

# BERICHTE UND URKUNDEN

## VÖLKERRECHT

### Dokumente zu Deutschlands Rechtslage

#### I. Die »kleine Revision« des Besatzungsstatuts

##### Vorbemerkung

In Ausführung der auf der Konferenz der Außenminister der Vereinigten Staaten, Großbritanniens und Frankreichs vom 6. bis 8.4.1949 in Washington beschlossenen Grundsätze der alliierten Besatzungspolitik nach Errichtung einer deutschen Bundesrepublik<sup>1)</sup> proklamierten die drei Militärbefehlshaber der drei westlichen Besatzungszonen Deutschlands am 12.5.1949 das Besatzungsstatut, das am 21.9.1949 in Kraft trat und am 23.9.1949 im Amtsblatt der Alliierten Hohen Kommission<sup>2)</sup> verkündet wurde<sup>3)</sup>. Dies war ein erster Versuch, das bisher nicht näher definierte, in Schrifttum und Praxis durchaus verschieden beurteilte<sup>4)</sup> Besatzungsregime in Deutschland wenigstens für die drei Westzonen *ad hoc* formulierten, für beide Seiten verbindlichen Rechtsregeln zu unterstellen, wobei sich freilich die Alliierten die Auslegung der vielfach vagen und mehrdeutigen Bestimmungen vorbehielten. Gerade die Neuartigkeit der Lage und der für sie geschaffenen Regeln rechtfertigen es, die 1949 verkündeten Texte, zusammen mit den im März 1951 erlassenen Änderungen festzuhalten, unabhängig von der ständig fließenden Entwicklung und von der in zahlreichen geschriebenen und ungeschriebenen, gesprochenen und unausgesprochenen, faktisch befolgten oder durchbroche-

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1) Siehe diese Zeitschrift Bd. XIII., S. 660 Anm. 1.

2) Konstituiert durch das Abkommen über die Drei-Mächte-Kontrolle für die Westzonen Deutschlands vom 8.4.1919, a.a.O. S. 661.

3) Amtsblatt der Alliierten Hohen Kommission für Deutschland (nachfolgend abgekürzt: Amtsblatt der AHK) 1949 Nr. 1, S. 13 ff.

4) Vgl. z. B. den Bericht von Meister, diese Zeitschrift Bd. XIII, S. 173 ff., und den unten S. 411 f. angezeigten Aufsatz von Kunz in *Western Political Quarterly* 1950, S. 538 ff.

nen Regeln sich niederschlagenden Wirklichkeit, die zur Folge hat, daß die bereits im Spätjahr 1950 fertiggestellte, aber erst im März 1951 verkündete sogenannte »kleine Revision« vielfach als schon bei ihrem Inkrafttreten durch den Fortgang der politischen Entwicklung überholt bezeichnet wurde.

Die nach Art. 9 des Besatzungsstatuts vom 23. 9. 1949 binnen 12, längstens 18 Monaten nach dessen Inkrafttreten durchzuführende, in ihren Zielen auf der Londoner Außenministerkonferenz vom Mai 1950 näher umschriebene<sup>5)</sup> Revision wurde im Sommer 1950 durch eine in London tagende »Alliierte Studiengruppe zur Revision des Besatzungsstatuts« vorbereitet und in dem *Communiqué on Western Germany* der Außenministerkonferenz vom 12.–18. 9. 1950<sup>6)</sup> erneut in ihren Grundlinien angekündigt. Bemerkenswert ist an dem Communiqué vom 18. 9. 1950 der Beschluß der alliierten Regierungen, die erforderlichen Schritte in ihrer innerstaatlichen Gesetzgebung zu unternehmen, den Kriegszustand mit Deutschland zu beenden, was aber die Rechte und den Status der drei Mächte in Deutschland nicht berühre, da diese Rechte und dieser Status auf einer anderen Grundlage beruhen. Hiermit wird, in Erwartung einer vielleicht nicht durch Friedensvertrag erfolgenden Beendigung des Kriegszustandes mit Deutschland, die viel umstrittene völkerrechtliche Grundlage des Besatzungsregimes negativ dahin umschrieben, daß sie nicht auf dem Kriegszustand beruhe, also keine *occupatio bellica* sei. Diese wenn auch einseitige amtliche Erklärung verdient bei einer völkerrechtlichen Analyse des Besatzungsregimes in Deutschland wie auch des von den Okkupationsmächten einseitig erlassenen und revidierten Besatzungsstatuts Beachtung. Die »Erste Urkunde zur Revision des Besatzungsstatuts«, die den Aufbau und wesentlichen Inhalt des bisherigen Statuts unberührt läßt, wurde am 6. 3. 1951 verkündet<sup>7)</sup>, zusammen mit »Entscheidungen« und »Direktiven« zu seiner Durchführung und Ergänzung, und ist am 7. 3. 1951 in Kraft getreten, gleichzeitig mit der dem revidierten Statut angepaßten »Satzung der Alliierten Hohen Kommission«.

S.

### 1. Besatzungsstatut in der Fassung vom 6. März 1951

#### a) Declaration concerning the entry into force of the Occupation Statute<sup>1)</sup>

WHEREAS by letter dated 12 May 1949 the Military Governors and Commanders-in-Chief of the French, United States and British Zones of Germany,

<sup>5)</sup> Gemeinsame Erklärung vom 14. 5. 1950, diese Zeitschrift Bd. XIII, S. 664–666.

<sup>6)</sup> Diese Zeitschrift Bd. XIII, S. 667–669.

<sup>7)</sup> Erste Urkunde zur Revision des Besatzungsstatuts vom 6. 3. 1951, Amtsblatt der AHK Nr. 49 vom 6. 3. 1951, S. 792 ff.

<sup>1)</sup> Amtsblatt der AHK Nr. 1 vom 23. 9. 1949, S. 2; erstmals deutschen Stellen bekannt-

respectively informed the President of the Parliamentary Council at Bonn that the Occupation Statute had been promulgated by them as of that date, and that, "upon the convening of the legislative bodies provided for in the Basic Law and upon the election of the President and the election and appointment of the Chancellor and the Federal Ministers, respectively, in the manner provided for in the Basic Law, the Government of the Federal Republic of Germany will then be established and the Occupation Statute shall thereupon enter into force"; and

WHEREAS the conditions aforesaid have been satisfied; and it is expedient formally to declare the entry into force of the Occupation Statute;

NOW, THEREFORE, the Council of the Allied High Commission hereby declares that the Occupation Statute entered into force as from 21 September 1949.

Done at BONN, Petersberg, on 21 September 1949.

A. FRANÇOIS-PONCET

French High Commissioner for Germany

John J. McCLOY

U.S. High Commissioner for Germany

B. H. ROBERTSON

U.K. High Commissioner for Germany

b) Text of Occupation Statute promulgated on the 12<sup>th</sup> May 1949 by the Military Governors and Commanders-in-Chief of the Western Zones

#### THE OCCUPATION STATUTE<sup>2)</sup>

In the exercise of the supreme authority which is retained by the Governments of France, the United States and the United Kingdom,

We, General Pierre Koenig, Military Governor and Commander-in-Chief of the French Zone of Germany,

General Lucius D. Clay, Military Governor and Commander-in-Chief of the United States Zone of Germany, and

General Sir Brian Hubert Robertson, Military Governor and Commander-in-Chief of the British Zone of Germany,

Do hereby jointly proclaim the following Occupation Statute:

1. During the period in which it is necessary that the occupation continue, the Governments of France, the United States and the United Kingdom desire and intend that the German People shall enjoy self-government to the maximum possible degree consistent with such occupation. The Federal State and the participating Länder shall have, subject only to the limitations in this Instrument, full legislative,

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gegeben unmittelbar nach der Außenministerkonferenz in Washington, am 10. 4. 1949, vgl. Drucksachen des Parlamentarischen Rats 693 a und c (amtlicher englischer bzw. französischer Text), veröffentlicht am 12. 5. 1949 durch die Militärgouverneure und Oberbefehlshaber der Westzonen Deutschlands.

