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"Saving the NPT and the Nonproliferation Regime in an Era of Nuclear Renaissance"

July 24, 2008

There are presently clear indications that we are about to see a revival of nuclear energy worldwide. It is important to make this expansion of nuclear energy for the production of electricity and desalinated water as safe and secure as possible.

In the coming decade, however, the rate of this expansion will be limited by several factors: in some recipient states, by the lack of an adequate industrial infrastructure, or of a nuclear safety regulatory regime monitored by a truly independent and experienced control organization; and in supplier states, by a limited capacity to produce certain types of nuclear equipment, such as reactor vessels. In short, the world-wide expansion of nuclear electricity production is not going to occur overnight.

Since there's no rush, we have time to "do" nuclear right. Doing it right means, in particular, putting stronger barriers to proliferation in place before, not after, new nuclear capabilities spread.

I respectfully submit that there are five specific actions that must be taken by the relevant actors within the international community in order to strengthen the non-proliferation regime.

- First, increase the International Atomic Energy Agency (IAEA or Agency)'s verification authority and detection capability so that the IAEA has both the authority and capabilities required to detect *any* undeclared nuclear-related activity (including nuclear weaponization activities) in non-nuclear-weapon states (NNWS).
- Second, improve, through preventive measures, the credibility and enforcement capability of the IAEA and the UN Security Council (UNSC) in case a state is found to be in non-compliance with its safeguards agreement or, thereafter, withdraws from the NPT.
- Third, provide credible fuel supply guarantees in order to reduce the incentive for states to develop sensitive fuel cycle capabilities at the national level.
- Fourth, limit and better control illicit trafficking and transfers of nuclear material and dual use items, and
- Fifth, make significant and irreversible progress in nuclear disarmament, starting with the ratification and entry into force of the CTBT.

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The actors within the international community who must act to achieve the objective of strengthening the non-proliferation regime are the IAEA, the UNSC, the Nuclear Suppliers Group (NSG), the five nuclear-weapon-states (NWSs or P-5), and of course the member states of which these organizations are comprised. What each of these actors must do to achieve the desired level of strength for the non-proliferation regime is as follows.

1. The IAEA

The IAEA Board of Governors (BoG) should:

a) Approve and publish a list of the information that Member States are expected to communicate to the IAEA in accordance with Article VIII.A. of the IAEA Statute[2].
The IAEA Secretariat has inter alia recommended that the BoG "*request all States to provide to the Agency relevant information on exports of specified equipment and non-nuclear material, procurement enquiries, export denials, and relevant information from commercial suppliers in order to improve the Agency's ability to detect possible undeclared nuclear activities*"[3].

For the same reason the BoG should also request all member states to provide, on a regular basis, information regarding each **import** of specified equipment and non-nuclear material listed in Annex II of the Additional Protocol (AP)[4]. Today providing such information is not obligatory and (even under the terms of the Additional Protocol) requires a specific request from the Agency to the member state from which the Agency wishes to acquire such information.

b) Acknowledge that the failure and breaches committed by the Republic of Korea (RoK) and Egypt and reported to the BoG respectively in November 2004[5] and February 2005[6] were cases of non-compliance which should have been reported to the UNSC as mandated under Article XII.C. of the Statute.
The BoG should therefore adopt a resolution requesting the Director General (DG) to transmit all reports concerning those two states to the UNSC for information purposes while commending them (if appropriate) for their proactive cooperation with the Agency and for the actions taken to remedy their non-compliance as has been the case for Libya in 2004[7].

It is essential that the failures and breaches committed by the RoK and Egypt be unequivocally recognized to constitute non-compliance with their Comprehensive

[2] Article VIII.A states that "*Each member should make available such information as would, in the judgment of the member, be helpful to the Agency*".
[3] SeeIAEA Secretariat's Note 45 of August 2006
[4] This refers to the « Model Protocol Additional to the Agreement(s) between State(s) and the IAEA for the application of safeguards », information circular INFCIRC/540 (Corrected) approved by the BoG in 1997.
[5] GOV/2004/84
[6] GOV/2005/9
[7] In its resolution of 10 March 2004 the BoG "Finds, under Article XII.C of the Statute, that the past failures to meet the requirements of the relevant Safeguards Agreement (INFCIRC/282), identified by the Director General constituted non-compliance, and, in accordance with Article XII.C, requests the Director General to report the matter to the Security Council for information purposes only, while commending the Socialist People's Libyan Arab Jamahiriya for the actions it has taken to date, and has agreed to take, to remedy the non-compliance".

