CABINET

BERLIN

MEMORANDUM BY THE SECRETARY OF STATE FOR FOREIGN AFFAIRS

At their meeting on 18th November, 1958, when there was a discussion about Berlin, my colleagues asked for an examination to be made of alternative means of maintaining supplies to the Western sectors of Berlin if the existing arrangements were interrupted (C.C. (58) 81st Conclusions, Minute 2). Annex A to this paper describes what the existing arrangements are, what action the Soviet or East German authorities could take to alter them and what the existing Allied instructions are for dealing with certain eventualities. Annex B to this paper explains the legal position upon which our position in Berlin rests. Since these papers were prepared we have received the Soviet Note announcing their proposals and intentions. This note shows that there is no immediate threat to our communications with Berlin. I nevertheless circulate these two documents to my colleagues for their information.

S. L.

Foreign Office, S.W. 1,
4th December, 1958.
ANNEX A

COMMUNICATIONS BETWEEN WEST GERMANY AND WEST BERLIN
AND BETWEEN WEST AND EAST BERLIN

A.—COMMUNICATIONS BETWEEN WEST GERMANY AND WEST BERLIN

There are road, rail, canal and air communications routes between West Germany and West Berlin. Both Allied and West German traffic use the road and rail routes. Only Allied aircraft fly to West Berlin, along three air corridors agreed with the Russians in 1945. Only West German barges use the canal routes but they carry coal for the Allied garrisons in Berlin.

Allied Official and Military Access to Berlin

2. The Allied right to maintain garrisons in Berlin derives from the unconditional surrender of Germany. Their right of access to Berlin derives from their right to maintain garrisons. The Allied Governments maintain that this right of access is not subject to any control whatever but in the case of road and rail communications they have in practice agreed to show documents to the Soviet authorities and to allow these to be time-stamped. But they have not accepted that the Soviets have any right of inspection of vehicles or trains and have always refused to accept any form of control by East German personnel.

Rail

3. An agreement of 10th September, 1945, mentions both freight trains and passenger trains. The Allied trains are sealed when passing through the Soviet Zone and have an Allied military guard. Documents are shown to Soviet officers at the check point on entering the Soviet Zone (Eastbound) or on leaving it (Westbound) in order to establish the status of the train. The documents include a nominal roll of the personnel on the train or corresponding freight documents. The Russians simply put a time-stamp on the documents.

Road

4. Road travel is not specifically covered by any written agreements with the Russians other than the Paris Agreement of 20th June, 1949, ending the blockade which provides that communications which existed before the blockade were to be resumed. By usage Allied road travel to Berlin is limited to the Berlin-Helmstedt autobahn and Allied vehicles are checked by Soviet personnel at each end of the highway. This check consists of an examination of the Allied travel document and the placing thereon of a time-stamp. Only Allied personnel are carried in Allied vehicles. The Russians claim the right to inspect Allied vehicles but the Allies have always refused to permit this and have preferred to turn back rather than submit to inspection.

Air

5. An agreement of 30th November, 1945, defines three air corridors for Allied use (Berlin-Hamburg, Berlin-Brückaburg and Berlin-Frankfurt-on-Main). No air travellers (Allied or West German) between West Germany and West Berlin are subject to any Soviet or East German control. The Russians participate in the work of the quadripartite Air Safety Centre in Berlin. Flights of Allied aircraft, military or civil, are simply notified to the Soviet Representative in the Air Safety Centre. He does not have the right to veto such flights.

West German and Non-Official Access to Berlin

6. The right of West German access to West Berlin has always been considered by the Allies to be inherent in the status of Berlin as well as in the principle that Germany should be treated as a whole. The general right of West German access is covered by the Paris Agreement of 20th June, ending the blockade. In addition German barge traffic, rail freight and post and telegraph communications are regulated by specific agreements between the West and East German administrations. In contrast to Allied official and military movements,
however, the movement of German persons and goods between West Germany and West Berlin has, in practice, always been subject to East German control and East German taxes are paid on freight movements. Similarly, all private Western travellers by road and rail are subject to East German control.

7. No West German aircraft fly to Berlin and all German air travellers must therefore travel in Allied aircraft. All East German refugees are flown out of West Berlin in Allied aircraft.

