People's Chamber of the Republic and, until 1962, the existence of the Commandant's Office in the Soviet garrison in Berlin and the special status of the capital of the GDR under national military law. It is interesting to note that at the Geneva meeting of the Foreign Ministers of the Four Powers in 1959, attended by both the GDR and FRG, the delegation from the GDR took advantage of this formula, in accordance with which East Berlin only "performs the functions of the GDR capital", although it objected to the proposal of the Western representatives to extend international control over this part of the city, pointing out that it was inadmissible for the GDR "to make its sovereignty a subject of discussion and, especially, of violations" (Statement by L. Bolz from 16.7.1959).

It would be advantageous for us, under the present circumstances, to devote some effort to ensuring a special status for Berlin, especially its Eastern part, in light of the "claims" of the GDR. With a view to the forthcoming unification of Germany, we could also significantly strengthen our positions on German affairs in the talks on its settlement. Such a view of the city's legal position would also bring a rapprochement with the Western Powers, which they would welcome. Objections can in principle only be expected from the GDR and these would entail a number of practical issues related to the "restoration" of the special status of its capital (direct elections to Parliament, the status of the Deputies from East Berlin, the dissemination of laws and Government decisions, etc., roughly the same as in the relations between West Berlin and the FRG).

In this regard, it is important to determine the conditions under which such an interpretation would be appropriate and necessary for the protection of our interests in Berlin and in German affairs in the light of this perspective of the unification of the GDR and the FRG, as well as of Berlin itself.

And this concerns, obviously, the case of accession of the GDR to the FRG under article 23 of the Bonn Basic Law. The fact is that such an act of the GDR would extend, in its understanding, not only to the eastern part of the city, but theoretically also to Berlin as a whole, which would then automatically be considered by the Germans as an integral part of Germany. If we do not accept the above interpretation, we would have to accept the validity of such an act in relation to East Berlin, although not to the western sectors for which this accession is expressly prohibited by the Quadripartite Agreement. The legal separation of Berlin from the GDR would allow us, perhaps, to discipline the Germans without resorting to extreme measures (for example, to the full or partial restoration of the rights of the USSR in the GDR) and not to the practical elimination of our positions in the GDR and Berlin in the event of such an accession of the GDR to the FRG.

A similar need for the isolation of Berlin may arise at the unification of the two German states due to some other act that could invoke a similar need for the elaboration of the special status of Berlin if this happens before the development of a multilateral settlement, bringing into question the Soviet presence and the rights of the USSR in relation to Germany or in some other way violating our interests.

An important argument in favor of such an interpretation is the fact that the legal position of the Soviet troops deployed in the eastern part of the city would acquire a special character, different from the Western Group of Troops (WGT). The questions such as their continued stay in Berlin, their reduction etc. would have to be resolved in this case on a separate basis, and solutions connected with the WGT would not apply to our Berlin contingent. Thus we would have the opportunities to preserve the material rights of the USSR related to Berlin and connected with our military presence and in general provide us with a real force that is able to carry out, if necessary, the previously mentioned extreme measures to protect Soviet interests.

The most expedient option for us would be to accept as a basis of our behavior in Berlin affairs the legal reasoning of the Western Powers, following which this city enjoys a special status different from those of either German state. Its position is so dependent upon the Four Powers (the 1955 Declaration on Berlin), that it excludes any independent steps by Berlin in connection with the unification of Germany. The open transition to the positions of the United States, Great Britain and France should, however, be accompanied by the restoration of the rights of the USSR in East Berlin, or at least by our return to the Inter-allied Commandant's Office, which would once again acquire the authority relating to the eastern Sector within the decision-making on Berlin as a whole. We should avoid the impression of revival in any form of the occupation regime or its separate elements. For this reason, it would be sufficient to limit this, where appropriate, to the confirmation of common quadripartite responsibility in regard to Berlin as a whole and as a practical step to resume our participation in some minor joint actions of the victorious Powers (for example, in ceremonies for the reception of consular executives). If possible, it would be better to avoid the restoration of a Soviet presence in the Inter-allied Commandant's Office, instead proposing to the Three Powers to exercise such joint responsibility at the political level within the framework of the interaction between their administrations and our embassy in the GDR. This does not, of course, exclude the development of contacts on the military side, but without formalizing them as part of the quadripartite structure.

