ATTACHMENT 7

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CRS Report for Congress

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NPT Compliance Issues

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Summary

President Bush remarked in 2005 that "[Nuclear Nonproliferation Treaty] NPT Parties must take strong action to confront the threat of noncompliance with the NPT...We cannot allow rogue states that violate their commitments...to undermine the NPT's fundamental role in strengthening international security." North Korea and Iran pose two clear compliance challenges to the treaty. However, some NPT parties are adamant that the United States and other nuclear weapon states are not complying with their own obligations to pursue nuclear disarmament. This report, which will be updated as needed, discusses different views and issues of NPT compliance.

The May 2005 Nuclear Nonproliferation Treaty (NPT) Review Conference failed to produce any substantive agreements, revealing fissures in the nonproliferation regime at a time when the United States requires considerable support for its "tailored" approaches to countries and problems of proliferation concern. In part, the failure to make progress on the most pressing NPT problems — North Korea, Iran, and nuclear disarmament — is rooted in long-standing differences in how NPT compliance is viewed.[1] As they have in the past, nuclear weapon states argued that the international regime needed to strengthen its ability to address the non-compliance of non-nuclear weapon states such as Iran and North Korea, while non-nuclear weapon states argued that nuclear weapon states needed to better comply with their obligations to eventually disarm, and to share the peaceful uses of the atom.

Background

The NPT, which entered into force in 1970, has often been described as a grand bargain. Under the treaty, non-nuclear weapon states agree to give up pursuit of nuclear weapons, but not their pursuit of the peaceful uses of nuclear energy. The main obligations of the non-nuclear weapon states are to foreswear nuclear weapons (Article II), submit to IAEA safeguards inspections (Article III), and not supply certain nuclear-

[1] See CRS Report RL32857, *The Nuclear Nonproliferation Treaty Review Conference: Issues for Congress*, and CRS Report RS21592, *Iran's Nuclear Program: Recent Developments*.

related items unless they are under safeguards (Article III).[2] The main obligations of the nuclear weapon states are not to transfer or help non-nuclear weapon states acquire nuclear weapons (Article I), not to supply certain nuclear-related items unless they are under safeguards (Article III), to facilitate the exchange of peaceful nuclear energy technology (Article IV), and to pursue negotiations toward nuclear disarmament (Article VI).

The bifurcation of states into nuclear "haves" and "have-nots" has led, at times, to opposing views on many aspects of treaty implementation. For example, some states would like to focus on whether the nuclear weapon states are complying with Articles IV (technical cooperation) and VI (nuclear disarmament) of the treaty, while other states would like to focus on whether the non-nuclear weapon states are complying with Articles II (obligation not to develop or receive nuclear weapons) and III (safeguards).

The NPT itself is silent on how to assess compliance, how to resolve compliance disputes, and what procedures to follow in the event of non-compliance. Specifically, there is no verification of compliance with the obligations in Articles I and II not to transfer or receive nuclear weapons.[3] The treaty contains no language on verification other than to require states to accept nuclear safeguards (Article III). The Director General of the International Atomic Energy Agency (IAEA) reports on safeguards implementation every year, and sometimes on specific compliance issues at Board of Governors meetings.[4] For Articles IV and VI, the treaty offers no definitions or ways of assessing whether states are living up to their obligations. Nuclear weapon states, in the past, have provided information about their nuclear cooperation efforts, their contributions to the IAEA's technical cooperation program, and descriptions of their efforts toward nuclear disarmament. At the 2000 NPT Review Conference, the parties agreed to what have become known as the "13 Practical Steps" toward disarmament; since 2000, the United States has withdrawn its support for some of those steps.[5]

Compliance vs. Verification

All arms control treaties have obligations, but not all have verification measures — i.e., measures that help nations monitor activities and assess compliance with treaty obligations. The Biological Weapons Convention, on the one hand, obligates parties not to develop, produce or stockpile biological agents or toxins, but contains no verification measures, while the Chemical Weapons Convention spells out verification measures in detail. Under the Anti-Ballistic Missile Treaty, the United States and the Soviet Union

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[2] Nuclear safeguards is a system of inspections and reports for detecting and deterring diversion of nuclear material for use in nuclear weapons. For non-nuclear weapon state parties to the NPT, this is formalized in full-scope safeguards agreements (INFCIRC/153).

[3] Mason Willrich, *Non-Proliferation Treaty: Framework for Nuclear Arms Control,* Virginia: The Michie Company, 1969, p. 100.

[4] The Board of Governors has thirty-five members, whose composition is determined by procedures outlined in Article VI of the IAEA Statute. See [http://f40.iaea.org/worldatom/Documents/statute.html#A1.6]

[5] See J. Sherwood McGinnis, "Article VI of the NPT," May 1, 2003. McGinnis said, "We made clear last year that the United States no longer supports all 13 steps."

relied on national technical means (e.g., satellite and overflight photography) to verify compliance. The Intermediate-Range Nuclear Forces (INF) Treaty referred to both national technical means and on-site inspections, and created a Verification Commission to resolve disputes.

