



## The NPT Review Process and the Future of the Nuclear Nonproliferation Regime

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Good morning, and thank you for the chance to speak about how we in the United States Government see the current Nuclear Nonproliferation Treaty (NPT) review cycle and its role in strengthening the nuclear nonproliferation regime.

### I. Strengthening the Nonproliferation Regime

I had a chance to address some related issues at the end of last year at the Wilton Park conference. There, I made the point that the nuclear nonproliferation regime, as a whole, is greater than the sum of its treaty parts - and that governments can and should engage in a range of individual, joint, and multilateral national efforts to fight nuclear proliferation and complement and reinforce the NPT regime. I outlined how the U.S. Government, working with other concerned states, has built a "layered" approach to nonproliferation, supporting and strengthening the NPT regime itself, developing new formal and informal multilateral efforts such as U.N. Security Council Resolution 1540 and the Proliferation Security Initiative (PSI), and employing national authorities with regard to export controls and sanctions against proliferator entities. I also discussed the relationship between nonproliferation and the international peaceful nuclear cooperation that the United States seeks to enrich and deepen. I stressed that no one has more to lose than the countries of the developing world, should the international community fail to prevent the emergence of nuclear weapons capabilities in additional countries.

### II. The NPT Review Process and Nuclear Nonproliferation

But what I did not address at Wilton Park was how the NPT review process *itself* can and should be used to strengthen the nuclear nonproliferation regime. Since we are now beginning a new review cycle that will culminate in the 2010 NPT Review Conference (RevCon), I am grateful for the opportunity to say a few words on the subject today.

#### A. *The Role of the NPT Review Process*

So what does, or can, the review cycle actually *do*? The Treaty itself set up the review process in the third paragraph of its Article VIII, providing that at intervals of five years a majority of States Party may choose to convene review conferences "in order 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." This cyclical process was not established for the purpose of *amending* the NPT, for that is covered elsewhere. Instead, it is something different: a provision for States Party periodically to come together to talk about the operation of the Treaty, about the challenges it faces, and about how to keep it relevant in a changing world.

The negotiating history of the NPT shows that it was the United States that suggested inclusion of provisions for reviewing the operation of the Treaty after a certain period of time. U.S. representatives noted that this would give states the chance to air any concerns they might have about how well Parties were living up to the Treaty's provisions and the principles expressed in its Preamble. From the inception, therefore, the NPT review process has been about discussion, about debate, about reinforcing the norms and principles expressed in the Treaty itself, and about developing common ground in meeting challenges that face the nuclear nonproliferation regime.

#### B. *"Success" and "Failure"*

One commonly hears talk about how frustrating it was that the 2005 Review Conference missed the opportunity to issue Main Committee reports and agree upon a Final Document because of one country's disagreement on one issue out of so many. However, the United States believes that much progress was made at the RevCon in discussing some key issues, among them the importance of:

- deterring and responding to Treaty withdrawal by states in violation of the NPT's core of nonproliferation obligations;
- achieving universal adherence to the International Atomic Energy Agency (IAEA) Additional Protocol giving international inspectors more of the authority they need to detect undeclared nuclear activity and making the Protocol part of the safeguards standard;
- ensuring compliance with the nonproliferation obligations that form the core of the Treaty, and preventing the emergence of further states armed with nuclear weapons;
- recognizing the need for all states to live up to the strictest standards of safety and security in their peaceful nuclear activities; and
- supporting the fullest possible cooperation in the peaceful uses of nuclear energy consistent with nonproliferation norms.

It was indeed unfortunate that disagreement on a single precluded arriving at statements of agreement on so many other key points.

But let us not overlook the forest for the trees. If the procedural collapse of the 2005 RevCon was frustrating precisely because "we were so close" to agreement on so many matters, we should take heart from that. After all, progress made among so many sovereign governments on many issues is no less significant merely because we do not today have a piece of paper on "Review Conference" letterhead that expresses this understanding in five official languages.

