CONFERENCE OF NON-NUCLEAR-WEAPON STATES

Geneva, 1968

Item 1 (d) of the provisional agenda

a) DECLARATION BY NUCLEAR-WEAPON STATES, JOINTLY OR SEVERALLY, TO PROTECT THE NON-NUCLEAR-WEAPON STATES WHO HAVE RENOUNCED THE PRODUCTION, ACQUISITION AND USE OF NUCLEAR WEAPONS AGAINST THREAT OR USE OF NUCLEAR WEAPONS

by

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A. THE DECLARATION AND OTHER METHODS OF ENSURING THE
SECURITY OF NON-NUCLEAR-WEAPON STATES

1. The security of States, which was traditionally based on the military forces
at the command of each State or on a combination of forces through alliances, now
depends on circumstances beyond the control of most States. As a result of
technical advances which have led to the interdependence of all nations throughout
the world, whether or not they belong to international organizations, and
particularly as a result of the creation and development of weapons and means of
delivery whose use is potentially dangerous to all nations, every country is now
faced with the possibility of threats to its security of a kind that cannot always
be solved by reliance on its own military forces or even under the alliances which
it may have contracted. Another factor affecting a considerable number of States
is the policy of non-alignment which involves, among other things, the avoidance of
alliances with States possessing nuclear weapons and means of delivering them.

2. The methods and measures proposed for ensuring the security of States which
have to face this new situation without nuclear weapons are so diverse that they
are now becoming incompatible with one another. In other words, a measure which
might seem acceptable and feasible to one State is regarded as impossible and
unacceptable by another. The specific methods referred to in item 1 of the
provisional agenda for the Conference of Non-Nuclear-Weapon States are only some
of the most obvious. In order to establish the special nature of the declaration
which is the subject of this report, we shall list the most important of all the
conceivable measures proposed or suggested by various States in international
bodies or covered in expert studies and shall mention some of their main variants,
without expressing any views on the value of each of them or of their relations to
one another.

3. For some countries, the mere legal existence of a treaty on the non-proliferation
of nuclear weapons, even a treaty which does not contain any guarantee clause or is
not accompanied by any security measures, would be a sufficient guarantee of the
security of non-nuclear-weapon States. Other countries, on the other hand, have
argued that, if a non-proliferation treaty is to be effective and acceptable, it
must contain a provision or be accompanied by some specific measure involving the
so-called "negative guarantee" - namely, either an undertaking by the nuclear Powers
that they will refrain from the use, or threat of use, of nuclear weapons against a
non-nuclear-weapon State, or a provision prohibiting the use, or threat of use, of
these weapons. This undertaking to renounce the use of nuclear weapons, or the provision prohibiting their use, could be expressed in various different forms - as a clause in the non-proliferation treaty itself or in a separate convention, or in some other form. Lastly, other countries, whether or not they believe that these measures should be antecedent or supplementary, have taken the view that the security guarantee would be more effective if it were expressed positively - that is to say, if it contained some expression of intent or some pledge or obligation to come to the aid of, or protect, a non-nuclear-weapon State against the use, or threat of use, of nuclear weapons. This positive guarantee can also be expressed in different forms: as an explicit provision in the non-proliferation treaty, in the form of an international agreement or convention or, lastly, in a multilateral or unilateral declaration, which might or might not be drafted in one of the established bodies of the organized international community and might or might not take the form of - or be annexed to - a resolution of the United Nations General Assembly or Security Council. In short, for those who think that there is a need for explicit guarantees, in whatever legal form they may be expressed, such guarantees may belong to one of the two following basic categories, or to both at the same time: negative guarantees - that is to say, undertakings to refrain from, or to prohibit, the use, or threat of use, of nuclear weapons; and positive guarantees - that is to say, an offer to assist a non-nuclear-weapon State when nuclear weapons are used against it or when it is threatened with the possible use of nuclear weapons. In both cases, basic responsibility for implementing the measures lies with the nuclear Powers.

