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UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY

December 31, 1964

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MEMORANDUM FOR THE DIRECTOR AND DEPUTY DIRECTOR

FROM: ACDA/GC - George Bunn

SUBJECT: Memorandum on Security Guarantees and Non-Proliferation of Nuclear Weapons.

There is attached a memorandum on the above subject which attempts to explore some of the fundamental and difficult questions involved. We are requesting comments from those interested in ACDA and in the State Department. However, because of the immediate concern with the subject in New York, I thought you might be interested in having this draft.

Attachment:

As stated.

ACDA/GC

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SECURITY GUARANTEES AND NON-PROLIFERATION  
OF NUCLEAR WEAPONS.

I. **BACKGROUND.**

In recent months, since the detonation of a nuclear device by the Chinese Communists, there has been discussion of the possibility of nuclear Powers providing to non-nuclear Powers "guarantees" which will protect the latter from nuclear attack. Such "guarantees" are thought to be necessary, or at least helpful, as a means of inducing non-nuclear States to forego the acquisition of their own nuclear weapons.

Recent statements include the following:

A. Statement of President Johnson. In his address to the Nation of October 18, 1964, the President said: "The nations that do not seek national nuclear weapons can be sure that if they need our strong support against some threat of nuclear blackmail, then they will have it."

B. Proposal of the Irish Foreign Minister. In his address before the General Assembly on December 8, 1964, Foreign Minister Aiken suggested as a "counterpart" to a non-acquisition pledge "that the nuclear powers bind themselves not to give control of nuclear weapons to non-nuclear States and to go to the

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assistance of a non-nuclear State attacked by a nuclear Power."

(Underscoring added) He also proposed that the Chinese Communists be offered the Chinese seat on the Security Council, assuming that the Chinese Communists agreed to be bound by the purposes and principles of the U.N. Charter, "by a non-dissemination agreement and by an agreement that all other nuclear States would go to the assistance of a non-nuclear State attacked by a nuclear Power." The Foreign Minister welcomed President Johnson's statement of October 18, quoted above. He continued:

"President Johnson's assurance, however, would be far more effective to prevent the spread of nuclear weapons if . . . similar assurances were given by the other nuclear Powers, and if those assurances were incorporated in a treaty such as I have suggested between the nuclear Powers and were confirmed and ratified by their treaty-making authorities. Even if all five nuclear Powers are not now prepared to sign a treaty of that kind, it would, I am convinced, be a strong brake on the spread of nuclear weapons and a vital step for the prevention of war and the establishment of stable peace if as many nuclear Powers as possible negotiated and ratified such a treaty without delay."

C. Statement of U.K. Minister of Defense. During House of Commons debate on December 17, Defense Minister Healey was asked about the problem of how to meet British commitments outside Europe in light of the Chinese Communist nuclear

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explosion. Healey said:

"By far the best answer would be for the existing nuclear Powers on both sides of the Iron Curtain to give solemn and effective guarantees to non-nuclear Powers against nuclear blackmail or attack. This, I believe, must be a major priority in our negotiations with the Soviet Union. But if Russia refused to consider such a step, then we shall have to see whether it is possible for the Western nuclear Powers to give such a guarantee by themselves. If it comes to this, serious problems might arise for those non-nuclear Asian countries which are committed to a policy of non-alignment. These are grave and complicated matters whose full implications are not yet apparent to any of those concerned, but I think the House will agree that they justify her Majesty's Government in reserving their position for the time being on the question of the role of aircraft outside Europe."

D. Suggestions by India. Despite considerable speculation to the contrary, it is understood that Prime Minister Shastri, during his visit in London with Prime Minister Wilson in early December, did not make any definite proposals for the extension of a guarantee to India by the nuclear Powers. However, in a Foreign Affairs debate of December 22, Foreign Minister Swaran Singh said the following:

"India has not asked for a 'nuclear shield' from any particular country, but does hold that non-nuclear countries should have assurance of their security and safety. Great nuclear Powers (U.S.A.

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and U.S.S.R.) have responsibility to devise some methods of providing such assurance."