We should remember that the NPT review process, with its periodic Preparatory Committee (PrepCom) and Review Conference meetings, is neither an executive nor a legislative institution. To be sure, the Review Conferences can and do sometimes - although only less than half of the time (at only three out of seven RevCons), to judge from the historical record - reach consensus in Final Documents. But such documents are statements of political consensus at a particular point in time upon certain policy positions. They do not themselves have any legal import, and so of course they would not constitute a "subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions" within the meaning of Article 31(3) of the Vienna Convention on the Law of Treaties.

Indeed, the nature of the review process itself makes clear that Parties' expressions of policy agreement at meetings are *by their nature* neither intended nor expected necessarily to stand for all time. After all, were it possible for a group of nations to articulate views that would forever thereafter perfectly fit the challenges that would face the NPT in our complex world, there would have been no need for a review process in the first place. Rather, it is precisely because the world *does* change over time that it is important for all of us to come together periodically and discuss NPT issues - and for us to decide, each time, what we *now* think is most important to do. Many issues will remain of enduring importance, and should continue to be a focus of our attentions. Other issues may be overtaken by events in our changing world and become less relevant. Still other, new issues will certainly arise. It is our collective responsibility to discern and address the matters most important to the successful operation of the Treaty.

### C. Reinforcing Norms and Facilitating Collective Action

All of which brings me back to my point about the real value of the NPT review cycle. As I noted, it does not "legislate," and it does not itself implement. Some might even disparage it by saying that what it does best is just provide an opportunity for endless talk. But such criticism would be unfair, and would miss the point.

The review cycle is *supposed* to provide a forum for talk; that is its primary purpose. It provides a unique opportunity for countries to exchange views about how the Treaty is living up to its intentions and expectations, and to develop common ground on how we can help it do better. The cynic might argue that the NPT review cycle does not "do" anything at all, but we must not lose sight of how it can nonetheless *catalyze* and *facilitate* a great deal.

And that is why, while we are disappointed like many of you that more progress was not made on Main Committee reports and a Final Document at the 2005 RevCon, we in the United States do not regard 2005 as a failure. As we see it, the standard for whether a review cycle should be regarded as a "success" or "failure" is not whether it produces a particular document at its conclusion - though we would agree that having a good consensus text on issues of substance is certainly preferable to having none. Instead, we view "success" as being determined by whether or not States Party are, at the conclusion of a cycle, closer to or farther from the shared understandings needed to address the challenges that face the nuclear nonproliferation regime. By *that* standard, I would judge the previous cycle as having had mixed results.

#### (1) Article VI

Clearly, on some issues, differences remain. International debates about disarmament and Article VI matters, for instance, have unfortunately not yet moved enough out of the Cold War context. They remain too much fixated upon a superpower arms race that has ended - just as Article VI of the NPT urges - and upon warhead numbers and force postures which already reflect a very-different 21<sup>st</sup> Century world and still continue to move toward fulfillment of the Treaty's broader disarmament objectives. It apparently remains insufficiently clear to many that the gravest obstacles to making progress on the overall goals of Article VI do *not* lie with countries such as the United States, the arsenal which has long been making extraordinary progress in the *right* direction and whose commitment to the disarmament goals expressed in the NPT's Preamble and Article VI remains unwavering. Instead, the most acute Article VI problems today lie with the threat of emerging nuclear arsenals in some present or former NPT *non*-nuclear weapons states - arsenals which are moving quite in the *wrong* direction - and with the regional nuclear arms races that might be engendered if States Party fail to act to enforce nonproliferation norms.

