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THE LEGALITY OF THE ANNEXATION OF AUSTRIA BY GERMANY *

By HERBERT WRIGHT

Of the Board of Editors

The legality of the annexation of Austria by Germany under international law stems out from the peace treaties signed in the suburbs of Paris at the end of World War I.¹ The Treaty of Versailles of June 28, 1919, between Germany and the Allied and Associated Powers (including the Principal Allied and Associated Powers), provides (Art. 80)—

Germany acknowledges and will respect strictly the independence of Austria, within the frontiers which may be fixed in a Treaty between that State and the Principal Allied and Associated Powers; she agrees that this independence shall be inalienable, except with the consent of the Council of the League of Nations.²

Such a boundary-fixing treaty was the Treaty of St. Germain of September 10, 1919, between Austria and the same Powers, which fixed (Art. 27) the frontiers of Austria with Germany as "The frontier of August 3, 1914."³ This provision, therefore, is to be considered as incorporated in Article 80 of the Treaty of Versailles as a part of the obligation assumed by Germany.

Austria, on her side, assumed a similar obligation under the Treaty of St. Germain, which provides (Art. 88)—

The independence of Austria is inalienable otherwise than with the consent of the Council of the League of Nations. Consequently Austria undertakes in the absence of the consent of the said Council to abstain from any act which might directly or indirectly or by any means whatever compromise her independence, particularly, and until her admission to membership of the League of Nations, by participation in the affairs of another Power.⁴

Austria, however, assumed an additional obligation to that of the "inalienability" of her independence without the consent of the Council of the League of Nations, namely, that of not compromising her independence "by any means whatever" and of not participating "in the affairs of another Power" (evidently meaning Germany) until her admission into the League of Nations.

Both Germany and Austria, therefore, are bound by the peace treaties,

* The following paper is derived from the author's memorandum on the "Attitude of the United States toward Austria," House Doc. No. 477, 78th Cong., 2d Sess.

¹ Since writing the paper presented here there has come to the author's attention Hans Klinghoffer, *Les aspects juridiques de l'occupation de l'Autriche*, Rio de Janeiro, 1943, which covers many of the points made here, but is not as detailed.

² Carnegie Endowment for International Peace, *The Treaties of Peace, 1919-1923*, New York, 1924, Vol. I, p. 59.

³ Carnegie Endowment, work cited, p. 277.

⁴ Carnegie Endowment, work cited, p. 297.

which provide that the independence of Austria is inalienable except with the consent of the Council of the League of Nations. Needless to say, the Council of the League of Nations has never expressed any approval of the alienation of the independence of Austria by way of its absorption by Germany. From the point of view of conventional international law, therefore, the annexation of Austria by Germany, lacking that consent, is null and void.

But the obligation assumed by Austria in the Treaty of St. Germain is corroborated and strengthened by the so-called Geneva Protocol. The collapse of Austrian currency in 1922 led Austria to appeal to the Council of the League of Nations, which succeeded in negotiating the basis for the signing, on October 4, 1922, at Geneva, of two protocols concerning the financial and economic reconstruction of Austria by the British, French, Italian, Czechoslovak, and Austrian Governments. In the first of these protocols, the four non-Austrian signatories solemnly declared—

That they will respect the political independence, the territorial integrity, and the sovereignty of Austria;

That they will not seek to obtain any special or exclusive economic or financial advantage calculated directly or indirectly to compromise that independence;

and the Austrian Government, on its part, undertook—

in accordance with the terms of Article 88 of the Treaty of St. Germain, not to alienate its independence; it will abstain from any *negotiations* or from any economic or financial engagement calculated *directly or indirectly* to compromise this independence.⁵

Yet within a decade began the efforts of Germany to induce Austria to violate her solemn treaty obligations. The treaty-prohibited *negotiations* between German Reich Chancellor Heinrich Brüning and his Minister of Foreign Affairs, Dr. Julius Curtius, on the one hand, and Austrian Minister of Foreign Affairs, Dr. Johann Schober, on the other hand, led to the proposal of March 19, 1931 (published two days later), for the establishment of a Customs Union (*Anschluss*) of Austria with Germany.⁶ This plan was abandoned on September 3 by its proponents, after the protests of France, Czechoslovakia, Poland, and other nations, on the eve of an Advisory Opinion by the Permanent Court of International Justice at The Hague that such a union would violate the Geneva Protocol of October 4, 1922, between Austria and the group of Powers guaranteeing a League of Nations

⁵ French text and English translation in Manley O. Hudson (ed.), *International Legislation*, Vol. II, pp. 882-883. Italics mine.

⁶ English translation of the Austro-German Protocol of March 19, 1931, in Manley O. Hudson (ed.), *World Court Reports*, Vol. II, pp. 746-748. An account of the final achievement of the Anschluss with its historical background and relevant documents is contained in *Völkerbund*, VIIth year, no. 11-12 (March, 1938) and no. 13 (April, 1938).

loan to Austria.⁷ The failure of the plan led to the resignation of the cabinet of which Schober was a member and the eventual formation by Engelbert Dollfuss of his first cabinet in May, 1932.

