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## CURRENT UNITED STATES NUCLEAR NON-PROLIFERATION POLICY

CARLTON R. STOIBER\*

I appreciate the opportunity to discuss current United States nuclear non-proliferation policy at this symposium on the timely and important subject of Nuclear Arms and World Public Order.

Today I will be speaking primarily about policy, not law. I would, however, like to emphasize at the outset that the non-proliferation field, unlike many other areas of international relations, is crowded with legal instruments which seek to govern certain aspects of this extremely complex assortment of technological, economic, foreign policy and national security issues. On the international level, there are broad multilateral instruments such as the 1968 Nuclear Non-Proliferation Treaty (NPT),<sup>1</sup> the Statute of the International Atomic Energy Agency,<sup>2</sup> the Latin American Nuclear Free Zone or Tlatelolco Treaty<sup>3</sup> and two sets of related guidelines for nuclear exports adopted by the nuclear supplier nations.<sup>4</sup> There are also a large number of bilateral

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1. Treaty on the Non-Proliferation of Nuclear Weapons, *opened for signature* July 1, 1968, 21 U.S.T. 483, T.I.A.S. No. 6839, 729 U.N.T.S. 161.

2. Statute of the International Atomic Energy Agency, Oct. 26, 1956, 8 U.S.T. 1093, T.I.A.S. No. 3873, 276 U.N.T.S. 3 (entered into force for the United States July 29, 1957).

3. Treaty for the Prohibition of Nuclear Weapons in Latin America (Tlatelolco Treaty), Feb. 14, 1967, 634 U.N.T.S. 281.

4. The first set of guidelines was incorporated in memoranda addressed to the Director General of the International Atomic Energy Agency in 1974. It represented the efforts of a group of nuclear exporter nations which had signed the Non-Proliferation Treaty, including the United States and the Soviet Union, to coordinate their export policies and more effectively assure compliance with Article III.2.b of the Treaty. IAEA Doc. INFCIRC/209 and 209/Add. 2, *reprinted in* L. SANDERS, SAFEGUARDS AGAINST NUCLEAR PROLIFERATION 58 (1975).

In January 1978, these guidelines were used as the basis for a substantially similar compilation devised by the Nuclear Supplier Group, whose participants included France, a non-NPT party. These arrangements, which came to be called the "London Club Guidelines," comprise factors to be evaluated in the transfer of nuclear technology, a "trigger list" of items to be controlled for non-proliferation purposes and a memorandum clarifying the "trigger" listing. Unlike the Zangger Committee Guides, which cover only exports of commodities, the London Club Guidelines also cover the transfer of technology or information. IAEA Doc. INFCIRC/254 (1978). *See* J. YAGER, INTERNATIONAL CO-

nuclear cooperation agreements between various nations, which define the conditions—including non-proliferation requirements—under which nuclear commerce is to be conducted.<sup>5</sup> There are approximately thirty such instruments which govern United States relations with other nuclear trading partners.<sup>6</sup>

An important objective of United States non-proliferation policy is to support and strengthen these multilateral instruments. The United States is, of course, a party to the Non-Proliferation Treaty and was one of its primary sponsors. United States law states that we will "strongly encourage nations which have not ratified the Treaty on Non-Proliferation of Weapons to do so at the earliest possible date."<sup>7</sup> In his non-proliferation message of July 16, 1981, President Reagan reaffirmed that policy,<sup>8</sup> and the Administration has taken every opportunity to urge non-adherents to join the Non-Proliferation Treaty regime. In this regard I am happy to report that just recently, Uganda deposited in Washington its instrument of accession to the NPT, making it the 119th country to do so. Legal scholars can debate whether or not this broad acceptance makes the NPT *jus cogens*.<sup>9</sup> What is certain, however, is that it is one of the broadest multilateral treaty regimes in existence. On the regional level, in 1981 the current Administration successfully urged the Senate to ratify Protocol I of the Latin American Nuclear Free Zone Treaty.<sup>10</sup> This constituted the final step necessary for the United States to participate fully in that treaty regime.

OPERATION IN NUCLEAR ENERGY 36-38, 96-97 (1981).

5. See generally J. YAGER, INTERNATIONAL COOPERATION IN NUCLEAR ENERGY at 43, 64-65 (1981) (a discussion of trends and agreements related to the peaceful use of nuclear energy).

6. *Id.* at 26; See *Atoms for Peace Manual: A Compilation of Official Materials on International Cooperation for Peaceful Uses of Atomic Energy*, S. Doc. No. 84-55, 84th Cong. 1st Sess 370 (1955). See, e.g., Agreement for Cooperation Concerning Civil Uses of Atomic Energy, July 17, 1972, United States-Brazil, 23 U.S.T. 2477, T.I.A.S. No. 7439; Agreement for Cooperation Concerning Civil Uses of Atomic Energy, June 13, 1968, United States-Philippines, 19 U.S.T. 5389, T.I.A.S. No. 6522.

