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Printed for the War Cabinet. September 1941.

SECRET.

Copy No. 65

W.P. (G) (41) 98.

September 23, 1941.

WAR CABINET.

ALLIED MILITARY CONSCRIPTION.

Memorandum by the Secretary of State for Foreign Affairs.

ON the 15th August, 1940, my predecessor, with the concurrence of all the Ministers concerned, undertook in a note to the Allied Governments to "invite Parliament to pass legislation conferring the necessary authority upon the Allied Administrations in the United Kingdom to call up their nationals for military service in accordance with their existing national laws, or such other provisions as the Allied Governments may wish to make." This undertaking has been repeated on more than one occasion in the House of Commons.

2. Steps preparatory to the conferment of these powers upon the Allied Governments have been taken. A comprehensive registration of Allied nationals has been carried out, and powers to conscript their merchant seamen have already been given to the Allied Governments by the Allied Powers (Maritime Courts) Act.

3. The preparation of legislation to give the Allied Governments power to enforce military conscription has, however, given rise to certain misgivings on the part of the Minister of Labour and the Home Secretary. The Maritime Courts Bill met with limited but tenacious opposition in the House of Commons, and my colleagues feel that there will be considerable opposition to an Allied Military Conscription Bill from those who consider that it will give insufficient protection to certain members of the Allied communities in this country who may be opposed to their Governments on religious, racial or political grounds. Consideration has been given to a number of schemes for safeguarding not only the prerogatives of the Allied Governments, but also the position of the various minorities. A plan was drawn up and mentioned in the War Cabinet on the 26th May, but certain of the Departments concerned later foresaw serious difficulties about this scheme, and it has not been possible as a result of further examination to find any satisfactory compromise.

4. The Minister of Labour will be in charge of the legislation, and, with the concurrence of the other Ministers concerned, has now propounded a scheme by which Allied nationals in this country, who are not already embodied in their national forces or reserved from military service because of the importance of their civil employment, will be given a free right of option between joining their national forces or the British forces. This will automatically solve minority difficulties, and has a good deal to recommend it on practical grounds. But, as it involves a considerable derogation from the sovereign powers of the Allied Governments, it cannot be assumed that they will readily agree to it.

5. In deference to the views of my colleagues, I am, however, prepared to put the proposition to the Allied Governments in the terms of a note which I annex. But, as this proposition differs from the scheme already submitted to the Cabinet, involves a breach of the undertaking which has been given to the Allies and in the House of Commons, and may cause some political difficulty with the Allies, I feel I should first consult my colleagues on the action which it is proposed to take.

A. E.

Foreign Office, September 23, 1941.

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ANNEX.

Draft Note to Allied Governments.

Your Excellency,

September, 1941.

Your Excellency will recall that in a note of the 15th August, 1940, Lord Halifax made certain proposals for the purpose of facilitating the employment of male Allied nationals in the United Kingdom in the common Allied war effort. These proposals were based upon the two broad principles that the obligations for war service on Allied nationals should so far as possible be the same as those on British subjects, and that the Allied Governments temporarily established in this country should have the right of prior call upon the services of their own citizens. It was stated that His Majesty's Government contemplated submitting legislation to Parliament to enable the Allied Governments to call up their nationals for military service in accordance with their own national laws, and it was hoped that it might be possible to arrange that the Allied Governments should be in a position to direct their nationals to war service in a civilian capacity, in particular to service in the mercantile marine. In order to facilitate the suitable employment of other Allied nationals, it was proposed that they should all be registered under arrangements concerted between the British Ministry of Labour and the appropriate Allied authorities with a view to their being placed as rapidly as possible in industrial or other civilian employment.

2. These proposals received a general welcome from the Allied Governments and considerable progress has been made in giving effect to them. A comprehensive registration of Allied nationals has been carried out and special offices have been set up to facilitate the placing of Allied citizens in useful employment. The Allied Powers (Maritime Courts) Act has been passed by Parliament to enable the Allied Governments both to maintain discipline and to direct their merchant seamen, where necessary, to serve upon Allied merchant ships. It is only in the field of military conscription that progress has not so far been made, and this has been due, as I am sure your Excellency appreciates, partly to the necessity for dealing first with the larger and more urgent question of Allied merchant seamen, and partly to certain very real difficulties of law and policy, which the particular problem of military conscription presents for His Majesty's Government.

3. The question of military conscription has, however, been under constant consideration between the various Departments, as a result of which certain conclusions have been reached which I am instructed to communicate to your Excellency with the request that they may be laid before the Government and that the Foreign Office may receive as soon as possible any comments which the Government may wish to offer before any final decision is taken as to the form of the legislation to be submitted on this subject to Parliament.

