



Volume 8. Occupation and the Emergence of Two States, 1945-1961

U.S. Delegation Minutes of the Meeting between the Western Military Governors and the German Minister Presidents regarding the German Reply to the London Documents (July 26, 1948)

What to call the West German constitution and how to ratify it were among the topics discussed in detail at a meeting between the West German minister presidents and the western military governors in late July 1948. The minister presidents preferred the term Basic Law. They opposed a referendum and favored ratification of the constitution/Basic Law by the state parliaments [*Landtage*], since they were eager to avoid a referendum campaign given the country's tense political situation. The question of how to redraw the boundaries of the *Länder* remained open, since it could not be decided on short notice. In the end, the minister presidents did not insist that their requests be met, but accepted in principle the directives agreed upon by the Allies in London.

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General KOENIG, as Chairman, opened the Meeting. He stated that the meeting had been called to allow the Minister Presidents to give their final reply concerning Documents I, II and III and he therefore asked Minister President STOCK (Hesse) to speak.

Herr STOCK stated that the Minister Presidents had examined very closely the observations made at the last meeting. They were glad to be able once again to discuss the problems as a whole with the Military Governors. The Minister Presidents were prepared to create, within the framework of the London Agreements, a political and economic organization for Western Germany and they were very anxious to reach agreement with the Military Governors. They had chosen two from amongst their number to discuss the specific questions. Minister President ARNOLD would present the point of view of his colleagues on Document I and Minister President LUEDEMANN would discuss Document II. As far as Document III was concerned the Minister Presidents had not found it necessary to discuss this for the present.

Herr STOCK further stated that he and his colleagues would be glad to hear the comments of the Military Governors after the statements of Herr ARNOLD and Herr LUEDEMANN and to be able to withdraw for a final consultation after having heard them. The Military Governors stated that they were in agreement with this procedure and the Chairman asked Minister President ARNOLD to speak.

Herr ARNOLD (North-Rhine–Westphalia) wished, first, to make a few general remarks on the question of the referendum and the 'Basic Law'. He indicated that there was general agreement that a solution must be reached as quickly as possible. According to the original proposals, the 'Basic Law' or 'Provisional Constitution' should be accepted by the population by means of a referendum. Obviously the problem of the referendum was of the greatest importance. The Minister Presidents were also of the opinion that the Basic Law should be ratified on as broad a democratic basis as possible.

They had, however, certain serious objections to the referendum as provided in Document I. The Minister Presidents feared, in fact, that the submission of the 'Basic Law' to a referendum might provoke a very violent electoral campaign throughout Germany. The communists and all other destructive elements would certainly take advantage of this electoral campaign to aggravate the schism which already existed between the West and the East. In particular, in view of the position of the communists, it was very probable that they would do their utmost to present the 'Basic Law' not as a German law, but as a law imposed by the Allied Powers. There was therefore the risk that an electoral campaign, in these conditions, would result in a vote against the Occupying Powers. The destructive forces of the left as well as of the right would combine to destroy the proposals made. Recalling that in conformity with the original proposals, the veto of one-third of the *Länder* would be sufficient to overthrow the proposals, Minister President ARNOLD stressed that if, as a result of an electoral campaign, the 'Basic Law' was rejected, this would mean not only the rejection of the Koblenz proposals but also the rejection of the London decisions. Such a development would be a catastrophe not only for Germany but for the whole of Europe. But whatever the results of such an electoral campaign, it was certain that it entailed the risk of introducing an element of uncertainty into any future development.

Minister President ARNOLD repeated that he and his colleagues were entirely in agreement with General CLAY on the point that this 'Basic Law' should be ratified on as broad a popular basis as possible but after having closely examined the psychological conditions and the political situation the Minister Presidents wondered whether it would not be preferable to have the 'Basic Law' ratified by the *Landtage* [state parliaments] of the different *Länder* instead of having it ratified by means of a referendum. The members of the *Landtage* had been elected by general and secret ballot and could therefore be considered as the legitimate and democratic representatives of 45,000,000 inhabitants. If therefore, as was probable, the *Landtage* accepted this 'Basic Law' by a large majority, it could be said that it had been adopted on a broad democratic basis. The Minister Presidents were of the opinion that this proposal took more into account the interests both of the Military Governments and of the German people than did the initial proposal.

As far as the 'Basic Law' itself was concerned Herr ARNOLD recognized that this was not a question of the statutes of a private organization. This, moreover, would become clear, without any doubt, in the text of the articles which it would contain.

