

**SELECTED KEY DOCUMENTS FROM UK
STATE PAPERS ON THE NEGOTIATION OF
THE NUCLEAR NON-PROLIFERATION
TREATY: 1965**

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January 14, 1965

GABINET

DEFENCE AND OVERSEA POLICY (OFFICIAL) COMMITTEE
SUB-COMMITTEE ON DISARMAMENT

NON-DISSEMINATION

Note by the Secretaries

Attached for the information of members of the sub-committee on disarmament is a background paper on the Non-dissemination of Nuclear Weapons prepared by the Foreign Office in November 1964.

(Signed) R. McC. Andrew
B. M. Day
J. T. Paget

Foreign Office, S.W.1.

January 14, 1965

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CONFIDENTIALNON-DISSEMINATIONIntroduction

It is a major British interest to prevent the further dissemination of nuclear weapons and knowledge related to their manufacture. A non-dissemination agreement binding on all nuclear powers and on all non-nuclear countries (or at least on those countries with the capacity to produce nuclear weapons or with military or political incentives to acquire them) would be a positive step towards a safer world. It would be an important and effective restraint on the arms race and a logical step to follow the Nuclear Test Ban Treaty.

2. Non-dissemination is a common interest of East and West. If additional countries possessed nuclear weapons, the prospect that they might one day be employed would be greater and this could increase the chances of a local conflict escalating into a war into which the nuclear resources of the great powers would be drawn. Moreover, new and serious elements of insecurity would be introduced into unstable areas of the world.

3. In the particular case of Western Europe, it is a major United Kingdom interest that the possession of nuclear weapons by the European members of N.A.T.O. should not extend beyond the United Kingdom and France (and we have given no assistance to the French in developing their nuclear weapons programme). The objections to the manufacture of nuclear weapons by the Federal Republic of Germany, or the evolution of a situation in which West Germany could make its own decision to fire the nuclear weapons in a Multilateral Force, or a Franco-German nuclear understanding which enabled the Germans to control their own nuclear weapons or to participate in a Franco-
/German

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German nuclear force, need not be argued here. A non-dissemination agreement would have the important result of confining West German activities in the field of nuclear weapons to participation in multilateral arrangements consistent with the agreement; and the United States (and the United Kingdom if we join) would be obliged to retain a right of veto over the use of the weapons concerned, if this was what the agreement required. (See also paragraph 23 below)

4. A non-dissemination agreement will also reinforce the system, best exemplified in the International Atomic Energy Agency, of applying safeguards to ensure that nuclear materials and equipment provided for peaceful purposes are not diverted to military uses. As civil nuclear programmes become larger and more common, and as competitive pressure mounts among the suppliers of nuclear materials and equipment, the objective of safeguards arrangements will be at risk unless the present non-nuclear powers bind themselves not to manufacture or acquire nuclear weapons.

5. In practice none of the existing nuclear powers is disseminating nuclear weapons or knowledge related to their manufacture. The Soviet Union, whatever they may have promised China between 1957 and 1959, has broken off all assistance to China in the field of nuclear weapons and there is little chance that anything except a major change in present Russian or Chinese policies towards each other could lead to a resumption of Russian help in the military nuclear field. A de facto agreement on non-dissemination among the nuclear powers can therefore be said to exist. As to the non-nuclear powers, there is no indication that any of them

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is in fact pursuing a military nuclear programme. However an increasing number of countries with civil nuclear programmes will in due course be in a position to develop a military nuclear capacity if they so wish. The incentives and pressures in this direction have increased following the Chinese nuclear test on October 16 1964. as recent debates in the Indian Parliament have shown. The present situation is therefore politically and technologically unstable and could be disrupted in a major crisis in East/West relations or in the event that a non-nuclear power came to suspect that an unfriendly neighbour was developing a nuclear weapon. A formal international agreement on non-dissemination would provide a greatly increased degree of assurance that nuclear weapons will not spread (even though agreements can be broken and some forms of evasion might be undetectable.)

The Irish Resolution

6. In December 1961 the General Assembly of the United Nations unanimously adopted a resolution (put forward by the Irish Delegation) calling for an agreement by which "nuclear states would undertake to refrain from relinquishing control of nuclear weapons and for transmitting the information necessary for their manufacture to states not possessing such weapons, and states not possessing nuclear weapons would undertake not to manufacture or otherwise acquire control of such weapons." The key word here is "control". The resolution did not prohibit the existing key of the cupboard arrangements nor did it refer explicitly to future multilateral arrangements, although the proviso that "control" would not be transferred to non-nuclear powers would apply here.

Scope of a Non-Dissemination Agreement

7. This Resolution is not a binding instrument even for members of the United Nations. It is moreover not fully comprehensive. As far as the United Kingdom is concerned, it would have been preferable had the Resolution / explicitly

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explicitly ruled out the transfer of nuclear weapons to any group of non-nuclear states under arrangements whereby control of the weapons would be vested in that group. Furthermore a non-dissemination agreement ought in our view to impose on the non-nuclear powers a further obligation not to help any other power to manufacture nuclear weapons (e.g. German assistance to the United Arab Republic) and this point is not fully covered by the Resolution. To meet our requirements a formal international agreement on non-dissemination would need to include provisions on these additional points as well as give effect to the objectives of the Irish resolution.

Recent Developments

8. Although non-dissemination figures in the American and Soviet plans for General and Complete Disarmament, it has so far been considered by the Geneva Disarmament Conference as a collateral measure. In this context its prospects, which at first seemed fairly bright, have faded as plans for the N.A.T.O. Multilateral Force began to take shape.

The American Draft Non-Transfer Declaration

9. In April 1963 Mr. Rusk showed the Soviet Ambassador in Washington the text of a draft non-transfer declaration (Annex A) and an explanatory minute (Annex B) which would accompany it. The declaration would have bound the nuclear powers not to transfer nuclear weapons into the national control of individual non-nuclear states or to assist such states in their manufacture; while, for their part, the non-nuclear states would undertake not to manufacture nuclear weapons or acquire control over them or seek to receive assistance from other states in this field. The accompanying minute made it plain that the declaration would not prevent the setting up of a multilateral type force

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provided that the weapons belonging to such a force could not be used on the basis of the national decision of any government not now possessing them.

The Russian Reply to the Draft Non-Transfer Declaration

10. In May 1963 the Russians delivered a Note (not published) commenting on Mr. Rusk's drafts. They charged the United States with seeking to disseminate nuclear weapons, argued that it was dangerous to let the West Germans have access to nuclear weapons and insisted that all access to nuclear weapons by troops of non-nuclear powers should be barred. The demand that all access to nuclear weapons by non-nuclear powers was evidently directed at the existing bilateral arrangements under which various N.A.T.O. countries deploy American tactical nuclear delivery systems, while the nuclear warheads are kept under American control. A fortiori it would also prevent the establishment of the Multilateral Force.

The British Attitude to the Non-Transfer Declaration

11. Although we were prepared to support the American Draft Non-Transfer Declaration, which had been shown to us at the end of 1962 and was subsequently circulated within N.A.T.O., it could have been improved in a number of ways. Thus

- (a) it did not rule out the transfer of control of nuclear weapons to a group of non-nuclear states;
- (b) it did not impose on non-nuclear powers a clear obligation not to help any other power to manufacture nuclear weapons; and
- (c) a declaration, even one entered into on a multi-lateral basis, would not be legally binding on participating states. It should therefore be turned into an internationally binding treaty or agreement, including provisions for ratification and registration with the United Nations.

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As explained in paragraphs 22-24 below the Americans have been unwilling to make changes in their public position that would satisfy us on (a). Point (b) is not an issue between the Americans and us and could be taken care of by a simple drafting change. As to the formal status of an agreement (point (c)), it is our view and apparently also the American view, that a full non-dissemination agreement would be an international agreement or treaty with corresponding formal provisions. No Western text on non-dissemination has been shown to the Russians since the Draft Non-Transfer Declaration and accompanying minute Non-Dissemination since the Test Ban Treaty

12. After the Nuclear Test Ban Treaty both we and the Americans tried to see to what extent the favourable international atmosphere might have induced the Russians to conclude a non-dissemination agreement on the basis proposed by the West. However, talks with Mr Gromyko at the United Nations General Assembly in October 1963 disclosed a definite hardening of the Russian attitude and it became clear that they intended to maintain that no agreement on non-dissemination could be concluded as long as the United States planned to set up, in the form of the Multilateral Force, an organisation that in their view contravened the principles of non-dissemination

The British Proposal for an Escape Clause

13. At the end of 1963 the United Kingdom made an attempt to overcome Russian unwillingness to sign a non-dissemination agreement. In a message of December 24, 1963 to Mr. Khrushchev the Prime Minister, after explaining that non-dissemination and the Multilateral Force were compatible suggested that the Russian anxieties could be overcome if an / agreement.

