

~~CONFIDENTIAL~~

April 6, 1966

ACDA/GO
Mr. Christopher

Mel:

Dick Faber of the UK Embassy left this with us yesterday in response to your request for UK Foreign Office information on the German CBW renunciation. Faber asked that the paper be treated as a fairly restricted, private document. So I do not think you should quote from it or circulate it, or even make known to others that we have a UK paper on this subject. Assuming that you mention this to George or Charlie, I think you should make sure they get the same caveat.

*Pls file
in my 1954
declassification
stuff*

*A.F.N.
AFN
revised from
1) Ed. Chas. Young
2) to cover history
note W&A copy
written*

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GERMAN CHANCELLOR'S UNDERTAKING NOT TO
MANUFACTURE ATOMIC, CHEMICAL OR BIOLOGICAL WEAPONS
IN THE TERRITORY OF THE FEDERAL REPUBLIC

Annex I to Protocol No. III to the Revised Brussels Treaty begins as follows:-

"The Federal Chancellor declares: that the Federal Republic undertakes not to manufacture in its territory any atomic, chemical or biological weapons, as detailed in paragraphs 1, 2 and 3 of the attached list."

The question has been asked why this declaration was restricted to manufacture in its territory. Prima facie, manufacture else where was not ruled out nor was the possibility of acquisition by importation from abroad excluded.

2. The Protocols to the Brussels Treaty were based on agreements reached at the Nine Power Conference held in London from 28 September to 3 October, 1948. ~~The text of this~~ declaration was drawn up by the Working Group on the Control of Armaments which the Conference set up to formalise the agreements reached by the Heads of Delegations and it was included in the Final Act. However, according to the verbatim records of the Conference's Ninth Plenary Session, Chancellor Adenauer's statement was as follows:-

See list of papers

6

"I do not like to feel fractious or quarrel, therefore I am prepared to declare on behalf of the Federal Republic that we will voluntarily renounce the manufacture of A, B and C weapons not on the reasons of strategically exposed zones, but quite voluntarily".

It will be observed that the German Chancellor did not limit his declaration not to manufacture these weapons to the territory of the Federal Republic. ~~the limitation was made in the Working Group's text which was elaborated~~ (between the Conference's Ninth Plenary Session and the Thirteenth Plenary Session held on the evening of the same day. *text was formulated*)

must be here

It is possible to pinpoint the occasion when the phrase "in its territory" was first used but the Working Group does not seem to have kept records of these discussions and it is not possible to state with confidence the reasons which lead to this addition. Nevertheless, it is possible to give some indication of the probable reasons why it caused no difficulty at the time.

The "strategically exposed zones" to which Chancellor Adenauer referred derived from the concept of "strategically exposed areas" in the European Defence Community treaty. However, it was found impossible to adopt the same concept at the Nine Power Conference because no other country wished to have any part of its territory designated as such an area. Chancellor Adenauer's declaration was thus made to get round the difficulty by explicitly accepting de facto discrimination. Before his declaration was made, however, it was inevitable for negotiations to start from that concept of "strategically exposed areas" and for the drafters of the declaration to think in such terms. The fact that West Germany had no

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no underlining
territories other than those in continental Europe (and thus "strategically exposed") and the fact that the whole object of the Conference was to limit the discrimination against the Federal Republic while reaching agreements acceptable to Parliamentary opinion in other countries were no doubt also factors. It is certain that all those participating in the Conference regarded the text eventually adopted as excluding any possibility of the manufacture of nuclear weapons by West Germany.

contemplated
5. *Prochus* The Protocols to the Brussels Treaty, and the subsequent measures taken by NATO, ~~have adequately ensured~~, that no West German force could be equipped with nuclear weapons acquired from abroad, except by the unanimous consent of NATO or WEU members. The arms for forces under NATO command are determined by the NATO Annual Review (and NATO, of course, works by the unanimity rule). The limits of arms for internal defense forces are laid down by WEU and cannot be altered except by a unanimous decision of Brussels Treaty Powers. Weapons for forces under national command must correspond to the size and mission of the forces concerned and the suitability and size of such forces are determined by NATO. ~~This latter in practice~~ has meant that the Federal Republic only retains non-combatant units (training establishments, and the like) under national command. Were such forces to be equipped with nuclear weapons, a theoretical but obviously remote possibility, NATO would presumably decide in such a case that the forces were ineligible to remain under national command and their armaments would then automatically be subject to the limitations imposed on forces under NATO command.

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All these limitations on manufacture and importation are supervised by the Arms Control Agency which must be supplied with information on the stocks of arms held by the three types of forces and which verifies that the information it is given is correct.

BACKGROUND NOTE

I. E. D. C. arrangements

1. The Nine Power Conference, of course, took place against the background of the failure of the European Defence Community which had been rejected by the French Parliament in summer of 1954. It is clear from the records that most participants at the Nine Power Conference found it difficult to dissociate the arms control measures under consideration from the arrangements envisaged in the E.D.C. Treaty. It is, therefore, useful to consider the E.D.C. arrangements in this context.

