

Letters to the Editor :

SALT and Voluntary Restraint

The editorial appearing in the Feb. 28 issue under the heading "Where have you been, Senators?" alleges several contemplated or on-going violations of Section 33 of the U.S. Arms Control and Disarmament Act which provides, in pertinent part, as follows:

" . . . no action shall be taken under this or any other law that will obligate the United States to disarm or to reduce or to limit the Armed Forces or armaments of the United States, except pursuant to the treaty-making power of the President under the Constitution or unless authorized by further affirmative legislation by the Congress of the United States."

To put this question into perspective, it would appear advisable to first address the legal impact of Section 33. By its very terms, this section applies only to actions which will "obligate" the United States, i.e., impose legally binding obligations on the United States to disarm, to reduce or to limit the Armed Forces or armaments of the United States. Section 33 does not affect the President's constitutional authority to conduct the international relations of the United States and make policy decisions related to arms control, unless such actions create legally binding obligations, in which case congressional approval is required pursuant to Section 33.

Your editorial alleges violations of Section 33 related to the Threshold Test Ban Treaty and the SALT I Interim Agreement, and a potential violation related to SALT II based upon statements attributed to the President by Professor Burns in an article appearing in the current Atlantic.

First, with respect to the Threshold Test

Ban Treaty, at present both the U.S. and the U.S.S.R. are refraining voluntarily from conducting nuclear explosions above the 150 kiloton threshold. This restraint is being practiced by both sides as a matter of policy and does not constitute a legally binding obligation.

Likewise, the President's statement that, while the SALT II Treaty is being negotiated, the United States will not take any action inconsistent with the provisions of the SALT I Interim Agreement provided the Soviet Union exercises similar restraint, is a declaration of policy. It is non-binding and non-obligatory. The United States is free to reverse its declared intention at will, and so is the Soviet Union. Furthermore, as far as on-going programs are concerned, as a practical matter only Soviet programs at present are affected.

With respect to the passage from Prof. Burns' article which characterized, rather than quoted, a statement of the President concerning the SALT II treaty, as noted in your editorial, Press Secretary Powell has already clarified the President's views. Mr. Powell indicated in his news conference of Feb. 23 that the President was suggesting that, in the absence of ratification of a SALT Treaty, the administration's policy would be influenced by whether or not the Soviet Union exercised restraint in its own programs and deployments. The President's position, as set forth by Mr. Powell, does not contemplate any legally binding obligation on the part of the United States.

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