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agreement included an "escape clause" similar to that in the Nuclear Test Ban Treaty. The effect of this would have been that the Russians could subsequently denounce the non-dissemination agreement if they believed that the Multilateral Force arrangements (which had still to be worked out) amounted to dissemination. We considered that if the Russians once accepted a non-dissemination agreement, they would in practice not exercise the right of withdrawal. The Russians showed no interest in the escape clause. It is, however, probable that non-dissemination agreement would in practice include some form of escape clause (The American Draft Non-Transfer Declaration does in fact contain, in paragraph 3, an escape clause).

14. The escape clause proposal was discussed with the Americans before it was put to Mr. Khrushchev. No text was actually shown to the Russians. The version we had in mind at the time is at Annex C, together with a revised version.

American Proposals for Nuclear Containment

15. After the abortive discussions with the Russians in the last few months of 1963 it was plain that the session of the Geneva Conference that opened in January 1964 would not see the conclusion of a non-dissemination agreement. The Americans have therefore devoted much attention to ways of approaching non-dissemination indirectly by what they have termed measures of nuclear containment. The objectives of nuclear containment are to put a ceiling on the nuclear capabilities of the nuclear powers, to permit the first steps towards a reduction in these capabilities and to hinder the spread of

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military nuclear capacity to non-nuclear powers. Measures in this field have included the cut-back in the production of fissile material for weapons purposes, increased public support for the application of International Atomic Energy Agency safeguards, and a proposal for a non-acquisition declaration. Of these various measures, only the non-acquisition proposal would have been an important advance towards non-dissemination. The others are not considered further in this paper.

Non-Acquisition Declaration

16. At the beginning of 1964 the Americans discussed with us and certain members of N.A.T.O. a proposal for a non-acquisition declaration under which the non-nuclear powers would renounce the manufacture and acquisition of nuclear weapons. This scheme was shelved mainly because of German opposition. In any case other major non-nuclear powers would not have been very keen to renounce nuclear weapons as long as the nuclear powers themselves were not participating and giving a moral and political lead in the matter. Moreover, it seemed likely that some non-nuclear powers would be reluctant to commit themselves to non-acquisition (even though a declaration could be revoked) unless it was clear that countries potentially hostile to them would do the same. We should have been prepared to support the non-acquisition proposal if it had found general favour within N.A.T.O., but since it did not, it seemed to us better to continue to work for a non-dissemination agreement at Geneva. The idea of a non-acquisition agreement has now however, been taken up by the Organisation of African Unity at its July 1964 Conference in a Declaration which has been forwarded to the United Nations for action by the General Assembly.

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Attempt to Enlist French Support

17. At another level there was an attempt in the spring of 1964 to make progress towards non-dissemination with the aid of the French. In February Mr. Rusk suggested that the French might be persuaded to take a more active part in promoting a non-dissemination agreement and might be better placed to argue with the Russians because of their known lack of interest in the Multilateral Force project. After a preliminary discussion between Lord Carrington, Mr. Rusk and M. Couve de Murville during the S.E.A.T.O. Council meeting in April, Mr. Butler and Mr. Rusk put to M. Couve de Murville during the N.A.T.O. Ministerial meeting at the Hague in May a proposal for a tripartite declaration affirming support for a non-dissemination agreement. M. Couve de Murville refused to join in the declaration which was therefore dropped, and made it clear that he would not be willing to tackle the Russians. The French attitude is further discussed in paragraph 26 below.

The Russian Attitude in 1964

18. It was not until the summer of 1964 that the Geneva Disarmament Conference resumed serious discussion of non-dissemination. After some remarks by Mr. Zorin and other Russians in Geneva in June there was for a time a small hope that the Russians might be interested in getting an early agreement on non-dissemination without insisting, as a prior condition, that plans for the Multilateral Force should be abandoned. Apart from this interlude the Soviet line has remained consistently tough and rigid. They have attacked the Multilateral Force on the grounds that it is disseminatory and the first step towards giving the West Germans nuclear weapons:

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They have rejected on these grounds any proposal for the early conclusion of a non-dissemination agreement unless it were one that blocked all access to nuclear weapons by troops of non-nuclear countries. The immediate Russian interest is probably to exert pressure against the Multilateral Force and to use the debate on non-dissemination for this purpose. With no sign that any nuclear power is going to disseminate the Russians probably maintain their present policy of refusing to conclude an agreement and lay the blame for this on the Western powers. Russian statements, however, leave open the possibility which must be a matter for speculation, that their attitude to an agreement on non-dissemination could change after some form of Multilateral Force comes into being.

13. In the face of the Russian position the main Western effort has been directed towards trying to persuade the Russians that the Multilateral Force will not be incompatible with non-dissemination and that, to the extent that the Russians genuinely fear that it may be, or that it may evolve into something contrary to the principles of non-dissemination, their best course of action would be to sign an agreement now, since this would give them a binding guarantee that the Multilateral Force could not lead to the further spread of nuclear weapons. However, Mr Gromyko told Mr. Butler in July that it was impossible for the Russians to sign an agreement on non-dissemination unless plans for the Multilateral Force, which they viewed as a form of dissemination, were abandoned. The Russians have also repeated their view that it was dangerous to give the Germans access to nuclear weapons.

Views of the Neutrals at Geneva

The Neutrals at Geneva have recently shown impatience at the lack of progress towards non-dissemination. There is no doubt that general sentiment at Geneva is hostile to the Multilateral Force as being the obstacle to a non-dissemination agreement. The United Arab Republic and

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Indian representatives have called for a stand-still in negotiations for the Multilateral Force so as to permit negotiations for a non-dissemination agreement to get started. The United Arab Republic has further suggested that a study group should examine the compatibility of the Multilateral Force with non-dissemination, while the Indians have argued that the Irish Resolution should be interpreted as prohibiting dissemination under either joint or individual control. The Russians are aware that these ideas are unwelcome to the West and no doubt hope to use them to embarrass us in Geneva and at the United Nations.

The Present Western Position and the American Attitude to Non-Dissemination and the Multilateral Force

21. At present it is possible for the West to argue that the Multilateral Force is not contrary to the principles of non-dissemination because the United States, and perhaps other countries too, will have a right of veto over the nuclear weapons in the Force. It can be further argued that if the Russians refuse to accept this, they are allowing their dislike of the Multilateral Force to distort their judgment and are setting greater store on exploiting the Multilateral Force as an issue in Europe and among the non-aligned than in concluding a non-dissemination agreement that would meet their legitimate political and defence concerns about what the Multilateral Force would mean in practice.

22. An important difficulty about the current Western position is that it conceals the fact that, even if the Russian attitude were to change, recent American tactics over the Multilateral Force and non-dissemination might make it difficult to include an agreement in the near future. It is just possible that the Russians might come to believe that the Multilateral Force with an American vet

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did not off-set the advantages which a non-dissemination agreement would bring. However, they would presumably also require to be assured that the Multilateral Force arrangements could not be subsequently modified in such a way as to give the Germans substantial control over the use of its nuclear weapons. It is therefore unlikely that we could avoid the central problem of the veto in the Multilateral Force if a change in the Russian attitude or tactics were to lead to serious discussion with them. In this context the Russians will have noticed that the American Draft Non-Transfer Declaration would not prevent the nuclear powers from transferring nuclear weapons to a group of non-nuclear states. Moreover, although United States representatives have repeatedly made it clear that no single participant in the Multilateral Force would be able to fire the missiles, since firing the missiles in wartime would be by decision of the United States and an agreed number of other participants, and have stated that any change in the control formula would require the consent of all participants, the Russians could point out that this gives them no binding guarantee that the Multilateral Force would not subsequently be altered so as to transfer control of nuclear weapons to a group of non-nuclear powers.

23. Up to now the Americans have not been prepared to give the Russians an assurance that the nuclear powers would retain a permanent veto in the Multilateral Force. United States officials have told us that they agree that the transfer of ownership and control to a group of non-nuclear powers would constitute dissemination but that they are not prepared to agree now as a matter of policy or international commitment that they would preclude such transfer in any and all conditions.

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One reason for this attitude is that the Americans in discussing the setting up of an M.L.F. have been at pains to leave open the possibility that, if a European political authority emerged later they might by agreement with the participants, want to modify their veto powers so as to give the European group greater authority. There seems, in practice no logical reason why this possibility should not be kept open in a manner consistent with a non-dissemination agreement precluding the transfer of nuclear weapons to any group of sovereign non-nuclear states. But it seems clear that, at least while the M.L.F. discussions are in train the Americans see political disadvantages vis-a-vis their potential M.L.F. partners in committing themselves to the latter.

24. Basically, however the American attitude remains that it is a matter of relative priorities: to them the setting up of the Multilateral Force is more important than an agreement ratifying a de facto understanding on non-dissemination among the nuclear powers. Moreover they can argue that Soviet tactics lend support to the view that for the Russians the Multilateral Force is more important than a non-dissemination agreement, and that any change in the present American public position would not in practice persuade the Russians to alter their tactics.