2. ~~The E.D.C.~~ Treaty envisaged joint European Defense Forces supervised by an executive body of Commissioners with supra-national powers and by a Council of national representatives whose general task was to harmonize the activities of the Commissioners with the policies of member governments. Articles 105 and 107 of the Treaty together forbade national production, import and export of all militarily significant war materials (which were defined in Annex I to the Article) and invested the Commissioners with the necessary powers to issue permits for their manufacture, import and export. These powers, however, were subject to certain limitations, set out in paragraph 4 of Article 107. One of these limitations was that the Commissioners could not grant permits in respect of certain weapons, listed in Annex II to the Article in "strategically exposed areas" except by a unanimous decision of the Council. The weapons listed in Annex II were atomic, chemical and biological weapons, missiles and influence mines, naval vessels other than minor defense craft and military aircraft.

It might be surmised that the phrase "strategically exposed areas" was intended to ensure that the Commissioners did not grant licenses to West Germany to manufacture or import those weapons except in the unlikely event of a unanimous decision on the part of the other members to allow them to do so. This was impossible to set out in so many words since one of the fundamental principles of the Treaty (Article 6) was that it would be non-discriminatory as between member states. However, the necessary explicit assurances on this point were provided by Chancellor Adenauer in a letter sent to the other signatories on the day the Treaty was signed. In this he made it clear that the Federal Republic accepted that West Germany was "strategically exposed" for the purposes of Article 107 and that it would not be discriminatory for the Commissioners not to issue permits in respect of Annex II weapons for its territory. However, he left the door open to the extent of saying that this undertaking was based on the supposition that the German contingents to the E.D.C. would have all of these weapons necessary to fulfil their tasks in the defence of Europe.

II. Nine Power Conference

4. Of the many problems that had to be resolved at the Nine Power Conference, two are relevant to this issue:

(1)

- (i) the need to replace E.D.C. Article 107 Annex II arrangements with prohibitory measures of slightly different scope; and ✓
- (ii) the need to replace E.D.C. Article 107 Annex I arrangements with arms control measures in a non-supra-national context. ✓

Discussions on these two problems were long and involved but certain clear divergencies of national interest emerged from the discussions which eventually determined the final solution.

The difficulty about problem (i) was to safeguard certain national interests which were themselves irreconcilable. These were

(a) the desire of the Federal German Republic to avoid discriminatory provisions; ✓

(b) the desire of the Federal German Republic that the legitimate needs of the German military forces should be met; ✓

(c) the desire of all the other participants that the Federal German Republic would not manufacture certain weapons (those listed in Annex II to E.D.C. Article 107 together with a few additions e.g. tanks, and a few subtractions, e.g. tactical aircraft); ✓

(d) the desire of the French to have complete freedom to manufacture all weapons; and ✓

(e) the desire of the Benelux countries, who were prepared to renounce the manufacture of nuclear, biological and chemical weapons, to continue to make other weapons e.g. tanks which they wished to deny to the Federal German Republic. ✓

4 cont.

As Mr. Anthony Eden, as he then was, explained to the House of Commons after the conclusion of the Nine Power Conference, no solution could be envisaged to these problems until the Federal Chancellor had given his undertaking unilaterally to renounce the manufacture of atomic, biological and chemical weapons. In fact, Chancellor Adenauer had to make two more concessions. These were not to manufacture the other weapons contained in E.D.C. Article 107 Annex II (as amended) except if authorised to do so by a two-thirds majority of Brussels Treaty Members; and to accept supervision of both these undertakings by the Arms Control Agency (see paragraph 8 below). The acceptance of de facto discrimination by the Federal Republic enabled satisfactory arrangements to be arrived at on points (b) to (e) in paragraph 5 above. Before Chancellor Adenauer's undertakings were given, however, the discussions had necessarily to recognize the concept of "strategically exposed areas" and to negotiate from that concept. It would, therefore, have been natural for the drafters of the Federal German declaration to think in such terms. The fact that Germany had no territories other than those in continental Europe (and thus "strategically exposed") and the fact that the whole object of the Conference was to limit discrimination against West Germany while reaching agreements acceptable to parliamentary opinion in the other countries were no doubt also factors. It is unlikely that anyone participating in the Conference would have regarded the text eventually adopted as leaving any loopholes for the manufacture of nuclear etc. weapons by West Germany.

no indication
has been
given

7. [These undertakings, of course, related only to the manufacture of nuclear etc. weapons. It remains to consider the arrangements for controlling the acquisition of them by the Federal Republic by importation from abroad.]