<sup>2)</sup> Die durch die Revision vom 6. 3. 1951 eingefügten Teile sind kursiv gesetzt, gestrichene Teile der ursprünglichen Fassung in Anmerkungen wiedergegeben.

executive and judicial powers in accordance with the Basic Law and with their respective constitutions.

2. In order to ensure the accomplishment of the basic purposes of the occupation, powers in the following fields are specifically reserved, including the right to request and verify information and statistics needed by the occupation authorities:

- (a) disarmament and demilitarisation, including related fields of scientific research, prohibitions and restrictions on industry, and civil aviation;<sup>3)</sup>
- (b) controls in regard to the Ruhr, restitution, reparations, decartelisation<sup>4)</sup>, deconcentration, non-discrimination in trade matters, *to the extent required for the purposes of paragraph (g) (2) below*, foreign interests in Germany and claims against Germany;
- (c) foreign affairs, including international agreements made by or on behalf of Germany; *but the powers reserved in this field will be exercised so as to permit the Federal Republic to conduct relations with foreign countries to the full extent compatible with the requirements of security, other reserved powers, and obligations of the Occupying Powers relating to Germany*<sup>5)</sup>;
- (d) displaced persons and the admission of refugees<sup>6)</sup>;
- (e) protection, prestige, and security of Allied forces, dependents, employees and representatives, their immunities and satisfaction of occupation costs and their other requirements;
- (f) respect for the Basic Law and the Land constitutions<sup>7)</sup>;
- (g) control over foreign trade and exchange *to the extent necessary*:
  - 1) *to meet the needs of security*;
  - 2) *to ensure the observance by the Federal Republic of the principles of the General Agreement on Tariffs and Trade, until the Federal Republic has become a party to the Agreement and assumed the obligations thereunder*;
  - 3) *to ensure the observance by the Federal Republic of the principles and practices of the international Monetary Fund Agreement and to control its exchange rate, until the Federal Republic has become a member of the*

<sup>3)</sup> Das auf der Brüsseler Außenministerkonferenz vom 19. 12. 1950 geschlossene "Agreement on Rearming Western Germany", ist samt dem Notenwechsel zwischen USA und UdSSR vom Spätjahr 1950 veröffentlicht in Current History, Februar 1951, S. 106 ff.

<sup>4)</sup> Vgl. Entscheidung Nr. 10 vom 6. 3. 1951, Ziff. 2 a, Amtsblatt der AHK 1951 Nr. 49, S. 794, Text unten S. 159. Es handelt sich hiernach nur noch um eine Durchführung der Gesetze der AHK Nr. 27 vom 16. 5. 1950, Amtsblatt der AHK S. 299 ff.; Nr. 32 vom 20. 7. 1950, Amtsblatt der AHK S. 498 ff.; Nr. 39 vom 21. 9. 1950, Amtsblatt der AHK S. 600 ff. Die Aufrechterhaltung der bisherigen Grundsätze der Bestimmungen über Entflechtung sowie die Ausführung diesbezüglicher Vorschriften durch die Bundesregierung ist durch besonders vorbehaltene Kontrollbefugnisse der Besatzungsbehörden gesichert (vgl. Entsch. Nr. 10, Ziff. 3, Text unten S. 159).

<sup>5)</sup> Vgl. Entscheidung Nr. 11 vom 6. 3. 1951, Amtsblatt der AHK Nr. 49, S. 795 ff., Text unten S. 160. Die Schreibweise von Occupying Powers, Occupation Authorities usw. ist in der Fassung vom 12. 5. 1949 durchweg klein, in der 1. Revisionsurkunde vom 6. 3. 1951 durchweg groß.

<sup>6)</sup> Vgl. Entscheidung Nr. 10, Ziff. 2 (b), Text unten S. 159.

<sup>7)</sup> Vgl. Entscheidung Nr. 10, Ziff. 2 (c) und 3, unten S. 159.

*Fund and assumed satisfactory obligations thereunder with respect to its exchange rate;*

4) *to provide for orderly settlement of claims against Germany;*

(h) <sup>8)</sup>

- (i) Control of the care and treatment in German prisons of persons charged before or sentenced by the courts or tribunals of the occupying Powers or occupation authorities; over the carrying out of sentences imposed on them; and over questions of amnesty, pardon or release in relation to them.

3. It is the hope and expectation of the Governments of France, the United States and the United Kingdom that the occupation authorities will not have occasion to take action in fields other than those specifically reserved above. The occupation authorities, however, reserve the right, acting under instructions of their Governments, to resume, in whole or in part, the exercise of full authority if they consider that to do so is essential to security or to preserve democratic government in Germany or in pursuance of the international obligations of their Governments. Before so doing they will formally advise the appropriate German authorities of their decision and of the reasons therefor.

4. The German Federal Government and the Governments of the Länder shall have the power, after due notification to the occupation authorities, to legislate and act in the fields reserved to these authorities, except as the occupation authorities otherwise specifically direct or as such legislation or action would be inconsistent with decisions or actions taken by the occupation authorities themselves <sup>9)</sup>.

5. (a) Any amendment of the Basic Law will require the express approval of the Occupation Authorities before becoming effective. Any agreement made between the Federal Republic and a foreign government will become effective 21 days after its official receipt by the Occupation Authorities unless previously disapproved by them, provisionally or finally. *Land constitutions, amendments thereof, and all other Federal or Land legislation will be effective without review by the Occupation Authorities but will be subject to repeal or annulment by them.*

(b) The Occupation Authorities will not disapprove *any agreement between the Federal Republic and a friendly country or repeal or annul* legislation unless in their opinion it is inconsistent with the provisions of the *Occupation Statute as revised or with* legislation or other *measures* of the Occupation Authorities, or constitutes a grave threat to the basic purposes of the Occupation <sup>10)</sup>.

<sup>8)</sup> Ziff. 2 (h) ist aufgehoben mit Rücksicht auf die von der Bundesrepublik Deutschland eingegangenen Bindungen, insbesondere das ECA-Abkommen vom 15. 12. 1949, und hatte gelautet:

(h) control over internal action, only to the minimum extent necessary to ensure use of funds, food and other supplies in such manner as to reduce to a minimum the need for external assistance to Germany.

<sup>9)</sup> Vgl. aber Direktive 4 in der Fassung vom 6. 3. 1951, Text unten S. 163.

<sup>10)</sup> Die Fassung vom 12. 5. 1949 lautete (abgeänderte Teile kursiv):

5. Any amendment of the Basic Law will require the express approval of the occu-

6. Subject only to the requirements of their security, the occupation authorities guarantee that all agencies of the occupation will respect the civil rights of every person to be protected against arbitrary arrest, search or seizure; to be represented by counsel; to be admitted to bail as circumstances warrant; to communicate with relatives; and to have a fair and prompt trial.

7. (a) *Insofar as it is based upon reserved powers. Occupation legislation will remain in force until repealed or amended by the Occupation Authorities.*

(b) *All other Occupation legislation will remain in force until repealed by the occupation authorities at the request of the appropriate German authorities, or repealed or amended by the German authorities upon authorisation by the Occupation Authorities<sup>11)</sup> <sup>12)</sup>.*

8. Any action shall be deemed to be the act of the occupation authorities under the powers herein reserved, and effective as such under this Instrument, when taken or evidenced in any manner provided by any agreement between them. The occupation authorities may in their discretion effectuate their decisions either directly or through instructions to the appropriate German authorities.

9. After 12 months and in any event within 18 months of the effective date of this Instrument the occupying Powers will undertake a review of its provisions in the light of experience with its operation and with a view to extending the jurisdiction of the German authorities in the legislative, executive and judicial fields.