A great many possible arrangements can be envisioned, when the question of providing a nuclear "guarantee" is raised. Some of these possibilities are implied in the proposals or suggestions described above. For example, a guarantee could be undertaken: by five Powers (the U.S. the U.K., France, the U.S.S.R. and Communist China); by four Powers (the U.S., the U.K., France, the U.S.S.R., but not Communist China); by the Western nuclear Powers (the U.S., the U.K., and perhaps France); by the two major nuclear Powers (the U.S. and the U.S.S.R.); or by any single nuclear Power. A guarantee could, by its terms, have broad application to all the non-nuclear countries of the world, to non-nuclear countries of a particular region, or to a specified non-nuclear country. As to the form of the undertaking, it could be incorporated in a treaty or formal agreement which includes non-proliferation provisions, and/or it could find expression in coordinated defense preparations and specific arrangements for military action in the event of various contingencies.

This memorandum examines a number of general and specific issues which would have to be faced in considering guarantees to

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protect non-nuclear Powers.

## II. CONCLUSIONS.

Based on the discussion below, the following preliminary conclusions are suggested:

1. If the object of a guarantee against nuclear attack is to induce a non-nuclear State to forego development of its own nuclear weapons, then the crucial problem is that of formulating a guarantee which is an effective, convincing deterrent against potential nuclear attack and which can, therefore, be relied upon by that State, in lieu of acquisition of its own nuclear weapons.

2. From the standpoint of the guaranteed State, the ideal guarantee would presumably be one which provides for automatic nuclear retaliation by the guaranteeing State. However, it is most unlikely that the U.S. would agree to a completely automatic guarantee, even though such a guarantee could technically be drafted. (The United States has not undertaken, in any of its post war security agreements, an automatic, unqualified commitment to use its force in the event of aggression against one of its allies.)

3. Whatever the precise legal formulation in a security

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agreement, an important, and perhaps even crucial, element in assuring a response, is the participation of the parties in defense planning and preparations, particularly stationing of troops in the area where an attack is likely to take place. In other words, the stronger the actual links between the guarantor and the guaranteed State, the more credible will be the guarantee. This conclusion raises the question of the extent to which a close defense relationship can be established and maintained with a country which wishes to pursue a policy of "non-alignment."

4. It has been suggested by some that an effective guarantee against nuclear attack might consist of an arrangement whereunder a nuclear Power maintains under its control nuclear weapons for future use by the threatened State if it is the victim of a nuclear attack. Although such an arrangement might be a meaningful deterrent, it would represent a very considerable change in important aspects of U.S. nuclear policy. The Atomic Energy Act would probably have to be amended, and the international political problems and ramifications would be very great.

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5. Opportunities will undoubtedly arise when the United States may make unilateral statements designed to warn an aggressor of the consequences of using nuclear weapons. Such statements may be more imposing than vague undertakings of a general character. A specific statement geared to a particular crisis, though not technically binding in the same way as an international agreement, commits the prestige of the U.S. to the promised course of action. The degree of commitment and determination conveyed by the statement can be increased if the Congress authorizes or gives its backing to the statement in a joint resolution.

6. A multilateral "guarantee" applying generally to non-nuclear Powers must, of necessity, be of a broad, unspecific nature, since it presumably cannot exceed the limits beyond which any single, participating nuclear Power is willing to go with respect to any single, participating non-nuclear Power. Despite its generality, such a guarantee could possibly serve, for a non-nuclear Power with limited capacity to make nuclear weapons, as a make-weight in deciding to forego or postpone

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a nuclear weapons program. Such a guarantee might also enter to some extent into the calculations inducing a particular aggressor not to use or threaten use of nuclear weapons; and if a nuclear attack did take place, it could provide a basis for intervention by a nuclear State so inclined. However, unless it were followed up by more specific defense arrangements, a general, multilateral "guarantee" might not serve its intended purpose of inducing forbearance from a nuclear weapons program on the part of non-nuclear States which actually have a capacity to make nuclear weapons and which feel that they may be threatened by the nuclear weapons of another country. In fact, such a guarantee, without further defense arrangements, might even be harmful: its vagueness could be misread by a potential aggressor, thereby increasing the likelihood of dangerous miscalculation. In addition, if a general guarantee were undertaken multilaterally by several nuclear Powers, it might wind up having the appearance of requiring some sort of "joint" action by the guarantor Powers. In this event, the result could be not only a further diminution of the value of the guarantee to the threatened State, but also

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a possible inhibition on the freedom of action of the United States.

