

MORANDUM

THE WHITE HOUSE

WASHINGTON

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January 24, 1969

MEMORANDUM FOR DR. KISSINGER

Subject: Provisions of the NPT and Associated Problems

At your request, I have prepared the following summary of the provisions of the Non-Proliferation Treaty (NPT), copy attached (Tab A), and the problems associated with these provisions, particularly as they relate to the FRG. The FRG's present reservations about the treaty, however, are not primarily directed at specific provisions but rather constitute reluctance to surrender a future nuclear option, particularly without obtaining compensatory concessions in its relations with the Soviet Union. Nevertheless, some of the points discussed below, including those previously resolved, could be advanced by the FRG as reasons for attempting to reopen the treaty or delaying signature.

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Articles I and II contain the basic obligations of the parties to the treaty to prevent the proliferation of nuclear weapons. Article I prohibits nuclear-weapon states from transferring to any recipient nuclear weapons or devices and from assisting the non-nuclear-weapon states in manufacturing or otherwise acquiring nuclear weapons. Article II obligates the non-nuclear-weapon states not to receive nuclear weapons or devices from any transferor whatsoever, and not to manufacture or seek assistance in the manufacture of nuclear weapons or devices.

These articles, which were the product of a long negotiation with the Soviet Union and our NATO allies, were designed as a compromise that protects existing NATO arrangements but precludes arrangements such as the MLF/ANF. The precise implication of these articles on present and future arrangements was originally a matter of serious concern to our NATO allies, particularly the FRG. To resolve these questions, our interpretations of these articles were given to the Soviet Union and our NATO allies during the course of the negotiations in the form of a series of Questions and Answers (Tab B). While we did not ask the Soviet Union to agree with our interpretations, it was made clear that they would be made part of the legislative record of the treaty and that formal Soviet objections would present

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serious problems. To this end, Secretary Rusk made the following statement at the hearings on the NPT before the Senate Committee on Foreign Relations:

"The treaty deals only with what is prohibited, not with what is permitted. It prohibits transfer to any recipient whatsoever of nuclear weapons or control over them, meaning bombs and warheads. It also prohibits the transfer of other nuclear explosive devices, because a nuclear explosive device intended for peaceful purposes can be used as a weapon or can be easily adapted for such use. It does not deal with, and therefore does not prohibit, transfer of nuclear delivery vehicles or delivery systems, or control over them to any recipient, so long as such transfer does not involve bombs or warheads. It does not deal with allied consultations and planning on nuclear defense so long as no transfer of nuclear weapons or control over them results. It does not deal with arrangements for deployment of nuclear weapons within allied territory as these do not involve any transfer of nuclear weapons or control over them unless and until a decision were made to go to war, at which time the treaty would no longer be controlling. And, it does not deal with the problem of European unity, and would not bar succession by a new federated European state to the nuclear status of one of its former components."

Although Foreign Minister Brandt has stated his satisfaction with these interpretations, there is a possibility that the FRG might seek to extend the interpretations to permit the establishment of a European "defensive" nuclear weapons system prior to the establishment of a fully federated European state.

These articles prohibit non-nuclear-weapon states from developing a nuclear device for peaceful purposes since it is clearly not possible to distinguish these technologies. Brazil has made a major point of this issue as a basis for objecting to the treaty, claiming its sovereign right to develop nuclear explosives for peaceful purposes. Despite continued efforts, however, Brazil has not been able to develop significant support for this position, and this has not become an issue among our Western allies.

These articles deal only with nuclear weapons and devices and therefore do not preclude other military nuclear programs such as nuclear submarines.

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Article III requires that all non-nuclear-weapon states accept international safeguards to prevent the diversion of fissionable material from peaceful

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nuclear activities to nuclear weapons. This article was initially criticized by our European allies and others as being discriminatory since it did not cover the nuclear-weapon states. It was argued that, although such safeguards were not technically required since the nuclear-weapon states were permitted under the treaty to continue the manufacture of nuclear weapons, this arrangement would put the non-nuclear-weapon states at a competitive disadvantage in peaceful uses. This problem was apparently resolved to the satisfaction of the FRG and most other countries when the US and the UK stated that they would voluntarily put their peaceful nuclear facilities under IAEA inspection when these safeguards were accepted by other countries.

The 1st paragraph of Article III provides that the safeguards procedures on fissionable material will be contained "in an agreement to be negotiated and concluded with the International Atomic Energy Agency in accordance with the Statute of the International Atomic Energy Agency and the Agency's safeguards system. . ." The wording of this and the subsequent paragraphs in Article III were the result of a long, and presumably successful, negotiation with our Western allies and the Soviet Union to find a formula that would provide for international IAEA-approved safeguards and also protect EURATOM as an independent institution without duplicating safeguard requirements. The problem was made extremely complex since France was a member of EURATOM but did not intend to sign the NPT. Moreover, France as a nuclear-weapon state was not subject to safeguards under the NPT which led to the stated fear that France might thereby obtain a special advantage with respect to the other members of EURATOM contrary to the Treaty of Rome. The language finally agreed upon and the US-UK unilateral voluntary acceptance of safeguards have apparently satisfied the FRG and other EURATOM countries that their interests are adequately protected.

