

IMLA GOES TO BERLIN: CELEBRATING THE FALL

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In a culture seemingly blinded by minute-to-minute political vignettes, it is easy to lose sight of far more transformative historical events. One such epochal moment occurred 30 years ago, as the entire world order seemingly shifted overnight: the fall of the Berlin Wall on November 9, 1989.

Under the auspices of IMLA's International Committee, twenty-seven IMLA members and guests were privileged to travel to Germany's capital city in November for the week celebrating the 30th anniversary of "Mauerfall." Our consensus is that the experience was was overwhelmingly worthwhile. We spent many hours in the environs of Friedrichstrasse, where East Berliners first stormed past guards and through the totalitarian barrier. We touched on the Wall's antecedents--a madman's instigation of World War, and the rapid deterioration of a wartime alliance as Soviet socialism emerged. We toured Berlin's soaring capitol building at the heart of the European Union and the NATO alliance. And we received curated programming about issues relevant to American communities—cyber security, personal data protection, smart cities, immigration, human rights and more. All of this was interspersed with individual forays into Germany's culture, arts, gastronomy, and social fabric.

The History: The elements that would lead to a divided Berlin are relatively well-known: Hitler's rise—first as a duly elected minor official, then as a guileless political sorcerer—leading to genocide and a global conflict that would leave 70 million dead; Stalin's brutal determination to establish a subjugated communist bloc; the severing of 30 percent of German citizens from the free world; and finally the erection, in 1961, of a massive physical barrier to prevent further emigration of East Germans, the most notorious segment of which divided the people of Berlin by means of two impenetrable cement walls framing a 100-yard, landmine-filled "death strip" where hundreds of would-be escapees were gunned down over the years.

History tells us that the promised miracles of centrally- controlled economies did not materialize. A trip to Berlin's East German Museum amply illustrates that in the decades after World War II, life for the average citizen behind the Iron Curtain was a series of shortages and deprivations. Indoor sanitation was absent in many dwellings and consumer goods, abundantly available in Western markets, remained stubbornly beyond reach. As the 1980s came to a close, anti-communist, pro-democratic outbursts convulsed through Warsaw Pact countries including Czechoslovakia, Poland, Hungary, Bulgaria, and Romania. Mikhail Gorbachev's new policy of *perestroika* revealed Moscow's grudging concession to capitalist principles, and the German Democratic Republic was informed that it could no longer rely on the Soviet Union for fiscal solvency. East Germany was in economic and political crisis.



In October 1989, disenchanted East Germans marched by the tens of thousands through the streets of Leipzig. The next month, nearly a million massed in East Berlin, with the Wall squarely in focus.

The Mayor's Story: What may not be as familiar are the specific incidents leading to the breaching of the Wall on November 9, 1989. In an indelible gathering three days before the anniversary, IMLA members were treated to a private dinner with Walter Momper, who was Mayor of West Berlin at that fateful moment in history. As Mayor Momper described, late in the afternoon of November 9, Günter Schabowski, a senior official in the GDR's ruling Socialist Unity Party, held what appeared to be a routine press briefing. In an unscripted moment, he was asked about reports that East German leadership was considering acceding to citizens' demands for greater access to the West. The GDR official was able to confirm that this prospect was under consideration, but he had not attended the most recent governmental discussions on changing travel policies. When asked *when* such a change might become effective, he rapidly scanned a written policy statement he had been handed —and misread an announcement presumably intended for the next day, to be broadcast only after East German leaders had cleared the specifics with Moscow and alerted border guards. He mistakenly responded "immediately."

Stunned reporters rapidly passed the information to the masses. Hundreds of East Germans soon converged at Checkpoint Charlie, the most famous of several passages through the Wall. The swarm vociferously insisted to be let through and violence appeared imminent. The confused GDR border authorities, lacking clear instructions from superiors, apparently had only two choices—to shoot their countrymen *en masse*, or allow them passage. They chose the latter. Within hours, a trickle of crossings became a torrent as thousands of East Berliners streamed across the border, becoming reacquainted with relatives and friends and a world of abundance that had long been foreclosed. A few sections of Wall were rapidly felled at the iconic Brandenburg Gate as worldwide media looked on.

Although it would take two years for the despised barrier to be fully dismantled, the Berlin Wall was effectively obsolete on November 9, 1989—the most overt indication of a far more profound collapse of Soviet socialism. Less than a year later, Germany would be reunified, erasing more than four decades of forced separation.

Mayor Momper told his story from the perspective of an elected leader responsible for the safety and order in his municipality. While he had anticipated a large influx of East Berliners, he could not have imagined the throngs that would fill his city, creating immense logistical problems and straining virtually all city services. His personal anecdote, aided by actual footage of the infamous press briefing and delivered in a small private dining room only blocks from Checkpoint Charlie, was itself worth the trip.

