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**COMPLIANCE AND THE TREATY ON THE
NON-PROLIFERATION OF NUCLEAR WEAPONS**

Working paper submitted by the United States of America

Introduction

1. States enter into nonproliferation and arms control agreements with the expectation that all States Party will fully implement and comply with those agreements and that consequently, those agreements will protect and enhance their security.
2. The most serious challenge facing the Nuclear Non-Proliferation Treaty (NPT) and its States Party today is noncompliance with the Treaty's core nonproliferation obligations by countries seeking to develop nuclear weapons.
3. Such noncompliance poses four threats to achievement of the fundamental objectives of the Treaty and its States Party:
4. First, noncompliance directly undermines the most important benefit that the NPT offers to States Party: assurance against the further 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 nonproliferation assurances, nonproliferation noncompliance imperils the peace and security of all nations.

5. Second, noncompliance undermines the foundation of trust and safety upon which the benefits of international nuclear cooperation for peaceful purposes necessarily are 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 increasingly would lose the benefits that such technology can bring.

6. Third, noncompliance with the Treaty's core of nonproliferation obligations undermines efforts to bring about universal adherence to the NPT. If the parties to the NPT fail to act to remedy noncompliance with the Treaty's obligations, there would be both little purpose in seeking to bring non-parties into the Treaty and little benefit to them in subjecting themselves to its obligations. Thus, an inability to respond effectively to noncompliance with nonproliferation obligations undercuts the chances of achieving NPT universality.

7. Fourth, noncompliance undercuts the aspirations of States Party to nuclear and general disarmament, as expressed in the Preamble to the NPT and in its 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, the creation of the international security 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.

Nonproliferation compliance is thus the foundation for future progress on disarmament. By the same token, for all these reasons, unaddressed and unresolved noncompliance with the Treaty's nonproliferation obligations quickly could create a vastly more insecure, dangerous, and impoverished world.

8. It is imperative that States Party to the NPT 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 nonproliferation obligations, to return violators to compliance, and to deter other would-be violators from following such a path. If the Treaty regime cannot accomplish these

tasks, it will have failed in its primary purpose – and will therefore also likely fail in promoting its other goals.

Nonproliferation Obligations

9. Article I of the NPT requires that nuclear-weapons States (NWS) Party 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-weapon State (NNWS) to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices. Among other actions to fulfill these obligations, the NWS should establish and implement comprehensive and effective export controls, and always consider whether a particular technology transfer or activity would further the ability of a NNWS Party to manufacture or acquire nuclear weapons.

10. Article II prohibits NNWS Party from receiving any transfer of a nuclear weapon or other nuclear explosive device, or control over such weapons or explosive devices, directly or indirectly. It also prohibits NNWS Party 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. Fulfillment of this obligation requires that NNWS Party refrain from any activities that constitute part of the manufacture or acquisition of a nuclear weapon. All States Party should be gravely concerned if any State, especially a Treaty Party, engages in activities the purpose of which appears to be nuclear weapons development. States also should have the necessary laws and regulations in place to implement their Article II obligations.

11. To prevent the “diversion of nuclear energy from peaceful uses to nuclear weapons,” Article III requires that each NNWS Party enter into a safeguards agreement with the International Atomic Energy Agency (IAEA) that sets 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 NNWS Party and the IAEA. Material noncompliance with an NPT-type safeguards

agreement likely will constitute noncompliance 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 nonproliferation compliance under the NPT.

12. States Party to the NPT have accepted the condition that their nuclear activities must be carried out in conformity with Articles I and II of the Treaty. Thus, if a State Party has violated Article I or II, that State cannot argue that Article IV protects it from the consequences of breach, including the imposition of measures by other States against its nuclear program. This also underscores the importance of strict observance of Article III to ensure compliance with Articles I and II and the overarching nonproliferation objectives of the Treaty. Further, States Party should take into account a broad range of factors, including their Article I and II obligations and the advisability of sharing certain technologies, when determining how best to facilitate “the fullest possible” exchange of equipment, materials and information for peaceful uses of nuclear energy under the second paragraph of Article IV.

Compliance Challenges in North Korea

13. On January 10, 2003, the Democratic People’s Republic of Korea (DPRK or 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 previously had given 89 days advance notice to withdraw in 1994 – just short of the three months’ notice required by Article X(1) of the Treaty – before deciding to remain an NPT party.) Prior to that date, North Korea had been working secretly to develop nuclear weapons for a number of 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 of Article III.

