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THE BERLIN WALL

A Defiance of Human Rights

INTERNATIONAL COMMISSION OF JURISTS
GENEVA
1962

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INTERNATIONAL COMMISSION OF JURISTS
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GENEVA, SWITZERLAND

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FOREWORD

The great walls of the past were erected to repel invaders and barbarians. The Wall in Berlin is unique because its object is to prevent the men and women behind it from reaching freedom.

The International Commission of Jurists does not propose to investigate and pass judgment on the complex political issues that have kept the problem of Berlin at the centre of international attention. As a non-political organization, the Commission is dedicated to the support and advancement of those principles of justice which constitute the basis of the Rule of Law. Respect for fundamental human rights is one such principle. The Report submitted herewith is therefore concerned with the human rights aspect of the Berlin problem and mentions political events merely to provide historical background.

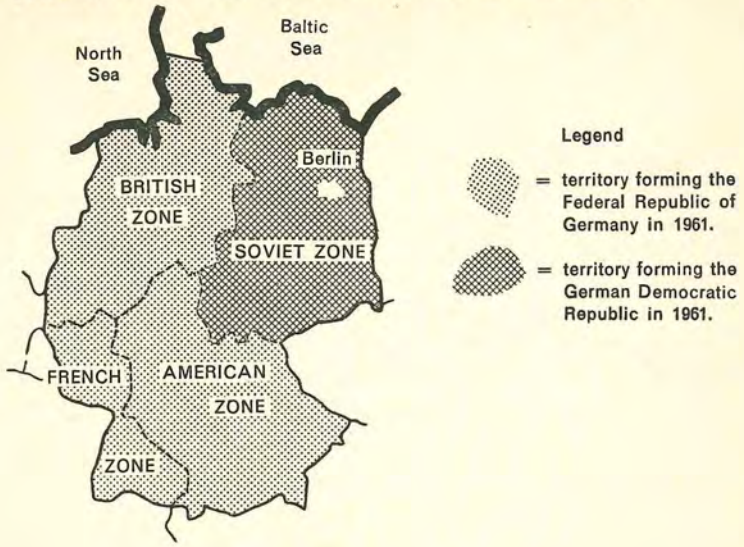
The material on which this Report is based has been gathered from many sources published in the German Democratic Republic: from its legislation, from its court decisions, from the pronouncements of its leaders and from the comments of its newspapers. The plight of the population of East Berlin is here reflected with the same intensity as would have been found if evidence had been taken from the thousands of refugees. Not always has it been reasoned political judgment that drove them away, nor were they in the majority moved solely by economic considerations. But the one feeling they had in common was the apprehension of being unable to determine freely the course of their lives and of those of their children, of being brutally separated from their families, of being gradually deprived of their German and European cultural heritage.

An intimidated and fearful community has now been hermetically sealed from its contacts with the outside world and from its last chance of reaching freedom. The violation of human rights that has thus been committed is here brought to the attention of the world legal community.

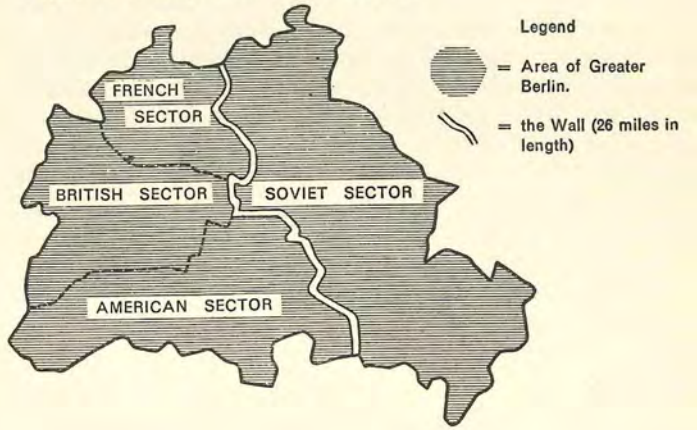
March 1962

SIR LESLIE MUNRO
Secretary-General

GERMANY: THE FOUR ZONES OF OCCUPATION AND BERLIN



GREATER BERLIN: THE FOUR SECTORS



CHRONOLOGY OF EVENTS

October 1943:	Conference of the Foreign Ministers of the United States of America, the United Kingdom and the Union of Soviet Socialist Republics in Moscow at which agreement in principle is reached on joint responsibility for post-war Germany and on the joint occupation of Germany.
September 12, 1944:	Protocol between the Governments of the U.S.A., the U.K. and the U.S.S.R. on the Zones of occupation in Germany and the administration of " Greater Berlin ".
November 14:	Agreement between the Governments of the U.S.A., the U.K. and the U.S.S.R. on the control machinery in Germany.
February 1945:	At the Yalta Conference, the Heads of Government of the U.S.A., U.K. and U.S.S.R. confirm the Agreement of November 14, 1944. They also agree that France is to receive an occupation Zone in Germany and that the French are to participate in the Allied Control Council.
May 1:	Agreement between the Governments of the U.S.A., U.K., U.S.S.R. and the Provisional Government of the French Republic regarding amendments to the Agreement of November 14, 1944, on control machinery in Germany, by which a fourth occupation Zone and a fourth Sector in Greater Berlin are created.
May 8:	German Act of Surrender.
June 5:	Statement by the Governments of the U.S.A., U.K., U.S.S.R. and the Provisional Government of the French Republic on Zones of occupation in Germany.

June 5, 1945: Statement by the Governments of the U.S.A., U.K., U.S.S.R. and the Provisional Government of the French Republic on control machinery in Germany.

July 7: Constitution of the Inter-Allied Governing Authority for Greater Berlin, known as the Kommandatura.

July 26: Agreement between the Governments of the U.S.A., U.K., U.S.S.R. and the Provisional Government of the French Republic regarding Amendments to the Protocol of September 12, 1944.

August 2: Potsdam Conference between the Heads of Government of the U.S.A., U.K. and U.S.S.R. ends.

April 21, 1946: The Communist Party becomes the SED by absorbing the members of the Social Democratic Party living in East Berlin.

August 13: The Inter-Allied Governing Authority, the Kommandatura, proclaims the Temporary Constitution of Greater Berlin.

October 20: Free Elections for the Berlin Municipal Assembly.

June 24, 1947: Election of Ernst Reuter as Mayor of Greater Berlin. This election is vetoed by the Soviet Commandant.

March 20, 1948: The Soviet delegation withdraws from the Allied Control Council.

June 16: The Soviet Commandant withdraws from the Kommandatura.

June 24: After having imposed heavy restrictions on civil traffic of persons and goods into West Berlin, the U.S.S.R. completes the total blockade of West Berlin. The " Airlift " begins shortly afterwards.

July 1: In the absence of the Soviet Commandant the Western Powers suspend the activities of the Kommandatura.

September 6, 1948: A Communist mob in the City Hall, located in the Soviet Sector, prevents a session of the Municipal Assembly. The Assembly consequently holds its first session in the British Sector.

November 30: The SED faction of the Municipal Assembly calls a meeting of the " Democratic Bloc " and " representatives of the mass organizations " to elect a Municipal Council for East Berlin.

December 21: The Kommandatura resumes work without the Soviet Commandant.

May 4, 1949: The New York Four Power Agreement between the Governments of France, U.S.S.R., U.K. and U.S.A. on the Lifting of the Berlin Blockade. " ... All the restrictions imposed since March 1, 1948, by the Government of the U.S.S.R. on communications, transportation and trade between Berlin and the Western Zones of Germany ... will be removed on May 12, 1949, ... "

May 23: Promulgation of the Basic Law (i.e. the Constitution) of the Federal Republic of Germany.

June 20: The Final Communiqué of the Sixth Session of the Council of Foreign Ministers at Paris confirms, *inter alia*, the Agreement on the Lifting of the Blockade.

June 8, 1950: Main Statute is promulgated for the administration of East Berlin.

August 3: Promulgation of the Constitution of the German Democratic Republic.

October 1: Constitution of West Berlin comes into effect.

January 4, 1952: Third Transitional Law of the Federal Republic of Germany is passed. This law equates West Berlin with the Federal States of the Federal Republic of Germany in matters of law, finance and economics.

January 19, 1953: Ordinance of East Berlin assimilates the administration of East Berlin with that of the GDR.

October 29, 1953: Ordinance on the issue of identity cards in the GDR which comes into operation for East Berlin on November 11, 1953.

September 19, 1954: Passport Act (GDR) makes a passport and visa obligatory for every international frontier crossing.

August 30, 1956: Passport (Amendment) Act (GDR) introduces more severe penal provisions.

December 11, 1957: Passport (Amendment) Act (GDR) extends the passport regulations to travel to West Germany.

December 11: Criminal Law (Amendment) Act (GDR) introduces, *inter alia*, a new punishable offence, that of " suborning into leaving the GDR ".

August 4, 1961: East Berlin Municipal Council orders registration of all transfrontier workers.

August 11: Following the Resolution of the Warsaw Pact States, instructions issues to the Council of Ministers by People's Chamber of the GDR concerning measures " for the security of the GDR ".

August 12: Decree of the Council of Ministers and instructions by the Ministry of the Interior on the sealing off of East Berlin.

August 13: Construction of the Wall begins.

INTRODUCTION

By starting to build a Wall through Berlin on August 13, 1961, the Communist regime in the German Democratic Republic (GDR) erected a monument commemorating and symbolizing three things.

1. In the last 15 years millions of GDR citizens have escaped from their imposed regime by fleeing to West Berlin and the Federal Republic of Germany. Neither the rigid passport requirements nor the penalties of 3 years imprisonment for " fleeing the Republic " and up to 15 years rigorous imprisonment for " false proselytism " (suborning into leaving the GDR) succeeded in stemming the flow. Even the setting up of a closed area along the 859 miles of border between the GDR and the Federal Republic was ineffective as long as the escape route via Berlin remained open on account of the freedom of movement in the Greater Berlin area. To close the " door to freedom " required the erection of an unscalable Wall between Communist-ruled East Berlin and free West Berlin. In building the Wall the GDR regime has publicly given visible and tangible proof of its incapacity to provide for its subjects that minimum degree of freedom, justice and welfare which represents the difference between a State and a concentration camp. First, therefore, an account should be given of the phenomenon of the flight from the Republic and of the relevant deterrent measures taken before August 13, 1961. Parts I and II of the following report deal with this aspect.

