July 11, 1966

Deputy Under Secretary of State for Political Affairs U. Alexis Johnson to the Secretary of State, 'Comments on the Proposed Revision of the Draft Non-Proliferation Treaty,' with enclosures

Citation:

"Deputy Under Secretary of State for Political Affairs U. Alexis Johnson to the Secretary of State, 'Comments on the Proposed Revision of the Draft Non-Proliferation Treaty,' with enclosures", July 11, 1966, Wilson Center Digital Archive, NARA, RG 383, Director's Office NPT Files, box 8, Non-Proliferation, William C. Foster. Contributed to NPIHP by Bill Burr. https://wilson-center.drivingcreative.com/document/177786

Summary:

In this memorandum, McNamara, Rusk, and Adrian Fisher discuss amendments and language of the NPT treaty that was in stalemate that summer. Fisher saw the 1954 Atomic Energy Act, with its prohibition of the “transfer of atomic weapons to any other country,” as providing model language for an NPT because it was compatible with the bilateral agreements.

Original Language:

English

Contents:

Original Scan

SECRET
EXDIS

DEPARTMENT OF STATE
DEPUTY UNDERSECRETARY

It consists of 28 pages, Number 7 of 7 copies, Series ACDA.

MEMORANDUM

July 11, 1966

Return
WC7-bill

TO: The Secretary

THRU: S/S

FROM: G - U. Alexis Johnson

SUBJECT: Comments on the Proposed Revision of the Draft Non-Proliferation Treaty

ACTION MEMORANDUM

We now have the reactions of the Principals to the revised draft which you submitted for comments on June 23 (Tab A). Secretary McNamara and the JCS (see Tab B), Glenn Seaborg (Tab C), Richard Helms (Tab D), and Leonard Marks (Tab E) have all concurred in your revision, on the understanding that it would not require a change in present nuclear arrangements in NATO. Mr. Fisher has submitted a memorandum (Tab F), suggesting a revised formulation. I have also received memoranda from Walt Stoessel (Tab G), Leonard Meeker (Tab H), and Herman Pollack (Tab I). Both Leonard Meeker and Walt Stoessel, like Adrian Fisher, are very much concerned about the serious difficulties which we would encounter in attempting to sustain politically an interpretation of our present arrangements as consistent with a prohibition on granting physical access to nuclear weapons. I share this concern.

EUR and CIA both point out that it is unlikely that the Soviet Union would be willing to accept language along the lines of the draft of June 23, particularly when it became clear--and, in public explanation to our Allies, as well as in response to Soviet questions, we would have to make it clear--that we regarded our new formulation as permitting both existing arrangements and nuclear sharing options. And, as the memoranda from ACDA, EUR, and L point out, we would probably be placed in a disadvantageous tactical position in attempting to argue that present arrangements do not involve "physical access."

Since you submitted the draft of June 23 for comment, a new development has made more difficult the possibility of arguing that existing arrangements do not involve physical access. On June 28, in a plenary session of the ENDC in Geneva, Mr. Foster stated that "Contrary to the Soviet implication, our NATO Allies do not obtain, store, deploy, transport, aim or attach to missiles or planes, any US nuclear weapons...." This statement originated with a military representative on Mr. Foster's staff, and although it had been cleared by an officer in the Joint Staff in Washington, it had not been cleared with others. Unfortunately, it is not true that our Allies

do not "transport," "aim," or "attach to missiles or planes" US nuclear weapons--they do all of these things, although under our control. The Joint Staff clearance for the statement had been based on the notion that until a weapon had been keyed to fire, it was not a "nuclear weapon" but merely a very expensive chunk of iron filled with uranium. This would scarcely be a politically defensible definition.

