CONSIDERATION OF AN INTERNATIONAL CONVENTION BY NON-NUCLEAR-WEAPON STATES TO UNDERTAKE THE PREVENTION OF THE PRODUCTION, ACQUISITION OF AND USE OF NUCLEAR WEAPONS

by

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# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. General considerations</td>
<td>3</td>
</tr>
<tr>
<td>II. Concept of the obligations of non-nuclear-weapon States in preventing the production, acquisition and use of nuclear weapons</td>
<td>4</td>
</tr>
<tr>
<td>1. Unilateral instruments effected by non-nuclear-weapon States</td>
<td>5</td>
</tr>
<tr>
<td>2. Regional contractual obligations for preventing the production, acquisition and use of nuclear weapons</td>
<td>6</td>
</tr>
<tr>
<td>III. Draft conventions by non-nuclear-weapon States for preventing the production, acquisition and use of nuclear weapons</td>
<td>10</td>
</tr>
<tr>
<td>IV. Problems relating to the conclusion by the non-nuclear-weapon States of a convention on the prevention of the production, acquisition and use of nuclear weapons</td>
<td>15</td>
</tr>
<tr>
<td>1. The legal bases of the convention</td>
<td>15</td>
</tr>
<tr>
<td>2. Scope of the convention</td>
<td>17</td>
</tr>
<tr>
<td>3. The problem of verifying compliance by non-nuclear States with undertakings not to produce, acquire or use nuclear weapons</td>
<td>22</td>
</tr>
<tr>
<td>4. The problem of guarantees resulting from the conclusion by non-nuclear-weapon States of a convention to prevent the production, acquisition and use of nuclear weapons</td>
<td>23</td>
</tr>
<tr>
<td>V. Procedure for implementing the obligations of non-nuclear-weapon States in respect of the prevention of the production, acquisition and use of nuclear weapons</td>
<td>23</td>
</tr>
</tbody>
</table>
I. GENERAL CONSIDERATIONS

Universal disarmament implies a universal right to take part in negotiations about disarmament. This means that nuclear-weapon States, non-nuclear-weapon States, States members of military and political blocs, non-aligned States, States Members of the United Nations and States which are not members thereof ought all to take part on terms of equality in the mechanism of disarmament negotiations.

In such negotiations, an assurance of the sovereign equality of States, irrespective of their military, political or economic situation, is one of the prerequisites of progress. This does not, however, mean equality of duties in this field. The scope and form of these duties are determined by a number of factors, among them: the extent to which individual States are engaged in the arms race - which must be circumscribed or brought to an end; the distinctive requirements of their own security, whether regional or collective; their legal position; their economic prospects; and so on.

The nuclear Powers bear the main responsibility for peace or world war. This responsibility is reflected in the balance between their rights and obligations in respect of disarmament. It is incumbent upon them to take a series of steps having as their object nuclear disarmament: stopping the production of nuclear weapons and of the means of delivering them; running down and liquidating stocks of such arms; completely banning nuclear tests; and prohibiting the use of nuclear weapons.

Having an equal right with the nuclear-weapon States to take part in disarmament negotiations, the non-nuclear-weapon States are also focusing their attention on various aspects of nuclear disarmament.

This inclination is in the first place due to recognition of the indivisibility of the dangers of the nuclear arms race for the security of all States, and to the realization that for the non-nuclear States its geographical extension could have adverse political and economic consequences, could make them dependent to varying degrees on the great Powers and could jeopardize their neutrality and non-alignment. Economic considerations also play an important part, especially the desire of the non-nuclear States to share in the economic benefits that would flow from abandonment of the arms race and in the advantages offered by the peaceful development of atomic energy. At the same time, the specificity of the intention of the non-nuclear-weapon States determines the nature of their modus operandi. Having no possibility themselves of taking steps to reduce or eliminate nuclear armaments, they are concentrating on partial measures intended to stop the nuclear arms race. Their contribution consists mainly in abstaining from any steps that might encourage the proliferation of nuclear
weapons (for example, it would help in this connexion if they were to declare unilaterally that they would not produce or acquire such arms or receive them on their territory). It also implies action to promote the acceptance in certain regions (for example, Latin America) of undertakings not to produce or acquire nuclear weapons or to receive them on their territory, to lend their good offices to the nuclear Powers during disarmament negotiations and to prepare the way for compromise solutions. In this last area, the efforts put forth by the non-aligned States are of particular importance (witness, among others, those which led up to the adoption of resolution 2:23 (XX) of the General Assembly of the United Nations).

The responsibilities and rights of nuclear and non-nuclear States in the disarmament process are indivisible. This unity implies reciprocity of duties between the two groups of States and is a sine qua non if solutions of disarmament problems are to be effective. This requirement has been stated in General Assembly resolutions. Resolution 2153 B (XXI) of 17 November 1966 on the conference of non-nuclear-weapon States also describes the problem of preventing further proliferation of nuclear weapons as "a matter of the highest priority demanding the unceasing attention of both nuclear-weapon and non-nuclear-weapon Powers"; and resolution 2149 (XXI) of 4 November 1966 appeals to "all States" to take "all the necessary steps to facilitate and achieve at the earliest possible time the conclusion of a treaty on the non-proliferation of nuclear weapons" and to refrain from "any actions conducive to the proliferation of nuclear weapons or which might hamper the conclusion of an agreement". Thus this latter resolution constitutes a directive addressed to nuclear-weapon and non-nuclear-weapon States alike to co-operate with a view to concluding a treaty on non-proliferation.

II. CONCEPT OF THE OBLIGATIONS OF NON-NUCLEAR-WEAPON STATES IN PREVENTING THE PRODUCTION, ACQUISITION AND USE OF NUCLEAR WEAPONS

Awakening to their joint responsibility for nuclear disarmament, the non-nuclear States have already helped the cause of non-proliferation, creating by their efforts "legal objective regimes", which act as stabilizers of international security. In the course of the disarmament negotiations, these States have also submitted a number of highly important proposals, the discussion of which has helped in framing the concept of the obligations of non-nuclear-weapon States in the prevention of the production, acquisition and use of nuclear weapons. The study of these obligations is essential to a proper analysis of the problem of the conclusion by the non-nuclear-weapon States of an international convention on the subject.
1. **Unilateral instruments effected by non-nuclear-weapon States**

**A. Unilateral instruments of a contractual nature**

(a) The Peace Treaties concluded by the Allied and Associated Powers with Bulgaria, Finland, Hungary, Italy and Romania, signed at Paris on 10 May 1947, prohibit the possession, production or testing of nuclear weapons.