If we all truly intend, as the NPT's Preamble exhorts us, to ease international tension and strengthen trust between States in order to facilitate nuclear disarmament pursuant to a Treaty on general and complete disarmament, it is imperative that we act quickly against the emerging regional nuclear arms race dynamics that fly so ominously in the face of the disarmament aims of the Treaty. (There is, therefore, a critical nonproliferation element in Article VI!) Our hope in the United States is that this review cycle will see other States Party come to recognize all that we have done, and all that we are continuing to do today, to achieve the disarmament goals expressed in the Treaty. And our hope is that States Party will be able to join us in working to create a global environment in which it will become both possible and realistic, rather than simply a Utopian dream, to achieve the elimination of nuclear weapons.

#### (2) Peaceful Nuclear Cooperation

Some differences also remain over certain aspects of how best to spread the benefits that nuclear technology can bring to mankind. Iran has, for instance, tried to hijack legitimate discussions of the NPT's Article IV and twist them into a politicized form designed to give cover to Tehran's nuclear weapons ambitions. This works against the interests of the developing world by imperiling the foundation of nonproliferation compliance upon which all nuclear cooperative relationships must be built. And Iran's efforts in this regard imperil the security of all nations by undercutting the NPT's ability to check the spread of what the IAEA Director General has called "latent" nuclear weapons capabilities.

#### (3) Strengthening the Nuclear Nonproliferation Regime

But while these differences are not trivial, the last review cycle nonetheless saw very important developments affecting how well the nuclear nonproliferation regime can address the challenges it faces. There is today, for instance, a much clearer appreciation of the crisis of nonproliferation compliance facing the regime. There is also a growing understanding of the ways in which innovative approaches to peaceful uses, such as the United States' Global Nuclear Energy Partnership (GNEP), can strengthen nonproliferation norms by providing incentives for countries to forswear proliferation-risky technologies even as they participate more and more in rewarding international nuclear cooperation programs. And there has been a growing understanding by national governments of the roles they can play, in a variety of respects, in reinforcing nuclear nonproliferation norms and taking concrete steps to support the goals of the NPT.

Steps taken to promote nuclear nonproliferation outside the formal mechanisms of the Treaty - I should reemphasize - complement and reinforce the NPT rather than supplant or replace it. Today's nuclear proliferation challenges are less severe, and the Treaty stronger, than would otherwise have been the case, as a result of steps taken by states cooperating informally, acting individually, and acting through other bodies such as the Security Council and the IAEA Board of Governors. PSI mechanisms, for instance, help interdict WMD-related shipments. Governments' efforts to improve export controls and nuclear materials security are making it harder for fissile material or weapons-related technologies to be transferred to aspiring weapons states, or stolen by criminals or terrorists. And multilateral and national efforts to promote adherence to the Additional Protocol are helping IAEA inspectors get more of the tools they need to verify safeguards compliance in the countries that have adhered.

At the same time, the U.N. Security Council, with Resolution 1540, has set in place important requirements to improve, where necessary, national legislation and regulations, and their enforcement, in order to help keep WMD-related technologies out of the hands of proliferators and terrorists. Meanwhile, the IAEA Board has lived up to the requirements of the Agency's Statute by referring Iranian safeguards noncompliance to the Security Council. And steps have been and continue to be taken by the Council itself to address the threats presented to international peace and security by the North Korean and Iranian nuclear weapons programs.

We should remember, therefore, that progress *has* been made in fulfilling the purposes of the Treaty during and since the last review cycle. And we should remember that while many of these developments occurred in ways formally separate from the NPT review process, it is the review cycle that has provided vital opportunities for the international community to come together regularly to discuss and build support for much-needed common approaches to such matters.

### III. The 2007-2010 Review Cycle

This is why we approach the current review cycle with cautious optimism.

#### A. Substance

As I noted, despite the lack of an actual piece of paper achieved by consensus, the 2005 Review Conference saw extensive and sometimes very productive discussions on important issues. This should give us a foundation upon which to build during the current cycle. Let me point out some key steps we will need to take together.