4. Theoretically speaking, most if not all these measures for ensuring security could be adopted outside the context of a treaty on the non-proliferation or non-dissemination of nuclear weapons. In international bodies, some of them, in fact, have already been proposed outside this context. On the other hand, as is obvious from what has just been said, these measures for ensuring security would not only operate to the advantage of non-nuclear-weapon States; their advantages in regard to security would also extend to the nuclear Powers themselves. However, in the context of the Conference of Non-Nuclear-Weapon States, methods of ensuring security relate to the security of those non-nuclear-weapon States which have renounced the production, acquisition and use of nuclear weapons; and we shall therefore consider the method referred to in item 1 (d) of the provisional agenda within the context of the non-proliferation of nuclear weapons, without prejudging the nature or content of the legal undertaking on non-proliferation.
5. A declaration by nuclear-weapon States, jointly or severally, to protect the non-nuclear-weapon States which have renounced the production, acquisition and use of nuclear weapons against the threat or use, or threat of use, of nuclear weapons is a form of positive guarantee of the security of the non-nuclear-weapon States. The guarantee of protection, in the form of a declaration, can take various different forms. It may be a unilateral declaration of individual national policy. It may be a multilateral declaration by various nuclear Powers. It may take the form of separate declarations by each of them with a common purpose and substance. Either of the latter two alternatives may or may not be drawn up in an international forum, which, for the organized world community, might be the United Nations General Assembly or Security Council. The declaration may appear in a resolution of the United Nations General Assembly as a specific measure for guaranteeing security. It can be contained in a Security Council resolution establishing security guarantees. The declaration guaranteeing security can even be included in an international agreement, convention or treaty. It is also possible to conceive of more than one of these alternatives being adopted in combination or in succession.

6. As is clear from the foregoing, the legal and political value of the declaration will vary enormously, depending on the form it takes and the various alternatives that may be adopted. Its value can also depend to a certain extent on whether or not one of the various formulas for a negative security assurance is adopted. The last part of this report will be concerned with an analysis of the relative value of these possibilities.

B. THE DECLARATION IN RELATION TO UNITED NATIONS RESOLUTIONS

7. Resolution 1380 (XIV), known as the "Irish resolution", in suggesting that the ten-nation disarmament committee should consider appropriate means of averting the danger of an increase in the number of States possessing nuclear weapons, raised only very indirectly the problem of security guarantees for States not possessing them. More or less the same was true of resolutions 1576 (XV), 1665 (XVI) and 1664 (XVI). Resolution 2028 (XX), on the other hand, in referring to the principles on which the negotiation of an international treaty to prevent the proliferation of nuclear weapons should be based, obviously covered the problem of the security of non-nuclear-weapon States in subparagraphs 2(b) and (d), concerning an acceptable balance of mutual
responsibilities and obligations of the nuclear and non-nuclear Powers and provisions
to ensure the effectiveness of the treaty. Resolution 2149 (XXI) reaffirmed resolution
2028 (XX) and thus again raised the question of guarantees. This was reaffirmed and
made more specific in resolution 2153 A (XXI), in operative paragraphs 3, 4 and 5,
and in resolution 2153 B (XXI), convening a conference of non-nuclear-weapon States,
in operative paragraph 1 (a). Since this is the most general and specific provision
of all those relating to security guarantees, we reproduce it here: "Decides to
convene a conference of non-nuclear-weapon States ... to consider the following and
other related questions: (a) How can the security of the non-nuclear States best
be assured?" Finally, at the twenty-second session the General Assembly adopted
resolution 2346 A (XXII), which reaffirmed resolutions 2028 (XX), 2149 (XXI) and
2153 A (XXI), calling upon the Conference of the Eighteen-Nation Committee on
Disarmament, which had been dealing with the subject for years, to give all due
consideration to all proposals submitted to the Committee and to the views expressed
by Member States, which included express references to security guarantees, and
resolution 2346 B (XXII), which after recalling resolution 2153 B (XXI), approved
the recommendations of the Preparatory Committee for the Conference of Non-Nuclear-
Weapon States, among which were recommendations concerning the mention of security
guarantees, and decided to convene the Conference in August 1968.

