

# F. A. S. PUBLIC INTEREST REPORT

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ON FIRST-USE

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## HOW ONE DECISION MAKER TRIGGERED THE END OF THE WORLD

Of course, it was a war no one wanted. Who would have wanted a nuclear war? The consequences had been well-advertised — and turned out to be, unlike consumer goods of that era, exactly as advertised. Neither the Soviet Union nor the United States nor Europe survived in any sense at all. How could they? Pre-war studies of post-attack economic viability had shown that there would not be enough “survival industry” in the face of 500 megaton; the major powers received 5,000 each. The more people saved from the immediate effects, the worse it was for the survivors; in the end, they starved and, after the first winter, there was no country left to speak of.

It was the third and last of the central European wars of that century. And everything about it was entirely predictable. The loosening of Soviet bloc ties had moved more rapidly than the Soviet Government was ready to accept. (What else?) The tinder was struck in divided Germany. (Where else?) Soviet efforts to suppress an East German uprising had been too much for the West Germans to bear and to watch. Breakdown of border controls, including those around West Berlin, had led to Soviet military action. During the confusion, West Berlin was overrun. NATO sent troops down the autobahn but, in a melee they were killed.

The West sent more troops; it feared a West Berlin fait accompli, as well it might. But this only led to more fighting, and in the resulting maneuvers the border was breached in several sectors.

The conflict was covered by the least of three NATO guidelines for war — a guideline requiring prior consultation with the 15-Nation Council before nuclear weapons could be used. (The conflict, though uncontainable by conventional means, did not threaten the integrity of NATO as a whole.) But the guidelines were unclear; prior consultation was not required for conventional attacks that presaged general hostilities. In any case, the NATO Treaty itself gave every nation the right to do whatever it wanted in the defense of the Alliance, once an attack had occurred. And the Council was, as could have been anticipated, in complete disarray.

The American President decided to show that he meant business. There seemed to him no other way except to fire a “demonstration” nuclear weapon. He felt his hand would have been forced, in any case. There was reason to believe that SACEUR (the NATO Commander) had the physical capacity to fire American nuclear weapons if he wanted. Seeing some of his troops overrun, he had intimated to the President that he would act to protect his NATO command — invoking his loyalty to NATO itself — even though he was also an American commander and under direct Presidential orders. The weapons below him were under a two-key system — but he was not — and he wanted to use nuclear demolition mines to stem the advance, and nuclear weapons to defend against aircraft. The President thought a demonstration attack would be better than possibly letting SACEUR take command.

He had been warned, however, that if it failed, he had better be ready to move massively and quickly with nuclear weapons if the Russians began to do so. The Russians had the drop on Western European cities, and on the 100 European nuclear weapon depots, with their 800 IRBMs and MRBMs and their many hundreds of medium bombers.

The American Defense Department had a plan for pre-empting the weapons. It would advise the Russians that the subsequent attack was limited, surgical and not designed to destroy the Soviet deterrent. (After all, both sides had missile-firing submarines.) DOD had calculated that the casualties would not be too bad for the Russians. (DOD was constantly doing such casualty counts and always underestimated the results equally, whether the casualties were Russians or Americans.)

Of course, communicating with the Russians turned out to be more difficult than expected. (When has it not?) And there is reason to believe that the Soviets were having difficulty communicating with themselves. In any case, the Russian planners assumed

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*Approved by the FAS Council as an instructive, if ironic, exposition of political and strategic problems of enormous and real importance.*

## CONGRESS IS SIX YEARS BEHIND NATO IN NUCLEAR PARTICIPATION

For six years, our fourteen NATO allies have been participating in the planning for possible employment of nuclear weapons, and methods have been devised whereby they can even share the responsibility for nuclear use (p. 3). But DOD argues that Congress itself has no role

(p. 4) despite assertions of the Founding Fathers, the Constitution’s “necessary and proper clause”, and the Congressional power over appropriations (p. 5). And DOD dismisses Air Force officers immediately if they dare to ask questions on related sensitive matters (p. 6). □

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that the next round would not be stopped short of widescale nuclear war in Europe, if nuclear weapons were used.