The German Attitude

25. The Germans have never been enthusiastic for a non-dissemination agreement. Although in the 1954 Paris Agreements they renounced the right to manufacture nuclear weapons on Federal German territory, and although the German Government have since stated on several occasions that they had no intention of seeking national control of nuclear weapons, they have been unwilling to repeat to the Russians the obligations which they undertook to their allies in 1954 without a substantial quid pro quo. The Germans dislike any agreement (such as the Test Ban Treaty) to which the D.D.R. is a party, on the grounds that this

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enhances the status of the D.D.R. They have said that they will sign a non-dissemination agreement provided that it is world-wide, possibly hoping that this means never. At present the Germans' predominant consideration is to avoid complicating or impeding the establishment of the Multilateral Force; and when the decisions on the Multilateral Force have been taken they may be less inclined to resist progress on a non-dissemination agreement, if the Americans are then working actively for one and are prepared to bring pressure on them.

The French Attitude

26. The French attitude is one of studied non-cooperation. This is a reflection of their general attitude to disarmament negotiations and in this instance, perhaps more specifically their awareness of the possible impact on Germany. But they appear to recognise that it is not in the French interest to disseminate and we think that France would associate herself with a non-dissemination agreement that commanded general support. It has been suggested that their newly begun flirtation with China might lead to French nuclear assistance to that country; but there is no serious evidence or likelihood of this and French Ministers have explicitly denied it.

The Problem of China

27. It would be unrealistic to expect that a non-dissemination agreement would deflect China from the development of her own nuclear weapons. Mr. Rusk has on a number of occasions referred to the importance for Congress of Chinese adherence to a non-dissemination agreement. Up till the time of the first Chinese explosion, the American intention, as expressed to us, was that China should sign as a non-nuclear power and thus renounce her military programme. The Chinese test has given non-dissemination a

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new urgency in American eyes but we do not know how they now view the question of Chinese participation. While the Administration may recognize that it is out of the question the strength of United States public and Congressional feeling on China cannot be ignored.

28. Our view on Chinese adherence is that a non-dissemination agreement without China would still have great value. We should certainly hope that a number of countries, to which China could theoretically give nuclear weapons or secrets at some future date, would through a non-dissemination agreement have disqualified themselves from receiving Chinese nuclear help. Furthermore, the American position could be defended in Congress by reference to the proposed escape clause.

Prospects for the Immediate Future

29. The chances of an early agreement on non-dissemination are slight. Mr. Gromyko indicated to Mr. Butler in July that he was willing to have a further round of discussions in New York in the autumn and the Foreign Secretary will no doubt wish to take advantage of this opportunity. But Mr. Gromyko was unyielding on the Multilateral Force and the Russians are expected to launch an attack on the project at the General Assembly perhaps in the context of a move to "strengthen" the Irish Resolution in ways unacceptable and embarrassing to the West. In this they would certainly have the support of the majority of non-aligned opinion.

30. In these circumstances the prospects for a new initiative are not bright. Neither the Russians nor the Americans are likely to be deflected from their emphasis on the Multilateral Force. On the assumption that it is not in

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our interest to bring out into the open the divergence between the Americans and us over the veto, or to risk thereby splitting open the Western Powers at the General Assembly. our immediate course of action is limited to continuing to maintain that non-dissemination and the Multilateral Force are compatible. We should stress privately with the Americans the importance of being prepared to concede to the Russians that dissemination to a group of non-nuclear powers will not be permitted and of not taking a line over the Multilateral Force that would enable the Russians to argue plausibly that it could lead to dissemination.

Atomic Energy and Disarmament Department
Foreign Office

November 17, 1964.

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FOREIGN OFFICE,
LONDON, S.W.1.
January 19, 1965.

As you know, we have been working on a possible draft of a Non-Dissemination Treaty and Sir Harold Beeley during his visit last week asked if he could be shown the latest draft. I enclose two copies.

2. This revised version takes account of comments made in your telegram No. 200 of December 22, as well as others by the Ministry of Defence and the Assistant Legal Adviser, and I hope it has reached the stage when no further substantial changes need be made. However, it is now being sent to others concerned in the Foreign Office and the Ministry of Defence for any further comment.

3. Subject to this final clearance we think that there would be advantage in showing a copy to the Disarmament Agency as soon as possible and inviting their comments. I should be grateful if you would put this to Sir H. Beeley and seek his views.

4. The draft treaty is accompanied by an explanatory note which needs to be read with it. The note is intended for use in discussion, e.g. with the Americans, but not for tabling.

5. I am sending a copy of this letter to Dick Faber in Washington.

(H.B. Shepherd)

A.J. Williams, Esq.,
U.K. Delegation to the Disarmament Conference,
GENEVA.

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UNITED KINGDOM DRAFT NON-DISSEMINATION TREATY

The Parties to this Treaty,

Desiring to promote international peace and security,

Desiring in particular to refrain from taking steps which will extend and intensify the arms race,

Believing that the further spread of nuclear weapons will jeopardise these ends,

Recalling that General Assembly Resolution 1665 (XVI) urges all States to co-operate for these purposes,

Reaffirming their determination to achieve agreement on general and complete disarmament under effective international control,

Have agreed as follows:-

ARTICLE I

1. The Governments of France, the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics, and the United States of America, hereinafter called the "nuclear States", undertake not to transfer national control of nuclear weapons to States not now possessing control of nuclear weapons or to any association in which power to prevent the use of such weapons is not retained by the nuclear States which are members of the association concerned.

2. They further undertake not to assist States not possessing nuclear weapons in the manufacture of nuclear weapons nor to transmit to them information necessary for their manufacture.

ARTICLE II

1. The other signatory Governments undertake

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/not to

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not to manufacture or acquire national control of nuclear weapons, or to bring nuclear weapons into the control of any association which does not include among its members one or more nuclear States who retain the power to prevent the use of the nuclear weapons supplied to the association concerned.

2. They further undertake not to seek or to receive from any State assistance in the manufacture of nuclear weapons or information necessary for their manufacture or to grant such assistance or transmit such information themselves.

ARTICLE III

1. This Treaty shall be open to all States for signature. Any State which does not sign this Treaty before its entry into force in accordance with paragraph 3 of this Article may accede to it at any time.

2. This Treaty shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics and the United States of America, which are hereby designated the Depositary Governments.

3. This Treaty shall enter into force after its ratification by any three nuclear States [and by (a certain number) of non-nuclear States] and the deposit of their Instruments of Ratification.

4. For States whose Instruments of Ratification or accession are deposited subsequent to the entry into force of this Treaty, it shall enter into force on the date of the deposit of their

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instruments of ratification or accession.

5. Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification and of accession to this Treaty, and the date of its entry into force.

6. This Treaty shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations.

ARTICLE IV

The Treaty shall remain in force indefinitely subject to the right of any signatory or acceding State to withdraw from the Treaty if it decides that extraordinary events related to the subject matter of this Treaty have jeopardised the supreme interests of its country. It shall give notice of such withdrawal to all other signatory and acceding States three months in advance.

ARTICLE V

[Provision for authentic texts and certified copies]

(Notes on the United Kingdom draft treaty are set out in the attached Appendix)

[Date]

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APPENDIX
NOTES ON THE UNITED KINGDOM DRAFT
NON-DISSEMINATION TREATY

General

The draft treaty contains the substance which the United Kingdom would like to see in a non-dissemination agreement. However for technical and presentational reasons it may be desirable to table the draft in a slightly different form. There are also a number of alternative approaches to certain aspects of the treaty. These matters are discussed briefly in the following paragraphs.

First preambular paragraph

2. An alternative approach would be to list the nuclear States that are original Parties to the Treaty as well to recite the names of any non-nuclear States associated with the drafting and negotiation of the Treaty. Because the position of France is uncertain, and we cannot at this stage be sure which non-nuclear countries would be involved in preparing the Treaty, it is probably best that this paragraph should for the moment stand as it is.

Article I

3. The point about France in paragraph 2 above arises here too. Another question is whether, and if so, how, the door should be left open to eventual Chinese adherence. There may therefore be something to be said for amending this paragraph to make it begin with the words:-

"The nuclear States undertake....."

4. In this event there would have to be elsewhere in the Treaty some definition of who were the nuclear States. This could take one

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of the two following forms:-

- (a) "In this Treaty, "nuclear State" shall mean a State possessing at the date when this Treaty is opened for signature national control over the use of nuclear weapons, and "non-nuclear State" shall mean a State not having such control".
- (b) "For the purposes of this treaty, the Governments of France, the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics and the United States of America shall be regarded as nuclear States."

It would also be for consideration whether Communist China should be included at this point or whether their status should be made clear in the event that they subsequently adhere to the Treaty. One good reason for omitting a reference to them at this stage is that it might be difficult to draft one in terms acceptable to all concerned.

