

## EDITORIAL COMMENT

### THE LONDON AND PARIS AGREEMENTS ON WEST GERMANY

In order to understand fully the recent London<sup>1</sup> and Paris<sup>2</sup> Agreements on West Germany, it is, in addition to a strictly legal analysis, indispensable to take into consideration the whole political background which produced these treaty norms: the deep split, the "tension of hegemony" between West and East, led, respectively, by the United States and the Soviet Union. This tension has made necessary Western strength through rearmament, the creation of NATO, attempts at some union between the states of free Europe, attempts aided economically and militarily by the United States; in the view of American and British strategists, such strengthening of the West imperiously demands the rearming of a sovereign West Germany, a consequence of the fact of her sensational economic recovery and of the fighting ability of her men. But such revival of a German Army has to guard against German militarism and overcome French fears.

A first attempt was made through the Bonn Agreements of May 26, 1952,<sup>3</sup> and the Treaty establishing the European Defense Community (EDC),<sup>4</sup> signed at Paris on May 27, 1952. With the long-expected denial of ratification of the EDC Treaty by the French Parliament on August 30, 1954, the Bonn Agreements, indissolubly linked to the EDC Treaty, became dead also. The present London and Paris Agreements are the outcome of a frantic search for a "second-best" solution of the problem. The basis was laid by the efforts of the British Foreign Secretary. The United Kingdom convoked the Nine-Power Conference<sup>5</sup> at London; here the basic decisions were made. Experts translated them into international documents, presented, accepted and signed at the Paris Conference on October 23, 1954. These Agreements, some between two, three, four, seven, nine or all the fourteen NATO Powers, form a vast and intricate network of interconnected Conventions, Declarations, Agreements, Resolutions, Protocols, Statements and Exchanges of Letters, all dedicated to the purpose of strengthening the security structure of the free world through a defense contribution by a sovereign West Germany.

There were, therefore, two principal problems: sovereignty of West Germany and a West German defense contribution. At the London Con-

<sup>1</sup> Nine-Power Conference, held in London from Sept. 28 to Oct. 3, 1954. Text of the Final Act in Department of State Bulletin, Vol. 31, No. 798 (Oct. 11, 1954), pp. 516-531.

<sup>2</sup> Results of Paris Conference. *Ibid.*, No. 803 (Nov. 15, 1954), pp. 719-733.

<sup>3</sup> See this writer's editorial in this JOURNAL, Vol. 47 (1953), pp. 106-114.

<sup>4</sup> See this writer's editorial, *ibid.*, pp. 275-281.

<sup>5</sup> Belgium, Canada, France Federal Republic of Germany, Italy, Luxembourg, The Netherlands, United Kingdom, United States.

ference an agreement was reached between the three Western Occupying Powers to end the occupation regime, to revoke the Occupation Statute and to abolish the Allied High Commission. In the meantime the three Western Powers issued a Declaration of Intent, "recognizing that a great country can no longer be deprived of the rights properly belonging to a free and democratic people" and expressing the desire "to associate the Federal Republic of Germany with their efforts for peace and security on a footing of equality." The last-quoted words are the key words. These basic decisions were worked out into diplomatic texts, signed at Paris on October 23, 1954. The first, concluded between the three Western Powers and West Germany, is the Protocol on the Termination of the Occupation Regime. It puts the Bonn Agreements of May 26, 1952, which had lapsed through the non-ratification of the EDC Treaty, into force, but with certain changes.<sup>6</sup> The first change is that this Protocol stands by itself and is not made dependent on the coming into force of the arrangements for a West German defense contribution. That is why Article 2 of the Protocol provides that, pending the entry into force of these latter arrangements, the rights heretofore exercised by the three Western Occupying Powers relating to the fields of disarmament and demilitarization shall, prior to the ratification of this Protocol, be retained by them; thereafter the Military Security Board shall be abolished and the controls in the fields of disarmament and demilitarization shall be applied by the Joint Four-Power Commission which shall consist of one representative of each of these four Powers and take its decision by majority vote. These arrangements are subject to review with the view to permitting the preparation of the future West German defense contribution.

The Bonn Agreements of 1952, adopted with changes by this Protocol, consist of the Convention on Relations and the so-called related conventions.<sup>7</sup> The changes made are contained in five Schedules<sup>8</sup> accompanying the Protocol. The changes in the related conventions are mostly of a technical nature: to eliminate the many references to the defunct EDC Treaty, taking into account that almost three years have elapsed since the signing of the Bonn Agreements, that certain Allied programs have been completed in Western Germany, and eliminating certain clauses which, in the words of the American Secretary of State, "were not felt to be in harmony with the status of equality being accorded to the Federal Republic."

