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Challenges of non-proliferation non-compliance

Working paper submitted by the United States of America

1. The most serious challenge facing the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and the broader nuclear non-proliferation regime today is non-compliance with the Treaty's core of non-proliferation obligations by countries seeking to develop nuclear weapons. Iran, for example, has engaged in a clandestine nuclear weapons programme for many years, in violation of its obligations as a State party. North Korea also violated its NPT obligations for many years while a party to the Treaty.

Cost of non-compliance

2. Non-compliance threatens the Treaty and the broader nuclear non-proliferation regime in multiple ways.

3. First, it directly undermines the most important benefit the NPT brings: assurance against the proliferation of nuclear weapons, and thus also against the emergence or resurgence of nuclear arms races and against the catastrophe of nuclear warfare. By undercutting these core non-proliferation assurances, non-proliferation non-compliance imperils the peace and security of all nations.

4. Second, non-compliance undermines the foundation of trust and safety upon which the benefits of international nuclear cooperation are necessarily built. Without assurances that transfers of nuclear technology will occur within the framework of appropriate safeguards and as part of a system that helps ensure the employment of such technology for exclusively peaceful purposes, such transfers would become more difficult, or even impossible, and mankind would increasingly lose the benefits that such technology can bring.

5. Third, non-compliance with the Treaty's core of non-proliferation obligations undermines efforts to bring about universal adherence to the NPT. If the parties to the NPT did not respond to remedy non-compliance with the Treaty's obligations, there would be both little purpose in seeking to bring non-parties into the Treaty and little benefit in having them subject to its obligations if they did join. An inability to



respond to non-compliance with non-proliferation obligations would undercut the chances of achieving universality.

6. Fourth, non-compliance undercuts the aspirations of the international community to nuclear and general disarmament, as expressed in the preamble to the NPT and in article VI. If the emergence of new nuclear weapons possessors cannot be stopped, new regional or global nuclear arms races are likely to develop and/or become entrenched, creation of the environment necessary for the total elimination of nuclear weapons would become ever more difficult and distant, and the risk of nuclear warfare would increase dramatically. Non-proliferation compliance is thus the foundation for future progress on disarmament.

7. For these reasons, it is imperative that States party to the Treaty place at the top of their agenda for this review cycle the development and implementation of vigorous and sustained efforts to detect violations of the Treaty's non-proliferation obligations, return violators to compliance, and deter other future would-be violators from following such a path. If the Treaty regime cannot accomplish these tasks, it will have failed in its primary purpose.

Non-proliferation obligations

8. Article I requires that nuclear-weapons States parties not transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices. It also requires that they not in any way assist, encourage, or induce any non-nuclear-weapons State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices. Among other actions to fulfil these obligations, the nuclear-weapons States should establish and implement comprehensive and effective export controls, and should always consider whether a particular technology transfer or activity would further a non-nuclear-weapons State party's ability to manufacture or acquire nuclear weapons.

9. Article II prohibits non-nuclear-weapons State parties from receiving from any transferor a nuclear weapon or other nuclear explosive device, or control over such weapons or explosive devices, directly or indirectly. It also prohibits non-nuclear-weapons State parties from manufacturing or otherwise acquiring a nuclear weapon or other nuclear explosive device, and from seeking or receiving any assistance in the manufacture of a nuclear weapon or other nuclear explosive device. Fulfilment of this obligation requires that non-nuclear-weapons State parties refrain from any activities that constitute the manufacture of a nuclear weapon — a term that reaches more than simply the final assembly of such a device. Accordingly, all parties should be gravely concerned if another party engages in activities the purpose of which appears to be nuclear-weapons development. Facts indicating that the purpose of a particular activity is the acquisition of a nuclear explosive device would tend to show non-compliance. One cannot overstate the importance of non-nuclear-weapons State parties refraining from activities that are directed at and represent progress towards the manufacture or acquisition of nuclear weapons. States should also have the necessary laws and regulations in place to implement their article II obligations.

10. To prevent the “diversion of nuclear energy from peaceful uses to nuclear weapons”, article III requires that each non-nuclear-weapons State party enter into a safeguards agreement with the International Atomic Energy Agency (IAEA) setting out the safeguards procedures to be applied to all source or special fissionable

material in all peaceful nuclear activities. Compliance with safeguards obligations therefore involves a separate agreement that is established between the non-nuclear-weapons State party and the IAEA. Material non-compliance with an NPT-type safeguards agreement will likely constitute non-compliance with article III as well. (The IAEA makes compliance determinations with regard to safeguards agreements. It does not make determinations regarding compliance with the NPT: such issues are for the States party to the Treaty to determine.) Because nuclear safeguards help ensure that nuclear items and material are not diverted to improper uses, compliance with safeguards agreements is an essential part of fulfilling non-proliferation obligations under the NPT.

