

July 21, 1971

**Memorandum for President Nixon from Kissinger,
"Berlin Negotiations: The Unresolved Issues"**

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Summary:

National Security Advisor Henry Kissinger updates President Nixon on the status of the Four Power Berlin negotiations between the Soviet Union, East Germany, West Germany, and the United States, focusing on unresolved issues on which the four states were unable to agree.

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MEMORANDUM

INFORMATION 36

NATIONAL SECURITY COUNCIL

SECRET

July 21, 1971

MEMORANDUM FOR MR. KISSINGER

FROM: Helmut Sonnenfeldt

SUBJECT: Berlin Negotiations: the Unresolved Issues

Following is a checklist of the status of various disagreed issues in the Four Power Ambassadorial negotiations on Berlin. The list is based on Ambassador Rush's reporting to the State Department.

Preamble and general provisions. Aside from the most basic and formal introductory language, the only scrap of text that has been agreed is that portion providing that "the Four Governments will mutually respect their individual and joint rights and responsibilities which remain unaffected." There is no agreement on the delicate issue of the renunciation of the use of force, reference to the UN Charter and peaceful settlement of disputes -- which also involve the knotty problem of defining the area to which the agreement applies.

Access. One basic disagreement on this issue is the Soviet insistence on referring to access as "transit", a code-word for international traffic between two sovereign states; similarly, the Soviets demand that access should be in accord with generally accepted international practice or rules (in contrast to the sui generis situation it is). Both concepts are incompatible with our view on the status of Berlin.

In addition to these more basic issues related to access, there are more narrow disagreements. For example, while all sides agree that there may be examination of seals on goods, the Soviets go further and insist on the GDR right selectively to inspect the goods themselves. With respect to access by persons, the sides are disagreed on whether to permit GDR inspection of travel documents (in addition to tickets), whether visa fees may be paid in a lump sum, whether the travellers are required to observe "public order" regulations (as distinct from health and traffic regulations), and whether general categories of persons restricted from travel may be established. In short, there is still a fair distance to go on the important access issue.

Entry into East Berlin. There is probably less disagreement on this than any other major issue, although some significant language still must be confirmed by the Soviets. There are relatively minor points unresolved, relating to the navigation of the Teltow canal (which we want opened), and

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additional crossing points at the Wall. The largest problem remains the issue of the designation of the parties to work out the implementing arrangements, with the Soviets insisting on the dealings being between the GDR and the Senat. (A similar "competence" issue is still unresolved on access generally, where the Soviet version implies a GDR competence over access.)

Bonn/Berlin relationship. A basic sticking point is the characterization of West Berlin: the West has offered the language that the "Western Sectors are not to be regarded as a Land", while the Soviets have proposed "are not included in the territorial or state structure". Both sides have dug in hard on this, and the FRG has made it clear that it will be virtually impossible to water down the current Western proposal.

Federal presence. There is still some wide disagreement here, for example whether the restriction on non-performance of constitutional acts in West Berlin is confined to the Cabinet as a whole or extends to individual Cabinet members. The Soviets, in addition, wish to have a general provision forbidding acts generally (by the Chancellor, Cabinet, etc.) which would signify the extension of their competence to Berlin. Similarly, there is disagreement over Bundestag committee meetings, with the Soviets accepting the proposition that single committees might meet, but the Western side (the FRG) desires an understanding that as many as two or three committees might meet simultaneously (the FRG will probably accept confining fraktionen meetings to only one at a time).

In addition, the Soviets have insisted on a general provision calling for good comportment in Berlin by FRG officials, as well as a statement in the Agreement's Annex making clear that FRG legislation apply as such in Berlin. We will probably concede this latter point -- since it is consistent with our theory of the essentially identical but technically separate legal structure -- but some Germans are concerned that this sort of statement will permit the Soviets later to charge that only Berlin officials may administer "Berlin laws".

FRG representation of Berlin abroad. There has been some forward movement on this in recent weeks, with both sides attempting to agree on an exchange of letters setting out the respective understandings. There is still much unresolved, largely centered on the distinct possibility that a double standard will result from the inconsistent statements proposed by the Soviets in the exchange. Essentially, however, both sides are still apart on the question of West Berlin's representation in the UN and other international bodies, extension of FRG treaties to Berlin and participation of Berliners in international exchanges and exhibits of the FRG. In all these, the Soviets have been attempting to carve out a voice for themselves in this

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area of responsibility for West Berlin, and generally have insisted that the FRG may have no dealings for Berlin in matters of security, status, or political affairs. Another basic disagreement is over the Western desire for acceptance by the Soviets of FRG passports for West Berliners. The Soviets have flatly refused to consider this, even though the West has offered to place a Commandant's stamp (or some other special designation) in the passport and suggested that the Soviets could issue visas on a separate piece of paper.

Final Quadripartite Protocol. This is the last area of disagreement with respect to the text of an Agreement itself. The essential point of difference -- and this is crucial -- is over the Western demand that the Soviets agree at a minimum to language calling for each Government to "see to it" that the inner-German arrangements are applied. This is a vital element in allowing us credibly to maintain that the package contains something approximating a Soviet guarantee of GDR commitments (and even this language is not ideal). The Soviets have refused to accept this. There is also another aspect to the connection between the inner-German arrangements and the Four Power agreement. The Western side wishes to make it clear that the execution of the German arrangements is essential to the implementation of the Quadripartite agreement. The Soviets, wishing to avoid anything which might imply a second class or dependent status for the German arrangements, are willing to accept only the concept of the simultaneous existence of the Four Power and the German arrangements.

Outside the immediate scope of the Agreement itself, there are areas of additional disagreement. The main one, of course, is the question of Soviet presence in West Berlin. Within that general issue is the important point of the Consulate General, but there are also lesser items such as the excessive Soviet demands on trade opportunities in West Berlin and the restoration of former Soviet property. There is in this context the unresolved issue of the manner in which the Western "commitment" on Soviet presence will be recorded, as well as the timing for the implementation of the Soviet expansion.

Also outside the Agreement, but of lesser weight, are the still unresolved issues of demilitarization (in which the Soviets want some indication that the West will continue to enforce these regulations in West Berlin), and the NPD (which the Soviets want the West to prohibit).

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