## 2. Decision No. 10. Programme for the revision of occupation controls<sup>13)</sup>

In implementation of the decisions taken by the Foreign Ministers of France, the United Kingdom and the United States at their New York Meeting on 18 September, 1950, the Council of the Allied High Commission, having this day promulgated the "First Instrument of Revision of the Occupation Statute", has decided

occupation authorities before becoming effective. *Land constitutions, amendments thereof, all other legislation, and any agreements made between the Federal State and foreign Governments, will become effective 21 days after its official receipt by the occupation authorities unless previously disapproved by them, provisionally or finally. The occupation authorities will not disapprove legislation unless in their opinion it is inconsistent with the Basic Law, a Land constitution, legislation or other directives of the occupation authorities themselves or the provisions of this Instrument, or unless it constitutes a grave threat to the basic purposes of the occupation.*

<sup>11)</sup> Die Fassung vom 12. 5. 1949 lautete:

7. Legislation of the Occupation Authorities enacted before the effective date of the Basic Law shall remain in force until repealed or amended by the occupation authorities in accordance with the following provisions: —

- a) legislation inconsistent with the foregoing will be repealed or amended to make it consistent herewith;
- b) legislation based upon the reserved powers, referred to in paragraph 2 above will be codified;
- c) legislation not referred to in a) and b) will be repealed by the occupation authorities on request from appropriate German authorities.

<sup>12)</sup> Vgl. Direktive Nr. 5 vom 6. 3. 1951, Text unten S. 164 f.

<sup>13)</sup> Amtsblatt der AHK 1951, Nr. 49, S. 794 f.

to adopt the following programme for further relaxation of controls under the Occupation Statute:

1. The powers reserved by paragraph 2 (b) relating to deconcentration will be exercised only to ensure completion of Allied programmes relating to the steel, coal and motion picture industries, I.G. Farben and the Grossbanken and actions which, as of 31 December, 1950, were called for under laws adopted by the Allied High Commission or have been initiated through legal process taken under existing laws. Upon completion of such programmes and actions these powers will be relinquished.

2. (a) The powers reserved by paragraph 2 (b) relating to decartelisation will be relinquished upon the enactment by the Federal Republic of legislation satisfactory to the Occupation Authorities, including provisions to prevent new concentrations of economic power.

(b) The powers reserved by paragraph 2 (d) relating to displaced persons and the admission of refugees will be relinquished as soon as commitments and other action satisfactory to the Occupation Authorities have been taken by the Federal Government with respect to the admission, care, and protection of displaced persons and refugees, including safeguarding their civil rights, assuring the continued and effective operation of International and Allied agencies established for their care and resettlement, and compensating victims of Nazi persecution.

(c) The powers reserved by paragraph 2 (f) relating to respect for the Basic Law and the Land Constitutions will be relinquished as soon as the Federal Republic has established a judicial authority deemed by the Occupation Authorities to be capable of effectively upholding the civil rights of the individual as defined in the Basic Law.

3. The Occupation Authorities will retain the powers necessary to ensure that the Federal Government carries out commitments undertaken and legislation enacted pursuant to paragraph 2 above and that the essential features of such legislation are maintained.

4. The Council of the Allied High Commission will issue further instruments of revision of the Occupation Statute from time to time as the conditions prescribed by this Decision for the relinquishment of powers are fulfilled.

5. This Decision shall become effective on 7 March, 1951.

Done at BONN, Petersberg, on 6 March, 1951.

On behalf of the Council of the Allied High Commission

A. FRANÇOIS-PONCET

French High Commissioner for Germany, Chairman

### **3. Decision No. 11. Competence of the Federal Government in the field of foreign affairs<sup>14)</sup>**

In exercise of the powers reserved by Paragraph 2 (c) of the Occupation Statute as amended by the First Instrument of Revision, the Council of the Allied High Commission decides as follows:

<sup>14)</sup> Amtsblatt der AHK 1951, Nr. 49, S. 795 ff.

*Art. 1.* The Federal Government is hereby authorised to establish a Ministry of Foreign Affairs and shall have exclusive responsibility for the choice of the personnel of its diplomatic, consular and trade missions.

*Art. 2.* The Federal Government may conduct relations with foreign countries subject to the provisions of this Decision.

*Art. 3. 1.* The establishment of diplomatic or consular relations or trade missions shall be subject to the prior approval of the Allied High Commission.

2. The Federal Government may, however, establish without such approval diplomatic missions in those countries, other than France, the United Kingdom, and the United States of America, in which prior to the effective date of this Decision it has been authorised to establish consular offices.

3. No prior approval will be required for the establishment of consular offices or trade missions in those countries with which the Federal Government has diplomatic or consular relations.

*Art. 4.* The Federal Government is hereby authorised to appoint official agents in the capitals of France, the United Kingdom and the United States of America.

*Art. 5.* The accreditation and status of foreign missions in the Territory of the Federal Republic will be governed by the following provisions:

(i) Diplomatic missions and consular offices established in the Territory of the Federal Republic will normally be accredited to and recognized by the Federal Republic. In exceptional circumstances they may be accredited to or recognized by the Allied High Commission. In no case will there be a dual accreditation of missions to the Allied High Commission and to the Federal Republic or the issue of exequaturs to consuls by both the Allied High Commission and the Federal Government.

(ii) The accreditation of foreign missions to the Federal Republic shall be notified to the Allied High Commission and they will thereafter have access to it in all matters relating to the fields reserved to the Occupation Authorities.

*Art. 6.* The Federal and Land Governments shall keep the Allied High Commission informed of any international negotiations. The Allied High Commission may intervene in negotiations relating to the fields reserved to the Occupation Authorities.

*Art. 7.* The Federal Government shall furnish to the Allied High Commission all appropriate information regarding action taken pursuant to the provisions of this Decision.

*Art. 8.* This Decision shall become effective on 7 March, 1951.

Done at BONN, Petersberg, on 6 March, 1951.

On behalf of the Council of the Allied High Commission

A. FRANÇOIS-PONCET

French High Commissioner for Germany, Chairman

**4. Directive No. 1 (Revised). Review of amendments of the Basic Law and of Federal legislation <sup>15)</sup>**

Directive No. 1 (Amended) as published in Issue No. 25 of the Official Gazette dated 30 June 1950, is hereby repealed and the following provisions substituted:

1. In accordance with paragraph 5 of the Occupation Statute as modified by the Instrument of Revision dated 6 March, 1951, any amendment of the Basic Law will require the express approval of the Allied High Commission before becoming effective; such amendment may not be promulgated before this approval has been given. With its request for approval of any such amendment, the Government of the Federal Republic of Germany shall deliver to the Secretary General of the Allied High Commission 55 copies each of the German text of the amendment and of English and French translations thereof. Four copies of the German text shall be certified to be accurate by the appropriate Federal Minister or an official designated by him for the purpose.

2. The Government of the Federal Republic of Germany shall deliver to the Secretary General of the Allied High Commission, immediately after publication 75 copies of the Bundesgesetzblatt, the Bundesanzeiger and all other organs of publication in which Federal legislation (Rechtsvorschriften) is promulgated.

3. In any case where Federal legislation is repealed or annulled by the Allied High Commission, the Federal Government shall cause a notice of such repeal or annulment, its extent, and its effective date to be inserted in the next issue of the official publication in which the legislation was promulgated.

4. The decisions of the Allied High Commission will be communicated to the Federal Government by the Allied General Secretariat.

5. This Directive shall become effective on 7 March, 1951.

Done at BONN, Petersberg, on 6 March, 1951.

By Order of the Allied High Commission

G. P. GLAIN

Secretary General

**5. Directive No. 2 (Revised). Review of Land constitutions and amendments thereof and Land legislation <sup>16)</sup>**

Directive No. 2 (Amended) as published in Issue No. 25 of the Official Gazette dated 30 June 1950, is hereby repealed and the following provisions substituted.