(b) Article 13 of the State Treaty concluded by the Allied and Associated Powers with Austria, signed at Vienna on 15 May 1955, forbids Austria to possess, construct or experiment with atomic weapons. This obligation was broadened by the Constitutional Act on the neutrality of Austria passed by the Austrian Parliament on 26 October 1955 (paragraph 2, B, 6).

**B. Unilateral instruments of a legislative nature**

(a) Article 9 of the Japanese Constitution of 3 November 1946 expresses in general terms the prohibition of the deployment of "land, sea or air forces, or of any other military potential".

(b) Article 1, clause 2, of the Austrian Constitutional Act (cf., A (b) above), declares, among other things, that Austria "shall not allow the construction on its national territory of foreign military bases". According to the Austrian Government's interpretation, as communicated to the United Nations, this obligation also implies "refusal to receive nuclear weapons on behalf of any other country" (see the Austrian Government's reply of 12 March 1962 to the Secretary-General's inquiry carried out under resolution 1664 (XVI) (DC/201/Add.2, page 9)).

**C. Unilateral instruments of a political nature**

(a) The Mexican Government announced on 22 March 1966 in the Eighteen-Nation Committee on Disarmament at Geneva that, in order to facilitate the conclusion of a general agreement, it had decided "neither to possess nor to admit to its national territory nuclear weapons of any sort" (ENDC/PV.7, page 8).

(b) The Government of India has on several occasions announced its decision not to produce or acquire nuclear weapons. On 14 March 1968, the Indian Prime Minister, Mrs. Indira Gandhi, reminded the Indian Parliament that "India has repeatedly announced that she is not making an atom bomb and that she is developing her nuclear energy programme exclusively for peaceful purposes" (A/C.1/PV.1567, page 78).

(c) Other Governments (among them those of Cyprus, Denmark and Norway), too, have solemnly declared their determination not to admit any nuclear weapon to their national territory, or to themselves produce or acquire such weapons.
D. The value of unilateral instruments affected by non-nuclear States

The various unilateral instruments affected by non-nuclear States are not of equal value. Those of a contractual nature have the legal force of international treaties and the principles of the law of treaties are applicable to them. According to these principles, such treaties give rise to specific rights and obligations, to a certain "objective regime" in relation to certain States or regions. Maintenance of the legal situation thus created is not only in the interest of the States Parties to the treaty; it is also in that of all other States that have accepted its creation. Such States have the right, should occasion arise, of calling for the application of the provisions, which cannot be amended or rescinded without their agreement. Unilateral declarations that simply express the good intentions of States, on the contrary, do not as a rule have legal effects or give rise to international obligations. They can therefore be modified or rescinded unilaterally (actu contrario or by facta concludentia). Nor do they give other States the right to request the maintenance of the situation they create. The Law of 1955 on Austrian neutrality, of which many States have taken cognizance, is an exception to this rule. The States concerned have undertaken to respect the Law, and have accepted it as an object of international guarantees.

2. Regional contractual obligations for preventing the production, acquisition and use of nuclear weapons

A. Obligations already in effect

The first case of an international agreement demilitarizing a specific territory was that of the Antarctic Treaty signed by 12 States at Washington on 1 December 1959. Article I of this Treaty, establishing the obligation to use Antarctica for peaceful purposes only, prohibits any measures of a military nature, such as the establishment of military bases, the building of fortifications or the carrying out of manoeuvres as well as the testing of any kind of weapon. Article V forbids "any nuclear explosions" in Antarctica or "the disposal there of nuclear waste material". The Antarctic Treaty thus provides not only for the specific prohibition of nuclear testing, but also for that of the production, maintenance or storing of nuclear weapons, as well as forbidding installations for their utilization.
B. Obligations under negotiation

(i) Latin America

Article 1 of the Treaty signed on 14 February 1967 at Tlatelolco, for the prohibition of nuclear weapons in Latin America, forbids the contracting parties to test, use, manufacture, produce or acquire, by any means whatsoever, any nuclear weapon, directly or indirectly, for their own account, or on behalf of anyone else or in any other way; to receive, store, install, deploy or possess in any form any nuclear weapon, directly or indirectly, for their own account, by anyone on their behalf or in any other way; to engage in, encourage or authorize, directly or indirectly, or in any way to participate in, the testing, use, manufacture, production, possession or control of any nuclear weapon. At the same time, the Treaty allows the transit of nuclear weapons across the frontiers of the region by States not party to the Treaty (Final Act of the fourth session of the Preparatory Commission for the Denuclearization of Latin America (COPREDAL)(ENDC/186, page 8)) and provides that the Contracting Parties "may carry out explosions of nuclear devices for peaceful purposes – including explosions which involve devices similar to those used in nuclear weapons – or collaborate with third parties for the same purpose," subject to adequate control and "provided that they do so in accordance with the provisions of ..... articles 1 and 5". The Treaty also provides for the establishment by the nuclear Powers of a system of controls and safeguards to ensure respect for the status of the zone (Additional Protocol II). As a result of the procedure adopted for its entry into force, the provisions of the Treaty have not yet become mandatory.