7. The classical concept of "guarantees of neutrality", as practiced mainly in the 19th century, might have some, although limited, relevance to contemporary problems. A variation of this concept is embodied in the Austrian State Treaty of 1955, which, inter alia, guarantees Austria's independence and prohibits Austrian acquisition of nuclear weapons.

8. The above points lead to the general conclusion that no single formula is likely to be satisfactory with respect to countries in such diverse circumstances as India, Sweden, the UAR, Japan and Israel.

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### III. THE CREDIBILITY OF THE GUARANTEE.

This is the fundamental issue which underlies most of the problems in connection with guarantees. Since the object of the guarantee is to contribute to the non-nuclear State's willingness to forego acquisition of nuclear weapons, very little if anything will be accomplished in this regard unless the non-nuclear State feels confident that the guarantee will afford the necessary protection if and when a showdown comes. In other words, if the guarantee is so formulated as to leave loopholes by which the guarantor can extricate himself, or if the guaranteed State feels for any reason that the guarantee will not be fulfilled, then there will be little alleviation of the pressure upon the threatened State either to make its own nuclear weapons or, at the very least, to proceed with personnel staffing, design planning, materials acquisition and other preparations, without actually producing the finished nuclear weapons. (It is understood that a very significant amount of preparation can be carried out with relative inconspicuousness.)

There are at least two ways to view the problem of credibility. First, as already discussed, the guarantee should

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convince the threatened State that assistance or retaliation will be forthcoming in the event of a nuclear attack. Second, the threatened State will probably try to assess whether the potential aggressor will fear retaliation. If the potential aggressor is not likely to take the guarantee seriously, then the guaranteed State might well not be satisfied because the risk of having to suffer a nuclear attack remains. Retaliation will hardly be viewed by the victimized State as an adequate substitute for successful deterrence.

It must be recognized, of course, that in practice calculations of deterrence will not be black and white and will vary greatly from situation to situation. For example, a non-nuclear Power which has serious doubts as to whether it is able to produce nuclear weapons and which is not immediately threatened by a hostile nuclear power might be willing, in exchange for a non-acquisition pledge, to accept a guarantee which would appear quite inadequate to a non-nuclear Power which could produce its own nuclear weapons without too much sacrifice and which is threatened by a hostile nuclear Power.

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#### IV. EXISTING GUARANTEES OF THE U.S.

Since the termination of the Second World War, the United States has undertaken many obligations somewhat similar to "guarantees" in the form of alliances with friendly States. These undertakings, embodied in the form of treaties, have been subject to approval by the U.S. Senate. Not only is Senate advice and consent to ratification necessary because of Constitutional requirements, but also Senate consideration provides an opportunity for obtaining a broad, national consensus behind the commitment of the United States. These factors bring to the fore the question of how far a democratic government can go in making a binding guarantee.

It would be possible, of course, to draft a commitment which by its terms obligated the United States without qualification to use force to aid any State which has been attacked by nuclear weapons. However, the United States has **not undertaken** such an unqualified obligation in any of its post war security treaties. The nearest thing to an unqualified promise to use U.S. force to assist the victim of an attack is found in the North Atlantic Treaty. Article 5 of that Treaty provides:

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"The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all; and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area." (Underscoring added)

Even here the decision remains up to the assisting State as to what "it deems necessary" to restore and maintain security.

The legal significance of this provision was expounded in Secretary Acheson's testimony supporting the Treaty before the Senate Committee on Foreign Relations:

"This naturally does not mean that the United States would automatically be at war if one of the other signatory nations were the victim of an armed attack. Under our Constitution, the Congress alone has the power to declare war. The obligation of this Government under Article V would be to take promptly the action it deemed necessary to restore and maintain the security of the North Atlantic area. That decision would, of course, be taken in accordance with our Constitutional procedures. The factors which would have to be considered would be the gravity of the attack and the nature of the action which this Government considered necessary to restore and maintain the security of the North Atlantic area. That would be the end

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to be achieved. Under the treaty we would be bound to make an honest judgment as to what action was necessary to attain that end and consequently to take such action. That action might or might not include the use of armed force. If we should be confronted again with an all out armed attack such as has twice occurred in this century and caused world wars, I do not believe that any action other than the use of armed force could be effective. The decision, however, would naturally rest where the Constitution has placed it."