14. The DPRK conducted a test of a nuclear explosive device on October 9, 2006, despite strong protests from the international community that were expressed clearly in the October 6,

2006 Statement by the President of the UN Security Council. North Korea's provocative act resulted in the unanimous adoption of UN Security Council Resolution 1718, which, *inter alia*, condemned the test and demanded that North Korea return to the NPT and IAEA Safeguards and called upon it to return to the Six-Party Talks.

15. Prior to 1994, and again after it lifted the freeze on its programs in 2003, North Korea pursued a program to produce plutonium for use in nuclear weapons, North Korea also is suspected of pursuing a separate program to produce highly enriched uranium. Pakistani President Musharraf also has stated that A.Q. Kahn and his network provided sensitive centrifuge technology to North Korea. Additionally, reports of the DPRK's nuclear cooperation with other countries continue to warrant serious vigilance. North Korea's clandestine nuclear cooperation with Syria – an NPT State Party bound by the nonproliferation obligations of Articles II and III of the Treaty, as well as by an IAEA safeguards agreement – is a dangerous manifestation of the DPRK's proliferation activities. North Korea assisted Syria's covert work in building a nuclear reactor capable of producing plutonium and *not* intended for peaceful purposes. Syria undertook this dangerous and potentially destabilizing work in defiance of its international obligations, and North Korea assisted.

16. North Korea's withdrawal from the NPT has spurred considerable discussions in NPT fora, including in Main Committee III at the 2005 NPT Review Conference and in the first meeting of the Preparatory Committee for the 2010 Review Conference, of how the nuclear nonproliferation regime better can deter and respond to withdrawal from the Treaty by Parties that are in violation of its provisions. (The United States, for example, addressed deterring withdrawal by Treaty violators in a document released in February 2007. Numerous other governments have also issued statements or papers on withdrawal.)

17. The United States remains committed to achieving the verifiable denuclearization of the Korean Peninsula in a peaceful, diplomatic manner via the Six-Party Talks – which includes China, the DPRK, Japan, the Republic of Korea, Russia, and the United States. On September 19, 2005, the Six Parties issued a Joint Statement under which the DPRK committed to abandoning all nuclear weapons and existing nuclear programs and returning, at an early date, to the NPT and to IAEA safeguards.

18. At the Fifth Round of the Six-Party Talks on February 13, 2007, the Six Parties agreed to an "Initial Actions for Implementation of the Joint Statement." In the February 2007 agreement, as the first step in its implementation of the 2005 Joint Statement, the DPRK 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 DPRK to conduct necessary monitoring and verification activities as agreed between the IAEA and the DPRK.

19. Subsequently, in the October 3, 2007 agreement, "Second Phase Actions for Implementation of the Joint Statement," the DPRK agreed to disable all existing nuclear facilities subject to abandonment under the September 2005 Joint Statement and the February 13 agreement. Under the October 3 agreement, disablement of the three core facilities at Yongbyon – the 5MW(e) reactor, the radiochemical laboratory (reprocessing plant), and the fresh fuel fabrication plant – was to be completed by December 31, 2007. It further stated that, at the request of the other parties, the United States would lead disablement activities and provide the initial funding for those activities. Eight of the 11 agreed disablement actions at the three core facilities at Yongbyon have been completed, and discharge of spent fuel rods from the 5MW(e) reactor has been underway since December 2007. Due to reasons of health and safety, the parties understood that the discharge of the spent fuel, and related disablement activities, would proceed beyond December 31, 2007.

20. In the October 3 agreement, the DPRK also agreed to provide a complete and correct declaration of all nuclear programs in accordance with the February 13 agreement by December 31, 2007. The DPRK missed the deadline to provide this declaration, and the United States continues to work closely with our Six-Party Talks partners to press the DPRK to provide a complete and correct declaration of its nuclear programs, facilities, and materials including clarification of uranium enrichment, nuclear weapons and proliferation activities, as soon as possible.

21. The DPRK also reaffirmed its commitment not to transfer nuclear materials, technology or know-how. The United States is committed to ensuring that North Korea does not further engage in proliferation, such as the sort of cooperation it undertook with Syria's secret nuclear

reactor project. We will work with our partners to establish in the Six-Party framework a rigorous verification mechanism to ensure that such conduct and other nuclear activities have ceased.