8. This background is important because it reveals a progressive consideration of
the problem and the need for security assurances for non-nuclear-weapon States,
including among the possible guarantees the declaration with which we are concerned.
It should be noted, however, that the so-called negative guarantee - of abstention
from the use, or threat of use, of nuclear weapons or prohibition of the use, or
threat of use, of them - has a long and important history in special resolutions on
the subject adopted by the United Nations, which will not be gone into because it
is outside the scope of this report. It must be said in any case that consideration
of the items relating to the negative guarantee was not proposed, at least initially,
in connexion with the non-proliferation of nuclear weapons, but independently of it,
that is to say, as an autonomous collateral disarmament measure. On the other hand,
the positive guarantee designed to protect non-nuclear-weapon States has generally
been raised in connexion with the non-proliferation of nuclear weapons.
9. In accordance with the United Nations resolutions listed above, the organs to which they were directed have paid careful and successively more specific attention to the ways and means of guaranteeing security. But it was at the meetings of the Eighteen-Nation Committee on Disarmament between March 1967 and March 1968 that the question of security assurances received the most direct and specific consideration. At the meetings of the resumed twenty-second session of the General Assembly, between April and June 1968, during the consideration of the Committee's report, to which were annexed the draft Treaty on non-proliferation and a draft resolution of the Security Council on security assurances, the security formulas put forward by the nuclear Powers which supported the draft treaty and co-sponsored the draft Security Council resolution were examined, interpreted and criticized by a great many States more fully and thoroughly than had ever before been possible.

10. Some States attending the Geneva Committee on Disarmament affirmed the need not only for negative guarantees, on which several countries placed the emphasis, but for positive guarantees; and others added that the guarantees must be equal for all States, whether aligned or not and whether members or not members of alliances. It was also proposed that a new article should be added to the draft Treaty to provide a positive guarantee that the nuclear Powers would undertake to come to the assistance of any non-nuclear-weapon State which requested such assistance when threatened or attacked with such weapons. It was further pointed out that the problem of guarantees grew out of articles I and II of the draft Treaty on non-proliferation. Another proposal, this time for a negative guarantee, was supplemented by the undertaking to introduce, through the Security Council, an adequate procedure for ensuring compliance with the pledge not to use or threaten the use of nuclear weapons. This point is mentioned because clearly any type of guarantee would normally tend to give the Security Council a predominant role.

11. At the resumed twenty-second session of the General Assembly, States naturally expressed a preference for the proposals for a positive security guarantee submitted by the nuclear Powers parties to the draft Treaty on non-proliferation. These will be considered below. Those who discussed the subject tended to stress the usefulness of the negative guarantee, primarily in the form of an explicit provision in the draft Treaty. As a general rule, only those countries whose delegation accepted and commended the above-mentioned proposals of the nuclear Powers showed interest in the positive guarantee to give assistance to non-nuclear-weapon States when they
became victims of aggression or of an attack or a threat of attack with nuclear weapons, although a number of representatives who criticized the way in which the positive guarantee was worded said that it should be incorporated in the draft Treaty on non-proliferation as one of the provisions of that instrument. However, no formal proposal in that sense was advanced at that stage. There were those who interpreted the positive guarantee - to assist non-nuclear-weapon States against which the use, or threat of use of such weapons, was made - as involving a concomitant negative guarantee that no nuclear Power could use nuclear weapons against a non-nuclear-weapon State.

C. POLITICAL AND LEGAL IMPLICATIONS OF THE DECLARATION

12. As has already been said (see above, paragraph 5), theoretically there are many different possible forms in which the declaration by the nuclear-weapon States to protect the non-nuclear-weapon States against the use, or threat of use, of nuclear weapons may be made. However, the declaration referred to in the provisional agenda of the Conference of Non-Nuclear-Weapon States is limited to one basic formula which admits of few alternatives. Item 1 (d) of the provisional agenda, as now worded, does not refer to an international convention, treaty or agreement in the form of a mandatory legal instrument, which would constitute maximum security assurance; another item of the provisional agenda deals with such cases. The basic formula is a declaration of intent, and the possible alternatives are: a unilateral declaration or a multilateral declaration; a declaration made outside or a declaration made within the United Nations (either in the General Assembly or in the Security Council). Finally, a declaration within the United Nations might consist of a statement by the representative or representatives of one or more nuclear Powers, or might be included in a resolution of the Assembly or of the Security Council, with the endorsement, as appropriate, of other members of either body. We shall consider the possible substance of each of the alternative forms of this declaration, beginning with the most simple and ending with the most complex.