Safeguards Agreement (CSA)[8]. Failure to adopt such a resolution would result in a dangerous precedent lowering the standards for compliance with the CSA and thereby seriously undermining the credibility of the safeguards regime.

c) Amend the draft "India-specific" safeguards agreement[9] submitted on 9 July 2008 to the Board's approval.

The preamble of the Agreement, which is described within the document itself as "India-specific", explicitly provides that "I*ndia's concurrence to accept Agency Safeguards*" depends on India's "*access to the international fuel market, including reliable, uninterrupted and continuous access to fuel supplies from companies in several nations…"*

First, accepting the principle of an "India-specific safeguards agreement" runs against the fundamental non-discrimination principle that - apart from the initial discrimination of the NPT in favor of the five nuclear-weapon states (NWS) - is the basis of IAEA safeguards at the state level[10], which are based on standard models.[11]

Second, this is the first time that the implementation of a safeguards agreement with the Agency depends on purely commercial conditions which, in addition, can hardly be verified by the Agency. Furthermore, the ambiguity of the phrase "several nations" effectively makes it discretionary with India to decide when the Agency can commence implementation.

Third, since it is entirely up to India to determine whether the appropriate fuel supply conditions are met or *continue to be met*, and if, at any time, India does not consider such conditions to be met, India has no obligation to accept Agency safeguards and can withdraw from the Agreement.

It is doubtful that such discretionary acceptance of a safeguards regime on the part of India meets the Hyde Act requirement of "IAEA Safeguards in perpetuity".

Fourth, Paragraph 3 of the draft safeguards Agreement states that "*the purpose of safeguards under this Agreement is to guard against withdrawal of safeguarded nuclear material from civilian use at any time*".

Since this paragraph 3 is limited to nuclear material and does not include non-nuclear material, equipment and components subject to the Agreement, i.e. those "*supplied to India which are required to be safeguarded pursuant to a bilateral or multilateral arrangement to which India is a party*"(§11(b)), it is not clear how the Agency would be informed of the exact content of these bilateral arrangements and therefore able to carry out its safeguards authority with respect to such non-nuclear material and equipment.

Therefore the BoG should require the Agreement to be modified so as to oblige India to notify to the Agency and place under safeguards all nuclear material, equipment

[8] INFCIRC/153 (corrected)
[9] GOV/2008/30
[10] INFCIRC 66-type safeguards agreements are « project » or facility specific not state level agreements.
[11] Comprehensive safeguards agreements INFCIRC/153-corrected, and Model Additional Protocol INFCIC/540-corrected.

and technology[12] and nuclear-related dual-use equipment, materials, software and related technology[13] which are supplied to India pursuant to any bilateral or multilateral arrangement. In addition the BoG should require all Member States to inform the Agency[14] of all such items supplied to India.

2. The UNSC

Experience has demonstrated that when a State is found to have been in non-compliance with its safeguards agreements (or in breach of its obligation to comply with its safeguards agreements, which is synonymous) and does not show full transparency and cooperation for resolving questions and/or inconsistencies with regard to its nuclear program (both past and present), the Agency will temporarily need expanded verification authority. This expanded authority, which will be in addition to that granted to the Agency under a Comprehensive Safeguards Agreement and a Protocol Additional, will be necessary, in these circumstances, to provide, **in a timely manner**, an adequate level of assurance that there are no undeclared nuclear material and activities in that state, and that no previously undeclared nuclear activities have been undertaken in furtherance of any military purpose.

To give the IAEA the verification tools it needs in cases of non-compliance, the UNSC should consider the merits of adopting a **generic** resolution[15] stating, independently of any specific case, that if a state is found by the IAEA to be in non-compliance with its Comprehensive Safeguards Agreement in accordance with Article XII.C of the IAEA Statute, **upon request by the Agency**, the UNSC would automatically adopt a **specific** resolution under Chapter VII of the UN Charter requiring that state to grant to the Agency extended access rights. These rights would be used to resolve outstanding issues, and would be **terminated** as soon as the Agency's Secretariat and the BoG have drawn the conclusion that there are no undeclared nuclear material and activities in the state and that its declarations to the IAEA are correct and complete. A draft of such a UNSC generic resolution is provided in Annex I.