When Adolf Hitler became Chancellor of the German Reich on January 30, 1933, he immediately took steps toward the realization of his ambition to unite Austria with Germany, which he had expressed as the foremost goal of his foreign policy when he first embarked on his political career. The very opening lines of Chapter I of *Mein Kampf*, written in October, 1924 and published in 1925, disclosed this intention:

Today I consider it my good fortune that Fate designated Braunau on the Inn as the place of my birth. For this small town is situated on the border between those two German States, the reunion of which seems, at least to us of the younger generation, a task to be furthered with every means and our lives long.

German-Austria must return to the great German motherland, and not because of economic considerations of any sort. No, not even if from the economic point of view this union were unimportant, indeed if it were harmful, it ought nevertheless to be brought about. *Common blood belongs in a common Reich.* As long as the German nation is unable even to band together its own children in one common State, it has no moral right to think of colonization as one of its political aims.⁸

A few months after he became Chancellor, Hitler sent Dr. Hans Frank, Bavarian Minister of Justice, to Vienna to pave the way for the union. His visit was attended by a number of incidents and his deportation from Austria made Hitler realize that he could not achieve his goal by peaceful measures. Then began a series of incidents with increasing intensity which culminated in Germany's violation of her treaty obligations by the forcible seizure of Austria.⁹ That Austria is absolved from any complicity in this treaty violation is evident from an account of the events which led up to it. Dollfuss himself, on the Party Day of the Christian Socialists in May, 1933, expressed himself not only opposed to the *Anschluss*, but even to Austrian National-Socialism.¹⁰ Differences between Berlin and Vienna became accentuated with the acceleration of the German propaganda campaign by the dropping of leaflets from German airplanes over Austrian territory and

⁷ Edwin M. Borchard, The Customs Union Advisory Opinion, this JOURNAL, Vol. 25 (1931), p. 711. Text of Advisory Opinion No. 20, Sept. 5, 1931, in Hudson, World Court Reports, Vol. II, pp. 711-743.

⁸ Adolf Hitler, *Mein Kampf*, New York, 1939 (compl. and unabr. fully annot. Eng. trans.), p. 3. Italics original.

⁹ A popular account of these incidents is given by Harold Nicolson, *Why Britain Is at War*, Harmondsworth, England, 1939, pp. 58-72.

¹⁰ For many of the statements of fact mentioned herein, see the "Chronology" in the World Almanac for the respective year and *Keesings Archiv der Gegenwart* for July 14, 1936, p. 2641, which gives a survey of events from March 31, 1931, to the agreement of July 11, 1936, and *Keesings Archiv* for Feb. 15, 1938, p. 3424, which brings the account up to that date.

by German radio attacks on the Austrian Government. On June 19, 1933, the NSDAP in Austria was dissolved.

An exchange of speeches in the autumn of 1933 between Reich Minister of Foreign Affairs, Konstantin Baron von Neurath, on the one hand, and Austrian Vice Chancellor, Dr. Franz Winkler (who had founded a new party, the National Corporative Front), and Chancellor Dollfuss, on the other, resulted in an exchange of political prisoners, but subsequent Nazi acts of terrorism in Austria led the Austrian Government to complain to Berlin and to report the matter to the League of Nations and the great Powers. Hitler explained his position in the Reichstag on January 30, 1934, declaring:

The assertion that Germany has the intention of forcing Austria is absurd and can not be proved. . . . The German Reich is—if the free will of the Austrian Germanity be completely respected—always ready to stretch the hand to a genuine entente.¹¹

But the German reply to the Austrian complaints was not considered satisfactory by Austria. An abortive Social-Democrat putsch on February 12-16 was followed on February 17, 1934, by a declaration of guaranty of Austrian independence by France, Great Britain and Italy on the basis of a dossier on German interference presented by the Austrian Government. The Governments of these three nations issued an announcement to the effect that they took—

a common view of the necessity of maintaining Austria's independence and integrity in accordance with the relevant treaties.

The Italian Government went further, by concluding with Austria (and Hungary) the Rome Protocol of Good Understanding and Collaboration of March 17, 1934,¹² which, in effect, established Italy as the protector of Austrian independence.

The revolt of the Social Democrats which had been suppressed induced the Austrian Government to devise a method for stricter control of affairs. On April 30, 1934, the Austrian Parliament approved the Federal Constitutional Law of that date,¹³ vesting Federal legislative power, including constitution-legislation, in the Federal Government. The latter was also authorized to regulate the transition to the new order created by the Constitution of May 1, 1934,¹⁴ providing for a "Christian German Federal State

¹¹ German text in *Keesings Archiv* for Jan. 30, 1934, p. 1254.

¹² Italian text and English translation in Hudson, *International Legislation*, Vol. VI, pp. 641-642. Two other Protocols were signed at Rome on March 17 and 23 by the same nations; texts in same, pp. 643-646.

¹³ *Bundesverfassungsgesetz vom 30 April 1934 über ausserordentliche Massnahmen im Bereich der Verfassung*, in the *Bundesgesetzblatt für die Republik österreich*, Vol. I, no. 255/1934, issue 72.