As noted above, the NPT requires comprehensive nuclear safeguards for non-nuclear weapon states. The purpose of the safeguards is to verify "the fulfillment of [a state's] obligations assumed under this Treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices."[6] Safeguards, briefly, refer to a system of inspections, reports and accounting procedures designed to detect discrepancies between what a state reports and what inspectors find.[7] There are no publicly available guidelines for determining how serious a safeguards violation might be; there is no automatic translation from safeguards violations into NPT violations.[8] This may help explain why the IAEA has found many discrepancies, but has not yet formally found Iran to be in noncompliance with its safeguards agreement.

Article XII of the IAEA Statute contains procedures for reporting non-compliance:

> ...The inspectors shall report any non-compliance to the Director General who shall thereupon transmit the report to the Board of Governors. The Board shall call upon the recipient State or States to remedy forthwith any non-compliance which it finds to have occurred. The Board shall report the non-compliance to all members and to the Security Council and General Assembly of the United Nations. In the event of failure of the recipient State or States to take fully corrective action within a reasonable time, the Board may take one or both of the following measures: direct curtailment or suspension of assistance being provided by the Agency or by a member, and call for the return of materials and equipment made available to the recipient member or group of members. The Agency may also, in accordance with article XIX, suspend any non- complying member from the exercise of the privileges and rights of membership.[9]

A key issue for many NPT member states has been the lack of procedures for the U.N. Security Council to follow in the event of NPT noncompliance. In the case of North Korea, the IAEA Director General requested a special inspection in February 1993, which North Korea refused. The IAEA Board of Governors concluded on April 1, 1993 that the North Korea was in non-compliance and referred the matter to the U.N. Security Council. On May 11, 1993, the Council called upon North Korea to comply with the agreement. The Agreed Framework ultimately was negotiated, virtually suspending North Korea's nuclear program for eight years. When confronted by the United States with allegations of a covert uranium enrichment program in October 2002, North Korea announced it would withdraw from the NPT in January 2003. On February 12, 2003, the Board of

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[6] Treaty on the Non-Proliferation of Nuclear Weapons, Article III.1.

[7] Discrepancies are measured in quantities. A "significant quantity" (significant for nuclear weapons purposes) is 8kg of Plutonium-239 and 25 kg of Uranium-235.

[8] Darryl Howlett, John Simpson, Harald Mueller, Bruno Tertrais, *Effective Non-Proliferation: The European Union and the 2005 NPT Review Conference*, Chaillot Paper No. 77, April 2005, Institute for Security Studies, European Union, Paris, p. 17.

[9] See [http://f40.iaea.org/worldatom/Documents/statute.html#A1.12] for the IAEA statute.

Governors once again declared North Korea in further non-compliance, referring the matter to the Security Council. The Board called upon North Korea to "remedy urgently" its non-compliance, and fully cooperate with the Agency. The Security Council discussed the issue in April 2003, but did not take any action.[10]

U.S. Ambassador Jackie Wolcott Sanders offered this view of what the U.N. Security Council could do with respect to Iran in a March 2005 statement:

> While the IAEA must continue to have a role in investigating Iran's past and ongoing nuclear activities and in monitoring its suspension pledge, the Security Council has the... authority to require and enforce a suspension of Iran's enrichment-related and reprocessing activities. In each of these areas, the Security Council can support and reinforce the IAEA's ability to pursue its investigations in Iran until the Agency can provide this Board with all the necessary assurances it requires.[11]

On September 24, 2005, the IAEA Board of Governors passed resolution GOV/2005/77, which concluded that Iran was in non-compliance with its NPT safeguards agreement. The resolution is notable because it was not unanimous (consensus is the norm) and did not immediately refer the issue to the Security Council.[12] The IAEA Statute requires that once the Board has made a finding of non-compliance, it must report it to the Security Council. The resolution noted that the Board would address "the timing and content of the report required under Article XII.C [of the Statute]." Reportedly, several states wanted to keep the focus of efforts in Vienna, rather than in New York. Without the support of Russia and China, both of which have veto power at the U.N. Security Council, a referral to the Security Council could potentially be damaging, rather than helpful.

According to the IAEA Statute, if inspectors find a state in noncompliance with its safeguards agreement, they report that to the Director General, who informs the Board of Governors. In the case of Iran, the DG did not declare Iran to be in noncompliance with its safeguards agreement, despite numerous discrepancies, but concluded in September 2005, according to GOV/2005/67, that "The Agency is, however, still not in a position to conclude that there are no undeclared nuclear materials or activities in Iran."[13] This opened the way for the Board of Governors to make a noncompliance finding.

