

DAJA-IA

2 February 1978

MEMORANDUM FOR RECORD

SUBJECT: February 1978 Brussels Meeting of NATO Legal Experts to the Political Committee

1. General. A meeting was held at 0945 on 31 January 1978 in Ambassador Aldrich's office. The subject was Mr. Solf's representation of the U.S. at the Brussels Conference of the NATO Political Committee. The meeting had been requested by Mr. Solf so that general guidance on Department of State views would be available. Attending, in addition to Mr. Aldrich and Mr. Solf, were Margot Mazeau (ACDA), Mike Matheson (L/PM), Colonel Norris (AF JAG, International Law), and Captain Cummings (DAJA-IA).
2. Time of Ratification. The first substantive item on the agenda was whether the U.S. should support the U.K. draft note on coordination within the alliance as to time of ratification. Mr. Aldrich expressed the view that despite the logical desirability of a close relation of the time of ratification between member States, political reality would preclude any close timing. This was especially true because it might take the U.S. several years before it could ratify the Protocols, while some other NATO countries could do so almost immediately. It would be unrealistic to ask certain NATO countries to postpone ratification for many years. Domestic law would have to be deferred to. Mr. Aldrich also made it clear that the U.S. would approach ratification from the perspective that no member of the Alliance should be given a "veto power" over the U.S. becoming a party to the Protocols. It now appears certain that France will not become a party, at least for the near future.
3. NATO Understandings. The second item on the agenda was what the U.S. position should be on the understandings formulated by the NATO Political Committee (Articles 35 - 60, Protocol I). Specifically, the issue presented was how the U.S. and other NATO countries would express these understandings, such as by incorporating them in the instrument of ratification. Mr. Aldrich's basic position was that the important thing was for the NATO countries to agree to the content of these understandings. As for the method of implementation, this would depend on each country's domestic legal approach. For the U.S., it depends in part on how firmly based the understandings are with respect to their negotiating history or how controversial they are. Those that are not as well supported in the negotiating record could be added to the instrument of ratification. In other instances, it would suffice to make these understandings clear in the report to the Senate and in the various military manuals that are written to reflect the Protocols. On the whole, however, these NATO understandings should be given effect in whatever manner that is deemed appropriate by each country.

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4. Other Understandings. The next item on the agenda was whether the U.S. should express a desire to have some coordination on understandings or reservations other than those recommended in the NATO study. The agreed position was that we should, in part because the U.S. was surprised at some of the U.K. statements. It was also agreed that the U.S. should express some "mild surprise" at the U.K. understandings on Articles 1 and 96. Mr. Aldrich and Mr. Solf indicated that they were unhappy with the broad U.K. understanding on the meaning of "armed conflict" in Article 1, but agreed that this understanding was desirable or valuable if limited to paragraph 4 of Article 1. This could be conveyed to the U.K. As for the understanding on recognition of wars of national liberation (Article 96), Mr. Aldrich indicated that he was surprised but would not have opposed it. Indeed, he preferred this narrow view of Articles 1 and 96. On the U.K. understanding on Rhodesia, the agreed view was that this was not a NATO issue and it should be treated as a strictly British problem. The Alliance as such should not commit itself on it.
5. Reprisals: The reprisals issue was one which Mr. Aldrich indicated should not be raised by the U.S. If another country raised it, however, we ought to say that there is no agreement yet within the administration and that the issue has been deferred for the time being. Mr. Aldrich also outlined the general arguments in favor and against a reservation on reprisals, and indicated why a democratic government would have political difficulty attaching a logically good (from an operational standpoint) reservation on reprisals.
6. Review and Analysis. Mr. Solf asked Mr. Aldrich when DOD could expect State's response on the Review and Analysis. Mr. Aldrich indicated in effect that it would be a few months (*i.e.*, after the next session of the Law of the Sea Conference) before he could study the Review and Analysis, and that the important thing is what we say in the report on the Protocols to the Senate.
7. Implementing Legislation. Part of the meeting was devoted to discussing what implementing legislation might be needed for the Protocols. The only provisions that truly appear to require legislation at this time are those in the Conventions and the Protocols on grave breaches. Various approaches to legislation were discussed, in addition to some of the reasons favoring legislation. The impression was given that implementing legislation could postpone the time that the U.S. becomes bound by the Protocols.

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8. Weapons Conference. Messers. Aldrich and Matheson indicated that the weapons issue will be taken up in a UN sponsored preparatory meeting that perhaps will be held in Geneva in late August to early September (perhaps the first two weeks of September), 1978.

9. Follow up. It was agreed that the U.S. would not generally encourage future meetings to discuss individual understandings or reservations. The POLADS could be used as a clearinghouse for other understandings for the time being.

CF:

Ambassador Aldrich
Ms. Margot Mazeau
Mr. Matheson
Mr. Anderson (2)
COL Bowden
COL Norris (3)
Capt Fruchterman
LTC Roberson
MAJ Parks

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