1. Each Land Government shall deliver to the Land Commissioner for its Land, immediately after publication, 75 copies of Land Gazettes and all other organs of publication in which, under the law of the Land, legislation (Rechtsvorschriften) is promulgated.

2. In any case where Land legislation is repealed or annulled by the Allied High

<sup>15)</sup> Amtsblatt der AHK 1951, Nr. 49, S. 797 f.

<sup>16)</sup> Amtsblatt der AHK 1951, Nr. 49, S. 798 f.

Commission, the Land Government shall cause a notice of such repeal or annulment, its extent, and its effective date to be inserted in the next issue of the official publication in which the legislation was promulgated.

3. The decisions of the Allied High Commission will be communicated to the Land Government by the Land Commissioner.

4. This Directive shall become effective on 7 March, 1951.

Done at BONN, Petersberg, on 6 March, 1951.

By Order of the Allied High Commission

G. P. GLAIN

Secretary General

**6. Directive No. 3 (Revised). Negotiation by the Federal or a Land Government of international agreements<sup>17)</sup>**

Directive No. 3 as published in Issue No. 24 of the Official Gazette dated 24 June 1950, is hereby repealed and the following provisions which will govern the negotiation by the Federal Government or a Land Government of international agreements (other than trade and payments agreements) are substituted therefor.

1. The Federal Government shall furnish to the Allied High Commission all pertinent information regarding its international negotiations.

2. The Allied High Commission may intervene in negotiations affecting reserved powers.

3. The texts, in the language or languages of the original, of all instruments embodying any agreements concluded shall be submitted to the Allied High Commission after signature, and will be subject to disapproval by the Allied High Commission within a period of twenty-one days. No such agreement shall enter into force before the expiry of this period or of such shorter period as the Allied High Commission may authorise.

4. If, after a decision of the Allied High Commission not to disapprove, either expressly or by failure to act within the twenty-one day period as set forth in paragraph 3 above, the appropriate authorities of the German Federal Republic decide to ratify the proposed agreement conditionally or with reservations, such conditional approval or approval with reservations, shall be referred to the Allied High Commission and will become effective only by a further decision of the Allied High Commission not to disapprove or by expiration of a further twenty-one day period beginning the day after such conditional approval or approval with reservations has been filed with the Allied General Secretariat.

5. An authenticated copy of each international agreement shall be deposited with the Allied High Commission together with authenticated copies of any instruments of ratification.

6. The Federal Government shall further furnish the Allied High Commission

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<sup>17)</sup> Amtsblatt der AHK 1951, Nr. 49, S. 799 ff.

with such information and data pertaining to the implementation of international agreements as may be requested by the Allied High Commission.

7. In the case of negotiation of an international agreement by a Land, the procedure set out above shall apply insofar as appropriate, but all communications between the Land Government concerned and the Allied High Commission shall be made through the Land Commissioner. When submitting to the Allied High Commission agreements which have been concluded, a Land Government shall furnish evidence of the approval of the Federal Government to these agreements.

8. This Directive shall become effective on 7 March, 1951.

Done at BONN, Petersberg, on 6 March, 1951.

By Order of the Allied High Commission

G. P. GLAIN

Secretary General

**7. Directive No. 4 (Revised). Notification by the Federal and Land Governments pursuant to paragraph 4 of the Occupation Statute (Revised)<sup>18)</sup>**

1. In accordance with paragraph 4 of the Occupation Statute, modified by the First Instrument of Revision dated 6 March, 1951, the Federal Government and the Governments of the Laender shall have the power, after due notification to the Occupation Authorities, to legislate and act in the fields reserved to these Authorities, except as the Occupation Authorities otherwise specifically direct or as such legislation or action would be inconsistent with decisions or actions taken by the Occupation Authorities themselves. Unless the Occupation Authorities hereafter otherwise direct generally or in specific cases, notification of the intention of the Federal or a Land Government to exercise such power shall be submitted to the Occupation Authorities pursuant to the provisions of this Directive, except in cases to which Directive No. 3 (Revised) or instructions relating to Foreign Trade and the negotiation of Trade and Payments Agreements, apply.

2. Twenty copies of the German text of the notification and of an English and French translation thereof shall be delivered to the Allied High Commission:

- (a) if a law is contemplated, in the case of a Government proposal, before the bill is presented to the legislature, and in the case of a proposal by any individual, group of persons or body other than the Government, at the earliest possible moment after the Government has received notice thereof;
- (b) if legislation other than a law is contemplated, prior to its signature by the issuing authority;
- (c) if action other than legislation is contemplated, prior to the taking of such action.

3. The notification shall state the purpose and scope of the legislation or action contemplated, the reasons why such legislation or action in a field reserved to the

<sup>18)</sup> Amtsblatt der AHK 1951, Nr. 49, S. 801 ff.

Occupation Authorities is deemed necessary or desirable, and the form which such legislation or action is to take. A draft of legislation may, but need not, be attached to the notification.

4. Delivery of the notification will be received, in the case of the Federal Government, by the Allied General Secretariat, and in the case of a Land Government, by the Land Commissioner.

5. Unless otherwise authorised by the Allied High Commission, proposed legislation shall not be passed or signed by the issuing authority, and proposed action shall not be taken, before twenty-one days have elapsed after official receipt of the notification without the Allied High Commission having raised any objection as provided in paragraph 6. In computing the twenty-one days, the day of receipt of the notification shall not be counted. The Allied High Commission may extend this period by notice sent to the Federal or the Land Government before the expiration of such period.

6. Within the twenty-one days or any extension thereof, the Allied High Commission may advise the Federal or the Land Government that there is a stated objection to the proposed legislation or action, or that there will be objection unless the legislation or action conforms to specific directions.

7. The Allied High Commission reserves the right to repeal or annul such legislation in any case where:

- (a) a notification has not been submitted in accordance with this Directive; or
- (b) the legislation departs materially from the particulars given in compliance with paragraph 3 of this Directive.

8. This Directive shall become effective on 7 March, 1951.

Done at BONN, Petersberg, on 6 March, 1951.

By Order of the Allied High Commission

G. P. GLAIN

Secretary General

**8. Directive No. 5. Repeal, deprivation of effect and amendment of Occupation legislation by German authorities pursuant to paragraph 7(b) of the Occupation Statute (Revised) <sup>19)</sup>**

1. The Federal Government or the Land Government, as the case may be, shall, in requesting authorisation of the Allied High Commission pursuant to paragraph 7 (b) of the Occupation Statute (Revised) for the repeal, deprivation of effect or amendment of any Occupation legislation which is not based on reserved powers, specify the Occupation legislation, or provisions thereof, which it is desired to repeal, deprive of effect or amend. Repeal, deprivation of effect or amendment of such Occupation legislation by the German authorities shall be accomplished only by specific language in appropriate legislation.

<sup>19)</sup> Amtsblatt der AHK 1951, Nr. 49, S. 803 f.

2. Requests for authorisation will be received, in the case of the Federal Government, by the Allied General Secretariat, and in the case of a Land Government by the Land Commissioner.

3. The Allied High Commission will as soon as possible advise the Federal or the Land Government in writing of its decision upon any such requests.

4. This Directive shall become effective on 7 March, 1951.

Done at BONN, Petersberg, on 6 March, 1951.

By Order of the Allied High Commission

G. P. GLAIN

Secretary General

#### 9. Revidierte Satzung der Alliierten Hohen Kommission vom 6. März 1951<sup>20)</sup>

##### *1. Establishment of Allied High Commission and Transfer of Control*

1. An Allied High Commission (hereinafter referred to as the "High Commission") is hereby established for the exercise of supreme Allied authority in the Federal Republic of Germany. The High Commission shall be headed by three High Commissioners, one designated by each of the three Powers signatory hereto.