Assessing Compliance

Articles I, II. In the Nuclear Nonproliferation Report to Congress (Section 601 report) for 2004, the U.S. Secretary of State described Iran as violating "its Safeguards

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[10] Fact Sheet on DPRK Nuclear Safeguards, International Atomic Energy Agency. See [http://www.iaea.org/NewsCenter/Focus/IaeaDprk/fact_sheet_may2003.shtml]

[11] Ambassador Jackie Wolcott Sanders, Special Representative of the President for the Non-Proliferation of Nuclear Weapons, Statement to IAEA Board of Governors, *Safeguards Implementation in the Islamic Republic of Iran*, March 2, 2005.

[12] Twenty-two Board members voted for; twelve abstained; and one — Venezuala, voted against. See "International Consensus Against Iran Fails," *Tehran Times,* September 25, 2005.

[13] GOV/2005/67, *Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran, Report by the Director General,* September 2, 2005, derestricted September 24, 2005.

Agreement with the IAEA, required under NPT Article III, and...its NPT Article II nonproliferation obligations."[14] This position infers that there is some way to find a state in non-compliance with its Article II obligation not to acquire nuclear weapons. However, as noted above, the NPT is silent on how to assess Article II compliance, other than through a presumption that a safeguards violation that is not corrected is evidence of a state's bad intentions. U.S. officials may have wanted to stress the seriousness of Iran's actions in the absence of the IAEA calling Iran into non-compliance, but that rationale is probably moot after the September 24th resolution.

Some press reports have created confusion on the scope of IAEA responsibilities in verifying compliance with the NPT. In particular, the Director General Mohamed ElBaradei has been quoted several times that in the case of certain states, he has no evidence of nuclear weapons programs. While those statements are undoubtedly true, observers may erroneously conclude that the IAEA must find evidence of a nuclear weapons program before calling a state into noncompliance. The case of Libya, where officials turned over documents proving it sought nuclear weapons, may be an exception, rather than the rule.[15] Despite hard evidence that Libya sought nuclear weapons, the IAEA Board's resolution on Libya's noncompliance simply stated that Libya had not complied with its safeguards agreement. The legal authority of the IAEA at present is limited to the range of activities within negotiated safeguards agreements.

President Bush proposed in February 2004 that the IAEA form a verification committee "to ensure that the IAEA is organized to take action when action is required." In June 2005, the IAEA established a Committee on Safeguards and Verification. If the committee addresses, as DG ElBaradei has suggested, areas such as information sharing, emerging technologies, enhancing the Agency's independent analytical capabilities, and ensuring that the Agency has an adequate and uniform legal authority to conduct credible verification, it is unlikely to branch out into monitoring weapons-related activities.

Article IV. In addition to stating the inalienable right of all parties to pursue peaceful uses of nuclear energy, Article IV says that "All the Parties to the Treaty undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials, and scientific and technological information for the peaceful uses of nuclear energy." There are no standards for measuring whether NPT parties are meeting these Article IV obligations for the fullest possible exchange. During treaty negotiations, the conventional wisdom was that the NPT would provide "a favorable basis for the spread of peaceful nuclear technology," and the United States recognized in Article IV a "commitment to action by nuclear Powers...to contribute.[16] However, that cooperation must also be in conformity with the Articles I and II obligations not to develop, manufacture, or transfer nuclear weapons technology. Some observers have questioned whether U.S. nuclear cooperation with India, proposed in July 2005, would

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[14] *Report to Congress Pursuant to Section 601 of the Nuclear Non-Proliferation Act of 1978, As Amended by the Nuclear Proliferation Prevention Act of 1994 For the Year Ending December 31, 2004.* p. 8.

[15] See CRS Report RS21823, *Disarming Libya: Weapons of Mass Destruction.* The IAEA Board of Governors resolution, GOV/2004/18, can be found at [http://www.iaea.org].

[16] Willrich, op. cit., p. 128 and 136. See U.S. Arms Control and Disarmament Agency, *Documents on Disarmament 1968*, Goldberg statement, May 31, 1968, p. 416.

contradict the principles the United States itself has set out for Article IV cooperation — that is, compliance with Articles I and II of the treaty. U.S. officials have argued to make India an exception to nonproliferation norms in order to strengthen nonproliferation.[17]

Article VI. Similarly, there are no measures in the NPT to verify compliance with the Article VI obligation to "pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament and on a treaty on general and complete disarmament under strict and effective international control." In 1967, U.S. negotiators argued that "it would not be feasible to incorporate specific obligations [toward disarmament] in the treaty itself. The differences that have prevented agreement on these measures have not yet been resolved."[18] The 1995 and 2000 Review Conferences identified "practical" steps toward disarmament but there are still disagreements about the legal status of those steps and their implications for non-compliance. Assistant Secretary of State Stephen Rademaker remarked in April 2005 that "the 13 steps do not encapsulate the obligations of Article VI in the NPT. The obligations of Article VI are encapsulated in Article VI."[19] The United States has reported on Article VI implementation[20], highlighting those steps it has taken to reduce the number of nuclear warheads in its deployed forces. Other states, however, complain of U.S. noncompliance because the United States continues to conduct research and development on new types of nuclear weapons and, as yet, has not accepted much deeper reductions in its nuclear forces.