2. Even after the border between the GDR and the Federal Republic had been sealed off, the escape route via Berlin remained open to East Germans because the four big Powers had at the close of World War Two agreed on a special status for Greater Berlin. Under the various agreements pertaining to this status, Greater Berlin was divided into four Sectors but was jointly administered, i.e., it was treated as a whole administrative unit. In 1946 the Inter-Allied Authority responsible for the joint administration of the city issued a " Temporary Constitution of Greater Berlin ". On the basis of this Constitution a single Municipal Assembly and a single Municipal Council for the whole area of

Greater Berlin were established as the legislative and executive organs, respectively. A mere two years later, however, the splitting-up process was begun; it was initiated by the constitution of a Municipal Council for the Soviet Sector. Such a constitution was both illegal and incompatible with the Four Power agreements. The split, which grew progressively wider from the constitutional and administrative viewpoints, had no effect on the unrestrained movement of West and East Berliners across the border between the Soviet Sector on the one hand and the American, British and French Sectors on the other. The freedom of movement in the area of Greater Berlin, based on the Four Power agreements, was preserved until August 13, 1961. The building of the Wall begun on that day put an end to this freedom and thus symbolized the collapse of the city's status as laid down by the Four Power agreements. This development is dealt with in Part III of the Report.

3. The final Part of the Report is devoted to the effect of the events of August 13, 1961, on the walled-off inhabitants of East Berlin. The evaluation of the legal position is based on human rights which are guaranteed under the GDR Constitution; the Wall also symbolizes the contempt in which these rights are held.

I. VOTING WITH THE FEET

The stream of refugees which, from 1946, poured from the Soviet-occupied Zone of Germany—since 1950 the German Democratic Republic—into West Berlin and the Federal Republic of Germany, was a phenomenon without parallel in recent times. This flight from East to West represented a unique form of plebiscite against the coercive rule of a Communist regime. Up to August 13, 1961, when the sealing-off of East Berlin closed the last escape route to the West, an estimated 3.7 to 4 million inhabitants of the Soviet-occupied areas of Germany had fled to the West. In the period of 1950-1959 alone the population of these areas (GDR and East Berlin) dropped from 18.4 million to 17.3 million. The Soviet-occupied areas of Germany are the only territory in Europe, if not in the whole world, showing a constant decrease in population.

The exact number of refugees from the Soviet Zone cannot be determined with certainty, as registration was begun only in September 1949. From September 1949 to August 15, 1961, however, 2,691,270 refugees were registered. Statistics reveal that the two sexes were represented in almost equal numbers, while 50% of all refugees were young persons under the age of 25. A breakdown by occupation shows that the number of gainfully active persons maintained a constant level at 60.5%; breaking this down further, it will be found that workers and craftsmen head the list, followed by persons engaged in commerce, transport and agriculture, and finally by intellectuals. While the number of refugees belonging to the liberal professions did not attain the high figures for other occupational groups, a comparatively greater importance was attached to it, since it meant that in many cases the "old intelligentsia" all but vanished. From 1954 until mid-1961 refugees from the GDR included:

3,371 doctors;
1,329 dentists;
291 veterinary surgeons;
960 pharmacists;
132 judges and State attorneys;

679 lawyers and notaries;
752 university teachers;
16,724 teachers (general and technical schools);
17,082 engineers and technicians.

Both the extent of the refugee movement and its composition by age group and occupation were harmful to the economy of the Soviet-occupied areas of Germany, as well as sorely hurting the prestige of the Communist regime in the GDR and East Berlin.

II. MEASURES TO PREVENT FLEEING THE REPUBLIC

Passport Regulations and Offences

Government and Parliament in the GDR took administrative and penal measures at an early stage, and subsequently made them more severe, with the particular aim of counteracting the escape movement and, in general, making travel from the GDR to the Federal Republic and abroad more difficult.

The relevant GDR legislation made a passport and visa obligatory for every border crossing (Passport Act of September 15, 1954, amended by the Act of August 30, 1956). Any person leaving, or arriving in, the territory of the GDR without the requisite permit or failing to observe the instructions regarding destination, routes and duration of travel, or any person who fraudulently obtained a travel permit, in favour of himself or another person, by giving wrong information, was liable to be sentenced to three years' imprisonment.

At first these regulations did not apply to internal German traffic, i.e., journeys to the Federal Republic, but were extended to such traffic by an amending Act of December 11, 1957. The significant point here was that unauthorized travel to West Germany could thereby be dealt with under the legislation on fleeing the Republic. The crime of fleeing the Republic was committed by any person leaving the territory of the GDR without the necessary permit.

In 1958, the first year in which the Passport (Amendment) Act of 1957 was applied, there was a fall of 75% in private travel from the GDR to the Federal Republic.

Sentences for breaches of the Passport Act as amended have been numerous. In the period January-October 1958 no less than 110 prosecutions for crimes against the Act were brought before just one of the eight Municipal District Courts in East Berlin. By way of example, a very recent judgment may be mentioned. On August 21, 1961, the Municipal Court of Greater Berlin sentenced the accused K. and P. to 12 and 8 months imprisonment respectively for the mere attempt to flee the Republic.

In making its finding the Court said:

> Under Section 5 of the Passport Act as amended by Section 1 of the Passport (Amendment) Act of December 11, 1957, the accused K. has rendered himself liable to punishment because he tried to leave the German Democratic Republic illegally. The attempt was abortive. The accused is therefore liable to punishment because of an attempted breach of the passport regulations. The accused P. aided and abetted the accused K. in his attempt to leave the GDR illegally, by trying to slip him through the control at our *State border* in his car. He is liable to punishment for aiding and abetting.
>
> *In deciding sentence, the considerable danger to society involved by the acts of the accused persons must be an essential factor.*[1] (Emphases added).

In view of the undiminished extent of the escape movement the issue of passports and exit visas by the competent authorities in the GDR was subjected to increasing restrictions. From 1957 onward, for example, permits to travel to the Federal Republic were, but for rare exceptions, refused to specified groups (university students, high school students, members of the Free German Youth, teachers, employees of the public administration and of nationalized concerns). In the spring of 1959 a special procedure for the granting of travel permits was introduced. The initial handling of applications for travel permits was transferred in all local government districts to the " Committees for All-German Work ". The Committees' decisions were checked by the People's Police. More recently, the District Offices of the People's Police have dealt with the issuing of travel permits.

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[1] *Neue Justiz* (East Berlin: a journal published by the Ministry of Justice the Supreme Court and the Attorney-General of the GDR), 1961, p. 617 *et seq.*

The Offence Known as False Proselytism

The penal measures to combat the flight from the Republic contained in the passport legislation of the GDR and the corresponding passport regulations of the East Berlin Municipal Council were supplemented by the Act of December 11, 1957, laying down additional provisions to the Penal Code. Section 21 (1) of the Act introduced a new activity punishable by law, i.e., that of " suborning into leaving the German Democratic Republic ". To describe this activity, the Minister of Justice of the GDR, Hilde Benjamin, coined the phrase " false proselytism " (literally translated from the German by the words " recruiting away "). Under this Section, sentences of up to 15 years imprisonment and possible confiscation of property could be imposed on any person

> who undertakes to suborn a person into leaving the German Democratic Republic
>
> (1) on behalf of organizations of agents, espionage agencies or the like, or of commercial undertakings, or
>
> (2) with a view to service in organizations of mercenaries.

Under Section 21 (2) of the above amending Act, sentence of not less than six months imprisonment was to be imposed on

> any person attempting to suborn a young person, or a person undergoing vocational training, or any other person, by reason of such person's occupational activity or specialized capacities or skills, by the use of threats, deceptions, promises or other similar methods of influencing freedom of choice, into leaving the German Democratic Republic.

The above quoted provision describes the elements of the offence of false proselytism. Light on what may be regarded as culpable " methods influencing freedom of choice " has been shed by an article published by Gustav Jahn, Vice-President of the Supreme Court of the GDR.[2] This article states, *inter alia:*

> Methods of suborning include the content and manner of exercising ideological influence, the motivation and reasoning whereby it is represented as proper and necessary to leave the GDR: the promise of a job, accommodation, the extolling of actual conditions in West Germany (in itself a deception), etc. The methods mainly employed are:
>
> 1. Extolling conditions in West Germany. About a third of the suborners base their false proselytism on the declarations in West Germany that the deserter will find " real freedom " and " better living conditions " than in the GDR. All cases where the suborners referred to alleged advantages of living in West Germany come under this method.
>
> 2. The next method is persuasion. As Kühlig has already explained, this usually consists in talking over one who is already weakening, in strengthening his resolve, removing his doubts, etc. As Kühlig explains, it is generally linked with promises, extolling conditions, etc. Precisely because of this, it is necessary—contrary to Kühlig's opinion—to illustrate independently the related methods, and not let them be included in persuasion. Persuasion can also embrace some elements of promise and deception.
>
> 3. Following persuasion there is the method of promises—specifically mentioned in the Law. The enticement offered is the prospect of a livelihood after desertion. The promises are, however, mostly demagogic and turn out to be baseless. They comprise a low, cunning trick and illustrate the whole character of this false proselytism.

[2] *Neue Justiz*, 1958, p. 840 *et seq.*

The German Democratic Republic Accuses the Federal Republic of Germany of Trading in People

It need not be supposed from the foregoing account of the crime of false proselytism that there was any need for the legislators of the GDR to create such an offence. In fact the offence was created so that the assumption would be made that " organizations of agents, espionage, agencies and so on " did in fact exist. In this way the GDR regime offered an explanation of the distressing phenomena of the flight from the Republic, which, it was hoped, the world would believe. It was a case of the wish being father to the thought. Even Walter Ulbricht, First Secretary of the Central Committee of the Socialist Unity Party of Germany, the SED,[3] and Chairman of the State Council of the GDR, did not solely blame the West for the mass flight from the GDR when he declared on March 20, 1961, before the Central Committee of SED:

> It constantly happens that valued citizens foresake the German Democratic Republic because they have been subjected to bureaucratic and inconsiderate treatment by State offices and, in many cases, by Party organs, and because their justified desires have been neglected. In such a mood they often fall prey to false proselytism, the systematic trade in people directed by Bonn.

The main cause is not, however, sought in the GDR's own mistakes. In Communist phraseology, the cause rather lies in the aim of the West German militarists to sap the economic

[3] SED is in fact the Communist party in the GDR. Also see below p. 23.

potential of the GDR, to use the refugees as spies and cannon fodder and to bring the GDR, and thus the whole socialist camp, into discredit before the bar of world public opinion by referring to the high numbers of refugees. This interpretation can also be found in court practice, e.g., in a judgment of the Supreme Court of August 2, 1961, *in re Adamo and others*, where the following may be found:

> The victims are enticed to West Berlin on the pretence of having a harmless discussion; there they are induced to abandon their assured living and betray the German Democratic Republic. In West Berlin, under the so-called Emergency Reception Procedure they are severely interrogated by the secret services of West Germany and other imperialist countries and have to provide these agents with links for spreading the trade in people. From West Berlin they are sent to West Germany to be exploited to the full. From West Berlin traders in people supply the NATO barracks where young men, contrary to their own interests, are drilled by Nazi officers as cannon fodder for the imperialists. The path of many women and girls leads via West Berlin to the sink of iniquity. For many, West Berlin is the first stop on the road to the gutter or to death. [4]

These utterances, surprising in the judgment of a Supreme Court, can hardly be regarded as anything other than compliance with the regulation that " a judge must strive unreservedly for the triumph of socialism in the GDR and must loyally support the power of the workers and peasants." [5] A judge in the GDR must live by the rule of socialist legality. This " sets judges the task of contributing, by their proceedings and in every decision, to strengthening the power of the workers and peasants.[6] In other words the task of supporting the Government as it exists under the Communist system.

