

HADA/R12/10

10 JUN 1970

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Dear Dave:

You are doubtless aware that 15 of our Latin American allies have brought into force a regional Treaty for the Prohibition of Nuclear Weapons in Latin America, which in many ways complements the Nuclear Non-Proliferation Treaty. On April 1, 1968, Vice President Humphrey signed Additional Protocol II to that Treaty for the United States. This is a Protocol designed for adherence by nuclear weapon states, which are not eligible to sign the treaty itself. It has been signed and ratified by the United Kingdom.

Prior to the U.S. signature, the issues involved in U.S. adherence to the Protocol were carefully reviewed by the Departments of State and Defense, the Joint Chiefs of Staff, the Atomic Energy Commission and the Arms Control and Disarmament Agency. All such departments and agencies concurred in the decision to sign the Protocol with a statement which was designed to clarify our understanding of several points under the Treaty on which our review indicated that clarification was needed. The Department of Defense requested, however, an opportunity to review the matter again prior to the submission of the Protocol to the Senate, to assure that any relevant experience under the

The Honorable  
David Packard,  
Deputy Secretary of Defense.

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Treaty following our signature would be taken into account. It is the purpose of this letter to afford that opportunity, as well as to seek concurrence in the updating of that portion of the statement dealing with peaceful nuclear explosion services. If you agree that early ratification would be desirable, we would then plan to propose to the President that he submit the Protocol to the Senate at this session.

To facilitate consideration of this matter, I enclose (1) a brief summary of the significant U.S. interests that would be served by ratification of Additional Protocol II in the near future with a statement similar to that made on signature; and (2) a more detailed paper describing the Protocol and the underlying Treaty, including their status, the issues that were considered by the Executive Branch in connection with the decision to sign the Protocol, and relevant developments since such signature.

I personally believe it would be advantageous for the Administration to act on this matter now. Announcement of a decision by the President to seek the advice and consent of the Senate to ratification of Additional Protocol II would have a favorable impact at home and abroad, and would reinforce our position on the non-proliferation of nuclear weapons. If we should delay action unduly, questions might be raised both here and in Latin America concerning the failure to follow up the U.S. signature of Additional Protocol II.

I understand that the staff of the Senate Committee on Foreign Relations has periodically inquired about when this Protocol will be submitted to the Senate, and indicated the expectation that it would be favorably received.

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If additional information on this matter is desired,  
please contact the Acting Director of ACDA, Mr. Philip  
Farley.

Sincerely,

(S)

Elliot L. Richardson

Enclosures:

Two explanatory papers.

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ACDA/GC:CNVanDoren:hef:6-3-70

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SUMMARY STATEMENT OF  
U.S. INTERESTS IN RATIFYING  
ADDITIONAL PROTOCOL II

U.S. ratification of Additional Protocol II to the Treaty for the Prohibition of Nuclear Weapons in Latin America would materially improve the prospects for the Treaty's success. This is believed to be in our national security interest since:

1. The Treaty includes an undertaking by the Latin American parties to prevent the type of deployment of nuclear weapons in Latin America that occurred in the Cuban missile crisis and provides for verification of compliance with this undertaking not only by the parties themselves, but by a regional organization that has now been established. It is to our advantage to reduce the chances of such deployment, which could upset stability in this hemisphere and add to the number of locations and directions, and in some cases decrease the distance, from which nuclear attacks could be launched against us.

2. The Treaty complements our efforts to prevent the proliferation of nuclear weapons in the following respects:

(a) The Treaty is already in force for eight states that have not yet ratified the NPT\* and has been signed by (but has not entered into force for) three states which have not yet signed the NPT.\*\*

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\* Barbados, Bolivia, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua and Uruguay. (For Nicaragua's statement on peaceful nuclear explosions, see pp. 8-9 of Background Memorandum.)

\*\* Argentina, Brazil and Chile. (For statements of the first two on peaceful nuclear explosions, see pp. 8-9 of Background Memorandum.)

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(b) The Treaty requires all nuclear materials and facilities under the jurisdiction of the parties to be used exclusively for peaceful purposes (unlike the NPT, which does not prohibit non-explosive military uses of nuclear material), and calls for IAEA safeguards on all such materials and facilities (unlike NPT safeguards, which do not attempt to detect the diversion to nuclear weapons of nuclear material furnished or used for other military purposes). Moreover, IAEA safeguards will be supplemented by the verification activities of the regional organization mentioned above.

3. The U.S. statement proposed as an integral part of our ratification will preserve our rights with regard to territorial claims of others and the freedom of action of the U.S., as well as the parties to the Treaty, to negotiate transit and transport privileges.

Our political interests in ratifying Additional Protocol II seem equally clear:

1. It would be a widely welcomed positive step in our relations with our Latin American allies, especially Mexico, which has been its chief promoter. (Our Ambassador to Mexico has strongly urged us to proceed promptly with this matter and Secretary Rogers has assured the Foreign Minister of Mexico that we would consider it expeditiously. We are on notice that our failure to ratify the Protocol this year, now that the United Kingdom has ratified it, will result in the introduction by the Parties of a resolution criticising such failure at the next session of the UN General Assembly. If we do proceed with ratification, the onus of this criticism will fall on the Soviet Union.)