The most important changes were made in the Bonn Convention on Relations; some are also inspired by the motive of granting equality to West Germany. That is the case with the change made in Annex B of

<sup>6</sup> See also the Report of the Secretary of State to the President of Nov. 12, 1954 (Department of State Bulletin, Vol. 31, No. 806 (Dec. 6, 1954), pp. 849-856).

<sup>7</sup> Convention on the Rights and Obligations of Foreign Forces, Finance Convention, Convention on the Settlement of Matters Arising out of the War and Occupation. Texts in Senate Execs. Q and R, 82nd Cong., 2nd Sess., Washington, 1952.

<sup>8</sup> Texts in London and Paris Agreements, September-October 1954 (Department of State Publication 5659, International Organization and Conference Series II (European and British Commonwealth), 5), pp. 65-94.

the Bonn Convention on Relations. This Annex B contains the Charter of the Arbitration Tribunal. Here the most interesting power of jurisdiction of this Tribunal, namely, to annul, directly and with binding effect in the Federal Territory, certain laws, administrative measures and judicial decisions, was eliminated. For the same reason the retained right of the three Western Powers to the stationing of armed forces in West Germany was given up as a retained right and a new and separate Convention on the Presence of Foreign Troops in the Republic—the second of the Paris documents—was concluded with West Germany. On the other hand, Chancellor Dr. Adenauer, in a letter to Sir Anthony Eden, recognized the continuing validity of Article 5, paragraph 7, of the Bonn Convention on Relations, according to which “independently of a state of emergency, any military commander may, if his forces are immediately menaced, take such immediate action appropriate to their protection (including the use of armed force) as is required to remove the danger.” Article 3 of the Convention on the Presence of Foreign Troops contains a revision clause, as provided in Article 10 of the Bonn Convention on Relations, and provides that the convention shall expire with the conclusion of a German peace settlement or if at an earlier time the signatory states agree that the development of the international situation justifies new arrangements.

The retained right of the three Western Powers with regard to Berlin is preserved. In London they declared that they will maintain armed forces within the territory of Berlin as long as their responsibilities require it, and will treat any attack on Berlin from any quarter as an attack on their forces and themselves. To this security guarantee was added at Paris the declaration of their intention to ensure the greatest possible degree of self-government in Berlin compatible with Berlin's special situation.

Equally, the retained right of the three Western Powers with regard to “Germany as a whole,” including its unification and a peace settlement, was preserved. They had already declared at London that a freely negotiated peace settlement for the whole of Germany remains an essential aim of their policy and that the final determination of the boundaries of Germany must await such a settlement; they had also declared that the achievement through peaceful means of a fully free and unified Germany remains a fundamental goal of their policy. The Protocol makes important changes with regard to the issue of the reunification of Germany. Whereas Article 10 of the Bonn Convention on Relations provided for its review in the case of actual reunification, there is now added a proviso for review also in case an international understanding is reached, with the participation and consent of the four governments, on steps toward bringing about the reunification of Germany. There are also important negative changes. Paragraph 7 of the Preamble of the Bonn Convention on Relations defined the integration of a reunified Germany within the European community as the settled policy of the three Western Powers and of the West German Government. Article 7, paragraph 3, stipulated that the three Western Powers will extend to the unified Germany the rights of the Federal Republic under the Bonn Convention on Relations and the related conventions and will for their part agree that the rights under

treaties for the formation of an integrated European community should be similarly extended, upon the assumption by such a unified Germany of the obligations of the Federal Republic toward the three Powers or to any of them. These two last-quoted provisos were not carried over into the Paris Protocol. The reason probably was that with the death of the EDC Treaty the European Community was out of date. But from this omission far-reaching legal consequences have been drawn by Professor Grewe, legal adviser of the Bonn Government, namely, that this omission shows also that the arrangements for West Germany's entry into NATO bind only West Germany and not a unified Germany. This had to be admitted by the representatives of the three Western Powers even at the Berlin Conference, held at the beginning of 1954. This shows that there is no legal continuity and identity: a sovereign West Germany is not identical with pre-war Germany, but a new state, a successor state; and a re-unified Germany will again be a new state, not bound in law by the treaties of West Germany. It is clear that this legal interpretation has far-reaching political consequences.

The second great problem at London and Paris was the integration of this sovereign West Germany into the Atlantic Community and provision for a new West German defense contribution. The complicated arrangements arrived at were dictated by British-American demands that the new security structure be reliable, by West Germany's wish for equality and non-discrimination, and by the desire to overcome French fears and reluctance. The way was prepared at London through the declaration of the American Secretary of State and the British Foreign Secretary, who, on behalf of the United Kingdom, made the far-reaching and unprecedented commitment that Great Britain will continue to maintain on the European Continent four divisions and the tactical air force and will not withdraw them against the wishes of the majority of the Brussels Treaty Powers, a commitment which may last until the end of this century.