Existing Soviet Position

8. In an exchange of letters between the Foreign Minister of the Deutsche Demokratische Republik and the Soviet Deputy Foreign Minister (Bolz/Zorin) of 21st September, 1955, the Russians explicitly admitted in the following terms that they were responsible for controlling Allies access to West Berlin and that Four Powers Agreements covered Allied road, rail and air access to Berlin—

"Control of the transport of troop-personnel and goods of United States, British and French garrisons stationed in West Berlin between the German Federal Republic and West Berlin will, until an appropriate agreement has been concluded, be periodically carried out by a Kommando of the group of Soviet troops in Germany.

Thereby, the transport of troop-personnel and goods of the garrisons of Three Western Powers in West Berlin will be permitted on the basis of the existing Four Power Agreements—

(a) on the Autobahn Berlin—Marienborn,
(b) by rail Berlin—Helmstedt, for the return of empty transport via the rail route Berlin—Oebisfelde,
(c) on the air-corridors Berlin—Hamburg, Berlin—Buckeburg and Berlin—Frankfurt/Main."

Possible Soviet Measures to alter Existing Arrangements about Allied Road and Rail Access

9.—
(a) The Russians could replace their control personnel with East German personnel.
(b) They could refuse to allow Allied vehicles and trains to travel to and from Berlin on the grounds that the Allies no longer had any right to be there.
(c) They could plead technical difficulties on the road and rail routes (as they did at the time of the Berlin Blockade in 1948 when Allied offers of technical assistance were refused).
(b) or (c) above would effectively deny road and rail routes to West Berlin unless force were used. In the case of (a) Allied instructions are as follows:

Existing Allied Instructions

Road

10. Allied travellers will, under protest, show their Allied travel documents to East German officials and allow them to be stamped. Subsequently a protest will be lodged with the Russians and our position reconsidered. If the East German officials attempt to vary the present procedure, e.g., by trying to issue East German travel documents, the traveller will turn back rather than submit to East German control.

Rail

11. The same instructions apply as for road travellers except that the train commander will only accept an East German stamp on the train documents provided that it is obviously only a date-stamp and not some form of visa. (This slight variation (at American insistence) between road and rail procedure is because it is thought that it would be less serious for an Allied road traveller inadvertently to accept an East German visa than for the commander of a military train.)

Possible Soviet Measures to alter Existing Arrangements about Allied Air Access

12.—(a) The Russians could attempt to introduce an East German into the Berlin Air Safety Centre.
They could announce that the Berlin Air Safety Centre is no longer competent to control air traffic between West Germany and West Berlin and that all aircraft over-flying East Germany must henceforward be subject to East German control.

(c) They could announce that the Berlin Air Safety Centre could henceforward only control Allied military aircraft and that all civilian aircraft must be subject to East German control (and presumably therefore have to land at East Berlin airport). This course of action would be very attractive to the Soviets because, if effective, it would prevent the exodus of East German refugees from West Berlin. They would, moreover, have some degree of justification in that the air corridors were designated for use in connection with the occupation of Berlin.

(d) If, despite Soviet insistence that the Berlin Air Safety Centre was no longer competent to control flights, the Allies none the less continued to clear flights tripartitely, they could (i) insist that the air corridors were at all times and at all heights full of Soviet-East German aircraft and therefore unsafe for use by Allied aircraft; (ii) "buzz" Allied aircraft; and (iii) in the last resort shoot them down.

Existing Allied Instructions
13. In the case of (a) agreed instructions are that the East German would be rejected. No decision has yet been taken about what to do in the case of (b) and (c).

Possible Soviet-East German Measures to alter Existing Arrangements about West German Road, Rail and Canal Access to Berlin
14.—(a) The East Germans could refuse to allow any West German travellers or freight to move into or out of Berlin by road, rail or canal.

(b) They could impose any infinite variety of restrictions of greater or less severity either by imposing prohibitive taxes or by pleading administrative or technical difficulties.

It is unlikely that any measures would be taken against West German travellers or freight except as part of a campaign against the Allied position or in retaliation for West German action in support of the Allied position.

B.—COMMUNICATIONS BETWEEN WEST AND EAST BERLIN
15. There is at present in theory, and to a very large extent in practice, complete freedom of movement throughout Berlin, i.e., there are no inter-sector controls. In addition the operation of many of the city's services necessitates a considerable degree of co-operation between the West and East Berlin administrations.

16. This freedom of movement still exists because, although since 1948 the Russians have refused to participate in the quadripartite administration of the city, they nevertheless still legally accept that Berlin has a special status of which freedom of movement within Berlin is one aspect.

17. The East Germans strongly object to this freedom of movement because it permits the exodus of East German refugees. They have accordingly made plans over the past years whereby it would no longer be vitally necessary for them to make use of those sections of the Berlin underground railway which pass through West Berlin.