As has been stressed on many occasions the great benefit that the NPT brings to the international community would be dangerously eroded if countries violating the Treaty or their safeguards agreements felt free to withdraw from it, develop nuclear weapons and enjoy the fruits of their violation with impunity.

To address this issue the UNSC should adopt (under Chapter VII of the UN Charter) another **generic** and legally binding resolution stating that if a state withdraws from the NPT (an undisputed right under its Article X) **after** being found by the IAEA to be in non-compliance with its safeguards undertakings, then such withdrawal constitutes a threat to international peace and security as defined under Article 39 of the UN Charter. This generic resolution should also provide that under these circumstances, all materials and equipment made available to such a state or resulting from the assistance provided to it under a Comprehensive Safeguards Agreement would have to be forthwith frozen and as soon as possible removed from that state under IAEA supervision and remain under the Agency's Safeguards.

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[12] listed in INFCIRC/254/Part1 (as revised)

[13] listed in INFCIRC/254/Part 2 (as revised)

[14] Under article VIII.A of the Statute.

[15] Such as resolution 1373 (28 September 2001) concerning acts of international terrorism, and resolution 1540 (28 April 2004) concerning the acquisition of nuclear, chemical or biological weapons and their means of delivery by non-state actors.

A pre-requisite for these proposals to be approved by the UNSC is to have the support of the five Permanent Members of the UN Security Council. Since President Putin has stated "*We are unequivocally in favour of strengthening the regime of non-proliferation*"[16], one could hope that Russia would support these generic and 'state-neutral" measures which would, of course, have no retroactive effect. The European Union, under French presidency, should bring such proposals to the attention of the Security Council.

3. The NSG

In addition to having an Additional Protocol in force as a pre- condition to exporting, the NSG should:

a) Request that all nuclear material and other items exported to any third country be used exclusively in facilities or locations placed under an IAEA INFCIRC/66-type safeguards agreements. Contrary to Comprehensive Safeguards Agreements, INFCIRC/66-type agreement do not lapse in case the state withdraws from the NPT. The INFCIRC/66-type agreement would normally be subsumed under the CSA and become operative only in case of withdrawal from the NPT. This is particularly important when dealing with sensitive fuel cycle facilities such as enrichment and reprocessing plants. All non-nuclear-weapon states (NNWS) members of the NSG should lead by example and place their enrichment and reprocessing facilities under INFCIRC/66-type safeguards agreements.

b) Reject arbitrary "India-specific" export guidelines and, instead, adopt objective criteria-based export conditions that would allow all non-NPT states the right to acquire nuclear power plants (NPPs) while at the same time reinforcing the global non-proliferation regime. A more detailed proposal for adopting such objective criteria based export conditions is attached as Annex II.

4. IAEA Members States

a. Bilateral agreements

Over the last couple of years, not only Russia and France, but also the US and China, have been competing to conclude nuclear cooperation agreements worldwide.

It is clear that none of these supplier states wish to see non-nuclear-weapon states acquiring nuclear weapons and therefore have a common interest in making sure that this does not happen. The objective is to find a way for these nuclear supplier nations which are competing for geopolitical influence, in particular in the Middle East, to agree on measures essential to contain nuclear proliferation and to avoid using more or less stringent bilateral non-proliferation requirements as a tool for giving the supplier states' domestic industry a competitive advantage.[17]

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[16] October 2007 speech in Munich at the 43rd Conference on Security Policy

[17] In particular the NSG safety exception should be well defined, no export should take place to a NNWS that has no Additional Protocol in force, and all sensitive fuel cycle facilities should be under IAEA safeguards that do not end if the state withdraws from the NPT.

IAEA member states should, as a matter of transparency, provide to the Agency the clauses of all their bilateral nuclear cooperation agreements dealing with nuclear non-proliferation, including safeguards and export conditions.

b. Fuel Supply guarantees

Considering the long experience gained and the high performance achieved by commercial nuclear fuel cycle companies, there is today very little economic incentive for a non-nuclear-weapon state (NNWS) to domestically develop and construct sensitive fuel cycle facilities such as uranium conversion, enrichment or reprocessing plants, because these plants cannot be economically competitive without the support of foreign technology holders.

To further minimize any incentive to build such plants domestically, it is necessary to provide the strongest possible guaranty of a secure supply of nuclear fuel. Even though the nuclear fuel cycle industry is an oligopoly, there is not a single example in history where a state that had a CSA in force had to close down an electrical NPP because it was denied the delivery of fresh fuel assemblies.