Article III

5. This article follows the lines of the corresponding provisions of the Test Ban Treaty.

6. The provision in paragraph 3 for the Treaty to enter into force after ratification by any three nuclear powers is designed to prevent a French or Chinese veto. This paragraph may need modification according to whether France is mentioned specifically in the Treaty. The reference to entry into force being also dependent on ratification by a certain number of non-nuclear powers may need to be considered

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further, depending, among other things, on whether or not any principal non-nuclear powers are associated with the preparation of the Treaty.

7. The Germans have suggested in the case of the Outer Space Convention that the Convention should incorporate a disclaimer clause on the following lines:-

"Declarations of ratification, acceptance or accession made by territories or authorities not generally recognised as states or governments have no effect on the general status of such territories or authorities and do in particular not entail their recognition by those states by which they have not been previously recognised."

It might help the Germans if a similar clause were also to be included in the present treaty. In this event it might be possible to simplify the provisions relating to signature and ratification. This however would need to be discussed with the Germans since it is possible that they would nevertheless prefer a complicated arrangement similar to that in the Test Ban Treaty rather than a situation in which the Soviet Union or a neutral was the sole depositary power.

Article IV

8. If progress is made towards the creation of a framework of collective international safeguards against nuclear threats or blackmail, and especially if, contrary to present expectations, the Treaty provides for such safeguards, it may well be desirable to amend the withdrawal clause

CONFIDENTIAL

/so as to

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so as to make the right of withdrawal depend also on the collapse of the collective safeguards. For the time being however the withdrawal clause is best kept in the form stated in this Article.

Verification

9. It is probably not possible to devise a system of verification to cover any aspect of the Treaty other than the obligation not to manufacture nuclear weapons and this itself would be discriminatory between nuclear and non-nuclear powers. If, however, any verification arrangements appeared to be feasible and worth inclusion, they might perhaps be set out as an annex to the draft treaty.

CONFIDENTIAL



UNITED KINGDOM DELEGATION TO THE
18-NATION DISARMAMENT CONFERENCE

Villa La Fenêtre, Route de Pregny, GENEVA

Telephone: 33 23 85

1. McBaynet
2. Lente Sore
MS
27

(2091/65)

RECEIVED IN
January 22, 1965.
21 JAN 1965
1A.D. 1052/19 (A)

CONFIDENTIAL

Dear Bryan

1801072/19

Thank you for your letter of January 19, enclosing copies of your latest draft of a Non-Dissemination Treaty.

2. We think the new draft is an improvement, particularly in Articles I and II. However, we suggest that Article I could be still further improved by bringing its wording more into line with that of Article II. At present it, rather illogically, prohibits the transfer of "national control" to any association", and the wording of the following clauses suggests that any such association will automatically include nuclear states.

This is a point I have commented on before DJ

3. We suggest therefore that the first part of this Article might be divided into two sentences, the first ending at: "States not now possessing control of nuclear weapons."; and the second reading as follows: "They further undertake not to transfer nuclear weapons into the control of any association which does not include among its members one or more nuclear States who retain the power to prevent the use of the nuclear weapons supplied to the association concerned."

4. We are glad that the first preambular paragraph has been amended but, as regards the definition and/or naming of the nuclear powers, would still greatly prefer the alternative suggested in paragraph 3 of the new Appendix, together with the definition in paragraph 4(a). The formula in paragraph 4 (b) would seem to make it impossible for China ever to accede, except as a non-nuclear power.

5. We should be grateful if you would consider these suggested amendments, which we would prefer to see taken into account before a copy of the draft is shown to the Americans. Subject to this, however, we agree that there would be advantage in going ahead in Washington fairly soon.

Yours ever
A. J. Williams

(A. J. Williams)

H. B. Shepherd, Esq., T.D.,
Atomic Energy & Disarmament Department,
Foreign Office, S.W.1.

CONFIDENTIAL

CONFIDENTIALNON-DISSEMINATION OF NUCLEAR WEAPONS

Your minute of 24 April, covering the draft Treaty and Explanatory Memorandum in their latest form.

2. I have various comments:-

(a) I do not like the wording of Article II (1). The effect of this appears to be to make it legal for a non-nuclear power to acquire nuclear weapons provided these weapons are brought under the control of an association which does include one or more nuclear states who retain the power to prevent the use of such weapons. Surely this is not at all what we want. Is it not enough to say simply "Each of the non-nuclear states party to this Treaty undertakes not to manufacture or acquire nuclear weapons"?

(b) Does the definition in Article III (a) cover China or not? In paragraph 7 of the Memorandum we refer to "the four nuclear powers".

(c) Is not Article IV as at present drafted going to land us again in all the trouble we had with the German Government over the Test Ban Treaty? What are the objections to including the disclaimer desired by the Germans (see paragraph 8 of the Memorandum)? The alternative arrangement suggested in that paragraph would hardly satisfy the Germans, because they are worried not so much about friendly governments as about the uncommitted.

3. Let us get together round a table with those to whom I have copied this minute some time on Monday to thrash out these points.

(Hood)
23 April, 1965

Mr. Shepherd

Copies to: Mr. Barnes
Mr. Ledwidge
Mr. Darwin
- Mr. Buxton

NOTES ON THE UNITED KINGDOM DRAFT
NON-DISSEMINATION TREATY

(These notes are intended for use in discussion
with friendly Governments, but not for circulation
to them with the draft Treaty)

General

The draft Treaty contains the substance which the United Kingdom would like to see in a non-dissemination agreement. However, there are possible alternative approaches to certain aspects of the treaty. Which is the best approach will emerge more clearly in the course of discussions with our allies. These matters are discussed briefly in the following paragraphs.

Article III

2. III(a) Definition of "Nuclear State"

Three approaches to this problem have been suggested:-

- (i) A definition enumerating the nuclear States. This might read:-
- '(a) "nuclear State" means the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics, the United States of America, the Republic of France and the Peoples Republic of China'.
- (ii) A definition listing the nuclear States which participated in the negotiations for the Treaty but avoiding the listing of other nuclear States. On this basis, the Treaty would provide that the United Kingdom, the U.S.S.R., the United States of America (and France), perhaps described as "the original Parties", should be named as nuclear States; and it would go on to provide that these original Parties could subsequently unanimously declare that
/any....

- 2 -

any state which in their opinion was a nuclear state (or whatever general phrase was thought appropriate) at the time the Treaty was opened for signature should, upon its accession, be deemed to be a nuclear State for the purposes of the Treaty. This would meet a possible objection that it was discourteous and perhaps provocative to name in a treaty any State (e.g. China) which had not participated in the drafting and had expressed itself as fundamentally opposed to the policy embodied in the treaty in question.

- (iii) A general descriptive definition. Nuclear States might be defined as those which at the time the Treaty is opened for signature have the full power and capacity to make use of (and not merely to deliver) nuclear weapons. Or they could be defined as those States which have at that time actually exploded a nuclear device and have publicly announced the explosion. Such a general definition has the advantage of avoiding the necessity of naming China explicitly in the Treaty text as a nuclear or a non-nuclear State and might therefore make it easier for some countries to sign the Treaty. Equally, however, it has the demerit of obscuring the main purpose of the Treaty, which is to separate the nuclear and the non-nuclear powers without ambiguity and once and for all.

Of these three approaches, (i) is preferable if political considerations do not preclude it; (ii) might involve drafting difficulties similar to (iii) and has the added disadvantage of appearing to put those nuclear powers
/that....

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that are within the negotiations in a superior position to those outside it, as well as assuming their unanimity; (iii) seems therefore better if (i) is not obtainable.

Article III(b) Definition of "non-nuclear State"

3. As at present drafted this definition does not, as the West would interpret it, embrace authorities not recognised as States, such as the D.D.R. Despite paragraph I of Article I, a transfer of nuclear weapons to such an authority would not therefore from our standpoint be a breach of the treaty. Since we have no complete legal solution to propose, it is probably unwise to air this point internationally.

Article III(c) Definition of "Control"

4. As a general principle it would seem desirable to define as precisely as is possible what is meant by transfer and acquisition of control (Article I.1 and Article II.1) and by "the power to prevent the use of....." in Article I.2 and Article II.2. We start from the basis that in bilateral or multilateral arrangements for sharing nuclear weapons systems the nuclear power that has supplied the warheads must retain the contractual right to refuse to allow their use. In addition physical control arrangements may be agreed for the purpose of contributing to the prevention of unauthorised use.

5. Any definition to be put into the present draft treaty must clearly not be in terms that might be found to demand controls or restrictions more extensive than those which we might subsequently want to apply under an A.N.F. agreement. Until therefore further progress has been made with the arrangements for the latter, it would be undesirable to put a detailed definition of control into any document on non-dissemination for wide circulation or public use. Without
/prejudice ..