Compliance challenges in North Korea

11. On 10 January 2003, the Democratic People's Republic of Korea (North Korea) notified the United Nations Security Council of its decision to "revoke the suspension on the effectuation" of its 1993 withdrawal from the NPT and asserted that its withdrawal would be effective the next day. (It had previously given 89 days advance notice to withdraw in 1993, before deciding to remain an NPT party.)

12. Prior to that date, North Korea had been secretly working to develop nuclear weapons for many years, notwithstanding its accession to the Treaty. North Korea's efforts to produce a nuclear weapon prior to its effective withdrawal constituted an undeniable violation of its NPT obligations, both of article II and article III.

13. The Democratic People's Republic of Korea conducted a nuclear detonation on 9 October 2006, despite strong protests from the international community, which were expressed clearly in the 6 October 2006 statement by the President of the Security Council. North Korea's provocative act resulted in the unanimous adoption of Security Council resolution 1718 (2006), which, *inter alia*, condemned the detonation and demanded that North Korea return to the NPT and to IAEA safeguards and called upon it to return to the six-party talks.

14. Today, the facts of North Korea's violations of the NPT are evident. Prior to the 1994 Agreed Framework, and again after it lifted the freeze on its programmes in late 2002, North Korea pursued a programme to produce plutonium for use in nuclear weapons. North Korea is also suspected of pursuing a separate programme to produce highly enriched uranium, and at one point even admitted this to the United States. The Democratic People's Republic of Korea was in violation of its safeguards agreement — and also NPT article III — from at least 1993, when the IAEA Board of Governors found it to be in non-compliance with its safeguards agreement. The actions of the Democratic People's Republic of Korea in December 2002 in removing IAEA seals and cameras, and in expelling inspectors, also constituted a violation of article III.

15. As the IAEA Director General noted in his introductory statement to the February 2003 IAEA Board of Governors meeting, North Korea "displayed complete disregard for its obligations under the Safeguards Agreement by cutting all seals and impeding the function of surveillance cameras that were in its nuclear facilities".

16. In short, North Korea was in "chronic non-compliance" with its safeguards agreement and article III of the NPT after 1993, and for years the IAEA has been unable to verify that there has been no diversion of nuclear materials. And because

the nuclear activities of the Democratic People's Republic of Korea constituted the manufacture of nuclear weapons, North Korea violated its NPT article II obligations as well.

17. Five regional powers — the United States, Russia, China, Japan and the Republic of Korea — are currently involved in diplomatic efforts, through the six-party talks, to resolve the North Korean nuclear crisis peacefully. In September 2005, the six States agreed to a Joint Statement calling for the Democratic People's Republic of Korea's denuclearization and return to the NPT and IAEA safeguards. North Korea's efforts to withdraw from the NPT have also spurred considerable discussions in NPT forums, including Main Committee III at the 2005 NPT Review Conference, of how the nuclear non-proliferation regime can better deter withdrawal from the Treaty by parties in violation of its provisions. (Deterring withdrawal by Treaty violators is addressed in a companion paper to this document that was released in February 2007 by the United States.)

18. At the conclusion of the fifth round of the six-party talks on 13 February 2007, the six announced an agreement on "Initial Actions for Implementation of the Joint Statement", in which North Korea committed to abandon all nuclear weapons and existing nuclear programmes and return, at an early date, to the NPT and IAEA safeguards. In the February 2007 agreement, the Democratic People's Republic of Korea committed to shut down and seal the Yongbyon nuclear facility, for the purpose of its eventual abandonment, and to invite IAEA personnel to return to the Democratic People's Republic of Korea to conduct all necessary monitoring and verification activities as agreed between the IAEA and the Democratic People's Republic of Korea. In the February 2007 agreement, the Democratic People's Republic of Korea also committed to provide in the next phase a complete declaration of all nuclear programmes, and to disable all its existing nuclear facilities, including graphite-moderated reactors and its reprocessing plant.

19. The six parties also agreed to cooperate in economic, energy, and humanitarian assistance to the Democratic People's Republic of Korea. Furthermore, the Democratic People's Republic of Korea and the United States agreed to start bilateral talks aimed at resolving pending bilateral issues and moving towards full diplomatic relations. The parties reaffirmed that they will take positive steps to increase mutual trust, and will make joint efforts for lasting peace and stability in North-east Asia. The Initial Actions agreement provides that directly related parties will also negotiate a permanent peace regime on the Korean Peninsula in an appropriate separate forum. The Parties agreed to take coordinated steps to implement the Joint Statement in a phased manner in line with the principle of "action for action".

20. Much work still lies ahead in implementing its terms, but this agreement holds out the possibility of resolving the Democratic People's Republic of Korea's non-compliance with nuclear non-proliferation norms. For this reason, States party to the NPT should lend their support and encouragement to the six-party process in order to maximize its ability to reach a successful conclusion.