18. If the Russians decided to hand over responsibility in East Berlin to the East German authorities the latter could take any of the following measures—

(a) Seal off East Berlin from West Berlin and insist that anyone wishing to visit East Berlin must have an East German visa.

(b) Insist that any German crossing the inter-sector boundaries must be subject to East German controls, but allow Allied officials to continue to visit East Berlin without any interference.

(c) Assume Russian responsibilities in East Berlin but not alter existing arrangements.

(a) and (b) would prevent the exodus of East German refugees. (c) would not affect Allied or West German access to East Berlin.

December 1958.
ANNEX B
JURIDICAL POSITION OF BERLIN

The right of the Western Powers to occupy Berlin is derived from the conquest of Germany. We have consistently maintained that at the unconditional surrender of Germany in 1945 each of the four Powers had the right to occupy any part of Germany (including Berlin), and that the quadripartite agreements which then came into force, or were subsequently negotiated, are not the source of the right to occupy, but only define the areas and the manner in which the right to occupy may be exercised. It follows from this that although the Soviet Union has repudiated quadripartite agreements in the past and may do so again in the future, it does not thereby put an end to the right of the three Powers to occupy their respective sectors in Berlin; nor would the rights of occupation of the three Powers be terminated if the Soviet Union were to announce that it for its part was renouncing the right to occupy its sector of Berlin.

2. Similarly, we claim that the right to occupy Berlin implies a right of access to Berlin across what we regard as the Soviet zone of occupation. This implied right has been recognised by the Soviet Union in quadripartite agreements but any repudiation by the Soviet Union of these agreements would not terminate the implied right.

3. The question of Berlin is inseparable from the question of the reunification of Germany and the peace treaty with Germany. It is for this reason that in the Bonn Conventions with the German Federal Republic the Western Powers reserved to themselves "their rights and responsibilities relating to Berlin and to Germany as a whole including the reunification of Germany and a peace settlement" and a similar reservation has been made vis-à-vis the Senate of Berlin.

4. The Soviet action as detailed in the later part of this paper has made it possible to presume that the Soviet Union recognised the rights and responsibilities of the Western Powers and claimed similar rights and responsibilities for itself.

Quadripartite Agreements about Germany and Berlin

5. The following documents are relevant—

(a) Declaration regarding the defeat of Germany and the assumption of supreme authority, issued on 5th June, 1945, by the four Allied Commanders in Germany. The following is an extract—

"The Governments of the United Kingdom, the United States of America and the Union of Soviet Socialist Republics, and the Provisional Government of the French Republic, hereby assume supreme authority with respect to Germany, including all the powers possessed by the German Government, the High Command and any State, municipal, or local government or authority. The assumption, for the purposes stated above, of the said authority and powers does not effect the annexation of Germany.

The Governments of the United Kingdom, the United States of America and the Union of Soviet Socialist Republics, and the Provisional Government of the French Republic, will hereafter determine the boundaries of Germany or any part thereof and the status of Germany or of any area at present being part of German territory."

(b) A Protocol about the zones of occupation and the administration of Berlin agreed in the European Advisory Commission on 12th September, 1944. The following is an extract—

"The Berlin area (by which expression is understood the territory of 'Greater Berlin' as defined by the Law of the 27th April, 1920) will be jointly occupied by armed forces of the United Kingdom, the United States of America and the Union of Soviet Socialist Republics assigned by the respective Commanders-in-Chief. For this purpose the territory of 'Greater Berlin' will be divided into the following three parts:

North-Eastern part of 'Greater Berlin' (districts of Pankow, Prenzlauerberg, Mitte, Weissensee, Friedrichshain, Lichtenberg,
Treptow, Köpenick) will be occupied by the forces of the Union of Soviet Socialist Republics.

North-Western part of 'Greater Berlin' (districts of Reinickendorf, Wedding, Tiergarten, Charlottenburg, Spandau, Wilmersdorf) will be occupied by the forces of

Southern part of 'Greater Berlin' (districts of Zehlendorf, Steglitz, 'Schöneberg, Kreuzberg, Tempelhof, Neukölln) will be occupied by the forces of

The boundaries of districts within 'Greater Berlin,' referred to in the foregoing descriptions, are those which existed after the coming into effect of the decree published on the 27th March, 1938 (Amtsblatt der Reichshauptstadt Berlin, No. 13 of the 27th March, 1938, page 215).