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- 4 -

prejudice, therefore, to the possibility of devising a detailed definition for insertion in the draft treaty at a later stage, we should at this stage select one of two other methods. Either we should attempt no definition of "control" or of "power to prevent the use....." but should be ready to discuss what is meant by these phrases if and when serious negotiations take place; or alternatively we could attempt a general definition which would have the effect of imparting some additional clarity not at present in the draft. For instance we might define control as "The power to use a nuclear weapon without the consent of a nuclear State". This would also have the advantage of reconciling the use of "control" in relation to bilateral arrangements (Article I.1, Article II.1) and "preventing the use of....." in respect of multilateral arrangements (Article I.2 and II.2).

Article IV

6. This Article follows the general line of the corresponding provisions of the Test Ban Treaty.

7. The provision in paragraph 3 for the Treaty to enter into force after ratification by three nuclear signatories including the United States and the Soviet Union is designed to ensure the adherence of both the principal nuclear powers and at least one other. If France is an original Party, then perhaps entry into force should depend on ratification by four nuclear powers. The reference to entry into force being also dependent on ratification by a certain number of non-nuclear powers may need to be considered further depending, among other things, on whether or not any important non-nuclear powers are associated with the preparation of the Treaty.

8. The German Delegation have said in NATO that a non-dissemination agreement should incorporate a disclaimer clause similar to the one they suggested for the Outer Space
/Conventions...

- 5 -

Conventions. This read as follows:

"Declarations of ratification, acceptance or accession made by territories or authorities not generally recognised as states or governments have no effect on the general status of such territories or authorities and do in particular not entail their recognition by those states by which they have not been previously recognised".

The inclusion of an express provision on this point would:

- (a) cast doubt on the legal view taken by us that the inclusion of such provisions is unnecessary to avoid recognition,
- (b) add to the difficulties of the negotiation,
- (c) weaken our position if, though successful on this occasion, we were unable to obtain the inclusion of such a disclaimer clause in a similar treaty in the future.

9. An alternative arrangement whereby friendly Governments during and after negotiations would make public statements disclaiming any implied recognition of unrecognised regions or entities would be preferable and more to the ultimate advantage of all concerned including the Germans. Such an arrangement has been accepted in principle by the Federal Republic in relation to the Outer Space Conventions, and is also apparently preferred by the Americans.

Article V

10. The suggested withdrawal clause is broadly in the same form as in the Nuclear Test Ban Treaty of August, 1963. The argument for this type of clause is that it retains the option for a non-nuclear power to withdraw if a potentially hostile State succeeds in acquiring its own nuclear weapons. It seems likely that a number of Governments which would in principle be ready to sign a non-dissemination treaty might /hesitate....

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- 6 -

hesitate to sign it in the absence of such a clause. It might be argued that a better alternative would be a system of guarantees given by the nuclear powers to non-nuclear powers, which would be operative in the event of their being threatened with nuclear weapons, but there is no indication that such a system is likely to be established in the near future. On the other hand it may also be argued that a clause permitting withdrawal at the sole discretion of the State concerned would negative the whole purpose of the treaty. In the last resort it is evidently a matter of tactics whether we should try to conclude a treaty without a withdrawal clause, thus adding considerably to its value, or concede from the start that some kind of withdrawal clause is likely to have to be included.

CONFIDENTIALDraft Non-Dissemination TreatyTags A
& B

I now submit a copy of the Draft Treaty and accompanying Memorandum, amended in accordance with the decisions taken at your meeting of 26 April. The revised drafts have been agreed by Mr. Darwin.

Tag C

2. If you have no further comments, I propose to send the drafts to Mr. Wright in the Ministry of Defence and to the C.R.O., as planned, for final clearance prior to submission to Ministers. A draft letter is attached.

(J.E.D. Street)
30 April, 1965

Lord Hood

Copies: Mr. Ledwidge
Mr. Barnes
Mr. Darwin
— Mr. Buxton, Geneva
Mr. Williams, "

CONFIDENTIAL

UNITED KINGDOM DRAFT NON-DISSEMINATION TREATY

The Parties to this Treaty,
Desiring to promote international peace and security,
Desiring in particular to refrain from taking steps which
will extend and intensify the arms race,
Believing that the further spread of nuclear weapons will
jeopardise these ends,
Recalling that Resolution 1665 (XVI) of the General
Assembly of the United Nations urges all States to co-operate
for these purposes,
Reaffirming their determination to achieve agreement on
general and complete disarmament under effective international
control,
Have agreed as follows:-

ARTICLE I

1. Each of the nuclear States party to this Treaty undertakes not to transfer control of nuclear weapons to any non-nuclear State.
2. Each of the Nuclear States party to this Treaty undertakes not to supply nuclear weapons to any association if the association in question does not include among its members one or more nuclear States who retain the power to prevent the use of the nuclear weapons supplied to the association concerned.
3. Each of the nuclear States party to this Treaty undertakes not to assist any non-nuclear State in the manufacture of nuclear weapons.

ARTICLE II

1. Each of the non-nuclear States party to this Treaty undertakes not to manufacture or acquire control of nuclear weapons.
2. Each of the non-nuclear States party to this Treaty undertakes not to join or to remain in any association to which nuclear
/weapons

- 2 -

weapons have been supplied if the association in question does not include among its members one or more nuclear States who retain the power to prevent the use of the nuclear weapons supplied to the association concerned.

3. Each of the non-nuclear States Party to this Treaty undertakes not to seek or to receive from any State assistance in the manufacture of nuclear weapons or itself to grant such assistance.

ARTICLE III

In this Treaty:

- (a) "nuclear State" means
- (b) "non-nuclear State" means any state which is not a nuclear state;
- (c) "control" means

ARTICLE IV

1. This Treaty shall be open to all States for signature. Any State which does not sign this Treaty before its entry into force in accordance with paragraph 3 of this Article, may accede to it at any time.
2. This Treaty shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Government of the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics and the United States of America, which are hereby designated the Depositary Governments.
3. This Treaty shall enter into force on the deposit of instruments of ratification by the Governments of the Union of Soviet Socialist Republics and the United States of America and by one other nuclear State [and by (a certain number of) non-nuclear States].

/4.

- 3 -

4. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Treaty it shall enter into force on the date of the deposit of their instruments of ratification or accession.

5. Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification of and accession to this Treaty, and the date of its entry into force.

6. This Treaty shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations.

ARTICLE V

The Treaty shall remain in force indefinitely subject to the right of any Party to the Treaty to withdraw from the Treaty if it decides that extraordinary events related to the subject matter of this Treaty have jeopardised the supreme interests of its country. It shall give notice of such withdrawal to all other signatory and acceding States three months in advance.

ARTICLE VI

[Provision for authentic texts and certified copies]

30 April, 1965.

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Revised United Kingdom Draft
Non-Dissemination Treaty

... The attached draft treaty on Non-Dissemination is the result of last Monday's (26 April) meeting between Lord Hood and the interested Departments in London.

2. It is not much changed. The provisions in Articles I and II, safeguarding M.L.F.-type arrangements, have been set out in separate subparagraphs. They do not change the sense of the original draft treaty, but they do make it clearer.

3. In Article III - Definitions - the revised draft treaty has relegated the two most important definitions to the explanatory notes. This appears to be a step backwards, particularly as the balance of argument in the notes comes down in favour of the form of words used in the earlier versions of the draft, particularly on the definition of a "nuclear state". It would surely be better to include definitions in the draft treaty on these crucial points; without them the draft does not mean much.

(R. Bedford)
3 May, 1965

Miss Richardson
Mr. Williams

Copies to: Sir H. Beeley
Mr. Tahourdin
Mr. Buxton -

CONFIDENTIAL*M. B. Smith**C. 20/6*

FOREIGN OFFICE,

LONDON, S.W.1.

25 June, 1965.

Thank you for your letter of 21 June about the preliminary German reactions to our draft non-dissemination treaty. It is encouraging to hear that their first thoughts are not entirely negative, and we are now preparing to circulate the draft in NATO early next week.

2. You may like to have some follow-up material on the question of Article IV and of the German objections, which we had foreseen, to the omission of any disclaimer clause dealing with the problem of the D.D.R. It seems to us that probably the most persuasive argument from the German point of view is that outlined in paragraph 9(c) of our talking notes. If in fact we did now obtain a disclaimer clause and failed to obtain one in any subsequent negotiations, it would be more difficult to argue that a signature of the later treaty did not constitute formal recognition of all other signatories. This is, however, only part of the position as we see it.