After the death of the EDC Treaty the simplest way of integrating a rearmed West Germany would have been her direct admission to NATO. But France insisted on control of West German rearmament, first of all through an European organization in which Great Britain, contrary to the EDC Treaty, is a member. Hence the Brussels Treaty of March 17, 1948, creating the Western European Union (WEU)<sup>9</sup> which had been completely overshadowed, especially with regard to its military features, by the North Atlantic Treaty,<sup>10</sup> was suddenly brought into the foreground, but with important changes. The Brussels Treaty was originally an anti-German alliance,<sup>11</sup> as clearly expressed in its text.<sup>12</sup> Nothing could better

<sup>9</sup> Text in Department of State Bulletin, Vol. 18, No. 462 (May 9, 1948), and reprinted *ibid.*, Vol. 31, No. 798 (Oct. 11, 1954), pp. 528-530. See this writer's editorial in this JOURNAL, Vol. 42 (1948), pp. 868-877.

<sup>10</sup> Signed at Washington April 4, 1949.

<sup>11</sup> Just as the British-Soviet Treaty of 1942, the French-Soviet Treaty of Dec. 10, 1944, concluded for twenty years by the provisional regime of General Charles de Gaulle, and the British-French Treaty of Dunkirk of 1947.

<sup>12</sup> In the Preamble and in Art. VII.

illustrate the “*revirement des alliances*” than the fact that this anti-German treaty was to become a treaty of alliance with West Germany. But as the changed Brussels Treaty was intended also to supervise the arming of the new ally, it now reads, rather ironically, less like a treaty of alliance providing for minimum contributions like NATO, but like a treaty for the reduction of armaments providing for maximum contributions. Finally the changed Western European Union had to be built into NATO. In order to satisfy the British wish for absolute sovereignty, all the supervision had to be restricted to the Continental Brussels Powers. In order to satisfy West Germany’s wish for equality and non-discrimination, France and the other Continental Brussels Powers had to accept supervision, too. Yet, the discrimination in fact regarding West Germany is veiled by the declaration of the West German Chancellor: West Germany undertakes voluntarily not to manufacture in its territory any atomic, chemical and biological weapons<sup>13</sup> or any of the weapons detailed in paragraphs IV, V and VI of Annex II to Article 107 of the EDC Treaty.<sup>14</sup> Here, elements of the defunct EDC Treaty were taken over, just as the West German defense contribution maximum is identical with that provided for by the EDC Treaty. Also very important is West Germany’s commitment that it will refrain from any action inconsistent with the strictly defensive character of NATO and WEU, and that it will never have recourse to force to achieve the reunification of Germany or the modification of the present boundaries of West Germany.

On this foundation the basic decisions, as to the Brussels Treaty, were taken at London and the corresponding documents were signed at Paris. They consist, first, of the Declaration inviting Italy and the Federal Republic of Germany to accede to the Brussels Treaty as modified by four Protocols. Protocol I deletes the anti-German features, extends the WEU to Italy and West Germany, adds close co-operation with NATO (any duplication with NATO, particularly in military matters, will be avoided), states the wish “to promote the unity and encourage the progressive integration of Europe,” and creates a Council which, *inter alia*, is also dedicated to “close cooperation with other European organizations.” The Council is empowered to set up necessary subsidiary bodies and to establish immediately an Agency for the Control of Armaments, and is bound to make an annual report to another newly created organ, the Assembly, composed of representatives of the Brussels Treaty Powers to the Consultative Assembly of the Council of Europe. Protocol II deals with the Forces of WEU, Protocol III with the control of armaments, Protocol IV with the Agency for the Control of Armaments, its organization<sup>15</sup> and its

<sup>13</sup> As detailed in Annex II to Art. 107 of the EDC Treaty.

<sup>14</sup> Namely, long-range missiles, guided missiles and influence mines, naval vessels other than minor defensive craft, and military aircraft. Any amendments as to these weapons can, on the request of West Germany, be carried out by a two-thirds majority of the Brussels Council of Ministers, if a request to this effect is made to NATO.

<sup>15</sup> A Director, a Deputy Director and a staff, drawn equitably from nationals of the Brussels Treaty Powers. The Director shall submit to the Council a plan for the organization of the Agency. The Agency will have departments for its different tasks:

tasks. The Control Agency is directed to supervise the non-manufacture of certain arms which West Germany has voluntarily undertaken not to manufacture and with the control of stocks of arms by the other Continental Brussels Treaty Powers. The United States retains full authority to determine allocation of U. S. military assistance. The French Prime Minister's wish for unification of production and standardization of armaments was not adopted, but a resolution was taken to convene a Working Group of the Brussels Treaty Powers on January 17, 1955, at Paris to study the draft directives submitted by the French Government on October 1, 1954, with a view to submitting proposals to the Council of the Western European Union.