Their plan was, if necessary, to try to destroy the British and French nuclear deterrents, and the Western airfields and supply depots. None of this could have been much of a surprise. Every indication had been that the Russians planned only massive, and not controlled, nuclear war. The surprise was that — just as DOD thought the Soviet Union might not escalate after attacks on IRBMs and MRBMs on Soviet territory — the Russians thought America might not escalate if they limited their attacks to European NATO and avoided large cities.

It was unclear later who fired first: the shots at the Soviet-based missiles and bombers or the shots from them. Conceivably, each fired on tactical warning of the other. Unfortunately, the Western firings came, as they had to, from U.S. Poseidon submarines and land-based Minutemen on American soil. These firings evidently led to Soviet land-based missile attacks into Montana. Some of the Soviet missiles aimed at Paris and London were mistakenly fired. When the French and British then fired at Moscow, the Russians hit Washington.

It developed that Presidential authority to fire had been delegated; all weapons had procedures for firing at will if command broke down. The result was a spasm, a free-for-all, in which every major city in Europe and the Superpowers was destroyed more than once.

\* \* \*

What had gone wrong? The President had not been more bull-headed than Lyndon Johnson, nor more paranoid than Richard Nixon, nor more parochially political nor less intelligent than any other President. After all, even President Kennedy had remarked that, if he did not win in Cuba, he might have been "impeached". This President just wanted to get off scot-free, to prevail, to be seen as politicians want to be seen. He had not meant to lose the country. He had also been very tired after days of crisis. And, unfortunately, it was the generals — not the President — who had seen the war games and knew how often these options escalated.

There were Senators who had tried to urge caution; they sensed that it was better to be more deliberate in Europe than to risk the whole country (and Europe too) for short-run advantage. But unfortunately, they had no right to express an opinion. And they had never had an opportunity to learn enough to be persuasive about the war plans. Their expertise was in avoiding waste — not in avoiding being laid waste. They had never been briefed on what happens in extremis; every submarine commander knew more about this than they. Leave it to the President was their slogan; if he handled it wrong, the American people who elected him would have only themselves to blame.

There had been a few Cassandras around the Congress, of course; not everyone could fail to see such obvious signs of impending catastrophe. Their

scheme was to force the President to get approval from some small independent body of peers, necessarily from another branch; since the Supreme Court would never do it, it had to be senior Congressmen.

It might have worked. The Congressmen were cautious and not under the same pressures as the President. They might have helped him by being available to share the responsibility for caution, by uncovering escalation problems in advance, or by requiring a clear exposition of his reasoning. But no one can be sure.

It turned out that an earlier study of the National Academy of Sciences on nuclear war had been a bit optimistic. Ten or twenty different (unexpected) mechanisms turned out to have disastrous conse-

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quences. Mankind is in irreversible decline now, even in the outer countries. The rate of mutation is up and what endures may not be quite the same thing when the decline halts and the genetic pot stops boiling. □

## MUST THE PRESIDENT CONSULT NATO ON FIRST USE?

(The bulk of the information below is summarized from one of the very few good sources available: the report of Richard Moose and James Lowenstein done in 1973 for the Foreign Relations Committee entitled, "U.S. Security Issues in Europe". It is now out of print.)

There are approximately 7,000 tactical nuclear warheads stored in European NATO countries for support of NATO activities. About one-third are for weapons to be used by U.S. forces. Twenty percent (about 1,400) are for purely defensive uses — surface-to-air missiles, atomic demolition munitions and anti-submarine warfare weapons. Roughly 80% of the 7,000 can be used for offensive or defensive purposes.

All of these weapons are under U.S. custody. In a reinforced alert, they can be moved from the 100 special storage sites but would still remain under U.S. custody.

A large number of these weapons are on quick reaction alert and this number increases with the state of alert until it can include the Pershing missiles, all land-based dual-capable aircraft and all sea-based strike attack aircraft.

The NATO allies rely upon three general kinds of military responses as described in a document of January 16, 1968 known as 14/3 and entitled: "Overall Strategic Concept for the Defense of the NATO Area." Under *direct defense*, efforts would be made to defeat the enemy, possibly using nuclear weapons. Under *deliberate escalation*, efforts would be made to cow the enemy by raising the risk of massive nuclear response. Under *general nuclear war*, massive attacks would be made against opposing nuclear weapons, other military targets, and cities.