(ii) Africa

Negotiations on the denuclearization of Africa had their origins in the action taken by Ethiopia, Ghana, Mali, Morocco, Nigerie, the Sudan and the United Arab Republic in the General Assembly in December 1960 to secure recognition of the continent of Africa as a denuclearized zone. General Assembly resolution 1652 (XVI) of 24 November 1961 requested Member States to refrain from carrying out nuclear tests in Africa and from using the territory, territorial waters or air space of Africa for testing, storing or transporting nuclear weapons; it also requested them to consider the continent of Africa as a denuclearized zone. On 21 July 1964, thirty-three Heads of State and Government of African countries issued at Cairo a declaration announcing their readiness to undertake, in an international agreement to be concluded under the auspices of the United Nations, not to produce or to acquire control of nuclear arms.
The declaration requested other States to assume the same obligation, and asked the nuclear Powers to respect and abide by the declaration. On 3 December 1965, the General Assembly of the United Nations adopted a draft declaration of African States on the denuclearization of Africa, as resolution 2033 (XX). This called upon all States to refrain from testing, manufacturing, using or deploying nuclear weapons on the continent of Africa, and from acquiring such weapons or taking any action which would compel African States to do likewise. In particular, the resolution urged the nuclear-weapon States not to transfer to the national control of any State, either directly or indirectly, nuclear weapons, scientific data or technological assistance in any form which might be used to assist such States in the manufacture or use of nuclear weapons in Africa.

C. Proposals for the creation of denuclearized zones

(i) In the international negotiations a prominent place is occupied by the plans for the creation of a denuclearized zone put forward by the Government of the Polish People's Republic, both at the twelfth session of the General Assembly (A/PU.597, page 237) and in the Eighteen-Nation Committee on Disarmament at Geneva (memoranda of 14 February 1958 and 28 March 1962 (ENDC/C.1/1)).

The Polish plan envisages the establishment of a denuclearized zone comprising the national territories of Poland, Czechoslovakia, the German Democratic Republic and the Federal Republic of Germany. No nuclear weapons would be manufactured or stockpiled in that territory; no equipment or facilities for their use would be installed; and the use of nuclear weapons against the territory of the zone would be prohibited. In order to guarantee the inviolability of the status of the zone, the nuclear Powers would give effective undertakings and would establish an adequate system of control. In its memorandum of 28 March 1962, the Polish Government expressed its views about the possibility that duties connected with denuclearization might be carried out in two stages: firstly the institution of the nuclear weapons freeze and denuclearization proper, and secondly the linking of denuclearization with the reduction of armed forces and conventional armaments to an agreed level.
On 29 February 1964, the Polish Government proposed that nuclear armaments be frozen on the territories of the Polish People's Republic, the Czechoslovak Socialist Republic, the German Democratic Republic and the Federal Republic of Germany (other European States being given the opportunity of adhering to the agreement). Under the terms of the proposal, those parties having armed forces on the territory subject to freezing would undertake not to produce, introduce, import or transfer to other parties on the territory the nuclear and thermo-nuclear weapons referred to in the draft. In order to ensure compliance with the obligations assumed, it would be appropriate to set up an adequate system of inspection and safeguards.

(ii) During the period 1957–1968, other proposals for creating denuclearized zones were put forward also. Among them, the following may be cited: the Romanian proposal of 10 September 1957 for the denuclearization of the Balkans and the Yugoslav proposal on the same subject of 6 June 1959; the Soviet Union and Indian proposal of 19 March 1959 for the creation of a denuclearized zone in Asia and the Pacific Ocean; the Swedish proposal of 16 February 1962 on the creation of such a zone in central and northern Europe; the Soviet Union proposal of 20 March 1963 on the denuclearization of the Mediterranean; and, lastly, the plan put forward on 23 May 1963 by Mr. Urho Kekkonen, President of Finland, for the denuclearization of Scandinavia.

D. The value of denuclearized zones and of negotiations for their creation

The establishment of denuclearized zones and negotiations relating thereto are also of great value for formulating the obligations of States in supra-regional agreements to prevent the production, acquisition and use of nuclear weapons.

In the negotiation of the creation of denuclearized zones two parallel tendencies are observable: one is to cast the political decisions of States or the resolutions of the General Assembly or other international organizations in the form of treaty obligations, with the dual object of making them more effective and assuring the respect of third parties for them. The second is to extend the scope of the proposed decisions for denuclearization to disarmament measures involving the withdrawal from the territory in question of nuclear weapons and of all types of missile.

The concept of de-atomized zones reconciles the special security interests of different countries with the general interest in assuring collective security. The individual interests of States demand the creation of legal and political conditions which keep them out of the nuclear arms race and remove their region from the operational sphere of foreign nuclear weapons and missiles, the presence of which on their territory
may expose them to nuclear attack. Thus, by accepting the principle of denuclearization, a State exercises its right of self-defence against the effects of the arms race. The collective interest of the international community for its part calls for the creation of denuclearized zones wherever the situation so requires, with the object of preventing a nuclear war. This tendency stems from the axiom that peace is indivisible. It is reflected in the conviction that the creation of denuclearized zones in different parts of the world can in large measure facilitate the solution of the more far-reaching problems of disarmament. Denuclearized zones are an instrument intended to ensure the balance of security between States.

So far, the negotiations about denuclearized zones have resulted in more precise formulation of the obligations of States and of the system of inspecting and safeguarding such zones, and to the definition of the terms "denuclearized zone" and "denuclearization". This has made it possible to draft several of the provisions of the draft treaty on the non-proliferation of nuclear weapons. The same procedure could just as readily be used in drafting other international conventions on regional or supra-regional denuclearization.

