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Ministry of Foreign Affairs, Directorate of Political Affairs, Disarmament, 'Note: Guarantees for non-nuclear-weapon States, Draft resolution of the Security Council'

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Summary:

This short research note briefly explores the case for and against vetoing the UNSC resolution. As the United States, the United Kingdom, and the Soviet Union were serving as co-sponsors, and the Republic of China on Taiwan would welcome any international measure the People's Republic of China opposed, France was the only state in a position to veto the UNSC resolution and perhaps torpedo the NPT when the UNGA special session met in late April. If France were to abstain, it would be henceforth bound by the resolution. Even so, the report cautioned whether "a negative attitude" should outweigh "the downside of defeating a project whose intention, if not whose content, fulfills the wishes of the vast majority of non-nuclear delegations."

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NOTE

Subject: Guarantees for non-nuclear-weapon States, Draft resolution of the Security Council.

The resolution^[1] that, on the margins of the non-proliferation treaty, the Americans, the British and the Soviets wish to have the Security Council adopt, by way of a security guarantee for non-nuclear-weapon States, has every chance of being adopted if France does not veto it and, consequently, to bind us, even if we abstain to vote, since the decisions of the Council are binding on all members of the United Nations.

However, even though the intention of its promoters is not to agree to any commitment that goes beyond those provided for by the [UN] Charter, the text of the resolution introduces a number of new concepts in comparison to those usually entertained in matters of collective security. We have to face the issue of whether the meaning and the impact of these concepts would justify a negative attitude from us despite the inconvenience of foiling a project, the intention, if not the content, of which meets the wishes of the vast majority of non-nuclear-weapon States.

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1 - Aggression and the threat of aggression by means of nuclear weapons against non-nuclear-weapon States.

These two concepts form the basis of the resolution (par. 1 and 2 of the dispositif). However, the Charter of the United Nations (article 39) shows no distinction between aggressions depending on the weapons used to perpetrate them or depending on the countries which are the victims of them. It does not even refer to "threats of aggression," but only to "threats to the peace."

The U.D. delegate to the Eighteen-Nation Committee on Disarmament (ENDC) stressed that aggression or the threat of aggression using nuclear weapons against a State without such weapons was indeed "a qualitatively new situation." of which the purpose of the resolution was precisely to raise awareness.

Such is also the conviction of the non-nuclear-weapon States who insist on the unprecedented means of pressure that nuclear weapons confer on those who possess them. Thinking more about the intimidation measures of which they may be victim than about the aggression strictly speaking, against which an intervention would most of the time risk being too late, they would like, in the phrasing of a senior Indian official^[2], benefit indirectly from the deterrent power of existing nuclear forces.^[3]

In this spirit, the Soviets had offered to provide in the resolution the "punishment" for any nuclear aggressor against a non-nuclear-weapon State. The Anglo-Saxons opposed it.

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On the other hand, the Americans were prepared to include in the declaration mentioned in paragraph 2 of the resolution the commitment not to use nuclear weapons against non-nuclear States, on the single condition that the latter "do not engage in an attack assisted by a nuclear power." Because they were unable to have this reservation granted by the Soviets, who opposed any modification of the Kosygin proposal, the Americans abandoned their project.^[4]

The concerns revealed by these different aspects of the negotiation show that by keeping the concept of "the threat of nuclear aggression against a non-nuclear-weapon State", the Council's decision could be interpreted, despite the letter of the text, as quite simply prohibiting the benefits of nuclear power relative to

a non-nuclear-weapon State. Wouldn't any nuclear-weapon State in conflict with a non-nuclear-weapon State risk, in fact, to being denounced, in any case, as a potential nuclear aggressor?

Such an interpretation of the resolution would have no real consequence if it were about the USSR or the United States. It could reserve difficulties, however, for any other nuclear power for whom conventional means would be insufficient to ensure its protection against the undertakings of a non-nuclear power.

2 - Discrimination between States

The draft resolution consecrates a number of discriminations between States. It opposes nuclear States to non-nuclear ones; it distinguishes among the permanent members of the [UN] Security Council between those who have nuclear weapons and those who do not; in paragraph 3 of its [preamble], it welcomed the expressed motives by some States for the benefit of only non-nuclear-weapon States that have signed the non-proliferation treaty.

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Of course, none of these distinctions appears in the [UN] Charter and the last one is particularly contrary to its spirit since the specific assistance foreseen on behalf of States signatory to the non-proliferation treaty is no other than the one reserved by the [UN] Charter for any victim of an attack.