It is very difficult to find a simple generalized formulation for a non-proliferation undertaking which (a) retains nuclear sharing options, (b) improves our tactical debating position, and (c) has a realistic chance of being accepted by the USSR. Leonard Mecker has suggested a formulation which involves an undertaking "not to transfer control of nuclear weapons through physical access or any other means"; Adrian Fisher has sought to avoid the now contentious word "control" by suggesting an undertaking "not to transfer nuclear weapons." However, both of these formulations still flag the issue of "physical access." Mr. Fisher's explicit limitation of its application to manufacture alone would, in my view, serve as a red flag prompting the Russians to insist that their concern with access applies to acquiring control over weapons rather than learning how to build them.

After having considered all the various suggested versions, it is my own opinion that the following formulation for Article I provides the best balance in trying to meet the three objectives noted earlier:

> Each of the nuclear-weapon states party to this treaty undertakes not to transfer nuclear weapons or control over them to any non-nuclear weapons state or any group of states, and not to assist, encourage, or induce any non-nuclear weapon state or any group of states to manufacture or otherwise acquire nuclear weapons.

(Article II would be reciprocal.) I believe this language provides the most simple and understandable formulation, while preserving all options except possibly the unlikely case of the UK divesting itself of its entire nuclear arsenal prior to its merger in a possible successor unified European state. The stress on "transfer of nuclear weapons" deals with access <u>to the extent that access is relevant to non-proliferation</u>; "control" covers cases of proliferating without physical access (e.g., a finger on the button or freedom from veto in command and control councils). "Physical access," in contrast, invites attention to <u>physical</u> controls. After looking over the Geneva conversations, I conclude that the Soviet suggestion on "physical access" (a term not in the Soviet draft treaty)

is directed at present arrangements, and that no language using that term would entirely get around this fact. If some compromise formulation is possible, in which the Soviets tacitly acquiesce in present arrangements, it would be better to use some other formulation stressing transfer and/or control, rather than "physical access."

If, nonetheless, you so desired, it would be possible to add at the end of the above draft article the phrase "through granting physical access to any such state or any group of states or by any other action."

The above formulation has not been staffed or considered by ACDA or others, but if it commends itself to you, you may wish to staff it through the Principals.

Recommendation:

That you request ACDA to staff out with interested Agencies the above formulation (with) (without) the phrase mentioning physical access.

Approve _____

Disapprove _____

Attachments:
1. Tab A - Memorandum for Committee of Principals dated June 23, 1966
2. Tab B - Letter from Secretary McNamara
3. Tab C - Letter from Mr. Seaborg
4. Tab D - Letter from Mr. Helms
5. Tab E - Letter from Mr. Marks
6. Tab F - Memorandum from Mr. Fisher
7. Tab G - Memorandum from Mr. Stoessel
8. Tab H - Memorandum from Mr. Meeker
9. Tab I - Memorandum from Mr. Pollack

cc: U - Mr. Ball
S/AL - Amb. Thompson
ACDA - Mr. Fisher
EUR - Mr. Stoessel
I. - Mr. Meeker
S/P - Mr. Owen

G/PM:RLGarthoff/G:UAJohnson

CONFID

THE SECRETARY OF STATE

WASHINGTON

MEMORANDUM TO MEMBERS OF THE COMMITTEE OF PRINCIPALS

SUBJECT: Non-Proliferation Treaty

Attached is a revised draft of a non-proliferation treaty which is under consideration. I would very much appreciate your transmitting comments as soon as possible.

DR.
Dean Rusk

Attachment:

Non-Proliferation Draft Treaty.

GROUP 3
Downgraded at 12 year intervals; not automatically declassified.

CONFIDENTIAL

CONFIDENTIAL

Proposed Revised Articles of U.S. NP Treaty

Article I

Each of the nuclear-weapon states party to this treaty undertakes not to grant, or in any other way to assist any non-nuclear-weapon states to achieve, physical access to nuclear weapons.

Article II

Each of the non-nuclear-weapon states party to this treaty undertakes not to manufacture, or otherwise to achieve physical access to, nuclear weapons.

Article III

Each of the States party to this treaty agrees not to take any of the actions prohibited in the preceding articles directly, or indirectly through third states or groups of states.