3. A second aspect of the same point which will have its importance for them is that, if we now insist upon a clause, it will create difficulties if the West itself wished not to demand such a clause in the case of any future treaty. This point is of special importance in connexion with the Outer Space Conventions. As you know, the Germans have stated in this connexion that they would be willing not to insist on a disclaimer clause in order to get the conventions through. The Americans persuaded them to take this attitude because a disclaimer clause would complicate those negotiations. If we put forward a disclaimer clause in a non-dissemination treaty, what will they do about the Outer Space Conventions? Will they demand that the Americans insert a disclaimer clause? Or if not will it not seem that some recognition results? Thus to insist on a disclaimer clause now will embroil them with the Americans subsequently on the Outer Space Conventions.

4. In short the insertion of a disclaimer clause would be inconsistent with what was done in the past in the Test Ban Treaty and is proposed to be done in the future on the Outer Space Conventions. This inconsistency can only work to Western disadvantage.

/s.

A.A.S. Stark, Esq., C.M.G.,
British Embassy,
BONN.

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Keep.

U.K. Draft Non-Dissemination Treaty

Flag A

The Embassy in Bonn handed our draft to the German Foreign Ministry on 18 June. Mr. Stark's letter of 21 June reports that the first German reaction was not entirely negative, though it was of course reserved, and that it seemed unlikely that the Germans would object to our draft going forward, i.e. for discussion in NATO. They have now intimated that they may not have their views ready before we circulate the draft in NATO, and it appears that they may prefer to reserve expression of them until discussion takes place in NATO.

Flag B

2. We must now settle the question of timing. Mr. Millard's letter of 18 June expresses the view that when we have circulated our draft with a memorandum of explanation, we should allow governments three weeks to consider them. I had hoped that we should be able to circulate the draft in NATO this week, but this is not now possible. We can do so next week, however, and I have asked the Embassy in Bonn to let the Germans know that this is our intention. We need not await any further assent from them. It would then be possible for the full discussion to be held in the Council during the week beginning 26 July. This timing would be satisfactory provided that the Geneva Conference has not resumed by then; and it seems rather unlikely that it will have done so. I recommend therefore that we should work on this basis and that the full NATO discussion should not be brought forward unless the Russians suddenly agree to an early resumption of the Geneva Conference.

3. Mr. Millard recommends that, when the full discussion is held, the Minister of State should lead for the UK, and I fully support this. I understand that Lord Chalfont is in fact willing to do this and that he would like Sir M. Beesley to go with him.

4. Lastly, I think we must be clear about our objectives in the NATO discussions. It seems to me that there is little likelihood of getting the agreement of all our NATO allies to our draft either in its present form or amended in a fashion which we could accept. We know that the Germans have all along been reluctant to consider signing a non-dissemination treaty before the establishment of an MLE/ANF; we know that the Americans are worried about the "European clause" and by the difference between the provisions of our non-dissemination draft and those of our proposed ANF treaty. If, therefore, we are going to present a UK draft at Geneva, then I think it can only be with the acquiescence of our allies and on the understanding that it is our own draft. But we can think again about this in the light of discussion in NATO.

5. The Canadians have now told us that they will follow us in tabling their draft in NATO with explanatory notes. A separate submission is being made on this aspect.

/6.

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h. [unclear]
[unclear]

FOREIGN OFFICE,
LONDON, W.1.

6. I submit a draft to Mr. Millard at the UK Delegation, with instructions for circulating our draft and its associated memorandum. WOOD, the Department's Legal Adviser, Western Dept., the Ministry of Defence and the CRO agree.

[Faint, illegible text]

(J.E.D. Street)
30 June, 1969

Lord Hood

- Copies: Mr. Barnes
- Mr. Ledwidge
- Mr. Buxton ✓
- Mr. Darwin
- CRO
- WOD

[Faint, illegible text]

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CONFIDENTIALUNITED KINGDOM DRAFT NON-DISSEMINATION TREATY

The Parties to this Treaty,
Desiring to promote international peace and security,
Desiring in particular to refrain from taking steps
which will extend and intensify the arms race,
Believing that the further spread of nuclear weapons
will jeopardise these ends,
Recalling that Resolution 1665 (XVI) of the General
Assembly of the United Nations urges all States to co-
operate for these purposes,
Reaffirming their determination to achieve agreement
on general and complete disarmament under effective inter-
national control,

Have agreed as follows:-

ARTICLE I

1. Each of the nuclear States party to this Treaty under-
takes not to transfer control of nuclear weapons to any
non-nuclear State, or to any association of States.
2. Each of the nuclear States party to this Treaty under-
takes not to assist any non-nuclear State in the manufacture
of nuclear weapons.

ARTICLE II

1. Each of the non-nuclear States party to this Treaty
undertakes not to manufacture or acquire control of nuclear
weapons, or to join or to remain in any association having
control of nuclear weapons.
2. Each of the non-nuclear States Party to this Treaty
undertakes not to seek or to receive from any State
assistance in the manufacture of nuclear weapons or itself
to grant such assistance.

/Article III

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ARTICLE III

In this Treaty:

- (a) "nuclear State" means
- (b) "non-nuclear State" means any State which is not a nuclear State;
- (c) "control" means the power to use a nuclear weapon without the consent of a nuclear State.

ARTICLE IV

1. This Treaty shall be open to all States for signature. Any State which does not sign this Treaty before its entry into force in accordance with paragraph 3 of this Article may accede to it at any time.
2. This Treaty shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Government of the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics and the United States of America, which are hereby designated the Depositary Governments.
3. This Treaty shall enter into force on the deposit of instruments of ratification by the Governments of the Union of Soviet Socialist Republics and the United States of America and by one other nuclear State and by (a certain number of) non-nuclear States.
4. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Treaty it shall enter into force on the date of the deposit of their instruments of ratification or accession.
5. Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification of and accession to
/this

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this Treaty, and the date of its entry into force.

6. This Treaty shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations.

ARTICLE V

The Treaty shall remain in force indefinitely subject to the right of any Party to the Treaty to withdraw from the Treaty if it decides that extraordinary events related to the subject matter of this Treaty have jeopardised the supreme interests of its country. It shall give notice of such withdrawal to all other signatory and acceding States three months in advance.

ARTICLE VI

[Provision for authentic texts and certified copies]

June, 1965

CONFIDENTIAL

CONFIDENTIALEXPLANATORY NOTES TO U.K. DRAFT
NON-DISSEMINATION TREATYGeneral

1. The text is drafted so as to follow as closely as possible the form of the partial nuclear test ban treaty of August, 1963, and to put into treaty language the provisions of the "Irish Resolution" of 1961, which was unanimously adopted by the General Assembly of the United Nations. The treaty has been drafted in as short and simple a form as possible and, in the hope that it may attract wide international agreement, without the inclusion of such provisions as for verification, safeguards or sanctions. But the United Kingdom does not necessarily regard the present text as final and is very ready to consider the views of its allies on changes which they think would improve it. As is explained below, in the case of one or two Articles there are alternative possibilities on which the views of other governments will be welcomed.
2. The text has, of course, been drafted in order to be consistent with the United Kingdom proposals for an Atlantic Nuclear Force and to recognise their non-disseminatory nature either explicitly or by implication. One method would have been to omit any reference to associations of states in the treaty text, in which case it could have been argued that the treaty did not apply to associations at all. This would open the way for Soviet allegations that the treaty was a fraud, which the West would evade by transferring control to an association. Furthermore, if the Soviet Union tabled a draft it would be bound to contain a provision on the point, and we should have to argue it in the context of a Soviet draft. Another argument which might have been advanced was that even if the treaty did apply by implication to associations, even
/without...

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without mentioning them explicitly, there would be no breach of the treaty involved in the transfer of ownership or management of nuclear weapons to an association, provided that control, as defined in the text, had not passed to the association. Even if this were so, however, it would not have been acceptable to adopt ambiguous wording about what is known to be a key point, and at which legal precision is therefore most important.

3. The alternative method is that followed in the present text, which places associations on exactly the same footing as individual states and thus would make it difficult for the Russians convincingly to attack the proposals for an Atlantic Nuclear Force on the ground that they were disseminatory in principle. At the same time, by the wording of the definition of "control" in Article III(c), it is made clear that so long as a nuclear state retains the power of "veto" on the use of nuclear weapons, there would be no transfer of control, as here defined, and therefore no dissemination.

Transfer of Information

4. We have considered a suggestion that the general reference to "assistance" in Articles I and II should be replaced by specific clauses banning the transmission of information related to the construction or design of nuclear weapons or of information intended for such a purpose. But we have concluded first, that the concept of intent is unhelpful, since intention is very difficult to prove, and second, that much information validly transmitted for the purpose of civil nuclear research or development may be marginally useful for a nuclear weapons programme. Finally, it is quite impossible to prevent the transfer of information or even to know when it is taking place.

"Nuclear State"

5. This definition has been left blank in Article III. There are two possibilities:

/(a)

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- (a) A definition enumerating nuclear states, which might read "'Nuclear state' means the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics, the United States, the Republic of France and the People's Republic of China".
- (b) A general descriptive definition. Nuclear states might be defined as those states which have at the time the treaty is opened for signature actually exploded a nuclear device and have publicly announced the explosion.

