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Strengthening the NPT and the Review Process

Remarks by
Ambassador Thomas Graham, Jr.
President, Lawyers Alliance for World Security
to a Program for Promoting Nuclear Non-Proliferation Workshop on
The Tough Challenges Facing Nuclear Non-Proliferation
Hosbjo, Norway
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Introduction

I would like to begin by thanking PPNN for inviting me to speak here today. Lately, on several occasions I have spoken about the enhanced role in and influence over international nuclear arms control and non-proliferation that nongovernmental organizations are playing in the post-Cold War world. PPNN over the years has been one of the most influential of these organizations.

I am addressing today the Statement of Principles and Objectives that accompanied the indefinite extension of the Nuclear Non-Proliferation Treaty in 1995 and ways in which the NPT and its review process can be strengthened. With the next Review Conference, the first of the new millennium and the first since the NPT was made permanent, right around the corner in April, we must begin to consider steps that could be taken in the short term to bolster a regime that has been badly shaken by recent events. The rejection of the CTBT by the U.S. Senate in October 1999, threats to unilaterally change the Antiballistic Missile (ABM) Treaty to accommodate U.S. deployment of a national missile

defense, the stalled START process, last year's nuclear tests by India and Pakistan, and the military coup in Pakistan – the first in a nuclear-armed nation – underscore the perilous condition of the NPT regime.

The threat of the spread of nuclear weapons to additional countries is the most important issue for United States and international security now and in the foreseeable future. As President Chirac of France, Prime Minister Blair of the United Kingdom and Chancellor Schroeder of Germany noted in their October 8th *New York Times* op-ed, “As we look to the next century, our greatest concern is proliferation of weapons of mass destruction, and chiefly nuclear proliferation. We have to face the stark truth that nuclear proliferation remains the major threat to world safety.” If the next century is to be more secure than the last, the world must be freed from the dangers associated with the proliferation of nuclear weapons. But without far reaching and effective measures to strengthen the NPT regime, international efforts to prevent the spread of these weapons are sure to fail.

The Statement of Principles and Objectives

The NPT was signed in 1968 and entered into force in 1970. It committed the non-nuclear weapon states parties to the Treaty, today numbering 181, never to develop or otherwise acquire nuclear weapons and to submit to international safeguards intended to verify compliance with this commitment. In exchange, these 181 states were promised unfettered access to peaceful nuclear technologies and the now five nuclear weapon states parties – the United States, the Soviet Union (now Russia), United Kingdom, France, and China – pledged in NPT Article VI to engage in disarmament negotiations aimed at the ultimate elimination of their nuclear arsenals. This central bargain – non-proliferation in exchange for eventual nuclear disarmament – is the foundation upon which the NPT regime rests.

Since the Treaty had been given a twenty-five year life span with an option for permanent, incremental or effectively no extension thereafter, the international community had before it the task in 1995 either to extend the Treaty indefinitely or extend it for a fixed period or periods, which could have led to its eventual termination. Having led U.S. efforts to secure indefinite extension of the Treaty in 1994 and 1995, I can say that a significant number of key non-nuclear weapon states were dissatisfied with the progress made by the nuclear weapon states in fulfilling their Article VI side of the bargain. Many of these non-nuclear weapon states were reluctant to accept a permanent NPT for fear of being locked into what they saw as an inherently discriminatory regime. While the NPT explicitly does not legitimize the arsenals of the nuclear weapon states, many were concerned that a permanent NPT would remove the incentive for those states to reduce their arsenals.

In order to ameliorate this concern, the NPT states parties at the 1995 Review and Extension Conference negotiated an associated consensus agreement called the Statement of Principles and Objectives that was intended to strengthen the regime and, in effect, at least politically if not legally, condition the extension of the Treaty. The Statement of Principles and Objectives pledged the NPT states parties to work toward eight primary objectives. These included universalization of NPT membership and adherence, a reaffirmation of the Article VI commitments of the nuclear weapon states to pursue in good faith measures related to eventual nuclear disarmament, and the completion of the Comprehensive Test Ban Treaty (CTBT) by the end of 1996. The Statement of Principles and Objectives also called for the commencement of negotiations for a fissile material cutoff treaty, efforts by the nuclear weapon states to reduce global nuclear arsenals, the encouragement of the creation of new nuclear weapon free zones,

and further steps to assure the non-nuclear weapon states against the use or threat of use of nuclear weapons.

