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Signed by the President  
8/6/70. Tom Morelli to  
Andrea Long 8/20/70.  
DEPARTMENT OF STATE

~~CONFIDENTIAL~~

Washington, D.C. 20520

July 16, 1970

MEMORANDUM FOR MR. HENRY A. KISSINGER  
THE WHITE HOUSE

S/S 10071

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Subject: Transmission to the Senate for advice and consent to ratification of Additional Protocol II to the Latin American Nuclear Free Zone Treaty

Def 18-9 LA

Additional Protocol II to the Treaty for the Prohibition of Nuclear Weapons in Latin America was signed for the United States on April 1, 1968. On June 26, 1970 the Secretary announced before the General Assembly of the Organization of American States that the President would submit the Protocol to the Senate for advice and consent to ratification in the very near future. The enclosed report of the Secretary of State and message from the President to the Senate are for the purpose of making that submission.

Additional Protocol II calls upon nuclear-weapon States, not eligible to sign the Treaty itself, to respect the denuclearized status of Latin America as provided for in the Treaty, not to contribute to violation of the Treaty, and not to use or threaten to use nuclear weapons against the Treaty parties. The United Kingdom has signed and ratified the Protocol.

The Secretary's report proposes a statement of understandings to be made an integral part of United States ratification of the Protocol, similar to the statement made by the United States at the time of signing the Protocol. It expresses our understanding concerning territories and territorial claims, transit and transport privileges, nonuse of nuclear weapons, and the definition of "nuclear weapon". The Arms Control and Disarmament Agency, the Department of Defense, and the Atomic Energy Commission concur in the proposed submission to the Senate.

*Theodore L. Eliot, Jr.*  
Theodore L. Eliot, Jr.  
Executive Secretary

Enclosures:

1

- Report and message accompanied by: Treaty for the Prohibition of Nuclear Weapons in Latin America, including Protocols I and II.
- Proposed statement on U.S. ratification of Protocol II.

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DEPARTMENT OF STATE  
WASHINGTON

July 16, 1970

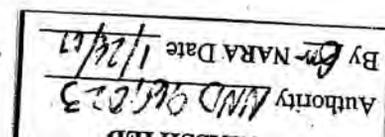
The President:

I have the honor to submit to you, with the recommendation that it be transmitted to the Senate for its advice and consent to ratification, Additional Protocol II, signed on April 1, 1968 on behalf of the United States of America, to the Treaty for the Prohibition of Nuclear Weapons in Latin America. The Treaty itself is not open for signature to states that are located outside Latin America, and such states are not eligible for membership in, or bound by the decisions of, the regional organization established to implement the Treaty.

Additional Protocol II to the Treaty is specifically designed for adherence by nuclear-weapon states that are willing to undertake to respect the express aims and provisions of the Treaty, not to contribute to its violation in the territories to which it applies, and not to use or threaten to use nuclear weapons against the states parties to the Treaty. The United Kingdom has signed and ratified the Protocol. The obligations which states assume upon ratification of the Protocol derive from both the provisions of the Protocol and the provisions of the Treaty itself.

The President,

The White House.



The Treaty for the Prohibition of Nuclear Weapons in Latin America is the culmination of a regional effort to keep Latin America free of nuclear weapons. A Joint Declaration on the subject was issued by Bolivia, Brazil, Chile, Ecuador, and Mexico on April 29, 1963. This effort was welcomed and encouraged by a resolution adopted by the United Nations General Assembly on November 27, 1963. After several years of international negotiation, including consideration of comments by the United States, the Treaty was opened for signature on February 14, 1967. The United States has expressed its support for the Treaty not only by signing Additional Protocol II, but also in public statements made by President Johnson and Vice President Humphrey, by our representatives in the Eighteen Nation Disarmament Committee and the United Nations General Assembly, and by United States votes for resolutions of the General Assembly in 1967 and 1968 commending the Treaty and calling upon those eligible to sign and ratify Protocol II to do so.

The Treaty has been signed by all Latin American states except Cuba (whose present government has indicated that it does not intend to sign) and Guyana (whose eligibility to sign is in dispute). It is currently in force for 16 of these states, and a new regional organization has been established to implement it.

The basic undertakings of the Contracting Parties (defined in Article 2 as the states for which the Treaty is in force) are set forth in Article 1. They are (a) to use exclusively for peaceful purposes the nuclear material and facilities which are under their jurisdiction; (b) to prohibit and prevent in their respective territories the testing, use, manufacture, production or acquisition by any means whatsoever of any nuclear weapons; (c) to prohibit and prevent in their respective territories the receipt, storage, installation, deployment and any form of possession of nuclear weapons by the Contracting Parties themselves, by anyone on their behalf, or in any other way; and (d) 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 negotiating history of the Treaty makes it clear that these prohibitions do not affect transit and transport privileges of non-Contracting Parties. This fact is reflected in the statement which accompanied United States signature of Protocol II and which, it is proposed, should accompany our ratification thereof. In that statement 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."

The United States statement makes clear also that, as regards the undertaking in Article 3 of Protocol II not to use or threaten to use nuclear weapons against the Treaty parties, this country would have to consider that an armed attack by a Contracting Party to the Treaty, in which it was assisted by a nuclear-weapon state, would be incompatible with that Party's corresponding obligations under Article 1 of the Treaty.