(1) *Compliance*

During this new cycle, we will all need to speak emphatically about the importance of rigorous compliance with the nonproliferation obligations of the Treaty. These words of ours must reflect our resolve, and be reflected in our actions. Without steadfast efforts to return violators to compliance and deter those who in the future would otherwise seek to follow such paths, neither the Treaty itself nor the system of peaceful nuclear cooperation that has grown up under its umbrella can survive. Without such compliance, the national security of all States Party will in fact be gravely endangered - both directly by the proliferators themselves, and by the spiraling regional nuclear arms competitions their behavior will produce.

Because we believe there is such broad agreement on the principle that North Korea needs to be denuclearized and return to the NPT as a non-nuclear weapon State Party, and that Iran's nuclear weapons effort must be demonstrably abandoned in its entirety, we think that this current NPT review cycle can contribute to the resolution of such problems by demonstrating the commitment of all Parties to these ends.

(2) *Detering and Responding to Withdrawal by Violators*

In light of Main Committee III's discussions during the 2005 RevCon, we believe there is a great opportunity to build upon the common ground that exists on the importance of deterring and responding to Treaty withdrawal by countries that are in violation of their obligations. Our French and other European colleagues did excellent work on this issue in the last cycle. We strongly support a renewal of these efforts, and look forward to contributing to them during this review cycle.

(3) *Peaceful Uses*

With regard to peaceful uses, while there are legitimate debates over how to handle the proliferation potential of "latent" weapons capabilities, we should not exaggerate them or assume that such differences are intractable.

First, to the extent that these peaceful use debates come up in the context of the Iranian nuclear crisis, we all must resist Tehran's effort to wrap its weapons program in the protective cloak of assertions about Article IV "rights." There are some legitimate differences over peaceful use policy that we should all be discussing, but these debates have *nothing whatsoever to do with Iran*. Article IV is quite clear that, for NPT parties, the right to develop, produce, and use nuclear energy for peaceful purposes is the right to do so "in conformity with Articles I and II of this Treaty." NPT parties do not have a right to nuclear technology for purposes that violate these key provisions of the Treaty.

Honorable people may disagree about what the correct answer is with respect to stopping the spread of enrichment and reprocessing technology elsewhere. But no responsible observer can defend the Iranian regime's contempt for its Treaty obligations as some kind of perverse fidelity to Article IV. So whatever one thinks of the broader Article IV debate, we should all insist that Iranian regime abandon its pursuit of nuclear weapons and restore international confidence in its peaceful intentions by ending the programs it began in secrecy two decades ago, and which it continues behind a cloud of lies and deception to this day.

Let us, in other words, have our debates about how best to fulfill the Treaty's principles with regard to peaceful uses. But let us also agree, and act upon, the fact that the Iranian regime, which has no operational nuclear reactors anyway, is *not* interested in enriching uranium for peaceful uses - and that the Iranian issue is thus an entirely separate question.

Second, we should not too quickly assume that today's disagreements over how to handle the increased availability of fuel-cycle technology necessarily reflect an entirely unavoidable tension in the NPT regime. This is not, we should remember, the first time the NPT has faced what may have seemed a "structural" tension between peaceful use and nonproliferation principles.

Perhaps the first "inherent tension" between peaceful uses and nonproliferation was perceived early in the NPT's history, in the fact that the most common research reactor designs of the time ran on highly-enriched uranium (HEU) - fissile material which might perhaps be easily diverted for direct use in a weapon. That is one of the reasons it was necessary to create the IAEA, a decade *before* the NPT was itself negotiated, and to build a safeguards system for monitoring and accountability of nuclear material. But technology is enabling us to reduce *those* tensions in the peaceful use system, for today an increasing proportion of research reactors run on less weapons-usable low-enriched uranium (LEU). Moreover, we have been working to convert older research reactors to LEU and to recover supplies of HEU from far-flung locations where they might perhaps be vulnerable to terrorist theft or proliferator access.

This example shows how it can be possible, over time and with innovative approaches, to escape - or at least reduce - what might otherwise seem to be an inescapable "structural" tension between peaceful uses and the Treaty's core nonproliferation norms.