13. A unilateral declaration of intent, formulated outside the organized international community, would almost inevitably take the form of a declaration of national policy. It would, of course, be issued by the Head of State or Government or some other eminent political authority representing a nuclear Power and would necessarily refer to the protection or support of each and every non-nuclear-weapon
nation renouncing such weapons. The nuclear Power would offer its assistance in
the event of what is called "nuclear blackmail". Declarations of this type, however
solemnly they may be made and whatever domestic political backing they may command
in the nuclear State itself, may include a certain amount of unilateral obligation
on the part of the guarantor, whose importance to the States benefiting from the
guarantee will depend on a factor which is doubly subjective: the confidence of the
State receiving the guarantee in the credibility attached to the declaration by the
State which may use or threaten the use of nuclear weapons against it. It must be
admitted that unilateral declarations of this type are not likely to be regarded
as adequate guarantees of security by the interested parties (the potentially
protected country and the potentially deterred country). In the past, at least, when
a declaration of this type has been made, its effectiveness has been very limited,
not only because of the minimal international legal force of such a declaration
but, more importantly, because of practical considerations of security. First
of all, the declaration is unilateral, and to the extent that it is not echoed by
one or more of the other nuclear Powers in similar declarations, it will tend to
be regarded as directed essentially against one or more of those Powers. The State
which wishes to avail itself of this guarantee would automatically be aligning itself
with one nuclear Power, namely, the one which made the declaration offering the
guarantee. This could not be done either by States parties to military alliances
with a nuclear Power or with nuclear Powers which did not make a declaration
(i.e., the Power or Powers against which the deterrent is directed) or by non-aligned
States. Consequently, the guarantee would refer only to countries already aligned
in possibly varying degrees - to the nuclear Power making the declaration. These
countries, of course, enjoy security from so-called "nuclear blackmail" by virtue
of their previous military pacts, political alliances or other types of explicit
or tacit agreements with the nuclear Power in question, and the declaration therefore
offers them - the only possible beneficiaries - nothing in the way of security that
they did not have before. Lastly, a unilateral declaration of the kind described
also lacks general credibility and hence deterrent power because of its general
wording, which embraces all non-nuclear-weapon States throughout the world in
circumstances in which, owing to the existence of systems of military, political
and other alliances in which the Power making the declaration does not participate and
owing to the presence of non-aligned States among those apparently covered by the
declaration, the real number of second parties is limited and the security guarantee
is deprived of any real meaning.
14. The case of a multilateral declaration by two or more nuclear Powers either jointly or concurrently (in the latter case the substance of the declarations must be identical) is different. Clearly, the importance of a joint or concurrent declaration will depend on the number of nuclear Powers making it and on their respective strength. Even admitting that both the number and strength are satisfactory to the extent that the declaration or declarations can be expected to produce a strong deterrent effect, two disturbing situations will nevertheless arise. First, the system of rules laid down in Chapter VII of the United Nations Charter will break down because it will no longer be the Security Council but two or more Powers considered individually which will determine whether or not a threat to the peace exists, etc. Second, it will confront the non-aligned nations with a dilemma which they may conceivably reject since they are countries which are non-aligned with respect both to each of the nuclear Powers individually and to any combination of them. The fact that two or more great Powers agree on some security matters – however important the points of agreement may be – does not invalidate the basis of non-alignment, which is broader and has a positive content. Lastly, this type of joint or concurrent declaration does not always fulfil the purposes of security guarantees.

15. There is little point in discussing one of the variants of the unilateral declaration: that issued within the framework of the United Nations. Although this circumstance would undoubtedly add to the declaration’s solemnity and therefore enhance its potential credibility, it would not, for all that, remove the drawbacks noted above.