4. The present position, as I understand it, is that the Allied Governments established since last year in the United Kingdom have been engaged, since their arrival, in calling up their nationals of military age under their own law for service with their respective national Forces as reconstituted in this country. It is assumed that calling-up notices have by now been served upon the greater part of the available Allied manpower in this country, and that, in most cases, the persons concerned have responded voluntarily in accordance with the obligations laid upon them by their own national law, except in so far as they have been reserved from military service in view of the greater importance of their services in civilian war work. The Government will no doubt have noticed with satisfaction that a recent judgment delivered by the Lord Chief Justice in a Divisional Court of the High Court of Justice has recognised the right of an Allied Government to call up its citizens in the United Kingdom under its own law, and established that Allied citizens who respond to this call-up and enlist in the Allied forces are subject to the provisions of the Allied Forces Act after joining their units. This judgment, against which an appeal has been entered, does not, and cannot, of course, authorise the enforcement, either under

United Kingdom or Allied Law, of Allied conscription on Allied citizens who refuse voluntarily to report to the Allied military authorities, as the compulsion of such persons to comply with their calling-up notices and to report for medical examination or enlistment can only be exercised by the intermediary of the Courts and police authorities of the United Kingdom, who cannot take the necessary action without the authority of specific legislation by Parliament.

5. The Service Departments of His Majesty's Government have, however, been guided by the principle that Allied nationals should, as a general rule, serve in their own Allied forces, and they have refused to accept Allied citizens for the British forces, except in certain very special cases. Moreover, the Home Office have co-operated by withholding the grant to Allied citizens of military age of exit permits to leave this country, unless the Allied Government concerned had previously released them from their military obligations.

6. Compulsory powers to enforce conscription upon Allied nationals are therefore only required in respect of a minority whose total number, making due allowance for those in reserved civilian occupations, appears from available statistics to be very small. Indeed, the residuary figure for all the Allies is thought to be not more than 5,000 in the aggregate. The experience of the past year has, however, shown that this minority is composed to a considerable extent of persons who are unwilling to serve with their national forces on the ground that, by reason of long residence in this country, they have lost touch with their country of origin, and have a strong preference for serving in the British forces, or for some other reason. After careful consideration of all aspects of the problem, His Majesty's Government have arrived at the conclusion that Parliament and public opinion in this country would not accept a proposal to put such persons automatically under the authority of a Government established in this country, and would insist upon some special arrangements being made for these minority cases.

7. His Majesty's Government consider that in the circumstances effect can best be given to the general principle that Allied nationals should have the same obligations for military service as British subjects by providing that Allied citizens who do not join their own Allied forces shall become liable to the National Service Acts of the United Kingdom, which would be amended for the purpose. The question then becomes one of the machinery to decide whether a given individual is to join his own Allied forces or the British forces. This could be done in one of two ways, either by setting up a special tribunal with authority to examine individual cases and to grant in certain circumstances an option to join the British forces, or by conceding a free right of option between the Allied or British forces in each individual case.

8. His Majesty's Government feel sure that the Allied Governments will agree that the procedure of a special tribunal would be open to a number of grave objections. Such a tribunal would, in accordance with the traditions of this country, have to sit in public, and applicants would have to be allowed to state their case fully. Political considerations and arguments would certainly be ventilated during the proceedings and would obtain wide publicity. Unfortunate and misleading impressions in regard not only to the Allied armed forces but also to Allied political affairs might well be created. Moreover, the questions which would have to be considered by such a tribunal in conjunction with all the possible difficulties of evidence and procedure, which might arise or in certain cases be deliberately fostered, would clearly lead in many instances to great delay and embarrassment being caused before a final decision was definitely reached.

9. If, on the other hand, a free option between the Allied and British forces were conceded to all the persons concerned, the difficulties connected with the establishment and operation of the tribunal would disappear, while the principle of equal obligations for military service would be no less maintained. I would emphasise that His Majesty's Government do not suggest that the free option should have retrospective effect, and it would be made absolutely clear that it did not in any way apply to existing members of the Allied armed forces or to persons subsequently joining the Allied forces of their own free will. Moreover, in order to avoid as far as possible the risk of options for the British forces on frivolous

grounds, it is proposed that Allied nationals electing to place themselves under the British National Service Acts should be admitted only to the British Pioneer Corps, unless they possessed special experience or qualifications which made them particularly suitable for the Royal Air Force.

10. I would therefore express the hope that the Government will be prepared to accept a scheme whereby Allied nationals within the age limit of United Kingdom military conscription (18 to 41), who are not already serving in the Allied or British forces, will be made liable by an Act of Parliament to compulsory military service, to be performed on choice either in the Allied or British forces. His Majesty's Government regret that the solution of this problem which they propose is not in strict accordance with the general promise given to the Allied Governments last year. But, as already explained, they are convinced by the experience they have gained since then that it would not be in the Allied any more than the British interest that recalcitrants should be allowed to state publicly the reasons why they do not wish to join their national forces, and that it would be greatly preferable not to attempt to force such persons to serve against their will in their national forces. It is not believed that Allied nationals would prefer to join the British Pioneer Corps instead of their national forces unless they had very strong reasons for the choice. If so, it would not appear to be to the advantage of the Allied forces not to take in the men.

11. I should be grateful if your Excellency would submit to your Government the new proposal outlined in the present note and would be so good as to inform me of their attitude.