The other security treaties of the United States appear more loosely drawn in terms of the obligation to assist with use of force. The Security Treaty with Australia and New Zealand (Article IV), the Treaty of Mutual Cooperation and Security with Japan (Article V), the Mutual Defense Treaty with the Philippines (Article IV), the Mutual Defense Treaty with Korea (Article III), the Southeast Asia Collective Defense Treaty (Article IV), and the Mutual Defense Treaty with the Republic of China (Article V) all contain obligations whereby each Party recognizes that an armed attack in the treaty area against any of the Parties "would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its Constitutional processes". (The SEATO Treaty and the Treaty with Japan contain slight textual variances of no significance for this discussion.)

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The Inter-American Treaty of Reciprocal Assistance contains a somewhat different formulation. It states that "an attack by any State against an American State shall be considered as an attack against all the American States" that each of the Parties undertakes to assist in meeting the attack in the exercise of the inherent right of individual or collective self-defense" that each of the Parties "may determine the immediate measures which it may individually take in fulfillment of the obligation contained in the preceding paragraph": that measures agreed upon by the Organ of Consultation of the Inter-American System shall be binding upon the Parties "with the sole exception that no State shall be required to use armed force without its consent" (Articles 3 and 20).

Although the precise language of the commitments of the United States is of great importance, the language does not tell the whole story. In order to bolster the defense of Europe, the United States has stationed a very substantial number of its troops on the Continent, particularly in Germany. If an attack should come from the East there would be virtually no possibility that American forces could avoid becoming involved in the

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fighting. In fact, quite the opposite is true. The forces are there, in a state of readiness, to respond to any attack. Whatever the niceties of legal analysis regarding the North Atlantic Treaty commitment of the United States, our allies can have little doubt, therefore, that the United States will be involved in the fighting once an attack starts.

Although the importance of physical commitment is most clearly illustrated in the case of Europe, similar factors are at work with respect to most of the other alliance structures of the United States. Not only does the presence of troops dramatize and cement a United States commitment, but also the presence of missiles, airplanes, nuclear weapons and naval vessels can serve similar purposes.

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V. THE ACTIONS WHICH TRIGGER THE GUARANTEE.

The guarantee would not have much utility unless it attempted, at least, to protect the non-nuclear state against nuclear attack. However, specification that the guarantee will go into operation in the event of a nuclear attack on the guaranteed state does not exhaust the possibilities which need to be considered.

The question also arises whether some form of guarantee should be undertaken in the event of conventional attack by a nuclear power against a non-nuclear power. The statement of December 8, 1964, by Foreign Minister Aiken of Ireland before the U.N.G.A., appears in its generality to make such a suggestion. The Irish Foreign Minister said that the nuclear powers should "bind themselves...to go to the assistance of a non-nuclear State attacked by a nuclear power."

From the standpoint of the guaranteed State, there would be some disadvantages in limiting the guarantee merely to response in the event of a nuclear attack. Principally, the guaranteed State might fear that a crisis

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involving clashes with conventional arms could ultimately lead, through miscalculation or otherwise, to use of nuclear weapons, unless the guarantor had been in on the conflict from the beginning. At the same time, the guaranteed State might fear that a guarantee tied only to nuclear attack could give to the potential aggressor a message that the obligation to assist begins only when the nuclear attack starts, thus freeing the aggressor from restraints which would exist if the guarantee had not been tied solely to nuclear attack.

Despite these considerations, it seems unlikely that the U.S. would agree to a multilateral guarantee extending generally to non-nuclear powers, which purported to commit the U.S. to action in the case of conventional attack. Such an obligation would be immensely far reaching. If the U.S. were to so commit itself, it might find itself at some future time involved in an excessive number of conventional conflicts. Alternatively, it might have to refuse, in the view of a guaranteed State, to carry out fully the spirit of the guarantee.

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A non-nuclear State may also wish protection against threats of nuclear attack, so-called "nuclear blackmail". If a potential aggressor makes menacing statements about its "overwhelming power", this may be enough to affect the national decisions of the threatened State. Accordingly, intimidation by nuclear threat remains a potentially serious problem for the guaranteed state.

