

ORGANISATION DU TRAITÉ DE L'ATLANTIQUE NORD
NORTH ATLANTIC TREATY ORGANIZATION

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PLACE DU MARECHAL
DE LATTRE DE TASSIGNY
PARIS-XVI.

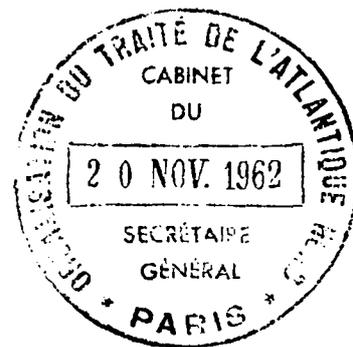
Tél. : KLEber 50-20

NATO SECRET
RDC/62/522

LE SECRÉTAIRE EXÉCUTIF
EXECUTIVE SECRETARY

To: Acting Secretary General
c.c. DSG/ASG Economics and Finance
ASG Political Affairs
Legal Adviser

From: Executive Secretary



Legal Aspects of Berlin Contingency Planning
Turkish Views on PO/62/637

I attach hereto a document I have today received from the Turkish delegation, setting out their views on document PO/62/637 which dealt with the legal aspects of Berlin Contingency Plans.

20th November, 1962 -

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TURKEY'S VIEWS ON DOCUMENT PO/62/637 DEALING WITH
THE LEGAL QUESTIONS REFERRING TO THE BERLIN CON-
TINGENCY PLANS

1. The document PO/62/637 dealing with the legal aspects of the Berlin contingency Plans is in our opinion a paper of technical character containing unbiased views. It tries to reproduce as they stand the existing rules and practices of international law germane to the subject matter.

2. However, it has to be pointed out that the paper do not take into consideration the dispositions of the Geneva Conventions on the Law of the Sea dated 29 April 1958. Although these Conventions are not entered into effect and do not prevail yet among the instruments of positive law, their legal value could not be denied altogether. As a matter of fact, in the first place, the said Conventions reflect the views of the majority of the international community. In the second place, these Conventions did not set forth new dispositions. They have only established the existing custom and practice relating to the subject matter of document PO/62/637. Therefore, in the study, account has to be taken of the said Conventions as a source of law.

Furthermore, it has to be conceded that the above mentioned Conventions carry at least as much juridical weight as the international jurisprudence which the paper takes into account rather extensively.

3. The paper indicates the difficulties that would be met by the members of the Alliance in justifying in international law their collective action when they resort to reprisal in response to an illegal act to be undertaken by the Soviets.

International cooperation in the defence field has evolved under the pressure of technological development and this has brought about the establishment of collective defence systems as NATO. However, contemporary international law did not keep pace with this evolution. Consequently, under present

circumstances, it would prove difficult to base on current international law the justification of Turkey's participation in measures of reprisals to be undertaken against an illegal act by the Soviets with regard to Berlin.

Unless the nature and scope of these Soviet actions become manifest, it will be difficult to express an opinion as to Turkey's participation to the measures of reprisal.

4. The fact that Turkey has a special situation on account of the Montreux Convention which regulates sea and air traffic through the Turkish Straits should not be lost from sight in considering the implementation of reprisal measures. This special situation is corroborated in paragraph 16(4) of the Geneva Convention on the Territorial Waters dated 29 April 1958.

Therefore, in the opinion of the Turkish Authorities, it is necessary to examine the actions set forth in the Berlin Plans in correlation with the relative dispositions of the Montreux Convention. To this effect, as already done in Chapter 4 of document P0/62/637 for the International Canals, Turkish Straits should also be treated in a separate section and the legitimacy of the contemplated measures and the arguments that could be invoked under international law should be examined in the light of articles 4, 5, 6, 19, 20 and 21 of the Montreux Convention.