

GERMANY: BASIC PRINCIPLES FOR MERGER OF THREE WESTERN ZONES OF OCCUPATION, AND OTHER MATTERS

Agreements signed at Washington April 8, 1949; declaration signed at Bonn (Petersberg¹) September 21, 1949, concerning entry into force of occupation statute

Occupation statute entered into force September 21, 1949; other agreements April 8, 1949

Occupation statute revised by instrument of revision of March 6, 1951;² terminated May 5, 1955, by protocol of October 23, 1954³

Agreement as to tripartite controls terminated by instrument of revision of March 6, 1951²

63 Stat. 2817; Treaties and Other
International Acts Series 2066

AGREEMENTS ON GERMANY

The Foreign Ministers of France, the United Kingdom and the United States of America, having met in Washington, have reached agreement on the documents listed below:

A. Agreed Memorandum regarding the Principles governing Exercise of Powers and Responsibilities of US–UK–French Governments following Establishment of German Federal Republic.

B. Occupation Statute defining the Powers to be Retained by the Occupation Authorities.

C. Agreement as to Tripartite Controls.

D. Agreed Minute respecting Berlin.

E. Agreed Minute on Claims against Germany.

F. Agreed Minute on Wuerttemberg-Baden Plebiscite.

G. Agreement regarding Kehl.

H. Message to the Military Governors from the Foreign Ministers of the US, UK and France.

I. Message to the Bonn Parliamentary Council from the Foreign Ministers of the US, UK and France.

¹ The Petersberg is a resort hotel on the Rhine River south of Bonn.

² 2 UST 1012; TIAS 2255.

³ 6 UST 4117; TIAS 3425.

The Foreign Ministers confirmed and approved the agreements made on plant dismantling, prohibited and restricted industries, and the establishment of the Ruhr Authority, all of which were recently negotiated in London.

Robert Schuman
*Minister for Foreign
Affairs of the
French Republic*

SCHUMAN

Ernest Bevin
*Secretary of State
for Foreign Affairs
United Kingdom*

ERNEST BEVIN

Dean Acheson
*Secretary of State
of the
United States of America*

DEAN ACHESON

WASHINGTON, D.C.

April 8, 1949

AGREED MEMORANDUM REGARDING THE PRINCIPLES GOVERNING EXERCISE OF
POWERS AND RESPONSIBILITIES OF US-UK-FRENCH GOVERNMENTS
FOLLOWING ESTABLISHMENT OF GERMAN FEDERAL REPUBLIC

1. The Governments of the United States, United Kingdom, and France retain the supreme authority assumed by them under the Declaration signed at Berlin on June 5, 1945,⁴ including the right to revoke or alter any legislative or administrative decisions in the three western zones of Germany.

2. The German governing authorities, whether Federal or Land, shall be at liberty to take administrative and legislative action, and such action will have validity if not vetoed by the Allied Authority. This means that military government will disappear, and that the function of the Allies shall be mainly supervisory.

3. There will be certain limited fields in which the Allies will reserve the right to take direct action themselves, including the issuance of orders to German officials at both the Federal and local levels. However, these fields will be restricted to a minimum; and aside from security matters, the exercise of direct powers by the Allies should be regarded as temporary and self-liquidating in nature.

4. Upon the coming into being of the German Federal Republic, the responsibility for supervision of the utilization of funds made available by the Government of the United States to the German economy for purposes of relief as well as of recovery shall rest with the Economic Cooperation Administration. It is understood that the German Federal Republic should become a party to the Convention for European Economic Cooperation⁵ and execute a bilateral agreement with the Government of the United States. Such contributions as the Government of the United Kingdom agrees to make shall be through the intra-European payments agreement.

5. With the establishment of the German Federal Republic and the termination of military government, the functions of the Allied authorities shall be divided, military functions being exercised by a Commander-in-Chief,

⁴ TIAS 1520, *ante*, vol. 3, p. 1140.

⁵ For text, see *American Foreign Policy: Basic Documents, 1950-1955*, vol. I, p. 992.

and all other functions by a High Commissioner. Each of the Allied establishments in Germany, aside from occupation forces, shall come under the direction of the High Commissioner. The three High Commissioners together will constitute the Allied High Commission.

6. It is the aim of the three governments to restrict to a minimum the size of the staffs maintained within Germany for the above purposes.

7. It is a major objective of the three Allied Governments to encourage and facilitate the closest integration, on a mutually beneficial basis, of the German people under a democratic federal state within the framework of a European association.

OCCUPATION STATUTE DEFINING THE POWERS TO BE RETAINED
BY THE OCCUPATION AUTHORITIES

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 Laender shall have, subject only to the limitations in this Instrument, full legislative, executive and judicial powers in accordance with the Basic Law⁶ 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 demilitarization, including related fields of scientific research, prohibitions and restrictions on industry, and civil aviation;

(b) controls in regard to the Ruhr, restitution, reparations, decartelization, deconcentration, non-discrimination in trade matters, foreign interests in Germany and claims against Germany;

(c) foreign affairs, including international agreements made by or on behalf of Germany;

⁶ For text, see *Germany 1947-1949: The Story in Documents* (U.S. Government Printing Office, 1950), p. 283.