It is hard to visualize a meaningful treaty commitment to assist a non-nuclear State in the event the latter is threatened by nuclear blackmail. The threat certainly need not be explicit; it can be completely ambiguous. In fact, there is a very considerable element of threat, whether or not anything is said, as soon as a hostile State has an adequate delivery capability. As a result, the statements, actions, and posture, of the potential aggressor could be subject to very different interpretations. The guaranteeing State might wish to be conservative in interpreting the conditions calling forth its involvement, while the guaranteed State might be very jittery about the implications of the potential aggressor's actions.

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Accordingly, it might well be difficult to formulate a treaty pledge to assist a State "threatened" by "nuclear blackmail" in precise enough terms to add significantly to the security of that State.

It is possible, however, to state a meaningful policy of assistance to a State in the event of a nuclear threat. In his address to the Nation of October 18, 1964, following the detonation of a nuclear device by Communist China, the President said that "the Nations that do not seek national nuclear weapons can be sure that if they need our strong support against some threat of nuclear blackmail, then they will have it." Such a statement is not a guarantee; it does not promise any particular action. The statement can, however, serve a wide range of important functions. It notifies the Chinese Communists that the U.S. will view threats of nuclear blackmail with the utmost seriousness and that the U.S. intends, in whatever way it may later decide upon, to give its strong support to the threatened State.

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#### VI. THE ACTIONS OF THE GUARANTOR.

A basic question with respect to a guarantee designed to support a non-proliferation undertaking is whether the guarantor State should pledge the use of nuclear weapons in response to a nuclear attack against the guaranteed State.

From the guarantor's standpoint, it can be argued that the guarantor should only be committed to taking action which it deems necessary and appropriate in response to a nuclear attack. If the guarantor has sufficient conventional air power to eliminate the nuclear weapon production facilities of the aggressor and to inflict other "unacceptable damage" on the aggressor, without using nuclear weapons, then the guarantor should presumably be able to reserve to itself the option of retaliating with conventional or nuclear weapons.

However, from the standpoint of the guaranteed State such a promise may not seem adequate. It may feel that unless the potential aggressor fears a nuclear attack, as opposed to a less destructive, conventional attack, then deterrence will not be reliable.

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The concerns of a non-nuclear State might be met if it were possible, and desirable in the particular instance, to work out with that State defense relationships involving joint planning and the presence of combat-ready troops from guarantor countries on the territory of the guaranteed State. An extreme form of relationship, which some have suggested, would involve the following elements: A nuclear State could station nuclear weapons together with delivery vehicles on the territory of the threatened State, assuming, of course, that the threatened State desires the arrangement; the nuclear weapons would remain in the control of the nuclear Power; however, the nuclear Power would commit itself to turning over control of the nuclear weapons, as well as the delivery vehicles, in the event of a nuclear attack; the non-nuclear State, which had suffered the nuclear attack, could then determine whether or not it wished to retaliate with nuclear weapons.

An arrangement along these lines could provide a very

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effective deterrent. Although the potential aggressor might question whether a guarantor State would carry out a nuclear attack itself, particularly if the potential aggressor had a long-range delivery capability with which to reach the territory of the guarantor, the potential aggressor should have much less doubt as to whether the victim of the nuclear attack would retaliate.

Despite its high deterrent value, the type of arrangement under discussion has very serious detractors. It would involve fundamental alterations in U.S. nuclear policy. First of all, existing U.S. law would have to be amended. Section 92 of the Atomic Energy Act makes it unlawful "for any person to transfer or receive in interstate or foreign commerce, manufacture, produce, transfer, acquire, possess, import, or export any atomic weapon." (Statutory exceptions to this prohibition are not relevant to the problem under discussion.)

Secondly, the arrangement would have nothing less than tremendous ramifications with respect to many of the allies of the United States. The U.S. has not been willing to promise the transfer of control of nuclear weapons to U.S. allies

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in the event of particular contingencies. Accordingly, if the U.S. were to propose a more favorable nuclear arrangement for a non-nuclear State such as India, some of the allies of the U.S. might wonder whether there are more rewards from the United States for being non-aligned than for being an ally. (The European allies of the U.S. have been targetted by nuclear weapons for some time now and have frequently been subjected to nuclear threats by the Soviet Union. On the other hand, the nuclear threat against India is, of course, very recent.)