The occupying forces in each of the three zones into which Germany is divided will be under a Commander-in-Chief designated by the Government of the country whose forces occupy that zone.

Each of the Three Powers may, at its discretion, include among the forces assigned to occupation duties under the command of its Commander-in-Chief, auxiliary contingents from the forces of any other Allied Power which has participated in military operations against Germany.

An Inter-Allied Governing Authority (Kommandatura) consisting of three Commandants, appointed by their respective Commanders-in-Chief, will be established to direct jointly the administration of the 'Greater Berlin' Area."

(c) An Agreement on control machinery in Germany reached by the European Advisory Commission on 14th November, 1944. Article 7 reads as follows—

"(a) An Inter-Allied Governing Authority (Kommandatura) consisting of three Commandants, one from each Power, appointed by their respective Commanders-in-Chief, will be established to direct jointly the administration of the 'Greater Berlin' area. Each of the Commandants will serve in rotation, in the position of Chief Commandant, as head of the Inter-Allied Governing Authority.

(b) A Technical Staff, consisting of personnel of each of the Three Powers, will be established under the Inter-Allied Governing Authority, and will be organised to serve the purpose of supervising and controlling the activities of the local organs of 'Greater Berlin,' which are responsible for its municipal services.

(c) The Inter-Allied Governing Authority will operate under the general direction of the Control Council and will receive orders through the Co-ordinating Committee."

(Document (a) and abbreviated versions of (b) and (c) are in Cmd. 6648 of 1945.)

Western Acceptance of Quadripartite Responsibilities

6. The Western Powers have in a number of ways acknowledged their acceptance of quadripartite responsibilities. Thus—

(a) In Article 2 of the Bonn Conventions of 23rd October, 1954, establishing their relations with the German Federal Republic, the Western Powers reserved to themselves "their rights and responsibilities relating to Berlin and to Germany as a whole, including the reunification of Germany and a peace settlement."

(b) In their letter of 12th May, 1949, by which they approved the Federal German Basic Law, the Allied Military Governors said that "While Berlin may not be accorded voting membership in the Bundestag or Bundesrat, nor be governed by the Federation, she may nevertheless designate a small number of representatives to the meetings of those legislative bodies."

(c) The Three Powers maintain the legal fiction that the Inter-Allied Governing Authority (Kommandatura), referred to in the Quadripartite Agreements quoted above, is still responsible for the administration of the whole of Berlin despite the Russian walk-out in July 1948.
Existing Soviet Acceptance of Quadripartite Responsibilities

7. The Soviet Government admit that they still have some responsibility under quadripartite agreements for Germany as a whole and for Berlin. Most of these are included in the documents relating to the Soviet-Deutsche Demokratische Republik (D.D.R.) Treaty governing their mutual relations, signed on 20th September, 1955. Thus—

(a) In the preamble to the Treaty reference is made to “the obligations of the D.D.R. and the Soviet Union which, in accordance with international agreements, concern Germany as a whole.”

(b) In a Soviet declaration published at the same time as the Treaty provision is made in the following terms for the Soviet Ambassador to the D.D.R. to maintain appropriate relations with representatives of the Three Powers on all-German questions:

“The Council of Ministers of the USSR decided to abolish the office of High Commissioner of the USSR and Germany. The task of maintaining appropriate relations with the representatives of the United States, Great Britain and France in the German Federal Republic on matters arising from Four-Power decisions on all-German questions has been transferred to the Ambassador of the USSR in the German Democratic Republic.”

In the same declaration provision is made for the Commander-in-Chief of the Soviet Armed Forces in the D.D.R. to maintain appropriate relations with the Commanders-in-Chief of the Three Powers (these relations are at present maintained via the existing Military Commission).

(c) Following the Treaty was an exchange of letters between the two Governments (the Bolz-Zorin exchange) regarding access to Berlin. These letters stated that control of the transportation of military personnel and goods of the Three Powers (including the use of the three Air Corridors) would be exercised on the basis of existing Four-Power agreements, temporarily by the Soviet Military authorities “until an appropriate agreement is arranged.” (For exact text see paper which deals with communications with Berlin.)

In addition, it should be noted that, although the Soviet Government maintain that the whole of Berlin is legally part of the D.D.R., they nevertheless, at present, maintain a Soviet Commandant in East Berlin and have not formally incorporated East Berlin into the D.D.R. (the position of East Berlin in relation to the D.D.R. is therefore very similar to the West Berlin relationship with the Federal Republic).

December 1958.