STATEMENT BY
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to the
THIRD SESSION OF THE PREPARATORY COMMITTEE
FOR THE 2005 REVIEW CONFERENCE OF
THE TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS

Articles I and II

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Check against delivery.
During ratification hearings on the NPT before the United States Senate in 1968, the chief U.S. negotiator of the NPT noted that fact, but also made clear that "manufacture" was not limited to final assembly of a nuclear weapon, and facts indicating that the purpose of a particular activity was acquisition of nuclear weapons would tend to show noncompliance.

As the foregoing statement implies, it is not always easy to determine when a country has violated Article II because intent is a key factor. That is, does the acquiring state intend to use the technology for peaceful purposes or for non-peaceful purposes? For this reason, the question of compliance with Article II is often not addressed. By contrast, the Article III obligation of non-nuclear weapon states to place nuclear material and facilities under IAEA safeguards is more objective, so compliance determinations under that Article can be relatively straightforward.

In the remaining portion of my time, I would like to consider with you the question of when a violation of Article II occurs and how it can be determined. My objective is to stimulate discussion on what is a central obligation of the Nuclear Nonproliferation Treaty. It is to underscore that actual possession of a nuclear weapon is not the only instance in which a violation of Article II occurs. It would be counter-intuitive to argue that proliferation must be completed before a violation can be said to occur. After reviewing three specific examples, I will suggest some general guidelines to consider in determining when a violation has occurred, short of actual possession.

The DPRK is a clear case where a party to the NPT ultimately stated explicitly that its purpose was to acquire nuclear weapons. This dramatic pronouncement was preceded by a long history of noncompliance and claims that its nuclear activities were entirely for peaceful purposes. For seven years following its adherence to the Treaty, the DPRK delayed conclusion of a safeguards agreement with the IAEA, violating Article III. Shortly after concluding its safeguards agreement, the DPRK began to obstruct necessary inspections, which led to a non-compliance finding by the IAEA Board of Governors. In 1994, the DPRK and the United States signed the Agreed Framework, which established a process under which the DPRK was to come into full compliance with its IAEA safeguards agreement and the NPT. By moving ahead with an undeclared uranium enrichment program, the DPRK violated the Agreed Framework. When confronted, the DPRK admitted its uranium enrichment capability and then proceeded to escalate its noncompliance. It removed IAEA seals on the facilities frozen under the Agreed Framework.
Mr. Chairman,

One of the NPT’s major strengths is its ability to confront and adapt to change. While we can be justifiably proud of past success, we must acknowledge that noncompliance with its nonproliferation provisions now challenges the Treaty. Unfortunately, a few NPT parties have chosen not to comply. How other parties respond to such noncompliance presents the greatest challenge presently facing the nonproliferation regime.

Mr. Chairman, I will begin by making a few observations with respect to Article I, but spend the majority of my remarks on Article II.

Article I

Article I requires the five nuclear weapon states not to transfer possession or control of nuclear weapons or other nuclear explosive devices to any recipient and not to assist, encourage, or induce any non-nuclear weapon state to acquire nuclear weapons. To fulfill these obligations, the nuclear weapon states must have in place comprehensive and effective export controls and must protect sensitive nuclear weapons information, facilities, and material. In meeting these nonproliferation obligations, nuclear weapon states must recognize that non-parties to the NPT and non-state actors — as well as non-nuclear weapon states that are parties — may seek to acquire nuclear capabilities.

Steps have recently been taken to establish and strengthen international cooperative measures. These include strengthening the IAEA’s capabilities to assist states to prevent nuclear terrorism, efforts to strengthen the Convention on Physical Protection of Nuclear Material, accelerated work under the Cooperative Threat Reduction and Department of Energy programs in the states of the former Soviet Union, and the G-8 Global Partnership. These measures, while helpful, cannot replace the core responsibility of each nuclear weapon state to establish, maintain and enforce effective and comprehensive controls over exports, facilities, and information.

