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Item 1(a) of the provisional agenda

(a) CONCLUSION OF AN INTERNATIONAL CONVENTION UNDER WHICH NUCLEAR-WEAPON STATES UNDERTAKE NOT TO USE OR THREATEN THE USE OF NUCLEAR WEAPONS AGAINST STATES WHICH HAVE UNCONDITIONALLY RENOUNCED THE PRODUCTION, ACQUISITION AND USE OF NUCLEAR WEAPONS

by

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I. Introduction

1. The Treaty on the Non-Proliferation of Nuclear Weapons, the draft of which was submitted by the delegations of the Soviet Union and the United States of America to the Conference of the Eighteen-Nation Committee on Disarmament at Geneva and approved with certain modifications on 12 June 1968 by the General Assembly of the United Nations,1/ 2/ considerably enhances the prospects of nuclear disarmament and thus constitutes a measure in the interests of all mankind and an important landmark along the road to nuclear disarmament.

2. In the course of the hard-fought discussions and negotiations leading up to the conclusion of the Treaty in question, the States not possessing nuclear weapons (hereinafter referred to as "non-nuclear-weapon States") pressed the States possessing nuclear weapons (hereinafter described as "nuclear-weapon States") to grant them, in return for the obligations they were prepared to undertake in the free exercise of their sovereignty, certain rights and advantages calculated to balance out the mutual obligations between the non-nuclear-weapon States and the nuclear-weapon States. The concern of the non-nuclear-weapon States was concentrated on three main problems; the need to ensure access to scientific and technological information with a view to the utilization of atomic energy for peaceful purposes and the possible advantages of any peaceful applications of nuclear energy; the measures to be taken to prevent the commitment undertaken by them from perpetuating the privileged situation of the States possessing nuclear weapons; and finally the problem of the security guarantees to be given to the non-nuclear-weapon States by the nuclear-weapon States.

3. The General Assembly of the United Nations, in resolution 2028(XX) of 19 November 1965 laying down certain criteria to be fulfilled by the Treaty on the Non-Proliferation of Nuclear Weapons, stipulated that it should "embody an acceptable balance of mutual responsibilities and obligations of the nuclear and non-nuclear Powers", thus accepting the principle of mutual obligations as a basis for the settlement of this question.2/

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1/ The Treaty was adopted by 95 votes to 4, with 21 abstentions. For the text see resolution 2373(XXII) of 12 June 1968.

2/ The draft Treaty was submitted to the Eighteen-Nation Committee on 24 August 1967, and in revised versions, taking account of the observations made by the members of the Committee, on 18 January and 11 March 1968.

2/ Resolution 2028(XX) was adopted by 93 votes to none, with 6 abstentions (Cuba, France, Guinea, Mali, Pakistan and Romania).
4. The first two of the problems mentioned above were disposed of in the Treaty on the Non-Proliferation of Nuclear Weapons. With regard to the rights of non-nuclear-weapon States in respect of the peaceful uses of nuclear energy, the Treaty lays down concrete obligations to be undertaken by the nuclear Powers (articles IV and V), at the same time settling the important question of the control of such use (article III). As regards the second problem, article VI formulates the juridical undertaking of the Parties to the Treaty to pursue negotiations in good faith on effective measures relating to nuclear disarmament and hence to general and complete disarmament under strict and effective international control.

5. The need for security guarantees to be given by the nuclear-weapon States to offset the obligations entered into by the non-nuclear weapon States was stressed by many delegations in the course of the discussions on the non-proliferation of nuclear weapons. The non-nuclear-weapon States argued that in return for renouncing nuclear weapons they should be given firm and effective guarantees against the use or threat of the use of nuclear weapons. As the discussions in question indicate, the measures to be taken by the nuclear-weapon States may be in the first instance of a negative type, consisting of an undertaking by them never to make use of nuclear weapons or the threat to resort to nuclear weapons against the non-nuclear-weapon States. But positive measures by them can also be envisaged, in the form of an undertaking to furnish, individually or collectively, any aid or assistance needed by a State falling a victim to an act of aggression involving the use of nuclear weapons. Clearly the two solutions are not mutually exclusive and may very well complement each other. It is with the first of these measures that the present paper is concerned.

II. Nature and juridical scope of the commitments undertaken by the non-nuclear-weapon States

6. Since a treaty on security guarantees will inevitably be ancillary to the Treaty on the Non-Proliferation of Nuclear Weapons, its purpose being to round off the settlement of the problem of preventing the spread of nuclear weapons as far as security guarantees are concerned, obviously the tenor of the latter is bound to have decisive influence on the negotiations concerning the proposed new treaty. Hence we must consider briefly what will be the commitments for the non-nuclear-weapon States and nuclear-weapon States respectively arising out of the Treaty on the Non-Proliferation of Nuclear Weapons once it enters into force.