The Closed Areas

The legislation to prevent flight from the Republic was complemented by the establishment of a closed area along the 859 mile long frontier between the GDR and the Federal Republic. This area comprises an 11 yards wide control strip, a 548 yards wide barrier strip and a 3 mile wide closed zone. Life in the closed zone is subject to numerous restrictions.[7] A special police permit

[4] *Neue Justiz* 1961, p. 550.

[5] Section 15, Organization of the Judiciary Act, 1959 (GDR).

[6] *Gericht und Rechtsprechung in der DDR* (a Journal published by the Ministry of Justice of the GDR).

[7] New Regulations were contained in an Ordinance of the GDR of June 18, 1954.

is required to visit the closed area; to visit the barrier strip requires, in addition, permission from the local border police command post. It is forbidden to set foot on the control strip which has been cleared of timber and ploughed over. Persons doing so are fired on without warning.

In the summer of 1952 there was extensive forced evacuation from the closed area, which led to a wave of escapes. The GDR authorities proceeded to further compulsory evacuation after August 13, 1961. As could be observed from West German territory, most of the evacuation was carried out under heavy military guard. In the Bavarian-Thuringian frontier area many farm buildings were demolished. How little it was a question of voluntary removal from the " danger area of the State border " — the official GDR version — could be seen from the rise in the number of refugees from the areas concerned and the deployment of units of the People's Police and of armed factory militia groups.

A closed area was also established along the 68 mile long border between West Berlin and GDR territory.

The Constitution of the GDR of August 3, 1950, guarantees freedom of movement within the GDR (Article 8) and freedom to emigrate (Article 10) which is rightly called " one of the truly basic freedoms ". Both these freedoms are furthermore embodied in Article 13 of the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations. The relevant provisions of the Constitution of the GDR permit, however, restriction by law of the right to unimpeded choice of residence within the State and of the right to emigrate. It is, on the other hand, an uncontested principle that a constitutional right may not be basically infringed by means of legal restrictions. The Basic Law of the Federal Republic, for instance, contains a specific provision to that effect in Article 19, Section 2. Under Article 29 of the Universal Declaration of Human Rights, the free exercise of rights and freedoms may only be subjected to such restrictions

> as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

With the legislation described above and the judicial and administrative practices based thereon the GDR Government has acted in patent contempt of basic rights guaranteed by the Constitution of the GDR.

The Open Door

Until August 13, 1961, the position at the Sector border between West Berlin and East Berlin was different. On the basis of the Four Power agreements regarding Greater Berlin there was in practice freedom of movement. The details of the arrangement are discussed below. To get a correct legal assessment of the sealing off of East Berlin from West Berlin which began on August 13, 1961, it is necessary to describe the status of Greater Berlin as agreed on by the occupying Powers.

III. THE CONSTITUTIONAL DEVELOPMENT OF GREATER BERLIN

The Inter-Allied Agreements concerning Germany and Greater Berlin

For occupation purposes Germany was divided, on the basis of its borders as at December 31, 1937, into four Zones, each occupying Power being allocated one Zone, and a separate territory of Greater Berlin to be administered jointly by the occupying Powers.

The following diplomatic instruments determined, in essence, the legal status of Greater Berlin:

(i) Protocol of September 12, 1944, between the Governments of the United States of America, the United Kingdom and the Union of Soviet Socialist Republics on the occupation Zones in Germany and the administration of Greater Berlin.

(ii) Agreement of November 14, 1944, between the United States of America, the United Kingdom and the Union of Soviet Socialist Republics on the control machinery in Germany.

(iii) Agreement of May 1, 1945, between the Governments of the United States of America, the United Kingdom, the Union of Soviet Socialist Republics and the Provisional Government of the French Republic regarding amendments to the Agreement of November 14, 1944, on control machinery in Germany, by which a fourth occupation Zone in Germany and a fourth Sector in Greater Berlin were created to be administered by the Provisional Government of the French Republic.

(iv) Statement of June 5, 1945, by the Governments of the United States of America, the United Kingdom, the Union of Soviet Socialist Republics and the Provisional Government of the French Republic on the Zones of occupation in Germany.

(v) Statement of June 5, 1945, by the Governments of the United States of America, the United Kingdom, the Union of Soviet Socialist Republics and the Provisional Government of the French Republic on control machinery in Germany.

(vi) Agreement of July 26, 1945, between the Government of the United States of America, the United Kingdom, the Union of Soviet Socialist Republics and the Provisional Government of the French Republic regarding amendments to the Protocol of September 12, 1944, on the Zones of occupation in Germany and the administration of Greater Berlin.

The occupation troops in each Zone came under a Commander-in-Chief (Zone Commander) appointed by the responsible Power.

Greater Berlin was divided into four Sectors. A basic point is that the area of Greater Berlin came under joint administration of the four Powers. For this purpose an Inter-Allied Governing Authority, the Kommandatura, was set up, composed of four Commandants, appointed by their respective Zone Commanders. The four Commandants were aided by experts, whose task was to supervise and watch over the activities of the local German authorities. Ranking above the Kommandatura of Greater Berlin there was the Inter-Allied Control Council, composed of the Zone Commanders. In Germany this Council held supreme power, each member in his own occupation Zone and jointly where matters concerning Germany as a whole were involved. In accordance with Article 8 of the Statement of June 5, 1945, on control machinery in Germany, the administrative system described above was valid " for the period of occupation following German surrender when Germany is carrying out the basic requirements of unconditional surrender ". Arrangements for the time following that period were to be the subject of a special agreement.

The Report of August 2, 1945, on the Potsdam Three-Power Conference contained " Directives for the Political and Economic Treatment of Germany during the Initial Control Period ". In regard to the political directives, the following principles call for special mention.

2. So far as practicable, there shall be uniformity of treatment of the German population throughout Germany.

...

4. All Nazi laws which provided the basis of the Hitler regime or established discriminations on grounds of race, creed or political opinion shall be abolished. No such discriminations, whether legal, administrative or otherwise, shall be tolerated.

...

8. The judicial system will be reorganized in accordance with the principles of democracy, of justice under law, and of equal rights for all citizens without distinction of race, nationality or religion.

9. The administration of affairs in Germany should be directed towards the decentralization of the political structure and the development of local responsibility. To this end, ...

...

(ii) all democratic political parties with rights of assembly and of public discussion shall be allowed and encouraged throughout Germany;

...

(iv) for the time being, no central German Government shall be established. Notwithstanding this, however, certain essential central German administrative departments, headed by State Secretaries, shall be established, particularly in the fields of finance, transport, communications, foreign trade and industry. Such departments will act under the direction of the Control Council.

10. Subject to the necessity for maintaining military security, freedom of speech, press and religion shall be permitted, and religious institutions shall be respected. Subject likewise to the maintenance of military security, the formation of free trade unions shall be permitted.

Unified Administration of Greater Berlin 1945-1948

The Kommandatura for the Greater Berlin area was constituted on July 7, 1945, and met for the first time on July 11, 1945. On August 13, 1946, it promulgated a " Temporary Constitution of Greater Berlin ", the underlying principles of which had been discussed with the authorized political parties. In a letter of the same date the Kommandatura emphasized that the Constitution placed full authority in the hands of representatives elected by the people—the municipal delegates.[8] This Municipal Assembly

[8] In his painstaking monograph on *The Legal, Political and Economic Position of the Soviet Sector of Berlin* published by Kulturbuch-Verlag West Berlin in 1954, Walter Brunn wrote on page 2: " The Municipal Assembly had general legislative power, but Article 13 provided that the decisions of the representative body in matters relating to the passing of decrees (Article 5, para. II) were valid within the jurisdiction only if such decisions were taken by the Municipal Assembly in conjunction with the Municipal Council, as the supreme administrative and executive organ. In matters pertaining to decrees, mostly concerning legislation, the Municipal Council thus functioned in conjunction with the Assembly, acting as a second legislative chamber. The Temporary Constitution further provided that the elected representatives, should, as a constituent assembly, undertake the elaboration of a widely-based definitive Constitution for the city of Berlin. The draft of this Constitution was, in accordance with Article 35 of the Temporary Constitution, to be submitted for approval to the Allied Powers by May 1, 1948. "

was elected on October 20, 1946. With a poll of 92.3% the distribution of the 2,085,338 valid votes cast was as follows:

SPD	(Social Democratic Party)	1,015,609 = 48.7%
CDU	(Christian Democratic Union) . .	462,425 = 22.2%
SED	(Socialist Unity Party, i.e., the Communists)	412,582 = 19.8%
LDP	(Liberal Democratic Party)	194,722 = 9.3%

Well in advance of the elections the Communists throughout Germany were already pressing for a merger of the Social Democratic and Communist Parties. The Social Democratic Party had arranged for a primary vote by its members on this question to be held on March 31, 1946. In East Berlin, the Soviet Commandant prevented the taking of this vote, while the vote taken in West Berlin resulted in an overwhelming majority agreement against the merger. This outcome notwithstanding, there was founded on April 21, 1946, the SED, which was an amalgamation between the Social Democratic Party and the Communist Party. At the same time members of the Social Democratic Party living in the Soviet Zone and in East Berlin were absorbed, without consultation, into the SED.

On June 24, 1947, the Municipal Assembly elected Ernst Reuter Mayor of Greater Berlin. The Soviet representative on the Allied Kommandatura vetoed the election; viewed in the ensuing course of events this veto represented the first step in the splitting up of Greater Berlin.