Article II Compliance Successes and Challenges

Under Article II, non-nuclear weapon state parties undertake not to “manufacture or otherwise acquire” nuclear weapons or “seek or receive any assistance in the manufacture” of nuclear weapons. Legal standards for these terms were not definitively established during the negotiation of the Treaty.
disabled IAEA cameras and expelled IAEA inspectors. In November 2002, the IAEA Board issued a strong resolution on the DPRK in response to its continued unwillingness to cooperate fully with the IAEA and the DPRK's disclosure of its unsafeguarded uranium enrichment program. The consensus resolution deplored the DPRK's public statements that it was entitled to possess nuclear weapons, contrary to its NPT obligations. In January 2003, the DPRK declared its intention to withdraw from the Treaty. The United States does not believe that any state can violate the NPT with impunity and, when caught, escape all consequences by invoking the withdrawal clause in Article X.

The DPRK engaged in a broad range of unsafeguarded nuclear activities focused on manufacturing weapons-grade nuclear material. Its intent to use this material for nuclear weapons was manifest in its efforts to conceal these actions and, more recently, in the acknowledgement of its nuclear weapons ambitions. Clearly, the DPRK actions to "manufacture or otherwise acquire" nuclear weapons violated Article II. That the DPRK only claimed possession of a nuclear weapon after it had withdrawn from the NPT is immaterial to the Article II violation, which took place much earlier. To the extent that the DPRK sought or received "any assistance" in these efforts to manufacture nuclear weapons, this, too, violates Article II.

In contrast to the DPRK's declaring its intent to acquire nuclear weapons, the more common tactic for an NPT party seeking nuclear weapons—also followed by the DPRK until 2002—has been to assure other parties that all its nuclear activities are for peaceful purposes.

Take the case of Iran. Iran is an NPT party. It has a safeguards agreement in force. It has signed the Additional Protocol, but continues to delay the early ratification to which it committed last fall. It claimed it would act as if the Protocol were in force, pending ratification, although the March 30, 2004 IAEA Note indicates that Iran continues to try to circumvent access. It remains for the IAEA to say whether Iran's performance has improved since—we are doubtful.

It is clear now that for 18 years, while portraying itself as in full compliance with the NPT, Iran violated safeguards, engaged in deception and denial, and conducted undeclared, clandestine experiments in all sensitive aspects of the nuclear fuel cycle. Iran's pattern of deception and denial continued even after the commencement of investigations by the IAEA; we believe it continues to this day. Iran grudgingly admits to facets of its sprawling secret nuclear program only when confronted with evidence that disproves its previous denials. In at least one
instance, it delayed an inspection until it could “sanitize” the facility in order to conceal evidence of its unsafeguarded enrichment activities from the IAEA.

Last year I spoke based on U.S. information. This year the IAEA has confirmed these facts. The conclusion is inescapable: Iran is continuing to dissemble and deceive. In the two years since Iran’s clandestine program first came to light, and six months after the IAEA Director General confirmed Iran’s “breaches of its obligations to comply” with its safeguards agreement, cooperation only comes grudgingly and in response to having been caught. As the IAEA has confirmed, many troubling questions about Iran’s nuclear activities remain unanswered.

Legitimate peaceful nuclear activities do not require denial and deception. The NPT regime contemplates the possibility of providing nuclear assistance to those who abide by their Treaty commitments and seek assistance for genuinely peaceful purposes. No country with peaceful nuclear intentions needs to engage in the duplicity and dishonesty that characterize Iran’s relationship with the IAEA. Iran still claims that it has no interest in nuclear weapons. At the Second Preparatory Committee, in 2003, we heard several statements from Iranian representatives that Iran’s nuclear program is only for peaceful purposes. Evidently, we were to believe that Iran’s covert, nuclear program was peaceful—contrary to ample evidence of military involvement and weapons intentions. The United States believes that the facts, taken as a whole, show that Iran intended to develop nuclear weapons, and that this intent coupled with the clandestine activities reported by the IAEA lead to the conclusion that Iran has violated Article II as well as Article III of the Treaty. How long will the international community accept Iran’s dissembling and deceit regarding these violations of core obligations?

