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November 28, 1966

MEMORANDUM FOR THE SECRETARY

SUBJECT: Revised Draft Language for a Non-Proliferation Treaty

In accordance with your request, there is attached a memorandum from you to the President analyzing revised draft language for Article I of a non-proliferation treaty. The memorandum has been cleared with Mr. Leddy and Mr. Katzenbach.

Adrian S. Fisher, Acting Director

Leonard C. Meeker, Legal Adviser

Attachment: Draft Memorandum to the President.

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MEMORANDUM FOR THE PRESIDENT

SUBJECT: Suggested Language for the Non-Proliferation Treaty: Relationship to Existing and Possible Allied Nuclear Arrangements.

Attached to this memorandum is new language for the first article of a non-proliferation treaty.

This draft states an obligation by a nuclear-weapon State ". . . not to transfer nuclear weapons. . . to any recipient whatsoever directly, or indirectly; (and) not to relinquish to any recipient whatsoever its control over its nuclear weapons. . ." This draft is based on the language which was attached to my memorandum to you of October 14 on this subject. It incorporates changes in this earlier language suggested, on a personal basis, by the Soviet representative in New York. The Soviet representative stated that he did not know whether these changes would make our draft acceptable to Moscow but said that they would improve it a great deal from the Soviet point of view.

The first change suggested is to prohibit transfers of nuclear weapons "to any recipient whatsoever." Our earlier language would have precluded transfers of nuclear weapons to any non-nuclear-weapon state "either individually or by virtue of its membership in a military alliance or group of States." The second change is to prohibit the relinquishment of control over its nuclear weapons "to any recipient whatsoever" as contrasted with the previous language which prohibited a relinquishment of control without explicitly saying to whom.

There follows an analysis of the suggested revised language. It shows that with the exception of the transfer of nuclear weapons (as opposed to control of them) to the U. K.,

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dealt with in paragraph 5) the revised language would not change the substantive obligations over those stated in our prior language.

Like our earlier draft, the undertakings in the new one would parallel the obligations of the U. S. Atomic Energy Act.

Like the earlier one, this draft:

1) Would not disturb existing bilateral arrangements. I believe the Soviets already understand this but this should be made quite clear as a matter of negotiating history.

2) Would have no bearing on the decision of the NATO allies to go to war, or on the establishment of a permanent NATO committee for nuclear planning and consultation.

3) Would not preclude the assignment to NATO of additional Polaris submarines with U. S. nuclear weapons in a manner consistent with present legislation.

4) Would not rule out the establishment of a multilateral entity in which non-nuclear-weapon states participated, and to which they made financial contributions, so long as there was no transfer to this entity of an ownership interest in nuclear warheads (as opposed to delivery vehicles) and so long as the United States retained control over the nuclear warheads. It would not bar participants in such an entity from having their own veto either on the basis of prohibiting firing from their territory or as otherwise provided by agreement.

5) Would not bar succession by a federated European state to the nuclear status of one of its former components. It would bar transfer of nuclear warheads to a European defense community not involving a new federated European state. But it would permit the formation of a European collective nuclear force, with joint ownership of delivery vehicles, so long as any participating nuclear-weapon state (U. K. or France) retained control of its nuclear warheads.

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5) Would bar transfers of nuclear weapons or other nuclear explosives to the U. K. (The earlier draft would only have prohibited relinquishment of control over such weapons or explosives to the U. K.) However, we cannot now transfer completed weapons to the U. K. under the Atomic Energy Act. (The U. S. has for many months taken the position publicly that nuclear explosive devices, even for peaceful purposes, cannot realistically and properly be distinguished from nuclear weapons.) In general, the kind of cooperation in which we now engage with the British would be protected by the third clause of the proposed language which would prohibit assistance in the manufacture of nuclear weapons or other nuclear explosives only to non-nuclear-weapon States.

I believe this language would keep open enough options for the present, and the treaty would, of course, contain a provision permitting U. S. withdrawal if it later felt its supreme interests were jeopardized. If you approve, I will authorize Mr. Foster to state to the Soviet representative that he believes that if the language attached commends itself to the Soviet Union it would be considered by the United States as a suitable basis for consultation with its allies in order to facilitate coming to a final position by both sides.

Dean Rusk

Attachment: Draft Article I.

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Attachment

ARTICLE I

"Each nuclear-weapons State Party to this Treaty undertakes not to transfer nuclear weapons or other nuclear explosives to any recipient whatsoever directly, or indirectly; not to relinquish to any recipient whatsoever its control over its nuclear weapons or other nuclear explosives; and not in any way to assist, encourage, or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosives."

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