Breakdown in the Kommandatura

In September 1948 Communist-staged unrest, against which the police of the Soviet Sector took no action, made it impossible for the Municipal Assembly, then sitting in East Berlin, to continue its work undisturbed. The Assembly was therefore obliged to transfer its meeting place from the Soviet Sector to West Berlin. Subsequent events are recounted by Walter Brunn as follows:

Unilateral Soviet interference, not approved by the Western Allies, affecting the self-government of Berlin gradually spread to all departments of the Municipal Council, the final result being a split in the administration of Berlin as a whole. This process terminated in the proclamation issued at a meeting of the Municipal Council for the Soviet Sector of Berlin held in the Admiralspalast on November 30, 1948. On that day according to reports in the Soviet Zone press, 236 " members of the parties forming

the Democratic Bloc ", 229 " delegates of democratic mass organizations " and 1151 " delegates from Berlin factories " met in " an extraordinary Municipal Assembly ". On a motion by the " Democratic Bloc " the previous Municipal Council for Greater Berlin was declared dissolved and a new Municipal Council was " elected ", the chairmanship of which was entrusted to Fritz Ebert, former President of the Brandenburg Provincial Assembly.

By declaration of the Soviet Commandant of Berlin dated December 2, 1948, (VOBL 1948, p. 435)[9] " the provisional Municipal Council of Greater Berlin elected by the Extraordinary Assembly of November 30, 1948, is recognised as the sole legitimate State administrative organ ". At the same time the Soviet Commandant announced that he would give this provisional Municipal Council all the help and support required to enable it to exercise its functions in the interest of the population.[10]

Cooperation between the Soviet Union and the Western Allies in the Kommandatura had already broken down on July 1, 1948. From this date until December 21, 1948, the Allied Kommandatura suspended its activities. On the latter date the Commandants of the Western Sectors of Berlin announced, in a joint communiqué, as follows:

The Temporary Constitution of Berlin, which was approved by all four Allies in 1946, requires that legislation and certain other acts of the Magistrat [Municipal Council] and City Assembly [Municipal Assembly] shall receive Allied approval. The refusal of the Soviet Authorities to attend meetings of the Allied Kommandatura cannot any longer be allowed to obstruct the proper administration of Berlin, according to the law.

The Allied Kommandatura will therefore resume its work forthwith. If the Soviet Authorities, either now or at a future date, decide to abide by the agreements to which the four Powers are committed, the quadripartite administration of Berlin could be resumed. During their abstentions the three Western Allies will exercise the powers of the Allied Kommandatura although it is realized that owing to Soviet obstruction it will only be possible for them to carry out their decisions in the Western Sectors for the present.

Separate Constitutions for West and East Berlin

The events portrayed (the splitting of Berlin, temporary suspension of the activities of the Allied Kommandatura) prevented the approval by the Kommandatura of the definitive Constitution of West Berlin which had been passed at its third reading on April 22, 1948, by the Municipal Assembly freely elected in 1946.

[9] VOBL stands for *Verordnungsblatt*; this is the official Government Gazette of the GDR for publishing Ordinances.

[10] Walter Brunn, *op. cit.* pp. 3-4.

Only in 1950 were negotiations for that purpose begun with the rump Kommandatura. The resultant Constitution of September 1, 1950, came into force one month later on October 1, but in view of the division which had occurred it applied only to the Western Sectors of Berlin. In the Soviet Sector the promulgation on June 8, 1950, of the " Main Statute for the Administration of Greater Berlin " laid the legal foundation for the Municipal Council illegally elected on November 30, 1948. Under this statute the Municipal Council, an executive organ, was empowered to legislate, a power which it had exercised since its constitution without statutory authority. A reason for this was that the representatives of various " democratic mass organizations " and " delegates from Berlin factories " forming the " Democratic Bloc ", did not at their meeting of November 30, 1948, elect a legislative Municipal Assembly. This stage in the separate constitutional development of the Soviet Sector of Berlin, arising from the division of the city, terminated with the promulgation of the " Ordinance respecting further democratization of the structure and procedures of the ... organs of Greater Berlin " of January 19, 1953, and the " Provisional order for the structure and procedures of the ... organs of Greater Berlin " of January 23, 1953, based thereon. The regulations made under these two Ordinances were termed " provisional orders " since definitive regulations were to be issued after the reunification of Berlin. These regulations brought the administrative structure of the Soviet Sector of Berlin into line with the position obtaining in the GDR since the administrative reform carried out in June 1952. The preamble to the Ordinance of January 19, 1953, stated this purpose quite clearly:

The establishment of the foundations of socialism in Greater Berlin, following the example of the German Democratic Republic, postulates further democratization of the organs of State authority in the capital, together with an improvement in their structure and procedure.

Legislative development following the division of Berlin led to a *de facto* alignment of East Berlin with the GDR; indeed East Berlin became the capital of the GDR. In view, however, of the Four Power agreements, East Berlin was not formally incorporated in the GDR. Consistently with those agreements it could not be. Nevertheless, the force of all important legislative enactments of the GDR was extended to East Berlin; this has usually been done by the East Berlin Municipal Council legislating itself for the application in the Soviet Sector of the legislative instruments of the GDR. On the other hand, the so-

called Third Transitional Law passed by the German Bundestag on January 4, 1952, has assimilated West Berlin to the Federal States of the Federal Republic of Germany in matters of law, finance and economics. With the exception of legislation respecting defence, Federal legislation is submitted for summary adoption to the Berlin Chamber of Deputies for application to West Berlin; the Allied Kommandatura does, however, retain the right of veto.

Freedom of Movement in Greater Berlin

The free travel of individuals between the Soviet and Western Sectors of the city was not affected by the division of Greater Berlin, as described above, provided such travel was not for the purpose of a long stay or a transfer of residence. To that extent therefore there was freedom of movement and Greater Berlin remained a unified area in accordance with the Four Power agreements referred to above (the Four Power agreements have never been repealed). East Berliners could work in the Western Sectors and West Berliners in the Eastern Sectors (these workers have been termed the " transfrontier " workers); the East Berliners were not prevented from attending theatre performances, concerts, lectures, cinema shows in West Berlin in large numbers, or from making purchases etc. there. West Berliners could meet anywhere in Greater Berlin members of their family, relatives, friends or acquaintances living in East Berlin. The immeasurable tightly-woven network of human relationships was not affected throughout the whole Greater Berlin area.

Under GDR and East Berlin legislation the legal position was as follows:

For inhabitants of West Berlin: There was until August 13, 1961, no restriction either in fact or in law on West Berliners visiting East Berlin, provided the visit was only temporary.[11] For other purposes, West Berliners required a visitor's residence permit. Today *all* access to East Berlin is barred without a visitor's residence permit.[12]

For inhabitants of East Berlin and the GDR: Until August 13, 1961, there was no limitation on the travel of East Berliners and

[11] Citizens of the Federal Republic required a special *laissez passer* to visit East Berlin as from September 18, 1960.

[12] Instruction of the Ministry of the Interior of the GDR, dated August 22, 1961.

inhabitants of the GDR to West Berlin for the purpose of a temporary visit. For a long stay in Berlin or for transfer of residence from East to West Berlin the GDR regulations governing emigration to the Federal Republic were applicable, namely an Ordinance of October 29, 1953, respecting the issue of identity cards. The provisions of this Ordinance were applicable to inhabitants of East Berlin, and were put into operation there by an Ordinance of the Municipal Council dated November 11, 1953.

Similarly, the scope of the Passport (Amendment) Act of 1957 [13] laying down penalities for fleeing the Republic was extended to East Berlin. The regulations applying to personal movement within Greater Berlin meant in practice that the People's Police of the Soviet Sector could do no more than operate random checks, in view of the right to free passage of the border for short-term stays. All the same, there were many cases where persons were detained at the frontier because their baggage or their nervous behaviour gave them away or because they had been denounced by People's Police informers. However, the brisk movement in both directions across the Sector border made it relatively easy for a determined person to pass through the spot checks operated by the People's Police.

It was therefore inevitable that Berlin should become " Freedom Gate " after the border between the GDR and the Federal Republic had become a closed zone. In July 1961 over 30,000 persons fled to the West by way of this gate. In the beginning of August, the numbers of East Germans fleeing each day rose steadily: on August 2, 1961, it was 1,322, over the weekend from August 6 to 7 it was 3,268, on August 8 it was 1,741 and on August 9 it was 1,926. No words could demonstrate more dramatically than these figures the contrast between life in East Berlin and the hope of freedom, although by no means necessarily of prosperity, in the West.

[13] See pp. 14-15 above.

IV. THE SEALING OFF OF EAST BERLIN

The Council of Ministers of the German Democratic Republic is Authorized to Proceed with Full Territorial Separation

A Resolution by the Consultative Political Committee of the Member States of the Warsaw Pact provided the Council of Ministers of the GDR with the pretext for its measures to seal off the Soviet Sector of Berlin and to increase its clamp-down on relations between the GDR and the West. This Resolution was not dated, but it was published in the principal newspaper of the Communist SED, the daily *Neues Deutschland*, on August 13, 1961, part of it reading as follows:

> The Governments of the Warsaw Pact States propose to the People's Chamber and the Government of the GDR and to all the workers of the GDR that they take action to introduce a system at the border of West Berlin that will effectively check the subversive action against the countries of the Socialist camp and install a reliable watch and control around the whole area of West Berlin including its boundaries with democratic Berlin... The Governments of the Warsaw Pact States naturally understand that the *introduction of protective measures on the border of West Berlin will create a certain degree of inconvenience for the population* but in view of the situation which has arisen the whole blame for this falls on the Western Powers and particularly on the Government of the Federal Republic... (Emphasis added),

Following this Resolution, the People's Chamber, the Parliament of the GDR, instructed the Council of Ministers of the GDR on August 11, 1961, " to prepare and take all action required in view of the facts noted by the Member States of the Warsaw Pact and of this decision " (by the People's Chamber). At the same time it confirmed " the steps taken by the Council of Ministers, the Municipal Council of Greater Berlin and the Councils of the Districts of Potsdam and Frankfurt-on-Oder for the security of the GDR and the prevention of the head-hunting and slave trade practised from Western Germany and West Berlin."

Referring to the Resolutions of the Warsaw Pact States and the People's Chamber, the Council of Ministers of the GDR decreed on August 12, 1961,

> ...the following measures for the protection of the GDR and in the interests of the security of the States of the Socialist camp:
>
> In order to prevent the unfriendly activities of the revenge-seeking and militaristic powers in Western Germany and West Berlin, a system of control shall be set up at the borders of the GDR, including the border with the Western Sectors of Greater Berlin such as exists on the borders of every sovereign State. A reliable watch and effective control shall be ensured at the borders of West Berlin in order to prevent subversive activity. *Citizens of the GDR may henceforth cross these borders only with special authority. Until such time as West Berlin is transformed into a demilitarized neutral free city, citizens of the capital of the GDR shall require special permission in order to cross the borders to West Berlin...* The Minister of the Interior, the Minister of Transport and the Mayor of Greater Berlin are instructed to issue the appropriate executive orders. This decision regarding action in order to safeguard peace, to protect the GDR, in particular its capital Berlin, and to guarantee the security of other Socialist States shall remain in force *until the conclusion of a German peace treaty*. (Emphases added).