III. DRAFT CONVENTIONS BY NON-NUCLEAR-WEAPON STATES FOR PREVENTING THE PRODUCTION, ACQUISITION AND USE OF NUCLEAR WEAPONS

A. Special conventions by non-nuclear-weapon States

(i) The first proposal for a convention among non-nuclear-weapon States not to produce, acquire or use nuclear weapons was the Uden plan. On 17 November 1961 Sweden submitted to the United Nations General Assembly a draft resolution, subsequently co-sponsored by Austria, Cambodia, Ceylon, Ethiopia, Liberia, the Sudan and Tunisia, requesting the Secretary-General to make an inquiry into the "conditions under which countries not possessing nuclear weapons might be willing to enter into specific undertakings to refrain from manufacturing or otherwise acquiring such weapons and to refuse to receive, in the future, nuclear weapons in their territories on behalf of any other country". The draft resolution called upon the nuclear Powers "to extend their fullest co-operation and assistance with regard to the implementation of the present resolution". It was adopted as resolution 1664 (XVI) on 4 December 1961, by 58 votes to 10, with 25 abstentions. Introducing the proposal, the Swedish delegation emphasized that its aim was to generalize the principles set forth in the Polish plans for the creation of a denuclearized zone in central Europe. Under the Uden plan, a strict relationship would have to be established between the cessation of nuclear tests and the creation of
regional demilitarized zones. In the Swedish view, if the response to the Secretary-General's inquiry was positive, it would be possible to convene a conference with a view to concluding agreements. On 2 January 1962, the Secretary-General sought the views of the Governments of all the States Members of the United Nations on resolution 1664 (XVI). He received replies from the Governments of sixty-one Member States and from one non-Member State (the German Democratic Republic). The United Arab Republic did not make a direct reply. Twelve States said that they were willing to sign the convention unconditionally (Afghanistan, Austria, Cambodia, Ceylon, Cyprus, Congo (then Léopoldville), Lebanon, Nepal, Sierra Leone, Sudan, Tanganica and Tunisia). Twenty States, although stating that they were prepared to sign the convention, made certain conditions, to wit: universality or reciprocity (Burma, Czechoslovakia, Ecuador, Finland, Hungary, Iraq, Mexico, Mongolia, Nigeria, Panama, Poland, Romania, Venezuela and German Democratic Republic); and the establishment of control (Ecuador and Venezuela). Eighteen States emphasized the importance of de-atomized regional zones and expressed their willingness to join such zones (Albania, Bulgaria, Byelorussian Soviet Socialist Republic, Chile, Czechoslovakia, Denmark, Finland, Hungary, Ireland, Mongolia, Peru, Poland, Romania, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yugoslavia and German Democratic Republic). Nineteen States argued the case against the United plan on such grounds as the right of self-defence, military considerations and the need to maintain the balance of power, and drew attention to the possibility of solving the problem in the context of general and complete disarmament (Australia, China, Dominican Republic, France, Greece, Iceland, Israel, Luxembourg, Madagascar, New Zealand, Paraguay, Thailand and United States of America). Other States stressed the possibility of carrying out the United plan provided that the great Powers took part (Canada, India, Italy, Japan and Yugoslavia) (DC/201/Add.2 and 3, DC/204/Add.1).
(ii) On 10 October 1964, forty-seven Heads of State and Government of the non-aligned countries, assembled at Cairo, announced, in their resolution VII ("General and complete disarmament, peaceful use of atomic energy, prohibition of all nuclear-weapon tests, establishment of nuclear-free zones, prevention of dissemination of nuclear weapons and abolition of all nuclear weapons"), their readiness not to produce, acquire or test any nuclear weapons; they also invited "all countries including those who have not subscribed to the Moscow Treaty to enter into a similar undertaking and to take the necessary steps to prevent their territories, ports and airfields from being used by nuclear Powers for the deployment or disposition of nuclear weapons". These undertakings were to form the subject of a treaty to be concluded in an international conference convened under the auspices of the United Nations. The Heads of State and Government also invited all nuclear Powers "to observe the spirit of this declaration". The Cairo declaration, distributed as document A/5763, was discussed in the general debate at the nineteenth session of the General Assembly and in the Disarmament Commission in 1965. Several uncommitted States revived the proposal that a convention be concluded, obliging the parties to refrain from producing or acquiring nuclear weapons and from receiving them on their territory. On 17 December 1964, the same proposal had been put forward by Malaysia (A/PV.1306). These efforts were renewed on 2 November 1966 in the First Committee of the General Assembly (A/C.1/PV.1440, pages 41-43). A resolution adopted by the Disarmament Commission on 15 June 1965, recognizing the urgency of concluding a treaty on non-proliferation, requested that "the various suggestions that agreement could be facilitated by adopting a programme of certain related measures" be given close attention (operative sub-paragraph 2 (c)).
(iii) On 14 September, the Italian delegation submitted a draft declaration by the non-nuclear-weapon countries according to which they: (a) would not manufacture or otherwise acquire national control of nuclear weapons; (b) would neither seek nor receive assistance from other States in the manufacture of such weapons. They would also accept the application to their nuclear activities of IAEA or equivalent international safeguards. The declaration would remain in force for a fixed period and for a specific number of countries. The proposal was of limited scope: (a) it did not cover all possible forms of proliferation; (b) it was limited to a definite period of time. During the discussion of this proposal in the Eighteen-Nation Committee at Geneva and at the twentieth session of the General Assembly, the importance of the Italian proposal as a temporary measure was emphasized (Argentina, Canada, Chile, Iran, Malta, Somalia and Sweden). Several States expressed misgivings, observing in particular that the declaration would have little practical impact and that the obligations to be assumed by the non-nuclear-weapon countries needed to be linked with those of the nuclear Powers (Ecuador, Ghana, Hungary, Libya, Mali, Nepal, Pakistan, Peru, Trinidad and Tobago, Turkey, Uganda and Zambia).

(iv) Taking up the Pakistani proposal of 8 September 1967, the Preparatory Committee for the Conference of Non-Nuclear-Weapon States placed the following topic on the Conference's provisional agenda as item 3 (c): "Consideration of an international convention by non-nuclear-weapon States to undertake the prevention of the production, acquisition and use of nuclear weapons". Pakistan did not provide a draft of possible obligations in this sense.