22. States Party to the NPT should lend their support and encouragement to the Six-Party process in order to maximize its ability to conclude successfully in the verifiable denuclearization of the Korean Peninsula and the DPRK's return to the NPT and to IAEA safeguards as a non-nuclear weapons state.

Compliance Challenges in Iran

23. Iran, too, has not complied with its nonproliferation obligations, particularly Articles II and III of the NPT and its safeguards agreement with the IAEA. Iran remains a State Party to the NPT without having conformed its conduct to the Treaty's rules. Indeed, its violations continue today and, in some respects, thus present an even greater challenge to the nonproliferation regime.

24. Iran violated its Article III safeguards obligations by pursuing a secret program 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 the diversion of nuclear material from safeguarded to unsafeguarded locations and uses.

25. As a result of the public revelation in 2002 that Iran was conducting secret nuclear activities, the IAEA began an extensive investigation into Iran's nuclear program. The IAEA's investigation resulted in Iran being found to be in breach of its safeguards obligations by the IAEA Board of Governors in November 2003. The Board found Iran in safeguards noncompliance in September 2005, and reported its noncompliance to the U.N. Security Council in February 2006.

26. The reasons for Iran's 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 longstanding activity constituted a violation of Article II. The 2007 U.S. National Intelligence Estimate (NIE) on Iran's nuclear program assessed with high confidence that Iranian military entities were working under government direction to develop nuclear weapons until the autumn of 2003. It further assesses with high confidence that these activities were halted in 2003 for at least several years as a result of international pressure. The NIE also assessed with moderate confidence that Iran would be technically capable of producing enough highly enriched uranium for a weapon sometime during the 2010-2015 timeframe. Additionally, as the IAEA Director General's report notes, Iran continues to refuse to disclose to the IAEA its weapons activities so that IAEA inspectors can verify that those efforts have stopped. The NIE further concludes that Iranian entities are continuing to develop a range of technical capabilities that could be applied to producing nuclear weapons, if a decision is made to do so. As the Director of the U.S. Central Intelligence Agency has described it, "the other aspects of the Iranian nuclear effort beyond the weaponization – the development of fissile material, the development of delivery systems – all continue apace." Iran's continuing efforts to develop uranium enrichment and other nuclear capabilities that are essential for a nuclear weapons program and for which it has no legitimate need, refusal to make a full disclosure of its weapons-related work, limited and grudging cooperation with the IAEA in other areas, and continued development of ballistic missile capabilities only serve to underscore international concerns about its intentions.

27. Despite efforts to conceal its nuclear activities from IAEA inspectors, the IAEA has uncovered strong indications of Iran's nuclear weaponization program. 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 program to develop nuclear weapons in violation of the NPT. Most recently, in its February 2008 report and technical briefing, the IAEA Secretariat informed its Member States of extensive, Iranian-origin documentation that has been made available to it describing Iran's nuclear weaponization efforts. This documentation, which included schematics of an underground test diagram, information on high explosive testing, and uranium conversion

flowsheets, made clear that Iran has not made a full disclosure of its weapons-related work. According to the IAEA, such disclosure is “critical to an assessment of a possible military dimension to Iran’s nuclear program.” These revelations, as well as their apparent administrative interconnections, which include military organizations, and efforts to design a missile re-entry vehicle that the IAEA judges as likely to be able to accommodate a nuclear device, further support the conclusion that Iran has been in violation of Article II for many years. Iran must make a full disclosure and allow the IAEA to verify that weaponization activities have stopped.

28. Iran has rebuffed repeated diplomatic efforts during the past five years. First, Iran rejected efforts by the United Kingdom, France, and Germany by abrogating the Paris Agreement that it signed with these powers in November 2004. It continues to reject the diplomatic offer made when these three countries joined with the United States, Russia, and China in June 2006, in a new effort to offer Iran a diplomatic solution to the crisis that its nuclear activities had created. Rather than work to resolve these issues, Iran has spurned the package of incentives these countries offered and repeatedly has refused to suspend its uranium enrichment and reprocessing activities.