Iran, which had been the subject of a nuclear embargo from the West after the revolution of 1979, has expressed concern that the delivery of fuel assemblies to its NPPs could be suspended or denied by a supplier for purely political reasons, and that it therefore has to develop a domestic uranium enrichment capability. Although the likelihood that all suppliers would deny such fuel deliveries is small, this concern must be addressed seriously.

One suggested solution is to construct and operate multinational facilities, in particular enrichment plants, in which the customers would also be shareholders, but without access to the technology.

In 2006 Russia launched such a facility- the International Uranium Enrichment Center (IUEC) at Angarsk- in collaboration with Kazakhstan, Ukraine and Armenia. South Korea and Mongolia have been reported to have a possible interest in joining the project, and it is open to other participants and in particular to Iran which has shown no interest so far. Russia will eventually retain 51% of the shares. In February 2007 the IUEC was entered on the list of Russian nuclear facilities eligible for IAEA safeguards implementation.

The IUEC project is not fundamentally different from the French Eurodif enrichment joint venture established in the late 1970s, with foreign shareholders (Belgium, Italy and Spain) including Iran[18]. Notwithstanding the merits of such a concept, these multilateral facilities don't address the real issue which is the guarantee that in the end the exporting state will not interrupt supply by denying or materially delaying the necessary export license.

[18] Iran owns 49 % of the shares of SOFIDIF which in turn owns 20 % of the capital of EURODIF.

The ultimate guaranty against such an occurrence is for the IAEA to own a fuel reserve that would be used to provide fuel assemblies to any country that is denied fuel delivery for purely political reasons.

Such a fuel reserve, to be effective, should be operated under the following three conditions:

- An IAEA low enriched fuel reserve (sometime called a "fuel bank") should, for practical reasons, be physically located (in the form of UF6) at some, if not all commercial enrichment plant sites.

- The Agency should conclude contracts with all manufacturers of fuel assemblies, to assure the Agency's access, in case of necessity, to some fabrication capacity.

- Countries where the fuel reserve and the fabrication plants are located should grant the IAEA a generic (or *a priori*) export license, subject to the IAEA confirming that a number of objective and well defined safety, security and non-proliferation conditions have been met by the recipient state (see Annex III), and that this state does not possess domestic sensitive fuel cycle facilities.

Independently, suppliers of NPPs should also consider the merit of leasing the fresh fuel assemblies required for the lifetime operation of the NPPs and of taking back the spent fuel (possibly in exchange for an equivalent quantity of well-conditioned high level vitrified wastes), as an incentive for the recipient State not to set up domestic enrichment and reprocessing facilities. Here again, Russia has taken the lead. So far it is the only country that has adapted its national law in order to be in a position to take back spent fuel assemblies of Russian and possibly foreign origin. The delivery of fresh fuel elements for the Bushehr NPP in Iran was made conditional on Iran committing to send back the spent fuel to Russia, thereby significantly diminishing, if not eliminating, the risk that the plutonium contained therein could be recovered by Iran.
What is not known is what other export conditions are required by Russia, for instance what Russia's rights may be in case Iran were to withdraw from the NPT or unilaterally suspend or limit the implementation of its CSA with the IAEA. As indicated above, it would be highly desirable to have these bilateral export conditions provided to the Agency.

5. Disarmament and the P-5

Both disarmament and a stronger non-proliferation regime are a prerequisite for an orderly expansion of nuclear energy.

If the 2010 NPT Review Conference is to be successful and agreement is to be achieved on concrete steps that would strengthen the non-proliferation regime, progress on nuclear disarmament is indispensable. It is well understood that whatever progress nuclear-weapon-states (NWSs) achieve in nuclear disarmament it will not, per se, be sufficient to convince those states determined to acquire a nuclear weapon capability to change course. But it

remains a prerequisite to gaining broad international support for measures such as those proposed in this paper.

It is of course very important to publicly support the vision of a world free of nuclear weapons, but progress toward that goal will be judged on the practical and concrete steps taken, and not just on the rhetorical statements made by NWSs. President Putin said (Munich-October 2007): "*The potential danger of the destabilization of international relations is connected with obvious stagnation on the disarmament issue*".

The P-5 now needs to agree on the concrete disarmament steps that constitute a priority and can be achieved before 2010.