2. As from the date of the entry into force of the Occupation Statute all authority with respect to the control of Germany or over any governmental authority thereof, vested in or exercised by the respective Commanders-in-Chief of the forces of occupation of the three Powers in Germany, from whatever source derived and however exercised, will be transferred to the three High Commissioners respectively to be exercised in accordance with the provisions hereof and of the Occupation Statute.

3. (a) The stationing within Germany of forces of the three Occupying Powers outside of their respective zones of occupation will be as agreed between appropriate High Commissioners and the respective Commanders-in-Chief. The forces of any other Allied Nation participating in the defence of Western Europe and deployed within Germany for that purpose may be stationed in such areas of a zone of occupation as are agreed by the High Commissioner and the Commander-in-Chief of the zone of occupation concerned<sup>21)</sup>.

<sup>20)</sup> Die ursprüngliche Fassung vom 20. 6. 1949 ist abgedruckt im Dep. of State Bulletin, Vol. XXI, No. 523, July 11, 1949, S. 25 ff.; Cmd. 7727 – Germany No. 2 (1949); Öffentlicher Anzeiger für das Vereinigte Wirtschaftsgebiet, Jg. 2, Sonderausgabe vom 21. 9. 1949, S. 2–3.

<sup>21)</sup> In der Fassung vom 20. 6. 1949 lautete dieser Absatz:

3. The forces of occupation of the three Powers in Germany shall remain stationed in their respective zones of occupation. Command of the forces of occupation in each zone and control of their related military establishments shall remain with the respective commanders of the forces of occupation in such zone.

(b) Command of the forces of the three Occupying Powers is vested in their respective Commanders-in-Chief, regardless of their location within the three zones of occupation. If, however, operational control of all or part of any of the forces of one Occupying Power located in the zone of occupation of one of the other two Occupying Powers becomes necessary, such operational control, together with necessary administrative arrangements, will be mutually agreed between the High Commissioners and the Commanders-in-Chief in the zones of occupation concerned.

(c) Control of the related military establishment and services of the three Occupying Powers is vested in their respective Commanders-in-Chief regardless of their position within the three zones of occupation. Administrative arrangements for forces of one Occupying Power when located in the zone of occupation of one of the two Occupying Powers will be as mutually agreed between the High Commissioners and Commanders-in-Chief of the two Occupying Powers concerned.

(d) Command and administrative arrangements of the forces of any Allied Nation other than the three Occupying Powers stationed within Germany will be a matter for governmental agreement between such Nation and the Occupying Power concerned.

(e) Existing agreements which have been concluded between two or all of the three Occupying Powers will not be altered by the foregoing without the mutual agreement of the High Commissioners and Commanders-in-Chief in the zones of occupation concerned <sup>22)</sup>.

## *II. Functions of the High Commission*

1. The High Commission shall exercise control over the Federal Government and the Governments of its constituent Laender as provided by the Occupation Authorities under said Statute, the High Commission shall reach its decisions in accordance with the provisions of Annex A hereof. These decisions shall constitute a joint exercise of the authority of all the three High Commissioners <sup>23)</sup>.

<sup>22)</sup> Der anschließende Absatz 4 der ursprünglichen Fassung:

4. Legislation of the occupation authorities enacted before the effective date of the Occupation Statute shall remain in force until repealed or amended or otherwise replaced as provided in the Occupation Statute.

ist gestrichen worden, da die diesbezügliche Vorschrift jetzt in Art. 7 Abs. a des RevBesSt enthalten ist.

<sup>23)</sup> Absatz 1 lautete in der alten Fassung:

1. The High Commission shall exercise control over the Federal Government and the Governments of its constituent Laender, as provided in the Occupation Statute. In the exercise of the powers reserved to the occupation authorities under said Statute, the High Commission shall reach its decisions in accordance with the provisions of the "Agreement as to Tripartite Controls" among the three Powers dated April 8, 1949, and attached hereto and made part of this instrument as

2. The High Commission shall act only through the Federal or appropriate Land Government except where direct action or legislation by the High Commission is necessary or appropriate for the due exercise of any of the powers reserved to the occupation authorities under the Occupation Statute.

3. The Headquarters of the High Commission shall be at the seat of the German Federal Government. The area defined as the Bonn Enclave will continue to constitute a special area directly under the administration of the High Commission and excluded from any individual zone of occupation <sup>24</sup>).

### *III. Organization of the High Commission*

1. The central <sup>25</sup>) organization of the High Commission at its headquarters shall be tripartite in character and shall consist of:

(a) an Allied Council (hereinafter referred to as "The Council") composed of the three High Commissioners. Each High Commissioner shall nominate a deputy or permanent representative who will take his place on the Council in his absence. The deputies or permanent representatives of the respective High Commissioners acting together may function as an executive committee of the Council if the Council so decides;

(b) such committees, including the Military Security Board, and such subcommittees and subordinate groups, with such membership and such terms of reference, as the Council may from time to time approve <sup>26</sup>).

(c) An Allied General Secretariat.

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Annex A. These decisions shall constitute a joint exercise of the authority of all of the three High Commissioners.

Die Abänderung war erforderlich wegen der Aufhebung des Drei-Mächte-Kontrollabkommens vom 8. 4. 1949, abgedruckt in dieser Zeitschrift, Bd. XIII, S. 661 ff.

<sup>24</sup>) Die alte Fassung lautete:

3. The Headquarters of the High Commission shall be at the seat of the German Federal Government, which, together with a surrounding area to be defined, will constitute a special area directly under the High Commission and excluded from any individual zone of occupation. The necessary special arrangements in connection with the definition and administration of this area in as far as they concern the Allies will be determined subsequently by the High Commission.

Der letzte, jetzt fortgefallene Satz ist durch die Regelung der Entscheidung Nr. 6 der AHK vom 17. 7. 1950 über das Statut des Bonner Sondergebiets (Amtsblatt der AHK, S. 505 ff.) erfüllt.

<sup>25</sup>) Das Wort "central" ist hinzugefügt worden.

<sup>26</sup>) Absatz 1 (b) lautete in der alten Fassung:

(b) such committees or bodies as the Council may from time to time establish. These committees and bodies shall advise the Council in their respective spheres and shall exercise such executive functions as the Council may delegate to them. The number, functions and organization of such committees or bodies may be changed, adjusted or eliminated entirely by the Council in the light of experience.

## 2. *The Council*

The Council shall constitute the supreme authority of the High Commission. The Council shall meet as frequently as it considers necessary and at any time upon the request of any of its members. The chairmanship of the Council and its various committees shall be held in monthly rotation by each of its members. The Council shall fix the time and place of its meetings and shall establish appropriate rules and procedures for the conduct of its business. Decisions of the Council shall be reached in accordance with Annex A <sup>27</sup>).

Subject to the above, in order to ensure continuity of operation, the Council initially shall be assisted by committees respectively for political affairs, foreign trade and exchange, finance, economics, law and by the Military Security Board. Each committee shall be assisted by such associated staff as it may require and as the Council approve;

<sup>27</sup>) Alte Fassung: "... with Annex A hereof."

Die folgenden Vorschriften der alten Fassung über die Ausschüsse und Unterausschüsse der AHK sind gestrichen. Sie lauteten:

## 3. *Committees*

The composition of each committee and its terms of reference shall be fixed by the Council. Initially, such Committees, together with their respective terms of reference, shall be as follows:

(a) the Political Affairs Committee, consisting of the Political Advisers to the respective High Commissioners, will be concerned with all political and foreign affairs of the German Federal and Land Governments coming within the competence of the Council;

(b) a foreign trade and exchange committee consisting of the respective Economic and Finance Advisers of each of the High Commissioners.