Regarding the title, there was no objection to adding in brackets after the words 'Basic Law' the words 'Provisional Constitution' and especially since there was general agreement on the fact that the whole organization to be created would be of a temporary nature only.

In conclusion, Minister President ARNOLD wished to stress that the amendments proposed by himself and his colleagues could be made to concur with the London decisions.

General KOENIG thanked Herr ARNOLD for his statement and asked Minister President LUEDEMANN to speak.

Minister President LUEDEMANN (Schleswig-Holstein) stated that during the previous meeting new statements had been made about the modification of the *Land* [state] boundaries. From these statements it was clear that the Military Governors attached particular importance to this question. The Minister Presidents had been asked for a specific reply on this subject and they had done their best to give this reply. Two questions had been asked:

1. Did the Minister Presidents recognize the necessity for modifying the *Land* boundaries?
2. Were the Minister Presidents themselves prepared to submit proposals on this subject?

The reply of the Minister Presidents to these two questions was in the affirmative.

The Minister Presidents were asked, moreover, to state on what date they would be able to make these proposals. It was difficult to reply to this last question for the following reasons: In the document transmitted on 1st July it was stipulated that such proposals should be made before the convening of a constituent Assembly. Since the Assembly was to meet before 1st September, there remained only four weeks or less to consider the question of modifications of the *Land* boundaries. This period was too short to reach a satisfactory solution of the problem and to make concrete proposals in view of the numerous difficulties which were implicated in this question.

In the Koblenz decisions the Minister Presidents had suggested that this Assembly which they had called 'Parliamentary Council' should be composed of delegations of the *Landtage* of the different *Länder* and that, in conformity with the London decisions, there should be one delegate to every 750,000 inhabitants. The situation could have changed if the Koblenz proposals had been accepted by the Military Governors. The Minister Presidents supposed that there was agreement on this point although this had not been specifically stated. For that reason they had been unable to commit themselves on the question of the date. The Minister Presidents had, however, decided at their last meeting to form a committee to deal with this problem and this committee had set to work immediately. The task of the Minister Presidents would be made considerably lighter if the two problems which were at present connected could be treated separately.

Bürgermeister [Mayor] BRAUER (Hamburg) wished to complete the statement of his two colleagues. To begin with he stressed that the attitude of the Minister Presidents as a whole to the London decisions was fundamentally positive. In their opinion, it was in the interests of Germany to reach as quickly as possible a solution to all the problems within the framework of these decisions.

Herr BRAUER wished to go even further. He considered indeed that if a quick solution was not found there was a risk that the application of the Marshall Plan, and the economic recovery made by Germany since the currency reform, would be jeopardized. For this reason it was of the greatest interest to Germany to reach a solution in the shortest possible time. The remaining divergences concerned only the methods to be adopted and not the objects in view. The Minister Presidents were prepared not to insist on these points of method and procedure if there was a risk of jeopardizing the whole. Therefore, the Minister Presidents wished to reach agreement today within the framework of the instructions of the Military Governors.

Regarding the Constituent Assembly or rather the Parliamentary Council, it could be said that ever since Koblenz the Minister Presidents had accepted the London proposals. They had recommended that the delegates who were to draw up the 'Basic Law' should be designated by the different *Landtage* before 1st September.

The Ministers President, when translating the word 'Grundgesetz' into English, had chosen the term 'Basic Law'. They felt, however, that a more adequate translation would be 'Basic Constitutional Law'. The term 'Grundgesetz' had only been chosen in order to avoid aggravating the condition of the Eastern struggle and of the struggle which the Minister Presidents were obliged to carry on against the propaganda of the SED and the parties of the Eastern Zone. This struggle would be made easier if the terms chosen by the Minister Presidents could be accepted by the Military Governors.

Concerning the crucial point of the referendum, the point of view of the Minister Presidents was as follows:

If it was a question of principle, the direct vote based on universal suffrage should have been applied already for the election of the members of the Constituent Assembly.

Herr BRAUER recalled, in this connection, the campaign for the 'Volksbegehren' in Germany. The states of the west had defended themselves against the introduction in their territory of this 'Volksbegehren' which was of SED inspiration. By accepting the referendum as a means of ratification they would be giving to the Communists just that popular vote which up to the present they had not obtained. This was for the Minister Presidents of the West a question of political and psychological tactics.

In support of his statement Herr BRAUER quoted a press commentary from the San Francisco Chronicle.