8. Discussions of the question of the control of military weapons (paragraph 4 (ii) above) were also somewhat animated since again a number of apparently irreconcilable national interests had to be met. The main problem was to substitute for the E.D.C. system of the licensing of production, import and export of Article 107 Annex I weapons by a supra-national body of Commissioners, another system to maintain a balance of such weapons between the various West European military forces. The control system eventually adopted related to the stocks of all militarily significant weapons in the possession of the national forces, whether under NATO or national command, without regard to their origin. This control was to be exercised by an Arms Control Agency in the following manner:

7

- (i) for the NATO forces, the ACA would verify that the stocks held were consistent with the quantities recognised as necessary by NATO in the Annual Review and that these stocks were not exceeded;
- (ii) for internal security forces, the ACA would verify that the armaments limits to be laid down by the W.E.U. were not exceeded; the procedures for establishing these limits were set out in a Protocol of 14 December, 1957; and
- (iii) for other forces not under NATO command, the ACA would verify that weapons were consistent with the size and mission of the forces concerned. The suitability and size of such forces were required to be consistent with the conclusions of the NATO Annual Review (agreed to by a NATO Resolution of October 1954). In practice this has meant that the Federal Republic's forces under national command have been confined to non-combatant units (training establishments and the like) which are equipped as such.

III. Present Situation

9

9. [It will be seen from the foregoing that the sum total of the arrangements agreed to at the Nine Power Conference clearly satisfied all the participants as effectively ruling out ~~possessory~~ manufacture of nuclear weapons by the Federal Republic, and controlling their unilateral acquisition by importation from abroad.]

10. In brief they amount to a situation in which the Federal Republic cannot, consistent with its Treaty obligations, maintain armed forces other than those contributed to NATO, or recognised by NATO as being suitable for retention under national command (e.g. internal defence forces and training establishments); cannot exceed certain maxima for these forces as agreed to by the Brussels Treaty Powers; cannot equip these forces with more or better weapons (whether manufactured in Germany or abroad) than those acceptable to NATO or WEU; cannot, of course, manufacture nuclear etc. weapons in its territory at all; and cannot manufacture certain categories of ships, missiles, bombers, etc. except by a decision of a two thirds majority of the Brussels Treaty Powers.

See memo of _____ from Christopher to Van Doren for discussion of 'hubris sic stantibus' question.

A. Size of forces / *not in Parliament*

- (i) Under the E.D.C. Treaty, member states could only recruit and maintain national armed forces for the common European Defence Forces. (The only major exception related to armed forces intended for employment in non-European territories for whose defence that member had assumed responsibility. As the Federal Republic had no such non-European territories, this exception did not apply to her).
- (ii) An unpublished Protocol to the E.D.C. Treaty laid down maxima for each country's contribution to the joint forces: in the case of the Federal Republic these were twelve divisions, a Tactical Air Force of 1,350 aircraft and some light coastal defence and escort vessels. ✓
- (iii) The Final Act of the Nine Power Conference declared that when the Federal Republic joined NATO, the size and general characteristics of the German defence contribution would conform to the contribution laid down for E.D.C. However the Final Act also recognised that in addition to forces under NATO command, certain other forces might exist under national command.
- (iv) Under Protocol No. II to the Revised Brussels Treaty the forces to be placed at the disposal of NATO are subject to the same maxima as were laid down in the unpublished Protocol to the E.D.C. Treaty. These maxima can only be altered by a unanimous decision of W.E.U. members. In common with other members, the Federal Republic could maintain internal defence forces at a strength agreed to by W.E.U.
- (v) A NATO Resolution of 22 October, 1954, required members to submit details of the national forces, stationed on the continent but not under NATO authority, to the NATO Council who would decide on their suitability and size; these are subject to examination and endorsement in the NATO Annual Review. In practice, so far as Germany is concerned forces under national command are restricted to certain non-combatant units which support the German NATO forces (e.g. supply and training establishments).

B. Weapons

- (i) Under Protocol No. III to the Revised Brussels Treaty, the Federal Republic makes its Declaration not to manufacture atomic etc. weapons in its territory and not to manufacture certain categories of ships, aircraft and missiles except if agreed to by a two-thirds majority of Treaty members. The Federal Republic, in common with other members also undertakes to accept control of its stocks of all militarily significant weapons to be used for its forces.

/(ii)/

- (ii) Under Protocol IV, the Federal Republic in common with other members of the W.E.U. is required to declare the total quantities of armaments it possesses for its NATO forces and Arms Control Agency has to verify that these arms are recognised as necessary by NATO as consistent with the needs of those forces. Under the same Protocol, the W.E.U. Council can take any measures it deems necessary if these limitations are exceeded.
- (iii) Under Protocol II and the Protocol of 14 December 1957, limits are laid down for the armaments of the Federal German internal defence forces. Under Protocol IV these must be notified to the Arms Control Agency which verifies that these limits are not exceeded.
- (iv) Under Protocol IV, the Federal Republic is only obliged to report on the stocks of armaments for the forces not under NATO authority. These armaments must however correspond to the size and mission of the forces concerned. The forces themselves are subject to the NATO Annual Review which determines their size and suitability.

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