(I) The Committee shall observe the economic, financial and foreign trade policies of the German authorities and shall advise the Council if such policies or any action taken or proposed to be taken pursuant thereto is likely to have such adverse effect on the foreign trade or foreign exchange resources of the German Government as is likely to increase its need for external assistance;

(II) the members of the Committee shall automatically be members of the Board of Directors of the Joint Export-Import Agency (hereinafter referred to as "JEIA") and in conjunction with the other directors shall be charged with the orderly liquidation of JEIA at the earliest practicable date. The Committee shall assume any control functions presently exercised by JEIA as may warrant retention when the liquidation of JEIA is completed;

(III) it is understood that the German Federal Republic will become a party to the Convention for European Economic Cooperation and will execute a bilateral agreement with the Government of the United States. It is further understood that thereafter the functions of the High Commission in respect of the matters referred to in (I) will be appropriately modified;

(c) the Economics Committee, consisting of the Economic Advisers to the respective

3. <sup>28)</sup> *Allied General Secretariat*

The High Commission shall be served by a tripartite general secretariat. The Secretariat will receive and dispatch all communications to or from the High

High Commissioners, shall observe the general economic policies of the German authorities and shall advise the Council as to the exercise of its powers in this connection reserved under the Occupation Statute. The Committee shall advise the Council on all matters relating to the decartelization and deconcentration of German industry;

(d) the Finance Committee, consisting of the Finance Advisers to the respective High Commissioners, shall observe the general financial policies of the German authorities, and shall advise the Council as to the exercise of its powers in this connection reserved under the Occupation Statute. To the extent necessary within the limits of the provisions of the Occupation Statute, the Finance Committee shall succeed to and shall assume the functions heretofore exercised by the Allied Bank Commission;

(e) the Law Committee, consisting of the Legal Advisers to the respective High Commissioners, shall advise the Council and its committees on all legal and judicial affairs arising out of the work of the High Commission;

(f) the Military Security Board shall deal with all matters of demilitarization, disarmament, industrial prohibitions and limitations, and scientific research in accordance with its existing terms of reference.

4. *Committee Staffs and Subordinate Groups*

(a) Within numerical limitations established by the Council, each of the Committees designated pursuant to paragraph 3 of this Article III shall establish such tripartite subordinate committees or other groups as may be necessary to the performance of its functions and as the Council may approve;

(b) except as specifically otherwise provided in sub-paragraph (c) of this paragraph 4, personnel for such subordinate committees or groups shall be appointed by each of the High Commissioners on a basis of parity among the three Allied nations. They may include military personnel. The number, functions and organization of such subordinate committees or groups may be changed, adjusted or eliminated entirely by the Council in the light of experience. Each subordinate committee or group shall be answerable to the committee responsible for its creation and shall report to the Council through such committee. Each subordinate agency shall be physically located at the headquarters of the High Commission except as may be otherwise determined by the Council;

(c) the subordinate committees and groups established pursuant to subparagraph (a) of this paragraph 4 shall include:

(I) Joint Export-Import Agency which, until liquidated as provided in subparagraph (b) of paragraph 3 hereof, shall function under its existing terms of reference with an integrated staff and shall report to the Committee on Foreign Trade and Exchange through its Director-General who together with the deputy Directors-General shall be members of the Board of Directors of JEIA;

Commission, prepare the agenda and materials for the meetings of the Council and shall keep the minutes of their meetings. The Secretariat or its appropriate branches shall act as the channel of communication between the High Commission and the agencies of the Federal Government, and between the Council and the several Land commissioners with respect to matters affecting said Land Governments. The Secretariat shall maintain the records of the High Commission and be responsible for such other tasks as the Council may decide.

#### *IV. Land Commissioners*

1. All powers of the High Commission shall be uniformly exercised in the constituent Laender of the Federal Republic, in accordance with tripartite policies and the directions of the Council.

2. To achieve uniformity in the exercise of its powers, the High Commission shall be represented at the seat of government of each of the constituent Laender by an Allied Land commissioner who shall be solely responsible to the Council for ensuring due compliance on the part of the Land authorities with the Council's decisions and directives. The Land commissioner shall report and be solely responsible to the Council for all matters of tripartite concern in the Land and shall be the exclusive channel of communication and liaison between the Council and the Land Government with respect to such matters.

3. In particular each Land commissioner shall be responsible to the Council for:

(a) recommended repeal or annulment of legislation enacted by the Land Government where he considers such action appropriate under paragraph 5 of the Occupation Statute<sup>29)</sup>;

(b) ensuring due compliance on the part of the Land Government with the Oc-

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(II) the Decartelization and Industrial Deconcentration Group, the Coal Control Group and the Steel Control Group, all of which shall report through the Economics Committee;

(III) the Combined Travel Board which shall report through the Political Affairs Committee;

(IV) a Civil Aviation Board which shall report as determined by the Council;

(V) an Information and Cultural Affairs sub-committee which shall report through the Political Affairs Committee;

(VI) a sub-committee on Foreign Interests which shall report as determined by the Council.

<sup>28)</sup> Früher: "5."

<sup>29)</sup> Die alte Fassung ist mit Rücksicht auf die Aufhebung der Genehmigungspflicht (Art. 5 BesSt) abgeändert worden. Sie lautete:

(a) initial consideration and prompt transmittal to the Council of Land legislation together with his recommendations thereon;

cupation Statute and with legislation and decisions of the Occupation Authorities thereunder<sup>30)</sup>;

(c) providing information as required by the Military Security Board and giving all necessary assistance to the inspectorate of the Military Security Board and such other bodies as may be authorized by the Council;

(d) the preparation of such periodic or special reports as the Council may request.

4. Each Land commissioner and the members of his staff shall be nationals of the Power in whose zone the Land is situated, and shall be appointed by, and administratively responsible to, the High Commissioner designated by such Power. Each Land commissioner shall be accountable exclusively to his High Commissioner and shall be his channel of communications and liaison with the Land Government with respect to:

(a) all matters which are listed in Article V, paragraph 2;

(b) conduct of all relationships between the forces of occupation stationed in the Land and the governmental agencies thereof except to the extent that direct communications and relations may be authorized by him.

5. Each High Commissioner shall designate an observer together with a small personal staff to be agreed in each case by the High Commissioners concerned, to each of the Land commissioners outside of his own zone for purposes of consultation and information.

#### *V. Individual Responsibilities of the High Commissioners*

1. Each High Commissioner shall maintain at the seat of government of each of the Laender in his zone a Land commissioner with the minimum staff and facilities required for the purposes set forth in Articles IV and V hereof. He shall ensure the due implementation by each of said Land commissioners of the decisions and directions of the Council. He shall also ensure that all powers of the High Commission are uniformly exercised within said Laender in accordance with tripartite policy and the decisions of the Council.

2. Each High Commissioner shall be responsible to his Government with respect to the Laender of his zone for the matters in fields reserved to occupation authorities listed below. Nevertheless, so far as possible, he shall coordinate the general policies which he may pursue in these fields with those of the other High Commissioners and exercise these powers in accordance with such tripartite legislation or policies as the Council may adopt:

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<sup>30)</sup> Die alte Fassung ist mit Rücksicht auf die Abänderung des Art. 5 BesSt und die Neufassung der Direktive Nr. 2 der AHK revidiert worden. Sie lautete:

(b) observing and ensuring due compliance on the part of the Land Government with the provisions of the Federal and Land constitutions, the Occupation Statute and the laws of the occupation authorities in force;

- (a) maintenance of law and order if the responsible German authorities are unable to do so;
- (b) ensuring the protection, prestige, security and immunities of the Allied forces of occupation, of the Allied occupation authorities, their dependents, employees and official representatives;
- (c) the delivery of reparations and restitutable property;
- (d) care and administration of displaced persons;
- (e) the disposition of war criminals;
- (f) administration of justice in cases falling within the jurisdiction of Allied courts;
- (g) control of the care and treatment in German prisons of persons charged before or sentenced by the courts or tribunals of the occupation authorities, over the carrying out of sentences imposed on them and over questions of amnesty, pardon or release in relation to them.