The 2nd paragraph of Article III prohibits any party to the treaty from providing fissionable material for peaceful purposes to any non-nuclear-weapon state unless the fissionable material is subject to the safeguards of Article III. Our EURATOM allies have been concerned that failure of EURATOM to negotiate an agreement with IAEA within the required time (see below) would prevent the US from providing fissionable material under previous or future agreements. In response to requests from EURATOM countries for commitments for future supplies that would clearly be contrary to the language of the treaty, we have taken the position that we do not believe this situation could arise and this point has not recently been pursued by any of the EURATOM countries. This could become a serious problem, however, if EURATOM and IAEA do not in fact work out an agreement within the required time.

The 3rd paragraph of Article III requires that safeguards not interfere with the economic or technological development of the parties or international

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cooperation in peaceful nuclear activities. This paragraph was intended to be responsive to the early concern, particularly in the FRG, that the system of safeguards would put them at a disadvantage in international competition in the field of peaceful nuclear activities.

The 4th paragraph of Article III specifically permits the IAEA to negotiate with groups of states (i. e., EURATOM) and provides that negotiation of agreements with the IAEA shall begin within 180 days of entry into force of the treaty and that the agreements shall enter into force within 18 months after the initiation of the IAEA negotiations. For countries that deposit their ratification subsequently, the agreements will enter into force within 18 months after the deposit of ratification. The timing of IAEA/EURATOM negotiations presents a problem since we told the EURATOM countries that we would take into consideration the status of the IAEA/EURATOM negotiations before our ratification of the treaty. These negotiations, however, will presumably not begin until the FRG signs the NPT and it seems clear that the FRG will not sign until the treaty has been ratified by the US. In these circumstances, the lack of progress on a EURATOM/IAEA agreement does not constitute grounds for our withholding ratification and there is no pressure now from the EURATOM countries for us to do so. In view of the deadline in these procedures and their concern over an assured US supply of fissionable material (see above), EURATOM countries plan not to ratify until they are confident of the outcome of EURATOM-IAEA negotiations.

Article IV is designed to reassure the non-nuclear-weapon states that the treaty will not affect their rights to participate fully in the use of nuclear energy for peaceful purposes. All parties "undertake to facilitate and have the right to participate in the fullest exchange of equipment, materials, and scientific and technological information for the peaceful uses of nuclear energy." This wording may create a future problem if various countries, such as the FRG, claim that we have an obligation to exchange information on subjects such as U-235 isotope separation technology which relate to peaceful uses but which we consider to be sensitive security information.

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Article V is designed to compensate non-nuclear-weapon states for agreeing not to develop nuclear explosives even for peaceful uses by providing assurances and the mechanism for them to participate in the potential benefits from the use of nuclear explosives for peaceful purposes. It provides that devices will be provided under appropriate international observation on a non-discriminatory basis and that the charge for explosive devices will be "as low as possible and exclude any charge for research and development." It provides that non-nuclear-weapon states will obtain these services by special international agreements through an appropriate

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international body and that negotiations on this subject will commence as soon as possible after the treaty enters into force. Although Brazil continues to insist on the sovereign right to develop nuclear explosives for peaceful purposes, this article appears to have taken care of most of the earlier objections on this point by other states. Nevertheless, this article may create future problems since the nature of the international agreements and the indicated international body are not agreed upon and will present some complex technical and political problems. The report of the Senate Committee on Foreign Relations was particularly concerned about the apparently open-ended obligation assumed by the US to provide these services to all countries on a highly subsidized basis. Nuclear excavation projects which will probably be of principal interest to most countries will require an amendment to the Limited Test Ban Treaty. Finally, this commitment to the further use of nuclear explosives for peaceful purposes almost certainly rules out the possibility of a tenable comprehensive test ban treaty.

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Article VI commits all parties to pursue negotiations in good faith relating to a cessation of the arms race and to nuclear disarmament. This is an essentially hortatory statement and presents no problems.

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Article VII makes clear that the treaty in no way affects the right to establish regional nuclear free zones. This is essentially a bow to the achievement of the Latin America Nuclear Free Zone Treaty (Treaty of Tlatelolco) and presents no problems.

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Article VIII establishes procedures for amending the treaty and provides for a review conference five years after the treaty enters into force and each five years thereafter at the request of the majority of the parties to the treaty.