Article IV

Any party to the treaty shall have the right to withdraw from the treaty, upon six months notice, if it decides that extraordinary events related to the subject matter of the treaty have jeopardized the supreme interests of its country. Five years after the entry into force of this treaty, a conference of parties shall be held in Geneva, Switzerland in order to review the operation of the treaty.

CONFIDENTIAL

SECRET

THE SECRETARY OF DEFENSE
WASHINGTON

ACTION
is assigned to

5 JUL 1966

10563

Honorable Dean Rusk
Secretary of State
Washington, D. C. 20520

Dear Dean:

I have reviewed your 24 June draft of a nonproliferation treaty and I concur in your proposal. I understand that this formulation is not intended to change present nuclear sharing arrangements or to limit consultative procedures in NATO. In private discussions of this draft with our allies, with the Soviet Union and with the Congress I believe this point should be made clear.

While I consider IAEA safeguards desirable, I believe we should not insist on mandatory safeguards in a nonproliferation treaty. I also believe the term "nuclear weapons" should include all nuclear explosives since nuclear devices might be used either for peaceful or military purposes.

I consider the achievement of a nonproliferation treaty to be a major step in our efforts to stop the spread of nuclear weapons. Therefore, if there is anything I can do to assist you in achieving agreement, please call on me at any time.

Sincerely,

Attachment
JCSM-437-66

16319

SECRET

SECRET

THE JOINT CHIEFS OF STAFF
WASHINGTON, D. C. 20301

JCSM-437-66
29 JUN 1966

MEMORANDUM FOR THE SECRETARY OF DEFENSE

Subject: Nonproliferation Treaty (U)

1. (C) Reference is made to an undated memorandum by the Secretary of State for Members of the Committee of Principals, subject as above, which requested comments as soon as possible on an attached revised draft of the US nonproliferation treaty. The Office of the Assistant Secretary of Defense (ISA) requested that the views of the Joint Chiefs of Staff on this matter be submitted by 29 June 1966.

2. (S) The Joint Chiefs of Staff continue to support the national policy of the United States of preventing the spread to additional states of an independent nuclear weapons capability and believe that an effectively safeguarded nonproliferation agreement could assist in preventing the proliferation of nuclear weapons. Their views on the over-all subject of a nonproliferation treaty are summarized in the Annex hereto.

3. (S) The Department of State's proposed revision to the US nonproliferation treaty is considered to be in consonance with the previously stated views of the Joint Chiefs of Staff with two exceptions:

a. There is no provision for clearly defined adequate safeguards on peaceful nuclear facilities and other peaceful programs to prevent nonnuclear states from developing nuclear weapons under the guise of peaceful research.

b. Proliferation is defined in terms of "physical access" rather than "control."

SECRET

4. (S) The Soviets have stated their desire to conclude a nonproliferation treaty during the current session of the Eighteen Nation Disarmament Committee (ENDC) if it would deny to nonnuclear powers "physical access" to nuclear weapons. It is understood that the intent of the Secretary of State, in circulating the proposed revision to the US draft nonproliferation treaty, is to test the sincerity of the Soviet stated desire for a nonproliferation treaty.

5. (S) The Joint Chiefs of Staff continue to hold the view that clearly defined adequate safeguards as outlined in JCSM-23-66, dated 12 January 1966, and in JCSM-36-66, dated 15 January 1966, should be an integral part of a nonproliferation treaty.

6. (S) Although the Soviets have indicated that neither MLF nor ANF is acceptable but that the crux of the problem is "physical access" to nuclear weapons by the Federal Republic of Germany, they could press for abandonment of all existing NATO nuclear arrangements and consultative arrangements in negotiation on such a draft treaty. The Joint Chiefs of Staff have concluded that there is no current military necessity for additional nuclear weapon-sharing arrangements with NATO Allies. In any event, negotiations and understandings associated with the proposed draft treaty in question must insure that present nuclear arrangements or consultative arrangements are not jeopardized.