Finally, the Statement of Principles and Objectives also included agreement to strengthen the International Atomic Energy Agency's capacity to verify that non-nuclear weapon states are not diverting materials and resources from peaceful nuclear programs to nuclear weapon programs. Revelations after the Persian Gulf War that Iraq had advanced further than previously thought in its efforts to develop nuclear weapons despite its membership in the NPT regime and recurring problems in North Korea underscored the importance of enhancing the IAEA's verification capabilities. In response to these concerns, the IAEA last year completed in Vienna the negotiation of an enhanced safeguards protocol that enables the Agency to use environmental monitoring techniques to detect trace amounts of residue left behind during the enrichment of uranium and plutonium. As of today's date, 46 nations have signed the accord, but only seven have brought it into force. Work is still needed to attain signature and entry into force by as many NPT non-nuclear weapon states as possible, especially those with nuclear facilities, prior to the 2000 Review Conference.

At the 1995 Review Conference, the states parties to the NPT also agreed to a strengthened review process that included the conduct of Review Conferences every five years and Preparatory Committee meetings in each of the three years prior to the Review Conferences. The agreement establishing this new process stipulated that the PrepComs would meet to consider "principles, objectives, and ways... to promote the full implementation of the Treaty, as well as its universality, and make recommendations thereon to the Review Conferences." The agreement further notes that the Review Conferences should look forward as well as back, stating that, "They should evaluate the results of the period they are reviewing, including the

implementation of undertakings of the States parties under the Treaty, and identify the areas in which, and means through which, further progress should be sought in the future.”

Together, these provisions enable the states parties to the NPT to meet almost annually to discuss substantive issues relevant to the Treaty, a significant improvement over the previous, quintennial structure in place prior to the 1995 Review Conference. In effect, as part of the agreement to make permanent the NPT, the non-nuclear weapon states were given greater ability to and opportunity for addressing concerns about progress by the nuclear weapon states toward fulfilling their half of the NPT’s basic bargain.

Where Are We Now?

This brings me to the question of where are we now. As I mentioned earlier, I believe that the NPT regime is in serious trouble as a result of recent developments. The rejection of the CTBT by the United States Senate in October is one such problem. The relationship between the test ban and the nuclear non-proliferation regime is an explicit one. The Preamble of the NPT expresses the desire of the states parties, now 186 nations, to see the completion of a comprehensive test ban. As was stated above, the Statement of Principles and Objectives specifically called for the completion of the test ban by the end of 1996. This was the only objective given a specific timeline for achievement, a fact that underscores the importance of the test ban to the health of the NPT regime. Indeed, non-nuclear weapon states have long regarded the CTBT as a litmus test as to whether the nuclear weapon states would live up to their half of the basic NPT bargain. While the CTBT was completed in 1996 as the Statement of Principles and Objectives required, U.S. Senate rejection of the Treaty in 1999 could be seen by some non-nuclear weapon states as an act of bad faith and could serve as a political rationale for arguing that they should be free from their commitment to a permanent NPT. Senate rejection of the

CTBT is tantamount to a statement to potential proliferators that, although the United States has not tested in seven years and has no intention of testing in the foreseeable future, to borrow a phrase from President Clinton, you other states have the green light.