2. It would improve our posture in international forums dealing with arms control, giving substance to the support which we have consistently expressed for this initiative in

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Presidential and Vice Presidential speeches in the last Administration, in statements and votes at the UN General Assembly and at disarmament conferences, and during the negotiation of the NPT. (Resolutions supported by the United States and approved with no opposing votes were adopted at the Twenty-Second and Twenty-Third Sessions of the UN General Assembly, inviting the nuclear-weapon states to sign and ratify Additional Protocol II to this Treaty as soon as possible.) Such action would be particularly auspicious in this UN anniversary year, in which arms control is expected to be stressed.

3. It should have a timely, beneficial effect on public opinion here and abroad, as a demonstration of the Administration's interest in promoting arms control.

4. It would put us in a better position to exploit the Soviet Union's unwillingness to enter into a commitment not to deploy nuclear weapons in Latin America and would help emphasize to our Latin American allies the potential danger of Soviet Cuban ties.

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BACKGROUND MEMORANDUM ON  
ADDITIONAL PROTOCOL II TO THE TREATY FOR THE  
PROHIBITION OF NUCLEAR WEAPONS IN LATIN AMERICA

The Treaty for the Prohibition of Nuclear Weapons in Latin America (hereinafter called the Treaty, the full text of which is set forth at Tab B) is the first successful attempt to create a nuclear free-zone in a populated region of the world. It was created at the initiative of a number of states in Central and South America, a region in which nuclear weapons do not form a part of existing security arrangements. The Parties to the Treaty itself are limited to states located in this region. The basic undertaking of the Parties, contained in Article 1, is to use exclusively for peaceful purposes the nuclear material and facilities under their jurisdiction and to prohibit and prevent in their respective territories:

"(a) The testing, use, manufacture, production or acquisition by any means whatsoever of any nuclear weapons, by the Parties themselves, directly or indirectly, on behalf of anyone else or in any other way; and

"(b) The receipt, storage, installation, deployment and any form of possession of any nuclear weapon, directly or indirectly, by the Parties themselves, by anyone on their behalf or in any other way."

The Parties have also undertaken to refrain from engaging in, encouraging or authorizing, directly or indirectly, or in any way participating in the testing, use, manufacture, production, possession or control of any nuclear weapon. The Treaty excludes from the definition of nuclear weapon "an instrument that may be used for the transport or propulsion of the device... if it is separable from the device and not an indivisible part thereof." (Art. 5) Compliance with the Treaty is to be verified by the application of safeguards of the International Atomic Energy Agency on all nuclear activities in the states covered by the Treaty, and by a regional implementing organization which was established in September, 1969.

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The Treaty is already in force for the fifteen states listed below (shown on the map at Tab A):

Barbados	Honduras
Bolivia	Jamaica
Costa Rica	Mexico
Dominican Republic	Nicaragua
Ecuador	Paraguay
El Salvador	Peru
Guatemala	Uruguay
Haiti	

All other Latin American states have signed the Treaty except Cuba (whose present government has indicated that it will not sign) and Guyana (whose eligibility to sign is in dispute). Brazil has ratified the Treaty in a manner that seems likely to defer indefinitely its entry into force for Brazil.\*

The Treaty itself is not open for signature by states that are located outside Latin America, and such states are not eligible for membership in, or bound by the decisions of, the implementing organization.

The Protocols to the Treaty, on the other hand, are designed for adherence by States outside the region. Protocol I (Tab C) is designed to enable such States which have territories within Latin America (i.e. the United Kingdom, France, the United States and the Netherlands) to subject such territories to the provisions of the Treaty. Protocol II (Tab D) is designed for adherence by nuclear weapon states. It contains undertakings to respect the aims and provisions of the Treaty, not to contribute to its violation, and not to use or threaten to use nuclear weapons against the Latin American states for which the Treaty is in force. The statement made by the United States in connection with signature of Protocol II clarifies our understanding of these undertakings.

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\* Unlike the other states which have ratified the Treaty, Brazil did not waive the numerous preconditions set forth in Article 28 for its entry into force.

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Protocol I has been signed and ratified by the United Kingdom and signed by the Netherlands. It has not been signed by the United States or France. Protocol II has been signed and ratified by the United Kingdom and signed by the United States. It has not been signed by the Soviet Union, France or the Chinese Communists.

Before the U.S. signed Protocol II, a careful study of the implications and consequences of adhering to it was made by the Departments of State and Defense, the Joint Chiefs of Staff, the Atomic Energy Commission and ACDA. As a result of this study, it was recommended that our signature be accompanied by a statement clarifying our understanding of certain aspects of our undertaking. That statement (the full text of which appears at Tab E) is discussed below. It is recommended that the same statement be made an integral part of the U.S. ratification of Protocol II. (In that connection it should be noted that the United Kingdom incorporated the statement at Tab F in its instrument of ratification of Protocol II.)

#### The U.S. Statement on Signing Protocol II

The statement is divided into three sections. Section I of the statement has three paragraphs.

##### 1. Territory

The first paragraph of Section I provides:

"The United States understands that the Treaty and its Protocols have no effect upon the international status of territorial claims."