7. (S) Subject to providing for safeguards as indicated in paragraph 5, above, and insuring that current Alliance nuclear arrangements and consultative arrangements are not jeopardized as indicated in paragraph 6, above, the Joint Chiefs of Staff pose no objection to the use of the proposed revision to the US draft nonproliferation treaty in exploratory discussions in Geneva. However, they request the opportunity to comment on the final version of this draft treaty resulting from consideration within the US Government and NATO before it is tabled at the ENDC.

For the Joint Chiefs of Staff:

SIGNED

EARLE G. WHEELER
Chairman
Joint Chiefs of Staff

Attachment

SECRET

ANNEX

SUMMARY OF PERTINENT JCS VIEWS ON A NONPROLIFERATION TREATY

1. (S) The United States should continue its national policy of preventing the spread to additional states of an independent nuclear weapons capability - an effective, safeguarded nonproliferation agreement could assist in preventing the proliferation of nuclear weapons.

2. (S) Security assurances to nonnuclear powers should not be included as an integral part of a nonproliferation treaty.

3. (S) Inclusion of a limitation on use of nuclear weapons against nonnuclear states in a nonproliferation treaty should be opposed.

4. (S) In all international negotiations, the United States should insist on a strict definition of proliferation in terms of "independent national control."

5. (S) Should the United States become a party to a nonproliferation treaty, the following interests must be provided for: (a) continued US nuclear flexibility to include international or multilateral sharing, (b) continued current and possible future US nuclear dispersal and delivery arrangements, and (c) clearly defined adequate safeguards.

6. (S) No agreement should be obtained at the risk of weakening NATO and downgrading the credibility of the US nuclear deterrent.

10431

UNITED STATES
ATOMIC ENERGY COMMISSION
WASHINGTON, D.C. 20545

JUL 1 1968

Dear Dean:

We recognize that the proposed revised articles of a U.S. non-proliferation treaty are drafted with the intention of cutting through the verbiage of the previous drafts and attempting to meet directly the stated Soviet over-riding goal of a non-proliferation treaty which is, according to their view, to prevent the "physical access" by non-nuclear weapon countries, to nuclear weapons.

The new Articles I and II are simplified and direct. We feel, however, that there is a need to reach an understanding within the government before any new treaty language is tabled, as to what is meant by "physical access". We think, for instance, that there might well be some question as to whether our present NATO atomic stockpile program or arrangements presently being considered are consistent with a ban on our granting "physical access" to nuclear weapons, or assisting non-nuclear weapons states in achieving such access. We also wonder about the consistency of the proposed articles with potential actions we might take during an emergency or in time of war.

We have stated in the past our belief in the importance of including in a non-proliferation treaty, a strong article on the acceptance of international safeguards by presently non-nuclear weapon states. On the basis of the views expressed by various government officials, including those offered in open hearings before the Joint Committee on Atomic Energy, we assumed general agreement within the Administration with this position. Since the beginning of the year, considerable effort has been spent in convincing some of our Western allies of our strong views on this subject and to enlist their support prior to our tabling of a revised Article III. In fact, we are presently engaged in very active negotiations with the Canadians on this very point. We are not aware of any evidence of Soviet objection to inclusion of a provision in the treaty for mandatory safeguards on presently non-nuclear weapon states.

Therefore, while we understand that you have attempted in the revised Articles to focus on the question of physical access, we strongly urge that a strengthened article on safeguards, such as the one we have been discussing with the Canadians, be retained in the non-proliferation treaty. In a sense, international safeguards offers the only method

for retaining continuing confidence on the part of all the parties to the treaty that the treaty's provisions were being observed.

We are sending you these comments at this time, in view of the urgency you have expressed, although we may have more comments after further consideration.

Cordially,

Chairman

Honorable Dean Rusk
Secretary of State

UNITED STATES INFORMATION AGENCY
WASHINGTON

DIRECTOR

1027

CONFIDENTIAL

June 29, 1966

MEMORANDUM FOR: The Honorable
Dean Rusk
Secretary of State

I have reviewed the draft of the non-proliferation treaty which you recently sent to the Committee of Principles. I approve of the simplified version based upon the assumption that it will not create any operating problems for AEC or related agencies.