4/ See the list of the delegations in question and a summary of their views in document A/6817 of 19 September 1967, Annex IV, p.2 et seq.
1. The non-nuclear-weapon States Parties to the Treaty undertake:
   (a) Not to receive the transfer from any transferor whatsoever of nuclear
       weapons or other nuclear explosive devices, directly or indirectly;
   (b) Not to receive the transfer of control over such weapons or explosive
       devices;
   (c) Not to manufacture or otherwise acquire nuclear weapons or other
       nuclear explosive devices;
   (d) Not to seek or receive any assistance in the manufacture of nuclear
       weapons or other nuclear explosive devices (article II).

2. The nuclear-weapon States Parties to the Treaty will have corresponding
   commitments, namely:
   (1) Not to transfer to any recipient whatsoever, directly or indirectly:
       (a) nuclear weapons or other nuclear explosive devices;
       (b) control over such weapons or explosive devices;
   (2) Not to assist, encourage or induce any non-nuclear-weapon State:
       (a) to manufacture nuclear weapons or other nuclear explosive
           devices;
       (b) otherwise to acquire nuclear weapons or other nuclear explosive
           devices;
       (c) to acquire control over such weapons or explosive devices
           (article I);

3. Finally, the States Parties to the Treaty on the Non-Proliferation
   of Nuclear Weapons, whether possessing nuclear weapons or not, undertake not to
   provide to any non-nuclear-weapon State for peaceful purposes:
   (a) source or special fissionable material, or
   (b) equipment or material especially designed or prepared for the
       processing, use or production of special fissionable material,

   in both cases unless the source or special fissionable material is subject
   to the safeguards required by article III of the Treaty (article III, para.2).

7. The conclusion to be drawn from this brief analysis is that States which
   in the exercise of their sovereign rights become Parties to the Treaty enjoy
demilitarization status from the military point of view. Demilitarization is not absolute, however. The Treaty does not prohibit the storing of nuclear bombs or other nuclear explosive devices on the territory of non-nuclear-weapon States nor their installation on behalf of a third State, nor again their transit across the territory of such State or transport above such territory. The question which is bound to crop up during the Conference of non-nuclear-weapon States will be whether this régime is regarded by the nuclear Powers as a satisfactory way of giving the non-nuclear-weapon States the security guarantees they demand. This calls for a comparison with other demilitarization systems established up to the present by treaty.

III. Demilitarisation régimes

1. Demilitarization and neutralization of Antarctica

8. The Antarctic Treaty, signed at Washington on 1 December 1959, starting out from the principle that it is in the interest of all mankind that Antarctica shall continue forever to be used exclusively for peaceful purposes and shall not become the scene or object of international discord, establishes a juridical foundation for the pursuit and development of international co-operation in scientific investigation in Antarctica, i.e. in the words of article VI of the Treaty, the area south of 60° South latitude, including all ice shelves. To this end, the Contracting Parties introduced the régime of full-scale demilitarization and an integral peaceful régime for Antarctica.

5/ "Demilitarization" is to be understood as a conventional régime prohibiting the presence of military forces and installations within a given territory and in general any use of such territory for military purposes in peace time. Demilitarization is to be distinguished from "neutralization" of a territory or State, whereby the contracting parties agree in the event of armed conflict to place such territory or State outside the theatre of hostilities. (See: Strupp, Neutralisation, Befriedigung, Entmilitarisierung, Stuttgart 1933, especially pp. 184, 211 and 430 et seq; Dictionnaires de terminologie du droit international public, Paris 1960, pp. 199 and 409).

The term "demilitarization" signifies a conventional régime prohibiting nuclear weapons, as well as nuclear installations for military purposes within a territory, on the high seas, or in outer space. Thus demilitarization constitutes a form of demilitarization restricted to nuclear weapons. It may be total or partial.

Only peaceful activities are authorized in that part of the world, and the Contracting States emphasize that "there shall be prohibited, inter alia, any measures of a military nature, such as the establishment of military bases and fortifications, the carrying out of military manoeuvres, as well as the testing of any type of weapons" (article I, para.1). Under article V of the Treaty "Any nuclear explosions in Antarctica and the disposal there of radioactive waste material shall be prohibited"; but the use of military personnel or equipment for scientific research or for any other peaceful purpose is permitted (article I, para.2). Under article IX an organ was set up by the Contracting Parties, consisting of their representatives, for the purpose of exchanging information, consulting together on matters of common interest pertaining to Antarctica, and formulating and considering, and recommending to their Governments, measures in furtherance of the principles and objectives of the Treaty.

2. Treaty on the partial banning of nuclear weapon tests

9. Whereas the purpose of the Antarctic Treaty was to establish an exclusively peaceful régime implying demilitarization and neutralization in a large sector of the uninhabited part of the globe, the initial step in the direction of demilitarization of nuclear energy on the actual territory of States was the conclusion of the Treaty banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, signed at Moscow on 5 August 1963.\footnote{This régime goes further than the classic type of demilitarization and neutralization of the territory. It prohibits not only all activities for military purposes in Antarctica and all acts of a military character in the event of armed conflict, but also any other hostile activity which cannot be described as peaceful, for example war propaganda against a State or group of States or the passage of warships.}

Under this Treaty, the Contracting Parties first of all accepted an unconditional and absolute obligation by undertaking (a) to prohibit, (b) to prevent, and (c) not to carry out any nuclear weapon test explosion, or any other nuclear explosion in the atmosphere, beyond its limits, including outer space, or underwater, including territorial waters or high seas. It should be noted that this obligation applies not only to nuclear weapons tests but also to any other nuclear explosion, in other words to explosions for peaceful purposes as well.

