

THE LEGAL BASIS FOR ECONOMIC OR MILITARY ACTION
BY NATO IN REGARD TO BERLIN

During the present discussions about enforcing a total embargo if the accesses to Berlin were to be cut by the Russians, there has been a great reluctance, specially on the part of the Danish Government, to follow suit and agree to the embargo measures prepared by the Four Powers concerned.

During the meeting on Wednesday, 30th August, the Danish Representative drew the attention of the Committee "to the special situation of NATO countries which were not direct participants in the Berlin Agreement." He felt that in this case, "the consideration of economic reprisals in the event of a total blockade of Berlin was not valid, and he therefore repeated his question to the Four Powers to indicate whatever legal justification they may present for Danish participation in such measures. He envisaged the possibility of the United Nations' endorsing economic sanctions as an instance where legal justification for an embargo would exist."

To this thesis, the Netherlands Representative opposed, in recalling that NATO countries have associated themselves with the Four-Power statement on Berlin. He added that "his authorities had given due consideration to the legal aspects, and had come to the conclusion that they would be justified by international law in abrogating trade and other agreements on the grounds of a threat to national security." Finally, the Dutch Representative pointed out that "most of the international agreements provided an escape clause of this kind in such cases."

In the economic field, therefore, there are already some doubts expressed as to the legal aspects of the embargo steps at present considered on the request of the Four Powers. In the military field, with a much more difficult and dangerous implication of any move, the legal aspects seem to be of a much greater importance. The situations seems to be clear - in October 1954 at the time of the Protocol to the Brussels Treaty, there was a joint declaration of the Governments of the United States, the United Kingdom and France, where paragraph 5 reads in this way:

"The security and welfare of Berlin and the maintenance of the position of the Three Powers are regarded by the Three Powers

as essential elements of the peace of the free world in the present international situation. Accordingly, they will maintain armed forces within the territory of Berlin as long as their responsibilities require it. They therefore re-affirm that they will treat any attack against Berlin from any quarter as an attack upon their forces and themselves."

This statement has been recorded in the Protocol dated 23rd October concerning the accession of the Federal Republic of Germany to the North Atlantic Treaty. "Having further noted that all member governments have associated themselves with the declaration made on 3rd October, 1954 by the Governments of the United States, the United Kingdom and the French Republic, etc."

Moreover, several press releases from the NATO Council have since then re-affirmed those views:

19th December, 1957: "we renew and re-affirm the declaration of the 23rd October, 1954, which had in view the establishment on a firm base of the security and freedom of Berlin."

16th December, 1958: Paragraph 5: "The Council recalls the responsibilities of each member state as assumed in regard to the security and welfare of Berlin and the maintenance of the position of the Three Powers in that City. ... The Soviet Union would be responsible for any action which had the effect of hampering the freedom and communications between that City and the free world, or endangering this freedom."

4th April, 1959: "... The Council confirms its unanimous determination to maintain the freedom of the people of West Berlin and the rights and obligations of the Allied Powers as expressed in the Council declaration on Berlin of 16th December, 1958. "

This re-affirmation is to be found also in the communiqués of 22nd December, 1959, 4th May, 1960, 18th December, 1960, and, finally, of the 10th May, 1961 in Oslo.