[illegible] H J Marks

CONFIDENTIAL

SECRET

No. 11 of series A.

UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY
WASHINGTON

OFFICE OF
THE DIRECTOR

July 8, 1966

MEMORANDUM TO THE COMMITTEE OF PRINCIPALS

SUBJECT: Proposed Revisions of Draft Non-Proliferation Treaty

Attached for your information is a copy of my memorandum to the Secretary of State concerning proposed revisions of the U. S. non-proliferation treaty draft, together with a suggested alternative text.

Adrian S. Fisher
Acting Director

Attachment:

As stated.

For Addressee Use Only; No further distribution without permission of the Arms Control and Disarmament Agency.

GROUP 3
Downgraded at 12 year intervals; not automatically declassified

SECRET

SECRET

UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY

WASHINGTON

OFFICE OF
THE DIRECTOR

July 8, 1966

MEMORANDUM FOR THE SECRETARY OF STATE

SUBJECT: Proposed Revision of US Draft Non-Proliferation Treaty

I agree with the premise underlying your memorandum of June 23 to the Committee of Principals, on a revised draft of a non-proliferation treaty, namely, that a new simplified draft is desirable. It has become clear in Geneva that the impasse reached in our discussions with the Soviets will continue so long as each side attempts to include in its draft treaty explicit language protecting a position known to be unacceptable to the other.

The suggested revision of Article I transmitted by your June 23 memorandum would be an apt tactical move to take advantage of the stated Soviet preoccupation with FRG access to nuclear weapons. I have serious doubts, however, whether we can square this proposed language with the existing bilateral agreements within NATO and hence satisfy the requirement that we do nothing that would upset these arrangements.

For example, under our existing arrangements, troops of our NATO allies actually transport U.S. nuclear weapons and even perform the physical work of attaching them to their own planes and missiles. This procedure is safeguarded by PALs and otherwise, (and is used under an understanding that the U.S. retains "custody" of the weapon) but it would be difficult to argue that the other nations do not have "physical access" to the weapons, as that term is normally used. Proposing a treaty which would ban "physical access" would be an invitation to the Soviets to attempt to disrupt the present arrangements

SECRET

that they might well find irresistible. Senatorial considerations of a treaty with this language would certainly expose these problems. The only way of avoiding the danger -- a detailed definition of "physical access" -- to limit it to access involving the ability to detonate, disassemble or observe internal construction -- would, in effect, invite a detailed discussion with the USSR of the pros and cons of our present NATO arrangement, a procedure which is hardly likely to be productive.

I am proposing for your consideration and for that of the Committee of Principals a suggested alternative draft which is based on the concept embodied in §§ 91 and 92 of the Atomic Energy Act of 1954. Those sections, with certain exceptions, prohibit the transfer of U.S. atomic weapons to any other country, and also prohibit our giving assistance to any non-nuclear weapons country that contributes to its capability to design, develop or fabricate such weapons. The proposed language focuses on prohibiting the transfer of U.S. nuclear weapons and deals with physical access only in the context of preventing any contribution to the capability of a non-nuclear weapon state to design, develop or fabricate nuclear weapons.

The development of the existing bilateral agreements -- within the framework of the Atomic Energy Act -- should make this proposal acceptable to our allies. The existing bilateral arrangements have been justified under this Act on the theory that under the custodial arrangements there has been no transfer of the weapons and that a transfer could take place only in connection with a Presidential decision to use the weapons in the face of actual or imminent hostilities. In such a situation the President's power as Commander-in-Chief would override any statutory inhibitions. It has been made quite clear in congressional testimony that the U.S. has no intention of requesting a change in this law either now or in the foreseeable future. Our allies are therefore clearly on notice that custodial arrangements for U.S. weapons will be as strict if not stricter than those now in effect. They are also aware that in connection with a decision to use weapons in the face of actual or imminent hostilities, the existence of such a treaty limitation would not be considered as relevant.