Article 3 of the Treaty (which is incorporated by reference in Article 4 of Protocol II), provides that, for the purposes of the Treaty, the term "territory" shall include all space "over which the state exercises sovereignty in accordance with its own legislation." When the Treaty was

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being negotiated, the U.S. had suggested the deletion of the language "in accordance with its own legislation," noting that "this language raises serious problems of territorial sovereignty which cannot realistically be resolved in the context of a nuclear free zone treaty." Several Latin American states claim extended territorial seas. Argentina, Ecuador, El Salvador, Panama, and Peru, for example, claim 200 mile territorial seas. The United States has never accepted such claims and holds them contrary to the rules of international law.

The United States statement assures that United States ratification of Protocol II cannot be construed as an acceptance by the United States of the unilaterally asserted territorial boundary claims of the parties to the Treaty.

## 2. Transit

The second paragraph of Section I of the United States statement deals with the question of the transit through the Treaty's zone of application of airplanes or ships of states that are not Parties while carrying nuclear weapons. It cites the negotiating history of the Treaty, which makes it clear that such rights and privileges of transit are not affected by the Treaty.

One of the alternative drafts of Article 1 of the Treaty submitted at the Third Session of the Preparatory Commission would have prohibited the Parties from permitting "transport" of nuclear weapons in their respective territories. Mexico's alternative text did not include any reference to "transport". In his letter of August 29, 1966, to the Chairman of the Preparatory Commission, U.S. Ambassador Freeman stated that "the United States assumes that the proposed treaty would impose no prohibition that would restrict the freedom of transit within the Western Hemisphere. The United States policy on freedom of transit is based on our national security needs and the vital security interests of the Hemisphere.... We therefore assume that the language of Article 1 as finally agreed will not in any way impair the freedom of transit."

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At the Fourth Session of the Preparatory Commission, Argentina advised that it wished a prohibition against transit and transport to be included in the Treaty. However, the Commission refused to adopt the Argentine position and the Final Act of the Fourth Session contained a specific statement regarding transit and transport. This statement notes that the parties to the Treaty itself may not engage in the "transport" of nuclear weapons, whether in transit or not, because of the prohibition in Article 1 against "any form of possession of nuclear weapons." But in the case of other states, including Parties to Protocol II, the transport of nuclear weapons is seen as "identical with 'transit'", which, in the absence of any provision of the Treaty, must be understood to be governed by the principles and rules of international law."

In the light of this background, the statement made by the United States on signing Protocol II read:

"The United States takes note of the Preparatory Commission's interpretation of the Treaty, as set forth in the Final Act, that, governed by the principles and rules of international law, each of the Contracting Parties retains exclusive power and legal competence, unaffected by the terms of the Treaty, to grant or deny non-Contracting Parties transit and transport privileges."

Both the statement in the Final Act and the United States statement preserve for the United States the right of innocent passage through the territorial sea (this being one effect of the phrase "governed by the principles and rules of international law"). The statement in the Final Act and the United States statement also preserve for the United States the privilege, if granted by the relevant Party, of port visits and overflights incidental to transit. The Final Act statement provides assurance that the continuation of present U.S. policies and practices with respect to the transport or transit of nuclear weapons will not be inconsistent with our undertakings under Protocol II to "fully respect the statute of denuclearization" and not to contribute to violations of Article 1 of the Treaty.

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Our experience since the Treaty's entry into force provides further assurance on this question. As shown below, the Treaty has now been in force for most of its present parties for an appreciable period of time:

<u>Date of Ratification</u>	<u>Country</u>
<u>1967</u>	
September 20	Mexico
<u>1968</u>	
April 22	El Salvador
June 14	Dominican Republic
August 20	Uruguay
September 23	Honduras
October 23	Nicaragua
<u>1969</u>	
February 11	Ecuador
February 18	Bolivia
March 4	Peru
March 19	Paraguay
April 25	Barbados
May 23	Haiti
June 26	Jamaica
August 25	Costa Rica
<u>1970</u>	
February 6	Guatemala

We have had no difficulties under the Treaty with respect to transit and transport privileges. The only relevant diplomatic exchanges have been those described below with Mexico, to which our naval vessels make some 60 port visits per year.

In April, 1969, the Mexican Government presented us with a note which did not refer to the Treaty but asked us for assurances that we would not request port visits of ships or overflights of aircraft carrying nuclear weapons. After several diplomatic exchanges, the matter was resolved as follows to the apparent satisfaction of all concerned: it was agreed that we would not reply to the note, but that we would continue to

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request clearances for port visits and overflights in the same manner as in the past; and the Mexican Government indicated that such requests would be granted. At the time this way of handling the matter was worked out, the Foreign Minister of Mexico cleared up a misunderstanding (based on an earlier remark he had made) by stating that the Mexican Government's request had been independent of and unrelated to the Treaty, and expressed agreement with the U.S. interpretation of the Treaty with respect to transit rights (Cable No. 4903 from Mexico City, 6 September 1969).

We understand that no difficulties have been experienced since that time. It is noteworthy that the United Kingdom received a similar note from Mexico, which was handled in the same general way prior to U.K. ratification of Protocol II.