3. Each High Commissioner shall be individually responsible to the Council for the formulation annually, in accordance with tripartite policies and criteria, of this budget of occupation costs and other requirements. Such budget shall be formulated and submitted to the Council, on a date to be determined by it, for consideration and approval by the Council and for transmission to the Federal Government. Each High Commissioner shall be responsible to the Council for control of his approved budget in accordance with accounting standards and procedures established by the Council <sup>31)</sup>.

#### *VI. Decisions of the Council*

1. Formal decisions and directions of the Council affecting the Federal Government or any agency thereof shall be in writing and shall be communicated to the Chancellor by or on behalf of the Council.

2. Formal communications involving matters of lesser import or of a routine character may be addressed to the Minister concerned by the appropriate organ of the Council.

3. Formal decisions or directions of the Council affecting a Land Government

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<sup>31)</sup> Die frühere Fassung lautete:

3. Each High Commissioner shall be individually responsible for the formulation annually, in accordance with tripartite policies and criteria, of a budget of occupation costs and other requirements within his zone. Such budget shall be formulated and submitted to the Council, on a date to be determined by it, for consideration and approval by the Council and for consolidation in a total budget of the occupation authorities for transmission to the German Government. Each High Commissioner shall be responsible to the Council for control of the approved budget for his zone in accordance with accounting standards and procedures established by the Council.

or any agency thereof shall be in writing and shall be communicated to its Minister President through the Land commissioner, in the name of the Council.

4. Formal decisions of the Council shall be recorded in an official gazette maintained by the High Commission at the Allied seat of control in Germany which shall be published in the English, French and German languages. Publication of any such decision in the official gazette of the High Commission shall be conclusive evidence that the recorded action or decision was taken pursuant to the powers vested in the occupation authorities under the Occupation Statute.

#### *VII. International Authority for the Ruhr*

The High Commission shall take all necessary steps to give effect to Article 22 of the Agreement establishing the International Authority for the Ruhr of April 28, 1949.

#### *VIII. Foreign Missions in Germany*

Foreign diplomatic representatives accredited to the Federal Government, together with any foreign representatives accredited to the Allied High Commission, shall have access to the Latter by procedures determined by the Council<sup>32)</sup>.

#### *IX.<sup>33)</sup>*

In the Charter of the Allied High Commission for Germany as revised by this Instrument, the expression "Occupation Statute" shall, where the context requires,

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<sup>32)</sup> Abgeändert mit Rücksicht auf die Neuregelung durch Art. 2 c RevBesSt und Entsch. Nr. 11. Die alte Fassung lautete:

#### *VIII. Foreign Missions in Germany*

The necessary liaison with the Governments of other nations especially interested will be ensured by the appointment by such Governments of appropriate missions to the Council of the High Commission having access, by procedures to be determined, to its subordinate bodies, and to the German Government.

<sup>33)</sup> Art. IX über die Tätigkeit der Organisationen der UN in Deutschland ist aufgehoben, Artt. X u. XI sind durch die neuen Schlußbestimmungen ersetzt worden. Die Artt. IX-XI lauteten in der alten Fassung:

#### *IX. United Nations Organizations in Germany*

United Nations organizations and specialized agencies may operate in the Federal Republic of Germany on such terms as may be agreed by the Council.

#### *X. Official Languages*

The official languages of the High Commission shall be English and French. Authoritative German texts of documents shall be provided as necessary.

mean the Occupation Statute as from time to time modified by the Council of the Allied High Commission.

The "Agreement as to Tripartite Controls" among the three Powers dated 8<sup>th</sup> April 1949, previously attached to and making a part of the Charter as Annex A, is terminated.

In the Charter as revised by this Instrument of Revision the expression "Annex A" shall mean the Annex A attached to this Instrument of Revision.

## X.

In witness whereof the foregoing agreement has been duly executed by the respective representatives thereunto duly authorised of the Governments of the Republic of France, the United Kingdom of Great Britain and Northern Ireland and the United States of America in triplicate in the French and English languages, each text being authentic, and shall come into effect on the 7<sup>th</sup> day of March 1951.

### *Annex A* <sup>34)</sup>

1. In the exercise of the powers reserved to the Occupation Authorities to approve amendments to the Basic Law the decisions of the Allied High Commission shall require unanimous agreement.

2. In case in which the exercise of, or failure to exercise, the powers reserved under paragraph 2 (g) of the Occupation Statute would increase the need for assistance from United States Government appropriated funds, there shall be a system of weighted voting. Under such system the representatives of the Occupation Authorities will have a voting strength proportionate to the funds made available to Germany by their respective Governments. No action taken hereunder shall be contrary to any intergovernmental agreement among the signatories or to the principles of non-discrimination.

3. On all other matters action shall be by majority vote. It is understood that agreements between the Governments of the three Occupying Powers relating to

## XI.

In witness whereof the foregoing agreement has been duly executed by the respective representatives thereunto duly authorized of the Governments of the United Kingdom of Great Britain, the United States of America and the Republic of France, in triplicate in the French and English languages, each text being equally authentic, and shall come into effect on the date of the entry into force of the Occupation Statute.

Paris, 20<sup>th</sup> June, 1949.

(Sd.) ERNEST BEVIN.

(Sd.) SCHUMAN.

(Sd.) DEAN ACHESON.

<sup>34)</sup> Annex A ersetzt das Drei-Mächte-Kontrollabkommen vom 8. 4. 1949. Dieses ist am 6. 3. 1951 außer Kraft getreten. Text: diese Zeitschrift Bd. XIII, S. 661.

any of the subjects listed in paragraph 2 (a) and (b) of the Occupation Statute may not be modified by a majority decision of the Allied High Commission.

4. If a High Commissioner considers that a decision taken by a majority vote conflicts with an intergovernmental agreement which relates to any of the subjects listed in paragraph 2 (a) and 2 (b) of the Occupation Statute, or with basic tripartite policy, he may appeal to his Government. Such appeal shall serve to suspend action for a period of thirty days and for such further period of suspension as any two of the Governments agree. If such appeal is from a decision of the Allied High Commission to repeal or annul German legislation, the repeal or annulment shall not become effective until the expiry of the appeal period.

**10. Niederschrift der Abmachungen zwischen den  
Alliierten Hohen Kommissaren und dem Deutschen Bundeskanzler  
auf dem Petersberg am 22. November 1949<sup>35)</sup>**

Following upon the meeting of the three Foreign Ministers in Paris on November 9 and 10 the United Kingdom, French, and United States High Commissioners were authorized to discuss with the Federal Chancellor the letters which he had addressed to them on the subject of dismantling with a view to a final settlement of this problem. The instructions to the High Commissioners also covered a wider field and required them to examine with the Chancellor other points to be included in a general settlement. Discussions took place accordingly on November 15, 17 and 22 on the Petersberg.

The discussions were animated throughout by the desire and the determination of both parties that their relations should develop progressively upon a basis of mutual confidence. Meanwhile, their primary objective is the incorporation of the Federal Republic as a peaceful member of the European community and to this end German association with the countries of Western Europe in all fields should be diligently pursued by means of her entry into the appropriate international bodies and the exchange of commercial and consular representation with other countries. Both the High Commissioners and the Chancellor appreciate that progress toward this objective must depend upon the establishment of a true sense of security in Western Europe, and they have addressed themselves particularly to this end. In all these matters they have been encouraged to find a wide community of ideas and intention and they have in particular agreed upon the following:

I. The High Commission and the Federal Government are agreed to promote the participation of Germany in all those international organizations through which German experience and support can contribute to the general welfare. They

<sup>35)</sup> Dismantling in Germany Modified, Text of Protocol of Agreements, Dep. of St. Bull., Vol. XXI, No. 544, December 5, 1949, S. 863 a. Das Petersberger Abkommen bildete die erste grundsätzliche Ergänzung des Besatzungsstatuts. Es bedeutete insofern eine Phase der Revision noch bevor die eigentlichen Revisionsverhandlungen aufgenommen wurden. Durch die nachfolgende Entwicklung ist ein Teil seiner Bestimmungen nunmehr überholt.

record their satisfaction at the various steps already achieved in this direction citing German participation in OEEC, the desire expressed on both sides that the Federal Republic should be promptly admitted to the Council of Europe as an associate member and the proposed signature of a bilateral agreement with the Government of the United States of America covering ECA assistance.

