

SECRET

cc: M. G. ...
M. Bendall
M. Guillaume
M. ...

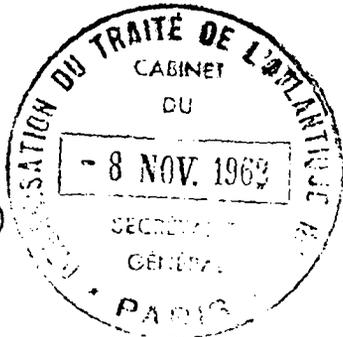
15

UNITED KINGDOM PERMANENT REPRESENTATIVE
ON THE NORTH ATLANTIC COUNCIL

OTAN/NATO

PLACE DU MARÉCHAL DE LATTRE DE TASSIGNY
PARIS XVIe

TEL: MIRABEAU 53.90



(24275G)

November 8, 1962

My dear Acting Secretary General,

In your PO/62/637 of October 4 you invited comments from national authorities on a note by the NATO Legal Adviser on the legal aspects of Berlin maritime countermeasures.

Monsieur Guillaume's review has been studied with great interest in London, and I enclose some comments by the Foreign Office Legal Advisers which I hope will be found helpful.

As you said in the Council on October 31, when the BERCON and MARCON plans were approved, the Council should be fully aware of the legal implications of the contingency plans so that if it should ever have to select a plan from the catalogue it would be in a position to take into account all the relevant factors, including political, military and legal. Our comments on Monsieur Guillaume's note are offered entirely in the sense of your remarks, and as a contribution to this particular aspect of the matter.

*Yours Sincerely,
Paul Mason*

His Excellency Mr. G. Colonna di Paliano,
Acting Secretary General,
OTAN/NATO.

SECRET

Legal Aspects of
Maritime Berlin Contingency Planning

The United Kingdom Foreign Office Legal Advisers find the general form of Monsieur Guillaume's note acceptable and in particular approve the classification in paragraph 1. They suggest, however, that this classification needs further elaboration than it is given at present. This is because possibilities (a) and (b) not only concern the Soviet Union, United States, United Kingdom and France, but also the three Western Powers in NATO on the one hand; and the Soviet Union's allies in the Warsaw Pact, etc., on the other. It is also necessary to consider the special position of the Federal Republic and the Soviet Zone of Germany. For the action which is legitimate in a situation short of armed or imminent threat of armed attack may be different according to:

- (i) whether the action is to be taken by one of the Three Powers or by a NATO ally;
- (ii) whether the action is to be taken against the Soviet Union or one of the Soviet Union's allies.

/At

At least four possible combinations have to be considered therefore in relation to each form of maritime action. The question of reprisals by NATO allies in the event of action in breach of international law by the U.S.S.R. or the Soviet Zone of Germany is particularly difficult, and underlies much of the discussion which took place in October, 1961, upon the Report of the Sub-Group of Legal Experts of the Working Group on Economic Countermeasures.

2. The Foreign Office Legal Advisers suggest that paragraph 4 of Monsieur Guillaume's note and subsequent paragraphs should be expanded to take into account not only the Geneva Convention on the High Seas, but also the Geneva Convention on the Territorial Sea and the Contiguous Zone. This Convention deals in Section III with the right of innocent passage through territorial waters, and is specific in saying that the ships of all States shall enjoy the right of innocent passage and that passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. This implies that MARCON 3, 4, 5 and 6 could be put into force in territorial waters only by way of reprisal, and subject to the conditions on which reprisals may be justified in international law.