### Nuclear Requests Referred to NATO Governments

In meetings in 1962, 1968 and 1969, NATO decided on secret guidelines for the use of nuclear weapons. All requests for such use either by NATO commanders, or members' governments, or possibilities for their use in defense of NATO by nuclear powers in NATO, would be referred immediately to the NATO governments and to the NATO Defense Planning Committee (composed of all NATO nations except France).

Governments would express their view on the consequences of use or non-use, the methods of use, the political and military objectives, and so on. The views would be communicated to the nuclear power concerned and its decision would be relayed, in turn, to the allied governments, the NATO council and the major NATO commanders. There are classified estimates of the time required to complete this consultation.

In these discussions, special weight would be given to the views of the country on — or from — which the weapons would be used, and to the country providing the weapons and to the country firing them.

Voting in the NATO Council has always been unanimous and official NATO publications note that NATO is composed of sovereign nations that have relinquished

## VOICES OF CONGRESSIONAL CONCERN

Senator Sam Nunn (D., Georgia): "In a Warsaw Pact attack, the initial shock of conventional fighting, probably with some initial military setbacks, combined with the desire to insure a U.S. nuclear commitment, could result in enormous and possibly irresistible pressure to use nuclear weapons at the outset".

—pg. 3, *Policy, Troops and the NATO Alliance*,  
April 2, 1974

Report to Foreign Relations Committee: (concluding words ". . . the security of the United States itself is inextricably linked to nuclear weapons in Europe, first of all because the weapons are American, and secondly, because their use perhaps could, and more probably would, involve U.S. strategic nuclear forces and thus, in turn, inevitably produce a U.S.-Soviet nuclear exchange". □

—Report of Richard Moose and James Lowenstein,  
December, 1973

none of their independence, so that decisions are taken by "common consent" — not by majority vote. However, the basic NATO Treaty, which does specify a Council, does *not* specify its voting procedure and Article 5 of the Treaty would seem to give any nation the right to take any action it wishes:

"The Parties agree that . . . each of them . . . will assist the Party or Parties so attacking by taking forthwith, individually and in concert with the other Parties, such action as *it deems necessary* . . ."

(italics added)

In the NATO guidelines, three contingencies are discussed: Soviet nuclear attack; Soviet conventional attack of such magnitude as to suggest general hostilities against NATO but uncontrollable with NATO conventional means; Soviet conventional attack, uncontrollable by conventional means but not covered by the case above. In the first two cases, nuclear weapons may be used *without* prior consultation with the NATO Council, if time does not permit. (This fact is evidently classified but can be clearly read between the lines of official documents.) In the latter case, however, the decision to use nuclear weapons *would* require "prior consultation".

The President is bound to consult with NATO before releasing or ordering the use of nuclear weapons in Europe. And he cannot, in any case, order the NATO SACEUR (the NATO Commander) to fire unless he orders this individual to take action as an American and as Commander of U.S. Forces in Europe. Presumably, if NATO said "no" with clear consensus but the American President wanted to go ahead, nevertheless, this individual — the servant of NATO and of the American Department of Defense would have a bad case of divided loyalties. This is presumably one of a number of cases not uncovered by NATO guidelines (as of 1973). □

### NATO, YES; CONGRESS, NO

"The U.S. has encouraged, and the Allies value highly, the shared responsibility for planning and participation in the possible employment of theater nuclear weapons within NATO's strategy". □

—Report of James R. Schlesinger, May, 1975  
(Theatre Nuclear Forces in Europe)

## CRANSTON RESOLUTION NEARS INTRODUCTION

As the FAS newsletter was being sent to the printer, the Office of Senator Alan Cranston (D., California) was drafting, with considerable ingenuity, a resolution that would implement the principles set forth in the September Public Interest Report. The resolving clause would read as follows:

"Now therefore be it resolved that

(1) In any given conflict or crisis, whatsoever, and notwithstanding any other authority, so long as no nuclear weapons have been used by others, the President shall not use nuclear weapons without consulting with, and securing the assent of a majority of, a committee composed of the

Speaker of the House of Representatives  
and Minority Leader

Majority and Minority Leader of the Senate  
Chairman and Ranking Member of:

Senate Committee on Armed Services  
House Committee on Armed Services  
Senate Committee on Foreign Relations  
House Committee on International Relations  
Joint Committee on Atomic Energy

(2) Nothing herein shall preclude the President from using nuclear weapons first if Congress adopts a declaration of war that explicitly suspends the authority granted in this act."