Legislation in the 109th Congress

The 109th Congress remains interested in NPT compliance issues, particularly those related to Iran and North Korea. Members introduced the following legislation:

- H.Con.Res. 133, *Non-Proliferation Treaty Enhancement Resolution of 2005,* urges universal adoption of safeguards-strengthening measures and implementation of disarmament steps;
- H.R. 665, *Omnibus Nonproliferation and Anti-Nuclear Terrorism Act of 2005,* calls upon the President to report to Congress on measures to close the perceived NPT Article IV "loophole";
- H.R. 3184, *Small Quantities Protocol Act,* calls on IAEA member states with a Small Quantities Protocol to also sign, ratify, and implement the Additional Protocol and provide access by IAEA inspectors;
- H.Res. 373, *Recognizing the dangers posed by nuclear weapons and calling on the President to engage in nonproliferation strategies designed to eliminate these weapons of mass destruction from United States and worldwide arsenals,* called upon the President to comply with Article VI obligations under the NPT.

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[17] See CRS Report RL33016, *U.S. Nuclear Cooperation with India: Issues for Congress.*

[18] Willrich, op. cit., p. 162.

[19] Wade Boese and Miles Pomper, "The U.S. Approach to the 2005 Nuclear Nonproliferation Treaty Review Conference: An ACT Interview with Assistant Secretary of State Stephen Rademaker," April 19, 2005, [http://www.armscontrol.org/interviews/20050419_Rademaker.asp]

[20] The United States and other states have produced reports on their actions and policies in support of Article VI, which are available at [http://disarmament2.un.org/wmd/npt/index.html]

ATTACHMENT 8

Chase, Vincent

From: Kopple, Scott [Scott.Kopple@nnsa.doe.gov]
Sent: Friday, September 15, 2006 4:45 PM
Subject: U.S. and Russia Sign Liability Protocol

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FOR IMMEDIATE RELEASE
Friday, September 15, 2006

U.S. and Russia Sign Liability Protocol

Nonproliferation Program Will Eliminate Enough Plutonium For 16,000 Nuclear Weapons

WASHINGTON, DC – Secretary of Energy Samuel W. Bodman praised today's signing of a liability agreement between the United States and the Russian Federation that clears a legal hurdle for an important nonproliferation program administered by the Department of Energy's National Nuclear Security Administration (NNSA).

Under Secretary of State Robert Joseph and Russian Deputy Foreign Minister Sergei Kislyak signed the agreement in Washington, on behalf of their two governments. The United States and Russia successfully completed negotiations of the protocol in 2005, and the Russian government recently completed its formal process approving it for signature.

"This agreement demonstrates that both countries continue to be committed to this important nonproliferation program, which will dispose of enough weapons-grade plutonium for more than 16,000 nuclear weapons," Secretary Bodman said. "It's an important part of the Bush administration's effort to keep nuclear material out of the hands of terrorists."

The plutonium disposition program aims to eliminate a total of 68 metric tons (about 150,000 pounds) of surplus weapon-grade plutonium in the United States and in Russia, and stems from a 2000 nonproliferation agreement between the two countries. Both countries will dispose of their plutonium by converting it to mixed oxide (MOX) fuel for use in nuclear reactors. Once the MOX fuel is irradiated, the plutonium has been converted into a form that cannot be used for nuclear weapons.

"Signing this protocol with our Russian partners formally resolves the issue of what liability framework would apply for cooperation between the two countries to eliminate this dangerous material from Russian and U.S. stocks," said NNSA Administrator Linton F. Brooks. "We continue to work with the Russian Federation on the next steps in implementing the plutonium disposition agreement."

NNSA is nearing completion of site preparation activities for construction of a Mixed Oxide Fuel Fabrication Facility at the Savannah River Site in Aiken, South Carolina. The agency is awaiting completion of the appropriations act for fiscal year 2007 before proceeding with construction.

Established by Congress in 2000, NNSA is a semi-autonomous agency within the U.S. Department of Energy responsible for enhancing national security through the military application of nuclear science. NNSA maintains and enhances the safety, security, reliability and performance of the U.S. nuclear weapons stockpile without nuclear testing; works to reduce global danger from weapons of mass destruction; provides the U.S. Navy with safe and effective nuclear propulsion; and responds to nuclear and radiological emergencies in the U.S. and abroad. Visit www.nnsa.doe.gov for more information.

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