### 3. Non-Use

As shown at page 1 of this memorandum, one of the undertakings by the Latin American parties to the Treaty is to prohibit and prevent in their respective territories the use of nuclear weapons. Accordingly, Protocol II, which is basically an undertaking by nuclear-weapon states to respect the Treaty and not to contribute to its violation, contains an undertaking "not to use or threaten to use nuclear weapons against the Contracting Parties" to the Treaty, which are defined to include only those Latin American states with respect to which the Treaty is actually in force. This undertaking does not extend to other nuclear powers, nor to non-parties to the Treaty (such as Cuba), nor to states outside the zone which have territories or possessions within it. It is made in reciprocity for the undertakings of the Contracting Parties under Article 1 of the Treaty which not only are designed to keep the area wholly free from nuclear weapons but also include an undertaking to refrain from "encouraging or authorizing, directly or indirectly, or in any way participating in the use...possession or control of any nuclear weapon." Actions incompatible with those basic obligations would constitute a failure of the consideration for our non-use undertaking, and thus a material breach of the Treaty that would enable us to treat our non-use undertaking as no longer binding. To make clear our understanding that this principle would extend to an armed attack by a Contracting Party, in which it was assisted by a nuclear-weapon state, the third paragraph of Section I of the U.S. statement reads as follows:

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"As regards the undertaking in article 3 of Protocol II not to use or threaten to use nuclear weapons against the Contracting Parties, the United States would have to consider that an armed attack by a Contracting Party, in which it was assisted by a nuclear-weapon State, would be incompatible with the Contracting Party's corresponding obligations under article 1 of the treaty."

Assessment of the non-use undertaking at the time the Treaty was signed by the United States resulted in agreement within the government that it was acceptable in this particular case in view of (a) the special historic relationship which the United States has maintained with its hemispheric neighbors, and (b) the difficulty of conceiving of circumstances in which the United States would find it in its interest to use or threaten to use nuclear weapons against a Latin American party to the Treaty which was abiding by its obligations thereunder, as understood by the United States and clarified in the foregoing statement.

#### 4. Peaceful Nuclear Explosions

The Treaty does not preclude the carrying out of nuclear explosions for peaceful purposes within the territories of the parties, provided such explosions are carried out in accordance with the provisions of Article 18 (which establishes certain procedural requirements) "and the other articles of the Treaty, particularly articles 1 and 5" (Article 1 includes the basic undertakings, quoted at page 1 above, not to acquire, use, or possess nuclear weapons, and Article 5 defines "nuclear weapon" in a manner which covers the nuclear explosive devices that could be used in an explosion for peaceful purposes). During negotiation of the Treaty, Brazil took the position that the parties should be left free to manufacture their own nuclear explosive devices for peaceful purposes. The United States, which was then facing the same problem in the NPT negotiations, pointed out that to carve out this exception from the undertakings under

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Article 1 would be to nullify the latter. In response to our suggestions, a new paragraph 4 was added to Article 18 of the Treaty, permitting the Parties to accept the collaboration of third parties, such as the United States, in carrying out peaceful nuclear explosions. It is our position, which is shared by Mexico and (to the best of our knowledge and belief) by most of the other parties, that the final text of the treaty must be construed, like the NPT, to prohibit the manufacture or other acquisition of nuclear explosive devices even for peaceful purposes, and hence not to enable the parties to explode such devices by themselves. The only present party to the Treaty which has indicated a different view is Nicaragua (see Tab H). Brazil and Argentina, which are the only other countries that have indicated such disagreement, are not yet parties to the Treaty. None of the three is yet a party to the NPT.

To make clear our understanding of the Treaty on this point, the United States included the following paragraphs as Part II of its statement on signature:

"The United States wishes to point out again the fact that the technology of making nuclear explosive devices for peaceful purposes is indistinguishable from the technology of making nuclear weapons and the fact that nuclear weapons and nuclear explosive devices for peaceful purposes are both capable of releasing nuclear energy in an uncontrolled manner and have the common group of characteristics of large amounts of energy generated instantaneously from a compact source. Therefore we understand the definition contained in article 5 of the treaty as necessarily encompassing all nuclear explosive devices. It is our understanding that articles 1 and 5 restrict accordingly the activities of the Contracting Parties under paragraph 1 of article 18.

"The United States further notes that paragraph 4 of article 18 of the treaty permits, and that

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United States adherence to Protocol II will not prevent, collaboration by the United States with Contracting Parties for the purpose of carrying out explosions of nuclear devices for peaceful purposes in a manner consistent with our policy of not contributing to the proliferation of nuclear weapons capabilities. In this connection, the United States reaffirms its willingness to make available nuclear explosion services for peaceful purposes on a non-discriminatory basis under appropriate international arrangements and to join other nuclear-weapon States in a commitment to do so."

The last sentence of this statement was written before negotiation of the NPT was completed, and accordingly neither reflects the fact that in that Treaty we did join other nuclear-weapon states in such a commitment, nor indicates the terms and conditions of such commitment. Thus it appears desirable to revise this sentence in the statement we make upon ratification of Protocol II. A suggested revision follows:

"In this connection, the United States calls attention to Article V of the Nuclear Non-Proliferation Treaty, under which it joined in an undertaking to take appropriate measures to ensure that potential benefits of peaceful applications of nuclear explosions would be made available to non-nuclear weapon states party to that treaty, and reaffirms its willingness to extend such undertaking, on the same basis, to states precluded by the present treaty from manufacturing or acquiring any nuclear explosive devices."