10. Apart from this categorical obligation, the Treaty in question contains a relative ban. The States bound by the Treaty have the same obligation in regard to

\footnote{This Treaty came into force on 10 October 1963, the date of the deposit of instruments of ratification by the Soviet Union, the United Kingdom and the United States of America in accordance with article III, para.3. As of the present date, the Treaty covers ninety-six States. For the text, see: United Nations, Juridical Yearbook 1963, pp.107 to 109.}
explosions underground (for test purposes or otherwise) if such explosion causes radioactive debris to be present outside the territorial limit of the State under whose jurisdiction or control such explosion is conducted (article I, para.1).

11. The Contracting Parties undertake furthermore to refrain from: (a) causing, (b) encouraging, or (c) in any way participating in, the carrying out of any nuclear weapon test (article I, para.2). It is explicitly stipulated in this Treaty that it bans even explosions underground, whatever their purpose, if such explosions cause radioactive debris to be present outside the territorial limits of the State responsible for them.

3. Denuclearization of outer space and neutralization of celestial bodies

12. When the amazing progress made by science and technology brought the exploration of outer space within the bounds of possibility, the United Nations General Assembly gave expression to its belief that the exploration and use of outer space should be for the betterment of mankind (resolution 1721 A (XVI) of 20 December 1961). Subsequently (resolution 1884 (XVIII) of 17 October 1963) it called upon all States to refrain from placing in orbit around the earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, installing such weapons on celestial bodies, or stationing such weapons in outer space in any other manner; and to refrain from causing, encouraging or in any way participating in the conduct of the foregoing activities. Principles governing the exploration and use of outer space were formulated in the Declaration unanimously adopted by the General Assembly on 13 December 1963 (resolution 1962 (XVIII)) which enabled the Committee on the Peaceful Uses of Outer Space to prepare the Treaty on Principles governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies. This Treaty, adopted by the General Assembly (resolution 2222 (XXI) of 19 December 1966), and opened for signature on 27 January 1967, implies first of all the partial demilitarization of space, since the States Parties to it undertake not to place in orbit around the earth any objects carrying nuclear weapons or any other kind of weapons of mass destruction (article IV, first paragraph)²/. With regard to the moon and other celestial bodies, the Treaty stipulates, as in the case

²/ For the text of this Treaty see resolution 2222 (XXI) of 19 December 1966, Annex, and the United Nations Monthly Chronicle, vol. IV, No. 1, January 1967, pp. 42 et seq. The Treaty entered into force on 10 October 1967. Up to the present thirty-two States have ratified it or acceded to it, including the United States, United Kingdom and the Soviet Union.
of Antarctica, an all-embracing peaceful régime covering that of neutralization. The Contracting States undertake not only not to install nuclear weapons or other weapons of mass destruction on celestial bodies but also to use the moon and other celestial bodies exclusively for peaceful purposes. Following the same procedure as was used in the Antarctic Treaty, this treaty expressly forbids the establishment of military bases, installations and fortifications, the testing of any type of weapons and the conduct of military manoeuvres on celestial bodies. The inference to be drawn from the régime thus established is that celestial bodies cannot become the theatre of hostilities. In accordance with an express provision the above-mentioned ban does not apply to the use in space of military personnel for scientific research or for any other peaceful purpose or the use of any equipment or facility necessary for peaceful exploration of the moon and other celestial bodies (article IV, para.2). This stipulation quite obviously excludes from the ban launching pads and nuclear propulsion rockets needed for launching space ships.

4. Demilitarization of Latin America

13. The aim of the Treaty for the Prohibition of Nuclear Weapons in Latin America, opened for signature at Tlatelolco, Mexico, on 14 February 1967, according to its preamble, is to establish a militarily demilitarized zone in Latin America, thus contributing towards ending the armaments race, making a significant contribution towards preventing the proliferation of nuclear weapons and constituting a powerful factor for general and complete disarmament, while sparing the peoples of Latin America from squandering their limited resources on nuclear armaments.\textsuperscript{10} Article 28 of the Treaty lays down a number of requirements which have to be met before it enters into force; it is also stipulated that the rise of a new Power possessing nuclear weapons can have the effect of suspending the execution of the Treaty. From the date of its entry into force, the Treaty imposes on States which have ratified it or acceded to it the following specific undertakings, as set out in article 1:

(1) To use exclusively for peaceful purposes the nuclear material and facilities under their jurisdiction, and

(2) To prohibit in their respective territories:

\textsuperscript{10} For the text of this Treaty, see document A/6663 of 23 February 1967, p.12 \textit{et seq.}
(a) the testing, use, manufacture, production or acquisition by any means whatsoever of any nuclear weapons, by the Parties themselves, directly or indirectly, on behalf of anyone else or in any other way;

(b) the receipt, storage, installation, deployment and any form of possession of any nuclear weapon, directly or indirectly, by the Parties themselves, by anyone on their behalf or in any other way;

(3) to prevent in their respective territories the activities referred to under (2) above;

(4) To refrain from engaging in, encouraging or authorizing, directly or indirectly, the testing, use, manufacture, production, possession or control of any nuclear weapon;

(5) To refrain from participating in any way in the activities referred to under (4) above.