Generalized language of this sort would seem to be desirable on the premise that realistic options for future NATO or European nuclear arrangements would not be prejudiced by a draft which neither explicitly protects nor rejects them. The attached draft would limit the so-called European option essentially to a federated entity capable of succeeding to the nuclear assets of its constituent members. Given the U.K. position and our own firm position against transfering control, however, this is in fact the only option available.

For their part, the Soviets would have to be guided by their own estimate of the viability and likelihood of further options being implemented, although it would probably be necessary in the course of future discussions with them to provide further reassurance about our plans.

We must recognize, of course, that in any serious effort to negotiate a mutually acceptable agreement we must consider what our reaction might be if the Soviets insisted on injecting the concepts of "use", "control" or "ownership" in the negotiations.

I believe we should continue to oppose Soviet language regarding "use" of nuclear weapons since this entails even greater difficulties in terms of existing and possible future arrangements than are associated with the term "physical access". We should endeavor to persuade the Soviets that the question of "use" is relevant only in a wartime situation, a situation in which this treaty would have little relevance.

In principle, I see no reason why we could not now undertake an obligation not to transfer control of nuclear weapons to any non-nuclear state or to any group of states. The limitation to <u>national</u> control in our existing draft treaty does not appear relevant to possible future nuclear arrangements of the kind we now have in mind. Moreover, in recent testimony before the JCAE, both you and Secretary McNamara have stated

explicitly that the U.S. has no intention of relinquishing control over its nuclear weapons. It is also pertinent to note that the U.K. has made clear publicly that it has no intention of transferring control over its nuclear weapons. These facts are now abundantly clear to the FRG.

As for ownership, it is our understanding that our approach to future NATO arrangements no longer includes the possibility of sharing ownership of our nuclear warheads (though joint financing is not otherwise ruled out). We are not aware of any disposition of the U.K. to transfer ownership of its warheads. Accordingly, we should, at least in principle, also be prepared to undertake not to transfer nuclear weapons into the ownership of any non-nuclear state or group of states.

While I believe that the above questions may well arise during the course of negotiation, the attached draft would afford the basis for initiating serious negotiations with the Soviet Union. The concept of no transfer of nuclear weapons would enable us to argue with the Soviets that it embraces what is relevant without having to add to the text contentious ideas about control and ownership.

Adrian S. Fisher

Adrian S. Fisher
Acting Director

Attachment:

Proposed Revised Draft
Non-Proliferation Treaty

[illegible], 1966

CONFIDENTIAL

Proposed Revised Articles of U.S. Non-Proliferation Treaty

Article I

Each of the nuclear weapons States party to this treaty undertakes not to transfer nuclear weapons to any non-nuclear-weapons State or to any group of States, or to take any action, by granting physical access or otherwise, that will contribute to the capability of any non-nuclear-weapons State to design, develop or fabricate nuclear weapons.

Article II

Each of the non-nuclear-weapons States party to the treaty undertakes not to manufacture or otherwise acquire nuclear weapons, either independently or together with other States.

Article III

Each of the States party to this treaty agrees not to take any of the actions prohibited in the preceding articles directly, or indirectly through third States or groups of States.

Article IV

(Text of article dealing with safeguards -- still under consideration)

Article V

Any party to the treaty shall have the right to withdraw from the treaty, upon six months notice, if it decides that extraordinary events related to the subject matter of the treaty have jeopardized the supreme interests of its country. Five years after the entry into force of this treaty, a conference of parties shall be held in Geneva, Switzerland in order to review the operation of the treaty.

Article VI

(A) "Nuclear-weapon state" means a State possessing a nuclear weapon or weapons as of (date). For the purpose of this Treaty a nuclear weapon includes any device capable of producing a nuclear explosion.

(B) "Non-nuclear weapon State" means any State which is not a nuclear-weapon State.