7. Nuclear Non-Proliferation Act, 22 U.S.C. § 3201(c) (1979).

8. See N.Y. Times, July 17, 1981, at A4, col. 1. In his *Statement on Nuclear Spread*, President Reagan outlined a policy framework for furthering the long-standing national objective to limit nuclear weapon proliferation. *Id.*

9. *Jus cogens* is a category of international law comprised of preemptory norms and inalienable rights. The concept of *jus cogens* includes the notion of a global bill of rights, as well as a law higher than the law of nations, so fundamental that it cannot be changed by agreement. For a thorough discussion of *jus cogens*, see M. MCDUGAL, H. LASWELL & L. CHEN, HUMAN RIGHTS AND WORLD PUBLIC ORDER 339-50 (1980).

10. *Nuclear Nonproliferation Policy: Hearings before the Subcomm. on Energy, Nuclear Proliferation, and Government Processes*, 97th Cong., 1st Sess. 10-28 (1981) (testimony of James L. Buckley, Under Sec., Security Assistance, Science and Technology, State Dept.).

Regarding domestic law, most nations, certainly all major nuclear supplier nations, have enacted legislation defining the requisites for participation in nuclear trade. In the United States, the statutory framework for our non-proliferation policy is contained in the Nuclear Non-Proliferation Act of 1978 (NNPA).<sup>11</sup> This extremely long and complex enactment—it takes up thirty pages of small, single-spaced type in a recent congressional compilation—provides detailed procedures, standards and policy objectives in the non-proliferation field. The NNPA effectively mandates how the United States government will conduct its international nuclear business. It would be impossible in a short presentation to go into detail on the very specific interagency procedures and criteria set forth in the statute. In brief, it requires a complex review of proposed nuclear exports by United States government agencies, including the State Department, Department of Energy, Arms Control and Disarmament Agency and Defense Department. If this review determines that an export satisfies statutory criteria, a favorable recommendation is transmitted by the Executive Branch to the independent Nuclear Regulatory Commission (NRC), the licensing agency for such transactions. NRC licensed exports include major items of nuclear equipment and nuclear materials such as enriched uranium for nuclear reactor fuel. If the NRC disagrees with the Executive Branch's judgment, it will not issue the license, but will refer the matter to the President, who may authorize the export upon making the required statutory findings. The President's executive order authorization may, in turn, be overridden by congressional action within certain time limits.

In addition to exports of nuclear equipment and materials, there are nuclear-related transactions which require the approval of other United States agencies. Again, I shall not descend into detail; however, there are two important kinds of transactions that are implemented by the Department of Energy. One involves so-called "subsequent arrangements."<sup>12</sup> This term of art applies to United States government approval of certain nuclear activities in foreign nations, such as reprocessing of United States-supplied fuel. The second type of activity involves transfers of certain kinds of nuclear technology to foreign countries.<sup>13</sup> By technology we mean information, whether written, oral or incorporated into components or devices.

Outside these tightly controlled exports, which have uniquely nuclear uses, there is a range of so-called "dual-use" exports which are

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11. 22 U.S.C. §§ 3201-3282 (1979).

12. See 42 U.S.C. § 2160 (1983).

13. See 42 U.S.C. § 2156 (1983).

licensed by the Department of Commerce.<sup>14</sup> These items are typically used in a range of non-nuclear industrial activities but may also have nuclear uses. A good example of such a commodity is a sophisticated computer which may be used either to control certain processes in a nuclear power plant or to handle the payroll of a national railroad system. A nuclear referral list of sensitive items has been prepared, and such items are reviewed for their proliferation sensitivity by an interagency group called the Subgroup on Nuclear Export Coordination.<sup>15</sup> One of my responsibilities is to chair this interagency body.

With this very brief overview of our nuclear export system, let me now move to the primary focus of these remarks—United States non-proliferation policy. As with past administrations, the present Administration places a very high priority on this subject. A clear statement of this high-level concern was contained in a recent address of Secretary of State George Shultz in the United Nations General Assembly.

But as important as these [strategic] negotiations are, the problem of arms control cannot be left to the two superpowers. The threat of nuclear proliferation extends to every region in the world and demands the attention and energy of every government. This is not solely, or even primarily, a concern of the superpowers. The non-nuclear countries will not be safer if nuclear intimidation is added to already deadly regional conflicts. The developing nations will not be more prosperous if scarce resources and scientific talent are diverted to nuclear weapons and delivery systems.

Unfortunately, as the task becomes more important, it also becomes more difficult. Greater quantities of dangerous materials are produced, and new suppliers emerge who lack a clear commitment to non-proliferation. But the technology that helped to create the problems can supply answers as well. Vigorous action to strengthen the barriers to aggression and to resolve disputes peacefully can remove the insecurities that are the root of the problem. The United States, for its part, will work to tighten export controls, to promote broader acceptance of safeguards, to urge meaningful actions when agreements are

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14. See Special Nuclear Controls, 15 C.F.R. § 378 (1983).

