CONSEIL DE L'ATLANTIQUE NORD
NORTH ATLANTIC COUNCIL

Index

EXEMPLAIRE / COPY N° 374

ORIGINAL: ENGLISH
28th October, 1961

NATO SECRET
DOCUMENT
C-M(61)99

LEGAL ASPECTS OF POSSIBLE ECONOMIC COUNTERMEASURES

Note by the Joint Chairmen of the Working Group on Economic Countermeasures

At its meeting on 26th October, 1961, the Working Group on Economic Countermeasures took note of the report of the Sub-Group of Legal Experts which was convened by decision of the Council(1) and agreed that it should be transmitted to the Council.

(Signed) R.W.J. HOOPER
A. VINCENT

OTAN/NATO,
Paris, XVIe.

(1) C-R(61)50, Item I

LEGAL ASPECTS OF POSSIBLE ECONOMIC COUNTERMEASURES

Report by the Sub-Group of Legal Experts

On 4th October, 1961, the Council decided to convene national experts in international law from all countries desiring to be represented to study the legal aspects of the question of possible economic countermeasures to be taken in the face of the Berlin crisis(1). The Legal Sub-Group met on 23rd and 24th October, 1961. At its first meeting it elected Professor W. Riphagen of the Netherlands to be its Chairman.

2. The Sub-Group was invited to examine(2):

(a) the justification in international law of the imposition of a partial or total economic embargo;

(b) the justification of the breaches of bilateral and multilateral international agreements which would be involved;

(c) the arguments which could be invoked to show that the measures contemplated are not contrary to the provisions of the United Nations Charter;

(d) legal problems arising from(3):

(i) closure of NATO airports to Soviet bloc aircraft;

(ii) prevention of transit overflights and technical stops by Soviet bloc aircraft in NATO countries;

(iii) prohibition against NATO country aircraft calling at Soviet bloc airports.

3. The Legal Sub-Group considered that the following three contingencies might arise:

(1) an armed attack bringing the North Atlantic Treaty into operation;

(2) imminent threat of such attack;

(3) action by the Soviet Union or "DDR" to interfere with communications to Berlin not amounting to either (1) or (2).

---

(1) C-R(61)50, Item I

(2) AC/202-R/7, Item I

(3) C-M(61)97

Contingencies (1) and (2)

4. It was generally agreed that a blockage of military and civilian access, air or ground, to West Berlin, even if it did not involve an armed attack, could only be made effective by an imminent threat of armed attack. The Sub-Group agreed that in this event a total economic embargo by all members of NATO against all members of the Soviet bloc could be justified as legitimate self-defence, individual and collective. This view based on the assumption that all members of the Warsaw Pact would necessarily have associated themselves in some way, though perhaps not formally, with the action taken by the Soviet Union or the "DDR" to sever communications with West Berlin.

5. The Three Powers having special responsibilities in Berlin could base their action on the breach by the Soviet Union of obligations which she had assumed under Four-Power Agreements. As far as other NATO countries were concerned the justification of their action would lie in the inherent right of collective self-defence in connection with Articles 5 and 6 of the North Atlantic Treaty and the "Resolution of Association" dated 22nd October, 1954, (1) and the subsequent Council declaration on Berlin of 16th December, 1958(2). The last two texts have also been published.

Contingency (3)

6. If the action taken by the Soviet Union or the "DDR" against communications with West Berlin did not effect a blockage as defined in paragraph 4 above, it was recognised that such action in itself might not amount to an armed attack or imminent threat of armed attack. The appropriate response for members of NATO in contingency (3) might be partial economic countermeasures. In this situation also the position of the Three Powers was clear. They would be able to claim that there had been a breach by the Soviet Union of its obligations towards them and that they were therefore entitled to resort to reprisals, according to the classical rules of reprisals, i.e. that if the legal rights of State "A" were infringed by State "B", State "A" was entitled to take action against State "B", which would otherwise be in breach of international law (including international agreements), providing that (i) the possibility of settlement by negotiations had been duly explored and (ii) that the reprisals were in proportion to the wrong done. Unless there were a direct infringement of their rights, other members of NATO could not act on this view of reprisals.

---

(1) C-M(54)82(Final)

(2) M3(58)1

7. All members of NATO could invoke one or both of the following considerations to justify partial economic measures, within the framework of NATO, against the Soviet bloc:

(1) that the action of the Soviet Union or the "DDR" against communications to West Berlin was part of a policy and the beginning of a process which would lead to a total severance of communications involving imminent threat of armed attack, or even armed attack, and therefore members of NATO were entitled to resort to measures of self-defence at the beginning of the process;

(2) given the special characteristics of the North Atlantic Alliance, including the machinery for taking political decisions in common and the unified command structure, it could be argued that classical restrictions on reprisals which, in the main, envisaged bilateral relations between states could not be considered a bar to collective countermeasures. The North Atlantic Alliance was formed to meet the threat from the Soviet Union, and it is clear that it is the intention of the Soviet Union that any action against the West would be concerted among the Soviet bloc countries in the Warsaw Pact. If the Soviet Union took action of the kind envisaged here, supported by members of the Warsaw Pact, against certain members of NATO, the Alliance as a whole would be threatened, and it could be argued that all members of NATO were entitled to resort to reprisals against all members of the Soviet bloc.

It was recognised that the theory developed might not be considered to be an uncontroversial expression of existing principles of international law, but could only be based on considerations of what represents a progressive development of the law in contemporary conditions of international affairs.

8. After some discussion, the Sub-Group was agreed that economic countermeasures would not in themselves involve any infringement of the United Nations Charter and that members of NATO were not under any legal obligation to refer to the Security Council before taking such measures. If members of NATO resorted to measures of Self-defence under Article 51 of the United Nations Charter they would be under an obligation to report them to the Security Council. Whether in any other case there should be a reference to the Security Council is a question of policy.

9. In the time available the Sub-Group could not examine all the international agreements which might be affected by economic countermeasures. The Group did, however, examine some International Agreements, the application of which might be affected by the measures set out in paragraph 2(d) above. Its conclusion was that the escape clauses, if any, in such agreements did not permit the type of countermeasures envisaged, and that the justification would therefore have to be found in the considerations set out in paragraphs 6 and 7 above(1).

(Signed) W. RIPHAGEN
Chairman

---

(1) The Turkish Representative drew attention to some particular aspects of the Montreux Convention and repeated the reservation made by his delegation in C-M(61)97. The Norwegian and Danish Representatives repeated the remarks recorded in the same report as regards the Scandinavian Airlines System.