Ban on Travel

In accordance with the decision of the Council of Ministers of August 12, 1961, quoted above, the Minister of the Interior issued an Instruction the same day, stating:

> ...
>
> 2. Citizens of the German Democratic Republic, including citizens of the capital of the German Democratic Republic (of Democratic Berlin) shall require authorization from their competent People's Police District Office or from their local People's Police Inspectorate in order to visit West Berlin.
>
> ...
>
> 6. Citizens of the German Democratic Republic not working in Berlin are requested to refrain henceforth from travelling to Berlin.

What is actually happening is that Party and Press bring pressure to bear on citizens of the GDR and East Berlin to dissuade them from travelling to the West. Citizens are called upon to make binding statements that they will not apply for permits to travel or to leave the country. The newspapers in the GDR and East Berlin have published large numbers of such declarations. For instance, the occupants of No. 23 Wilhelm-Pieck-Allee, Magdeburg, declared:

> We have discussed the matter and now declare that we shall not visit the Federal Republic until a peace treaty has been signed. [14]

[14] *Volksstimme* (Magdeburg, GDR), August 14, 1961.

Anyone applying for a permit to travel or to go to the Federal Republic or West Berlin must expect his application to be turned down. *Neues Deutschland* printed an open letter to a female citizen of the GDR under the heading " Aunt Frieda and Peace—or Citizens of the GDR and Journeys to the West ". One passage read:

> In the same way as you prevent travellers from entering a treacherous swamp by putting up a warning sign and a barrier, we have now protected our frontiers and will issue travel permits for Western Germany only in particularly justified cases. [15]

The new regulations, amounting to a total removal of the freedom of movement previously respected in Greater Berlin, treat as fleeing the Republic any unauthorized crossing towards West Berlin of the frontier dividing Greater Berlin in two. An offender is liable to a prison sentence of up to 3 years under Section 1 of the Passport (Amendment) Act 1957 and preparation or attempted passage are also liable to prosecution.

The Transfrontier Workers

The effect of cordoning-off fell particularly heavily on the transfrontier workers, the 52,000 East Berliners who worked in the Western Sectors of Berlin. The text of the relevant East Berlin announcement will be found at Appendix A.

The problem of transfrontier workers had always been a thorn in the side of the Soviet Sector authorities. In 1955 a campaign began against the transfrontier workers. This campaign was systematically stepped up in the early summer of 1961. The press in the GDR referred to these people as black marketeers, work-shy elements, parasites and so on. It was stated that by profiting from the division of the country they had forfeited any right to share in the benefits of socialist construction. They were turned out of new housing and prevented from buying certain industrial products by the East Berlin Ordinance of June 30, 1961, supplementing the Ordinance to prevent speculation in food and industrial products of November 27, 1952. There was an increasing volume of charges of " illegal importation of currency " and of offences against the East Berlin Ordinance concerning statistical recording of employment data of January 14, 1953. The latter Ordinance required East Berliners who had taken up

[15] *Neues Deutschland* (East Berlin), August 31, 1961.

employment in West Berlin after January 26, 1953, to apply for authorization to the East Berlin employment office, and this was invariably refused. On August 4, 1961, the East Berlin Municipal Council ordered registration of all citizens of the GDR and of East Berlin working in West Berlin. A few days later, on August 9, the Municipal Council issued an Ordinance requiring all transfrontier workers living in East Berlin to pay their rents, their taxes and their public rates in DMark West. This meant a substantial financial loss for such transfrontier workers, who could get 5 DMark East in West Berlin for 1 DMark West, as opposed to an official exchange rate of 1 to 1. The purpose was to make the transfrontier workers give up their jobs in West Berlin.

The Wall

The legislation aimed at eliminating freedom of movement within Greater Berlin, with its threats of punishment for flight from the GDR and subornment thereto, has been supplemented by the measures now known throughout the world by which the Soviet Sector of Berlin has been shut off. A Wall was constructed, beginning on August 13, 1961, the length of the 26 miles of border between East and West Berlin. Its height varied between 7 and 13 feet; in addition barriers were made of uprooted trees and barbed wire entanglements; wire fencing was erected, road surfaces torn up, ditches dug and so on. The tracks of the overhead railway line connecting West and East Berlin were torn up and twisted at the border stations situated in the Soviet Sector. Where the Sector boundary followed a length of houses in the Soviet Sector, the doors and windows facing towards the border were barricaded or bricked up so as not to serve for escape purposes. For the same reason, the entry to the Church of the Atonement in Bernauerstrasse facing the border was also walled up. It was one of the churches whose services were regularly attended by people from both parts of Berlin. Thousands of East Berlin workers including women and children, were ordered to raze allotments and other cultivated land near the border and to pull down the summer-houses and sheds there in order to facilitate frontier control.

Many occupants of houses near the border were forcibly evicted; first of all transfrontier workers and their families, secondly citizens who had failed to vote at elections and then persons noted

by the People's Police as "unreliable elements". Members of the SED generally remained excluded from such eviction.

The East Berlin authorities argued that such eviction was carried out in the interests and for the protection of the people living near the Sector border, and that many of those concerned had themselves asked for this to be done. The statement of a householder from East Berlin who managed to escape shortly before being evicted gives a more accurate picture, specially when it is remembered that after eviction people were accommodated mostly in gymnasia and barracks:

> A few days after the Eastern Sector was sealed off on August 13, 1961, the local head of the People's Police had a card index prepared of all persons living in the area. This boded no good... On the afternoon of September 20, 1961, I went to the Harzerstrasse in Treptow and saw how people's furniture was being loaded on to removal vans and taken away, and that this was going on all the time. Women were standing around weeping. One woman told me that houses had already been cleared in this way a few days before... I was afraid that I would not only be thrown out of the house but sent away into the Zone, for the People's Police had already told us that pensioners could earn a little extra if they went potato picking.

Little is known so far as to what regulations, if any, the East Berlin Authorities may have invoked in order to justify the evictions, the destruction of summer-houses, the razing of allotments and so on. The Ministry for All-German Affairs of the Federal Republic in Bonn has records of one case in which a movement order was based on Section 14 of the Prussian Police Administration Act of June 1, 1931, under which the police authorities are required to take whatever action is necessary under existing laws in order to protect the community or the individual against dangers liable to threaten public security or order. It might also be possible to cite certain provisions of the new Defence Act, which furnish numerous opportunities for substantial encroachment on the sphere of the rights of the individual, should these measures be applied to East Berlin. The Act for the Defence of the German Democratic Republic of September 20, 1961, is an emergency law justified in the preamble by means of the alleged increased military preparations of the West German "militarists". This Act cites the main occasions when the provision of goods and services can be demanded of social organizations, cooperatives, associations and of individual citizens. But such occasions will not arise until a State of Emergency has been proclaimed by the Chairman of the State Council, who is at present Walter Ulbricht. However,

certain provisions of the Defence Act may be applied even before a State of Emergency has been proclaimed. These include Section 9 (provisions for the preparation of supplies and services) and Section 15 (access to particular areas), Subsection (2) and Subsection (1) of which read, respectively, as follows:

> 9 (2) In the case of real property, an order may be issued preventing any alteration to the character of the land or the carrying out of any alterations in a particular manner.
>
> 15 (1) At the request of the heads of the offices and units of the national People's Army, access to specific areas may, in the interest of the defence of the Republic, be prohibited by offices of the People's Police either permanently or for the duration of exercises or transport, or may be made dependent on special authorization.
>
> Residence in such areas may be either wholly or partly prohibited.

According to Section 19 of the Defence Act there is no judicial redress regarding compensation for damages or claims for payment in respect of provision of services.

A Divided City

How densely the network of human relationships within Berlin is interwoven has already been described. It has been shown that the constitutional and administrative cleavage of Berlin had no more adverse an effect on human contacts than the existence of the frontiers between its Sectors had had. The population of a city is a community bound together by so many shared interests that it may be compared to a large family. The Berlin family was disrupted with a brutality that defies exaggeration on August 13, 1961. Within the city community individual families were especially hard hit by the building of the Wall. Only after August 13 did it become manifest how many West Berliners still had relatives in the Eastern Sector of Berlin or in the GDR. The examples given below illustrate the nature of the problem encountered:

> The aged father still lives over there in Prenzlauer Berg; his family visited him or he came over for the day to look after his grandchild. There was an aunt from Dresden who came to stay regularly, bought shoes, which are so bad and dear over there, got in supplies of all the small household goods which are not to be found under the planned economy and braced herself in the free air of West Berlin for a return to the grim daily life of Ulbricht's "first German State of the Workers and Peasants". Families who had lived for years in the GDR and the Federal Republic were reunited for a few days in West Berlin; however apart in distance their lives had grown, the family ties still held fast...

> Individual lives were particularly hard hit by the unexpected shut down. For instance, there is a cabinet maker, who still had a small house in East Berlin, but had lived for years in West Berlin and had run a flourishing workshop there with more than ten workers under him; he was there [in East Berlin] on the night of August 12/13 and has not since returned. Or there are the students at a technical school who had already sat for part of their examinations in West Berlin and were staying on that night of misfortune with their people in East Berlin; they too must now fit into the planned economy over there. Or there are betrothed couples separated by the Wall who can find no means of seeing each other again. All those who, for the most varied reasons, had not obtained a valid personal pass for West Berlin, could not go back. [16]

Another example of the way in which the action on August 13 totally disrupted the organic life of a human community is provided by the fate of

> musicians, actors, choristers, dancers, ballet dancers, stage hands and performers who worked in the Eastern Sector, some of them on long-term contracts, and who had never given up their West Berlin domicile. Owing to the limited capacity of theatres and orchestras in post-war Berlin, they found it extremely hard to move to a house in the West. There were about a thousand of them at the end of August. The East German regime gave them the alternative, on September 15, either of moving to East Berlin or of being cut off. To the surprise of the managements, most remained in West Berlin, often despite decades of connection with their own theatres; they must now seek other work in West Berlin or in the Federal Republic of Germany. [17]

About 150 scientists who worked in East Berlin institutes, high schools and academies, many on long-term contracts, live in West Berlin. Only a few returned to their work in East Berlin after August 13. Another sad matter concerns the children who daily used to cross the Sector boundary from East Berlin to attend schools in West Berlin. Now they can no longer cross. Of these 1,575 children in their first to thirteenth school year, only those 454 who were at West Berlin boarding schools were able to attend classes there after August 13. For the remainder indoctrination began in the " socialist " schools of East Berlin and the GDR.