29. Accordingly, on July 31, 2006, the UN Security Council adopted UN Security Council Resolution 1696, demanding that Iran verifiably suspend all activities related to enrichment and reprocessing, including research and development, by August 31, 2006. Resolution 1696 also noted the possible imposition of sanctions under Article 41 of Chapter VII of the UN Charter. On August 31, 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 December 23, 2006, the Security Council unanimously adopted Resolution 1737, including a requirement that Iran suspend its proliferation-sensitive nuclear activities (uranium enrichment-related, reprocessing, and heavy water-related activities), because of that country’s refusal to undertake the measures required by the IAEA Board of Governors and its failure to comply with UNSCR 1696. After Iran refused to comply with this second resolution, a new sanctions package was agreed to by the Security Council, in the form of Resolution 1747, on March 24, 2007. Not only did Iran not comply with the Security Council’s requirement to suspend its enrichment program, it announced it would suspend compliance with

Code 3.1 of its Subsidiary Arrangement to its Safeguards Agreement regarding the early provision to the IAEA of design information on new nuclear facilities.

30. In August 2007, the IAEA Secretariat concluded a “modalities agreement” with Iran, by which Iran pledged to adhere to a work plan and specified timetable in resolving all outstanding issues. While the Secretariat has been able to state that many issues are no longer “outstanding,” the IAEA has made clear its continued need to verify the correctness and completeness of Iran’s declarations in this regard. Most worrisome, Iran has limited its engagement with the Agency on the critical issue of credible information the Agency has obtained from multiple sources regarding Iran’s weaponization efforts described above. The Director General’s report of February 2008 concluded that the information held by the Agency on this issue is a “matter of serious concern and critical to an assessment of a possible military dimension to Iran’s nuclear program.”

31. Iran’s continued defiance of the will of the international community resulted in further action by the UN Security Council, which in March 2008, adopted Resolution 1803, further tightening sanctions on Iran.

Ensuring National Compliance and Addressing Noncompliance Challenges

32. The continued security of all States Party to the NPT, and the integrity of the NPT and of the broader nuclear nonproliferation regime as a whole, require that all States Party fully implement and comply with their NPT obligations and quickly and effectively address international nonproliferation noncompliance challenges. International security and the integrity of the Treaty and the broader regime also require that those challenges be addressed in a way that makes clear to future would-be violators that noncompliance likely will be detected, and that such detection will incur costs for them that will exceed the benefits that they could expect to gain from their violations.

33. In order to implement their NPT obligations effectively and ensure their own compliance, Parties need to have the will and capacity to implement their obligations and to assess and ensure compliance. This includes putting in place appropriate domestic legal mechanisms; developing

the necessary institutions and internal infrastructure; acquiring the necessary staff, equipment and training; and taking steps when necessary to respond to noncompliance within their borders or in locations under their jurisdiction. States, regional groups and international organizations in a position to do so should provide assistance to those who have identified gaps in their capacities – be it in their legal framework, their implementation and enforcement structures, and/or their personnel and equipment – to implement fully their NPT nonproliferation obligations. For its part, the United States has provided, and will continue to provide, such assistance bilaterally, through the IAEA's technical assistance programs, and through its efforts to help other States implement their UN Security Council Resolution 1540 obligations, including those related to nuclear nonproliferation.

34. With regard to the international dimension, how States individually and collectively respond when they detect noncompliance will help determine whether that noncompliance continues or expands, whether it has a long-term impact on the integrity and viability of the NPT, whether it degrades the security of other Parties and/or global stability, and whether it undercuts the efficacy of negotiated agreements as instruments of international security. Only if violators face consequences for their violations – including especially denial of any anticipated benefits of their noncompliance – can they be expected to take compliance seriously, and only by the imposition of such consequences will other would-be violators be deterred. In the case of violations, a range of potential responses are available under states' national law and international law, including potential responses available under the UN Charter, and may be undertaken by nations acting individually, together, on a regional basis, through the governing bodies of international organizations, or through other multilateral arrangements.

35. The Iranian and North Korean nuclear crises demonstrate the grave challenges to the viability of the nonproliferation regime that noncompliance with the NPT's nonproliferation obligations presents to the NPT. It is, therefore, 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 noncompliance with Articles I, II, or III of the Treaty – or with safeguards agreements. These should include commitment to and support for strengthening national capacities to implement the nonproliferation obligations of the NPT; endorsement of effective proliferation-resistant ways to share the benefits of the peaceful use of nuclear energy;

endorsement of steps to deny NPT violators who withdraw from the NPT unsafeguarded access and use of nuclear-related equipment and technologies acquired from others while an NPT member; and national and international action to respond to violations and convince such violators that it is in their interest to come back into compliance with the NPT. Without effective collective action in this regard, international security and the NPT's continued efficacy and viability inevitably will be called into question.