¹⁴ O. Ender, *Die neue österreichische Verfassung, mit dem Text des Konkordates*, Vienna and Leipzig, 1934 (3d ed.). See H. Arthur Steiner, *The Austrian Constitution of 1934*, this *JOURNAL*, Vol. 29 (1935), pp. 125-129.

on a corporative basis," which had been submitted to and approved in advance by the Parliament before it adjourned *sine die* on April 30.

Continued violent moves in Austria supposedly inspired by the German Ambassador in Vienna, Dr. Kurt Rieth, finally culminated in the attempted revolution of July, 1934. The Austrian Government on July 12, had issued an order whereby courts martial would impose the death sentence on terrorist bombers and even those caught in possession of bombs. On July 25 Chancellor Dollfuss was murdered in his room in the Chancery, Vienna, by Otto Planetta, one of a group of 144 Austrian Nazis who had forced their way in, apparently in expectation of capturing the entire cabinet. They were dislodged and captured a few hours later. The murderer and one of the leaders were court-martialed and hanged on July 30. Germany disavowed any connection with the abortive putsch, ostensibly suppressed Nazi activities in neighboring Bavaria and ordered home the German Ambassador in Vienna for indiscreet conduct, replacing him with former Chancellor Franz von Papen. The Austrian Vice Chancellor, Prince Ernst Rudiger von Starhemberg, carried on for a few days until July 29, when Dr. Kurt Schuschnigg, Minister of Justice, was made Federal Chancellor and formed a cabinet. Both were opposed to the ideology of the *Anschluss*.

Relations between Austria and Germany continued to attract the attention of the great Powers. The Governments of France, Great Britain, and Italy felt it necessary, on September 27, 1934, to renew their declaration of guaranty of Austrian independence.¹⁵ Again, on January 7, 1935, France signed an agreement with Italy providing for consultation in case of a threat to Austrian independence,¹⁶ to which Great Britain acceded on February 3.¹⁷ The consultative agreement was confirmed by the Stresa Conference on April 13. It was perhaps the activities of these three nations in behalf of the maintenance of Austrian independence which induced Hitler, on May 21, to declare, in a lengthy address before the Reichstag, that—

Germany has neither the intention nor the wish to interfere in the internal affairs of Austria, to annex it, or to realize the *Anschluss*.¹⁸

Chancellor Schuschnigg replied in an address before the Austrian Federal Diet on May 29¹⁹ and a month later Vice Chancellor Prince Starhemberg in an interview with the Budapest *Az Est* formulated the conditions for the return of Austro-German relations to normalcy.²⁰ A Press Agreement between Germany and Austria was signed on August 27, 1935,²¹ and the

¹⁵ *Keesings Archiv* for Feb. 15, 1938, p. 3424; text in G. Fr. de Martens, *Nouveau recueil général de traités*, 3d ser., 39, p. 3.

¹⁶ Text in *The Times*, London, Jan. 12, 1935, p. 11.

¹⁷ *Keesings Archiv* for Feb. 15, 1938, p. 3424.

¹⁸ Same for May 21, 1935, p. 2052. The German text of the entire speech is printed here.

¹⁹ Same for May 30, 1935, pp. 2067 ff.

²⁰ Same for June 28, 1935, p. 2114.

²¹ Same for Aug. 27, 1935, p. 2197.

two countries joined in the celebration on April 21, 1936, of the bicentenary of the death of Prince Eugen of Savoy.²² Relations seemed to be improving. On July 11, 1936, an agreement was signed between Germany and Austria, whereby—

(1) In the sense of the statement made by the Führer and Reich Chancellor on May 21, 1935, the German Government recognizes the full sovereignty of the Austrian Federal State.

(2) Each of these two governments shall regard the internal political conditions of the other country, including the question of National Socialism in Austria, as a domestic concern of that country, on which it will not exercise any influence, either directly or indirectly.²³

Austria, on the other hand, "acknowledged herself to be a German State," but added that this would not affect the position of Austria in regard to Italy as defined by the Rome Protocol of 1934 and its additional clauses of 1936.

This apparently amicable official relationship was ruptured on January 26, 1938, when Dr. Josef Tavs, Secretary of the "Committee of Seven," the established but legally unauthorized Nazi organization in Austria, was arrested by the Austrian Government. The papers found in his apartment showed that a widespread rising had been planned, including written instructions signed by "R. H." (Rudolf Hess, Hitler's Deputy) ordering Tavs to create disorders in Austria in the first weeks of April. Under the plan,²⁴ the moment a shot was fired by order of the Schuschnigg Government to restore order, German troops which would be concentrated on the Austrian border under the excuse of maneuvers, would enter Austria for the purpose of "preventing bloodshed." The arrest of Tavs and the seizure of this compromising document upset the German plan temporarily.

On February 12, 1938, Federal Chancellor Schuschnigg, in company with Dr. Guido Schmidt, State Secretary for Foreign Affairs, and von Papen, German Ambassador in Vienna, paid a visit, in the presence of Reich Minister of Foreign Affairs, Joachim von Ribbentrop, to Hitler at Berchtesgaden in Obersalzburg at the latter's invitation.²⁵ Von Papen had assured Schuschnigg that all that was needed to adjust the relations between Germany and Austria was a frank and friendly conversation.²⁶ Schuschnigg

²² Same for April 21, 1936, p. 2522.