- (d) displaced persons and the admission of refugees;
- (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;
- (g) control over foreign trade and exchange;
- (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;
- (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 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.

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

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 sei-

zure; 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. 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.

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.

AGREEMENT AS TO TRIPARTITE CONTROLS

The Governments of the United Kingdom, France and the United States agree to enter into a trizonal fusion agreement prior to the entry into effect of the Occupation Statute. The representatives of the three occupying powers will make the necessary arrangements to establish tripartite control machinery for the western zones of Germany, which will become effective at the time of the establishment of a provisional German government. The following provisions agreed by the Governments of the United Kingdom, France and the United States shall form the basis of these arrangements:

1. An Allied High Commission composed of one High Commissioner of each occupying power or his representative shall be the supreme Allied agency of control.

2. The nature and extent of controls exercised by the Allied High Commission shall be in harmony with the Occupation Statute and international agreements.

3. In order to permit the German Federal Republic to exercise increased responsibilities over domestic affairs and to reduce the burden of occupation costs, staff personnel shall be kept to a minimum.

4. In the exercise of the powers reserved to the Occupation Authorities to approve amendments to the Federal Constitution, the decisions of the Allied High Commission shall require unanimous agreement.

5. In cases in which the exercise of, or failure to exercise, the powers reserved under paragraph 5 [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. This provision shall not, however, reduce the present United States predominant voice in JEIA [Joint Export-Import Agency] and JFEA [Joint Foreign Exchange Agency] while these organizations, or any successor organization to them, continue in existence and are charged with the performance of any of their present functions. No action taken hereunder shall be contrary to any inter-governmental agreement among the signatories or to the principles of non-discrimination.

6. On all other matters action shall be by majority vote.

7. (a) If a majority decision alters or modifies any intergovernmental agreement which relates to any of the subjects listed in paragraph 5 [2] (a) and 5 [2] (b) of the Occupation Statute, any dissenting High Commissioner may appeal to his Government. This appeal shall serve to suspend the decision pending agreement between the three governments.

(b) If a High Commissioner considers that a majority decision conflicts with any inter-governmental agreement which relates to any of the subjects in paragraph 5 [2] (a) and 5 [2] (b) of the Occupation Statute or with the fundamental principles for the conduct of Germany's external relations or with matters essential to the security, prestige, and requirements of the occupying forces, he may appeal to his Government. Such an appeal shall serve to suspend action for 30 days, and thereafter unless two of the Governments indicate that the grounds do not justify further suspension.

(c) If such appeal is from an action of the Allied High Commission either declining to disapprove or deciding to disapprove German legislation, such legislation shall be provisionally disapproved for the duration of the appeal period.

8. A High Commissioner who considers that a decision made by less than unanimous vote involving any other matter reserved by the Occupation Statute is not in conformity with basic tripartite policies regarding Germany or that a Land constitution, or an amendment thereto, violates the Basic Law, may appeal to his government. An appeal in this case shall serve to suspend action for a period not to exceed twenty-one days from the date of the decision unless all three governments agree otherwise. If such appeal is from an action of the Allied High Commission either declining to disapprove or deciding to disapprove German legislation, such legislation shall be provisionally disapproved for the duration of the appeal period.

9. All powers of the Allied High Commission shall be uniformly exercised in accordance with tripartite policies and directives. To this end in each Land the Allied High Commission shall be represented by a single Land Commissioner who shall be solely responsible to it for all tripartite affairs. In each Land the Land Commissioner shall be a national of the Allied Power in whose zone the Land is situated. Outside his own zone each High Commissioner will delegate an observer to each of the Land Commissioners for purposes of consultation and information. Nothing in this paragraph shall be construed to limit the functions of bodies established pursuant to inter-governmental agreement.

10. To the greatest extent possible, all directives and other instruments of control shall be addressed to the federal and/or Land authorities.

11. The Trizonal Fusion Agreement will continue in force until altered by agreement among the governments.

AGREED MINUTE RESPECTING BERLIN

It was agreed that the provisions of the Agreement as to Tripartite Controls shall be applied as far as practicable to the western sectors of Berlin.

AGREED MINUTE ON CLAIMS AGAINST GERMANY

The governments of France, the United Kingdom and the United States will proceed, in consultation with other governments concerned, to develop proposals for the settlement of financial claims against Germany, claims arising out of the war which remain unsettled, claims with respect to Allied property in Germany, and other questions of an economic or legal character arising out of the existence of a state of war between Germany and the Allied Powers. There should also be appropriate consultations with the German Federal Republic. Prior to the relinquishment of reserved powers in the field of foreign exchange, the three governments will give consideration to the desirability of obtaining from the German Federal Government formal recognition of such claims.