16. There can be no doubt that – barring such unlikely eventualities as the agreement of all the nuclear Powers, whether Members or not Members of the United Nations, on an identical declaration guaranteeing the security of all non-nuclear-weapon countries, whether or not they belong to the Organization – the declaration would gain in significance and in political and legal value if it was made within the context of the Charter and in the organs of the United Nations. In such a context, the declaration could assume one of the forms already suggested or – what seems more likely – assume the form of statements in the Assembly or in the Security Council coupled with resolutions in one or both organs. This is, moreover, precisely the formula adopted by the three nuclear Powers which have drafted and are supporting the Treaty on the Non-Proliferation of Nuclear Weapons in submitting a draft resolution on the security
assurances mentioned, at the resumed twenty-second session of the General Assembly, in an annex to the report of the Eighteen-Nation Committee. As already stated (see above, paragraph 11), this proposal and its sponsors' observations were subjected to comment and criticism; however, this review and the subsequent analysis of this alternative will be confined to discussing its probable implications.

17. It must be pointed out that, appearances to the contrary notwithstanding, what is fundamental in the action proposed by these nuclear Powers is not so much the resolution in the Security Council as the accompanying declarations. It is the declarations which lay down the limits to which those nuclear States will go in providing or supporting immediate assistance to a non-nuclear-weapon State party to the Treaty on the Non-Proliferation of Nuclear Weapons which is the victim of an act of aggression involving nuclear weapons or is threatened with such an act. The declaration made in the Security Council - the most solemn and formal forum for such an important matter as guarantees - define the intentions of the nuclear States. The resolution of the Security Council, which is certainly of genuine importance in itself, serves to give the declarations solemn international emphasis and enhances their formal quality. In any case, I believe that these declarations are the crux of the matter so far as security assurances are concerned. The content of the declarations, which is substantially the same for all three Powers, includes a number of postulates. The first is that any aggression or attack accompanied by the use of nuclear weapons would endanger the peace and security of all States. The second is that such acts or threats of aggression would create a qualitatively new situation in which the nuclear-weapon States would have to act immediately through the Security Council to take the measures necessary to counter such aggression or to remove the threat of aggression in accordance with the United Nations Charter, which calls for the taking of "effective collective measures for the prevention and removal of threats to the peace" (Article 1 (1)). The third is that any State which commits aggression accompanied by the use of nuclear weapons, or which threatened such aggression, must be aware that its actions are to be countered effectively by measures to be taken in accordance with the United Nations Charter to suppress the aggression or remove the threat of aggression. The fourth is that the States affirm their intention to seek immediate Security Council action to provide assistance in accordance with the Charter, to any non-nuclear-weapon State party to the Treaty on the Non-Proliferation of Nuclear Weapons that is a victim of an act of aggression or an object of a threat of
aggression in which nuclear weapons are used. The fifth is that the nuclear Powers reaffirm in particular the inherent right, recognized under Article 51 of the Charter, of individual and collective self-defence if an armed attack, expressly including a nuclear attack, occurs against a Member of the United Nations. The nuclear Powers concerned also announced at Geneva that their votes in the Security Council for the resolution and their statements were based upon the fact that the resolution was supported by the two other nuclear Powers and on the fact that those States had made similar statements as to the way in which they intended to act in accordance with the United Nations Charter.

18. The Security Council draft resolution, for its part, contains three principles that are expanded in the declarations. The first is that the Security Council, and above all its nuclear-weapon State permanent members, would have to act immediately in such a case. The second refers to the declarations of intent to provide or support immediate assistance to the State finding itself in the situation in question. The third reaffirms the inherent right of self-defence, recognized in Article 51 of the Charter.

