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Statement by Ambassador Jackie Sanders, Special Representative of the President for the Non-Proliferation of Nuclear Weapons, on Articles I and II, in the First Committee of the 2005 Review Conference of the Treaty on the Non-Proliferation Of Nuclear Weapons, May 19, 2005

On March 7 of this year, President Bush urged all NPT parties to take strong action to confront the threat of noncompliance with the NPT. In the U.S. opening statement, Assistant Secretary Rademaker made clear that the U.S. delegation would focus considerable attention on this issue. We should work together at this RevCon and in this Main Committee to recognize the depths of this problem and to agree on the main principles of our response. While these violations have undermined the security of all NPT parties, we can and must seek to correct these problems by holding accountable those in noncompliance and seek to deter future violations by setting in place new policies to deter future violations.

Participants have already heard much about the events of the past five years. North Korea's consistent violations before it announced its intention to withdraw from the NPT, and its February 10 assertion that it has manufactured nuclear weapons, have created great instability in Northeast Asia and threaten the NPT regime. States in the region are confronted by a country with a history of provocation and belligerency that has declared that it has nuclear weapons. These developments underscore the critical importance for our common security and for the continued strength of the nuclear nonproliferation regime that North Korea return to compliance with the NPT. North Korea should return expeditiously and without preconditions to the Six-Party Talks and commit to the complete, verifiable and irreversible dismantlement of its nuclear program.

In the Middle East, we applaud Libya for choosing to meet its NPT obligations. By doing so, it set an important standard for how countries in violation of their nonproliferation undertakings can voluntarily return to compliance and strengthen global confidence and security. Regrettably, however, since the last RevCon the world also learned of the Iranian regime's broad-based, long-term secret effort to acquire a fissile material production capability. Iran pursued these programs, which could give Iran a nuclear weapons capability, for nearly 20 years and in violation of its NPT and IAEA safeguards undertakings. The security consequences for the Middle East of these developments are grave. We encourage Iran to respond positively to the EU-3, to fully suspend and permanently cease all enrichment-related and reprocessing activities, to dismantle equipment and facilities related to such activities, to bring into force and implement the Additional Protocol, and to cooperate fully with the IAEA to resolve outstanding questions and meet all IAEA Board requests. Iran should provide objective and verifiable guarantees in order to demonstrate that it is not using a purportedly peaceful program to hide a nuclear weapons program or to conduct additional clandestine nuclear work elsewhere in the country. We share the desire of European Governments to secure Iran's adherence to its NPT obligations through peaceful and diplomatic means.

In addition to keeping pressure on North Korea and Iran, what should NPT parties be doing consistent with their Article I and II obligations to help prevent future cases of noncompliance?

Article I requires the nuclear-weapon States not in any way to assist, encourage or induce any non-nuclear weapon state to manufacture or otherwise acquire nuclear weapons or other explosive devices. To fulfill these obligations, the nuclear-weapon States must establish and implement comprehensive and effective export controls, including on dual-use items. The nuclear-weapon States have a special responsibility as they have possessed nuclear weapons infrastructures for decades. Given the interest of certain non-nuclear-weapon States and non-state actors in seeking the means to build nuclear weapons, the nuclear-weapon States must effectively protect against theft or unauthorized transfer of technology, equipment and material useful in the development and manufacture of nuclear weapons. Of course, their stockpiles of weapons and fissile material for weapons must be closely guarded.

Article II requires the non-nuclear-weapon States 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 explosive nuclear devices. Fulfillment of this obligation requires that non-nuclear-weapon States refrain from activities designed to develop a nuclear weapons capability. Further, they should provide transparency into their activities sufficient to demonstrate their peaceful purpose, and have in place the necessary laws and regulations to enforce their Article II obligations.

NPT supplier states, both nuclear- and non-nuclear-weapon States, should not authorize the export of any nuclear-related item unless they are satisfied that the transfer would not contribute to the proliferation of nuclear weapons. Adhering to this principle strongly reinforces the nonproliferation objective of the NPT. When in doubt about a possible diversion risk, it is best to forego the export. By doing so, NPT supplier states can avoid inadvertently assisting a possible future NPT violator in acquiring capabilities useful for a nuclear weapons program. If a state has violated the NPT's nonproliferation obligations, then all nuclear cooperation with that state should terminate. If an NPT party is engaged in nuclear weapons-related activities, it is very difficult to ensure that nuclear supply, even if originally intended for peaceful applications, would not be diverted and used in the activities that violate the Treaty.

The revelations associated with the Khan nuclear procurement network have made clear that all must be vigilant to prevent their territories from being used to further nuclear weapons acquisition. In recent years, many NPT states with strong commitments to the Treaty found that secret networks had penetrated their own territory. It is important that all NPT parties remain vigilant against the prospect of these procurement networks and have the authority necessary to move against such illegality. UNSCR 1540 was passed in April 2004 in large part for this very purpose. Among its requirements is the establishment by all states of effective national legal and regulatory measures to criminalize the proliferation of weapons of mass destruction, their delivery systems and related materials. Doing so will embed NPT obligations in national laws and regulations, and create the basis for effective enforcement and prosecution if citizens violate the treaty obligations undertaken by their governments. All NPT parties with experience in implementing such controls should be willing to assist others in meeting the requirements of the resolution. Full implementation of 1540 by all states will strengthen enforcement of Articles I and II of the NPT.