II. The Federal Government, appreciating the desirability of the closest possible cooperation by Germany in the rehabilitation of Western European economy, declares its intention of applying for membership in the International Authority for the Ruhr in which, at present, the Federal Government is only represented by an observer, it being understood between both parties that German accession will not be subject to any special conditions under article 31 of the agreement for the establishment of the Authority.

III. The Federal Government further declares its earnest determination to maintain the demilitarization of the Federal territory and to endeavour by all means in its power to prevent the re-creation of Armed Forces of any kind. To this end the Federal Government will cooperate fully with the High Commission in the work of the Military Security Board.

IV. It is further agreed between them that the Federal Government shall now initiate the gradual reestablishment of consular and commercial relations with those countries where such relations appear advantageous.

V. The Federal Government affirms its resolve as a freely elected democratic body to pursue unreservedly the principles of freedom, tolerance, and humanity which unite the nations of Western Europe and to conduct its affairs according to those principles. The Federal Government is firmly determined to eradicate all traces of Nazism from German life and institutions and to prevent the revival of totalitarianism in this or any form. It will seek to liberalize the structure of government and to exclude authoritarianism.

VI. In the field of decartelization and monopolistic practices the Federal Government will take legislative action corresponding to decisions taken by the High Commission in accordance with article 2 (B) of the Occupation Statute.

VII. The High Commission has communicated to the Chancellor the terms of an agreement reached by the three powers for the relaxation of the present restrictions on German shipbuilding.

The main provisions now agreed are as follows:

The construction of ocean-going ships excluding those primarily designed for passengers, and tankers up to 7,200 tons, fishing vessels up to 650 tons and coastal vessels up to 2,700 tons not exceeding 12 knots service speed may begin forthwith. The number of such ships to be constructed shall not be limited.

The Federal Government may, with the approval of the High Commission, acquire or construct before December 31, 1950, six special ships exceeding these limitations of size and speed. Further particulars on this point were communicated to the Chancellor.

The Federal Chancellor raised the question of the construction and repair of ships in German shipyards for export. The High Commissioners informed him

that this matter was not discussed by the Committee of Experts and that they were not in a position to give him a final decision on it. However, they will meanwhile authorize German shipyards to construct for export ships of the types and within such limits of numbers as are applicable to construction for the German economy; they will authorize repair of foreign ships without restriction.

VIII. On the question of dismantling, the High Commission has reviewed the present position in the light of the assurances given by the Federal Government and has agreed to the following modification of the programme. The following plants will be removed from the reparations list and dismantling of their equipment will cease forthwith.

*A. Synthetic Oil and Rubber Plants:*

Farbenfabriken Bayer, Leverkusen; Chemische Werke Hüls (except for certain research equipment); Gelsenberg Benzin AG, Gelsenkirchen; Hydrierwerke Scholven AG, Gelsenkirchen-Buer; Ruhröl GmbH, Bottrop; Ruhrchemie AG, Oberhausen-Holtien; Gewerkschaft Viktor, Castrop-Rauxel; Krupp-Treibstoff-Werke, Wanne-Eickel; Steinkohlenbergwerk Rheinpreußen, Moers; Dortmunder Paraffin-Werke, Dortmund; Chemische Werke, Essener Steinkohle, Bergkamen.

*B. Steel Plants:*

August Thyssen Hütte, Duisburg-Hamborn; Hüttenwerke Siegerland AG, Charlottenhütte, Niederschelden; Deutsche Edelstahlwerke, Krefeld; Hüttenwerk Niederrhein AG, Duisburg; Klöckner-Werke AG, Düsseldorf; Ruhrstahl AG, Henrichshütte, Hattingen; Bochumer Verein AG, Gußstahlwerke, Bochum. Except that electric furnaces not essential to the functioning of the works will continue to be dismantled or destroyed.

C. Further dismantling at the I. G. Farben plant at Ludwigshafen will not take place except for the removal of the equipment for the production of synthetic ammonia and methanol to the extent provided for in the reparations programme.

D. All dismantling in Berlin will cease and work on the affected plants will be again rendered possible.

It is understood that equipment already dismantled will be made available to IARA except in the case of Berlin. The present modification of the reparations list will not affect the existing prohibitions and restrictions upon the production of certain materials. Dismantled plants may be reconstructed or re-equipped only as permitted by the Military Security Board and those plants at which dismantling has been stopped will be subject to suitable control to ensure that the limitation on the production of steel (11,1 million tons per annum) is not exceeded.

IX. The question of the termination of the state of war was discussed. Although such termination may be as consistent with the spirit of this protocol, it presents considerable legal and practical difficulties which need to be examined.

X. The High Commissioners and the Federal Chancellor have signed this protocol with the joint determination to carry into effect the purposes stated in the

preamble hereof and with the hope that their understandings will constitute a notable contribution to the incorporation of Germany into a peaceful and stable European community of nations.

Initialled:

B. H. ROBERTSON

J. J. McCLOY

A. FRANÇOIS-PONCET

K. ADENAUER

## **II. Die Reichstagsvorlage Nr. 367 des Königs von Schweden betreffend die deutschen Vermögenswerte und Guthaben in Schweden**

### **Vorbemerkung**

Bemerkenswert ist dieses Dokument nicht nur, weil es zwei so wichtigen Fragenkreisen (Deutschlands Rechtslage und Behandlung ausländischen Eigentums) angehört, sondern weil darin neue, bisher im völkerrechtlichen amtlichen Verkehr kaum bekannte Begriffe auftauchen. Bei den Verhandlungen einer schwedischen Delegation in Washington vom 31.5. bis 18.7.1946, worüber das Protokoll berichtet, wurde von alliierter Seite an Stelle des in seinem rechtlichen Bestand den Vertretern der Alliierten offenbar zweifelhaft gewordenen deutschen Staatswesens von der »deutschen Volkswirtschaft« gesprochen und die Besatzungsmächte als »Vertreter der deutschen Volkswirtschaft« bezeichnet, was eine Fülle rechtlicher Fragen aufwirft. Insofern ist dieses Dokument auch eine Illustration zu dem in dieser Zeitschrift Bd. XIII, S. 67 ff., von Stöcker behandelten Thema »Völkerrecht und Weltwirtschaft«, als an Stelle eines formalrechtlichen Gefüges ein Wirtschaftskörper sozusagen als rechtliche oder doch wenigstens rechtserhebliche Einheit auftritt und aus seinem einheitlichen Vorhandensein Rechtsfolgen abgeleitet werden.

Schließlich wirft dieses Dokument ein Licht auf die in ihrem Wesen erst unzureichend durchforschten Zusammenhänge zwischen völkerrechtlichen und privatrechtlichen Ordnungsbereichen, die ohne Gefahr für das Rechtsgefüge überhaupt nicht angetastet werden dürfen und die letztlich einmünden in die Fragen der Gebietshoheit. S.

### **Nr. 367<sup>1)</sup>**

*Vorschlag S. M. des Königs an den Reichstag betreffend Bestätigung eines zwischen Schweden einerseits und den Vereinigten Staaten, Frankreich,*

<sup>1)</sup> Bihang till riksdagens protokoll 1946. 1 saml. Nr. 367. Im Institut überprüfte Übersetzung aus dem Schwedischen. Über die Behandlung der deutschen Vermögenswerte im schwedischen Recht siehe den Bericht von Michaeli, unten S. 315 ff.