14. It should be noted that the Treaty does not mention among the activities which are prohibited the transport of nuclear weapons over the territory of the Contracting States. According to the official explanation given in the Final Act of the fourth session of the Preparatory Commission for the Denuclearization of Latin America, the transport of nuclear weapons by any of the Contracting Parties is covered by the prohibitions expressly laid down in the Treaty. With regard to the transport of nuclear weapons where the carrier is a State not a Party to the Treaty, transport is regarded as identical with transit, for which the territorial State is at liberty to grant or deny permission in the free exercise of its sovereignty, unless some other arrangement has been reached in a treaty between the states. It can be seen from two statements recorded in the Final Act that on the crucial question whether the transit of nuclear weapons can or cannot be reconciled with the denuclearization status, a fundamental difference of opinion arose: whereas the delegation of the Argentine Republic maintained that the authorization of transit would violate the spirit of the Treaty, the delegation of Nicaragua reserved its right, inter alia, to "permit transit of atomic materials" through its territory. 11/

15. The zone of application of the Treaty at the outset comprises the whole of the territories for which the Treaty is in force; but upon fulfilment of the requirements of article 28, paragraph 1, it will embrace a vast zone defined in the Treaty on the basis of geographical criteria and also including part of the high seas both east and west of the continent (article 4, para.2).

11/ op. cit., pp. 8 and 9
16. A protocol (Additional Protocol I) opened for signature by the United States, France, the Netherlands and the United Kingdom, makes the status of denuclearization as defined in articles 1, 3, 5 and 13 of the Treaty applicable to territories for which, de jure or de facto, they are internationally responsible and which lie within the limits of the geographical zone established in the Treaty. The United States Government intends to exclude Puerto Rico and the part of the Virgin Islands under United States administration from the régime and is only prepared to accept denuclearization of the Panama Canal Zone and the Guantanamo base on certain conditions. 11 bis/

17. Unlike the instruments quoted earlier, this Treaty gives a definition of a nuclear weapon. The term is defined as meaning "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". The definition goes on "An instrument that may be used for the transport or propulsion of the device is not included in this definition if it is separable from the device and not an indivisible part thereof" (article 5).

18. The Treaty 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, provided that they do so in accordance with the provisions of the Treaty (article 18).

19. In view of the ban on nuclear explosions stipulated in the Treaty of 5 August 1963, this authorization must be interpreted, as far as the States which accepted the latter Treaty are concerned, as referring exclusively to explosions underground which do not cause radioactive debris to be present outside the territorial limits of the State responsible for the explosion.

20. It should be pointed out that the Treaty for the Prohibition of Nuclear Weapons in Latin America envisages certain guarantees to be given by the nuclear Powers - a regional solution of the kind to be sought by the forthcoming conference of non-nuclear-weapon States at the world level. Under an annex to the Treaty (Additional Protocol II) the nuclear Powers would undertake to respect the status of

11 bis/ Marie-Françoise Furet, Revue générale de droit international public 1967, No. 4, p. 1029
demilitarization of Latin America as defined in the Treaty. To this end, the nuclear Powers signing and ratifying the Protocol in question will undertake two obligations:

(1) Not to contribute in any way to the performance of acts involving a violation of the obligations of article 1 of the Treaty in the territories to which the Treaty applies in accordance with article 4;

(2) Not to use or threaten to use nuclear weapons against the Contracting Parties for the prohibition of nuclear weapons in Latin America.12/

21. In order to ensure compliance with the obligations of the Treaty, the Contracting Parties envisaged the establishment of a special body to be known as the "Agency for the Prohibition of Nuclear Weapons in Latin America" (articles 7 to 11), and the negotiation by each Contracting Party of multilateral or bilateral agreements with the International Atomic Energy Agency for the application of its safeguards to the nuclear activities of the Contracting Parties.

5. **Question of the demilitarization of Africa**

22. The principle of recognizing the African continent as a demilitarized zone has been recognized since 24 November 1961, when the United Nations General Assembly in resolution 1652 (XVI) called upon Member States to refrain from carrying out or continuing to carry out in Africa nuclear tests in any form and to refrain from using the territory, territorial waters or air space of Africa for testing, storing or transporting nuclear weapons. At the same time it called upon them to consider and respect the continent of Africa as a demilitarized zone. In the course of its first session held at Cairo from 17 to 21 July 1964, the Organization of African Unity adopted a solemn Declaration in which the Heads of State and Government announced their readiness to undertake, in a treaty to be concluded, not to manufacture or acquire the control of nuclear weapons.13/ This Declaration was endorsed by the Second Conference of Heads of State and Government of Non-Aligned Countries in their Declaration of 10 October 1964.14/ The General Assembly, endorsing the Declaration

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12/ See the explanations given by the representative of Mexico, Ambassador García Robles, on behalf of all the Latin American Republics on 23 October 1967 (A/C.1/4504).