Article IV

6. This article follows the general line of the corresponding provisions of the Test Ban Treaty.

7. It has been suggested that entry into force could also be dependent on ratification of some or all prominent non-nuclear states to be listed by name. The problem here is one of selection and of ensuring that no one such state can, by its abstention, hold up the entry into force of a treaty accepted by the rest of the world. We suggest therefore that if it is desirable to require a wide formal consensus of agreement, it would be preferable to provide that ratification by a certain numerical total of non-nuclear states would be required before the treaty could come into force.

Disclaimer

8. It has further been suggested that a treaty of this kind should incorporate a disclaimer clause specifically reserving the position of signatory states on the question of the formal recognition of either signatories. HMG consider that the inclusion of an express provision on this /point...

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point would:

- (a) cast doubt on the legal view taken by HMG that the inclusion of such a provision is unnecessary to avoid recognition;
- (b) add to the difficulties of the negotiations.

9. HMG consider that they and other friendly governments during and after negotiations could and should make public statements disclaiming any implied recognition of unrecognised regions or entities; this would protect the position equally well and would be more to the ultimate advantage of all concerned in the long run.

Article V

10. The suggested withdrawal clause is broadly in the same form as in the Nuclear Test Ban Treaty of August, 1963. The argument for this type of clause is that it retains the option for a non-nuclear state to withdraw if a potentially hostile state succeeds in acquiring its own nuclear weapons. It seems likely that a number of governments which would in principle be ready to sign a non-dissemination treaty might hesitate to sign it in the absence of such a clause. It might be argued that a better alternative would be a system of guarantees given by the nuclear powers to non-nuclear powers, which would be operative if they are threatened with nuclear weapons, but there is no indication that such a system is likely to be established in the near future. On the other hand it may also be argued that a clause permitting withdrawal at the sole discretion of the state concerned would negate the whole purpose of the treaty. A further possibility is to link a withdrawal clause with a requirement that a state should not be permitted to withdraw at its own sole discretion, but should be compelled to prove its case for withdrawal to the satisfaction of some sort of international /authority...

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authority. The difficulty here would be to select or provide for an international authority which would not be paralysed by a big-power veto and to which all sovereign states would be prepared to surrender the power of decision in matters vitally concerning their security and inherently difficult to prove. In the last resort it is evidently a matter of tactics whether to table a treaty without a withdrawal clause, thus adding considerably to its value, or to concede from the start that some kind of withdrawal clause is likely to have to be included.

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CONFIDENTIALEXPLANATORY MEMORANDUMNotes on the United Kingdom
Draft Non-Dissemination TreatyGeneral

The draft treaty contains the substance which the United Kingdom would like to see in a non-dissemination agreement. However, there are possible alternative approaches to certain aspects of the treaty. Some of these may emerge more clearly in the course of any negotiations. These matters are discussed briefly in the following paragraphs.

First Preambular Paragraph

2. An alternative approach would be to list the nuclear States that are original Parties to the Treaty as well as to recite the names of any non-nuclear States associated with the drafting and negotiation of the Treaty. Because the position of France is uncertain, and we cannot at this stage be sure which non-nuclear countries would be involved in preparing the Treaty, it is probably best that this paragraph should for the moment stand as it is.

Articles I-III

3. The approach followed in this draft is to define (rather than list) the nuclear powers (and, by a process of exclusion, the non-nuclear countries as well). This seems, for the time being at least, the best way of dealing with the question of China and France. If the nuclear powers are listed and China is included among them, this might well cause difficulties for a number of countries when the draft treaty is tabled. But omission of China from a list of nuclear powers would equally be criticised and the treaty would be regarded as unrealistic and too obviously anti-Chinese. It has been argued, however, that the approach in the present draft, which avoids naming the

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nuclear powers is itself unrealistic, that China is a nuclear power, and that the whole purpose of the treaty is to separate the nuclear and the non-nuclear powers without ambiguity and once and for all.

4. If this view is adopted prior to or during negotiations, the following alternative version of Article III(a) would seem preferable:-

'(a) "nuclear state" means the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics, the United States of America, the Republic of France and the Peoples Republic of China'.

5. An alternative approach would be to provide in the Treaty text that the United Kingdom, the United States of America, the U.S.S.R. (and France) should as original Parties to the Treaty be defined as nuclear states, and that these original Parties could subsequently unanimously declare that any state which in their opinion was a nuclear state at the time of the first entry into force of the treaty, should, upon its accession, be deemed to be a nuclear state. This would meet a possible objection that it was discourteous and perhaps provocative to name in a treaty any state (e.g. China) which has not participated in the drafting and has expressed itself as fundamentally opposed to the policy embodied in the agreement.

Article IV

6. This Article follows the general line of the corresponding provisions of the Test Ban Treaty.

7. The provision in paragraph 3 for the Treaty to enter into force after ratification by three signatories including the United States and the Soviet Union is designed to prevent a French or Chinese veto (should they be original Parties), and to

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ensure adherence of both the principal nuclear powers. If France is an original Party, then perhaps entry into force should depend on ratification by the four nuclear powers. The reference to entry into force being also dependent on ratification by a certain number of non-nuclear powers may need to be considered further, depending, among other things, on whether or not any important non-nuclear powers are associated with the preparation of the Treaty.

8. The Germans have said in NATO that a non-dissemination agreement should incorporate a disclaimer clause similar to the one they suggested for the Outer Space Convention. This went as follows:-

"Declaration of ratification, acceptance or accession made by territories or authorities not generally recognised as states or governments have no effect on the general status of such territories or authorities and do in particular not entail their recognition by those states by which they have not been previously recognised".

The wider implications of including a disclaimer of this kind in an initial agreement are being studied. An alternative arrangement whereby friendly Governments during and after negotiations would make public statements disclaiming any implied recognition of unrecognised regions or entities would probably be preferable.

Article V

9. The suggested withdrawal clause is broadly in the same form as in the 1963 Nuclear Test Ban Treaty. The argument for this type of clause is that it retains the option for a non-nuclear power to withdraw if a potentially hostile state succeeds in acquiring its own nuclear weapons. It seems likely that a number of Governments that would in principle be ready to sign a non-dissemination treaty, might hesitate to

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sign it in the absence of such a clause. It might be argued that a better alternative would be a system of guarantees given by the nuclear powers to non-nuclear powers, which would be operative in the event of their being threatened with nuclear weapons, but there is no indication that such a system is likely to be established in the near future. On the other hand it may also be argued that no Government is going to sign the treaty unless it intends to abide by its provisions, and that a clause permitting withdrawal at the sole discretion of the state concerned would negative the whole purpose of the treaty. In the last resort it is evidently a matter of tactics whether we should try to conclude a treaty without a withdrawal clause, thus adding considerably to its value, or concede from the start that some kind of withdrawal clause is likely to have to be included.

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O.P.D.(O)(D)(65) 2nd Meeting

COPY NO. 83

CABINET

DEFENCE AND OVERSEA POLICY (OFFICIAL) COMMITTEE

SUB-COMMITTEE ON DISARMAMENT

MINUTES of a Meeting of the Sub-Committee held
in Conference Room 'C', Cabinet Office, S.W.1.,
on WEDNESDAY, 11th AUGUST, 1965 at 11.00 a.m.

PRESENT:

Sir Harold Beeley,
United Kingdom Disarmament
Delegation, Geneva (In the Chair)

Brigadier A.C. Lewis,
Representing the Chief
of Defence Staff

Mr. H.B. Shepherd,
Foreign Office

THE FOLLOWING WERE ALSO PRESENT:

Mr. A.C. Stuart,
Foreign Office

Mr. R.J. Andrew,
Ministry of Defence

Mr. I.B. Watt,
Commonwealth Relations
Office

SECRETARIAT:

Mr. W.F. Mumford
Mr. C.V.T. Walne

S U B J E C T

NON-DISSEMINATION TREATY

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NON-DISSEMINATION TREATY

THE CHAIRMAN briefly reviewed the attitudes expressed recently at Geneva towards the reaching of an agreement on non-dissemination. The Soviet Union continued to regard any arrangement for nuclear sharing in NATO as disseminatory. Mrs. Myrdal, the first neutral to speak at the E.N.D.C., had made it clear that the Swedish Government thought a Comprehensive Test Ban Treaty should have priority over a non-dissemination agreement. It was possible that the Indian Government would take the position that the decision to become a nuclear power was a purely national decision, and not a matter for international agreement.