In order to expose the legislative intent necessary to justify the delegation to a Committee, the draft has "Whereas Clauses" (among others) as follows:

"Whereas, there would not be time in all cases for the Congress itself to deliberate as a whole over the question of first use of nuclear weapons;

"Whereas, in such cases as there was adequate time, Congress could work its will through a suitable statute, rescinding the delegation of authority herein;"

A second resolution, being developed independently by Congressman Les Aspin (D., Wisconsin), would preclude first use without a declaration of war. Other relevant clauses, modifying this position, were not yet available. □

## ARMS CONTROL ASSOCIATION ENDORSES "NO ONE DECISION MAKER" PRINCIPLE

On October 1, the Arms Control Association wrote FAS that its Board of Directors had discussed "with great interest" the idea that the President should be required to secure the consent of Congress before using nuclear weapons first. It "approved in principle" the concept that "persons other than the President should be directly involved, and not merely 'consulted' " in a first-use decision. It concluded that "as a practical matter" these other persons should be members of Congress. The Board considered that "adopting such a decision-making process would help ensure that the momentous decision" would be a "careful deliberate one". The Board noted that it was not appropriate at this point to define the mechanism further but noted it should be such that the issue could be addressed "expeditiously". This support was gratifying to FAS.

As a note to FAS members, the following experts endorsed the FAS approach to this problem when it was first put forward in 1972: Adrian Fisher, Marvin Goldberger, Leslie H. Gelb, Morton H. Halperin, George W. Rathjens, Herbert Scoville, Jr., Eugene Skolnikoff, Richard H. Ullman, Herbert F. York. (Members of the Council who endorsed the no-first-use without Congress-

sional authorization principle in the September newsletter are listed as "National Council Members" on page 2.) □

## DOD RELIES UPON AEC STATUTE TO JUSTIFY FIRST USE ANYTIME

In 1946, the Congress passed a law giving the President authority to:

"... direct the Commission (1) to deliver such quantities of special nuclear material or atomic weapons to the Department of Defense *for such use as he deems necessary* in the interest of national defense."

This statute becomes understandable only in the context of safeguards of that day. Civilian control in 1946 was taken to mean that nuclear weapons should remain in the custody of the civilians (AEC) for as long as possible to prevent any mad general from deciding to launch a nuclear war on his own. In pursuit of this philosophy, AEC nuclear weapons custodians were placed on aircraft carriers, strategic air command bases and whatever. They were instructed not to release the nuclear weapons to the military unless shown a proper authorization stemming from the President.

Eight years later, Congressman Chet Holifield, who had been involved in the drafting of the provision, made this comment in the Congressional Record, (House July 21, 1974 — H10688). He noted that this section:

"... grants to the President the authority to transfer from civilian hands to the military atomic weapons when they are needed to be transferred for the defense of the Nation. That particular provision was written in especially so that no trigger-happy general could take one of these atomic bombs and start dropping it anywhere in the world and start an atomic war.

"We wrote that provision in because we realized that the atomic weapon so far exceeds in capacity to destroy normal weapons that we must put a solemn obligation on the President that the President alone can designate when and where an atomic weapon is to be used."

Today the provision is largely irrelevant because the AEC custodians no longer guard weapons on their bases. Nevertheless, this anachronistic statute — which was designed in any case not to give the President any new authority but to guard against misuse of military authority — now is being quoted as authority for the President to use nuclear weapons whenever he wants.

This is how DOD put it in a letter of September 25 from the Acting General Counsel L. Niederlehner to FAS:

"Under section 91 of the Atomic Energy Act of 1954, as amended, the President has direct control over the number and type of atomic weapons produced and the extent to which such weapons shall be transferred to the Department of Defense for such use as he, the President, deems necessary in the interest of national defense. Under the Constitution of the United States, the President is designated as Chief Executive as well as Commander-in-Chief of the Armed Forces. As Commander-in-Chief he is empowered and has the duty to take measures as he deems necessary to protect the country against its enemies in the event of armed conflict."