14/ Section VII of the Declaration (A/5763). See also La Documentation Française, **Articles et documents**, No. 0,1605 of 7 November 1964, p.7.
on the denuclearization of Africa issued by the Heads of State and Government of African countries, and reaffirming its earlier request on that question, 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 take similar action. It also called upon all States to refrain from the use, or the threat of use, of nuclear weapons on the African continent (resolution 2033 (XX) of 3 December 1965).\footnote{15/} Admittedly, the Treaty envisaged in the Declaration of Cairo has not yet been concluded, but the instruments quoted above make it clear that the denuclearization of the African continent is almost universally acceptable.

IV. Scope of the obligations to be assumed by the nuclear-weapon States in the proposed treaty

23. The crux of the problem is the implementation, in this particular respect, of the principle, as stated by the United Nations General Assembly, of an acceptable balance of mutual responsibilities and obligations between the nuclear Powers and the non-nuclear Powers.

24. The first and most important question which arises in this connexion is whether the obligations arising for the non-nuclear-weapon States which become Contracting Parties to the Treaty on the Non-Proliferation of Nuclear Weapons will be regarded by the nuclear-weapon States as adequate to justify the undertaking on their part not to use or threaten to use nuclear weapons against them.

25. A study of the work of the Eighteen-Nation Committee unfortunately does not provide a positive reply to this question. As pointed out earlier, the Treaty in question does not prohibit Contracting States from storing or transporting nuclear weapons within their territories. But when the Chairman of the Council of Ministers of the Soviet Union, Mr. A. Kosygin, stated in his message to the Conference of the Eighteen-Nation Committee at Geneva on 1 February 1966 that the Soviet Union was ready to undertake not to use nuclear weapons against non-nuclear-weapon States provided the other nuclear Powers gave the same undertaking, he expressly limited this offer to States not having nuclear weapons in their territory. His statement on this matter reads as follows: "In order to facilitate agreement on the conclusion

\footnote{15/ This resolution was adopted by 105 votes to none, with 2 abstentions (France and Portugal).}
of a treaty (i.e. the Treaty on the Non-Proliferation of Nuclear Weapons) the Soviet Government declares its willingness to include in the draft treaty a clause on the prohibition of the use of nuclear weapons against States Parties to the Treaty which have no nuclear weapons in their territory.\(^\text{16/}\)

26. This last-named condition must obviously be interpreted as covering all instances of the presence of nuclear weapons on the territory of non-nuclear-weapon States, whether temporary (e.g. transit) or continuing (stockpiling of nuclear weapons). It seems likely that other nuclear Powers, bearing in mind the interest of international security as well as their own security, will be similarly concerned, at any rate in respect of States having stocks of nuclear weapons belonging to another nuclear Power. Indeed the condition in question is quite understandable. In the first place, even if nuclear weapons are stockpiled within the territory of a State which does not itself possess nuclear weapons, the State is liable to become a nuclear Power at any moment if the State which maintains the stocks of nuclear weapons transfers the disposal of these terrible weapons to the territorial State. Furthermore, in the event of a serious international crisis, it is not inconceivable that the military authorities of the territorial State might forcibly take over the weapons by force. Again, a nuclear weapon stockpile, especially if situated at a military base - as is generally the case - is a potential source of nuclear danger which could trigger off nuclear aggression in the event of a crisis. To give a non-nuclear-weapon State having a nuclear weapon stockpile belonging to a nuclear Power in its territory the benefit of the guarantee in question would amount to giving the nuclear-weapon State owning the nuclear stockpile a tremendous advantage; and any such measure, far from making for international peace and security, would on the contrary tend to create an unstable and even dangerous situation. The same argument would apply to the transport of nuclear weapons across the territory of non-nuclear-weapon States, except that here the presence of these weapons on the territory of the foreign State is only temporary - admittedly a minor difference only. Thus, for the reasons mentioned, it would seem only fair in the treaty to be concluded to limit any guarantees given by the nuclear-weapon States to the States which have accepted the status of total demilitarization. In this connexion it may be mentioned that in the case of

Antarctica as well as that of outer space, the undertaking by the nuclear-weapon States not to use nuclear weapons, as implied in their acceptance of the integral peaceful régime for outer space, was agreed to as counterbalancing the total demuclearization of Antarctica and of the celestial bodies.

27. This opinion is in fact corroborated by General Assembly resolution 2153 A (XXI) adopted on 17 November 1966.\(^{17/}\) in which the Assembly calls upon all nuclear-weapon States to refrain from the use, or the threat of use, of nuclear weapons against States which may conclude regional treaties, to ensure the total absence of nuclear weapons on their respective territories. This condition as laid down by the General Assembly for demuclearized zones established at the regional level is still more pertinent to a demuclearized zone established at the world level.