The basic decisions as to bringing the changed WEU into NATO were also taken at London and the corresponding documents signed at Paris. The first is the Protocol to the North Atlantic Treaty on the accession of the Federal Republic of Germany. The second is the very important Resolution to increase the powers of the Supreme Allied Commander Europe (SACEUR).<sup>16</sup> Of great importance also is Section IV of the Final Act of the London Conference recording the view of all the NATO governments that "the North Atlantic Treaty should be regarded as of indefinite duration."

This whole complicated network of agreements is based on a very thin foundation: the bilateral French-West German Saar Accord of October 23, 1954.<sup>17</sup> It provides for "a European Statute of the Saar within the framework of WEU." The interests of the Saar in the fields of foreign affairs and defense are represented by a European Commissioner, appointed by and responsible to the Council of the WEU, who may be neither a Frenchman nor German nor Saarlander. The "*rattachement économique à la France*" is fully maintained and reinforced: customs union, currency union, French domination of the coal, iron and steel industry in the Saar. Gradual economic ties between the Saar and West Germany are promised, but they must not endanger the dominant French position in the Saar. Concessions to West Germany are that the European Statute is only valid "until the conclusion of a peace treaty" and that it must be approved by a plebiscite. This plebiscite will be held three months after the freeing of political parties, associations, newspapers and public meetings. Once the European Statute is approved, it can no longer be questioned or attacked until the conclusion of a peace treaty. France and West Germany

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departments dealing with the examination of statistical and budgetary information, inspection, test checks, and administration.

<sup>16</sup> All deployment of troops shall be in accordance with NATO strategy; the location of forces is to be determined by SACEUR after consultation with the national authorities concerned; these forces shall not be redeployed or used operationally without the consent of SACEUR. The integration of forces will, as a rule, remain at Army Group and Tactical Air Force level. The powers and responsibilities of SACEUR for the logistic support of the forces placed under its authority will be increased; SACEUR will also have control over higher training of all national forces assigned to its command in peacetime. The "area" of SACEUR will not include North Africa.

<sup>17</sup> English text in New York Times, Oct. 26, 1954, p. 4.

guarantee the European Statute until the conclusion of a peace treaty and will ask the British and American governments to do the same.

If we consider the London and Paris Agreements as a whole, we may say that they constitute the best possible substitute solution and will, if ratified and executed, contribute to strengthening the security structure of the free world. But, as was indicated by earlier developments, the idea of a union of free Europe is, unfortunately, in retreat. This is shown by the death of the EDC Treaty, the new French nationalism, the resignation of Jean Monnet, Chairman of the High Authority of the European Coal and Steel Community, and the elimination of all "supra-national" features in the new agreements. To that comes the weakness of the basic Saar Accord, on the ratification of which the coming into force of the whole treaty arrangement depends. Perhaps the hope expressed by the American Secretary of State<sup>18</sup> that "now we have both the Saar and Trieste problems settled" and that they "are no longer there to be unsettling of the whole situation," is over-optimistic. It should also not be overlooked that Italian Trieste was returned to Italy, whereas the intent of the Saar Accord is to separate permanently the one hundred percent German Saar from Germany. The Saar Accord is, of course, heavily attacked in West Germany; even the Chancellor of West Germany, who remains optimistic,<sup>19</sup> had to concede "a profound divergence of views" between France and West Germany. For the latter the Saar Accord is a temporary agreement which leaves German sovereignty over the Saar intact; for France the Accord is final, as expressed by Gilbert Grandval, French Ambassador to the Saar. The London and Paris Agreements are again provisional only, as the many references to a German peace treaty, the settlement of Germany's frontiers and the problem of reunification of Germany show. The whole treaty arrangement also presupposes a real conciliation between France and Germany, a permanent and sincere co-operation, and for that the present situation offers no guarantee. But the first necessity now is the ratification, the second, the execution of the London and Paris Agreements, the building up of a strong, reliable and yet not militaristic German Army.

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#### THE MONETARY GOLD DECISION IN PERSPECTIVE

The somewhat involved decision of the International Court of Justice in the Case of the Monetary Gold Removed from Rome in 1943,<sup>1</sup> which copes with such a novelty to the judicial process as an attack on jurisdiction by a plaintiff, also brings to a curious resting point one phase of a post-World War II experiment in international legal remedies: restitution *in specie*.

<sup>18</sup> In his televised report to the President and the Cabinet at the White House on Oct. 25, 1954. Department of State Publication 5659, p. 7.

<sup>19</sup> See Konrad Adenauer, "Germany, the New Partner," in *Foreign Affairs*, Vol. 33 (1955), pp. 177-183.

<sup>1</sup> I.C.J. Reports, 1954, p. 19; digested in this *JOURNAL*, Vol. 48 (1954), p. 649.