There were now three draft non-dissemination treaties. The Canadian draft made provision for the introduction of related measures, in particular assurances to non-nuclear States and safeguards, whereas the United Kingdom wanted to keep to the simplest possible text. However the major area of disagreement among the Western Powers was the question of reconciling nuclear sharing in NATO with a non-dissemination treaty. Three possibilities were being discussed -

- (i) An arrangement corresponding fairly closely to the A.N.F. proposal, and providing that an existing nuclear power would retain a veto.
- (ii) An arrangement loose enough to permit at some time in the future majority control of nuclear weapons, which would make possible the out-voting of the existing nuclear powers.
- (iii) A European Federation, which would be the legal successor of the sovereignty of its component states, and could therefore inherit from one of them the status of a nuclear State.

In the United Kingdom view the second would be disseminatory whereas the first and third would not be. The United States Government was not, however, prepared at this time finally to reject the second possibility. They considered that the chances of agreement with the Russians on any text were not great, and that the risk of alienating the Germans was not worth taking. The United Kingdom Delegation had been unable to get the agreement of the other members of the Western Four at Geneva (U.S.A., Canada and Italy) to the United Kingdom draft Treaty incorporating our own views. It had therefore been decided that the Americans should table their own draft treaty at the Conference and would be the sole sponsors. Their draft differed particularly from the United Kingdom draft in the wording of Articles I and II which would now allow for the second kind of "European option". Her Majesty's Government would have to explain their reservations over these Articles. The Canadians had indicated that they would support any form of wording that could be agreed between the United Kingdom and United States. The Italian Government had expressed its approval of the American draft although retaining its original preference for the Canadian version.

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Additional complications had arisen over Article III of the American draft dealing with the question of safeguards. The United States Government felt strongly that the I.A.E.A. should be strengthened, but realised that their acceptance could not be made mandatory on all parties, since this would not be acceptable to the Russians. The Canadian and Italian Governments considered that to propose to apply safeguards to the non-nuclear States alone would be discriminatory. The United Kingdom did not accept this view since the treaty itself was discriminatory. In any case we had made it clear to the Americans that we could not accept paragraph 2 of the American Article III, dealing with safeguards on transfer of equipment and material.

The following points were made in discussion -

(a) In our current negotiations with the United States for a new civil atomic energy bilateral agreement we had fought against the application of I.A.E.A. safeguards on the supplies of enriched uranium we hoped to obtain under this agreement. Acceptance of paragraph 2 of Article III of the American draft non-dissemination agreement would, however, make it mandatory for the United States to insist on these safeguards. Our objections arose partly from the use in the United Kingdom of the same plants for processing fissionable material for both the civil and military nuclear programmes and partly because in the course of time the enriched uranium we imported from the United States would become dispersed through the greater part of our civil nuclear energy programme thus rendering a large part of the latter open to I.A.E.A. supervision. Since the provisions of paragraph 1 would apply to the civil nuclear programmes of the non-nuclear powers, the only real effect of maintaining paragraph 2 would be to embarrass and damage the United Kingdom and possibly, in the future, France. This provision had therefore no relevance to the problem of preventing dissemination. It was simply a reflection of the American desire to show that in their own dealings with other countries in civil nuclear energy matters they made no distinction between their nuclear allies and other countries.

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EMBASSY OF THE UNITED STATES OF AMERICA
LONDON

August 16, 1965

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RECEIVED IN
ARCHIVES No. 19
26 AUG 1965
IAD 1052/226

Dear Sir Paul

We have been asked to deliver the
attached letter from Secretary Rusk to the
Foreign Secretary.

Sincerely yours,

Philip M. Kaiser
Charge d'Affaires ad interim

Sir Paul Gore-Booth,
G. C. M. G., K. C. V. O.,
Permanent Under-Secretary of State,
Foreign Office,
S. W. 1.

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QUOTE:

August 16, 1965

Dear Michael:

I am greatly concerned, just as we are about to wind up what I believe to be our successful discussions on the tabling of a non-proliferation treaty at Geneva, to learn from an urgent message received from our delegation that at a joint press conference scheduled for tomorrow, your delegate plans to say in his opening statement, by way of explaining why the UK Articles I and II were not tabled, that the US version of Articles I and II would leave open the possibility of majority voting in a multilateral force, which your country would regard as disseminatory.

I would deplore any statement or implication that the US proposal is disseminatory, not only because of the damage it would do to our unity of purpose but particularly because I firmly believe it would be incorrect to say that there is an element of proliferation in the US proposals. I am convinced we preclude this possibility by the commitment that there shall be no increase in the number of entities, whether they be states or other organizations, which have the independent power to use nuclear weapons. That number is now five and under our formula it cannot become greater than five.

Perhaps a way out of the problem we now face could be found should your delegate state, that as far as the UK was concerned, it does not intend to enter into any organization which permits the use of nuclear weapons by majority vote. This would certainly be your right. In practice, of course, there is no way other members of alliance could force the UK into a nuclear arrangement which it does not find satisfactory.

We for our part could make a general observation, if necessary, that we would be prepared to consider any future arrangement worked out in the European context which is suitable to the Europeans, so long as it followed the basic guideline that

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NOTHING TO BE WRITTEN ON THIS PAGE

there was to be no increase in the total number of states or organizations having the independent power to use nuclear weapons. The respective statements envisaged should remove any suspicion that further dissemination was contemplated or was possible.

We have expressed the above views orally to your representatives here and because of the pressure of time, I have also asked our Embassy to do what it could on an urgent basis. I would be most grateful if you could help us work something out that will reach our two delegations before any press conference is held in Geneva tomorrow.

Sincerely,

Dean Rusk

UNQUOTE

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FROM FOREIGN OFFICE TO WASHINGTON

Cypher/OTP & By Bag

DEPARTMENTAL DISTRIBUTION

No. 6549

20 August 1965

D. 0017 21 August 1965

PRIORITY

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Addressed to Washington telegram No. 6549 of 20 August
Repeated for information Saving to: UKMis Geneva No. 135

Please pass following message to Mr. Rusk in reply to his letter to me of 16 August of which a copy has already been sent to you separately.

"Thank you for your letter of 16 August about the non-dissemination treaty and the report from your delegation at Geneva that Lord Chalfont proposed to describe it as disseminatory.

As you know, the matter was handled in my absence by Gore-Booth. He explained to your Minister here that, while it was not possible for Lord Chalfont to reconcile our difference of policy which I set out in my message to you of 6 August, he would see that Lord Chalfont's attention was drawn to your anxiety that nothing should be said which exaggerated the differences between us.

I hope that you will by now have seen the full text of Lord Chalfont's introductory statement at the Western press conference, which our Embassy in Washington were instructed to communicate urgently to the Department of State. I think that what Lord Chalfont said, while making clear our reservations, as he was bound to do, made equally clear our full support for the United States draft as a basis for serious negotiation and our appreciation of the decision of the United States to go forward and table it. I was also glad to see that in his own statement at the same conference Mr. Foster referred to the contributions made to the draft by the other members of the Western Four.

I hope that we can together now bend our efforts to the task of persuading the other states at Geneva, including eventually the Russians, to treat the negotiations with the seriousness they deserve. Let us keep in touch; as you know I greatly value these exchanges."

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Atomic Energy and Disarmament Department

1965

DISARMAMENT

IA 1052/228

FROM

Mr. Killick, Wilson
to Mr. Street

No. 1240/5

Dated 25 August

Received 26 August

SUBJECT :

AmERICANS are presumably content with
Lord Chalfont's statement as there has been
no further comment.

Encloses Copy of :

References and Relevant Papers :

-/220

-/210

(Outward Action)

Off. R. Killick, Wilson
to Mr. Street. 27/8.

MINUTES

D.H.

LS

27-8

Mr. Shepherd o.r. ^{noted} ~~SEP~~ _{S/P.}

9/9

(Printing Instructions)

(Referred to Legal Adviser)

(Action completed)

9/9

(Main Indexed)

10/7/67



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(1240/5)

BRITISH EMBASSY,

WASHINGTON, D.C.

25 August, 1965.

RECEIVED IN
ARCHIVE No. 19
26 AUG 1965
IAD 1052/228

Thank you for your letter of 23 August about the non-dissemination treaty.

Dear John,

Thank you for your letter of 18 August about the non-dissemination treaty. It is useful to have this background.

2. We have heard no more on this subject from the Americans since they received copies of Lord Chalfont's statement at the press conference on 17 August, apart from the comment by a comparatively junior State Department official reported in Scott's letter of 19 August to Shepherd. I think it likely that Messrs. Bundy and Rusk are reasonably content with Lord Chalfont's statement, given that they still think that we were wrong to want to spell out so precisely in our draft treaty the foreclosing of the "European option". I am rather reluctant to ask the State Department direct for any further comment; unless you feel strongly, I would prefer to let sleeping dogs lie. Mr. Rusk has had the Secretary of State's message about this, and I think we can assume that he is content so long as he makes no rejoinder.

I think this is right

24/8/65

Yours ever,

John Killick

(J.E. Killick)

J.E.D. Street, Esq.,
Atomic Energy and Disarmament Department,
Foreign Office,
London, S.W.1.