Thirdly, although the type of arrangement under discussion might be feasible with a very close ally, it is questionable whether it could be undertaken with a "non-aligned" country. If the "non-aligned" country wished to follow the familiar pattern of undermining important U.S. positions and being careful to not/offend the Soviets, it is far from certain that U.S. public opinion, particularly Congressional opinion, would support such a favorable defense arrangement for the non-aligned country. This observation applies, of course, to some extent to the establishment and maintenance of any very close defense relationship with a non-aligned country. The difficulty of obtaining broad

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Congressional support for economic aid to a country such as Yugoslavia should not be forgotten.

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## VII. THE BEHAVIOR OF THE GUARANTEED STATE.

The United States, as well as other potential guarantors, would, of course, wish to obtain a non-acquisition pledge from a non-nuclear Power in exchange for a guarantee against nuclear attack. If such a quid pro quo had been established, the U.S. would not have to go to the aid of a guaranteed State if the latter/had obtained, either by manufacture or transfer, national control of its own nuclear weapons. Of course, if the U.S. determined that it was still in its interest to render assistance, it could do so; but it would not be obligated.

The situation, however, would not be so clear cut if the guaranteed State had carried out extensive preparations to make a nuclear weapon; e.g., research, design work, materials acquisition and so forth, but had stopped just short of producing the weapon itself.

Another situation of uncertainty as to application of the guarantee could be created if the guaranteed State for one reason or another appeared to be responsible for the outbreak of hostilities. Both sides in any conflict can usually be expected to launch vigorous campaigns to demonstrate that the

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other side was the true aggressor. If the facts were actually uncertain, e.g., if the initial incident took place in a remote region of Asia, the truth might never be definitively ascertained.

Questions of this sort would not necessarily all have to be resolved when a guarantee was concluded. However, they are introduced at this point in order to illustrate the uncertainties which could easily develop as actual events unfold under almost any type of guarantee, but particularly one of a general, multilateral character. The special dilemma faced by the non-nuclear State under these circumstances could be expressed in this way: If a general and unspecific guarantee is created, a threatened, non-nuclear State may well have anxiety as to whether the guarantee will stand up when needed; however, if as a result the non-nuclear State takes what it would regard as provident precautionary measures, such as the initiation of preparations for a weapons program, then it may run the further risk that one or more of the guarantors will be disposed to regard such preparations as "provocative" or contrary to the spirit of the non-acquisition pledge and therefore grounds for non-fulfillment of the guarantee.

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VIII. RELATIONSHIP TO EXISTING U.S. POSITION ON "BANNING THE BOMB."

Pursuant to GA Resolution 1653 (XVI), the Secretary General of the United Nations requested the views of governments on the possibility of convening a special conference for signing a convention on the prohibition of the use of nuclear and thermo-nuclear weapons for war purposes. The United States replied that there would be no point in holding such a conference.

Secretary of State Rusk explained that:

"The United States Government can and does offer the fullest assurances that it will never use any weapon, large or small, with aggressive intent. But the United States, like other free nations, must be fully prepared to exercise effectively the inherent right of individual and collective self-defense as provided in the United Nations Charter.

"The Charter of the United Nations makes a distinction, not between one weapon and another, but between the use of force for aggression and for defense. This distinction is critical."

If the U.S. expresses willingness to undertake a guarantee to protect non-nuclear States against nuclear attack, without regard to the question of which State first initiated aggression, the position quoted above might well be undermined. In effect,

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such a guarantee could be looked upon as a sanction against any first use of nuclear weapons, whatever the cause of the conflict. On the other hand, if the guarantee were limited in its application to the country which used nuclear weapons, if that country were the original aggressor, then the uncertainties discussed previously would be brought into prominence.

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IX. UNILATERAL STATEMENTS GEARED TO PARTICULAR CRISES.

As indicated elsewhere in this memorandum, substantial problems may arise if broad, multilateral security guarantees are attempted in order to protect non-nuclear States against nuclear attack. Many of these problems arise from the inherent difficulty of attempting to formulate a sufficiently specific promise when performance on that promise may be requested under a very wide variety of unforeseen circumstances at unpredictable times in the future.

This kind of difficulty obviously does not arise in the case of a unilateral statement made by the United States in the light of specific circumstances existing at the time the statement is needed. The statement could be as specific as to threatened actions by the United States as the United States believed advisable. Even though such a statement would not technically create the same obligation as an international agreement, nevertheless it could be most imposing and convincing to the potential aggressor. When the President makes a promise of intended action on behalf of the United States, the prestige of the United States becomes committed to the performance of that

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course of action. This is particularly so if the U.S. Congress, by Joint Resolution, has authorized or given backing to the U.S. commitment.