19. Both the oral declarations and the provisions of the resolution constitute an expression of intent, the effectiveness of which does not depend on any future possible action by the Security Council but exclusively on the fact that the resolve has been unanimously expressed by three major nuclear Powers and in solemn and formal terms which make it highly credible that it will be exercised should the occasion arise. This credibility is strengthened by certain features of the expression of resolve, of which I shall give only one example for the time being: the broad interpretation given to Article 51 of the Charter in respect of acts against which collective self-defence may be applied. In a nutshell, the force and validity of the security guarantee thus given would derive from its credibility, which would act as a deterrent, rather than from its being honoured in practice. The guarantee offered is credible because it comes from three nuclear Powers, because it involves or allows broad and non-restrictive interpretations of the Charter and because of the emphasis and solemnity with which it is given. Last but not least, the strength of the guarantee lies in the fact that it is in the vital interest of these nuclear Powers to halt proliferation, and the Treaty on non-proliferation is effective, as will be seen later, only to the extent that the existence of assurances discourages its denunciation. The Treaty is only part of the system of non-proliferation. The other part, owing to the nature of the interests of the non-nuclear-weapon countries and of the nuclear Powers, is the existence of security assurances whatever form they may assume.
20. The political force and value of the positive security assurance constituted by the separate and similar declarations of the nuclear Powers supporting the Treaty on the Non-Proliferation of Nuclear Weapons which are permanent members of the United Nations Security Council, especially if these declarations are coupled with a joint resolution of the Council, reside primarily in the fact that this is an act calculated to deter all the other nuclear Powers. Mention should be made of the possible case of one of the latter which, although a permanent member of the Council, does not accede to the Treaty; and of another which is not a permanent member of the Council and is not in favour of the Treaty. There would seem to be no reason why the deterrent effect of the declaration thus conceived should not hold good for the Powers in question.

21. Secondly, it may likewise be argued that the declaration also constitutes a deterrent on the part of the nuclear Powers subscribing to the declaration *vis-à-vis* each of the others which subscribe to it. As is apparent from paragraph 17, the final part of the possible declarations would include a provision whereby the declaring State would make the validity and effectiveness of what it declared conditional upon the circumstance that each of the other nuclear Powers making similar declarations did likewise. It might seem possible to deduce from the fact that each party's declaration of intent is made conditional on the others, that, if one of the declaring States did not honour its declaration, what was offered by the other declaring States would become null and void and that the security assurance would thus disappear. However, the truth is quite the contrary. Since each party would make its declaration conditional on that of the others, it would make them realize that the expression of coinciding intentions was a *sine qua non* for all the declarations to be valid. Failure by one of the declaring States to honour its declaration would thus automatically constitute a threat to each of the others, because a guarantee, once given, is a factor of security both for the declaring States and for the countries at which the declaration is aimed. The suggested text of the declarations states that any aggression accompanied by the use of nuclear weapons or the threat of such aggression against a non-nuclear-weapon State would create a qualitatively new situation. The declaration does not distinguish between aggression or threat of aggression from a nuclear State not making the declaration and that which might come from one of those which make it. Irrespective of its origin, such a situation arising after the assurances have been given is qualitatively
different from the preceding one. The declaration may also be interpreted, were it to be expressed in a Security Council resolution, as a kind of implicit waiver of the veto by the Powers making it, although, as already said, it is not the Security Council's capacity to act which gives force to the declaration but the fact that the declaration is made. The latter point is confirmed by the repeated stress which the declarations lay on the immediate action of the declaring States to take the measures necessary to counter aggression or remove the threat of aggression, a matter which is also relevant to Article 51 of the Charter which will be analysed below.

