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Why the Soviet Union Permitted Austria to Be Free: A Long-Standing Mystery Solved

On May 15, 1955 the Governments of France, the Soviet Union, the United Kingdom and the United States, after long years of negotiations, signed with Austria the treaty ending the four zone occupation of that country which had begun ten years before. This agreement was not a "peace" treaty in the usual sense, inasmuch as the United States was never at war with Austria, but was titled appropriately the Austrian "State Treaty" because it restored Austria's position of an independent sovereign State, as it had been before the forcible take-over by Hitler and the *anschluss* which the United States never recognized.

The constitutional groundwork for an independent Austria was, of course, laid down initially by the Moscow Declaration of 1943, wherein it was pledged that Austria should be made free and independent:

The Governments of the United Kingdom, the Soviet Union and the United States are agreed that Austria . . . shall be liberated from German domination. . . .

They regard the annexation imposed upon Austria by Germany on March 15, 1938 as null and void. . . . They declare that they wish to see re-established a free and independent Austria, and thereby open the way for the Austrian people themselves . . . to find that political and economic security which is the only basis for lasting peace.

Despite the injunction in this declaration, the history of the Austrian Treaty negotiations is a frustrating illustration of classic Soviet obstructionism. First, the USSR stalled on including the treaty on the agenda of the Foreign Ministers meeting. All kinds of delaying tactics were then pursued by the Soviet representatives whose demands required 379 meetings of the special treaty commission, deputy foreign ministers and the Council of Ministers itself in order to clarify the USSR's position. Agreement would appear to be reached, only to be succeeded by more shifts in position by the Soviet Union. Even a 48-to-0 resolution adopted by the United Nations General Assembly in 1952 (with the abstention of the Soviet bloc) which urged the four powers to terminate their occupancy, failed to break the stalemate. At one point, in February 1954 when the Austrian Government and the three Western Powers

went so far as offering to accept the Soviet versions of the only five articles that remained unagreed to in the draft treaty, the Soviet Foreign Minister raised a wholly new and unacceptable demand that the Soviet military occupation should continue indefinitely—a condition which would have emasculated the treaty.

All during this period the Soviet Government was draining Austria of virtually every substantial asset it could lay its hands on. Under the pretext of the Potsdam Agreement of August 1945, which permitted reparations for the Allied and Associated Powers from “appropriate German external assets” the Soviets applied this provision by force and duress even to properties seized by Germany after the *anschluss*, to properties owned by the Government of Austria and to property in Austria owned by nationals of other nations. Factories were dismantled and shipped to the Soviet Union. Over 63,000 pieces of equipment were seized during the first year of postwar occupation. In ten years, more than \$500 million worth of oil was taken away by the USSR, along with over \$1 billion in property.¹ While all this looting was going on, the other allied powers were providing assistance to Austria, to enable it to hold off the economic disintegration during being engineered by the Soviet Union. The United States alone gave Austria some \$1.25 billion during the ten years of the Soviet occupation, which put our Government, when one compares the amounts involved, in the ridiculous and irritating posture of subsidizing the Soviet Union for a large portion of its pilferages.

In addition, Article 21 of the Treaty of Peace with Rumania and Article 22 of the Peace Treaty with Hungary provided for withdrawal of allied forces from the two countries within ninety days, subject to the right of the Soviet Union to maintain troops in both on the lines of communication with its occupation forces in Austria. Consummation of the Austrian treaty necessarily would have the effect of annulling the peace treaty basis for the USSR to retain its troops in the two satellite countries for the purpose of protecting its lines of communication to Austria. Nevertheless, in view of previous violations by the Soviets of provisions of the Hungarian and Rumanian treaties, the United States Government was not too sanguine that the legalistics of the situation would induce a Soviet military withdrawal from those two countries.

So much by way of the amalgam of components which may have conditioned Soviet intransigence on the Austrian treaty. When all these factors are taken into consideration, there seemed small likelihood that the USSR would soon relax its noose around Austria’s neck, not only for its material advantages, but also for its transparent political design. Then, suddenly, in 1955,

¹*The Austrian State Treaty*. Hearing before the Committee on Foreign Relations, United States Senate, June 10, 1955, on Executive G, 84th Cong. 1st Sess., p. 6.

Soviet policy underwent a dramatic change. Whether it was a coincidence or not the reversal took place when parliamentary action by the Western European Governments assured completion of the Paris Accords which restored sovereignty to the Federal Republic of Germany, creating the Western European Union, and providing for membership of the Federal Republic of Germany in NATO. In any event, on March 25 of that year, the Austrian Chancellor (Raab) was invited to Moscow to discuss areas of disagreement between the parties. Seven weeks later, on May 15, the four occupation powers and Austria signed the treaty. The Soviets withdrew or compromised every obstacle which they had erected to the treaty in the prior years of negotiation. Why? What was the reason for this about-face? For years, that nagging question persisted, with no satisfactory answer.

