

October 5, 1967

**Aide-Memoire to Commissioner Martino by Robert
Schaetzel, 'Article III of the Non-Proliferation Treaty'**

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Summary:

This memorandum to Commissioner Martino from Ambassador Schaetzel accepts the Soviet Draft Article III as he believes it will permit non-nuclear Euratom countries to negotiate collectively with the IAEA and permit a satisfactory verification concept.

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S E C R E T

Aide-mémoire remis le 5 octobre 1967 par Monsieur l'Ambassadeur Schachtel à Monsieur le Commissaire Martino.
sujet : article III du Traité de Non-Prolifération.

Text aide-mémoire :

The US would be prepared to accept the Soviet Draft Article III as it stands since we believe it will permit non-nuclear-weapon-Euratom countries to negotiate collectively with the IAEA and since it would permit a verification concept along the lines of the 3 principles set forth below, the substance of which were cited to the Soviets in Geneva Co-Chairmen discussions on the U.S. Draft Article III last summer which led to the submission of the compromise draft by the Soviet delegation on September 1.

It is the view of the United States, arrived at as a result of the consultation in NAC since the 6th of September on the proposed Soviet compromise language for Article III, that if certain proposed changes in, and understandings concerning, the proposed language are achieved it will be advantageous to the U.S. and its NATO allies to incorporate such an Article III in the draft treaty to be submitted to the UN General Assembly. In keeping with our prior understanding, no government would be committed to accept the treaty as submitted. The United States is, accordingly, prepared to seek the agreement of the Soviet Union urgently on the following changes and understandings.

1. Safeguards on nuclear "materials" of "facilities". The United States proposes to inform the Soviet delegation that, in our view, the present language of the Soviet Draft Article III which makes safeguards applicable to "facilities containing or to contain such materials (i.e., source or special fissionable material), including principal nuclear facilities" (emphasis added) attempts to prejudge an issue which has been under discussion at the IAEA for some time. We are aware of concerns expressed that the present Soviet

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text, by its language on the safeguarding of facilities, would tend to make it difficult to amend the safeguards document on this point if further experience and technological advances should alter the nature of the safeguards required for facilities. The fact that such amendments might be necessary can be concluded from Paragraph 5 of the preamble to the draft treaty which indicates support for research, development and other efforts to further the application, within the framework of the IAEA safeguards system, of the principle of safeguarding effectively the flow of source and special fissionable material by use of instruments and other techniques at certain strategic points. In our discussions with the Soviets we would urge that it is not appropriate to attempt to resolve this highly technical issue of applying safeguards to facilities, as opposed to applying them solely to materials, in the safeguards article of the non-proliferation treaty, since this is a matter which should be decided by the Board of Governors of the IAEA. For that reason we would propose language which is completely neutral and which leaves this question up to the IAEA without attempting to characterize the decisions it has made in the past or to prejudge decisions it may make in the future. To this end we will recommend the following language in lieu of the first three sentences of the Soviet compromise text : "Each non-nuclear-weapon state party to the treaty undertakes to accept International Atomic Energy Agency safeguards, as provided in the Agency's safeguards system, with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices for the exclusive purpose of verification of the fulfillment of the obligations assumed under this treaty".

In the event this change proves not negotiable with the Soviets we would then point out to them that their present language does not give an adequate characterization of the present IAEA safeguards system. The IAEA statute and the current IAEA safeguards document do provide for safeguards on nuclear facilities but solely for the stated purpose of making possible the effective application of safeguards to nuclear material. This latter qualification is not stated in the Soviet language and we would therefore propose that

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the third sentence of Paragraph 1 of the proposed Article III be amended to read as follows: "These procedures shall also extend to facilities containing or to contain such materials, including principal nuclear facilities, for the sole purpose of making possible the effective application of safeguards to such material produced, processed or used in such facilities".

2. Amending Safeguards Document. The Soviets have made it quite clear that they believe that the present IAEA safeguards document is not incorporated in the treaty in the sense that a treaty amendment would be required to revise the safeguards document. This is clearly the common sense interpretation of the language; it is supported by the reference in the preamble to research toward simplifying safeguards. It does not appear to be wise to try to seek an amendment to the language to clear up a point which is already quite clear, but the U.S. will make an appropriate statement on this point at such time as Article III is tabled and will seek to have the Soviet Union make a similar statement. The argument has been made that in signing a safeguards agreement a state is buying a "pig in the poke". But, as to possible amendments of the IAEA safeguards document, IAEA safeguards agreement in the past have followed a pattern of incorporating a specific safeguards document with a provision that if the document is modified by the IAEA the parties may agree to amend the safeguards agreement to include the modifications. We believe this established practice, together with Western representation on the IAEA Board of Governors, afford adequate protection against harmful modifications.

3. Activities carried out anywhere. The United States has given considerable thought to the objections which have been made by some Euratom members to the last words of the last sentence of the proposed Paragraph 1 which defines the scope of the safeguards requirement as extending to activities of a non-nuclear-weapon state "carried out by it anywhere". In view of the necessity of preventing evasion of the treaty by activities carried out by one of the non-nuclear-weapon parties in the territory of a non-signatory state it will be difficult to argue that this phrase should be deleted. The argument is made even

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more difficult by the fact that western countries agreed to this language in the limited test ban treaty. However, the attention of the United States has been focused on the Euratom problem and, particularly, on the problem presented by such jointly owned facilities as Grenoble and Chooz which are physically located in France but which are half owned by Germany and Belgium respectively.