22. Thirdly, the deterrent constituted by the declaration may be considered to extend also to States which acquire atomic weapons in the future, after the assurances have been provided. This might be regarded as one of the most direct purposes of the declarations, since, in the cases discussed in paragraphs 20 and 21, the deterrent effect of the assurance is directed at Powers which already know perfectly well that an attack or threat of attack with nuclear weapons would automatically lead to action by one or more other nuclear Powers, either separately or jointly. With regard to the Powers which are already nuclear at the time the assurances are given, the declaration only confirms a precautionary measure known to these Powers. On the other hand, the presumptive new nuclear countries (generically called "Nth countries") need to be convinced that the deterrent exists. One might even go further and argue, with regard to any given "Nth country", that to give the assurance serves the additional purpose of persuading it that, since the deterrent exists, it will gain nothing by changing from the "Nth country" category to that of an identified nuclear Power. Obviously it would be difficult for this effort of persuasion to produce much effect, first, because the countries which could acquire nuclear weapons will believe that the possession of such weapons is, precisely, essential to their own security - a more effective deterrent than assurances - or that their access to the weapon constitutes a basic means of defence and not a measure precursory to, or an instrument for, attacking or threatening to attack a non-nuclear-weapon State with nuclear weapons; and, second, because political, diplomatic and military capacity and power are enhanced, as has been obvious since the day after the first nuclear weapon was used, by the simple fact of possessing it, much more than by the capability of threatening to use it or actually using it. I must go a step further in my conjectures concerning the scope of the security assurances as they affect "Nth countries" and say that the deterrent implicit in the assurances could even be extended, under the broad interpretation of Article 51 of the Charter which, as was stated and as will be further
developed in paragraph 26, is a premise of the declarations, to certain prior acts preparatory to the threat of attack with nuclear weapons, among which the production of nuclear weapons (and, indeed, the acquisition and even the transfer of such weapons) should be included, the concept "nuclear weapon" being taken to embrace so-called "explosive devices for peaceful purposes". Since this hypothesis, developed ad absurdum, might lead to the relatively outrageous conclusion that the security assurance would then prohibit the acquisition, manufacture etc., of nuclear weapons, which, it would seem, was certainly not the intention of the declaring States, it is well to recall that, in one famous case, discussion was exercised effectively - without the need for a prior public pronouncement - precisely at an intermediate stage prior to the actual transfer of nuclear weapons from a nuclear Power to a non-nuclear-weapon State. Hence it is rational to suppose that, if not the production of nuclear weapons by a "Nth country", at least the acquisition of such weapons by transfer would be affected by the security assurance. In other words, the discussion is aimed, if not at a "Nth country" which is virtually nuclear because of its technological and economic capacity, at least at a "Nth country" which becomes virtually nuclear for political and military reasons which induced a nuclear Power to supply it with these weapons.

23. In a nutshell, and while this does not mean recommending as the optimum security assurance the system of common declarations coupled with a resolution of the Security Council (and/or of the General Assembly, although it is arguable that the force of a Council resolution would be sufficient), it may be asserted that the security assurance consisting of the system of declarations will be politically effective, in the absence of a mandatory legal régime, not because this assurance means that nuclear weapons would necessarily be used by one of the major nuclear Powers against the Power attacking or threatening to attack with such weapons, regardless of who was the "blackmailer" or aggressor, but because the declarations are a politically credible deterrent of their possible use. The credibility derives mainly from the fact that, individually and in similar terms, the major nuclear Powers refer to such a possibility. It also derives from the fact that in the present international context of relationships of strength and influence there cannot conceivably be any case of an attack, or threat of attack, with nuclear weapons against a non-nuclear-weapon country which does not in some way affect the present and presumably future balance of interests of these major nuclear Powers, a balance which would constitute - provided this system of assurances, for which the virtually unanimous legal and political
endorsement of the non-nuclear-weapon States is required, is successful - a kind of universal status quo from the point of view of security. There is a final point of conjecture which may be added to the others. Supposing that the assurance did not work - for example, if the deterrent was not effective the first time a non-nuclear-weapon State was faced with the need to invoke it - the Treaty on non-proliferation would ipso facto lose its value as a political instrument, and, legally speaking, its denunciation might be justified. It is feasible to assume that the nuclear Powers interested in the Treaty would try in any event to prevent non-proliferation from breaking down, for fundamental reasons involving their own political and military status and perhaps also - to take the long-term view - their own security. (There are respectable dissenting opinions on the latter point.)