The transition in such a way to the legal position of the Three Powers will greatly facilitate mutual understanding during the negotiations on German unification, not only in the case of Berlin, but also for the whole complex of issues arising in relation to Germany. Following the logic of our current position, we will also escape the need to declare our own rights with regard to Berlin or its Eastern part, which would block the achievement of consensus in the negotiation process as such. It would be advisable to take this step in the near future, because, for example, given the attempts of the Federal Republic of Germany to bring about direct elections in West Berlin for the Bonn Bundestag, there is a need to prevent violations of the quadripartite agreement of 3.9.1971, and first of all its provision specifying the non-affiliation of West Berlin with the FRG. This ruling is, in principle, the last but at the same time the most clear legal statement that prevents the "Anschluss" of Berlin with the FRG, even if the GDR should accede under article 23 of the Basic Law. Having joined the legal stand of the Three Powers, it is important for us to put them in a position where the possible claims of the GDR

177 to East Berlin and its involvement in the process of German unification without proper settlement become issues for all four allies, not just the USSR. This will make Berlin a sort of a regulator of the process of the merger of the GDR and the FRG, which should be exclusively in the hands of the Four Powers and would act to stabilize and safeguard the interests of all the parties concerned.

4. *The mechanism for resolving the German issue*

The postwar quadripartite agreements which are still in force provide a very clear procedure for the final resolution of all issues related to the defeat of Germany in the Second World War. At the conference in Potsdam, the USSR, the United States and the United Kingdom agreed that this should happen within the framework of a peaceful settlement (a peace treaty was implied) for Germany. Preparation of "the relevant document" was assigned to the Council of Foreign Ministers (CFM) consisting of the "members representing the States which signed the conditions of surrender, dictated to the Enemy state and concerned with that task". Concerning Germany, such states are the Four Powers that signed the Act of surrender of the German armed forces and subsequently adopted the Declaration on the Defeat of Germany, having thus assumed supreme power over Germany. It should, however, be taken into account that the Three Allied Powers invited not only France, but also China to sign the text of the Potsdam Agreement and the establishment of the CFM, and this issue may in principle arise later on if the German settlement is to be conducted on the formal basis of the Potsdam decisions.

It is essential to keep in mind that by the time of the military surrender of Germany they were at war with more than 50 states in the anti-Hitler⁸ coalition. So it cannot be ruled out that they take an interest in participating in a peaceful settlement and will make their own respective demands. The Potsdam agreements, however, do not envisage the mandatory bringing of these countries to the conclusion of a peace treaty, leaving room for other forms of considering their interests. The conference, for example, has obliged the CFM "when examining an issue which is a matter of interest for a State" that is not represented in the Council, to invite such a State, but only "to take part in the discussion and study of the said issue". In addition, the CFM may convene an "official conference of states most interested in solving any given problem", which apparently is not part of its duties. Thus, the involvement of other states in a peaceful settlement is either left to the discretion of the Four Powers, or is limited to a preliminary examination of the relevant specific individual issues. It is important for us to note therefore that the Four Powers have the right to solve the problems of peaceful settlement by themselves "in the final analysis", if they do not find it necessary to convene the above mentioned "official conference", the composition of which they will be free to decide.

As for Germany, it should accept, according to the Potsdam agreement, a peace treaty prepared by the USSR, USA, Great Britain and France. This function was assigned to the "German government suitable for this purpose". Thus, it was implied that the suitability of such a government should be recognized by the vic-

8 *Adolf Hitler (1889–1945)*, dodis.ch/P535, *Führer of the German Third Reich 1933–1945*.

torious powers, which would decide the issue at their own discretion (by prior agreement with each other), or should be recognized by the “official conference” of the broader composition.

The formula used in Potsdam on the “suitable ... Government of Germany”, clearly implies that there should be an overall German Government by the time of the adoption of the Peace Treaty. What was quite natural at the conference of the USSR, the United States and Great Britain, now, given the the conditions of existence of two sovereign German states, raises a question about the correlation of terms of unification of the GDR and the FRG and of the time frame of the German settlement, as well as the recognition of both their governments’ authority to adopt a peace treaty.