“There lies a deep and devilish irony in the fact that the Germans are defending their undemocratic actions by using such democratic methods as the referendum in order to make their attitude palatable to the United States. This is a powerful weapon which is being utilized with great skill.”

On the question of boundary modifications Herr BRAUER re-affirmed that the Minister Presidents were equally desirous of settling it quickly so that there would be no delay in the application of Document II.

Finally, as concerned the Occupation Statute, the Minister Presidents noted with satisfaction the decision of the Military Governors to take into consideration the German proposals.

In conclusion Herr BRAUER stressed once more that the Ministers President, like the Military Governors, wished the present discussion to reach a satisfactory conclusion as soon as possible in order to end the state of uncertainty.

General KOENIG thanked the Minister Presidents for their statements and on his proposal the meeting was adjourned for 45 minutes in order that the Military Governors might have time to consult.

The meeting adjourned at 15.45 hours.

The meeting continued at 16.30 hours.

General KOENIG, on behalf of his colleagues and of himself, again thanked the Minister Presidents for the opinions expressed by them. He indicated that, since these proposals differed in certain points from the London decisions, the Military Governors were obliged to refer to their respective Governments so that the Governments might examine whether they could consider them.

In reply to Minister President STOCK as to the date of the next meeting, General KOENIG stated that another meeting would be called as soon as the three Allied Governments had made known their points of view.

Minister President STOCK wished then to know what were the points on which the Minister Presidents differed from the London decisions to such an extent that an adjournment for Governmental consultation became necessary.

General KOENIG indicated that the points on which he and his colleagues were obliged to consult their respective Governments were the following:

1. The question of the referendum.

2. The question of the name to be given to the 'Basic Law'—'Basic Constitutional Law'.
3. The question of co-ordination in the time of the modifications to be made to the *Land* boundaries and for the meeting of the Constituent Assembly.

Minister President EHARD (Bavaria) then asked to be heard.

He stated that it was not the intention of the Minister Presidents to end the present discussion in this manner. The Minister Presidents had felt obliged to set forth the reason for their attitude; they would have liked to know whether these reasons were acceptable in principle or not, and whether the appreciation by the Military Governors of these reasons would not permit them, within the framework of the London agreements, and their own instructions, to take into account the proposals of the Ministers President. If the Military Governors could affirm that on certain points they had no freedom of action, the Minister Presidents would find themselves in a new situation. In this case the Minister Presidents should be given a fresh opportunity for consultation in order that the discussion might be continued, but first he wished to be allowed to discuss quickly the points of divergence.

As regards the name to be given to the Basic Law, the Minister Presidents saw no real difficulty in this question of terminology. In their opinion it was simply a bad translation and an addition or explanation should be sufficient to clear up this point. They suggested that the Military Governors should make a proposal on this point compatible with their instructions.

The second point was that of co-ordination in the time of modification of the *Land* boundaries and of the convening of the Constituent Assembly. There again Dr. EHARD saw no real divergence and considered that this difficulty could easily be resolved.

Therefore, the only question on which there was serious difficulty was that of the referendum. The Minister Presidents would have acted in contradiction to their duty if they had not explained to the Military Governors their objections to the principle of the referendum. If the Military Governors could not accept these reasons the Minister Presidents would like them to say so clearly. They would also like to know why the Military Governors were unable to accept these reasons. Perhaps they were bound, on this point, by the very specific provisions of the London Agreement. This point was very important for the Ministers President. If, finally, the question of the referendum was the only divergence which made it necessary for the case to be referred to the three Governments this created a new situation and in such a case the Minister Presidents wished to consult, amongst themselves, once more in order to modify, if necessary, their attitude.

Dr. EHARD stressed once again that the Minister Presidents would be very glad if the discussion could continue today on this basis.

Finally, Dr. EHARD asked the Military Governors to state precisely the points of divergence and their demands on those points.

On the proposal of General KOENIG the meeting adjourned for ten minutes, it being understood that the Military Governors would reply to Dr. EHARD's questions when the meeting resumed.

The meeting resumed at 17.15 hours.

General KOENIG stated on behalf of his colleagues and of himself that:

1. The question of the term 'basic law' or 'Basic Constitutional Law' or 'Basic Law (Provisional Constitution)' was not very important and the Military Governors considered that, in fact, an arrangement was possible on this point.
2. Concerning the question of the referendum, the Military Governors had heard of the explanations given, in particular those of Herr ARNOLD, on this point and if the Minister Presidents insisted on ratification by the *Landtage* the Military Governors would be obliged to refer to their Governments. This did not, however, signify a refusal.
3. Concerning the question of the modification of boundaries, the Military Governors understood the reasons given by the Ministers President; in particular they understood that it was a question of time. The Military Governors were, however, bound by the London agreements. They were, therefore, obliged to inform their Governments of this question and ask them for instructions but, here again, this did not constitute a refusal.