If one had to select only three issues on which the P-5 must act, in my view, they should be: ratifying the Comprehensive Test Ban Treaty (CTBT), agreeing on a Fissile Material Cut-Off Treaty (FMCT) while simultaneously implementing the Trilateral Initiative between the USA, Russia and the IAEA, and last but not least, de-emphasizing the value of nuclear weapons.

- **Ratifying the CTBT**

To speak about the vision of a world free of nuclear weapons without making every effort to bring the CTBT into force will not only convince no-one, but strike most people as hypocritical.

To date 138 states have ratified the CTBT. For this most important treaty to come into force it still needs to be ratified by the following 10 States: China, Colombia, Egypt, India, Indonesia, Iran, Israel, North Korea, Pakistan, and the United States[19].

It is the primary responsibility of NWSs to convince the world that nuclear weapons will progressively become obsolete and irrelevant to their future security strategy, and that therefore NWSs do not need, nor do they intend to develop and test, new types of nuclear weapons in disregard of their NPT commitments.
Until more convincing progress is made in the area of irreversible nuclear disarmament, many non-nuclear-weapon states (NNWS) will no doubt continue to oppose the highly desirable measures for strengthening the non-proliferation regime recommended in this statement.

The very first concrete step should be for the United States and China to ratify the CTBT as the other three NWSs - France, the Russian Federation and the UK - have already done.

Ratifying the CTBT (the first of the 13 practical steps agreed to by consensus by the 2000 NPT Review Conference) is the most convincing indicator of the NWSs' willingness to comply with their NPT (Article VI) disarmament undertakings.

Many NNWSs, particularly from the Non Aligned Movement (NAM), have been quite vocal in expressing their frustration not only about the lack of progress by the five NWSs with regard to the implementation of the "13 practical steps" referred to above,

[19] Among those, only 3 States have not signed the CTBT: India, North Korea and Pakistan

but also about the "*legal double standard*" between NNWSs that are party to the NPT and the three States that are not (India, Israel and Pakistan) with regard to international verification of their nuclear activities.

Once the CTBT has been ratified by all NWSs it will be logical and easier for supplier countries to request that India ratifies the Treaty as a condition for any nuclear cooperation. This would increase the chances that India would one day agree to join the CTBT, provided of course that Pakistan does so too. Israel, which has already signed the CTBT, would most likely ratify it before the other non-NPT States. It must be a priority for the next US President to have the CTBT ratified by the US before the 2010 NPT Review Conference.

Establishing a WMD free zone in the Middle East is obviously a desirable long term objective. However everyone knows that in order to reach that stage a series of difficult political steps need to be taken and that this will likely take decades to achieve.

A first important milestone on this long road would be for all states in the region that have not yet done so, to sign and ratify the CTBT, in particular Israel, Iran and Egypt.
I would suggest that this would particularly be in Egypt's interest, and that Egypt rather than appearing to be prominent among those opposing badly needed measures to strengthen the non-proliferation regime[20], should use its diplomatic leverage to reach that goal.
North Korea could represent another important milestone. The so-called "Six-Party talks" that resulted in the Joint Statements of September 2005 and February 2007 have as their goal "*the verifiable denuclearization of the Korean Peninsula in a peaceful manner*" including North Korea's commitment to abandon all nuclear weapons. The ratification of the CTBT by North Korea would be a logical and important step, and should therefore be mentioned explicitly in future discussions.
Here again, the ratification of the CTBT by the USA and China would make progress in this direction much more likely.

For any Party to the NPT to delay or obstruct the entry into force of the CTBT is incompatible with the spirit of the Non-Proliferation Treaty and with the basic undertakings of its signatories.

Nuclear supplier states (within or outside the NSG) should undertake not to provide any nuclear energy cooperation (except possibly for major well-defined safety reasons) to any state that has not ratified the CTBT. They would thereby demonstrate that they are ready to give priority to their non-proliferation undertakings for the sake of international peace and security in the long term rather than to their short term economic interests. Russia and the EU have a common interest and are in a good position to promote this objective.

[20] such as the conclusion of the Additional Protocol (AP) to Comprehensive Safeguards Agreement (CSA), a request repeatedly made by the IAEA's Board of Governors and General Conference.

