

July 25, 1968

Letter, Minister Willy Brandt to Franz J. Strauß, with Attachment 'Comments on a French Note sent by the Federal Minister of Finances to the Federal Minister of Foreign Affairs by Letter of July 2, 1968'

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Summary:

Brandt answered Strauß by forwarding a memorandum from the Federal Government Commissioner for Disarmament and Arms Control, Ambassador Swidbert Schnippenkötter, who clarified that the ambiguity in wording reflected "a quite conscious dissent" between the United States and the Soviet Union. Concerns about this point of legal ambiguity remained central to the lines of argument taken by NPT opponents and many NPT skeptics in Bonn through late 1969 and, to a lesser extent, though 1973 and 1974 when NPT ratification was debated.

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WILLY BRANDT^[1]
MINISTER OF FOREIGN AFFAIRS

Bonn, July 25, 1968

II B 1 - 87.00

To the
Federal Minister of Finances
Mr. Franz Josef Strauss^[2]

53 B o n n

Dear Mr. Colleague,

Unfortunately I am just finding the time today to respond to your letter from the 2nd of this month. There you had asked for my comments to the note you sent regarding issues of the NP [Non-Proliferation] Treaty.

I am therefore forwarding you on this subject comments by Mr. Ambassador Schnippenkoetter^[3].

With friendly greetings
[signed Brandt]

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Copy

Ambassador Dr. Schnippenkoetter
Bonn, July 21, 1968
II B 1 - 87.00

Note

RE: NP Treaty

here: Comments on a French Note sent by the Federal Minister of Finances to the Federal Minister of Foreign Affairs by Letter of July 2, 1968

The French note submitted to Mr. Federal Minister Dr. Strauss is talking about a deep Russian-American 'misunderstanding' regarding the interpretation of the phrase "indirect control over nuclear weapons". The opinion that there does exist a misunderstanding between the nuclear great powers is erroneous. In reality, we do have here an actually completely aware disagreement between both powers concerning the interpretation of the term "control" (= access), which is indeed a key term of the NP Treaty (Articles I and II). Americans and Soviets have accepted their disagreement of interpretation because they were only able to agree on that basis. Since their agreement in fall of 1966, both powers have not allowed to change the phrasing of politically decisive Articles I and II any more in order not to jeopardize their compromise. For that reason, the Americans have not included in their known interpretation text, which they also shared with the Soviets, a definition of "control" or "indirect control". They have told us that on that issue "ambiguity [is] a virtue", this is the political foundation of the treaty.

Concerning the history of this issue one can state the following: The Americans had still defined "control" in their open NP Treaty draft of March 22, 1966 as a "right or ability to fire nuclear weapons without the concurrent decision of an existing nuclear-weapon state". We have asked Washington in 1967 to include this

appropriately limiting definition of the proliferation term at least in the written text of interpretation, if it is no longer in the treaty text. We argued for this because of the danger of an extreme interpretation of "control" by Moscow (especially with regard to the need for future structural improvements of the [NATO] alliance and the continuation of European unification). The Americans did reject our request with an argument they never had used before, namely that a definition of "control" is unnecessary for the basic purposes of the treaty; mostly, however, because a renewed discussion over "control" would allow the Soviets to revisit all the old problems concerning "access"; the "access" discussion had earlier led the NP negotiations into a dead end; the Soviets could even question some NATO arrangements where the Americans believe that the Soviet are currently tacitly tolerating them. Since the Soviets have been provided with the American text of interpretation, the United States could share their own definition of "control" only internally in a secret NATO Council meeting; and we could later refer to the meeting minutes of the NATO meeting. The oral interpretation of "control" was indeed given in the NATO Council meeting of April 20, 1967. However, there the Americans came up with a new and shorter definition: "the independent power to use nuclear weapons". The Soviets obviously do not accept the American interpretation of "control". Their interpretation is differing from the American one in two respects:

- concerning the question whether the prohibition of "indirect control over nuclear weapons" has to be interpreted in a restrictive or extensive way, there does not exist a military-technical criterion, but here rather the political intentions of the respective non-nuclear-weapons state are relevant. This means: are its intentions "good", "peaceful" et cetera, such prohibitions can be applied generously; however, if those intentions are "bad", "not peaceful", or even a "renewal of aggressive politics" (Potsdam Agreement[4], Article 53 and Article 107 of the Charter of the United Nations[5]), the flexible prohibition term of the NP Treaty must be applied very strictly (at the expense of the non-nuclear-weapons state) and complied with.