B. Conventions by non-nuclear-weapon States within the framework of a broader non-proliferation system

(i) On 12 August 1965 India proposed, in the Eighteen-Nation Committee, that a non-proliferation treaty should be concluded in two stages: in the first stage the nuclear Powers would undertake not to transfer nuclear weapons or nuclear technology to non-nuclear States; would cease all production of nuclear weapons and delivery vehicles, and would give priority to the reduction of stocks of nuclear weapons and to other disarmament measures. After these undertakings had been put into effect, the non-nuclear-weapon States would, as the second stage, undertake not to acquire or manufacture nuclear weapons. During the transitional period between the first and second stages - according to India - it would be possible to put the Fanfani plan into operation (ENDC/PV.233, page 18).
(ii) On 13 October 1965, Malta suggested in the General Assembly that the dissemination and the proliferation of nuclear weapons should be considered separately. Dissemination (i.e., "the creation by a nuclear Power of a new nuclear entity or Power, either directly by the provision of weapons or technology or indirectly by permitting control of nuclear weapons by a hitherto non-nuclear entity or Power") would be the subject of agreement at the first stage. Later on, an agreement would be concluded forbidding the proliferation of nuclear weapons - a term used by Malta to denote "the acquisition, through independent development or otherwise, of nuclear weapons capability by a hitherto non-nuclear Power or entity" (A/PV.1359, page 2). Malta renewed its suggestions in the First Committee of the General Assembly on 28 October 1966 (A/C.1/PV.1434, pages 53-56).

C. Contractual undertakings by non-nuclear-weapon States within the framework of a general agreement on non-proliferation

(i) An Indian proposal of 25 October 1954 envisaged ways and means of establishing an "armaments truce" (A/C.1/L.100). This "truce" was also to apply to nuclear weapons, and their non-proliferation was implicit in it. Developing its proposal in the Disarmament Commission on 12 July 1966, India submitted a draft proposing that adequate measures should be taken to ensure that the Powers did not trade in nuclear weapons and did not supply them to other countries that could pass them on to third countries (DC/PV.58, page 38).

(ii) General Assembly resolutions 1380 (XIV) of 20 November 1959 and 1576 (XV) of 20 December 1960, both adopted at the instance of Ireland, dealt with the obligations of nuclear and non-nuclear States as a whole, while still envisaging the conclusion of an international convention to this end. This way of framing obligations was taken up again in the drafts for a treaty on the non-proliferation of nuclear weapons (ENDC/192/Rev.1 and Rev.2) and in the several resolutions on the subject adopted by the General Assembly (2028 (XX), 2153 (XXI) and 2346 (XXII)).

(iii) Among other proposals dealing in similar fashion with the responsibilities of nuclear-weapon and non-nuclear-weapon States, the following may be cited:
(a) The proposal submitted in the General Assembly on 27 September 1960 by Mr. Władysław Gomułka, the chairman of the Polish delegation, that States possessing nuclear weapons should be bound not to transfer them to other States and not to help other States in starting their own production of those weapons; also that States which did not as yet possess nuclear weapons should be bound not to accept them from other States and not to manufacture or prepare for the manufacture of those weapons either on their own territory or on the territory of other States (A/PV.874, page 163).

(b) The Pakistan proposal of 26 September 1962, the object of which was to define in an international convention the obligations of nuclear-weapon and non-nuclear-weapon States with a view to prohibiting further proliferation of nuclear weapons (A/PV.1133, page 150).

(iv) During the discussions on the non-proliferation treaty, the principle of the simultaneity of the responsibilities of nuclear-weapon and non-nuclear-weapon States was supplemented by another, that of the balance of responsibilities between the two groups. Operative sub-paragraph 2 (b) of General Assembly resolution 2028 (XX) of 19 November 1965 requests that the treaty ensure "an acceptable balance of mutual responsibilities and obligations of the nuclear and non-nuclear Powers". The non-aligned States have elaborated this principle, which lies at the origin of the amendments they have proposed to the treaty, dealing in the first place with the right to use atomic energy for peaceful purposes and with the responsibilities of nuclear States in the field of disarmament.

IV. PROBLEMS RELATING TO THE CONCLUSION BY THE NON-NUCLEAR-WEAPON STATES OF A CONVENTION ON THE PREVENTION OF THE PRODUCTION, ACQUISITION AND USE OF NUCLEAR WEAPONS

1. The legal bases of the convention

During the preparatory work, problems relating to the conclusion by the non-nuclear-weapon States of a convention on the prevention of the production, acquisition and use of nuclear weapons were studied from the angle of the value of such an agreement in two distinct cases, namely: before and after signature of the non-proliferation treaty.
A. Conclusion of the convention before signature of the non-proliferation treaty

In this case, the function of the convention, as a collateral instrument, would be to facilitate the conclusion of a general treaty on non-proliferation. To this end, the convention would have to be compatible with the following General Assembly resolutions:

(a) 2149 (XXI) of 4 November 1966, which defines the principles which should govern the behaviour of States during the negotiation of a non-proliferation treaty (the taking of all necessary steps for the conclusion at the earliest possible time of such a treaty; and abstention from all actions that could hamper its conclusion); and

(b) 2028 (XX) of 19 November 1965, which lays down the prerequisites for an agreement on non-proliferation.

B. Conclusion of the convention after signature of the non-proliferation treaty

The function of the convention as a complementary instrument would be to enhance the effectiveness of the non-proliferation treaty by the following means:

(i) Consolidation of the treaty concluded. This would at the same time be a manifestation of the non-nuclear States' intention to discharge their obligations strictly and in good faith. This would be of particular practical value if one or more nuclear Powers failed to subscribe to the non-proliferation treaty, and might also induce more States to sign it.

One of the forms this instrument could take is that of an undertaking by the non-nuclear parties to it to give immediate effect to the provisions of the non-proliferation treaty, except for the ratification procedure envisaged in Article IX. A similar method has been provided for in Article 29, paragraph 2, of the Treaty of Tlatelolco. Attention may also be drawn to the fact that the same course was followed after the signature of the Briand-Kellogg Pact on 27 August 1928 with a view to speeding up its application, in view of the fundamental importance of the ban it imposed on aggression. At the instance of the Soviet Union, the instrument known as the "Litvinov Protocol" was adopted on 9 February 1929 to allow the signatories to apply the principles of the Pact before they took effect.