28. The question may be asked whether the non-nuclear-weapon States wishing to take advantage of the security guarantees offered by the nuclear-weapon States should not, in addition to renouncing the production, acquisition and utilization of nuclear weapons in their respective territories, also undertake to prevent in the future, insofar as they are able, the testing, use, production or acquisition of such weapons by third parties, and their entry for whatever purposes and storage. It would be useful to rule out, by means of an express provision to this effect, the by no means purely theoretical possibility that a third State, a group of States or even a large economic undertaking might engage in activities on the territory of a non-nuclear-weapon State which the State itself had renounced under the Treaty on the Non-Proliferation of Nuclear Weapons. It should be pointed out that the Treaty for the Prohibition of Nuclear Weapons in Latin America includes a provision to prevent certain activities deemed incompatible with the status of demuclearization.

29. The Heads of State and Government of the Non-Aligned Countries likewise in the Declaration of 10 October 1964 adopted by the Conference, declared their readiness not to produce, acquire or test any nuclear weapons, and called upon all countries 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 of nuclear weapons".\(^{18/}\)

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\(^{17/}\) This resolution was adopted by 97 votes to 2, with 3 abstentions.

\(^{18/}\) See document A/5763.
30. It would also be desirable for the proposed treaty to define the scope of the guarantee by specifying that it covers not only the territory, but also the territorial waters, the air space and any other area where the non-nuclear-weapon State exercises de jure or de facto sovereignty.

31. It might furthermore be worth while considering whether the future treaty should not lay down a broader obligation on the part of the nuclear-weapon States, namely to respect the demobilization status accepted by the non-nuclear-weapon States, especially since the idea is expressed in various General Assembly resolutions, e.g. resolution 2033 (XX) on the demobilization of Africa, and in other international instruments like the 1964 Declaration of the Organization of African Unity already mentioned. Such a provision would, incidentally, merely reflect the present state of international law, which stipulates that all States are required to respect the objective régime established by a valid treaty (demarcation of frontiers, demilitarization, neutralization, internationalization of rivers, etc.), unless they have ruled out by an unequivocal manifestation of intent the presumption that they have tacitly accepted the implications of the treaty in question. 19/

32. The obligation to respect the demobilization status accepted by the non-nuclear-weapon States and not to make use of nuclear weapons against those States must be interpreted as implying a ban on the over-flight of aircraft carrying

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nuclear bombs above the territory of the denuclearized States. In point of fact, the overflight of denuclearized States by aircraft carrying nuclear weapons, like the transport of nuclear weapons over their territory, is incompatible with the status of total denuclearization. Furthermore, not to mention the way in which they contribute to international tension, such overflights expose the State involved to the real danger of serious harm in the event of accidents to such aircraft because of human failings. Accidents of this kind have taken place on a number of occasions in recent times.²⁰/

²⁰/ The following may be mentioned among incidents of this type:

(1) In early December 1965, a Super Starfighter bomber of the type designed to carry nuclear bombs left the airfield of Norvenich, in the Federal Republic of Germany, flew to northern Norway and crashed in the neighbourhood of Narvik, after flying more than 3,000 kilometres; the pilot had fainted. Fortunately the plane had no bombs on board. (Rudé Právo, 10 December 1965.)

(2) A B-52 nuclear bomber of the United States Strategic Air Command on an emergency mission crashed on 17 January 1966, following a collision with a supply plane, near the village of Palomares in Spain, with four thermo-nuclear bombs, one of which broke up and caused serious damage to the population through fallout of radioactive materials, especially plutonium (New York Times, 9 February, The Times, 21 January and 3 March 1966; Le Monde, 22 and 24 January and 3 April 1966; Pravda, 30 January 1966.)

(3) Quite recently again, on 21 January 1968, an American B-52 bomber crashed on the ice in North Star Bay near Thule in Greenland with four bombs of 1.1 megatons each. Here again, the fallout of radioactive material contaminated the ice and the subjacent sea. (See Le Monde, 24, 25, 26 January and 1, 13 and 14 February 1968; Pravda (Moscow), 24, and 25 January 1968; The Times (London), 23 and 24 January 1968; New York Herald Tribune, 23, 24, 25, 26 and 27 January 1968.)
33. It seems to be universally recognized that the proposed treaty must also deal with nuclear threats to States which have accepted deminuclearization status, ruling out intimidation or pressure of any kind against a foreign State exerted by announcing the intention to make use of nuclear weapons. This would proscribe the threat of nuclear aggression as well as resort to nuclear armaments, which constitutes not a threat to but a violation of international peace and security. It would place a juridical ban on the danger of nuclear blackmail about which a number of delegations expressed concern during the discussions on the Treaty on the Non-Proliferation of Nuclear Weapons.