General KOENIG added that, in referring to their Governments, the Military Governors promised to request that a reply be given as early as possible.

Senator President KAISEN (Bremen) then asked to be heard. He stated that the reply of General KOENIG was very clear. It signified, as far as the Germans were concerned, that an unnecessary loss of time would ensue before it was possible to proceed. The opinion of the world, and particularly of the masses, would not understand that the application of the London decisions had been held up for minor divergences of this nature. The Chairman had himself said that the question of terminology did not constitute a difficulty which could not be easily smoothed out.

On the question of the referendum, the London agreements of course provided the framework which, in a general manner, was binding upon the Germans insofar as their requests for modification might be unsuccessful. The Germans would consider, therefore, that for the question of the referendum they were bound by the London agreements and they would prefer to accept the referendum rather than waste time. If the referendum was to be the stumbling block which risked upsetting the whole, the Minister Presidents would be ready to accept it. They wished only that the Allied Governments should be informed of the reasons brought forward by the Minister Presidents against this referendum.

The Minister Presidents asked only that they be allowed to begin applying the London decisions for they had already taken certain preparatory measures, in particular with regard to the

Constituent Assembly, and they wished to know whether the time limits fixed for them were to be observed.

General KOENIG asked if this reply given by Herr KAISEN represented the reply of the Minister Presidents as a whole.

The Minister Presidents replied in the affirmative.

General KOENIG, having summed up the situation created by the last statement of Minister President KAISEN and after having asked the opinion of his two colleagues, stated that the Military Governors wished to consult quickly on this new situation.

After consultation, General KOENIG stated on behalf of his two colleagues and of himself that:

THE MEETING

2. (a) agreed:

(1) That there was no longer any serious difficulty about the name to be given the proposed 'Grundgesetz'.

(2) That, as far as the question of the referendum was concerned, the Minister Presidents accepted the London decisions. It was understood, however, that their wishes in regard to this question would be submitted by the Military Governors to the three Allied Governments and that the Minister Presidents would be informed in due time of the position taken by the (respective) Governments.

(3) That, as far as the question of co-ordination in the time of carrying out the boundary modifications and convening the Constituent Assembly was concerned, the Military Governors would also submit to the three Allied Governments the wishes of the Ministers President. The Commanders-in-Chief promised to support this request. The reply of the Governments would be communicated to the Minister Presidents as soon as possible. In case these Governments should refuse to grant an additional extension of time to the Ministers President, the latter would be obliged to observe the dates provided for in London.

General KOENIG added that the three Military Governors had thus given a clear reply to the three questions. If they accepted points 1, 2 and 3 above, and if they undertook entire responsibility for them, they could begin to apply the London decisions. [. . .] In particular, they could allow their *Landtage* to choose the method of election of the Delegates to the Constituent Assembly.

Minister President STOCK asked to speak once again in order to state in the name of all the Minister Presidents that they felt that considerable progress had been made that day. The Minister Presidents would take the first measures for the nomination of delegates to the Constituent Assembly. They believed that agreement was complete as far as the question of the 'Grundgesetz' was concerned, and of the date of convening the Constituent Assembly. As to the referendum, they had presented their arguments with a view to permitting co-operation between the Germans and the Occupying Powers. They were glad to know that these arguments would

be submitted by the Military Governors to their Governments, and they agreed to abide forthwith by the decision which would be taken. Regarding the modifications of the *Land* boundaries, they noted the intention of the Military Governors to inform their Governments of their wish to extend the time limits fixed, and they were glad to know that the Military Governors were disposed to recommend that the German proposals on this matter be taken into consideration. In the meantime, the work on this question would be begun without delay and a Sub-Commission would start work on this problem the next day. The Minister Presidents were of the opinion that a very satisfactory solution had thus been found and they wished that a Press communiqué be drawn up at the end of the present discussion. [. . .]

Source: Reply of the Minister Presidents to the Proposals Made by the Military Governors following the London Decisions (July 26, 1948), in OMGUS, *Federal Constitution*, p. 46; reprinted in Beata Ruhm von Oppen, ed., *Documents on Germany under Occupation, 1945-1954*. London and New York: Oxford University Press, 1955, pp. 322-30.