This revision assumes that the United States is willing to make nuclear explosion services available to parties to this treaty even if they are not also parties to the NPT. Failure to do so would seem clearly inconsistent with assurances we gave during negotiation of the treaty (see Tab G) and in our statement on signature. Such failure would also strengthen

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the hand of those who believe the Treaty should not be read to preclude the development, acquisition or use by the parties themselves of nuclear explosives for peaceful purposes--a position which would destroy the efficacy of the Treaty as a non-proliferation measure. On the other hand, the extension of this commitment to non-NPT parties could reduce the incentive to join the NPT, and might be criticized in the Senate as an uncalled-for extension of our undertaking under Article V of that Treaty, which was itself subjected to criticism as constituting "nuclear largesse."

The particular wording suggested is designed to:

- (1) update our statement on signature by making clear that we have already joined others in a commitment to ensure that nuclear explosion services are made available on a non-discriminatory basis;
- (2) make clear that the basis on which we would be willing to make the explosion services available is the same as that under the NPT:\*

\*Which provides (1) that "Each party to the treaty undertakes to take appropriate means to ensure" that "the potential benefits from any peaceful applications of nuclear explosions" will be made available "in accordance with this Treaty" (thus precluding any transfer of nuclear explosive devices or access to information that would be of assistance in their manufacture); (2) that they will be made available "under appropriate international observation and through appropriate international procedures...on a non-discriminatory basis;" (3) that "the charge for the explosive devices used will be as low as possible and exclude any charge for research and development;" and (4) that such benefits shall be obtainable either pursuant to bilateral agreements or "pursuant to a special international agreement or agreements /negotiations on which are to commence as soon as possible after the entry into force of the NPT/ through an appropriate international body with adequate representation of non-nuclear-weapon states."

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- (3) limit ourselves to an expression of willingness to extend NPT benefits to parties to this treaty, thus implying that some further step may be necessary to create a legally binding commitment to do so. (This could reduce the basis for Congressional criticism and would leave some of the incentive for joining the NPT provided by Article V thereof, which is more clearly a commitment not only by us but by other parties.); and
- (4) limit our expression of willingness to extend the NPT undertaking to those parties to the Latin American Treaty who consider themselves bound by our interpretation of Article 18 of that Treaty.

Regardless of the form of the U.S. statement, it is clear that neither the Treaty, nor our ratification of Protocol II, would prevent the United States from conducting the nuclear explosions that would be involved in the nuclear excavation of an Atlantic-Pacific Interoceanic Canal. If such excavation were conducted in the territory of a party to the Treaty, however, the procedural requirements set forth in paragraphs 2 and 3 of Article 18 would of course have to be met. (Neither Panama nor Colombia is yet a party to the Treaty, although both have signed it.\*) In this connection, it should be noted that the provisions in paragraph 3 of Article 18 regarding observation of preparations and "unrestricted access in the vicinity of the site of the explosion" for the International Atomic Energy Commission and the personnel from the regional implementing organization would have to be read in the light of the basic purpose of the Treaty to prevent the proliferation of nuclear weapons capabilities. Access could not be such as to disclose the technology involved in the manufacture of the nuclear explosive devices used by a nuclear-weapon state in providing the explosion service. That the United States understands paragraph 3 of Article 18 in this fashion is demonstrated by the reference in Part II of the United States statement to our goal of carrying out any such explosions

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\*They have both also signed the NPT.

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in a manner consistent with the policy of "not contributing to the proliferation of nuclear weapons capabilities.\*

#### 5. Protocol I Territories

As noted in the section above on the "non-use" undertaking in Protocol II, that undertaking applies only to the "Contracting Parties" to the Treaty itself, a term that does not include territories or possessions in the area that are brought under the Treaty by ratification of Protocol I. Thus territories such as Surinam and the Netherlands Antilles and British Honduras could be subjected to all of the obligations of a party to the Treaty without getting the benefit of the "non-use" undertaking under Protocol II. In signing Protocol II, both the United States and the United Kingdom indicated their desire to correct this inequity (which was probably a drafting oversight) by extending their "non-use" undertakings to such territories. Thus Section III of the U.S. statement on signature reads as follows:

"The United States also wishes to state that, although not required by Protocol II, it will act with respect to such territories of Protocol I adherents as are within the geographical area defined in paragraph 2 of article 4 of the treaty in the same manner as Protocol II requires it to act with respect to the territories of Contracting Parties."

#### Other Matters

While it is believed that the preceding discussions covers the principal matters that must be considered in connection with U.S. ratification of Protocol II, several others should be noted:

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\*Also by the earlier U.S. Note at Tab G.

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(a) Zone of Application

Although the Treaty includes provisions for the eventual creation of a very extensive zone of application, excluding the continental United States but covering substantial portions of the high seas, these provisions can be ignored in considering our ratification of Protocol II. This is so because, even after ratification of Protocol II, we will retain full power to prevent this broad zone of application from ever coming into effect. The Treaty provides that one of the preconditions for this extension of the zone of application is U.S. signature and ratification of Protocol I to the Treaty. We have not signed Protocol I, and do not contemplate doing so in the foreseeable future. Moreover, it seems extremely unlikely that all the other preconditions--which include ratification of the Treaty by Cuba and ratification of Protocol II by the Chinese Communists--will ever be met.