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Article IX designates the US, UK, and USSR as depository governments and provides that the treaty shall enter into force upon the deposit of instruments of ratification of the depository governments and 40 other signatory states. This procedure could permit the treaty to enter into force without

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any of the key near-nuclear-weapon states being parties to the treaty. The Senate has recommended that the President consider delaying depositing the instruments of ratification until such time as he has "received positive assurance that a majority of those countries nearest to a nuclear-weapons capability intend to adhere to the treaty." This is a potential chicken-and-the-egg problem since it is clear that US ratification of the treaty is required to provide impetus to the treaty and is probably required before any of the hold-out near-nuclear countries will sign the treaty.

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Article X permits any party to withdraw from the treaty after three months' notice "if it decides that extraordinary events relating to the subject matter of this treaty jeopardize the supreme interests of its country." It also provides that 25 years after the treaty enters into force a majority of the parties to the treaty will decide whether the treaty shall continue in force indefinitely or for an additional fixed period. The latter provision was included primarily in response to the basic concern of the FRG (Chancellor Kiesinger) about entering into an obligation of indefinite duration.

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Article XI defines authentic texts and the procedure for depositing the original treaty as well as copies to the signatory states.

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The Preamble has twelve paragraphs expressing the consensus of the parties. The first three reflect the importance and urgency of preventing nuclear proliferation; the next two express support for international safeguards on peaceful nuclear activities and for improvements in safeguards techniques; the next two deal with the principle of sharing the benefits of peaceful applications of nuclear energy, and of making technological by-products of work on nuclear explosives available for peaceful purposes; the next four express the urgent need for further progress toward disarmament and limitations on the nuclear arms race; and the last reaffirms the principles of the United Nations Charter regarding the use of force and threats of force in international relations. Although the preamble is essentially hortatory in nature, it is given some additional significance by the provision in Article VIII that the first conference to be held after five years to review the operation of this treaty "with a view to assuring that the purposes of the preamble and the provisions of the treaty are being realized."

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The principal problem area in the preamble is the final paragraph that reaffirms the principles of the United Nations Charter regarding the use of force and threats of force in international relations. During the course of Soviet-German bilateral exchanges in 1967 and 1968, the Soviets affirmed the continuing validity of Articles 53 and 107 of the UN Charter (Tab C) regarding its rights to take measures against enemy states during World War II. The FRG, which has been concerned about the problem of "nuclear blackmail" has, therefore, questioned whether it is covered by this portion of the preamble in the eyes of the Soviet Union. After the Soviet intervention in Czechoslovakia focussed attention on this issue in the FRG, we publicly gave the FRG assurances that we did not consider Articles 53 and 107 of the UN Charter gave the Soviet Union the right to intervene in the FRG and reaffirmed the obligations of the North Atlantic Treaty in the event of such Soviet action. The Senate Committee on Foreign Relations was particularly concerned that the Soviet intervention in Czechoslovakia was in violation of this part of the preamble.

Military Guarantees -- The treaty contains no military guarantees. Despite strong pressure from many countries, it was clear during the negotiations that neither the US nor the USSR was prepared to include these in the treaty. However, in connection with the UN General Assembly's consideration of the draft NPT, the UN Security Council adopted a resolution essentially reaffirming the obligations of the UN Charter in connection with the NPT. This resolution was accompanied by separate statements by the US and the USSR which indicated their intention of honoring their commitments under the UN Charter in connection with the NPT. In testimony before the Senate Committee on Foreign Relations, Secretary Rusk took the position that there were no additional obligations assumed by the US under the UN security guarantee resolution. Nevertheless, in recommending that the Senate approve the NPT, the Committee made a special point that this did not construe approval of security guarantee measures embodied in the UN resolution or the supporting US declaration. During the negotiations, the FRG raised the guarantee problem in the context of what would happen to their existing security guarantee from the US in the event that NATO lapsed while the NPT was still in force. We have taken the position that, while we expect NATO to continue, the FRG would have adequate reason to exercise its rights under the withdrawal clause (Article X) in the unlikely event that NATO should lapse.

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In the above discussion, I have attempted to point up all the major problem areas in the treaty, including some which are now hopefully largely only of historical interest. I think that it is clear that great attention has been given to the specific objections of the FRG to the details of the treaty and that these objections have been essentially resolved. The FRG's continued reservations about the treaty reflect reluctance in many quarters there to give up a future nuclear option, particularly without compensatory concessions in the FRG's relations with the Soviet Union. Nevertheless, some of these complex issues could still be used by the FRG, or others, in an attempt to reopen the treaty or delay its entry into force.

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Attachments:

- Tab A - Treaty Text
- Tab B - Interpretations Q&A
- Tab C - Articles 53 & 107 of UN Charter

cc: Dr. Halperin - w/atts.
Mr. Sonnenfeldt - w/atts.

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