- the prohibition of proliferation (Article I) or acceptance (Article II) of "indirect control" over nuclear weapons has to exclude for all future the option for an ever so remote but potentially maybe realistically appearing chance for whatever kind of nuclear potential in "aggressive" non-nuclear-weapons states.

Legally, the extensive Soviet interpretation of "control" is the same as legitimate as the more restrictive one of the Americans. The American-Soviet agreement occurred at the moment when the Americans dropped the MLF[6] project of which the Soviet said it would gain the Federal Republic [of Germany] "access", this is "control": This historical circumstance during the genesis of the American-Soviet compromise does even favor an extensive interpretation of "control"; namely through implied action, this is the dropping of the MLF, the Americans have in fact indirectly agreed with the Soviet interpretation.

The disagreement over what the prohibition of "control over nuclear weapons, directly or indirectly" specifically means is not justiciable, because there does not exist a legal definition whatsoever and there is no arbitrating authority. Thus this will always have to be debated politically. Here the Soviets will undoubtedly attempt to legally bolster their objectives with the NP Treaty.

It cannot be excluded that Moscow - with regard to a growing American-Soviet convergence of interests in the nuclear field - is expecting a decrease of American resistance against the Soviet interpretation of the "control" prohibition. We should, however, consider that the Americans will adhere to their restrictive interpretation.

Although the French note submitted to Mr. Federal Minister Dr. Strauss correctly emphasizes the political key importance of the term "indirect control", there can be no agreement with some of its [the note's] individual conclusions. For instance, it is certainly not correct to state the Soviets are objecting to "any alliance between a nuclear state and a non-nuclear state". At least they are not just viewing the Warsaw Pact but also the Atlantic alliance in its current structure as compatible with the NP Treaty. In both cases, nuclear-weapons states are allied with non-nuclear-weapons states. However, according to American interpretation the NP Treaty is prohibiting a "nuclear European Defense Community", and according to Soviet interpretation in addition probably also other intermediary stages of an European defense union.

The wording of Articles I and II of the Treaty is at the same time as comprehensive as it is vague, but also Article III undoubtedly contains politically dangerous elements. Since we do agree with the NP Treaty in principle, it will be the task of the Federal Government in the coming weeks and months to protect ourselves reliably against any hostile abuse of the treaty towards Europe and Germany, in particular with our own - and legally tied to the signing- interpretations and reservations. For that reason, there will be no comments made here on the hypothetically presented Soviet individual interpretations and their political consequences as outlined in the French note. Whether, as proposed in that note, it is possible to induce the Soviets to put their interpretation of Articles I and II in writing appears to be highly doubtful. All Soviet statements are indicating clearly that Moscow has a central interest to reserve for itself for the future a range of interpretations as unrestricted as possible, especially towards ourselves.

Since an improper interpretation of the NP Treaty would result in dangers not just for ourselves but also - as the French note does correctly state - for all of Europe, it is even more surprising that so far the French government has not yet said anything on this issue of interpretation.

[signed Schnippenkoetter]

[1] Willy Brandt (1913-1992). Governing Mayor of West Berlin 1957-1966, West German Minister of Foreign Affairs 1966-1969 and Federal Chancellor from 1969 to 1974.

[2] Franz Josef Strauß (1915-1988). West German Minister of Nuclear Issues (1955/56), Defense (1956-1962), and Finances (1966-1969).

[3] Swidbert Schnippenkötter (1915-1972). West German diplomat, in July 1969 Permanent Representative at the United Nations Office at Geneva.

[4] 2 August 1945.

[5] 26 April 1945.

[6] Temporary American Multilateral Force (MLF) proposal regarding shared control over nuclear Polaris submarine missiles.