(b) The Canal Zone

Panama has signed, but not yet ratified the Treaty. During negotiation of the Treaty, the Preparatory Commission was officially advised by the United States that "From the U.S. point of view, we would be agreeable to inclusion of the Panama Canal Zone" under the Treaty, "although of course the well-established transit rights would not be affected."\* To achieve this result by signing and ratifying Protocol I to the Treaty, however, would present problems, because (1) we would have to specify in our ratification of Protocol I that it did not apply to Puerto Rico and the Virgin Islands, which we do not wish included in a nuclear free zone; (2) we might lose our ability to prevent the entry into force of the extended zone of application of the Treaty; and (3) Panama takes the position that it has the power to commit the Canal Zone to the Treaty by virtue of its sovereignty over the Zone. The United States position is that only the U.S. has the power

\*Letter dated December 10, 1965 from ACDA Director Foster to Chairman Garcia Robles.

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to enter into treaty obligations covering the Zone (since it exercises all powers as if it were sovereign) and that Panama cannot do so without the consent of the United States. When Panama ratifies the Treaty, the United States could assert that our ratification of Protocol II, coupled with our earlier expressions of intent with respect to the Canal Zone, constituted consent to inclusion of the Canal Zone under the Treaty, subject to established transit rights. That, together with Panamanian ratification of the Treaty, would leave no doubt (under either the U.S. or Panamanian legal positions) that the Treaty was applicable to the Canal Zone.

(c) Duration and Denunciation

Protocol II makes the provisions in Article 29 of the Treaty, on duration and denunciation, applicable to that Protocol. Article 29 provides that the Treaty shall remain in force indefinitely, but that any Party may denounce it by giving three months' advance notice that, in its opinion, "there have arisen or may arise circumstances connected with the content of the Treaty or of the annexed Additional Protocols I and II which affect its supreme interests and the peace and security of one or more of the Contracting Parties." (The three months' notice requirement would not apply to an exercise of our right under international law, discussed under "Non-Use" above, to consider ourselves relieved of our undertakings under Protocol II as against a party responsible for a material breach of its own obligations under the Treaty.)

(d) The Soviet Position

The Soviets have not signed Protocol II, and have indicated considerable hesitancy to do so. The reasons for this hesitancy appear to include the following:

- (1) Support for the position of Cuba, which has refused to join the treaty, asserting that U.S. nuclear weapons remain in Puerto Rico, the Canal Zone and "and other Latin American areas";

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- (2) The fact that the Treaty contains no ban on the transportation of nuclear weapons and that the United States has refused to stop sending nuclear-armed vessels through the Panama Canal;
- (3) The position taken by Brazil, with which the Soviet Union disagrees as we do, with respect to the Treaty's provisions on peaceful nuclear explosions;
- (4) Concern that the Treaty may deflect some Latin American states from joining the NPT, which the Soviets prefer; and
- (5) The fact that their ratification of Protocol II, unlike ours, would end their ability to control whether the extended zone of application--covering substantial areas in the Atlantic and Pacific Oceans--ever comes into effect.

While we would consider Soviet adherence to Protocol II highly desirable, we do not believe it should be considered a sine qua non of our own adherence to that Protocol. This is so because:

- (1) The principal benefit of the Treaty to us lies in the undertaking of the Latin American parties to forswear nuclear weapons, to prohibit and prevent their introduction into the area, and not to authorize or encourage their use by others. Participation by the Soviets is irrelevant to the first, and the second and third should serve to inhibit the Soviet Union even if it does not adhere to Protocol II.
- (2) The Treaty will supplement our national efforts to detect any introduction of nuclear weapons into the region by the Soviet Union; and

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- (3) The non-use undertaking in Protocol II, as clarified by our statement on signature, would not apply to any state which permitted the Soviet Union to introduce nuclear weapons into the area or to a situation in which the Soviet Union assisted a Contracting Party in connection with an armed attack by such Party.

#### CONCLUSION

Except for the proposed revision of our statement on peaceful nuclear explosions, all of the problems discussed above were carefully considered in connection with the U.S. decision to sign Protocol II to the Treaty. It is believed that the review of these problems in this memorandum indicates that none of them is so serious or unmanageable as to offset the clear advantages to the United States of proceeding with ratification of Protocol II and incorporating in the instrument of ratification the statement described above.

~~CONFIDENTIAL~~

ADDITIONAL PROTOCOL II

The undersigned Plenipotentiaries, furnished with full powers by their respective Governments,

*Convinced* that the Treaty for the Prohibition of Nuclear Weapons in Latin America, negotiated and signed in accordance with the recommendations of the General Assembly of the United Nations in Resolution 1911 (XVIII) of 27 November 1963, represents an important step towards ensuring the non-proliferation of nuclear weapons,

*Aware* that the non-proliferation of nuclear weapons is not an end in itself but, rather, a means of achieving general and complete disarmament at a later stage, and

*Desiring* to contribute, so far as lies in their power, towards ending the armaments race, especially in the field of nuclear weapons, and towards promoting and strengthening a world at peace, based on mutual respect and sovereign equality of States,

*Have agreed as follows:*

*Article 1.* The statute of denuclearization of Latin America in respect of warlike purposes, as defined, delimited and set forth in the Treaty for the Prohibition of Nuclear Weapons in Latin America of which this instrument is an annex, shall be fully respected by the Parties to this Protocol in all its express aims and provisions.