Similarly important is the issue of national missile defense and the ABM Treaty. Presidents Clinton and Yeltsin have both referred to the ABM Treaty as the “cornerstone of international arms limitation,” but some in the United States are seeking deployment of national missile defense systems that would seemingly require U.S. violation or abrogation of the Treaty. Since 1972, the ABM Treaty has prohibited the deployment of a nationwide missile defense by either the United States or Russia. By limiting nationwide defenses, the ABM Treaty made the SALT limitations and START reductions of the superpower nuclear arsenals possible. If one nation could have deploy an effective nationwide defense against a missile attack, the other would have been forced to build larger arsenals in order to overwhelm those defenses and maintain a credible deterrent.

Renewed concern within the United States about the alleged missile threat from so-called, and I emphasize “so-called”, “rogue states” such as Iran, Iraq, and North Korea, however, has prompted some commentators to urge that U.S. national security requires the deployment of a limited national missile defense system. The Clinton Administration has pursued discussions with the Russians intended to attain agreement from Moscow to negotiate amendments to the ABM Treaty that would allow the deployment of a limited defense.

The link between strategic offensive and defensive systems remains as critical today as it was during the Cold War. In a letter to President Clinton, President Yeltsin remarked that unilateral U.S. deployment of a NMD system “would have extremely dangerous consequences for the entire arms control process.” Russian Defense Minister Sergeyev, too, has stated publicly

that unilateral U.S. NMD deployment would do “unacceptable damage to the reduction of strategic offensive weapons.” China also has indicated that such deployments, even those designed to ward off attack from so-called rogue states, would cause it to significantly expand rather than contract its strategic nuclear arsenal. In fact, an all out nuclear arms race among the United States, Russia and China conceivably could be the result. Needless to say, this would be highly damaging to the NPT regime. If the NPT regime is to be preserved, we must maintain the viability of the ABM Treaty and revitalize the START nuclear arms reduction process in which there has been no progress for years.

Where to Go from Here

This environment, which lacks the kind of leadership from the nuclear weapon states contemplated by the Statement of Principles and Objectives, if not soon corrected, could open the door to the gradual disintegration of the NPT and the widespread proliferation of nuclear weapons. Once opened, that door will be difficult to close, creating a truly nightmarish situation for international security. Every future conflict, no matter how small, could run the risk of going nuclear and it would be almost impossible to keep nuclear weapons from falling into the hands of dangerous non-state actors such as terrorist organizations, religious cults and criminal conspiracies.

The road to the dismantlement of the NPT could take either of two courses. In one scenario, nations such as North Korea or Iraq, or others eventually may test nuclear weapons. If states such as these test, then it is probable that other prominent states presently committed to non-proliferation would reconsider their status as non-nuclear weapon states and acquire indigenous nuclear deterrents. The NPT regime would be destroyed and, because of the delicate compromise it contains, could never be revived. Proliferation by as few as one or two key states

could spark a chain reaction that would lead in the medium term to the existence of a significant number of new states with nuclear weapons. During the Kennedy Administration there were predictions that there could be as many as 25-30 nuclear weapon states with nuclear weapons fully incorporated into their military establishments by the end of the 1970s. Let us hope that this prediction does not come true in the early years of the new millennium.

A second scenario is somewhat less confrontational in nature, but no less dangerous to the NPT regime in its result. Some states have for a time observed that without progress toward nuclear disarmament, the NPT regime cannot persist indefinitely. Nuclear weapons technology is too easy to master and the incentives too great for many non-nuclear weapon states to continue to accept the existence of a few haves in a world of have-nots. It is possible that some states that remain committed to nuclear non-proliferation and disarmament, some of the more than 110 nations party to Nuclear Weapon Free Zone agreements for example, may determine that they no longer benefit from their membership in the NPT regime. These states, which are not proliferation risks but frustrated disarmers, may decide to withdraw from the NPT and pursue a non-discriminatory convention banning nuclear weapons instead. While the withdrawal of these states would not directly be proliferative, it would seriously, if not fatally, weaken the NPT regime and thus inhibit efforts to convince would-be proliferators that continued adherence to the non-proliferation norms established by the NPT regime is the appropriate path. The nuclear weapon states would, of course, not subscribe in the foreseeable future to a nuclear weapons convention.