V. Observations on sanctions for material violation of treaties relating to the non-proliferation of nuclear weapons

34. The possibility of serious violation of the treaty under consideration calls for very special consideration owing to the tremendous importance for the future peace of the world of the provisions of the Treaty on the Non-Proliferation of Nuclear Weapons and the Complementary treaties containing security guarantees, and because of the dangers inherent in a material breach of one of the essential provisions of these treaties for international peace and security in general and for the security of the various Contracting States in particular. Nor does it seem desirable to apply to this type of violation the normal rules applicable to breaches of an international treaty and constituting grounds for suspending the operation of the treaty in the event of a breach.\(^{22}\) This procedure could cause a chain reaction and destroy the entire deminuclearization system built up at the cost of so much effort. It would be far preferable to lay down in the treaty itself special sanctions for violations of the treaties establishing the deminuclearization régime, excluding the application of the general norms of the Law of Treaties in such cases. If this could be achieved, it would both increase the security of the Contracting States and enhance the efficacy of the treaties in question.

35. It would be quite appropriate to provide that any use of nuclear weapons against States which have accepted total deminuclearization status constitutes nuclear aggression and that all other breaches of the essential provisions of those treaties constitute a threat to peace or a breach of the peace within the meaning of Article 39 of the Charter of the United Nations. In all these cases, the Security Council would thus be obliged to apply the enforcement measures laid down in Chapter VII of the Charter.

\(^{22}\) See article 57 of the International Law Commission's draft and the relevant commentary (A/6309/Rev.1, p.82).
36. In addition, it would certainly be a very useful way of emphasizing the
ground of a breach of the treaties relating to the demilitarization regime to
stipulate that any breach of the essential provisions of those treaties is an
international crime. As far as nuclear aggression is concerned, this conclusion is
indisputable, since all aggression constitutes a crime against peace according to the
interpretation – the correct one – of the 1928 Pact of Paris (Briand–Kellogg Pact) as
given by the Nürnberg International Tribunal and included in the affirmation of the
principles of international law recognized by the Charter of the Nürnberg Tribunal and
the judgment of the Tribunal, and confirmed unanimously by the United Nations General
Assembly (resolution 95(I) of 11 December 1946). But even other types of violation
of the treaties in question are very serious in character and call for penal sanction.
Since any non-nuclear-weapon State can quite easily procure nuclear materials for
peaceful purposes under the conditions laid down in the Treaty on the Non-Proliferation
of Nuclear Weapons, any State committing a breach of that Treaty should be presumed to
be attempting to procure nuclear explosive devices for military purposes, in other
words for purposes prohibited by the treaties in question. By violating these
treaties it would be endangering international peace, which is the highest good of
of mankind. In this connexion, it should be recalled that the United Nations
International Law Commission included in the list of crimes in its draft Code of
Offences against the Peace and Security of Mankind, prepared in 1951 and completed in
1954, not only aggression and the threat of aggression, but also "Acts by the
authorities of a State in violation of its obligations under a treaty which is designed
to ensure international peace and security by means of restrictions or limitations on
armaments, or on military training, or on fortifications, or of other restrictions of
the same character" (article 2, para.7).\textsuperscript{23/} In its commentary on the above paragraph,
the Commission recalled that the League of Nations' Committee on Arbitration and
Security considered the failure to observe conventional restrictions such as those
mentioned in this paragraph as raising, under many circumstances, the presumption of
aggression.\textsuperscript{24/}

\textsuperscript{23/} Report of the International Law Commission on the Work of its Third Session
(A/1858, p.12), and Report on the Work of the Sixth Session, International Law

\textsuperscript{24/} ibid.
37. Finally, with particular reference to the case of breaches of the above treaties by a non-nuclear-weapon State, it might be provided, along the lines of the Pact of Paris (Briand-Kellogg Pact) of 27 August 1928 that any Contracting State violating one of the essential obligations of the treaties in question would forfeit the benefits of those treaties.

VI. The treaty on security guarantees and international law

38. The formulation of a treaty which would embody the undertaking by the nuclear-weapon States not to resort to the use, or threat of use, of nuclear weapons against States which have adopted the total denuclearization status should be based on contemporary international law, the main distinguishing features of which, apart from the recognition of the right of peoples to self-determination, are prohibition of the resort to force as an instrument of individual State policy, as laid down in Article 2(4) of the United Nations Charter, and the branding of aggressive war (including preparation, launching and waging of such war) as a result of the evolution of international law. The starting-point in this evolution was the Covenant of the League of Nations following the First World War and culminating, after the horrors of the Second World War, in the affirmation of the Principles of Nürnberg by the United Nations General Assembly. In spite of the existence of these general rules of law which are binding upon all States, there is no doubt that the treaty in question must be concluded. In the first place, such a treaty will crystallize the obligations in regard to non-aggression in one particularly important respect. But while the ban on the use of force for the purposes of individual State policy is accepted by practically all legal authorities, as part and parcel of general international law, certain of its manifestations are challenged in their practical application, as is evident from the discussions in the successive committees set up by the General Assembly to formulate the principles of international law concerning friendly relations and co-operation among States. Thus it would seem desirable and extremely useful to stipulate with all possible precision in the new treaty the renunciation by the

25/ Since the principles of the Charter have also been accepted, expressly or tacitly, by the States not yet Members of the United Nations, they must be considered today as binding today upon all States.