Compliance challenges in Iran

21. Unfortunately, however, North Korea is not the only country to have violated articles II and III of the NPT and its safeguards agreement with the IAEA. Iran also has violated these obligations, and has yet to abandon its pursuit of the capability to

produce fissile material for use in nuclear weapons. Because Iran remains a State party to the NPT without having conformed its conduct to the Treaty's rules, in some respects it presents an even greater challenge to the non-proliferation regime.

22. Iran violated its article III safeguards obligations by pursuing a secret programme involving the undeclared procurement and use of nuclear materials for two decades, while aiming to acquire the most sensitive elements of the nuclear fuel cycle. Such activities have included: unsafeguarded enrichment activities; unsafeguarded plutonium separation activities; the import of undeclared uranium compounds; and diversion of nuclear material from safeguarded to unsafeguarded locations and uses.

23. For several years, IAEA inspectors have sought repeatedly to resolve outstanding questions about the nature and scope of Iran's activities, but have been met at every turn by Iranian lies, evasions, deceptions, and concealment. Again and again, Iran has impeded IAEA inspector activity, refused requests for critical information, orchestrated delays during which extensive efforts have been undertaken by Iranian authorities to conceal evidence of safeguards violations, and wrapped its activities in webs of falsehoods. At every step, the most significant information the IAEA has learned about Iran's safeguards violations has been confirmed only grudgingly by Iran, and only when it had become clear that hard evidence contradicted each excuse previously offered by the Iranian regime. As a result of the public revelation of many of its activities beginning in 2002, Iran was found to be in breach of its safeguards obligations by the IAEA Board of Governors in November 2003. Iran was again found in safeguards non-compliance by the Board in September 2005, and its non-compliance was reported to the Security Council in February 2006.

24. Worse still, the reasons for this 20-year campaign of deception lie in Iran's pursuit of nuclear weapons in violation of article II of the NPT. The United States has been warning of Iran's nuclear weapons ambitions since at least 1993, and in 2004 first publicly concluded that Iran's long-standing activity constituted a violation of article II. This conclusion has become an inescapable inference in light of Iran's long campaign of nuclear deception, coupled with its continuing efforts to develop uranium enrichment and other nuclear capabilities for which it has no legitimate need.

25. Furthermore, despite all of its efforts to conceal its nuclear activities from IAEA inspectors, Iran has been discovered to possess documentation on the fabrication of uranium hemispheres — items for which there exists no plausible use except in nuclear weapons, and which it acquired from the same illicit proliferation network that supplied nuclear weapons designs to Libya's former clandestine programme to develop nuclear weapons in violation of the NPT. The organizational interconnections between Iran's uranium conversion and enrichment work and military organizations, suspicious tests related to high explosives, and efforts to design an apparently nuclear missile re-entry vehicle further support the conclusion that Iran has been in violation of article II of the NPT for many years.

26. After repeated diplomatic efforts by the United Kingdom, France, and Germany were rebuffed by Iran — and after Iran had abrogated the Paris Agreement that it signed with these three States in November 2004 — the three countries joined with the United States, Russia, and China in a new effort to offer Iran a diplomatic solution to the crisis its nuclear activities had created. Iran, however, has continued

to spurn the package of incentives offered it by these countries in June 2006, and has repeatedly refused to end its provocative and destabilizing nuclear activities.

27. Accordingly, on 31 July 2006, the Security Council adopted resolution 1696, demanding that Iran verifiably suspend all enrichment-related and reprocessing activities, including research and development, by 31 August 2006, and noting the possible imposition of sanctions under article 41 of chapter VII of the Charter of the United Nations. On 31 August 2006, the IAEA Director General submitted a report confirming that Iran had failed to comply with resolution 1696. As a result of Iran's continued defiance of the international community, on 23 December 2006, after three months of negotiations, the Security Council unanimously adopted resolution 1737, including a requirement that Iran suspend certain proliferation-sensitive nuclear activities, because of that country's refusal to undertake the measures required by the IAEA Board of Governors and its failure to comply with Security Council resolution 1696. After Iran refused to comply with this further resolution, a new sanctions package was agreed by the Security Council, in the form of resolution 1747, on 24 March 2007. Iran continues to defy the Security Council and violate its obligations under these resolutions, as well as under the NPT.

Addressing compliance challenges

28. The continued integrity of the NPT, and of the broader nuclear non-proliferation regime as a whole, requires that non-proliferation compliance challenges be quickly and effectively addressed. The integrity of the Treaty and the regime also requires that this be done in a way that makes clear to future would-be violators that non-compliance likely will be detected, and that such detection will incur costs for them that will exceed the benefits they could expect to gain from their violations.

29. The Iranian and North Korean proliferation situations demonstrate the grave challenges to the viability of the non-proliferation regime presented by non-compliance with the Treaty's core of non-proliferation obligations. It is imperative that States party to the NPT make it their highest priority during the current NPT review cycle to develop and implement improved ways to deter, detect, and reverse non-compliance with articles I, II, or III of the Treaty, or with safeguards agreements. Without effective collective action in this regard, the NPT's continued efficacy and viability will be called into question.