Article 3 of the Treaty defines "territory" to include the territorial sea, air space and any other space over which the state exercises sovereignty in accordance with its own legislation. The statement of the United States makes clear our understanding that the Treaty and its protocols have no effect upon the international status of territorial claims.

Article 4 of the Treaty defines the zone of application of the Treaty as "the whole of the territories for which the Treaty is in force". The article also makes provision for a broader zone of application within the Western Hemisphere, including international waters, upon the fulfillment of all of a number of conditions, one of which is United States ratification of Protocol I to the Treaty. Protocol I calls upon states to apply the status of denuclearization in territories for which they are internationally responsible within the Treaty zone. The United States has not signed Protocol I, and the United Kingdom is the only nuclear-weapon state that has to date become a party to this Protocol.

Article 5 of the Treaty defines nuclear weapons.

It excludes an instrument that may be used for the transport or propulsion of a nuclear explosive device if it is separable from the device itself and not an indivisible part thereof. But it includes any device which is capable of releasing nuclear energy in an uncontrolled manner and which has a group of characteristics that are appropriate for use for warlike purposes. This definition is particularly significant in connection with Article 18 of the Treaty, which deals with peaceful uses of nuclear explosions. Paragraph 1 of that article provides that the Contracting Parties may carry out explosions of nuclear devices for peaceful purposes, or collaborate with third parties for the same purpose, provided they do so in accordance with the provisions of Article 18 and the other articles of the Treaty, particularly Articles 1 and 5. Paragraph 4 of Article 18 specifically permits the Contracting Parties to accept the collaboration of third parties for such purposes.

The statement which accompanied signature by the United States of Additional Protocol II, made the following comments on the definition of "nuclear weapon" in Article 5:

"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."

Subsequent to the making of this statement, the United States in fact joined in such a commitment in the Nuclear Non-Proliferation Treaty, which entered into force on March 5, 1970. Accordingly, it is proposed that when used in connection with our ratification of Additional Protocol II the last sentence of this statement be updated to read as 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."

Neither the Treaty nor our adherence to Additional Protocol II would present any bar to the use by the United States of nuclear explosions for excavation of a new Atlantic-Pacific interoceanic canal with the consent of the party in whose territory such excavation took place, although it would have to be consistent with other treaty obligations, including the Limited Test Ban Treaty. But the Treaty for the Prohibition of Nuclear Weapons in Latin America would require certain procedures

to be followed in connection with such a project. These include (a) advance notification to the International Atomic Energy Agency, containing the information specified in paragraph 2 of Article 18, and (b) observation as provided in paragraph 3 of that article, by representatives of the International Atomic Energy Agency and of the new regional organization established to implement the Treaty. \*

Articles 6-11 of the Treaty are not of direct interest to the United States, since they relate to meetings of the signatories and the organization and procedures of the regional "Agency for the Prohibition of Nuclear Weapons in Latin America" (the Spanish acronym for which is OPANAL). The first meeting of this organization was held in Mexico City September 2-9, 1969, and was attended by a United States observer. Article 7 of the Treaty provides that "Only the Contracting Parties shall be affected by its decisions."

Articles 12-16 of the Treaty establish a control system for the purpose of verifying compliance with the obligations entered into by the Contracting Parties in accordance with Article 1. Article 13 requires the Contracting Parties to enter into agreements with the International Atomic Energy Agency for the application of its safeguards to their nuclear activities.

I enclose a copy of the Treaty and Additional Protocol I, which I suggest be transmitted to the Senate for its information in connection with consideration of Protocol II. Also enclosed is a copy of the statement which I propose be made an integral part of United States ratification of Protocol II.

I believe that ratification of Additional Protocol II to the Latin American Nuclear Free Zone Treaty would complement our other efforts to prevent the proliferation of nuclear weapons.

Respectfully submitted,



Enclosures:

1. Additional Protocol II to the Treaty for the Prohibition of Nuclear Weapons in Latin America.
2. Proposed statement on U.S. ratification of Additional Protocol II.
3. Treaty for the Prohibition of Nuclear Weapons in Latin America, and Additional Protocol I.

Clearances:

ACDA - Mr. Day <i>ew</i>	L - Mr. Salans
Mr. Hancock <i>ew</i>	L/T - Mr. Bevans <i>C.B.</i>
PM - Mr. Martin <i>ew</i>	L/PMO - Mr. Huang <i>ew</i>
SCI - Mr. Zook <i>ew</i>	L/ARA - Mr. Feldman <i>ew</i>
ARA/LA/USOAS - Mr. Crimmins <i>ew</i>	Defense/ISA - Col. Randall <i>ew</i>
IO/UNP - Mr. Higgins <i>ew</i>	Atomic Energy Commission -
H - Mr. Leahy <i>ew</i>	Mr. Labowitz <i>ew</i>

PROPOSED STATEMENT ON RATIFICATION  
BY THE UNITED STATES OF AMERICA OF  
ADDITIONAL PROTOCOL II TO THE TREATY FOR THE  
PROHIBITION OF NUCLEAR WEAPONS IN LATIN AMERICA

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 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 device.

### 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..