I have painted a grim picture of the future of the non-proliferation regime, but these outcomes are not cast in stone. Responsible action by the nuclear weapon states in the short term could help to preserve the NPT for the long term. For instance, it may be possible to hold the

line at the April 2000 Review Conference. The states parties could adopt a second Statement of Principles and Objectives that could include a commitment from the non-nuclear weapon states that there will be no threats of any damage to the NPT regime until the 2005 Review Conference in exchange for several commitments from the nuclear weapon states. These could include undertakings such as good faith efforts to bring the CTBT into force, universalization of no first use policies among the nuclear weapon states, maintaining the viability of the ABM Treaty, and pursuing reductions in U.S. and Russian nuclear arsenals to a level in the range of 1000 strategic nuclear warheads for each nation. Not all of these objectives would have to be completed prior to the 2005 Review Conference, but the nuclear weapon states would be expected to demonstrate good faith efforts toward their completion.

The 2000 NPT Review Conference could agree that if sufficient progress were made toward fulfilling these commitments, the 2005 Conference would reaffirm the fundamental and central importance of international commitment to the NPT and the associated regime. If such progress is not made, states parties could be expected to review their commitment to the Treaty and the continuance of the NPT regime would be in question. However, if the NPT regime is unambiguously reaffirmed at the Review Conference of 2005, the nuclear disarmament process could continue, and an important step will have been taken toward strengthening the regime. Further, commitments to the nuclear disarmament process could be undertaken at the 2005 Conference leading to a very strong NPT in 2010 beginning to merge with customary international law.

Additionally, the NPT could be further enhanced now by emphasizing the role of international law. It could be argued even before universalizing the NPT, that the Treaty has become fully integrated into customary international law; that the principle of the non-use of

nuclear weapons is now a part of customary law binding on all states. And, as I indicated, if the line can be held against proliferation over the medium term, the principle of non-proliferation as well can become part of international law. Unfortunately, here again the nuclear weapon states have not set the best example. Most retain policies that rely on the potential first use of nuclear weapons. These policies are potentially incompatible with are pledges not to use nuclear weapons against a non-nuclear weapon state party to the NPT unless such a state should attack in association with another nuclear weapon state, referred to as negative security assurances.

During negotiations to extend the NPT in 1995, the UN Security Council passed Resolution 984, which recognized the negative security assurances issued by the nuclear weapon states, an essential component of the undertaking to indefinitely extend the Treaty. These NPT negative security assurance commitments also have been indicated to be legally binding by the International Court of Justice, and are essential to maintaining non-nuclear-weapon state confidence in the NPT regime. Additionally, in agreeing to the appropriate protocols of the Treaty of Tlatelolco as well as the Treaties of Pelindaba and Rarotonga, the nuclear-weapon states have made treaty pledges not to use or threaten to use nuclear weapons against the more than 90 non-nuclear-weapon states that are members of these regimes. By declaring publicly and unequivocally that they would under no circumstances introduce nuclear weapons into a conflict, the nuclear weapon states could support the rule of international law and in the process strengthen the NPT.

While the NPT review process adopted in 1995 is a significant improvement over the previous process, as I have implied, the NPT states parties could agree to adopt a new statement of principles and objectives at each future review conference. These would simply be basic mileposts that the states parties would set forth in order to maintain a proper course and better

evaluate progress. The purpose would not be time-bound objectives, and the proposals therein could carry over from Review Conference to Review Conference. The objective would be to maintain full participation of the nuclear and non-nuclear weapon states in the implementation of the NPT and gradually merge the NPT regime into customary international law, thereby developing a comprehensive code of civilized behavior for dealing with nuclear weapons, which could aim toward the ultimate elimination of these weapons.

As I noted at the beginning of my remarks, if the next century is to be more secure than the last and the widespread proliferation of nuclear weapons is to be prevented, the NPT regime must be maintained and strengthened and in some way eventually universalized with the security of all states fully protected. Such a course as I have outlined may be worth considering in the context of achieving this goal. Thank you for your attention.