The position of the Western Powers, formulated as early as the 1950s, has been the need for a preliminary unification of Germany (under the control of the Four Allies), the government of which should comply with the provisions of the Peace Treaty envisaged in Potsdam. The Soviet Union believed, on the contrary, that it would be necessary to reach a peaceful settlement even before the unification of the two German states, either by signing a relevant document with both Governments, or two separate treaties with each (because the FRG claims to be the sole representative of all Germans). The Four Powers, however, have agreed to engage the GDR and the FRG in the solution to the German problem at the preparatory stage, which was confirmed by the participation of the GDR and the FRG representatives in the Geneva Foreign Ministers meeting of the USSR, the United States, Britain and France in 1959, although the Western Powers considered these representatives to be present only as “advisers”. Now it appears easier to resolve the issue of a peaceful settlement, since previously the main obstacle was the refusal of the Western Powers to recognize the GDR as a sovereign state. The United States, Britain and France are unlikely to postpone a peaceful settlement after the unification of the two German states.

However it cannot be excluded that in the West the preference would be given to some other options that do not involve the signing of a formal peace treaty with Germany stemming, for example, from the fact that the state of war with Germany has already been terminated by unilateral statements made by all the members of the anti-Hitler conflict in the early 1950s. From a legal point of view, such “Ersatz” that in any way differ from a peaceful settlement could not be the final solution to the whole complex of problems associated with Germany’s defeat in the Second World War. According to the current Allied agreements, many questions have expressis verbis been left specifically for the peace treaty. The final and legally indisputable solution of the German problem can be reached only in this form, on which we should insist and which, in all likelihood, would be in the interests of the majority of the European countries.

The Ottawa document agreed by the Four Powers and the two German states does not contradict the decisions of the Potsdam Conference. The new model envisages “meetings” at the level of the Foreign Ministers of the said six countries “to discuss the external aspects of the structure of German unity, including the issue of the security of neighboring states”. Such “meetings for discussions”, however, cannot be tantamount to negotiations on a peaceful settlement, and therefore

179 fit well into the Potsdam framework. On the basis of the 1945 decisions we could also take a rather advantageous and attractive position in the political sense by advocating the inclusion in the model envisaged by Potsdam of such countries as Poland, Czechoslovakia, Denmark, the Netherlands, Belgium and others in the further discussions (planned after those in Ottawa).

In the light of the Potsdam Conference and the Ottawa decisions, the process of preparing and concluding a German peace settlement could be divided into several stages. The first of these would be the preliminary consultations of experts and the meeting of the USSR, the USA, Great Britain and France, with the GDR and the FRG representatives at the Foreign minister level as agreed in Ottawa. This would contribute to the initial elaboration of a certain range of issues, after which it would be possible to convene – again in accordance with the Potsdam decisions – the “official conference” of the most interested States, including the GDR, the FRG and the neighboring countries. This conference would be empowered to conclude the peace treaty in its final form. The final stage would be to endorse this document at the meeting of the CSCE with states participating at the highest level, which would, without any detailed reconsideration of the Treaty, recognize and confirm the conclusion of the German peace settlement by issuing a special act or a declaration. Then all these documents could be registered at the UN. Within the framework of the proposed procedure we would obviously seek to strengthen the interaction of the Four Powers, which would serve as a kind of “rod” supporting the entire negotiating mechanism. It is possible to encourage and invite the Three Powers to such cooperation from the Soviet side, as the Potsdam decisions envisage preliminary discussions among the members of the Council of Ministers of Foreign Affairs “before the involvement of other interested States”, although this is not necessary. Depending on the position of the future GDR government, it would be advisable for us to come to a preliminary agreement with it on the relevant issues.

It appears that we do not seem to be able to avoid widening the circle of participants in the talks on the German peace settlement, although this could hinder quick and effective negotiations. It is known that a number of States have already expressed their interest in participating (Poland, Italy, Yugoslavia, Norway). The Four Powers, according to the Potsdam agreements, will not be able to shy away, at least formally, from the participation of such countries in the consideration of certain specific issues. It cannot, however, be ruled out that some countries may insist on equal access to the negotiation process as a whole. Their exclusion from the settlement of the German problem could cause serious problems afterwards, if some of Parties question its legality precisely because of the refusal to invite them to the settlement of issues of the unification of Germans together with the most interested States.