DOD refused to expand on this letter. But it also seems to be using as authority the fact that an early Fulbright sponsored version of no-first-use without Congressional authorization was defeated in Congress. □

## CONSTITUTIONAL ASPECTS

There can be little serious doubt that the Founding Fathers viewed their commander-in-chief as one who would work under the guidance of the legislature, whenever this guidance was both feasible and desired by the legislature.

The Continental Congress gave George Washington a commission on June 19, 1775, that terminated by saying:

"And you are to regulate your conduct in every respect by the rules and discipline of war (as herewith given you) and punctually to observe and follow such orders and directions from time to time as you shall receive from this or a future Congress of the said United Colonies or a committee of Congress for that purpose appointed."

True, the Constitution was drafted later and there was unhappiness about how the system of Congressional oversight had worked during the Revolutionary War. But the men who wrote this commission were not suddenly going to turn around and give the commander-in-chief complete and total authority to do whatever he pleased whenever a declaration of war was passed. As Henry Steele Commager put it, everyone

"including Washington himself took for granted the supremacy of the civil over the military power . . ."

In the Federalist Papers, the commander-in-chief was described by Hamilton as providing

"nothing more than the Supreme Command and direction of the military and naval forces, as First General and Admiral . . ."

Obviously, there had to be a supreme commander. But this does not imply that he can command anything and everything once the war starts, if the legislature did not agree.

### McGeorge Bundy Asserts Congressional Power

As McGeorge Bundy put it in hearings on War Powers:

"I think that Congress would be most unwise to attempt to tell a field commander how to fight a specific battle. but I think it has every right to assert itself on broad questions of place, time, and the size of forces committed."

"The war powers are shared; the Constitution writes it that way; history shows it that way; and we have allowed the process of that sharing to break down."

(April 26, 1971, U.S. Senate)

The over-riding power of Congress in this — as in every other area — is made clear also by the Constitutional "necessary and proper" provision that the legislature may:

"Make all Laws which shall be necessary and proper for carrying into execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Office thereof."

And as Justice Goldberg has testified:

"The President has no war — constitutionally, has no warmaking powers except perhaps to repel, as I have said earlier, a surprise attack, an emergency following which he must immediately go to Congress.

There is no question that under the necessary and proper clause Congress may legislate in this area."

(U.S. Senate, October 6, 1971)

A pre-eminent authority on the commander-in-chief powers of the President is Professor Louis Henkin of Columbia University. He has written as follows:

"Less confidently, whatever the President can do short of war, in war his powers as Commander-in-

## WHO TO BELIEVE?

*Secretary Schlesinger: "I think there are very powerful incentives to, if — and this is a very low probability event — nuclear weapons were actually employed, there would be very powerful incentives to suppress the conflict before it became destructive."*

(*Issues and Answers, July 5, 1975*)

*Secretary Schlesinger: "The first use of theater nuclear forces, even in very limited ways, carries grave risks of escalation and should be considered only when the consequences of conventional defeat would be even more serious." □*

(*May, 1975 from Report to Congress on Nuclear Force Posture in Europe under P.L. 93-365*)

Chief are subject to ultimate Congressional authority to 'make' the war, and Congress can control the conduct of the war it has authorized. (One might suggest, even, that the President's powers during war are not 'concurrent' but delegated by Congress, by implication in the declaration or authorization of war.) It would be unthinkable for Congress to attempt detailed, tactical decisions, and as to these the President's authority is effectively supreme. But in my view, he would be bound to follow Congressional directives not only as to whether to continue the war, but whether to extend it to other countries and other belligerents, whether to fight a limited or unlimited war, today, perhaps, even whether to fight a 'conventional' or a nuclear war."

### History Shows Few Conflicts

Of course, the examples provided by history are not sufficiently rich to expose many cases in which Congress was moved to exploit these powers; during this time, Presidential power has grown. Many now simply mouth the phrase "commander-in-chief" as an incantation, as if it constituted an unanswered argument that Congress has no role once war begins.

But the War Powers Resolution, with all of its difficulties, constitutes a counterexample, since it limits the time that the President can fight undeclared wars.

