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THE PRESIDENT'S TRIP TO GERMANY
(Chancellor Adenauer's Funeral)

April 1967

Background Paper

The Non-Proliferation Treaty
and Germany

We believe that German problems with the Non-proliferation Treaty all center around one basic unspoken consideration--a reluctance to relinquish for all time Germany's access to atomic military power without some prospect of progress towards eliminating adamant Soviet opposition to the reunification of Germany. As it is, the Germans see little benefit in the Treaty for them, but also know that the international pressure on them to sign will be tremendous, if the Treaty comes into being. The Federal Republic has already forsworn the national production of nuclear weapons since 1954 and subjected itself to international controls. Many important members of Kiesinger's Christian Democratic Party had looked on the MLF as a means of resuming the international political stature to which they believe Germany has a claim, but they feel that the Treaty prevents this and similar options short of complete European federation. There is German resentment over the fact that the United States first sought agreement with the Soviet Union last fall on the text of a preliminary draft treaty before even beginning consultations on the text with its NATO allies. There is also a recent report that Kiesinger feels there must be a definite time limit--perhaps of 15 years--on an NPT in order to make it palatable to his own party.

Since the Kiesinger Government took office in December, we have consulted patiently and exhaustively with Germany and others. Most of the subsequent changes in the draft

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text, to which we are seeking Soviet concurrence this week, were incorporated in direct response to German requests. These changes, if acceptable to the Soviets, should go far to eliminate German problems with the phraseology of the Treaty. It will then be up to Kiesinger to decide whether German interests can be reconciled to the very concept of the Treaty. Faced with a critical and vocal press on the subject and with an influential nucleus of hard core opponents to the Treaty within his own party, government, and parliament, Chancellor Kiesinger is wrestling with this difficult decision right now.

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NON-PROLIFERATION TREATY INTERPRETATIONS

1. The treaty deals only with what is prohibited, not with what is permitted.
2. 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.
3. 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.
4. 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.
5. 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.

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6. 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. A new federated European state would have to control all of its external security functions including defense and all foreign policy matters relating to external security, but would not have to be so centralized as to assume all governmental functions. While not dealing with succession by such a federated state, the treaty would bar transfer of nuclear weapons (including ownership) or control over them to any recipient, including a multilateral entity.

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REDRAFT OF POSSIBLE
NON-PROLIFERATION TREATY FORMULATIONS

The following formulations represent the changes from the draft formulations of March 3, 1967.

New language is underlined. One asterisk * on revised language indicates that the change is to appear in the text tabled initially at Geneva if we are successful in achieving Soviet agreement to that end. Two asterisks ** indicates that while the United States would agree to the change, we believe it more likely to receive acceptance if put forward during the Geneva discussions after the initial tabling. Footnotes are used to explain the changes made from the April 3 draft formulations, discussed at the NAC meeting of April 4 and deletions from the earlier draft.

TEXT

The States concluding this Treaty, hereinafter referred to as the Parties to the Treaty,

Considering the devastation that would be visited upon all mankind by a nuclear war and the consequent need to make every effort to avert the danger of such a war and to take measures to safeguard the security of peoples,

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Believing that the proliferation of nuclear weapons would seriously enhance the danger of nuclear war,

In conformity with resolutions of the United Nations General Assembly calling for the conclusion of an agreement on the prevention of wider dissemination of nuclear weapons,

Undertaking to cooperate in facilitating the application of International Atomic Energy Agency safeguards on peaceful nuclear activities,

Expressing their support for research, development and other efforts to further the application of the principle of safeguarding effectively the flow of source and special fissionable materials by use of instruments and other techniques at certain strategic points.*¹

Declaring their intention to achieve at the earliest possible date ² the cessation of the nuclear arms race,

Urging the cooperation of all states in the attainment of this objective,

¹This paragraph replaces the paragraph of the April 3 draft which read "Expressing their support for national and international research and other cooperative efforts toward maximum utilization of technological advances to reduce the access to processes and facilities necessary for effective safeguards."

²Deletion of the phrase "at the earliest possible date," was suggested in the April 3 draft. It has been decided to retain the phrase.