²³ *Völkerbund*, VIIth year, no. 11-12 (March, 1938), p. 150. Cf. *New York Times*, July 12, 1936, p. 1; *The Times*, London, July 13, 1936, p. 14.

²⁴ The main outlines of the plan are set forth in Eugene Lennhoff, *The Last Five Hours of Austria*, London, April, 1938, pp. 75-76.

²⁵ *Keesings Archiv* for Feb. 12, 1938, p. 3418; *Völkerbund*, VIIth year, no. 11-12 (March 1938), p. 150. The forcible seizure of Austria was foreshadowed two days earlier, Feb. 10, 1938, when Germany announced its intention to recognize "Manchukuo," which had been similarly forcibly seized by Japan. A treaty between Germany and "Manchukuo" was signed at Berlin on May 12, 1938. *Christian Science Monitor*, May 12, 1938, p. 1; Green H. Hackworth (ed.), *Digest of International Law*, Vol. I, p. 338.

²⁶ See Lennhoff, work cited, pp. 79-81.

brought with him the portfolio containing the case against Tavs, showing a violation of the Agreement of July 11, 1936, by Hitler's agents. This enraged Hitler, who declared that Schuschnigg himself had violated the July Agreement by his persecutions of the Austrian Nazis. He demanded the appointment of Dr. Artur Seyss-Inquart, President of the German-Austrian Volksbund and a prominent Nazi, to such position in the Austrian Government as would place him in charge of the whole Austrian police force.

A joint official communiqué published at Berlin and Vienna on February 15, 1938, after the Berchtesgaden interview stated:

The object of this conversation was to clear up difficulties which had arisen in the execution of the Agreement of July 11, 1936. It was agreed that both parties were determined to keep to the principles of the Agreement and to regard it as a point of departure for a satisfactory development of relations between the two States.²⁷

Early on the morning of the following day, in conformity with the conversation at Berchtesgaden, Seyss-Inquart entered the cabinet as the representative of the national opposition in the position of Minister of Interior and Minister of Public Safety, Dr. Schmidt (also a prominent Nazi) became Minister of Foreign Affairs and several other changes were made. Immediately after the formation of the new cabinet amnesty was officially proclaimed for Austrian Nazi prisoners (including Tavs).²⁸

Two days later another official communiqué published simultaneously at Berlin and Vienna declared:

By reason of the agreement concluded on 12 February 1938 at Berchtesgaden between the Austrian Federal Chancellor and the German Reich Chancellor, the Austrian National-Socialists shall henceforth have the possibility of legal activity within the ranks of the Patriotic Front and all other Austrian organizations. This activity can be exercised *only on the basis of the Constitution*, which excludes, after as before, the formation of political parties, and on a foot of equality with all other groups. *Measures will be taken by the Reich, in execution of the interdiction in force, to exclude all interference of the organizations of the [National-Socialist] Party in the internal affairs of Austria*, in order to contribute thereby to a satisfactory development.²⁹

In the succeeding days the difficulties in the solution of the problem of dealing with the activities of the Austrian Nazis grew from bad to worse. The situation was aggravated by the strained relations of Great Britain with Italy over the latter's failure to give guaranties as to the withdrawal of Italian volunteers from participation in the civil war in Spain. Britain could hardly be expected to take any strong action in the Austrian matter

²⁷ *Völkerbund*, issue cited, p. 151; *Keesings Archiv* for Feb. 16, 1938, p. 3425.

²⁸ Same, p. 3426. This idea was developed by Schuschnigg in the course of a lengthy address on Feb. 24, 1938. *Keesings Archiv* for Feb. 24, 1938, pp. 3439-3444. For an account of Schuschnigg's visit to Berchtesgaden and its results, see Lennhoff, work cited, pp. 82-101, and *Keesings Archiv*, *passim*.

²⁹ *Keesings Archiv* for Feb. 18, 1938, p. 3428. Italics mine.

except in coöperation with Italy. It was the unsatisfactory relations with Italy which were partly responsible for the resignation of Foreign Secretary Anthony Eden on February 20.

On the evening of Wednesday, March 9, Schuschnigg announced in a speech to the Tyrol leaders of the Patriotic Front which was broadcast from Innsbruck that a plebiscite would be held on the following Sunday, March 13, for the Austrian people to vote on the following question:

For a free and German, independent and social, for a Christian and united Austria! For peace and work and legal equality of all, who confess their adherence to the people and fatherland [of Austria].³⁰

Those entitled to vote in the plebiscite were limited to Austrian Federal citizens, who were born at the latest in the year 1914 and therefore 24 years of age.

Two days later Dr. Hugo Jury, Deputy Leader of the *Volkspolitische Referat* (an organization representing the so-called "national" elements of the Patriotic Front), recommended that the National-Socialists abstain from participation in the plebiscite, chiefly on the ground that—

by omitting two of the most important principles of the new Austria from the plebiscite question, namely, the authoritarian leadership and the corporative organization of Austria, the way was opened up to the democratic form of State and thereby to the Popular Front and the Bolshevization of our beloved fatherland.