The argument has been made that since no treaty safeguards will be applicable in France, the treaty would prohibit non-nuclear-weapon members of Euratom from making such investments in France; and that accepting such an obligation would be contrary to Chapter IX of the Euratom treaty, establishing a nuclear common market. The Soviets are aware of this issue but doubtless as a logical consequence of their own unwillingness to submit to safeguards, maintain that it is quite irrelevant to the purpose of the treaty. They take the view that no activity carried out in a nuclear-weapon state, such as France, whether or not this state is a party to the treaty, would require the application of IAEA safeguards.

We believe the best way to resolve this question would involve an understanding focusing on the words "carried out by it". We would attempt to obtain an understanding that this language applies only to facilities under the dominant and effective control of a non-nuclear-weapon state party to the treaty. It would be made clear that this phrase does not apply to facilities outside of the parties' territory and over which they do not have such dominant and effective control. The Soviets have already indicated their understanding that neither the jointly owned French-German facility at Grenoble nor the Belgian-French facility at Chooz would require safeguards under such a criterion. With these precedents we could be sure that similar activities in the future would not be covered, and as a practical matter, we doubt that significant problems will arise.

4. Agreement with Euratom. The first sentence of Paragraph 4 of the proposed new Soviet language provides for agreements with the IAEA "either individually or together with other states as provided in the statute of the IAEA". The language "individually or together with other

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states" was described by the Soviets as intended to deal with the Euratom problem. It was followed by "as provided in the statute of the IAEA" to make the point clear. We pointed out to the Soviets that we would wish to rely upon both Article III (A) (5) of the IAEA statute which deals with "bilateral or multilateral arrangements" for safeguards and Article XVI (A) of the same statute which deals with "relationship" agreements between the IAEA and other international organizations the work of which is related to that of the Agency. In private conversations, the U.S. has made it quite clear that this language would have to permit members to negotiate and conclude an agreement with the IAEA through Euratom to carry out their safeguards obligation and that a Euratom-IAEA agreement could result from these negotiations. The Soviets have indicated that they agreed.

The United States is of the opinion that the suggested language is adequate. In addition, in order to make this interpretation unmistakably clear, we would be prepared to state our understanding in an EHC Plenary meeting at the appropriate time, and also to make our position clear in the IAEA Board of Governors at the time an IAEA-EURATOM agreement becomes the subject of consideration there. We would state that the language permits the IAEA to enter into an agreement covering the NPT safeguards obligations of parties with another international organization the work of which is related to the IAEA and the membership of which includes the parties concerned.

5. Nature of Agreement between IAEA and Euratom.
Our interpretation of the Soviet compromise language with respect to "verification" has already been set forth. The nature of the agreement finally negotiated between IAEA and Euratom is, of course, an important unresolved question before us. On this question the basic protection of the interest of Euratom members is their ability to negotiate with the IAEA through Euratom. Euratom will not have a weak bargaining position due to the representation of its members and allies in the IAEA and the fact that IAEA safeguards cannot be applied until an agreement is concluded between the IAEA and the party or parties concerned and, then, only in accordance with that agreement.

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The U.S. does not believe it is advisable to try to spell out the nature of such an agreement at this time since it must be formulated by, and to the satisfaction of, both organizations. It is possible, however, to state two extremes both of which must be excluded. The first extreme is a duplication of Euratom safeguards by the IAEA with, in effect, an IAEA twin for every Euratom safeguard official, both doing precisely the same thing. The second extreme is the other end of the spectrum, that is an agreement under which IAEA can merely conduct a paper inspection of the records of Euratom, with no opportunity to form an independent judgment that diversion is not taking place. The United States is prepared, however, at the appropriate time to state publicly in the EHDC the three principles which we believe should be taken into account in any IAEA-Euratom agreement. These principles would be as follows :

(1) There should be safeguards for all non-nuclear-weapon parties of such nature that all parties can have confidence in their effectiveness.

(2) In discharging their obligations under Article III, non-nuclear-weapon parties may negotiate safeguards agreements with the IAEA bilaterally or together with other parties, and specifically, an agreement covering such obligations may be entered into between the IAEA and another international organization the work of which is related to the IAEA and the membership of which includes the parties concerned.

(3) In order to avoid unnecessary duplication, the IAEA should make appropriate use of existing records and safeguards, provided that under such mutually agreed arrangements the IAEA can satisfy itself that nuclear material is not diverted to nuclear weapons or other nuclear explosive devices.

6. Implementation Period. It is not recommended that we attempt to amend the two-year period provided in Paragraph 4 of the Soviet Delegation draft. As has been pointed out, substantially more than two years would be available to Euratom for working out arrangements

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for the IAEA. Without formally initiating negotiations, the United States can enter into exploratory talks with the IAEA during the period before the treaty came into force for the purpose of establishing the guidelines for the formal negotiations which would follow.

United States Mission to the European Communities
Brussels, October 5, 1967

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