CONFIDENTIAL

DEPARTMENT OF STATE
THE LEGAL ADVISER

CONFIDENTIAL

July 6, 1966

MEMORANDUM FOR G - AMBASSADOR JOHNSON

FROM: L - Leonard C. Meeker

SUBJECT: Proposed Revised Articles of U.S. Non-proliferation Treaty

Two basic questions arise in considering the Secretary's proposed draft of a non-proliferation treaty: whether the language is both broad enough and narrow enough to make an agreement possible without sacrificing any vital interests.

I. Is the language of Article I, prohibiting nuclear weapon states from granting, or assisting non-nuclear weapons states to achieve, physical access to nuclear weapons, broad enough?

Proliferation other than by physical access

1. There are means other than "physical access" by which proliferation could occur. For example, were a non-nuclear weapon state given the right, either unilaterally or in association with other non-nuclear nations, to order the firing of nuclear weapons held entirely in the custody of a nuclear weapon state, there would clearly be proliferation without a transfer of physical access. This form of proliferation is prohibited by our present draft; the new draft would therefore represent a retrogression in this regard. It seems certain that the Soviets would not be prepared to leave room for such an arrangement in any non-proliferation treaty they would sign.

2. This problem might best be met by modifying Articles I and II so as to prohibit the transfer or acquisition of "control over nuclear weapons, through physical access or any other means." This formulation retains the emphasis on physical access while achieving the necessary breadth. As will be seen, having the term "control" in the definition is also desirable

The problem of ownership

3. Neither the Secretary's version nor the proposed modification would rule out a transfer of part or all of the bare legal title to nuclear weapons, so long as no incidents of control or physical access went with it. However, ownership of weapons has been excluded in recent proposals within the U.S. Government (i.e., response to NSAM 345) and I would not think we would want to resist strongly any Soviet proposal that ownership be specifically barred by the treaty.

II. Is the language of Article I narrow enough?

Present arrangements

1. "Physical access" may be interpreted in such a way that it does not necessarily interfere with present allied arrangements, at least as long as we do not release the nuclear weapons involved. That is, it may be argued that physical access to unarmed nuclear weapons does not necessarily constitute physical access to nuclear weapons; what is important from the point of view of non-proliferation is whether the sort of contact with nuclear weapons that a non-nuclear country enjoys gives it the ability to use them, and this remains the problem, whether the key term is "control" or "physical access".

2. The above argument is probably sound, but it is also somewhat subtle and takes some explaining. The initial reaction to use of the term "physical access" in this context is that it prohibits nationals of non-nuclear countries from carrying or transporting nuclear weapons, even if they have electronic locks on them and even if a national of the nuclear country responsible for the weapons is always present. Making "physical access" the key term in a non-proliferation treaty would put us more on the defensive regarding our present nuclear arrangements than would a formulation that explicitly focused on whether the ability to use nuclear weapons had been transferred. The modified version proposed above, prohibiting a transfer or acquisition of control through physical access or any other means, would thus be desirable.

3. It might be thought that the Secretary's draft, with or without the proposed modification, would preclude a transfer of physical control over nuclear weapons in all situations, including wartime. However, the better view would be that this language did not forbid a nuclear country, in circumstances where full-scale hostilities had commenced or were clearly imminent, from transferring nuclear weapons to a non-nuclear ally for use in the common defense. The purpose of a non-proliferation treaty is to reduce the chances of a nuclear holocaust occurring by minimizing the number of nuclear decision-making centers. So long as a nuclear nation retains control over access to its nuclear weapons up to the point when it decides that they must be employed in the common defense, its plans to accord access to its allies once that point had been reached would not seem to conflict with the purposes of a non-proliferation treaty.

4. It is difficult to write an exception for this situation into the treaty, and the better course may well be simply to leave it implicit. The present U.S. draft treaty's attempt to deal with this by defining control to mean the right or ability to fire nuclear weapons without the concurrent decision of an existing nuclear weapon state has been attacked by the Soviets as creating much too large a loophole (see Geneva 2583, 2584, June 28, 1966).