(ii) Elaboration of the principles of the renunciation of the production and acquisition of nuclear weapons embodied in the non-proliferation agreement. During
the debate in the First Committee at the twenty-second session of the General Assembly, some States Members urged that the conference on non-nuclear-weapon States should elaborate certain general principles embodied in the non-proliferation treaty (Austria, Canada, Colombia, Iraq, Ireland, Pakistan, the Soviet Union, the United Kingdom and the United States of America). This proposal related in the first place to Articles IV and V, which give non-nuclear States certain rights and prerogatives in respect of the peaceful use of atomic energy. It would then be possible to complement the prohibitive clauses in the non-proliferation treaty by provisions on the obligation to use atomic energy for exclusively peaceful purposes and on the forms which co-operation between non-nuclear States in this domain might take. In this case, the essential prerequisite would likewise be the compatibility of the measures envisaged with the spirit and letter of the non-proliferation treaty.

(iii) Completion of the principles embodied in the non-proliferation treaty (prohibition of production and acquisition) by the banning of other forms of State activity, in the first place the use of nuclear weapons. If this were done, the proposed convention could serve as a model for the implementation of plans for nuclear demilitarization. This process, also known as denuclearization, de-atomization or military denuclearization, means the acceptance by States of contractual undertakings to abstain from specified forms of activity in the nuclear-weapon field on their national territory or indeed outside that territory.

2. Scope of the convention

A. The proposed convention would prescribe the prohibition of the production, acquisition or use of nuclear weapons.

   (i) Prohibition of production

   An undertaking not to produce nuclear weapons means that the contracting States must abstain from all activities involving the use of atomic energy to produce nuclear weapons. Since some of the technological processes concerned are common to the application of atomic energy both for peaceful and for military purposes, it is difficult to define all the activities that might lend themselves to the production of nuclear weapons. This is why the procedure laid down in Article III of the non-proliferation treaty seems reasonable. This article defines the production of nuclear weapons as a process entailing the transformation into nuclear weapons of atomic energy intended for peaceful uses. In principle, this definition covers all source or special fissionable material in all peaceful nuclear activities within the territory of a State, under its jurisdiction, or carried out under its control anywhere.
(ii) Prohibition of acquisition

An undertaking not to acquire nuclear weapons means that States must abstain from any activity the aim of which is the direct or indirect acquisition of nuclear weapons.

The prohibition covers all forms of acquisition, to wit:

(a) physical acquisition, or acquisition of the capacity to engage in military activities with nuclear weapons (use of nuclear weapons); and

(b) legal acquisition, or acquisition of the capacity to engage in legal activities relating to nuclear weapons (acquisition of rights of ownership or co-ownership, possession or co-possession, disposal or joint disposal, control or joint control, or over nuclear weapons).

To assure the effectiveness of this prohibition States would have to agree that it applied to all forms of the acquisition of nuclear weapons, on no matter what grounds, whether in international law (for example, through a treaty of alliance) or in private law (for example, through a contract of purchase or sale).

(iii) Prohibition of use

An undertaking not to use nuclear weapons means that States must abstain from any activity having as its aim the utilization of nuclear weapons in time of peace or their use in time of war.

The ban on utilization in time of peace affects several forms of activity, in particular those described in (a), (b) and (c) below.

(a) Nuclear-weapon tests

The proposed convention could mark a step forward along the road to the solution of the problem of prohibiting underground nuclear explosions, in other words, it could constitute an extension of the partial ban on nuclear tests set forth in the Treaty of Moscow of 5 August 1963.

At regional level, such obligations have already been assumed under the terms of the Antarctic Treaty of 1 December 1959 (Article 5) and under those of the agreement of 14 February 1967 on the prohibition of nuclear weapons in Latin America (the Treaty of Tlatelolco, Article 1). General Assembly resolution 2033 (XX) of 3 December 1965 on the denuclearization of Africa also provides for such prohibition (operative paragraph 5).

At supra-regional level, Nepal tabled in the First Committee of the General Assembly at the latter's resumed twenty-third session a proposal under which non-nuclear States would undertake not to carry out nuclear tests (A/61/PV.1559, pages 27-31).
(b) Installation of nuclear weapons on the territory of non-nuclear-weapon States

Prohibition of the installation of nuclear weapons on the territory of non-nuclear-weapon States would ensure the efficacy of the undertakings given by States to refrain from producing or acquiring nuclear weapons. At the same time, it would be a contributory factor in ensuring the equality of the States Parties to the convention. The concepts of the responsibilities of the non-nuclear States analysed in section II above include prohibition of the possession of nuclear weapons, by forbidding such States to install (for example, the memorandum of the Government of the Polish People's Republic of 28 March 1962 and the declaration on the denuclearization of Africa adopted by the General Assembly on 2 December 1965) or store such weapons belonging to foreign Powers, either directly or on their behalf (Treaty of 14 February 1967 for the prohibition of nuclear weapons in Latin America, Article I); they also require non-nuclear-weapon States to refuse to receive on their territory nuclear weapons belonging to foreign Powers, again directly or on their behalf (General Assembly resolution 1664(XVI) of 4 December 1961).

The problem of banning foreign bases is bound up with this question. Many proposals have already been formulated in this connexion. At supra-regional level, the Soviet Union and the socialist countries have repeatedly advocated that military bases in foreign territory should be abolished (see, among others, the proposal submitted by the Soviet Union to the Disarmament Commission on 27 May 1965 (DC/218)) or that the installation of nuclear weapons outside the national territories of the nuclear Powers should be banned (see, again, for example, the Soviet Union proposal of 12 February 1963 on the renunciation of the right to use foreign territories for stationing strategic means of delivering nuclear weapons (ENDC/75)). At regional level, a fundamental condition of this kind has been suggested by the African States in connexion with their demands for the denuclearization of Africa (among other places, in the resolution on general and complete disarmament adopted by the Conference of Heads of African States and Governments held at Addis Ababa from 22 to 25 May 1963 (ENDC/93/Rev.1)) and also in the setting of the debates on the elimination of foreign military bases in Asia, Africa and Latin America which, inter alia, led up to the adoption of General Assembly resolution 2165 (XXI) of 5 December 1966. Faced with this demand for the abolition of bases, some States members of NATO and SEATO raised
various objections, invoking the right of self-defence, their obligations towards their allies and considerations of military defence (for example, in their replies to the inquiry carried out by the Secretary-General under the Unden plan (DC/201 and 204).