When the treaty was presented to the United States Senate for its advice and consent a like bewilderment was manifested that the USSR had finally agreed to give up its occupation of Austria. For, neither before nor since has the Soviet Union relinquished control over any territory it had seized, at least not without installing a regime of its own selection or persuasion. To most observers it was incredible that they should have done so with Austria, and to have permitted the people of that nation to choose, in free elections, the Government they desired. Surely, Western action on the Paris Accords does not adequately explain the enigma. Nor was Secretary of State Dulles' report to the President able to offer a more enlightening answer:

The cause of this change of policy on the part of the Soviet Government can only be conjectured. Certainly it is not without significance that the change coincided with assurance that the Paris Pacts would be ratified, Western Europe consolidated and a free and independent Federal Republic of Germany brought into NATO.²

Although "not without significance," agreement on the Paris Pacts is hardly the real solution; there had to be more to it than that, and there was. The present Editor-in-Chief of the *International Lawyer* tripped on it quite by accident during a luncheon at the Austrian Embassy in London over a year ago. It was then he learned that Soviet withdrawal was unquestionably attributable to the resourcefulness of the American military officer who was the legal adviser in 1946 to the United States High Commissioner in Austria, General Mark Clark. That legal adviser was Colonel Eberhard P. Deutsch, of New Orleans, the former Editor-in-Chief of the *International Lawyer*. The technique which he cooked up to resolve the difficult constitutional dilemma which the Soviet presence had created was the device of the "reverse veto."

As subsequently disclosed to Mr. Freeman in London, and later confirmed

²*The Austrian State Treaty*. Report of the Committee on Foreign Relations, United States Senate, on Executive G, 84th Cong. 1st Sess., June 15, 1955, p. 4.

and amplified by Colonel Deutsch, the situation at the time was as follows: During the occupation period, laws passed by the Austrian Parliament could not be enacted or applied without the agreement of all of the Four-Power occupation authorities—the principle of unanimity. Although, as might be imagined, Austrian bills were normally agreed to by the Western Powers, very often, and usually in the most important cases, the Soviet veto would block many bills essential to the reconstruction of the young Austrian Republic.

Each of the military governments was divided into committees, chaired each month by a different government. At the time of the incidents described, Colonel Deutsch, as Chief of the United States Legal Committee, was the chairman of the Allied Legal Committee. For various reasons it was agreed in 1946 that the International Control Agreement on which the military government of Austria was based, needed to be changed. By that time, the Austrian Government, which had been functioning under decrees of a cabinet, had established an elected parliament. None of the reasons for a change in the military regime was of any particular importance to the USSR, because all they really wanted was recognition of their right to be in Austria. As already mentioned, this was indispensable to the retention of their occupying forces in Yugoslavia, Hungary and Rumania. When a decree or law was enacted, it would come before the joint Allied Legal Committee for analysis and report. If reported favorably, and accepted unanimously by the Allied Council—which was, of course, composed of chiefs of the occupying forces, then, and only then, could the law or decree become effective. It was about this time that it occurred to Colonel Deutsch that if this stalemating procedure could be replaced it would be most satisfactory for the future progress of Austria, which was favorably disposed to the recommendations of the Western Powers.

Accordingly, Deutsch suggested that the Austrians should proceed to enact their laws through the Parliament, and *if they were not unanimously disapproved* by the Allied Council within thirty-one days they would become law. In this way, Deutsch explained to the Russians, the idea of “unanimity” would be preserved. The suggestion was then adopted in the revised International Control Agreement for the Government of Austria. Thereafter, when the Austrians wished to enact a law, it was first discussed with the American contingent. After passage, it could not be killed by a Soviet veto, since *disapproval* required unanimous action. The result was that while the principle of unanimity so important to the Russian military was maintained, the Western Powers had complete control of Austrian legislation. Clearly, the Russians simply did not know what they were getting into. A concomitant of this was that when the elections were held for Parliament, General Mark Clark, as High Commissioner in the Military Government, managed to see that they were conducted along “good old American lines.” This was accomplished by having teams composed of four officers of each of the occupying forces as “poll watchers”

both in the Western and Eastern occupied zones. As a consequence, of the 165 members of Parliament elected, only three were members of the Communist Party.

It soon became obvious that the jig was up, even though it took the Soviets some eight years to throw in the towel on what had become for them a wholly futile participation in the Allied Council. The Austrian State Treaty and Soviet departure from the occupation followed.

The unique role of Colonel Deutsch in virtually single-handedly inducing the Soviet disengagement was recognized by the Austrian Ambassador to the United States, Dr. Ernst Lemberger on March 2, 1967. Conferring upon Colonel Deutsch the Gold Badge of Merit awarded to him by the President of Austria, Ambassador Lemberger declared:

The entire reconstruction of our law system and the whole legal basis of Austria's economic reconstruction after the war was possible only by the above-mentioned agreement, and so Colonel Deutsch really laid the foundation stone for the reconstruction of Austria.

The episode never received the attention it deserved, although the achievement had been noted in the local press over ten years before. In its issue of December 21, 1955, the *Times Picayune* had this to say:

. . . the negative veto . . . was probably the shrewdest piece of diplomatic razzle-dazzle perpetrated on the Russians to date in any theatre . . .

How the Soviets ever were bamboozled into accepting that clause remains one of the great mysteries of international diplomacy. And the presumption that the Muscovites goofed is heightened by the fact that the head of the Russian element of the Secretariat shortly afterwards went home "on leave" and never came back.

While other factors may also have entered into the Soviet decision to withdraw from Austria, there is little question but that Colonel Deutsch's contribution created the conditions which convinced the Russians that further continuance of the occupation could not advance their goal of a Communist takeover.

The lesson to be drawn from this fascinating incident should be apparent. In diplomacy, as in private practice, there is no substitute for the trained lawyer's skills and resourcefulness. In a potentially critical situation for the future freedom of a great people, those skills paid off. Unfortunately, the United States has not always enjoyed this calibre of ingenuity from its negotiating teams—two distressing examples being the Potsdam Agreement on Berlin, for which this nation has already paid dearly; and the Panama Canal Treaties of 1977, which could have been made more palatable to the American people by more solid draftsmanship and a more acute sensitivity to what is required by the national interest.