24. The system of declarations recently analysed was frequently criticized at the resumed twenty-second session of the United Nations General Assembly. The reservations range all the way from complete scepticism regarding their effectiveness as security measures to doubts as to whether they might not rather entail such great subjection to the nuclear Powers making the declarations that this would ultimately increase the insecurity of the non-nuclear-weapon States ostensibly protected by them. The political questions are, of course, a matter for the exclusive consideration of States, but there are also some legal points which should be analysed. The concept of "aggression" has such a long and controversial history that there are, quite justifiably, basic arguments against its use. However, the use of other terms that have not been subjected to such critical scrutiny evades the substance of the problem. The terms "attack" and "use" may also lend themselves to interpretations similar to those given to "aggression" and, even to the extent that they might be unambiguous, it is doubtful whether using them instead of "aggression" would make the assurance more convincing for the non-nuclear-weapon countries; because they are interested in the assurance being as strong as possible and covering, so far as possible, any of the acts which, although there may not have been unanimity on the subject, have been considered "aggression" in the widest sense of the term. From this angle, the ambiguity of the word "aggression" presents less of a problem than would weaker expressions such as "use" or "attack". Moreover, if it is recognized that the security assurances are also of importance to the nuclear Powers, they will presumably agree in practice without much discussion to make the concept of "aggression" broad enough to cover any factor that may affect the security guaranteed.
25. The words "qualitatively new situation" as applied to the situation that would arise from a threat involving nuclear weapons made against a country which does not possess such weapons and has renounced their production, acquisition and use should be defined. Besides its political implications, the expression may also be given a legal interpretation that will justify embarking upon an analysis of Article 51 of the Charter since the declarations refer to acting in exercise of the inherent right of individual or collective self-defence. A "qualitatively new situation" is one which makes it necessary to interpret the United Nations Charter in such a way as to deal with situations for which it does not make explicit provision, in other words progressively.

26. This is not the place to enter into a detailed examination of Article 51 of the Charter and the various interpretations that have been placed upon it. It is common knowledge that there are two divergent schools of thought with regard to the text. One interprets it literally and restrictively and it recognizes that the right of self-defence may be exercised only in the event of an armed attack. According to this view, anything that is not an "armed attack" or falls short of an "armed" attack does not justify the exercise of this right. On the other hand, the other school emphasizes that the possibility of exercising the right of self-defence is an inherent right of every State and hence only that State (and, in the case of collective self-defence, only the States involved) may qualify the nature of the attack. For the proponents of this view, acts preparatory to armed attack (and in this case the meaning of "preparatory" is open to debate) also justify the exercise of the right of self-defence. The gap between the two positions has led to irreconcilable interpretations of Article 51. However that may be, it is interesting to note that one of the clearest cases of the broad interpretation of Article 51 was that invoked by the partisans of this interpretation with respect to the possible use of nuclear weapons, an argument based on such de facto circumstances as the greater rapidity and power with which an "armed attack" can be made with nuclear weapons. These factors, they said, have made it necessary to broaden the meaning of the term "armed attack", especially in connexion with nuclear weapons, to include those preparatory acts which would make exercise of the right of self-defence physically possible. Now, given this difference of opinion, which more than once has become a matter of serious international concern, it must be agreed that the positive security guarantee will have to be based on the broad interpretation of Article 51 of the
Charter. This would seem to be the interpretation adopted - to give one example - in the guarantee offered in the declarations made by some nuclear Powers following the consideration of the Treaty on non-proliferation. The reason for this is that, if the restrictive interpretation of Article 51 were to be embodied in the guarantee, the latter's effectiveness would be drastically reduced. The fact that the positive security guarantee affects the interpretation of Article 51 of the Charter is one of the most striking examples of the great legal importance of having a system of security guarantees.

27. Many other legal conclusions can be drawn from a searching analysis of the positive security guarantee consisting of a declaration like the one discussed in this report. None of the possible forms of this declaration would have a greater legal impact than the incorporation of the positive guarantee in a mandatory international instrument, for example, in a multilateral treaty. However, this alternative has not been considered in the present report, not because a treaty on security guarantees is a marginal possibility, but precisely because it is such a crucial matter that it deserves a study to itself. In any case, attention is at least drawn to the cardinal importance of a formula of this type for the declaration studied in this report.

28. The deterrent power of a security guarantee, especially if expressed in an eminently verbal form such as a declaration, would very largely depend on the persuasiveness of its presentation. The intentions and the extent of commitment of the declaring Powers must be clear to all those who accept the declaration or are affected by it. The excessive subtlety commonly used in certain so-called "sophisticated" forms of presenting commitments or expressions of intent in international affairs would defeat the purpose, which is the need to inspire conviction. The first requirement of a security guarantee - a vital matter for all sovereign States - is to convince each of those States of its effectiveness.