5. A precedent of sorts for leaving a wartime exception implicit exists in the history of the Limited Test Ban Treaty. Although that treaty prohibits "a nuclear weapons test or any other nuclear explosion", a memorandum of the Legal Adviser explained to the Senate that the treaty did not prohibit the use of nuclear weapons in time of war.

6. Should we decide to leave the wartime exception implicit we would want to make perfectly clear at Geneva what we were doing, lest we later be accused of having negotiated a treaty under false pretenses.

Future arrangements

access was the key term. As seen above, however, it would be sound, if subtle, to interpret physical access in terms of the ability to use nuclear weapons. Again, modification of the proposed language so as to focus on "control, through physical access or any other means" would be desirable.

8. The effect of the Secretary's draft, as modified above, would be to require a nuclear power veto in any nuclear arrangements. A veto-free European option of a certain sort, would, however, remain open. Were some of the nations of Europe to effect political integration in such a way that all foreign and military affairs would be handled through a central institution, it would be sound to consider the integrated entity to have succeeded to the nuclear status of any of its formerly national components. This option is in fact much closer to what we would be prepared to see come to pass than the possibilities open under the broader wording of the present U.S. draft.

9. The Secretary's draft might be interpreted as precluding the granting to non-nuclears of the physical power to prevent the firing of nuclear weapons from their territory without their consent. Under the proposed modified version in which the key term would be "control", but control would be undefined, it might be thought that any negative control by non-nuclears over nuclear weapons would be forbidden. However, the better view in either case would be that the purposes of a non-proliferation treaty do not require any limits on the extent to which non-nuclear countries may prevent the firing of nuclear weapons. A definition of control so as specifically to safeguard the possibility of negative control is therefore not necessary, and would raise other problems.

I

DEPARTMENT OF STATE

INTERNATIONAL SCIENTIFIC AND TECHNOLOGICAL AFFAIRS

10601

MEMORANDUM
CONFIDENTIAL

JUL 8 1966

TO : G - U. Alexis Johnson

THROUGH: S/S

FROM : SCI - Herman Pollack

SUBJECT: Draft Non-Proliferation Treaty

I have reviewed the June 23 revised draft of a non-proliferation treaty that the Secretary is now circulating to the Committee of Principals for comment. Presumably this draft was not intended to include all necessary elements of such a treaty, since there is no clause to cover safeguards. I assume the Secretary meant to focus attention on the concept embodied in the new Articles. I would leave any comment on these particular Articles to those more familiar with the intricacies of the problem.

I do wish to record, however, my strong belief that any non-proliferation treaty to be effective and to endure must make provision for some means of verifying that the undertakings of the parties are in fact being carried out. To this end I believe a non-proliferation treaty should include a strong provision providing for international safeguards to ensure that peaceful nuclear activities and materials are not being used counter to the undertakings of the parties. Without a provision for effective international safeguards, I believe it will become increasingly difficult to inspire confidence among potential nuclear states that the non-proliferation treaty is being honored by all. This problem will become increasingly more acute as more and more plutonium is produced throughout the world through the rapid increase in nuclear-powered electrical generating plants in many countries.

The Joint Committee on Atomic Energy has expressed itself strongly on this issue on several occasions. There appears to be significant Congressional support for an effective safeguards clause in any non-proliferation treaty.

CONFIDENTIAL

I am also concerned about the so called "Plowshare" loophole, about which much has already been said. The statement Mr. Foster is now authorized to make in the ENDC on peaceful nuclear explosives is of great importance in this matter. I believe it is essential that the treaty clearly proscribe development of "peaceful" nuclear explosives by non-nuclear powers, since the technology is the same as for the development of weapons. The addition of the phrase "or other nuclear explosives" to the end of Articles I and II of the June 23 draft would appear to close effectively this loophole. I grant that this may make the treaty somewhat more difficult to sell, but this fact in itself may indicate the importance of the Plowshare provision.

SCI:NFSievering:aam
7/5/66