- **The FMCT and the Trilateral Initiative**

Among the 13 practical steps agreed upon in the final document of the 2000 NPT Review Conference, under implementation of Article VI of the NPT, is the application of the principle of **irreversibility** to nuclear disarmament (step 5).
However great the merit of unilateral or bilaterally agreed reductions of the number of nuclear warheads in NWSs' arsenals may be, it is nonetheless crucial to convince NNWSs that this trend is irreversible.

This is why it is so important to make progress in negotiating an FMCT that would cap globally the quantity of fissile material that can be used in nuclear weapons. In parallel the Trilateral Initiative launched in September 1996 by the USA, the Russian Federation and the IAEA to develop a new IAEA verification system for weapon-origin material removed from defense programs, should be concluded and implemented (step 8). This would serve as an example for all NWSs to place fissile material designated by each of them as no longer required for military purposes under IAEA verification in order to ensure that such material remains **permanently** outside military programs (Step 10).

In order to increase the likelihood of an FMCT being agreed sooner rather than later, it would appear reasonable to limit its initial scope to the production of weapons grade material after its entry into force and not to insist on the more ambitious goal of including existing stocks. At this stage, such insistence would be a clear recipe for failure. The other most difficult challenge is to agree on the principle and the extent of international verification measures under the FMCT. But in any case it is important to remember that under Article 18 of the Vienna Convention on the Law of Treaties "*A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:*
(a) It has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or
(b) It has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed."

Entry into force of an FMCT is certainly many years away. But, before 2010, the P-5 should jointly declare[21] that pending the entry into force of a multilateral FMCT, they will not produce fissile material for nuclear weapons. If China cannot be persuaded, the other four NWSs should nevertheless make such a joint declaration.

- **De-emphasizing the value of nuclear weapons**

As suggested by Alexei Arbatov[22], the first and most important step to de-emphasize the value of nuclear weapons would be for the P-5 to make an unequivocal nuclear non-first-use pledge to all non-nuclear member states of the NPT.

[21] As suggested by Robert Einhorn (CSIS) . International Conference on Nuclear Disarmament,. Oslo, February 26-27, 2008
[22] «Reducing the role of nuclear weapons". International Conference on Nuclear Disarmament, Oslo, February 26-27, 208

Another important step would be for the P-5 to de-alert strategic nuclear forces and verifiably withdraw all their tactical nuclear weapons from forward bases to centralized storage sites on their national territories.

There have been clear signals that both Russia and the US agree on the necessity to place high priority on negotiating a follow-up agreement to the Strategic Arms Reduction Treaty (START), since that treaty will expire at the end of 2009, and it must either be extended or replaced by that time.

As already mentioned, these steps will not, by themselves, deter any state which intends to acquire nuclear weapons from trying to do so, but they are indispensable for gaining NNWSs' support for the non-proliferation strengthening measures proposed in this statement.

Between now and the 2010 NPT Review Conference, I deeply hope that Russia and the US will give greater momentum to the disarmament process and will compete to be perceived by all others to be the world's most responsible nuclear weapons state.

Annex I

Draft UN Security Council Resolution

June 2008

The Security Council,

Affirming that proliferation of nuclear, [chemical and biological] weapons, as well as their means of delivery, constitutes a threat to international peace and security,

Reaffirming, in this context, the Statement of its President adopted at the Council's meeting at the level of Heads of State and Government on 31 January 1992 (S/23500), including the need for all Member States to fulfill their obligations in relation to arms control and disarmament and to prevent proliferation in all its aspects of all weapons of mass destruction,

Recalling also that the Statement underlined the need for all Member States to resolve peacefully in accordance with the Charter any problems in that context threatening or disrupting the maintenance of regional and global stability,

Affirming its resolve to take appropriate and effective actions against any threat to international peace and security caused by the proliferation of nuclear, [chemical and biological] weapons and their means of delivery, in conformity with its primary responsibilities, as provided for in the United Nations Charter,

Affirming its support for the multilateral treaties whose aim is to eliminate or prevent the proliferation of nuclear, [chemical or biological] weapons and the importance for all States parties to these treaties to implement them fully in order to promote international stability,

Affirming that prevention of proliferation of nuclear, [chemical and biological] weapons should not hamper international cooperation in materials, equipment and technology for peaceful purposes while goals of peaceful utilization should not be used as a cover for proliferation,

Recognizing further the urgent need for all States to take additional effective measures to prevent the proliferation of nuclear, [chemical or biological] weapons and their means of delivery,