There is a third case: Libya. For many years my Government expressed its concern that Libya was pursuing nuclear weapons. Our worries were well-founded. Following lengthy discussion by the U.K. and my own Government with Libya, we now know that Libya, like Iran and the DPRK, was pursuing a secret nuclear weapons program while publicly proclaiming that the intent of its program was peaceful. Libya also revealed that it clandestinely received many hundreds of tons of nuclear-related equipment from A. Q. Khan’s international black market trading network and through other illicit means.

In sharp contrast to Iran and the DPRK, Libya last December publicly committed itself to voluntarily relinquish all internationally banned weapons, in nuclear and chemical weapons, as well as MTCC-class
missiles. At Libya’s request, the United States and the United Kingdom have worked closely with Libya to help it fulfill its December commitments, while coordinating closely with the IAEA and OPCW. The Libyan case provides a compelling example of how the renunciation of weapons of mass destruction can be a pathway back into the international community. Libya’s decisions have been applauded worldwide, including by the IAEA Board of Governors and the President of the United Nations Security Council.

**Meeting the Challenges We Face**

Each specific case of noncompliance requires tailored treatment. We must bear in mind, however, that our decisions in specific cases impact the nonproliferation regime as a whole.

Turning from these specific cases, I would like to set forth some general principles that should be used in determining whether a state’s actions manifest an intent to acquire nuclear weapons. Common sense dictates that factors such as the following indicate intent to use a state’s nuclear infrastructure to conceal nuclear weapons development:

- the presence of undeclared nuclear facilities;
- procurement patterns inconsistent with a civil nuclear program -- clandestine procurement networks, fraudulent procurement through the use of front companies, false end use information or other false documents;
- a pattern of Article III safeguards violations that suggest not mere error or incompetence, but willful violations and/or systematic deception and denial efforts aimed at concealing nuclear activities from the IAEA; and
- a nuclear program that has little, if any, coherence for peaceful purposes, but great coherence for weapons purposes; for example, pursuing heavy water production when the state’s civil facilities use light water as a moderator and building enrichment facilities when there are other, cheaper national energy resources or an outside source of enriched uranium available to the state, etc.

Some might call this mere circumstantial evidence. But, when determining intent, that is most frequently all that is available. Debates about evidentiary standards should not be a substitute for exercising common sense and prudence. In making Article II compliance decisions, judgments as to the purpose of a Party’s nuclear activities go hand in hand with an evaluation of whether the activities themselves constituted “manufacture” or seeking or receiving assistance
in the manufacture of nuclear weapons. For some, the only proof would seem to be the actual testing of a weapon. That standard is folly.

Judgments as to the Party's purpose must be made by considering all of the facts. The United States recognizes that it may be uncomfortable for some to hold a given country accountable for its violations. However, failure to do so undermines the standard that we all support, emboldens others to follow the path of deception and violation, and puts us all at risk.

In his plenary statement Under Secretary Bolton explained in some detail President Bush’s February 11 proposals that would strengthen the Treaty and the capability of the IAEA to verify and monitor nuclear activities. These are concrete steps that the international community can take cooperatively to reduce the danger of proliferation.

Conclusion

In conclusion, Mr. Chairman, I reiterate three points.

First, the NPT continues to make a major contribution to international security because the vast majority of NPT parties continue to fulfill the Treaty’s nonproliferation obligations.

Second, assuring compliance with Article II obligations requires vigilance and fortitude. Waiting for overt, unambiguous breach of Article II and Article III before we act weakens the NPT and threatens international security. Waiting deprives the international community of the opportunity to halt the process before nuclear weapons are acquired. The international community must not avoid taking action simply because it is uncomfortable to do so.

Third, continuing noncompliance by Iran and the DPRK represents a serious challenge to the NPT and to the nonproliferation regime in general. In addressing this challenge multilateral institutions must do their part. The IAEA Board of Governors must be prepared to refer noncompliance cases to the Security Council. The Security Council must in turn be prepared to take appropriate measures to address violations reported to the Council by the IAEA. When violations occur we must act, and we must act together.

Thank you, Mr. Chairman.