*Article 2.* The Governments represented by the undersigned Plenipotentiaries undertake, therefore, not to contribute in any way to the performance of acts involving a violation of the obligations of article 1 of the Treaty in the territories to which the Treaty applies in accordance with article 4 thereof.

*Article 3.* The Governments represented by the undersigned Plenipotentiaries also undertake not to use or threaten to use nuclear weapons against the Contracting Parties of the Treaty for the Prohibition of Nuclear Weapons in Latin America.

*Article 4.* The duration of this Protocol shall be the same as that of the Treaty for the Prohibition of Nuclear Weapons in Latin America of which this Protocol is an annex, and the definitions of territory and nuclear weapons set forth in articles 3 and 5 of the Treaty shall be applicable to this Protocol, as well as the provisions regarding ratification, reservations, denunciation, authentic texts and registration contained in articles 26, 27, 30 and 31 of the Treaty.

*Article 5.* This Protocol shall enter into force, for the States which have ratified it, on the date of the deposit of their respective instruments of ratification.

In witness whereof, the undersigned Plenipotentiaries, having deposited their full powers, found to be in good and due form, hereby sign this Additional Protocol on behalf of their respective Governments.

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Statement Accompanying Signature by the United States  
of Protocol II to the Treaty for the Prohibition of  
Nuclear Weapons in Latin America

*In signing Protocol II of the Treaty of Tlatelolco, the United States Government makes the following statement:*

I

The United States understands that the treaty and its protocols have no effect upon the international status of territorial claims.

The United States takes note of the Preparatory Commission's interpretation of the treaty, as set forth in the Final Act, that, governed by the principles and rules of international law, each of the Contracting Parties retains exclusive power and legal competence, unaffected by the terms of the treaty, to grant or deny non-Contracting Parties transit and transport privileges.

As regards the undertaking in article 3 of Protocol II not to use or threaten to use nuclear weapons against the Contracting Parties, the United States would have to consider that an armed attack by a Contracting Party, in which it was assisted by a nuclear-weapon State, would be incompatible with the Contracting Party's corresponding obligations under article 1 of the treaty.

II

The United States wishes to point out again the fact that the technology of making nuclear explosive devices for peaceful purposes is indistinguishable from the technology of making nuclear weapons and the fact that nuclear weapons and nuclear explosive devices for peaceful purposes are both capable of releasing nuclear energy in an uncontrolled manner and have the common group of characteristics of large amounts of energy generated instantaneously from a compact source. Therefore we understand the definition contained in article 5 of the treaty as necessarily encompassing all nuclear explosive devices. It is our understanding that articles 1 and 5 restrict accordingly the activities of the Contracting Parties under paragraph 1 of article 18.

The United States further notes that paragraph 4 of article 18 of the treaty permits, and that United States adherence to Protocol II will not prevent, collaboration by the United States with Contracting Parties for the purpose of carrying out explosions of nuclear devices for peaceful purposes in a manner consistent with our policy of not contributing to the proliferation of nuclear weapons capabilities. In this connection, the United States reaffirms its willingness to make available nuclear explosion services for peaceful purposes on a nondiscriminatory basis under appropriate international arrangements and to join other nuclear-weapon States in a commitment to do so.

III

The United States also wishes to state that, although not required by Protocol II, it will act with respect to such territories of Protocol I adherents as are within the geographical area defined in paragraph 2 of article 4 of the treaty in the same manner as Protocol II requires it to act with respect to the territories of Contracting Parties.

U.K. Statement on Ratification  
of Protocol II

"On depositing these instruments of ratification, I have the honour to declare that it is the understanding of the Government of the United Kingdom that:-

- (a) The reference in Article 3 of the Treaty to "its own legislation" relates only to such legislation as is compatible with the rules of international law and as involves an exercise of sovereignty consistent with those rules, and accordingly that signature or ratification of either Additional Protocol by the Government of the United Kingdom could not be regarded as implying recognition of any legislation which did not, in their view, comply with the relevant rules of international law;
- (b) Article 18 of the Treaty, when read in conjunction with Articles 1 and 5 thereof, would not permit the Contracting Parties to the Treaty to carry out explosions of nuclear devices for peaceful purposes unless and until advances in technology have made possible the development of devices for such explosions which are not capable of being used for weapons purposes;
- (c) Signature or ratification of either Additional Protocol by the Government of the United Kingdom could not be regarded as affecting in any way the legal status of any territory for the international relations of which they are responsible lying within the limits of the geographical zone established by the Treaty; and
- (d) The Government of the United Kingdom would, in the event of any act of aggression by a Contracting Party to the Treaty in which that Party was supported by a nuclear-weapon State, be free to reconsider the extent to which they could be regarded as committed by the provisions of Additional Protocol II.

I have the honour further to declare that the Government of the United Kingdom are prepared to regard their undertaking under Article 3 of Additional Protocol II not to use or threaten to use nuclear weapons against the Contracting Parties to the Treaty as extending not only to those Parties but also to territories in respect of which the undertaking to apply the statute of denuclearization, in accordance with Article I of Additional Protocol I, becomes effective.