AGREED MINUTE ON WUERTTEMBERG-BADEN PLEBISCITE

It was agreed that the status quo in Wuerttemberg and Baden would be maintained for the time being and that the plebiscite recommended by the German Minister Presidents would be postponed in the interest of avoiding any possible delay in the establishment of the German Federal Government.

It was further agreed that the question of the Wuerttemberg-Baden Land boundaries would be reexamined after the establishment of the German Federal Government.

AGREEMENT REGARDING KEHL

The French control authorities with the assistance of the Strasbourg French authorities will maintain under existing conditions jurisdiction over the Kehl port zone until establishment of the German Federal Government and conclusion of negotiations between the French and German Authorities with respect to a joint port administration for Kehl.

It was agreed, on a proposal of the French Government, that the city of Kehl would gradually be returned to a German administration. It was foreseen that the French temporarily domiciled in Kehl might remain during a four-year period required for the preparation of additional housing in Strasbourg. Around one-third of the French inhabitants will be able to leave Kehl within several months, and the remainder progressively thereafter as housing becomes available.

The final decision with respect to the Kehl port zone will be made in the peace settlement. If the port authority develops harmoniously, the US and UK will be willing at the time of the peace settlement to bring an attitude of good will toward the establishment of a permanent joint authority.

MESSAGE TO THE MILITARY GOVERNORS FROM THE FOREIGN MINISTERS OF
THE US, UK AND FRANCE

To the Military Governors:

For your guidance the Foreign Ministers of the US, UK and France transmit their views on the Basic Law. It is left to the Military Governors to determine the time they may consider it appropriate to communicate these views to the Parliamentary Council, but the Foreign Ministers wish that they be transmitted before opinion in the Parliamentary Council has crystallized, in order that the views given below may be reflected in the Basic Law.

“(a) The Foreign Ministers are not able to agree at this time that Berlin should be included as a Land in the initial organization of the German Federal Republic.

“(b) In the financial field any provisions put forward by the Parliamentary Council in the direction of securing financial independence and adequate strength for both the Länder and Federal Governments in operating in their respective fields will receive sympathetic consideration.

“(c) On the question of Article 36 (Article 95 (c)) they will also give sympathetic consideration to any formula which

(i) eliminates from the federal powers those matters definitely excluded by the London agreement.

(ii) assures to the Länder sufficient powers to enable them to be independent and vigorous governmental bodies.

(iii) assures to the Federal Government sufficient powers in the important fields of government to enable them to deal effectively with those fields in which the interests of more than one Land are substantially and necessarily involved.

“(d) Finally, the Foreign Ministers request that the Military Governors indicate to the Parliamentary Council, at an appropriate time, that they are ready to contemplate a suggestion for a right of the Federal State to supplement, from its own revenues, appropriations made by the Laender from revenues from their own taxes levied and collected by them, by grants for education, health and welfare purposes, subject in each case to specific approval of the Bundesrat.”

MESSAGE TO THE BONN PARLIAMENTARY COUNCIL FROM THE FOREIGN
MINISTERS OF THE US, UK AND FRANCE

To the Military Governors:

The Foreign Ministers of the US, UK and France request you to transmit to the Parliamentary Council at Bonn the following message on their behalf:

“The Foreign Ministers have considered the problem of a Federal German Republic in all its aspects in Washington and have come to a number of important decisions of policy in regard thereto. They have decided that, in general, the German authorities shall be at liberty to take administrative and legislative action, and that such action will have validity if not vetoed by Allied authorities. There will be certain limited fields in which the Allies will reserve the right to take direct action themselves and which are set out in the Occupation Statute, a copy of which is attached hereto.

“With the establishment of the German Federal Republic, Military Government as such will terminate and the functions of the Allied Authorities will be divided—control functions being exercised by a High Commissioner and Military functions by a Commander-in-Chief. The three High Commissioners together will constitute an Allied High Commission, and it is the aim of the three governments to restrict to a minimum the size of the supervisory staffs attached to their respective High Commissioners.

“The Foreign Ministers further affirm that it is a major objective of the three Allied Governments to encourage and facilitate the closest integration on a mutually beneficial basis of the German people under a democratic Federal State within the framework of a European association.

“Nevertheless, before the far-reaching developments which they contemplate can be put in hand, it is essential that an agreement should be reached by the Parliamentary Council upon a Basic Law for the German Federal Republic.”

DECLARATION CONCERNING THE ENTRY INTO FORCE
OF THE OCCUPATION STATUTE

Whereas by letter dated 12 May 1949⁷ the Military Governors and Commanders-in-Chief of the French, United States and British Zones of Germany, 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-PONGET
*French High Commissioner
for Germany*

JOHN J. McCLOY
*U.S. High Commissioner
for Germany*

B. H. ROBERTSON
*U.K. High Commissioner
for Germany*

⁷ *Ibid.*, p. 279.