But the worst effect of the Wall is the lost opportunity of exchanging life in the GDR for life in the Federal Republic. The denial of this opportunity, it has been observed, depresses morale:

> Many of the most valuable citizens continued living in the Eastern Sector or in the GDR with the idea that they would be able to go over to West Berlin on the underground or the tram with what they could carry whenever existence under the totalitarian system became too intolerable. This exit has been walled up. The result is resignation and desperation. [18]

[16] *Neue Zürcher Zeitung* (Zurich), October 28, 1961.

[17] *Idem.*

The Ordinance Restricting Residence. [19]

The Acts, Ordinances, Instructions and so on issued since August 13, 1961, by the authorities of the GDR and East Berlin do not have the *sole* function of bringing about the physical and spiritual isolation of the GDR and East Berlin from the West. They are no mere defensive measures. The new statutes include some described as milestones in the development of socialist law. According to Minister of Justice Hilde Benjamin, it is in this perspective that the " Ordinance concerning Restriction of Residence " issued by the Council of Ministers of the GDR on August 24, 1961, has to be seen. This Ordinance authorizes the following invasions of individual freedom:

a) actual restriction of residence, i.e., preventing a person from residing in specific places or areas (a form of expulsion);

b) designation of a specific place of residence (a form of banishment);

c) the requirement to take particular work;

d) ordering educational labour for persons reluctant to work.

Expulsion and educational labour may be ordered by the courts; while the requirement to take particular work and banishment may be ordered by the local authorities. [20] Since the system of dictatorship of the proletariat means that all the State organs are subject to the Party and its instructions, it is of no importance in legal theory what measures are ordered by what organs.

Expulsion may be either an additional penalty " in the case of a sentence of imprisonment or of probation ", by Section 1 of the above Ordinance, or it may be the main penalty. In the latter case it is decreed " even if no specific criminal law has been vio-

[18] *Idem.*

[19] For full text of this Ordinance see Apendix C at pp. 49-50.

[20] In the first executive regulations issued under the Ordinance concerning Restriction of Residence of August 24, 1961, the term " local authority " designates the so-called local popular Assemblies and their Councils, namely those for the Municipality, the District and the Area; Municipal, District and Regional Councils are executive authorities.

lated " at the request of the local State organs if the behaviour of the person convicted " represents a danger to the community or to individuals or if public security and order are jeopardized. " [21]

If there is a court verdict ordering expulsion, the local authority may then order banishment and at the same time designate specific work for the banished person.

The local authority may request the District Court to order educational labour to deal with persons reluctant to work. Educational labour is apparently possible as the only penalty. According to standard terminology any person is regarded as reluctant to work who does not perform " socially valuable work ", in other words who does not actively participate in building socialism. Farm workers have been prosecuted as reluctant to work for saying they wanted a free evening after their eight-hour working day; they had been promised this leisure in the spring of 1960 campaign for the socialization of agriculture. These were the grounds used against a cooperative farmer in the Postdam district who was sentenced to educational labour. Reports in the GDR press [22] show that this form of sentence is carried out in forced labours camps.

According to the Minister of Justice Hilde Benjamin, it is intended to include the provisions of the Ordinance concerning Restriction of Residence in the projected new Criminal Code of the GDR. She sees the combination of restriction of residence with educational labour as a " socialist educational measure ".

It has been learned by means of court reports in *Neues Deutschland*, and in other papers in the GDR that the powers to sentence contained in the Ordinance concerning Restriction of Residence have already been applied in numerous cases. A 25 year old East Berliner, C., was sentenced by the East Berlin Central District Court for attempting to flee the Republic and for defamation of the State, to one year's imprisonment to be followed by educational labour for an indefinite period. [23] On September 7, 1961, the same court sentenced a 31 year old brewer, Paul Pietruschinski, to educational labour and expulsion from East Berlin. Although " healthy and strong ", he had allegedly worked only sporadically and in most cases not more than a total of five months a year. [24] *The Times* of London reported a case in Leipzig which ended with sentences of restriction of residence and educational labour for 20 men and women for criticizing the Government. [25]

Increasing Restrictions on Freedom of Expression

The Constitution of the GDR guarantees freedom of speech and assembly, Article 9 stating:

> All citizens have the right, *within the limits of universally applicable laws*, to express their opinion freely and publicly and to hold unarmed and peaceful assemblies for that purpose. This freedom shall not be restricted by any service or employment status and no one may be discriminated against for exercising this right.
>
> There is no press censorship. (Emphasis added.)

In practice there is no such freedom, where it is used in order to criticize the regime or its policies. A critic of the Communist system is liable to criminal prosecution under Sections 19 and 20

[21] Expulsion was known as a secondary punishment in the German Criminal Law Code of 1871, which is still in force in both the Federal Republic and in the GDR, although with numerous and varied amendments. Expulsion is only used to a limited extent, as demonstrated by the Institute for East European Law, Munich, in a *Chronicle of Legal Development in the Eastern Bloc*, in which the relevant provisions of the German Criminal Code are compared with the scope of the Ordinance concerning Restriction of Residence: " Section 38 of the Criminal Code designates police supervision as an additional sentence supplementing imprisonment. It may be ordered for a period of up to 5 years when this is specified in the individual provisions of the Criminal Code. Section 39 states that a criminal placed under police supervision by the court may be forbidden by the higher police authorities to reside at specific places. Police supervision may be ordered by court decision: in the case of offences against national defence, against the leaders in a riot, in the case of mutiny by convicts, in the case of disturbance of the peace, against leaders of criminal associations, in the case of counterfeit coining, procuring, distribution of indecent writings, theft or embezzlement, robbery or blackmail, receiving stolen property, organization of games of chance, arson, causing a flood, causing damage to transport, or to installations for protection against water and causing damage by poisoning wells.

Police supervision may therefore only be ordered in very clearly specified cases and generally only together with a prison sentence.

The introduction by the GDR of new regulations restricting residence shows clearly that the authorities do not regard the existing provisions concerning police supervision as sufficient. It may be concluded that the basic feature of the new Ordinance is that restriction of residence may be ordered *without* there being any criminal act, in other words exactly what the notorious OGPU practised under Stalin."

[22] *Neues Deutschland* (East Berlin), September 8, 1961.

[23] *Neue Zürcher Zeitung* (Zurich), September 9, 1961.

[24] *Neues Deutschland* (East Berlin), September 8, 1961.

[25] *The Times* (London), September 8, 1961.

of the Criminal Law (Amendment) Act of December 11, 1957. These Sections read as follows:

19. Propaganda and agitation harmful to the State

(1) Any person

1. Glorifying or propagating fascism or militarism or defaming other peoples and races,

2. Creating discontent against the power of the workers and peasants, against their organs, against social organizations, or against a citizen because of his national or social activity or his membership of a national institution or State organization, assaulting such persons or threatening them with violence,

shall be subject to imprisonment of not less than three months. An attempt shall also be punishable.

(2) Any person shall also be punished who distributes writings or other objects with similar contents or introduces or distributes such objects for the purpose of hostile agitation.

(3) In serious cases, particularly when such action is performed on the instructions of the persons or bodies described in Section 14,[26] severe imprisonment shall be ordered.

20. Defamation of the State

Any person

1. publicly slandering or distorting the decisions or activities of national institutions or social organizations,

2. publicly slandering a citizen for his national or social activity or his membership of a State institution or social organization,

shall be liable of a prison sentence of up to two years.

Section 20 means, in effect, that anyone who disparages the Government is liable to a prison sentence.

To give an idea of the criminal justice meted out under the above-mentioned provisions, two sentences passed in 1958 may be quoted.

The Gera Area Court sentenced G. Sch., a housewife, to one year's imprisonment on June 11, 1958, for attacking the fundamental social structure of the GDR, thereby agitating in a manner hostile to the State as covered by Section 19 (2) of the Criminal Law (Amendment) Act 1957. She was accused of the following —and of nothing more:

> in connection with the measures taken by our Government with regard to abolishing the remaining rationing provisions and the consequent improvement in the living standard of the working population, the accused when shopping in a food store in B. on May 28, 1958, spoke in the most shameless manner against the workers' and peasants' power and called for a strike.

[26] The " persons or bodies " described in Section 14 are: other States or their representatives; organizations or groups which combat the workers' and peasants' power or other peace-loving peoples.

The " most shameless words " she used consisted of statements that she had been to West Berlin for three days and had had the opportunity of eating her fill of apricots and bananas. She had claimed that in the GDR you could not get more than two bananas and that these were frequently rotten. She was also accused of having been against the policies of the GDR, as demonstrated by the fact that when she had been a spectator at a battle exercise in B. the previous year she had shouted out: " They are shooting for peace ". [27]

One H. K. was sentenced on August 20, 1958, by the Bad Langensalza District Court to 10 months imprisonment for defamation of the State because he had told political jokes in a café.

It is not surprising that people are now being very severely punished if they give vent to their displeasure at the policy of cordoning off introduced on August 13, 1961. The State-run press of the GDR and East Berlin has reported numerous prosecutions of this sort. The Kyritz District Court sentenced a worker named Gutschmann to 10 months imprisonment. The prosecution stated: " Gutschmann showed himself to be an *agent provocateur*, ran down our actions of August 13, and made himself the spokesman for the capitalists in the Federal Republic. " [28] A sentence of 2½ years imprisonment was passed on a worker, R., in September 1961 for criticizing the sealing off action of August 13, 1961.

Intensification of the Campaign against Freedom of Information

(a) The Written Word

It is generally agreed now that the freedom of expression which is guaranteed in the Constitution of the GDR, also incorporates the so-called freedom of information, that is to say the freedom under Article 19 of the Universal Declaration of Human Rights " to seek, receive and impart information and ideas through any

[27] *Dokumente des Unrechts.* (Bonn, Federal Republic of Germany, published by the Ministry of All-German Affairs), Part IV, p. 197.

[28] *Der Mitteldeutsche* (Bonn, Federal Republic of Germany), 1961, No. 3/5.

media ". The freedom to seek and to receive information and ideas from the non-Communist world has for years been drastically restricted in the GDR and East Berlin. It is forbidden to own Western newspapers or periodicals. Distributing Western publications is an offence liable to prosecution under the Youth Protection Ordinance of September 15, 1955. This Ordinance prohibits, justifiably enough, the distribution of indecent literature, but this conception is taken to cover not only valueless detective and sex novels, but also any books " contrary to the moral and political views of the workers ". Adults imperilling the " socialist consciousness " of young people by distributing such books are brought to account.