Sachsenhausen: Two days before our inspiring dinner with the Mayor, the IMLA group experienced a far different chapter in Germany's past. A duo of spotless buses ferried us for a one-hour journey to Oranienburg, a small town located 25 miles north of Berlin. The burg's narrow roads passed trim houses and small garden plots before ending at a large parking

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area adjoining another high wall. This was Sachsenhausen, a Nazi camp built in 1936 to hold a large spectrum of humanity deemed to be inconsistent with the maniacal aims of the Third Reich. Intellectuals, communists. homosexuals, immigrants, nonconformists—and Jews, by the thousands—were brought here, conveyed through the town from the train station in plain view of the residents. We walked into the massive facility through iron gates emblazoned with "Arbeit Macht Frei" and followed a knowledgeable docent for more than two hours as every aspect of the institution's unimaginable cruelty was revealed. While Sachsenhausen never operated on the scale of far more notorious remote death camps such as Auschwitz, tens of thousands were exterminated here, within a stone's throw of the town's day-to-day activities.

This excursion raised many unanswered questions, foremost among them being how such inhumanity could possibly have been supported—or at least ignored—by so many. The German government is determined to expose this history; the Memorial to the Murdered Jews of Europe, an arrangement of massive coffin-like stone rectangles, occupies several acres in the middle of Berlin near the Brandenburg Gate, and a trip to camps like Sachsenhausen is mandatory for all German schoolchildren, many of whom were there during our visit.





In Kennedy's Footsteps: Another morning saw the group taking a short ride on U-Bahn numbers 6 and 2 to Schöneberg, a picturesque residential borough outside Berlin's curent city center. There, we climbed stairs in the local Rathaus, which served as Berlin's City Hall prior to Soviet partition, a to a large room where we were warmly welcomed by the District Mayoress, Mrs. Angelika Schöttler. That building is a source of particular pride to Americans; from its portico in June 1963, shortly after the Wall had severed Berlin, John F. Kennedy delivered his "Ich bin ein Berliner" message to the enthusiastic support of thousands.

The Reichstag after Dark: Our activities were not confined to daylight hours. As the IMLA group awaited our 8pm entry slot before the security facility adjoining Berlin's Reichstag—the nation's capitol building that provides tours until 10 pm each weeknight—we noticed a collection of what appeared to be broken pieces of slate, standing vertically in a long row. Inspection revealed that these were actually thin steel plates bearing the names of 96 German legislators who died "unnaturally" between 1933 and 1945--a precursor to the larger history lesson to be rendered within. Upon entering the Reichstag, an enormous modern structure with soaring walls of glass immediately revealing the legislative chamber itself, we quickly learned from another excellent docent about the building's darker past. As Hitler's rise accelerated in the 1930's, a major obstacle stood in his way—the people's elected representatives. In 1933, a mysterious fire tore through the Reichstag, gutting it and paralyzing the legislature. The Nazi party falsely blamed a Communist for the arson, executed him, and began a crackdown on Communists and others considered inimical to Hitler's aspirations. The vertical plates we had seen outside were a tribute to the many public servants who were murdered in this campaign.

The Reichstag also evidences the struggle which ultimately righted the German ship of state. Portions of the building still bear the marks of bullets and shrapnel fired as the Nazis fought annihilation near the War's end, and the signatures and salutations of exultant Soviet soldiers remain scrawled on several concrete walls. Like the American flag raising over Mount Suribachi, the iconic image of the Soviets' hammer and sickle flying above the Reichstag in May 1945 heralded the allies' victory in Berlin. Today, the structure houses a vibrant democratic institution. It is architected to feel accessible and transparent, figuratively and literally--we walked directly past Angelica Merkel's office. The immense legislative chamber, a gradual bowl ending at a large dais under a massive metallic eagle sculpture, accommodates all 709 members of the current Bundestag, with room for several hundred spectators. And the building's signature piece—a glass covered globe rising high above the city, rewards visitors with a spectacular view from a spiraling walkway.

The Trabi Tour: On our last day, those of us who had elected to pay an extra 79 euros joined a "Trabi Safari." From 1957 to 1991, a plant in Zwickau, East Germany, produced slightly more than three million of the Trabant—a noisy, antiquated two-cylinder, two-stroke 500cc automobile. Constructed of "duroplast," a peculiar cotton fiber/resin plastic shell affixed to a steel frame, the Trabi's 25-horsepower engine was barely more muscular than today's riding lawnmowers. Although the

pride of East Germany, even into the 1980's the Trabant had no tachometer, no indicator for the headlights or turn signals and no rear seat belts—and drivers had to pour a mix of gasoline and oil into the vehicle. Because East Germans had to wait for up to 10 years to obtain a Trabant off the waiting list, used Trabis—available immediately from a private seller—were worth more than the purchase price for a new one.