All of the declared wars have emanated from joint resolutions (signed by the President) or statutes that provided very extensive powers indeed — so that there is little precedent for limiting declared wars. The result is that those Constitutional lawyers who put more weight on "accretion of power" and precedent, than on the statements of the Founding Fathers sometimes assume declarations of war to provide unlimited powers. However, the very way in which the declarations are passed, as any other Joint Resolution or statute, suggests that Congress could write into them whatever it wanted. This is surely a much fairer presumption than to say that they cannot. And it is interesting to note that few doubt but that Congress could, if painfully and annually — control Executive Branch actions of very minor kinds by asserting that "no funds shall be spent" in the appropriations bills to do the things that Congress does not want done.

There seem, in short, to be these quite separate ways to establish that Congress has the power: historical interpretation of the debate over relevant war powers clauses by the Founding Fathers; the necessary and proper clause; and the power over appropriations. In the light of this multiplicity of methods of establishing Congressional authority, the authority seems undeniable. □

## NATIONAL ACADEMY AND ACDA INTERPRET JOINT REPORT DIFFERENTLY

On October 2, in the morning, FAS received bemused phone calls from the press in which it was suggested that the National Academy of Sciences was taking leave of its senses. Evidently, an Academy study on the effects of nuclear war was being released with a press release that began, "Mankind would 'probably' survive a nuclear war." A covering letter from President Philip Handler was flatter and said the study had asked as its principal question: "Would the biosphere and the species, *Homo Sapiens* survive?" and answered "yes".

FAS called the Arms Control Agency, which had sponsored the study, and warned that it seemed about to have the opposite effect from that intended; no study could be sure about survival. And what, in any case, was the relevance to public policy of an uncertain conclusion that mankind "might" survive?

Later, when a copy fell into our hands (the Academy was not treating our newsletter as press for this purpose and did not send us an advance copy) we became even more alarmed. The covering letter was, indeed, bizarre. Having ballyhooed the study as reaching a conclusion which, in fact, it did not really reach, it then explained why the conclusion was not warranted (other unstudied political, economical, and social effects) and then warned unspecified far-off countries not to take the study so seriously as to start a third world war in an effort to rule the remains.

### ACDA Alarmed

ACDA rushed to distinguish its position at the press conference and noted that the study showed the "magnitude of our ignorance". Indeed, ACDA moved to the left of FAS by emphasizing that "ecological backlash" would itself deter superpowers from attacking; FAS had always assumed that, for the superpowers in the line of fire, the backlash effects of firing our own weapons would be trivial compared to the inevitable frontlash (retaliation). But perhaps ACDA knows more optimistic war planners in DOD than we do.

At the press conference, Philip Handler said that his letter was a personal one. But since it was bound into the final document and was the only readable part of a highly scientific document, it was bound to mislead the

public. Paradoxically, as a result of Handler's innovations, the science in Academy documents is more closely reviewed than heretofore. But his covering letters are evidently unreviewed. Thus the weakest link in the Academy chain turns out to be the most important one — the interpretive link between science and what it means for public policy. □

## AIR FORCE DISMISSES OFFICER FOR ASKING ONE QUESTION

In a class for Air Force officers who would later work in underground Minuteman missile silos, Major Harold L. Hering asked a simple, honest, straightforward, and highly moral question. Within 24 hours, the Air Force began moving him out of the service. The question was this: "How can we be sure that the order entering the command post is a properly authorized one?" Major Hering was content with explanations of how the two key system worked. And he had no *specific* apprehension about the validity of incoming orders.

But he asked the natural question anyway. The week his plight was made public, FAS was writing to the Defense Department about the same subject and getting non-answers, terminating: "You may be assured that this subject receives continued attention at the very highest level of Government". Maybe so. But at the lowest levels, it is a fatal flaw to even recognize the problem.

From FAS's point of view, any person trained to fire missiles who does not have the sense to ask this question during training, in the interests of national security, if nothing else, is unqualified to be an Air Force officer. FAS wrote the Secretary of Defense and asked that Major Hering be reinstated as a token of the sincerity with which DOD is vigilant in raising the same question. We shall return to this subject in subsequent newsletters. □

## HOW THE WORLD CAN END THROUGH MISUNDERSTANDING

Soviet declarations indicate that if the Warsaw Pact believes NATO is about to launch a major nuclear attack, it will seek to preempt with nuclear strikes on military targets. (pg. 10) □

—Report of James R. Schlesinger, May, 1975  
(Theatre Nuclear Forces in Europe)

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