Some have argued that the NPT faces a structural tension today. On the one hand, the world relies upon nuclear power for electricity generation - and, thanks to growing energy needs and increased awareness of the problems associated with fossil fuel consumption, it will likely rely more and more upon nuclear power in the future. But since reactors today tend to run on at least LEU, most of them still need uranium enriched to *some* extent.

There has not, hitherto, been any problem meeting reactor fuel needs through the long-established producer states. Nevertheless, some additional countries have, for various reasons, expressed an interest in acquiring fuel-cycle technology. But the ubiquitous availability of uranium enrichment capability - or its analogue, plutonium production and reprocessing - also necessarily entails a capability to develop nuclear weapons. The basic physics and operating principles of nuclear weapons have been known publicly for many years now, and it has long been understood that the greatest technical barrier to massive and widespread proliferation has been the difficulty of acquiring sufficient quantities of weapons-usable fissile material. Anyone who can enrich (or reprocess) can overcome this hurdle to weapons development - helping open the door to the incalculable dangers of a proliferated world.

This was not so much of a problem in the past. Back at the time the NPT was negotiated, enrichment technology was available to very few, not widely understood, and commonly treated as tightly-controlled national security information because of its utility in producing fissile material for weapons. Enrichment technology was not expected to be widely available, so it was easy to promote "Atoms for Peace" because peaceful nuclear cooperation was seen as largely building power reactors to be run on fuel produced by the few states that already had the technology. Today, however, thanks in part to indigenous development efforts and in part to the activities of A.Q. Khan and his ilk, enrichment and reprocessing technology is increasingly available. As a result, there seems to exist today a conflict between the pursuit of peaceful fuel-cycle activity and nonproliferation good sense - a tension that apparently resulted from early assumptions that such technology would not be as ubiquitous as it threatens to become today.

President Bush has long made clear our belief that a key to controlling this problem is to limit the further spread of enrichment and reprocessing (ENR) technology. This remains our view. But we understand that this important step, alone, might not be attractive to every *non*-ENR country that might be considering getting into the fuel-cycle business in order to provide fuel for expanding power-generation programs.

That is why we are also working hard with the producer states and the IAEA to develop broad cooperative programs for fuel-supply assurances, as well as efforts such as our own GNEP initiative. GNEP seeks to develop new reactor technologies that are more proliferation-resistant than ever, as well as designs optimized for the needs of developing countries. It also seeks to develop a reliable system of fresh fuel supply and spent-fuel management services, to build upon and reinforce the efforts currently underway here in Vienna to create a reliable fuel supply system that might include an IAEA-overseen fuel bank as a supply of "last resort." We also intend to create our own reserve of nuclear fuel to back up these collaborative fuel-supply efforts. (For this purpose, we will be converting into LEU more than 17 metric tons of surplus HEU from our own defense programs.) Significantly, we believe that the perceived need for countries to consider proliferation-risky fuel-cycle activity will decrease in proportion to the world's success in setting up such a reliable, multi-producer, and internationally supported system.

So before one assumes that the fuel-cycle problem embodies an intractable tension between peaceful uses and the core nonproliferation principles of the Treaty,

remember these efforts. Thanks to such work, we hope the world will be able to avoid confronting a zero-sum trade-off between nonproliferation and peaceful use equities. We believe the world can, as the saying goes, have its cake and eat it too. We can expand and deepen nuclear cooperation around the world, and we can do so in proliferation-responsible ways through robust collaborative international fuel-services mechanisms that will help take away perceived needs for the further spread of proliferation-risky fuel-cycle technology.

This is why we are cautious optimists with regard to peaceful use issues in this new NPT review cycle. We hope that it will be possible for States Party to come to a better understanding of the ways in which such innovative approaches can allow the world to enjoy increased benefits without increased risks.