He also maintained that Article 65 of the 1934 Constitution authorized a plebiscite only by the Federal President and not by the Federal Chancellor.³¹

The official position on this last point was that Article 65 was not applicable here, since it provided only for cases in which the people were called to vote on Federal legislation, but Article 93, which provides that—

The Federal Chancellor determines the directives of policy. Within these directives each Federal Minister directs independently the branch of affairs entrusted to him.³²

In an authoritarian state, the official position maintained, it was left absolutely to the discretion of the head of the Government to determine the moment and manner, according to his understanding of the general political

³⁰ English translation of proclamation of Schuschnigg in *Völkerbund*, issue cited, p. 152; cf. *Keesings Archiv* for March 9, 1938, p. 3466, which also gives the procedure and details for the holding of the plebiscite. For an account of how the news "broke" in Vienna, see also Lennhoff, work cited, pp. 120-133.

³¹ *Völkerbund*, issue cited, pp. 153-154, which gives an English translation from *Wiener Neueste Nachrichten*, the morning edition of which was confiscated because of Dr. Jury's article. Cf. *Keesings Archiv* for March 11, 1938, p. 3468. Article 65, par. 1, provides that "The people shall be called to vote, when the Federal Government decides", etc., mentioning three instances of Federal legislation. Ender, work cited, p. 61. On the morning of March 11 an Austrian Nazi newspaper maintained that the proposed plebiscite was illegal and unconstitutional: Lennhoff, work cited, p. 30.

³² Lennhoff, work cited, p. 71.

situation, for putting to the proof whether his political directives were in harmony with the will of the people.³³

Another argument which the Nazis invoked against the plebiscite was the provision according to which the age limit of persons entitled to vote was fixed at 24 years. This objection is not precisely of a juridical nature. As the 1934 Constitution contains only a single provision, namely, Article 65, paragraph 2, fixing the age-limit for participation in a plebiscite, and that only on the matters enumerated in paragraph 1 of the same article, at 24 years, it goes without saying that by analogy the same age limit was fixed for a plebiscite juridically based on Article 93. Rather does the objection seem to have been based on political considerations, since the 24-year age limit would have debarred a great number of youthful National-Socialists.

After the actual annexation the additional reason was alleged that the plebiscite ordered by Chancellor Schuschnigg never had received the assent of the Ministers who represented the so-called national elements (more exactly, the National Socialists) and that consequently it constituted a violation of the Berchtesgaden agreement. This argument, invoked by both Ministers Seyss-Inquart and Dr. Edmund Glaise-Horstenau, is juridically unimportant and inaccurate, as is proven by the exchange of letters between Seyss-Inquart and Minister Guido Zernatto on March 9, 1938, on the one hand, and the reply and declarations of Chancellor Schuschnigg on March 10 and 11, on the other.³⁴

Seyss-Inquart's letter to Zernatto mentions without any equivocation the conditions under which Seyss-Inquart and the Austrian Nazi elements represented by him would be prepared to give their assent to the holding of the plebiscite announced by the Federal Chancellor. It reads:

. . . I am bound, in conformity with my duties, but also in consideration of the responsibility which I assume as Minister of Interior and of Public Safety, to request for the plebiscite for the observance of the following conditions:

The plebiscitary procedure should take place in all the states according to an identical plan, the observance of which is incumbent upon the Minister of Interior. In each of the district commissions he would have one man of trust from the offices of the Volkspolitische Referat. The vote will be secret. For this purpose, there will be voting booths. The ballot will be cast in a closed envelope. The casting of an envelope containing a blank ballot or a ballot with remarks other than the addition of the affirmative or negative vote will be considered and counted as invalid votes.

In the partial results as well as in the total result, the numbers of persons entitled to vote, persons who have participated in the vote as well as the number of affirmative, negative, and invalid votes should be set out. The different groups will have the liberty of giving instructions in meetings and by way of distribution of tracts. The voters shall

³³ *Keesings Archiv* for March 11, 1938, p. 3468.

³⁴ Printed in Guido Zernatto, *Die Wahrheit über Oesterreich*, New York and Toronto, 1939. Zernatto owns the original letters included in this correspondence.

not march in processions to the places in question, but individually. No manifestation shall take place on the day of the plebiscite. The protection of the plebiscite shall be entrusted exclusively to the executive forces.

On condition that the plebiscite is conducted as indicated above, I shall be in position to give it my consent following the obligation I assume in connection with Article 2, paragraph 3, of the Berchtesgaden agreement and I believe, moreover, I can guarantee, as Minister of Public Safety, the conduct of the plebiscite in peace.