An example of a unilateral U.S. statement is found in President Kennedy's Address to the Nation of October 22, 1962, concerning the presence of Soviet missiles in Cuba. In that Address, the President said:

"It shall be the policy of this Nation to regard any nuclear missile launched from Cuba against any nation in the Western Hemisphere as an attack by the Soviet Union on the United States, requiring a full retaliatory response upon the Soviet Union."

This statement was unquestionably more imposing in its deterrent power than prior generalized undertakings. (The provisions of the Inter-American Treaty of Reciprocal Assistance are quoted earlier in this memorandum.)

Of course, a unilateral statement of the United States can, if appropriate, be much less tightly drawn than was the Cuban missile crisis statement. For example, with respect to the Arab-Israeli problem, President Kennedy made the following statement in his press conference of May 8, 1963:

"We support the security of both Israel and her neighbors. We seek to limit the Near

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East arms race which obviously takes resources from an area already poor, and puts them into an increasing race which does not really bring any great security.

" . . . This Government has been and remains strongly opposed to the use of force or the threat of force in the Near East. In the event of aggression or preparation for aggression, whether direct or indirect, we would support appropriate measures in the United Nations, adopt other courses of action on our own to prevent or to put a stop to such aggression, which, of course, has been the policy which the United States has followed for some time."

The usefulness of unilateral United States statements geared to specific crises can easily be visualized if a hypothetical crisis between India and Communist China is imagined. Assume, for example, that intelligence reports indicated that Communist China was undertaking a military build-up in the Himalayas and that an attack against India might shortly take place. The President could then determine what sort of a warning he might wish to give the Chicom. He would presumably take into account such factors as the state of India's military defenses, the intelligence estimates of Chicom conventional and nuclear strength, the extent of United States military commitment in other regions, the degree of support from allies,

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particularly those within the region, and a great many other factors. The circumstances might lead the President to issue a warning much more explicit and compelling for the particular crisis than any generalized undertaking designed to cover innumerable, unpredictable crises. On the other hand, if the circumstances led to a very cautious response, then this would presumably have resulted from a calculation by the U.S. of how its own interests should best be served.

If the possibility of U.S. responses of this sort is kept in mind, the need to enter into generalized, international agreements does not seem as great. Of course, a promise to a non-nuclear State that the U.S. might, if it sees fit, issue an appropriate warning to a potential aggressor probably would not by itself provide to the non-nuclear State a very solid basis for foregoing the acquisition of its own nuclear weapons. However, if the U.S. and the particular non-nuclear State had begun to carry out joint defense preparations providing some tangible guarantee of U.S. involvement, then the non-nuclear State might have confidence that the U.S. would exert on its behalf all appropriate efforts that it could, including, if deemed desirable, solemn public warnings to the potential aggressor.

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X. APPLICABILITY OF CLASSICAL "GUARANTEES OF NEUTRALITY"

A famous example of this type of guarantee was the neutralization of Belgium. By a treaty of 19 April 1839, between Great Britain, Austria, France, Prussia, Russia and Belgium, it was declared that "Belgium shall form an Independent and perpetually Neutral State. It shall be bound to observe such Neutrality towards all other States." Belgium was declared to be "placed under the guarantee" of the five powers listed above. (As is commonly known, the United Kingdom entered the First World War technically on the grounds of German violation of this guarantee; it had been disregarded completely by Germany, -- Chancellor von Bethmann-Hollweg referring to it as a "scrap of paper".)

A "guarantee of neutrality" could conceivably be more attractive to some non-aligned governments than an alliance relationship, inasmuch as such a guarantee might not involve the abandoning of non-aligned status. However, a number of possible drawbacks should be mentioned.

First of all, a "guarantee of neutrality" is in some respects a very broad undertaking. Any attack, nuclear or conventional, would violate the "neutrality" of the

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guaranteed State, and thus the guarantors could be called upon for assistance whether or not a nuclear attack had taken place. (The question of whether a conventional attack should trigger the guarantee has been discussed in a previous section.)