Affirming its commitment to the Treaty on the Non-Proliferation of Nuclear Weapons, and recalling the right of States Party, in conformity with Article I and II of that Treaty, to develop research, production and use of nuclear energy for peaceful purpose without discrimination,

Recalling that the IAEA General Conference in its resolution GC(49)/RES/13 of 30 September 2005 noted that "the Agency's capability to detect undeclared nuclear material and activities should be increased", and stressed "the continuing need for the Agency's safeguards system to be equipped to respond to new challenges within its mandate",

Determined to facilitate an effective response to global threats in the area of nuclear proliferation,

Acting under Chapter VII of the Charter of the United Nations:

1. *Decides that* if a State is reported by the IAEA to be in non-compliance with its NPT Safeguards Agreement(s), the Security Council shall forthwith adopt a specific resolution, under Article 41 of the Charter of the United Nations:

   a. deciding that, upon request by the IAEA, the State in non-compliance shall provide the IAEA immediate access to locations, facilities, individuals, documents and equipment as defined in the Model Temporary Complementary Protocol (TCP) attached in Annex I to this resolution and any other access right specifically requested by the IAEA. The TCP shall remain in force until such time as the IAEA has drawn the conclusion that the State declarations under its Safeguards Agreements are correct and complete and that there is no undeclared nuclear material and activities in the State;

   b. requesting the Director General of the IAEA to report within 60 days of the adoption of the specific resolution, and thereafter on a quarterly basis, on whether the State is fully implementing the provisions of its Safeguards Agreement(s) and the TCP and is fully and pro-actively cooperating with the IAEA;

2. *Decides that* if the Director General of the IAEA is unable to report within the timeframe defined in sub-paragraph 1.b, or at any time thereafter, that the State in non-compliance is fully implementing the provision of sub-paragraph 1.a. above, the Security Council shall forthwith adopt a specific resolution under Article 41 of the Charter:

   a. requiring the State to immediately suspend all uranium and plutonium conversion and enrichment related activities and all reprocessing related activities, including theoretical and applied research and development and suspend any other activity specifically requested by the IAEA or the Security Council until such time as the IAEA has drawn the conclusion that the State declarations under its Safeguards Agreements (including the TCP) are correct and complete and that there is no undeclared nuclear material and activities in the State;

   b. requesting the Director General of the IAEA to report within 60 days of the adoption of this specific resolution on whether the State has fully complied with the provision of sub-paragraph 2.a.

3. *Decides that* if the reports referred to in sub-paragraphs 1.b and 2.b show that the State in non-compliance with its NPT Safeguards Agreement does not fully comply with the provision of sub-paragraphs 1.a and 2.a, the Security Council shall adopt a specific resolution under Article 41 of the UN Charter deciding that all States shall forthwith suspend the supply of any military equipment and cooperation with the non-compliant State as long as it remains in non-compliance with Security Council resolutions.

Annex II

NSG: A Criteria-based Approach to Non-NPT States

There is little doubt that it would be desirable to provide a country such as India with access to the safest and most efficient nuclear technology to produce electricity while protecting the environment. The only problem, and it is a major one, is that such supply would be contrary to both the spirit of the NPT and the NSG export guidelines, because India has not ratified the NPT and has not concluded a comprehensive safeguards agreement with the IAEA[23].

Is it therefore possible, for the NSG to elaborate a criteria-based approach, that would allow all non-NPT States the right to acquire NPPs while at the same time reinforcing the global non-proliferation regime?

As a matter of principle, to be compatible with the spirit of the NPT, any such approach should formally require that non-NPT States accept at least all the obligations and responsibilities of the NWSs and be entitled to less cooperation from the supplier states than that which is made available to NNWSs parties to the NPT.
The US/India Agreement would achieve just the opposite result: while India would be free to further develop its nuclear weapons program[24] it would receive fuel supply assurances from the US and others that have never been offered to any NNWS. Also the US would be granting India a **generic consent** to reprocess[25] nuclear material transferred pursuant to the Agreement.

The fact that a country has more than one billion inhabitants or less than ten million is clearly not a valid criterion from a non-proliferation point of view.

The NSG should therefore consider the following objective criteria in order to export nuclear material and equipment to any non-NPT State.