Chancellor Schuschnigg, in replying to these passages of Seyss-Inquart's letter, declared:

4. The same procedure for the plebiscite in the different states is guaranteed;

5. The execution of the plebiscite is entrusted to the governors of the state as heads of the delegated Federal administration;

6. The offices of the Volkspolitische Referat shall be represented by their men of trust in the plebiscitary commissions;

7. The vote shall be secret;

8. The technical procedure of the plebiscite shall be conducted in conformity with the proposals of the Minister of Public Safety. These proposals differ only in a few insignificant details from the provisions already ordered;

9. No group shall be granted the liberty of giving instructions, of holding meetings or conducting propaganda by way of distributing tracts. According to the Constitution, no political parties exist. The National-Socialists have been admitted on a footing of equality with the other groups of the Patriotic Front. As there is no group of the Front enjoying the liberty of giving particular instructions, no exception can be made for the National-Socialists;

10. No provision is made for the formation of parades by the participants in the plebiscite;

11. Provision has already been made for the interdiction of all manifestation on the day of the plebiscite;

12. The provisions already ordered provide that the protection of the plebiscitary procedure shall be assumed exclusively by the executive organs of the state;

13. The assent of the Minister of Public Safety to the organization of the plebiscite is not necessary. The Federal Chancellor nevertheless accepts with his thanks the declaration of this assent;

14. The Federal Chancellor is content to learn that the Minister of Public Safety is prepared to guarantee that the plebiscite shall be conducted in peace. . . .³⁵

Thus, Dr. Seyss-Inquart and the Nazi elements represented by him had consented in formal fashion that a plebiscite under the form proposed by the Federal Chancellor should be organized and the assertion of the Minister of Interior that he had not been informed of the Chancellor's project was notoriously untrue. On the evening of March 10, an interview between the

³⁵ Zernatto, work cited, pp. 289 ff.

Federal Chancellor and Minister Seyss-Inquart took place, at which Seyss-Inquart once more declared that he was able to guarantee that the plebiscite would be conducted in peace. Moreover, he himself proposed to make a radio speech the next day to recommend to the "national" elements their participation in the plebiscite.³⁶

In the early afternoon of Friday, March 11, an ultimatum to Schuschnigg from Berlin presented by Seyss-Inquart and Glaise-Horstenau demanded that the announced plebiscite be indefinitely postponed.³⁷ An hour later, Schuschnigg refused to accept it unless the Nazis would refrain from disturbing order. Hitler was dissatisfied with this and sent a second ultimatum, reiterating his demand for the indefinite postponement of the plebiscite and further demanding the resignation of Schuschnigg and the appointment of Seyss-Inquart as Chancellor in his place.³⁸ At 6:15, it was officially announced that the plebiscite was indefinitely postponed.³⁹ But the Nazis were still not satisfied with this compliance.

At 6:45 p.m., a third ultimatum, which had been flown from Berlin, was presented to Schuschnigg by Wilhelm Keppler, Hitler's representative in Vienna on special mission. The demands included the appointment of Seyss-Inquart as Chancellor of a majority National-Socialist Government and the establishment of the NSDAP as a legal party in Austria. The ultimatum referred to the presence of the Seventh Reichswehr Corps at the frontier⁴⁰ and gave Schuschnigg until 8 p.m. to make his decision, otherwise

³⁶ Zernatto, work cited, p. 295.

³⁷ Their attitude in presenting this ultimatum under the threat of withdrawing from the cabinet and declining all responsibility for anything that might subsequently happen, in direct contradiction to the assurances that had been given the preceding day, was determined by the orders that the two Ministers, according to their own testimony, had received from the Reich Government. Seyss-Inquart received his instructions by telephone from Göring and Hess and declared that decisions would henceforth be made in Berlin and his only mission would consist in "transmitting the orders without the slightest influence on the contents thereof." Zernatto, work cited, pp. 307 and 309. Thereby they violated not only their oath, taken in conformity with Article 84, par. 1, of the Constitution, but also Article 93. Their attitude might also be considered to constitute high treason under Section 58 (c) of the Austrian Penal Law, which provides that he commits the crime of high treason who acts in a way "to provoke or increase an external danger for the State or a revolt or a civil war within."³⁸ Lennhoff, work cited, pp. 185-186.

³⁹ *Keesings Archiv* for March 11, 1938, p. 3468; Lennhoff, work cited, p. 196. In the evening of March 11 the German radio commenced to spread the "news" of alleged Communist troubles in Austria to justify the entry of German troops which apparently had been ready since Monday, March 7, that is, two days before Schuschnigg's announcement of the plebiscite.

⁴⁰ Von Ribbentrop had explained to Lord Halifax in London that the concentration of German troops along the Austrian border was merely as "a measure for the protection of the German frontier!" Lennhoff, work cited, p. 197. The *Deutsche Nachrichtenbüro* subsequently broadcast a communiqué in which the Reich Government formally denied the sending of an ultimatum to the Austrian Federal Government demanding the formation of a National-Socialist Cabinet, declaring this demand had proceeded from Austrian sources: *Völkerbund*, issue cited, p. 154.

the German troops would enter Austria that same evening, in order "to shed no blood in Austria."⁴¹ At 7:50, shortly before the ultimatum expired, Schuschnigg spoke over the radio as follows:

Today we have been faced with a difficult and critical situation. I am instructed to report to the people of Austria on the day's events. The Government of the German Reich has presented to the Federal President an ultimatum, with a fixed time-limit, demanding the appointment of a candidate of its own choice for the post of Chancellor and the formation of a Government in accordance with the proposals of the German Reich Government. In the event of a refusal, it is intended that German troops shall march into Austria at this hour.

I place on record before the world that the reports spread in Austria to the effect that labor disturbances have broken out, that there has been serious bloodshed, that the Government is no longer in control of the situation and has not been able to maintain order, are inventions from beginning to end.