A Mrs. R. C. who ran a lending library in Frankfurt-on-Oder had 229 books seized and confiscated which were stated to come under the following headings: " children's literature tainted with Fascism, colonial literature, anti-Bolshevist books, books from forbidden publishers, pro-Fascist books, West German books, undesirable books of poor quality ". These included books by Gœthe, Theodor Storm, Knut Hamsun, Theodor Plivier, Werner Bergengruen and the famous children's classic " Heidi " by Johanna Spyri. The Frankfurt Town Council withdrew with immediate effect the accused's authorization to operate a lending library, and to sell books, newspapers and periodicals. The Frankfurt District Court sentenced her to one year's imprisonment for violation of the Youth Protection Ordinance. [29]

On October 9, 1958, the Municipal Court of the Prenzlauer Berg district of East Berlin sentenced three cleaning women to a total of eight months imprisonment for exchanging Western newspapers and novelettes at their place of work.

(b) Radio and Television Broadcasting

There are special difficulties of a technical nature opposing efforts to eliminate freedom of information when inhabitants of the GDR and East Berlin are able to obtain information and ideas from the West by way of radio and television broadcasts. Official statistics published on July 1, 1960, said that there were 700,000 television subscribers in the GDR, of whom some 70% were receiving Western broadcasts. The SED maintains that the dissatisfaction and opposition shown by the overwhelming major-

[29] *Dokumente des Unrechts. Op. cit.*, p. 39 *et seq.*

ity of the population of the GDR is the fault of Western radio and television broadcasts. There is so far no valid criminal legislation for the case of the owner of a television set and his family viewing Western stations. [30] However, it was declared an offence amounting to anti-state propaganda if the owner of a radio or television set invited persons outside the immediate family to listen to programmes. Penalties for this form of anti-state propaganda have been considerably increased since August 13, 1961. As recently as June 21, 1960, the Potsdam District Court sentenced a decorator, W. B., guilty of inviting friends to view Western television programmes and therefore engaging in anti-state agitation to " only " one year's imprisonment, whereas five persons were sentenced by the Schwerin Area Court to a total of 15½ years imprisonment on August 25, 1961, for the same offence.

In the meantime the SED has abandoned its policy of relying mainly on State prohibition against receiving Western radio or television programmes. It has set its youth association, the Free German Youth, to suppress such activities, and issued it with the appropriate " battle orders ". A campaign was announced for " Lightning action against NATO stations ", with the following details:

When?
Between September 5 and 9

Where?
In work premises and dwellings

What?
We have three aims:

1. We shall make people realise that anybody listening to a NATO station is becoming the dupe of the enemies of peace and of the working-class. We shall animate discussion everywhere and persist with it until the situation is perfectly clear and until everyone agrees no longer to listen to NATO stations and to set their aerials instead to the stations of freedom and socialism.

2. But if people will not see reason we shall climb on to their roofs and turn their aerials in the proper direction or, if all fails, remove them.

3. We shall also make sure that no fitters put up pivoting aerials in future. In the workshops responsible for this, class-conscious and skilled members

[30] For an example of an arbitrary order of a Municipal Council in this matter see Appendix D, p. 51.

of our organization will guarantee that the aerials are assembled properly, for peace, and that all television sets are tuned for the stations of peace. [31]

Clearly not everyone encountered was amenable to discussion, so that the Free German Youth carried out the threatened sanctions in many cases. During a session of the People's Chamber on September 20, 1961, a woman Deputy

> wearing the blue shirt of the State Youth Organization announced the formation of women's " order groups " in the factories, to persuade reluctant workers to maintain their production pledges. This girl proudly described the work of her group, *which had dismantled over 100 television aerials from roofs* and had persuaded many young men to perform honourable service in the national armed forces. [32] (Emphasis added.)

Television aerials were also destroyed.

The resulting infringements of the rights of the individual and the damage caused by such illegal actions ordered by the SED remain unpunished. Where an activity is adjudged by the Party to be expedient then such activity is not contrary to the law. A claim for compensation against an SED member in respect of destruction of a radio set was rejected by the Potsdam District Court on January 15, 1959, in the following terms:

> It is perfectly clear that the plaintiff suffered damage to his property. The defendant deliberately broke the plaintiff's portable radio.
>
> However, it has also to be considered whether the defendant's action was contrary to law or whether he was entitled to perform this action. The court believes that the action of the defendant was not contrary to law. In accordance with Section 228 of the Civil Code it is not an action contrary to the law if another person's property is damaged or destroyed in order to protect oneself or others against the threat of danger from that object.
>
> It may be proved that the plaintiff played his radio so loud that other passers-by could hear the inflammatory comments made from RIAS. [33] In this way he was guilty of spreading subversive propaganda against our State. Playing such programmes in the street is a danger for our Republic. This danger the defendant countered with his action. Therefore it was essential to damage or destroy the radio since the plaintiff had already showed in the preceding discussion that he would not be persuaded to turn off his radio.

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[31] *Junge Welt* (East Berlin), September 5, 1961; this is the official paper of the central council of the Free German Youth.

[32] *Neue Zürcher Zeitung*, (Zurich), September 21, 1961.

[33] Radio in the American Sector.

A typical example of the way in which the impunity of politically desirable breaches of the law is justified is provided by the following considerations expressed by the Supreme Court of the GDR when it acquitted an SED official in December, 1959, who had hit a man who farmed on his own over the head with a pitchfork after a political argument:

> If a person who has provoked another has been injured as a result of politically justified refutation of his anti-democratic remarks, there is no punishable offence since there are no harmful consequences for the German Democratic Republic, for socialist construction and for the interests of the workers. The person guilty of such remarks is himself answerable for any damage arising therefrom.

The actions by the Free German Youth against reception of Western stations and the acquittal of their members of all consequences of any illegal acts serve as impressive illustration for the great range of coercive action open to a dictatorship of the proletariat such as the GDR. In a dictatorship of the proletariat it is not the State authorities in the traditional meaning of the word, namely the powers named in the Constitution, that exercise supreme power. The highest power above every other authority in the national field is the Communist Party, or its executive organs. To describe this particular form of State, Lenin used the metaphor of motive force, transmission belts and levers. The levers and the transmission belts are represented by the trade unions, the Soviets (i.e., the State authorities), the cooperatives and the Communist Youth League. The motive power is the Communist Party, which means the SED in the GDR. According to the terminology of the statutes of the Communist Party of the Soviet Union, trade unions, Soviets, cooperatives, etc. come under the common heading of " organizations outside the Party ". In order to pursue its national or social aims, a Communist Party uses that " organization outside the party " which it regards as suitable for a given purpose. The only thing to ensure is that the one should not burden or thwart the activity of the other, for instance that the courts do not make those responsible for an action commanded by the Party answerable in civil and/or criminal law for any damage incurred in the course of such action. As shown above, this danger is in practice entirely avoided.

CONCLUSION

In response to a letter from the Mayor of Berlin to the Congress for Cultural Freedom, thirty authors of world repute signed a declaration dated August 29, 1961, containing the following passage:

" It is one thing for a social order to force its citizens, by the millions, to seek asylum elsewhere. It is still more reprehensible to cut off their escape by means of walls and barbed wire across city streets, to threaten them at the point of bayonets, to shoot at them in flight as if they were runaway slaves.

" This is not a matter of politics or ideology or of social philosophy. It is a matter of the most elementary respect for a human right—and one which all the nationals of the civilized world are on record as having recognized. The Universal Declaration of Human Rights, which was adopted by the General Assembly of the United Nations, states this right unequivocally (Clause 13, paragraph 2): ' Everyone has the right to leave any country, including his own . . . ' "

Even the Constitution of the GDR embodies the guarantee: " Every citizen is entitled to emigrate " (Article 10, Section 3). But the undermining of this right began long before the building of the Wall. The introduction of obligatory possession of a passport and visa is compatible with freedom of exit and emigration only if the citizen is given legal entitlement to the issue of a passport and the granting of an exit permit. For citizens of the GDR and East Berliners no such entitlement is provided under the Passport Act of 1954. Also irreconcilable with freedom of exit and emigration are the heavy penalties laid down by the Passport (Amendment) Act of 1957 for fleeing the Republic and by the Criminal Law (Amendment) Act of the same year for the crime of false proselytism. The fact that, inside the control strip, the police are authorized to fire on escapees from the Republic is even less compatible with this elementary freedom. The measures taken after August 13, 1961 by the GDR regime to prevent flight from the Republic have completely vitiated the freedom of exit and emigration which are themselves guaranteed under the Constitution.

Apart from freedom of exit and emigration, the measures taken by the GDR Government from August 13, 1961 onward have encroached extensively on other basic rights, namely personal liberty and freedom of movement, i.e., " the right to take up residence at any place ", both guaranteed under Article 8 of the Constitution of the GDR. Such was the effect, in particular, of the promulgation of the Ordinance of August 24, 1961 concerning Restriction of Residence which vests either the courts or the administrative authorities with the power to order expulsion, banishment and compulsory labour, even in the case of persons who have committed no criminal action. It is sufficient that the measure taken be deemed by the body concerned to be " in the interest of the community or of the individual or that " " public security and order are endangered ". Under the same Ordinance persons considered to be work-shy can be committed to educational labour. The statement by the Minister of Justice, Hilde Benjamin, that the provisions of the Ordinance represent " milestones in the development of socialist law " cannot disguise the fact that the new legislation is contrary to basic principles of law. Court decisions and administrative practice make this quite clear. One need only recall the case of the cooperative farmer from Potsdam who was sentenced to educational labour for being " work-shy " because, after his eight-hour working day, he claimed the evening free. Free evenings after work had been promised to the farmers during the campaign to socialize agriculture in the Spring of 1960. There can hardly be any doubt that the Ordinance concerning Restrictions of Residence can provide the " legal " basis for internment measures similar to those which had the effect of filling the Soviet labour camps in Stalin's time.

In the Resolution adopted by the Warsaw Pact States, published on August 13, 1961, it was stated that their Governments naturally understood " that the introduction of protective measures on the border of West Berlin will create a certain degree of inconvenience for the population ". Masters of the art of euphemism can put it thus, particularly when the victims of the " protective measures " cannot be freely heard. It has been shown that Sections 19 and 20 of the Criminal Law (Amendment) Act of 1957 (propaganda and agitation harmful to the State; defamation of the State) provide for the imposition of penalities for any criticism of the regime or its policies. The courts have applied these provisions in their full rigour against persons who expressed their displeasure at the " inconvenience " of the Wall and other sealing-off measures.

Article 9 of the Constitution of the GDR does indeed state that " all citizens have the right within the limits of universally applicable laws to express their opinions freely and publicly " and freedom of opinion is in fact one of the most basic civil rights in a democracy. This freedom enables and protects the formation and expression of a national will; respect for this will in the formulation of state policy is the hallmark of a democracy. Correctly interpreted, freedom to express opinions does therefore also embrace the right to criticize the regime and its administration. The position in the GDR is, however, different; there the right to free expression of opinion is identical with the citizen's duty to remain silent.