26/ See the following documents in particular: A/5746 (paras.106-109) concerning the work of the Special Committee in 1964, A/6799 of 26 September 1967 (pp.22, 113) on the work of the 1967 session of the Special Committee, and A/6955 of 11 December 1967, 23-29, containing the report of the Sixth Committee covering the point in question.
nuclear Powers of the use and the threat of use of nuclear force. The same argument holds good in regard to the ban on the use of nuclear weapons; if we interpret the existing international law correctly and in good faith, their use for aggressive purposes – as opposed to their manufacture, acquisition or storage – must be regarded as prohibited by positive international law, for example by article 23 of the Regulations annexed to the Convention respecting the Laws and Customs of War on Land, signed at the First Peace Conference and revised at the Second Peace Conference (held at the Hague in 1899 and 1907) and the clause in the preamble to that Convention which states that in cases to which the Regulations in question are not applicable "the inhabitants and belligerants remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience".

39. Thus, it was in keeping with international law for the General Assembly of the United Nations to state in resolution 1653 (XVI) of 24 November 1961 that "Any State using nuclear and thermo-nuclear weapons is to be considered as violating the Charter of the United Nations, as acting contrary to the laws of humanity and as committing a crime against mankind and civilization". In this respect, the treaty on guarantees could, in a very circumscribed area, introduce a desirable clarification and remove any doubt which might still subsist not only because of the result of the voting, which revealed a large number of negative votes or abstentions, but also because of the unenthusiastic attitude of Governments concerning the convening of a conference for the signature of a convention on this subject.

40. When we examine the undertaking to be given by the nuclear Powers in the light of international law, and particularly on the United Nations Charter, it seems necessary to recall that resort to the use of nuclear force is lawful in the exercise of individual or collective self-defence against nuclear aggression. The threat to resort to nuclear weapons may be justified if it is a measure of self-defence against aggression or the threat of aggression. Hence it would be desirable to include in the treaty a clause safeguarding the right of self-defence as laid down in Article 51 of the United Nations Charter, along the lines of the one which appears in the Security Council's draft resolution on security assurances (ENDC/225 of 7 March 1968, annex B).

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27/ This resolution was adopted by 55 votes to 20, with 26 abstentions, in a role-call vote. It is evident from the context of the resolution that what it refers to is the use of nuclear weapons for purposes of aggression.

VII. Importance of the treaty on security guarantees for the operation of the
denuclearization régime

41. There is no question that the conclusion of a treaty providing adequate
security guarantees for States accepting the denuclearization régime is bound to have
a considerable influence on the attitude of the Governments of the non-nuclear-weapon
States when the time comes to decide whether or not they will sign and ratify the
Treaty on the Non-Proliferation of Nuclear Weapons. The two treaties, which will be
mutually complementary, will establish the status of denuclearized States at the world
level. This status will give States Parties to the Non-Proliferation Treaty and the
new treaty to be concluded certain unquestionable advantages. The Parties to the
Treaty on the Non-Proliferation of Nuclear Weapons, while preserving in full their
right to develop research and the production and utilization of nuclear energy for
peaceful purposes, will acquire the further right to participate in the full exchange
of equipment, materials and scientific and technological information for the purposes
of such peaceful uses. They will also have at their disposal the services of explosive
devices for peaceful purposes at a cost involving no expenditure on research and work
on perfecting the devices, in other words on a far less costly basis than if they
undertook to produce and perfect such devices themselves. In this way, while
incidentally avoiding the disastrous nuclear arms race, they will be able to devote the
financial resources thus saved to economic and social development. Over and above all
this there will be the advantages arising out of the new treaty in the way of protection
of the Contracting Parties from nuclear aggression and nuclear blackmail.

42. Apart from these immediate advantages, States becoming parties to the two
treaties in question will enjoy the benefits accruing from the general application of
the denuclearization régime. Acceptance of the Treaty on the Non-Proliferation of
Nuclear Weapons by a very large number of States would, in the first place, put an end
to the nuclear armaments race, and by restricting the possession of nuclear weapons to
a small circle of five Powers would greatly facilitate nuclear disarmament in the future.
Furthermore, acceptance of these treaties could not fail to produce psychological and
political effects of far-reaching importance. Now that the idea of a denuclearized
zone as put forward on 2 October 1957 by the Polish Minister for Foreign Affairs,
Adam Rapacki, in respect of Central Europe has been accepted, in some instances in an
extended form, first of all for the continent of Antarctica, then for outer space, and
finally for Latin America, if the two treaties designed to establish a régime of
denuclearization were now to be accepted by the vast majority of States, the result
would be to create a vast zone, covering the greater part of the globe, from which nuclear weapons would be banned and where the use of nuclear weapons and the nuclear threat as well would be prohibited. The result would be likely to have a favourable effect even on States which at the outset were not disposed to become parties to the two treaties. And finally, the agreement thus reached on a matter of capital importance for mankind would make for an easing of international tension and help to create the climate of confidence which is so essential if conditions propitious for an agreement on general and complete disarmament under effective international control are to be created. Such an agreement, and that alone, can release the vast financial resources which are absolutely essential for raising the standard of living in the under-developed countries and elsewhere. Thus general and complete disarmament would rescue mankind not only from the scourge of war, but also from the scourge of hunger.