In the proposed convention, the minimum undertaking required could be agreement to denuclearize all foreign bases situated on the territory of States Parties (as foreseen, as elsewhere, in Article 1 of the Treaty of Tlatelolco) coupled with a ban on the installation of new bases for servicing nuclear weapons.

(c) The transport or transit of nuclear weapons through the territories of States Parties to the convention or through other territories under their jurisdiction or control

Having regard to the potential effects of the increasing mobility of nuclear weapons resulting from the development of transport techniques, it is becoming increasingly important that, alongside the ban on their being permanently stationed outside national territories, the transport of nuclear weapons should also be banned. This prerequisite found a place in General Assembly resolution 1652(XVI) of 24 November 1961 on the denuclearization of Africa. It is also reflected in the demand for a ban on the overflying by aircraft carrying nuclear weapons of territories outside the national territory of each State concerned. The Treaty of Tlatelolco proscribes the transport of nuclear weapons by the States Parties, although it allows their transit by States which are not parties to it, and hence by the nuclear Powers. So far as this question is concerned, some States (in particular, Argentina) have expressed reservations, emphasizing that this authorization violates the aims of the Treaty (ENDC/186, page 8).

Prohibition of the use of nuclear weapons in time of war could be defined in the following terms:

(a) Prohibition of the use of nuclear weapons by the non-nuclear States in the event of an armed conflict. This ban would be based on the principles laid down in the declaration on the prohibition of the use of nuclear and thermo-nuclear weapons adopted on 24 November 1961 by the General Assembly as resolution 1653(XVI) on a proposal submitted by Ethiopia; and

(b) Prohibition of the use of nuclear weapons by the nuclear Powers against States which have themselves undertaken not to produce, acquire or use nuclear weapons. A ban of this kind would in effect constitute a guarantee by the nuclear Powers of the inviolability of the legal status deriving from the convention. This obligation could be embodied in a separate protocol, as in the case of the treaty on the denuclearization of Latin America.
B. The object of the above-mentioned obligations would be nuclear weapons. The notion of nuclear weapons has not yet been defined in a universally valid convention. The Brussels Protocol of 23 October 1954 includes a definition of nuclear weapons adopted to meet the requirements of regulations applicable within the area of the West-European Union. On the basis of this definition, a nuclear weapon is defined in the Final Act of the second session of COPREDU/L, dated 2 September 1965, as "any weapon which contains, or is designed to utilize, nuclear fuel or radioactive isotopes and which, by explosion or other uncontrolled nuclear transformation of the nuclear fuel or radioactive isotopes, is capable of mass destruction, mass injury or mass poisoning" (A/5985). The treaty for the prohibition of nuclear weapons in Latin America defines a nuclear weapon as "any device which is capable of releasing nuclear energy in an uncontrolled manner and which has a group of characteristics that are appropriate for use for warlike purposes" (ENDC/186, page 16).

This definition does not cover all the types of nuclear device not having characteristics appropriate for their use for "warlike purposes". The draft treaty on non-proliferation does not define nuclear weapons, but Articles I and II forbid the production or acquisition of nuclear weapons of all kinds and explosive nuclear devices of all types. It is certain that at the present stage of technological progress it would be impossible to distinguish clearly between devices for peaceful nuclear explosions and those used in nuclear weapons. This is why, in order to eliminate any possible loophole from the treaty, it was deemed essential to extend its application to all explosive nuclear devices.

To make it possible for non-nuclear-weapon States to benefit by the advantages deriving from peaceful applications of atomic energy, as well as by peaceful nuclear explosions, both the Treaty of Tlatelolco (Article 18) and the draft non-proliferation treaty (Article V) recognize the possibility of making limited use of nuclear devices for peaceful purposes. One of the essential conditions of such use is that it should not conflict with the aims of the obligations assumed. This implies: (1) an undertaking on the part of States benefiting from peaceful nuclear explosions to exercise their right to do so in good faith, that is to say, an undertaking that they will not exploit it to gain for themselves the capacity to produce or acquire such explosives (see the declaration made by the Mexican delegation on 16 May 1968 in the First Committee of the General Assembly (A/C.1/PV. 1569, page 41)); (2) an undertaking
by the nuclear-weapon States to accept an adequate system of control; (3) an undertaking by the same States to make their services available to non-nuclear States on favourable terms, without using them as a means of bringing illicit pressure to bear; and (4) an undertaking by non-nuclear States and nuclear Powers alike to carry out nuclear explosions in conformity with the provisions of the Treaty of Moscow of 5 August 1963, which prohibits all explosions in cases where the resultant scientific and technological experience could be used in the production of nuclear weapons.

The convention concluded by the non-nuclear-weapon States could lay down an international procedure allowing them to benefit by the services provided by the nuclear Powers in the field of peaceful nuclear explosions.

3. The problem of verifying compliance by non-nuclear States with undertakings not to produce, acquire or use nuclear weapons

Control consists in a system of activities having as their object the verification of compliance by the non-nuclear States with their obligations under the international convention. As control, especially in relation to disarmament, is of exceptional importance for the security of States, and as it is indisputably bound up with the need for them to allow the presence of foreign (international) bodies on their respective territories, it could be organized only with the consent of all those interested. There is therefore no disinterested formula for international control. States are free to agree to the establishment of a control system and to define its scope as they choose; they are equally free to dispense with such a system if they consider it superfluous.

These comments apply equally to the proposed convention. The following factors will therefore have to be taken into consideration:

(a) the ban on the production of nuclear weapons is already controlled by an international inspection system (the ILEI: safeguards system) or through multilateral (BURLATOM) or regional (based on the Treaty of Tlatelolco) arrangements;

(b) the verification of the non-acquisition of nuclear weapons is an extremely complicated business; States Parties to treaties already concluded (for example, the Treaty of Tlatelolco and the non-proliferation treaty) have therefore abandoned the idea of setting up control in this sector; and

(c) verification of abstention from the use of nuclear weapons is an equally delicate matter; it would require authorization by the nuclear Powers to inspect such nuclear weapons as they might have installed on the territory of States Parties to the convention.
4. **The problem of guarantees resulting from the conclusion by non-nuclear-weapon States of a convention to prevent the production, acquisition and use of nuclear weapons**

This problem is dealt with in other working papers before the Conference.