Desiring to further the easing of international tension and the strengthening of trust between States, thus facilitating the elimination from national arsenals of nuclear weapons and the means of their delivery pursuant to a treaty on general and complete disarmament under strict and effective international control,

Noting that nothing in this Treaty affects the right of any group of States to conclude regional treaties in order to assure the total absence of nuclear weapons in their respective territories,

Affirming the principle that the benefits of peaceful applications of nuclear technology, including any technological by-products which may be derived by nuclear-weapon States from the development of nuclear explosive devices, should be available for peaceful purposes to all Parties, whether nuclear-weapon or non-nuclear-weapon States,³

³The substance of the preambular paragraph concerning peaceful uses of atomic energy which followed this paragraph has been moved to Article III Paragraph 5. As it appeared in the draft formulations of March 3, that paragraph read: "Convinced that in furtherance of this principle, all Parties are entitled to participate in the fullest possible exchange of scientific information for, and to contribute alone or in cooperation with other States to, the further development of the applications of atomic energy for peaceful purposes."

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Declaring their intention that potential benefits from any peaceful applications of nuclear explosions should be available through appropriate international procedures to non-nuclear-weapon Parties on a non-discriminatory basis and that the charge to such Parties for the explosive devices used should be as low as possible and exclude any charge for research and development.*

Have agreed as follows:

³(Continued)

As it appeared in the draft of April 3, that paragraph read: "Declaring that nothing in the provisions of this Treaty shall prejudice the rights of the Parties, in conformity with this Treaty, (i) to use nuclear energy for peaceful purposes, in particular for their economic development and social progress, (ii) to participate in the international exchange of nuclear material and equipment for the processing, use or production of nuclear material for peaceful purposes, and* to participate in the fullest possible exchange of scientific information for, and to contribute alone or in cooperation with other states or international organizations* to, the further development of the applications of atomic energy for peaceful purposes,"

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ARTICLE I

Each nuclear-weapon State Party to this Treaty undertakes not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly; and not in any way to assist, encourage, or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices.

ARTICLE II

Each non-nuclear-weapon State Party to this Treaty undertakes not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.

ARTICLE III⁴

For the purpose of providing assurance that source or special fissionable material covered by this Article is not diverted to nuclear weapons or other nuclear explosive devices:

1. Each non-nuclear-weapon State Party to this Treaty undertakes to have international safeguards meeting the requirements of this Article on all source or special fissionable materials for peaceful purposes within its territory or under its jurisdiction. In cooperating with any non-nuclear-

⁴The Article III formulation given to the Allies prior to the March 3 draft formulations read as follows: "Each non-nuclear-weapon State Party to this Treaty undertakes to accept the safeguards of the International Atomic Energy Agency on all its peaceful nuclear activities as soon as practicable. Each State Party to this Treaty undertakes not to provide source or fissionable material, or specialized equipment or non-nuclear material for the processing or use of source or fissionable material or for the production of fissionable material, for peaceful purposes to any non-nuclear-weapon State unless such material and equipment are subject to such safeguards."

The present Article III contains four changes from the April 3 draft formulations. They are: (a) Revising the first sentence of paragraph 1 to limit its application to source or fissionable materials. (b) Revising paragraph 2 to require IAEA members as well as Euratom members to facilitate agreement between the two agencies. (c) Adding a statement in the text of the treaty that safeguards are to be implemented in a manner designed to avoid hampering the economic or technological development of the Parties having them. (d) Shifting from the preamble to the text the preambular paragraph beginning: "Declaring that nothing in the provisions of the Treaty shall prejudice the rights of the parties..." (see footnote 3 above) One minor modification of this language is to add the word "safeguarded" in subparagraph (ii) of paragraph 5.

weapon State with respect to peaceful nuclear activities within the territory or under the jurisdiction of such State, each Party to this Treaty undertakes not to provide

- (a) source or special fissionable material unless the material shall be subject to such safeguards; or
- (b) equipment or material especially designed or prepared for the processing, use or production of special fissionable material unless the special fissionable material shall be subject to such safeguards;

2. After the original entry into force of this Treaty, each non-nuclear-weapon State Party to this Treaty which has source or special fissionable material subject to any international safeguards system other than that of the International Atomic Energy Agency, and each other Party to the Treaty which is a member of that Agency, undertakes to facilitate agreement, as provided for in this Article, on verification by that Agency of the effectiveness of the international safeguards system applied to such material;

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3. To meet the requirements of this Article, international safeguards (a) shall be either those of the IAEA or such other international safeguards generally consistent therewith as are accepted by the IAEA under verification procedures mutually agreed by the authorities of the IAEA and the authorities of the other international safeguards system concerned, and (b) shall be applied as soon as practicable but no later than three years from the date of the original entry into force of this Treaty;