#### (4) *Safeguards, Safety, and Security*

As everyone knows, the United States is a steadfast supporter of strengthening the nuclear safeguards system, achieving universality for the Additional Protocol as the new safeguards standard, improving nuclear-related export controls, and augmenting nuclear safety and security efforts to prevent access to nuclear materials and technology by terrorists. Because I think there is so much agreement on these goals, I will say here only that they remain a high United States priority - and that GNEP also aims to develop new and improved safeguards technologies. We hope that during this NPT review cycle States Party will reaffirm these principles and voice support for these efforts, adding their moral and political weight in support of ongoing projects toward these ends.

#### B. *Procedure*

Before I conclude, let me say a few words about issues of NPT review cycle procedure, to explain the philosophical underpinnings of our approach to such matters as the Preparatory Committee agenda, the allocation of special time, and defining the jurisdiction of committees and subsidiary bodies.

As you'll recall, I said a moment ago that the importance of the NPT review process lies in the opportunities it allows us to seek the best answers to the many challenges facing the nuclear nonproliferation regime today. The United States believes it is imperative that we use the NPT review process to the fullest, by engaging in frank and wide-ranging discussions to this end. This means getting through - and beyond - the traditional squabbling over "procedural" matters that has in the past made it so hard to have the kind of straightforward debate we need.

As we all know, when asked to do things such as define a meeting agenda, it is all too easy for countries to formulate clever turns of phrase that imply criticism of other governments' positions, or that seek to preempt anticipated rhetorical attacks. Anyone can play at this game, and all too often, many do. The problem, of course, is that when governments insist upon politicizing such matters, we *all* lose - because it becomes impossible to resolve these allegedly "procedural" matters and engage in *real* debate about substantive issues.

From the perspective of the broader purposes of the NPT review process, getting bogged down in political contestation over such turns of phrase represents the worst possible outcome. Ostensibly "procedural" discussions can become so polluted by substantive disagreements that it is impossible to resolve them. At the same time, we lose the chance to engage in open and honest debate about the issues when policy disagreements are camouflaged in fights over procedure. What we need, therefore, is a chance to get *beyond* the politicization of "procedure" and focus as quickly as possible upon the *real* debates.

So we seek a fresh approach to these matters. First, wherever possible, we should simply avoid *having* to fight over turns of phrase. Nothing, for example, requires us to have special time or subsidiary bodies. And because we do not absolutely need them, we should avoid such things. No lack of a jurisdictional headline will prevent governments from airing their concerns and discussing their ideas, but *insisting upon* such headlines can sidetrack meetings into dead-end blind alleys and prevent much valuable debate on these same concerns and views. Accordingly, we believe States Party should adopt a minimalist approach to such matters.

Second, where actual statements of purpose and jurisdiction are unavoidable, States Party should agree upon phrasing as broad, as unspecific, and as inclusive as possible - language that includes nothing that could irritate or inflame the political sensitivities of others, and which allows maximum freedom to debate substantive issues because it precludes nothing. Many governments will, for example, surely wish to discuss the nuclear situation in the Middle East, the crisis of nonproliferation noncompliance facing the regime, or what practical steps are needed to make progress toward the disarmament goals of Article VI and the Treaty's Preamble. Phrasings should be chosen that allow every issue to find a home in our work program, but that do this without creating political difficulties that could trigger a cascade of "procedural" difficulties.

This is the secret to success, and to avoiding yet another paralyzing procedural war that disguises matters of substance but that would keep us from honestly addressing the issues. We earnestly hope that people of goodwill and generous spirit will see the merit of this approach. It represents the best chance quickly to put procedural matters behind us and to engage in the candid and legitimate substantive debates that will be needed if the NPT is to survive the challenges it faces.

#### IV. **Conclusion**

Too often, one hears it said that the NPT is on the verge of collapse - or even that it is doomed. We in the United States do not believe that needs to be the case, however, and we hope that this review cycle can succeed in its intended purpose of helping ensure that the NPT plays as important a role in protecting and promoting our common interests in this new century as it did in the last. Thank you.

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