The Government of the United Kingdom have always believed that the establishment of a nuclear-free zone in Latin America would be a most useful step towards non-proliferation and the building up of international confidence. While warmly welcoming the achievement of the States concerned in setting up the organs of the Treaty, Her Majesty's Government note with regret that the Treaty is not yet in force in a number of important States in the area. The Government of the United Kingdom therefore hope that the deposit of their instruments of ratification of the Additional Protocols to the Treaty will serve as an encouragement both to other nuclear weapon States to recognize the Treaty and to those Latin American States which have not yet done so, to bring the Treaty into force in their territory."

Excerpt from Note Addressed to the Chairman  
of the Preparatory Commission by the United  
States Ambassador to Mexico, 29 August, 1966

\* \* \*

Article 13 [Later became Article 18]

We agree that Article 13 should permit the contracting parties to arrange with nuclear powers for nuclear explosions for peaceful purposes, but believe that it should not provide for the acquisition or development by the contracting parties of their own nuclear devices for such purposes. We recommend that Article 13 specifically prohibit the testing, manufacture, or other acquisition of all nuclear explosives by the contracting parties.

The development of any nuclear explosive device by such a party, even if intended for a non-military purpose, would be essentially indistinguishable from a weapons development program and would necessarily provide information directly pertinent for such a program. The effect on triggering further nuclear proliferation by neighbors and potential adversaries would be virtually the same as from building a bomb. This is particularly so, since any nuclear explosive intended for peaceful applications could be used as a weapon, or could be readily adapted for such use. If a Nuclear-Free Zone Treaty, therefore, permitted the manufacture or acquisition without appropriate controls of nuclear explosive devices for peaceful purposes, the treaty would be rendered virtually meaningless.

The United States believes, however, that possible future benefits of peaceful nuclear explosions should be made available to all states, whether or not they possess nuclear weapons, but in a manner which would not contribute in any way to nuclear proliferation. Accordingly, the United States believes that if and when peaceful applications of nuclear explosives that are permissible under test ban treaty limitations prove technically and economically feasible, states that possess nuclear explosive devices should make available to other states nuclear explosive services for peaceful uses. Such a service would consist of performing the desired detonation under appropriate international observation, with the nuclear device

remaining under the control and custody of the state that performs the service. This procedure would make available any possible future benefits of peaceful nuclear explosions at a cost far below that at which other countries could develop and produce such devices for themselves, especially in the case of excavation projects where only highly sophisticated thermonuclear explosives are really useful.

Paragraph 3 of Article 13 provides that appropriate officials shall have unrestricted access to any area in the vicinity of the explosion site. Since this could result in the compromise and divulging of sensitive design data of the nuclear device and of other techniques, we suggest that the officials only be given such access as is necessary to ensure compliance with paragraph 2 of this article.

STATEMENTS OF MINORITY VIEW WITH RESPECT TO ARTICLE 18

BRAZIL:

Statement on signature (which was repeated on ratification):

"The Brazilian Government, in affixing its signature to the Treaty... desires to reaffirm its interpretation of the meaning of Article 18 of that instrument. It is the understanding of the Government of Brazil that said Article 18 permits signatory states to carry out, through their own means or in association with third parties, nuclear explosions for peaceful purposes, including those which might presuppose devices similar to those used in military armament. I ask that your excellency transmit the tenor of the present note to all the signatories of the treaty." (Emphasis added)

Note: Article 18 does provide that "The Contracting Parties may carry out explosions of nuclear devices for peaceful purposes - including explosions which involve devices similar to those used in nuclear weapons - or collaborate with third parties for the same purpose" but adds, "provided that they do so in accordance with the provisions of this article and the other articles of the treaty, particularly articles 1 and 5."7

Statement by Ambassador Silveira at ENDC, August 31, 1967:

"Brazil is a signatory of the only international agreement which prohibits nuclear weapons in an inhabited region of the world. The Latin-American Treaty, the purposes of which we have always supported, encourages peaceful nuclearization and fully allows its parties to conduct research and to utilize nuclear

energy for peaceful purposes, including the manufacture of explosive devices for uses other than military. In Latin America--within a homogeneous international community where special favorable conditions prevail--we have made it clear that the renunciation of nuclear armament does not entail the abandonment of our inalienable right to economic and social development through the preservation of our freedom of scientific research and technological advancement. There can certainly be no reason, in a broader context, to adhere to a treaty [the NPT] imposing greater restrictions--and restrictions which, in our view are both unjust and unnecessary." (Emphasis added)

ARGENTINA:

Statement on signature:

"In signing the treaty...the Government of the Argentine Republic wishes to express its satisfaction over the inclusion in the instrument of clauses safeguarding the peaceful development of nuclear energy, among them Article 18, which recognizes the right of the Contracting Parties, by their own means or in association with third parties, to explode nuclear devices for peaceful purposes, including explosions that presuppose devices similar to those used in nuclear armaments. The Government of the Argentine Republic understands that the aforesaid provisions insure the use of nuclear energy as an essential aid in the development of Latin America and that consequently they constitute a fundamental prior condition on which to base an acceptable balance of mutual responsibilities and obligations for the nuclear and non-nuclear powers with respect to nonproliferation." (Emphasis added)

[Note: Embassy Caracas indicated that this statement had been coordinated with the Brazilian government.]