On the other hand, in the current state of affairs, the concept of a permanent member possessing nuclear weapons acts against China, thus relegated to the camp of potential aggressors whose only other members are those countries that would otherwise acquire nuclear power after the signature of the non-proliferation treaty.[\[5\]](#)

In short, the resolution will lend the authority of the [UN] Security Council to a classification of States and a definition of their respective positions in the nuclear realm dictated by the goals set down by the non-proliferation treaty. Without modifying the Charter, it could twist the terms of its application, if the circumstances were to lead to it being applied.

3 - Immediate action of the Security Council

The draft resolution takes care to specify that the action of the Council, of its permanent members having nuclear weapons (dispositif, para. 1) or of the States which will have shown their intention of providing assistance to the signatories of the non-proliferation treaty (dispositif, par. 2), will in any case be performed, "pursuant to the Charter of the United Nations." The declaration that the Americans will make when voting on the resolution confirms this and specifies, in particular, that the

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"immediate assistance" provided for in paragraph 2 of the provision will consist, as far as the United States is concerned, in stepping in so that the Security Council acts as soon as possible "pursuant to the Charter".

Conversely, the reaffirmation in paragraph 3 of the dispositif of the right of collective self-defense and of the provisions of the article 51 of the Charter show that the resolution does not include any commitment of a contractual nature relating to non-nuclear-weapon States.

In short, the only concession made is the recognition of the need for immediate action within the framework of the United Nations, but since no specific measures are envisaged to put in motion such action, nothing will change in the usual procedures and the permanent members of the Council will retain, in particular, the right to veto any initiative in this domain.

The role that the resolution accords, dangerously, to the concept of "threat of nuclear aggression," the discriminations it introduces between the States, the means of pressure it creates because of this in favor of the signature of the non-proliferation treaty, finally the anti-Chinese character it displays, and which has obviously not eluded Beijing, would justify a negative attitude from us and we could consider that we are all the more free to veto the resolution since it does not provide any special guarantee to non-nuclear-weapon States.

But such a decision would put us in a tricky situation regarding the non-nuclear-weapon States. Their reactions to the draft resolution are still unclear. They no doubt consider it, together with India, who made known its point of view, quite disappointing, but they also probably don't

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really believe in the possibility of getting more effective guarantees, even though this is Romania's point of view and the Federal Republic of Germany has just made an approach in this regard to the United States.^[6] Before the General Assembly, however, the non-nuclear-weapon States, and among them especially the non-aligned ones, will probably recall the interest they have always shown in the Kosygin proposal and the United Nations resolution that they had adopted on this subject (res. 2153 A (XXI)). The issue of the use of nuclear weapons against non-nuclear-weapon States therefore has a serious chance of being raised.

Unless, on this point, we are ready, for our part, to agree with the wishes of non-nuclear-weapon States, as we are also asked to do with regard to the countries of Latin America, it seems that we must avoid being made, when using our right of veto, to explain our position on the matter, whatever the inconvenience of the resolution and the step it marks for the ban on the use of nuclear weapons. However, the abstention of France would not cause any surprise, since our course of action with regard to the non-proliferation treaty is well known. While recalling our position, the representative of France would have to point out that we cannot consider ourselves bound by provisions which would include a modification of the [UN] Charter.

^[1] a copy of which is hereby attached.

^[2] Mr. Jha, during his mission in Paris last summer.

^[3] As for the Germans, they also insisted on the need to protect non-nuclear States against the nuclear "blackmail."

^[4] The reservation in question is among those that the Americans included when signing Additional Protocol n°2 of the Treaty for the Prohibition of Nuclear Weapons in Latin America.

^[5] Incidentally, this qualification should never be lawfully recognized by the signatories of the treaty since, pursuant to the NPT, nuclear States are the ones that manufactured a nuclear weapon and detonated it before January 1, 1967 (article IX, par. 3)

^[6] According to a news report dated March 29, a spokesperson for the German Federal Ministry of Foreign Affairs confirmed the information published on the same day in "Die Welt", declaring that M. F. Duckwitz had intervened with M. [Eugene] Rostow to ask the USA "to accept a guarantee of nuclear protection for non-nuclear countries signatories to the non-proliferation treaty, in case of fundamental modifications taking place in NATO or in case of dissolution of the Alliance."