

U.S. Senate Committee on Foreign Relations
Senator Richard G. Lugar
Opening Statement for
Nuclear Terrorism Treaties Hearing
May 7, 2008

I join in welcoming our witnesses and appreciate the opportunity to hear testimony regarding four treaties that would help to strengthen the international framework against the proliferation of nuclear weapons and materials.

The Amendment to the Convention on the Physical Protection of Nuclear Material updates that agreement by applying it specifically to nuclear terrorism. The International Convention for Suppression of Acts of Nuclear Terrorism enhances efforts to prevent nuclear terrorism through the vehicle of a multilateral agreement. Finally, two 2005 Protocols related to maritime navigation will criminalize trafficking in nuclear material and update existing agreements to reflect the progress the United States has made in gaining international support for proliferation interdiction efforts.

In April 2004, the UN Security Council adopted Resolution 1540, establishing for the first time binding obligations on all UN member states to take and enforce effective measures against the proliferation of WMD, their means of delivery, and related materials. If fully implemented, Resolution 1540 can help ensure that no state or non-state actor is a source of WMD proliferation.

Congress also has taken steps to update the set of tools available to the President to aggressively confront nuclear proliferation and terrorism. In 2006, Congress passed and the President signed into law permanent waiver authority for the Nunn-Lugar Cooperative Threat Reduction program. This permanent waiver authority was necessary to prevent the annual certification process from unnecessarily hindering the critical work of the Nunn-Lugar program.

In 2006, Congress also passed the Lugar-Obama Act, a provision of which authorized the President to conclude agreements with other countries to prevent the transportation of weapons of mass destruction and related materials to non-state actors or states of proliferation concern. The two maritime agreements we will review today provide an international legal basis for concluding agreements similar to those envisioned in the Lugar-Obama legislation.

I am hopeful that these treaties will be implemented in such a way as to strengthen our authority to confront the threat of nuclear proliferation.

As the Foreign Relations Committee takes up consideration of these treaties, we do so in the context of Administration inconsistencies toward recent treaties that President Bush has asked the Senate to pass. In 2006 and 2007, I worked with other members of this Committee to ensure that two agreements, one related to nuclear nonproliferation and one related to nuclear liability, went through all necessary legislative steps. Yet these agreements still have not entered into force because Executive Branch action to complete the ratification process has been inexplicably delayed.

I am deeply concerned by the Bush Administration's failure to bring into force the Additional Protocol to our safeguards agreement with the International Atomic Energy Agency. In February 2004, President Bush called on the Senate to promptly ratify the U.S. Additional Protocol. As Chairman of this Committee, I initiated the necessary action to ensure that the Senate did what the President had asked. Likewise, after much effort, the Senate passed implementing legislation for the U.S. Additional Protocol in November 2006. One would presume that Congressional approval would be the most difficult part of the implementation process. But eighteen months after passage of the implementing legislation, the Bush Administration still has not submitted

our instrument of ratification to the IAEA. Eleven months ago Senator Biden and I wrote to Secretaries Rice and Gates urging implementation of the U.S. Additional Protocol. This was followed by a second letter from myself to Secretary Rice last September similarly urging action. I have raised this issue in hearings and private meetings with Administration officials without receiving a satisfactory answer why implementation of a measure specifically requested by the President is taking so long.

I understand that there can be legal and policy issues that must be resolved even after Congress passes treaties and associated implementing legislation. But if an administration is committed to a particular measure, such issues should take weeks to resolve, not years. I would underscore that the Bush Administration supported the changes to the implementing legislation originally reported by our Committee. At no point did the Administration state that provisions subsequently added to the legislation would slow implementation. Indeed, in my judgment there is nothing in the legislation that would warrant such a glacial process of implementation.

The Administration also has not submitted its instrument of ratification for the Convention on Supplementary Compensation for Nuclear Damage (the CSC), which the Senate ratified in August 2006 and for which Congress passed implementing legislation in December 2007. The Administration has called the CSC critical to providing liability protection for our nuclear industry in India, China, and other areas currently expanding nuclear power capabilities.

All of the treaties we consider today require implementing legislation before they can come into force. Passing these treaties and associated implementing legislation will be a heavy lift. I believe this Committee is willing to undertake this task. But the Administration likewise must fulfill its responsibilities related to previous treaties.

With only a few months left in this Administration, I am hopeful that our witnesses might shed some light on when we might see completion of work on the Additional Protocol and on the CSC. Further, in view of our experience, how will you work to ensure that the treaties we examine today will enjoy expeditious Executive action, should Congress complete its work? I look forward to our discussion.

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