V. **PROCEDURE FOR IMPLEMENTING THE OBLIGATIONS OF NON-NUCLEAR-WEAPON STATES IN RESPECT OF THE PREVENTION OF THE PRODUCTION, ACQUISITION AND USE OF NUCLEAR WEAPONS**

The possibility of implementing these obligations, either by means of a universal or by means of a regional convention, has been studied in the course of the recent negotiations.

A. **The universality of the obligations of non-nuclear States**

In reply to the inquiry undertaken by the Secretary-General into the conditions on which General Assembly resolution 1634 (XVI) might be implemented, a number of States mentioned, among the conditions on which they could participate, the principle of the universality or reciprocity of the measures proposed.

Several States have propounded the prerequisite of universality in the case of other disarmament proposals, among them the non-proliferation treaty. According to those who favour a general undertaking by all the non-nuclear States, universality would imply not only the participation of these States, but also that of all the nuclear Powers in possible future conventions on the prevention of the production, acquisition and use of nuclear weapons.

B. **Regional organization of the obligations of non-nuclear States**

The desire on the part of non-nuclear States to discharge their responsibilities in preventing the production, acquisition and use of nuclear weapons found expression at regional level in a number of proposals about demilitarized zones put forward between 1957 and 1963, and in the replies to the Secretary-General's inquiry just referred to, as well as in the efforts of those States to make demilitarized zones one of the essential means of stopping the nuclear arms race. By way of example, General Assembly resolution 2023 (XX) of 19 November 1965, on the non-proliferation of nuclear weapons, may be cited. Operative sub-paragraph 2 (e) of this reads: "Nothing in the treaty should adversely affect the right of any group of States to conclude regional treaties in order to ensure the total absence of nuclear weapons in their respective territories". This principle has also been embodied in Article VII of the non-proliferation treaty.
The right of States to enter into regional undertakings to prevent the production, acquisition and use of nuclear weapons appertains to them on a basis of equality. This right has been confirmed by the interpretation placed on Article VII of the draft treaty on non-proliferation by several delegations during the debate in the First Committee at the resumed twenty-second session of the General Assembly in the spring of 1968 (the United States of America, on 26 April and 15 May; Poland, on 1 May; Ethiopia, on 6 May; Austria, on 9 May; the United Republic of Tanzania, on 17 May; and Colombia, on 24 May). This means that all the non-nuclear-weapon States, irrespective of their geographical situation, have the right to establish denuclearized zones. Against this background, the theory whereby some regional nuclear-armsments problems could be solved within the framework of general and complete disarmament, whereas others would be solved on the basis of regional agreements between those interested, must be deemed untenable. This case was argued in various General Assembly bodies during the years 1961 and 1966 by the following Member States: the United States of America, in the First Committee on 6 November 1962 (A/C.1/PV. 1267, page 56) and 1 December 1965 (A/C.1/PV. 1391, pages 13-17), and in the Disarmament Commission on 17 May 1965 (DC/PV/32, page 17); Japan, in the First Committee on 19 November 1962 (A/C.1/PV. 1280, page 51); the United Kingdom, in the First Committee on 10 November 1966 (A/C.1/PV. 1449, page 42); and by other States, among them Australia and Greece.

This approach cannot be regarded as warranted. True, each region has its own political and military features, so that its denuclearization too must have distinctive features; but the possibility of creating denuclearized zones in some regions but not in others is not such a characteristic. On the contrary, the individuality of each region implies differentiation in the forms and scope of the undertakings according to the functions with which States may wish to invest the denuclearized zone; for complete denuclearization consists in a complex of obligations providing alike for positive action by States (for example, withdrawal of nuclear weapons) and for abstention from action (for example, refusal to introduce nuclear weapons into territories where there are no atomic armaments). Positive action - with withdrawal of this arm - itself will, in the very nature of things, make a substantial contribution to denuclearization. On the other hand, where such armaments are not yet to be found, abstention - refusal to install or receive nuclear weapons - will be the essential obligation. Thus, the nature of States' responsibilities differs according to whether or not they already
have nuclear weapons on their territory. But, irrespective of the special features of
the forms and extent of the obligations, the legal establishment of a denuclearized
zone - no matter where it is to be created - has common features:

(a) regional agreements for preventing the production, acquisition and use of
nuclear weapons will have to be compatible with the entire system of international
agreements on disarmament, for example, with the Treaty of Moscow of 1963 banning
nuclear weapon tests in the atmosphere, in outer space and under water, as well as with
the non-proliferation treaty;

(b) pursuant to Article 52 of the Charter of the United Nations, such agreements
will have to apply to a distinct zone, i.e., to a precise, homogeneous geographical
unit, created on a basis of reciprocity with the object of assuring regional security;

(c) such agreements will have to lay down an adequate procedure for verifying
compliance with the obligations assumed; and

(d) they will have to guarantee respect by other States, and in particular by the
nuclear Powers, of the legal regime they create.

Comparing the two modes of implementing the obligations of non-nuclear States in
the prevention of the production, acquisition and use of nuclear weapons, the difficulties,
manifest in recent stages of the international negotiations and in the prevailing
international situation, of achieving universal participation by non-nuclear States in
the working of the proposed convention will have to be taken into account. This is
borne out by experience at the negotiations on the non-proliferation treaty, and especially
by the adoption by a number of States of the principle of the equality of their
obligations with those of the nuclear Powers. Lack of geographical cohesion in
responsibilities for preventing the production, acquisition and use of nuclear weapons
would impair the effectiveness of the obligations assumed. This would militate against
the elimination at regional level of the main factors, political and military,
encouraging the nuclear arms race, and against the conditions essential to strict
respect for the legal regime created by the conclusion of the convention in question.
Such cohesion could be ensured by creating denuclearized zones in different geographical
areas. This in turn could eventually lead to the introduction of a universal system
for preventing the production, acquisition and use of nuclear weapons.