Another activity that can help to ensure NPT parties do not inadvertently assist a state to acquire nuclear weapons is to take action against an illegal export during the transport phase. If an item has left the territory of the original supplier, there may still be an opportunity to impede the transfer whether in transshipment through another country or on the high seas. Consistent with their national legal authorities and legislation and international law and frameworks, states should take cooperative action to prevent illicit nuclear trafficking. The Proliferation Security Initiative is a cooperative activity supported by more than 60 states. It can play an important role in preventing nuclear items from reaching states or non-state actors of nuclear proliferation concern and thus promoting the NPT's nonproliferation goals.

Recent activity on two international conventions is also notable in the context of advancing the NPT's nonproliferation goals. The International Convention for the Suppression of Acts of Nuclear Terrorism, approved by the UN General Assembly on April 13, will strengthen the international legal framework to combat nuclear terrorism upon its entry into force. The United States also strongly supports the ongoing effort to include nonproliferation transport offenses and a complimentary shipboarding regime to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation. This effort will significantly expand the international legal basis to impede, prosecute and punish those persons or entities that are involved in maritime transport of proliferation-related shipments.

What more can NPT parties do to strengthen Article II's ban on the manufacture or acquisition of nuclear weapons?

First, NPT parties must have strong declaratory policies that establish the necessity of compliance with the NPT. It should be clear that there is zero tolerance for noncompliance with the NPT's nonproliferation undertakings, and that NPT parties are prepared to take firm and prompt action to hold any violator accountable for its actions. At a minimum, this should entail a cutoff of all nuclear-related cooperation. Such a step is prudent not only to prevent diversion to a possible nuclear weapons program, but it is good policy to terminate peaceful nuclear cooperation with NPT violators. Such benefits should be reserved only for NPT parties in full compliance with the Treaty.

NPT parties should also seek, through appropriate means, to halt the use of nuclear material or equipment acquired or produced by an NPT state as result of a material violation of the NPT's nonproliferation undertakings. These items should be eliminated or returned to the original supplier.

NPT parties should affirm their willingness to report cases of noncompliance with Article II to the UN Security Council. The Council should act promptly in such circumstances to determine a response, particularly when a case constitutes a threat to international peace and security.

Regardless of what measures are imposed against a violator or by whom, it is essential that any lifting of punitive measures be strictly linked to verifiable actions and be phased in over a period of time. Among the actions that must be taken by the noncompliant party are the full implementation of the IAEA Additional Protocol and transparency sufficient to demonstrate that the prior offender's nuclear program has become fully consistent with its NPT obligations.

Moreover, NPT parties are fully justified in insisting on certain limits on the offender's future nuclear program, even after full compliance has returned.

Finally, to strengthen the NPT's nonproliferation obligations requires that NPT parties understand that the prohibition in Article II against the manufacture or acquisition of a nuclear weapon must apply to more than just an assembled nuclear weapon. In an extreme case, an NPT party might have manufactured an entire mockup of the non-nuclear shell of a nuclear explosive, while continuing to observe its safeguards obligations on all nuclear material. It would be folly for NPT parties to fail to act in such circumstances. Whether or not there has been a safeguards violation under Article III, it is also important to determine whether all the facts of a case tend to point toward an intent to manufacture or acquire nuclear weapons. Facts indicating that the purpose of such an activity is the acquisition of a nuclear explosive device would tend to show noncompliance with Article II. Examples of activities of concern include: seeking certain fuel cycle facilities of direct relevance to nuclear weapons, such as enrichment or reprocessing, with no clear economic or peaceful justification; clandestine facilities and procurements; committing safeguards violations and failing to cooperation with the IAEA to remedy them; and using denial and deception tactics to conceal nuclear-related activities.

Some might ask how the pursuit of enrichment or reprocessing without an economic justification can be an indicator of a possible Article II violation. Iran provides a case in point. Iran sought to acquire an enrichment program in secret and in violation of its safeguards obligations under the NPT. In light of the willingness of another state to provide fuel for the Bushehr reactor and any future reactor, Iran's enrichment program has no conceivable civil purpose. Moreover, Iran's uranium reserves are too small to provide an independent fuel supply for its nuclear power program, but large enough to support a weapons program. Why, then, has the Iranian regime been pursuing enrichment, and why has it done so clandestinely for almost two decades? It is painfully clear that Iran has not made the strategic decision to abandon its pursuit of a nuclear weapons capability. It is determined to acquire an enrichment plant to give itself the capability to manufacture nuclear weapons, which it could pursue either through further violation of or withdrawal from the NPT. These factors have led the United States to conclude that the intent of these activities is the manufacture of nuclear weapons and that Iran is in violation of Article II.

We must adapt NPT enforcement to today's challenges. We have an obligation to each other under the NPT to keep this collective security arrangement strong for the indefinite future. If we are to thwart the strategies of those who would violate the NPT, we must do more to ensure that our companies and citizens are not contributing to proliferation. We must make clear that there will be significant consequences if any NPT party strays from its nonproliferation obligations. And we must be prepared to take action if there is noncompliance and to do so at an early stage. If we wait too long, it will be more difficult to dissuade the proliferator and we will have less time to do so.

The NPT should be an essential element of international efforts to create a global environment hostile to the spread of WMD. The NPT should be critical for global safety and security. However, the NPT will lose much of its effectiveness unless NPT parties are strongly committed to compliance with the Treaty nonproliferation undertakings and to strong action against those who are not.