The Federal President instructs me to inform the Austrian people that we are yielding to force.

Determined at all costs even in this grave hour to avoid shedding German blood, we have issued orders to our armed forces in the event of an invasion to withdraw without serious resistance, without resistance, and to await the decision within the next few hours. The Federal President has placed General Schilhawsky, Inspector General of Troops, in command of the army. All further orders to the armed forces will be given by him.

And so I take leave of the Austrian people at this hour with a German word of farewell and a heartfelt wish: "God protect Austria!"⁴²

At 8:20, Seyss-Inquart, as Minister of Interior and Public Safety, in a radio address appealed to the Austrian people to preserve peace and order and reminded them especially "that there must be no question of resistance, even on the part of the executive, against the German army, which is very possibly approaching,"⁴³ and at the same time sent the following unprecedented request to Hitler to dispatch German troops:

The provisional Austrian Government, which, after the resignation of the Schuschnigg Government, sees as its task the restoration of peace and order in Austria, addresses to the German Government the urgent request to support it in its task and to help it in preventing bloodshed. For this purpose it asks the German Government for the dispatch of German troops at the earliest possible time.⁴⁴

⁴¹ Lennhoff, work cited, p. 208.

⁴² English translation in Lennhoff, work cited, pp. 213-214; and *Völkerbund*, issue cited, p. 154; repetition occurs in the original. German text in *Keesings Archiv* for March 11, 1938, p. 3468.

⁴³ *Völkerbund*, issue cited, p. 155; *Keesings Archiv* for March 12, 1938, p. 3469; Lennhoff, work cited, pp. 215-216. The German troops had already left Munich at 1 p.m.

⁴⁴ *Völkerbund*, issue cited, p. 155; *Keesings Archiv* for March 12, 1938, p. 3469; Lennhoff, work cited, p. 236. It would seem to have been unnecessary for a National-Socialist Government which, according to the subsequent plebiscite of April 10, had the support of 99.73 per cent of the population, to have required the assistance of foreign troops, including planes and tanks, to maintain peace and order against the remaining 0.27 per cent.

From the time of Schuschnigg's final radio broadcast, President Miklas must have been held incommunicado in "protective custody," since no statement of his whereabouts was available. At 1:30 a.m., on Saturday, March 12, from the balcony of the Federal Chancery, Dr. Jury announced the appointment of Seyss-Inquart, who had been requested by the Federal President, "under pressure of the internal political situation," to take over the office of Federal Chancellor. At the same time eight others were named as members of the new National-Socialist Government.⁴⁵ Later on in the morning Miklas is said to have been conducted back to the Chancery under the "protective" guard of the Austrian Nazi Storm troopers.

Meanwhile, Hitler left Munich, whither he had flown from Berlin, and by auto crossed the Salzach River into Austria at Braunau am Inn, his birthplace, at 3:50 p.m., on March 12, paused there a while and then proceeded to the Danube and crossed the river to Linz, where he arrived at 8 p.m. and was greeted by Seyss-Inquart as "Mein Führer und Reichskanzler" in an address, in which he extended thanks to Hitler "from the hearts of millions of Austrians" and "at the same time solemnly declared that Article 88 of the [St. Germain] Peace Treaty is ineffective." This was the article guaranteeing Austrian independence. Hitler himself made a brief reply of thanks to the "German compatriots," referring feelingly to "the restoration of my homeland to the German Reich" and declaring:

You see in the German soldiers, who from all sections of the Reich are on the march at this hour, ever-ready and ever-willing fighters for the unity of the entire great German people, for our liberty, for the might of our Reich, for its greatness and for its grandeur now and forever.⁴⁶

On the morning of Sunday, March 13, 1938, the Seyss-Inquart Government "resolved" a Federal Constitutional Law, proclaiming (Art. 1) that "Austria is a state (*Land*) of the German Reich" and providing (Art. 2) for a plebiscite on April 10, 1938, on reunion with the German Reich.⁴⁷

On this annexation of Austria by Germany, the late Professor James W. Garner succinctly and accurately commented:

. . . it is of course true that Austria made no resistance to the German invasion but its Government protested and the German Reich's Chancellor refused to permit it to hold a plebiscite to determine the question whether the Austrian people desired to be annexed to Germany, after which a German army occupied the country and the Government of Austria was forcibly replaced by a Nazi regime set up by the German authorities. The Austrian Government so established, thereupon promulgated on March 13 a "constitutional law" proclaiming the

⁴⁵ *Völkerbund*, issue cited, p. 155; *Keesings Archiv* for March 12, 1938, p. 3469; cf. Lennhoff, work cited, pp. 232 and 236.

⁴⁶ English translation of both addresses in *Völkerbund*, issue cited, pp. 156-157; German text in *Keesings Archiv* for March 12, 1938, pp. 3470-3471.