Minimum conditions to be fulfilled

The recipient non-NPT State:

- Must have signed and ratified the Comprehensive Test Ban Treaty (CTBT) as requested from India and Pakistan in UNSC Resolution 1172. This could be done with the understanding that if another State proceeds with a nuclear test this would constitute an event, as defined in Article IX.2 of the CTBT, justifying withdrawal from the Treaty;

[23] At the 1995 NPT Review and Extension Conference, all NPT Parties endorsed the principle of full scope safeguards as a condition of supply.
[24] Article 4 of the 123 Agreement states "*this Agreement shall be implemented in a manner so as not to hinder or otherwise interfere with […] military nuclear facilities*".
[25] Article 6.iii of the 123 Agreement provides that "*The Parties grant each other consent to reprocess or otherwise alter in form or content nuclear material transferred pursuant to this Agreement*".

- Must agree that if it tests a nuclear device, all cooperation will be discontinued and all nuclear material, equipment, non-nuclear material or components transferred and any special fissionable material produced through their use would be removed from the country under IAEA Safeguards;
- Must adhere to a multilateral moratorium pending completion of a formal treaty banning the production of fissile material for nuclear weapons;
- Must have **all new** NPPs constructed and operated in the State subject to IAEA safeguards in perpetuity;
- Must have ratified an Additional Protocol to its safeguards agreement (as four out of five NWSs have already done);
- Must not have materially breached an IAEA safeguards agreement;
- Must adhere to the NSG export guidelines and the Missile Technology Control Regime (MTCR), and must commit not to export sensitive fuel cycle equipment and technology;
- Must implement UNSC resolution 1540[26];
- Must have ratified the Convention for the Suppression of Acts of Nuclear Terrorism;
- Must support and participate in the Proliferation Security Initiative (PSI)
- Must implement IAEA Safety Standards and adhere to accepted international safety norms;
- Must apply standards of physical protection based on current international guidelines[27].

Scope of cooperation

- Cooperation should be restricted to the construction and operation of NPPs for electricity production, the delivery of the necessary fresh fuel assemblies and the management of spent fuel and radioactive wastes;

- There would be no export of equipment, materials, or technologies related to sensitive fuel cycle facilities, including enrichment, reprocessing, and heavy water production;

- No nuclear material delivered under any cooperation agreement or derived therefrom should be reprocessed or enriched beyond 5% U-235 without the explicit prior consent of the NSG, and only in facilities placed under IAEA safeguards.

[26] Deciding "*that all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire manufacture, possess, transport transfer or use nuclear, chemical or biological weapons and their means of delivery*".

[27] The minimum level of physical protection should be as set out in IAEA document INFCIRC 225/Rev.4 as it may be revised. The recipient State must have ratified the 1980 Convention on the Physical Protection of Nuclear Material (CPPNM) and any amendments thereto.

ANNEX III

IAEA Fuel Bank and Generic Export Licence

The supplier states which are to provide low enriched uranium (LEU) stocks to the IAEA and/or drawing rights on their fuel fabrication capacity, will have to conclude a contract with the IAEA whereby they would grant the IAEA a binding long term generic export licence for all fresh fuel assemblies to be delivered to a recipient state which, according to the Agency meets the following conditions:

- The recipient sate is a party to the NPT and has been denied the delivery of fresh fuel assemblies for an operating NPP for purely political reasons.
- The recipient state has not issued any notice of withdrawal from the NPT.
- The recipient state has concluded with the IAEA an INFCIRC/66-type safeguards agreement for the NPP under consideration. This agreement would normally be subsumed under the Comprehensive Safeguards Agreement (CSA), but would be implemented in case the recipient state withdraws from the NPT, so that any fresh fuel or spent fuel remaining in the recipient state would always be subject to IAEA safeguards[28].
- The recipient sate has a CSA and an Additional Protocol in force.
- The IAEA has drawn the annual conclusion that there has been no diversion of nuclear material placed under safeguards and that there is no undeclared nuclear material and activities in the recipient state.
- The IAEA has not raised questions or found inconsistencies or anomalies concerning the State's nuclear programme that have not been resolved within a given period not to exceed 12 months.
- The spent fuel has been returned to the supplier sate within the contractual timeframe (if applicable).
- The NPP meets international (IAEA) safety standards and an adequate level of physical protection.
- The recipient state does not carry on any sensitive nuclear fuel cycle activity domestically.

[28] A CSA remains in force only for so long as the state remains party to the NPT, whereas under a INFCIRC/66 type agreement all nuclear material supplied or produced under that agreement would remain under safeguards, even if the state withdraws from the NPT, until such time the IAEA has determined that such material is no longer subject to safeguards.