Secondly, another problem with respect to classical guarantees of neutrality has to do with the possibility of providing assistance to a threatened State in preparing to meet an attack. There is considerable question as to whether this could be done at all under a traditional guarantee of neutrality. The British Foreign Minister described Belgium's position just before the German onslaught in 1914 in the following way:

"By the end of the week, on August 1, we had before us the announcement of the Belgian Government that Belgium would, if invaded, defend her own neutrality to the utmost of her power; that made the question straight and simple. Belgium at this stage made no appeal to the guaranteeing Powers. In this she acted properly and wisely. Such information as has come to my notice goes to show that, up to the last moment, the Belgian Government did not believe that any Power intended to violate the Treaty of Guarantee. To appeal to the Powers would then have implied a suspicion that she did not entertain: to ask help from some of them, and not from all, would have laid her open to a charge of

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siding with some against another, and thus departing from neutrality before this was threatened."

(Lord Grey, Twenty Five Years 1892-1916, 1925, p. 9)

Of course, the Government of India has already sought assistance both from Western countries, the United States and the United Kingdom, and from the Soviet Union, a Communist country. Perhaps, at some stage the question becomes one of semantics: can the label "guarantee of neutrality" be put on an arrangement even though all of the elements do not correspond to the classical guarantee? There is nothing to prevent juggling with labels. However, should "guarantees of neutrality" be attempted, it would be important to build understandings which would permit the guaranteed and "neutral" State to seek assistance in its defense preparations. This would be desirable in order to help prevent the guarantee from falling to pieces if one of the guaranteeing States is tempted to charge that the guaranteed State has been "neutral" in a lopsided fashion.

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# XI. THE PROBLEM OF INDIVIDUAL OR JOINT GUARANTEES

If a number of States jointly guarantee the security of another State from certain threats, a question can arise as to whether all of the guaranteeing States must act jointly to reinforce the guarantee and whether, as a result, the guaranteeing States will be released from performance if joint action is not achieved.

That this is not merely an abstract or academic possibility can be seen by examining the guarantee of the neutrality of Luxembourg. In the Treaty of London of 11 May 1867, between Great Britain, Austria, Belgium, France, Italy, the Netherlands, Prussia, and Russia, it was agreed in Article II as follows:

"The Grand Duchy of Luxemburg, within the Limits determined by the Act annexed to the Treaties of the 19th April, 1839, under the Guarantee of the Courts of Great Britain, Austria, France, Prussia, and Russia, shall henceforth form a perpetually Neutral State.

"It shall be bound to observe the same Neutrality towards all other States.

"The High Contracting Parties engage to respect the principle of Neutrality stipulated by the present Article.

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That principle is and remains placed under the sanction of the collective Guarantee of the Powers signing Parties to the present Treaty, with the exception of Belgium, which is itself a Neutral State."

Lord Derby, the Prime Minister explained the meaning of these provisions during debate in the House of Lords:

"...a single Power is not bound to take up the cudgels for all the other Powers with whom she gave a collective guarantee. I can give no further interpretation of the Treaty than this--that, as far as the honour of England is concerned, she will be bound to respect the neutrality of Luxemburg; and I expect that all the other Powers will equally respect it; but she is not bound to take upon herself the Quixotic duty, in the case of a violation of the neutrality of Luxemburg by one of the other Powers, of interfering to prevent its violation-- because we have only undertaken to guarantee it in common with all the other Great Powers of Europe. (Quoted in McNair, The Law of Treaties, 1961, p. 243.)

The "guarantee" was, in effect, interpreted in a way that it became no guarantee at all, but merely a promise by each of the parties not to attack Luxembourg.

The problem of a "collective guarantee" can, of course, be solved by careful drafting. The so called "Locarno Pact" of 1925 used the words, "the High Contracting Parties collectively and severally guarantee".

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Addition of the words "and severally" would, as a legal matter, avoid the conclusion that all of the guaranteeing Powers must act in concert. (The Locarno Pact was concluded between Great Britain, Belgium, France, Germany, and Italy to guarantee "the maintenance of the status quo resulting from the frontiers between Germany and Belgium, and between Germany and France, and the inviolability of the said frontiers..."; Germany denounced the Treaty in 1936 on the ground that a treaty of mutual assistance of 1935 between France and the Soviet Union was incompatible with the application of the Treaty of Locarno.)

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