The restrictions on the right of free speech are accompanied by restrictions on the right to listen. The measures limiting personal liberty, freedom to move from country to country and within the national territory, and freedom of opinion, were consequently accompanied by an even greater restriction on freedom of information, i.e. the right " to seek and receive information and ideas from all sources ". The citizen of the GDR was to be protected body and soul against any intellectual contact with the free world. Of the measures taken under this heading the most striking was the action entrusted to the Free German Youth against technical installations for the reception of Western radio and television programmes. Television aerials, in particular, were dismantled *manu juventutis*.

The Wall that prevents the citizens of the GDR and East Berlin from choosing freedom can not conceal the injustice perpetrated behind it. Its construction through the heart of the city has neither legal nor moral justification.

APPENDIX A

Announcement by the Municipal Council of East Berlin *

In accordance with the decision of the Council of Ministers of the German Democratic Republic of August 12, 1961, citizens of Democratic Berlin shall no longer engage in any occupational activity in West Berlin.

The Municipal Council calls on all citizens of Democratic Berlin previously employed in West Berlin either to apply to their last place of work in Democratic Berlin to resume employment there or to register with their local employment office with a view to obtaining suitable work.

Berlin, August 12, 1961.

The Municipal Council of Greater Berlin

EBERT
Mayor

* From *Neues Deutschland* (East Berlin), August 13, 1961.

APPENDIX B

Announcement by the Municipal Council of East Berlin *

The Municipal Council of the capital of the GDR issues the following announcement concerning registration of school children, apprentices and students who have hitherto pursued their studies in West Berlin.

1. Citizens of the capital of the German Democratic Republic (Democratic Berlin) whose children have hitherto studied at a school in West Berlin are hereby instructed to register with the competent office of the local branch of the People's Municipal Education Authority, for schools to be allocated to their children.

2. Apprentices who have hitherto been apprenticed in West Berlin shall register with the competent office of the local branch of the People's Municipal Education Authority, with a view to entering a training course.

3. Students and technical students who have previously pursued their studies at a university or technical or professional college in West Berlin shall register with the competent office of the local branch of the People's Municipal Education Authority.

4. The registrations ordered in paragraphs 1 to 3 shall be made by August 26.

Berlin, August 19, 1961

The Municipal Council of
Greater Berlin

LENGSFELD
Municipal Councillor

* From *Neues Deutschland* (East Berlin), August 21, 1961.

APPENDIX C

Ordinance concerning Restriction of Residence *

In accordance with a decision by the People's Chamber of the German Democratic Republic of August 11, 1961, the Government of the German Democratic Republic hereby decrees the following:

Section 1

(1) In the case of a sentence to imprisonment or probation the court may also order restriction of residence for the person sentenced.

(2) Restriction of residence may be ordered if it is in the interest of the community or of the individual that the person should be restrained from visiting particular places or regions or if public security and order is endangered.

Section 2

By restriction of residence the person sentenced is forbidden to reside in specific places in the German Democratic Republic. The organs of the Executive are empowered in accordance with such a sentence to require the person thus sentenced to reside in specific places or regions. They may also require the person sentenced to take up specific work.

Section 3

(1) At the request of the local authority, restriction of residence may be imposed by decision of the District Court even if no specific criminal law has been violated, provided that the person's behaviour represents a danger to the community or to individuals or if public security and order are jeopardized. In such cases Section 2 of this Ordinance shall apply.

(2) At the request of the local authorities educational labour may be ordered for persons reluctant to work.

(3) The provisions of the criminal procedure shall be applied accordingly.

* From *Gesetzblatt der Deutschen Demokratischen Republik* (East Berlin), August 25, 1961, No. 55.

Section 4

(1) Should the sentenced person resist the restriction of residence or the order to work, any probationary period shall be cancelled.

(2) Should restriction of residence directly follow a prison sentence or if it is ordered independently, violation of restriction of residence or of the order to work shall be punished by imprisonment.

Section 5

Property rights shall not be affected by restriction of residence.

Section 6

Executive instructions shall be issued by the Minister of the Interior and the Minister of Justice.

Section 7

This Ordinance shall come into force on August 25, 1961.

Berlin, August 24, 1961.

The Council of Ministers of the German Democratic Republic

STOPH
Deputy Chairman of the Council of Ministers

The Minister of Justice
Dr. BENJAMIN

APPENDIX D

Order of Pritzwalk Municipal Council Prohibiting All Reception of Western Broadcasts

1. All citizens of the district town of Pritzwalk are instructed immediately to refrain from receiving broadcasts from West German and West Berlin radio or television transmitting stations.

2. Aerials shall be immediately set to receive the radio and television transmitters of the German Democratic Radio.

3. Previous measures are confirmed by this decision.

4. Violations of this decision shall be prosecuted according to the legal provisions in force. In serious cases radio or television licences may be withdrawn. It may also be decided to confiscate the sets.

This Order of August 13, 1961, is arbitrary because it purports to invoke non-existent legal provisions in an attempt to intimidate the population.

APPENDIX E

The following two excerpts from the press of the German Democratic Republic illustrate punishments recently meted out to those indulging in " agitation harmful to the State " and " work dodging ".

POISON MARIA AND MISPLACED FRIENDSHIP *

or :

WHAT HAPPENS IF YOU LISTEN TO THE ENEMY

An extraordinary works meeting held at the Dewag publicity firm, Fotodia, Dresden, was particularly well attended. The judge, the magistrates and the public prosecutor of the Northern District Court had come to speak to an audience composed mostly of young women and girls in order to explain a trial which concerned them all and had lessons for everyone.

56 year old Maria Rieger had worked in the firm for several years and lived at Dresden A 19. Following the measures of August 13, she defamed our workers' and peasants' State in a shocking manner and wished a ruined harvest on all the citizens of the GDR. The above-mentioned discussion showed where her putrid thoughts led to. She listened to West Zone inflammatory broadcasts eagerly and took her information from Western newspapers that she got from her sister in Bavaria. She even lent some of these to other women at work and for the past year had been injecting this poison first of all in small doses by constant cunning remarks among the other members of her brigade. At the same time she was very well off in this State which she was running down. Together with her husband she owned a new house and she had a savings account of about 10,000 DM.

Quite rightly, some of her workmates stood up at this meeting and demanded an explanation from the brigade and the brigade leader as to how this open agitation could have occurred. " We discuss all our problems together. In the case of this member we should have shown up such unclear thinking at the first signs ", demanded brigade members from the paint shop and the photographic section.

Further discussion then showed the weak points in the collective and gave an instructive example of where misunderstood friendship at work can lead to. The brigade leader now admitted: " Yes, indeed, I should have given her a good talking to ". But nothing had happened, although everyone in the brigade knew full well that Maria Rieger listened to inflammatory broadcasts and constantly ran down our State. " We didn't take her seriously ! " " We had got used to her moanings. " And so they left Maria Rieger in peace until one of her workmates had a basinful and, conscious of her duty, no longer concealed these permanent complaints.

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* From *Sächsische Zeitung* (Dresden), September 6, 1961.

Poison Maria will now have a year in jail, isolated from the hostile insinuations of Western propaganda, in order to reflect on her shameful behaviour and draw conclusions about her future. The members of her brigade, however, should also get together for an open and honest discussion, learning from the results of where their indifference would have led.

RUTHENBERG WAS CHUCKED OUT *

In these days in which our Republic has won a victory for peace, we have all grown in stature. The comrades have closed their ranks. New fighters have entered the party. Waverers have come to realize the true situation and have joined the forces of peace. While our national People's Army and the combat groups keep a watch for peace on the borders with West Berlin, the workers are demonstrating their loyalty to the GDR with new production successes. Many brigade diaries contain reports on the major and minor heroic deeds of these days, such as that of the Scholz brigade in the Coswig pre-stressed concrete pillar works, from which we shall publish extracts in the next few days.

Ruthenberg has been in our brigade since June 6. He was sent to our works to gain practical information for a new plant. " This 20-year old was a pain in the neck right from the start ", foreman Scholz remarked. " He made himself out to be a great ladies' man, he shunned the collective and he was as work-shy as they come. "

" We could see he was Western-inclined ", added our Party organizer, Bruno Hoffmann, " but the balloon went up on August 14. "

What happened at our works on August 14?

Ruthenberg had dodged work on August 9 and 10, and was reported to have travelled home on August 11. Then he suddenly turned up again on Monday, August 14. During the mid-morning break, when group organizer Hoffmann was explaining to our brigade our Government's protective measures, Ruthenberg thought the right moment had come. He provoked us with cheeky taunts: " Tell me why tanks have to take up position in Berlin, if it's true that we are in favour of peace? " Then he thought he would play his trump card. He said he had been to Berlin on Sunday. He told us frightful stories and Bruno Hoffmann answered him sharply. But not all of our fellow brigade members knew that Ruthenberg was playing with marked cards.

Some of the politically inexperienced youngsters such as Christa Wendisch, Jürgen Goldhahn and Jochen Schulze were almost ready to believe the siren song of this card-sharper. After the meeting Ruthenberg continued his attempts to sell his propaganda, but he was in for a disappointment.

Our colleagues had looked things over in the meantime. At a second meeting that same day they analyzed Ruthenberg very thoroughly.

Wegner set the ball rolling: " How come you turn up again after sloping off for several days? "

Ruthenberg tried to worm his way out. He said he had been at his uncle's in *West Berlin.*

Comrade Schäbitz: " And what did you want in West Berlin? " Now Ruthenberg was trapped and he had to own up. Ruthenberg had already

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* From *Sächsische Zeitung* (Dresden), September 12, 1961.

betrayed our Republic once before. His father had also been arrested for similar offences while on " State leave " as Ruthenberg put it in his thieves' cant. The *agent provocateur* gave himself away time and time again. He said that he and a group of other rowdies, spurred on by the West Berlin front-line bosses, would have liked to attack our tanks.

Other colleagues such as Emil Winter who had previously looked on Ruthenberg's talk as mere wind now realized how dangerous this scoundrel was. We were itching to put a real worker's fist under this individual's chin.

The discussion lasted a good four hours and by the end Ruthenberg's trickery was out. The unanimous decision of our brigade: " Ruthenberg is a traitor. " " There is no place for such elements in our brigade. " " This is a job for the public prosecutor ".

And he did do his job. Two and a half years " in the cooler " was the sentence. " Hardly enough ", our veteran brigade member Hans Haufe averred. " But we forgot to do one thing. We should have given him a damn good booting up the arse. That would have pleased this lout and his bosses to see us stand and beg for a loaf of bread at the West Berlin border. Our Government was dead right to send something solid there, and that means tanks. And it's dead right that this rotten egg Ruthenberg is now where he belongs. "

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