A small group of intrepid IMLAers assembled at the Trabi Safari site near Checkpoint Charlie for an afternoon adventure. After a cursory self-guided educational encounter with wall-mounted models of the cars' unorthodox shifting mechanism, and the conspicuous absence of lengthy American-style waivers which would doubtless have consumed a dozen pages of exculpatory language, our caravan of gear-grinding anachronisms hit the busy streets of Berlin. What followed was two hours of guided tour. We wound past many of the city's tourist highlights:-immense cathedrals, infamous Nazi buildings, remaining portions of the Wall, now featuring murals from artists the world over, and bohemian neighborhoods such as Charlottenburg. At many points we were the subject of photographs as delighted tourists spied the passing vehicular icons. Less enthused were commuters and truck drivers with places to go, as our cars stalled repeatedly at red lights, turn signals flashing continuously





It was with a fair amount of relief that we finally inched the relics up the short ramp into the Safari's parking lot and rejoined its collection of more than 100 Trabis in various states of preservation. The exercise seemed a fitting end to our brief but absorbing look at East-West history.

The IMLA Sessions: IMLA's CLE-credited program interspersed between these events was relevant and informative throughout. Our first morning provided an update on the continent's General Data Protection Regulation (GDPR), which is already safeguarding European consumers and web users far beyond the modest measures afforded to Americans. Lawyer Maja Smoltczyk, Berlin's Data Protection Officer, described the numerous obligations imposed on web companies: abundant notice about the potential utilization of personal data, the requirement to obtain explicit consent thereto, and stringent limitations on the quantum and type of data obtained and stored. The impact of this different regime was immediately apparent upon use of our hotel's internet, which required numerous consents to proceed and in some instances refused access to ordinary-course American sites deemed to be noncompliant with GDPR mandates. While some of these principles are already being considered in the US and have been implemented on a modest basis in California, the European sanctions regime has yet to mimicked stateside. As Ms.Smoltczyk alluded, the GDPR's penalties can reach 4% of the violator's annual *revenues*. During our session, she referenced a major penalty about to be imposed, without mentioned any names. The next day she announced a fine of 40 million euros for violation of the GDPR.

Our look at German cyber security issues was presented by Dr. Dirk Behrendt of the Berlin Ministry of Justice and Dr. Ulf Beurymer, a jurist and expert in cyber issues. Like their American counterparts, German municipalities including Berlin are weathering a surge in hacking efforts by increasingly sophisticated criminals. Dr. Buerymer provided advice on the mechanics of minimizing governmental cyber attacks, ranging from basic policies requiring heightened password protections to particular technologies which are most resistant to intrusion. He also argued that at least partial responsibility for cyber attacks should be borne by the companies that design and implement the web applications, software and technology upon which municipalities and businesses rely.

Other sessions covered Smart Cities, delivered by Hilmar von Lojewsky, head of the Urban Development, Building, Housing, and Transport Department of the Deutscher Städtetag—the German League of Cities, an organization of 3,400 municipalities comprising more than 50 million people, and Immigration, by Mrs. Bilkay Kadem, Minister of Integration, Baden-Wurttemburg. Finally, we received an overview of Human Rights activities in Latin America by Eunice Gibson, formerly City Attorney in Madison, Wisconsin.

The IMLA International Facilitators: Our trip succeeded due to the efforts of IMLA International Committee head Ben Griffith, whose continuing push to enervate the "I" in IMLA has for many years added an extra-

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territorial dimension to our US and Canada focus. His vision of a Wall Anniversary trip to Berlin was the impetus for what followed. Similar credit is due to Tyler Wallach, who contributed many hours to the Berlin planning process—and brought his family to experience the journey; this included Tyler's father, Hon. Michael Wallach of the Texas Court of Appeals, who presented a Proclamation from Governor Greg Abbott to our cyber security speaker.

Behind all of this was Sven Kohlmeier, our irrepressible Berlin colleague who opened doors and made introductions which would literally have been impossible without his efforts. Sven, known to many members for his various presentations on cyber security issues at IMLA conferences, is a Berlin legislator, representing the Kaulsdorf sector of the city—as well as a full-time practicing IT attorney. He was present for virtually every phase of our tour, ensuring that each element went off smoothly, including in particular our private dinner with former Berlin Mayor Momper. We owe sincere thanks to Sven and look forward to his presence at our future IMLA events as we follow European directives which may influence North American regulators.

In Conclusion: The opportunity for IMLA members to meet leading Berlin municipal thinkers and to compare some of Germany's legal, political, and cultural milieu to our own--while getting to know one another better--was unquestionably worth the journey. As plans coalesce for our next such venture, potentially to Ireland, which will offer a fascinating legal and political study regardless of the trajectory of Brexit, IMLA members should keep "International" in mind. ML
















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