4. Agreement on the implementation of IAEA verification of another international safeguards system, as provided for in this Article, shall be reached as soon as practicable but no later than three years from the date of the original entry into force of this Treaty; and ^{4a}

5. The international safeguards required by this Article shall be implemented in a manner designed to avoid hampering the economic or technological development of the Parties having them. Nothing in this Treaty shall prejudice the rights of the Parties, in conformity with this Treaty, (i) to use nuclear

4a This paragraph suggested by the FRG on April 19 and concurred in by US at NAC meeting on April 20. This paragraph replaces paragraph 4 from April 3 draft which read: "In any case where agreement on the implementation of IAEA verification of another international safeguards system, as provided for in this Article, has not been reached within three years from the date of the original entry into force of this Treaty, the safeguards of the IAEA shall be applied."

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energy for peaceful purposes, in particular for their economic development and social progress, (ii) to participate in the safeguarded international exchange of nuclear material and equipment for the processing, use or production of nuclear material for peaceful purposes, and (iii) to participate in the fullest possible exchange of scientific information for, and to contribute alone or in cooperation with other states or international organizations to, the further development of the applications of atomic energy for peaceful purposes.

ARTICLE IV

1. Any Party to this Treaty may propose amendments to this Treaty. The text of any proposed amendment shall be submitted to the Depositary Governments which shall circulate it to all Parties to the Treaty. Thereupon, if requested to do so by one third or more of the Parties, the Depositary Governments shall convene a conference, to which they shall invite all the Parties, to consider such an amendment.

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2. Amendments shall enter into force for each Party to the Treaty accepting the amendments upon their acceptance by a majority of the Parties to the Treaty and thereafter for each remaining Party to the Treaty on the date of acceptance by it.*⁵

3. Five years after the entry into force of this Treaty, a conference of Parties shall be held in Geneva, Switzerland, in order to review the operation of the Treaty with a view to assuring that the purpose of the Preamble** and provisions of the Treaty are being realized. At five year intervals thereafter, if a majority of the Parties notify the Depositary Governments of their desire to hold an additional review

⁵Paragraph 2 from the March 3 formulations read as follows: "Any amendment to this Treaty must be approved by a majority of the votes of all the Parties to the Treaty, including the votes of all nuclear-weapon States Party to this Treaty. The amendment shall enter into force for all Parties upon the deposit of instruments of ratification by a majority of all the Parties, including the instruments of ratification of all nuclear-weapon States Party to this Treaty."

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conference, a conference of Parties shall be held
after such notification in Geneva, Switzerland, for the
purpose as the initial review conference.**

4. Preparations for any review conference, including
formulation of an agenda, shall be carried out by a Preparatory
Commission consisting of representatives of (i) each non-
nuclear-weapon State Party to this Treaty that is also a
member of the Board of Governors of the International Atomic
Energy Agency at the time of any meeting of the Preparatory
Commission and (ii) each nuclear-weapon State Party to this
Treaty. The Preparatory Commission shall meet in Geneva,
Switzerland, four years and six months after the entry into
force of this Treaty to prepare for the first review con-
ference. For any later review conference, the Depositary
Governments shall convene a meeting of the Commission as soon
as practicable after a majority of the Parties has requested
such a conference.**

ARTICLE V

1. This Treaty shall be open to all States for signature. Any State which does not sign the Treaty before its entry into force in accordance with paragraph 3 of this article may accede to it at any time.

2. This Treaty shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of _____, which are hereby designated the Depositary Governments.

3. This Treaty shall enter into force after its ratification by all nuclear-weapon States signatory to this Treaty, and _____ other signatories to this Treaty, and the deposit of their instruments of ratification. For the purposes of this Treaty, a nuclear-weapon State is one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to January 1, 1967.

4. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Treaty, it shall enter into force on the date of the deposit of their instruments of ratification or accession.

5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or of accession, the date of the entry into force of this Treaty, and the date of receipt of any requests for convening a conference or other notices.

6. This Treaty shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations.

ARTICLE VI

This Treaty shall be of unlimited duration.

Each Party shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other Parties to the Treaty and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.

ARTICLE VII

This Treaty, the English, Russian, French, Spanish and Chinese texts of which are equally authentic, shall be deposited in the archives of the Depositary Governments. Duly certified copies of this Treaty shall be transmitted by the Depositary Governments to the Governments of the signatory and acceding States.

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