There is a serious chance that the process of rapprochement between the two German states will proceed at a very rapid pace, leading to their unification even before or during the formal negotiations on a peaceful settlement. The creation of a united Germany in such a case will put before the Four Powers the question of their rights in it (responsibility persists) and, therefore, how it should be treated as the process of achieving a peaceful settlement evolves. The range of solutions to

this problem extends theoretically from the full restoration of allied rights, which consequently would mean the perception of such a unified state as the object of the negotiations before the recognition of its sovereignty, as is already the case of the FRG and the GDR, to its consideration as an equal party to the negotiations, i.e. their subject. The choice of any of the options will obviously depend on the specific circumstances of the unification of the two German states, and for the time being it is practically impossible to predict the character of such circumstances in their entirety. At the same time, the Four Powers are entitled, by virtue of their responsibilities for Germany, to define for themselves their approach towards the emerging unified state. However, it is impossible to exclude that in the case of the unification of the GDR and the FRG, the USSR, the United States, Great Britain and France will not be able to avoid the involvement of other participants in the consideration of the question of the identity of the new German state and its recognition as an equal party to the settlement. Some sort of guarantee to prevent the emergence of this complex of problems could be provided by the obligation undertaken by the participants in the talks even before the negotiation process starts not to change the existing situation and not to contribute to its change.

5. The subject and form of a peaceful settlement

The range of issues to be included in a peaceful settlement is predetermined by the Allied decisions in their most general form. The declaration of the defeat of Germany envisages the establishment of the borders and the statute of Germany or any part of it. The Potsdam Accords directly stipulated the inclusion of the two border issues on the agenda for a peaceful settlement – the western border of Poland and the border of the Königsberg district.

As for the “statute” of Germany, the list of related problems is obviously conditioned by the responsibility of the Four Powers for German affairs, primarily their responsibility for the provision of a democratic system and ensuring the peace-loving nature of the German State. This should take into account the basic principles of the Potsdam demilitarization, denazification, decartelization and democratization of Germany, as well as the implementation, or conditions of implementation that would necessarily be embodied in the peace settlement.

The situation which emerged in Germany and around Germany in the post-war period will inevitably require amendments to this settlement. The education and long-term development of the two independent German states on different tracks, with various international ties and commitments, raises rather important questions of succession, belonging to different alliances (blocks) and international organizations.

In view of the existence of special Allied rulings on Berlin, this issue is also subject to a special dispute resolution within the framework of a peaceful settlement. A necessary element of a peaceful settlement, in the final analysis, must be to ensure the absolutely equal status of Germany in the international community. In this regard, the peaceful settlement must repeal the rights and responsibilities of the Four Powers relating to Germany, as well as confirming the cessation of the state of war with Germany and of the occupational regime there.

181 A necessary element of a peaceful settlement should be the establishment of a mechanism to monitor and verify the implementation of the relevant agreements. It would be expedient to also include in the settlement some decisions regarding the basis of the further development of relations between its participants.

In the event that the unification of the two German states does not take place prior to reaching a peace settlement, it would be necessary to introduce into this settlement provisions affirming the right of the German people to self-determination and the establishment of a unified state. Here, it is necessary to specify that after their unification the GDR and the FRG will ensure the legal continuity of a German state in terms of a peaceful settlement.

The form of a peaceful settlement has not been clearly determined by Allied decisions, although one may find references to the peace treaty in some documents (the Potsdam agreements in particular). This issue may be resolved depending upon its mechanism, its content and its specific circumstances at the discretion of the parties to the settlement. It would probably be technically difficult to accept a single "all-inclusive document". For that reason this could be a question of drafting a number of documents whose legal status may coincide or differ. In such cases they should be combined in decisions ensuring the integrity of the whole complex of settlements and the mutual coherence of respective documents.

Considering that at the present time, when almost 45 years have passed since the end of the Second World War, the formalization of a settlement in connection with the unification of Germany as a "peace" settlement could be perceived (primarily by Germans) as an anachronism, the solution of the whole set of issues should be given a different image (leaving intact the subject of the settlement). It is expedient to resort in this case to more general designations of the settlement itself (Act, Charter, Code, etc.) and its territorial coverage (Central Europe, Europe).