⁴⁷ German text in *Keesings Archiv* for March 13, 1938, p. 3471; English translation in U. S. Dept. of State, Press Releases, Vol. 18, p. 374, and *Völkerbund*, issue cited, p. 1.

union of Austria with Germany. It is submitted that to hold under these circumstances that annexation thus brought about was not the result of force directed from Germany would be to ignore the actual procedure for forms the hollowness of which is as clear as daylight.⁴⁸

A logical conclusion from the above presentation would seem to be that the Austrians are entitled to the same rights and privileges as are extended to the Czechoslovaks, Poles, Danes, Dutch, Norwegians, and nationals of other overrun countries. To bring this down to practice, it might reasonably be argued, for instance, that just as German and Italian prisoners of war are segregated from each other, so Austrian prisoners of war should be segregated from German prisoners of war. This need not necessarily mean the freeing of the Austrian prisoners, but would be merely a matter of administration consistent with the policy of the United States toward the alleged "annexation" of Austria by Germany.

What might be regarded as somewhat of a precedent for such action, although possibly it was not applicable to prisoners of war, is presented by the treatment of the Poles who were natives or citizens of Austria in World War I. Although the Polish National Committee, which had been organized with headquarters in Paris under the presidency of Roman Dmowski, was not extended recognition "as an official Polish organization" by the United States Government until November 10, 1917,⁴⁹ the United States Government did not regard some Poles as alien enemies long before this. Austria-Hungary at that time was one of the belligerent Central Powers, but as early as June 29, 1917, Assistant Attorney General Charles Warren informed the Secretary of State that—

Austrian citizens other than natives of Germany, and natives of Austria other than citizens or subjects of Germany are not being classed as alien enemies.⁵⁰

Once the Austrian prisoners of war were segregated from the German prisoners of war, the way would be open for a sifting of the anti-Nazi Austrians impressed into German military service against their will from the pro-Nazi Austrians and the gradual release of the former from the restrictions retained for the latter. Here again, the precedent mentioned above offers a basis for such action. Although some Poles were considered to fall within the definition of the words "alien enemy" by the terms of Section 4067 of the *Revised Statutes*, Assistant Attorney General Warren stated that—

It is needless to add, however, that in the matter of granting permits to all such as are within the terms of the statute due consideration is being paid to their sympathies and affiliations in this war.⁵¹

⁴⁸ James W. Garner, Questions of State Succession Raised by the German Annexation of Austria, this JOURNAL, Vol. 32 (1938), p. 422.

⁴⁹ U. S. Foreign Relations, 1917, Supp. 2, Vol. I, p. 778; Hackworth, work cited, Vol. I, p. 215.

⁵⁰ U. S. Foreign Relations, 1918, Supp. 2, p. 206.

⁵¹ Same.

It is beyond the scope of this study to go into detail with regard to the beneficial effects of this and related acts toward the successful conduct of the present war, to its beneficial propaganda possibilities for the nations still subject to Germany's domination, to the possibility of drawing volunteers for the armed forces who are highly trained in German military science,⁵² possibly an Austrian unit like those of the other "free" governments fighting for the liberation of their countries, or to the possibility of organizing from some outstanding emigré Austrian statesmen who can prove some legal connection with the last legal Austrian Government a Free Austrian Government-in-Exile. Striking corroboration of many of the points established has been furnished by the Declaration on Austria signed at Moscow by the foreign secretaries of the Governments of the United Kingdom, the Soviet Union and the United States of America, and published on November 1, 1943, in which it was declared that the three Governments—

are agreed that Austria, the first free country to fall a victim to Hitlerite aggression, shall be liberated from German domination.

They regard the annexation imposed on Austria by Germany on March 15, 1938, as null and void. They consider themselves as in no way bound by any changes effected in Austria since that date. They declare that they wish to see reestablished a free and independent Austria and thereby to open the way for the Austrian people themselves as well as those neighboring states which will be faced with similar problems, to find that political and economic security which is the only basis for lasting peace.

Austria is reminded, however, that she has a responsibility, which she cannot evade, for participation in the war at the side of Hitlerite Germany, and that in the final settlement account will inevitably be taken of her own contribution to her liberation.⁵³

In the eyes of the Moscow signatories, Germany's annexation of Austria was "imposed" and therefore, "null and void," they are in no way bound by any changes effected since Hitler's invasion of Austria and they wish to see "a free and independent Austria" reestablished. The concluding paragraph of the same Declaration supports the suggestion made at the end of the above presentation concerning the utilization of Austrian soldiers in the fight for the liberation of Austria. The contention made above was simply for the possibility of such utilization, whereas the Moscow Declaration speaks of an inescapable obligation—"a responsibility, which she [Austria] cannot evade."

⁵² This would not violate Article 23 of the Regulations concerning the Laws and Customs of Land Warfare attached to Hague Convention IV of Oct. 18, 1907, that "A belligerent is also prohibited from compelling the nationals of the adversary to take part in military operations against their country, even in case they were in his service before the commencement of the war" any more than the utilization of Free French soldiers who escaped from forced German military service and for the same reason, that, since they would be volunteers, there would be no compulsion. This JOURNAL, Vol. 2 (1908), Supplement, p. 107; U. S. Foreign Relations, 1907, Pt. 2, p. 1211.

⁵³ U. S. Congress, 78th Cong., 1st sess., Congressional Record, Vol. 89, no. 164 (Nov. 1, 1943), p. 9026; U. S. Dept. of State, Publ. 2162 (War Documents), p. 14.