15. Participants in the Subgroup on Nuclear Export Coordination (SNEC) are: (1) The Department of State, which chairs; (2) the Department of Energy; (3) the Department of Commerce; (4) the Department of Defense; (5) the Arms Control and Disarmament Agency and (6) the Nuclear Regulatory Commission. *Controls on Exports of Nuclear-Related Goods and Technology: Hearings Before the Subcomms. on International Security and Scientific Affairs and International Economic Policy and Trade of the House Comm. on Foreign Affairs, 97th Cong., 2nd Sess. 15 (1982).*

violated, and to strengthen the International Atomic Energy Agency. As our action last week in Vienna should make clear, we will not accept attempts to politicize—and, therefore, emasculate—such vital institutions.<sup>16</sup>

I think it is important to emphasize the very large measure of continuity in United States policy on non-proliferation. This results not only from the presence of a detailed statutory framework in this field, but also from the existence of a broad, longstanding bipartisan consensus in this country about the crucial importance of restraining the spread of nuclear explosives to countries which do not presently possess such devices. The President's non-proliferation statement of July 16, 1981 also emphasized the important relationship between non-proliferation and United States national security.<sup>17</sup> There are two areas, however, in which the policy of this Administration differs to some extent from that of past administrations, and I would like to briefly touch upon these differences of approach. First, there has been a greater emphasis on the United States role as a reliable nuclear supplier. Section 2(b) of the Non-Proliferation Act states that the United States will "take such actions as are required to confirm the reliability of the United States in meeting its commitments to supply nuclear reactors and fuel to nations which adhere to effective non-proliferation policies . . ."<sup>18</sup>

The reliability of supply policy extends to those nations which share our basic non-proliferation objectives. There is a linkage here between United States nuclear supply and adherence by our trading partners to firm non-proliferation commitments. Those who undertake these commitments should have the benefit of a predictable and assured source of United States nuclear supply. Those who will not provide such assurances will not receive these benefits. One important way in which we have attempted to stabilize and improve our reliability is the Administration's decision not to seek changes in the basic statutory framework for our nuclear commerce. Although there are aspects of the NNPA which might have been amended to be more consistent with the Administration's views, we decided *not* to seek such changes, feeling that a disruptive legislative debate over the NNPA would cast further

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16. U.N. GAOR (forthcoming), U.N. Doc. A/37/PV 11 (1982).

17. See N.Y. Times *supra* note 8. President Reagan indicated United States security depends on the degree international nuclear capability is contained. He stated his administration is committed to "improving regional and global stability and reducing the motivations that can drive countries toward nuclear explosives" as a means of achieving both of these ends. *Id.*

18. 22 U.S.C. § 3201(b) (1979).

doubt on the consistency of our national policy.

Another important aspect of reliability is the emphasis on cooperation rather than unilateral action. Previous United States non-proliferation efforts were severely criticized by some other nations for imposing major changes in the standards and procedures for our nuclear cooperation without prior consultation and agreement.<sup>19</sup> Of course, it is not always possible to obtain full agreement on controversial policy changes. This Administration is, however, endeavoring to implement its non-proliferation policy with a maximum of consultation and prior notice to other nations who may be affected by our activities. Nevertheless, after such notice and consultation, we may still take actions different from those preferred by others. This approach can reduce some of the negative reactions which may flow from the abrupt implementation of new policies without such prior exchanges.

We have received positive reactions from other nations to what they regard as a less confrontational approach to nuclear issues. For example, at this year's Uranium Institute meeting in London in early September, a representative of the French CEA (that nation's nuclear agency) noted the United States policy as a positive development, stating that: "most governments now understand that the most efficient developments are not necessarily the most spectacular, and that the first prerequisite for an effective non-proliferation policy is a real worldwide consensus, rather than attempts to dictate new rules through unilateral decisions."<sup>20</sup>

A second difference with previous policy involves the greater willingness of this Administration to distinguish between different nations in determining the kind of nuclear cooperation we will permit.

In matters of non-proliferation, just as in every other aspect of foreign policy, concrete distinctions sometimes have to be made among the various countries of the world. President Reagan stated in July 1981 that the United States will not inhibit civil reprocessing and breeder reactor development in countries with advanced nuclear programs where such development is not a proliferation risk.<sup>21</sup>

Consistent with this position, the President approved a limited approach toward the reprocessing of material subject to United States consent rights and toward the use of plutonium derived from that material.<sup>22</sup> This approach is designed to give our close allies and nuclear

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19. See W. POTTER, *NUCLEAR POWER AND NONPROLIFERATION* 21-33 (1982).

20. *URANIUM AND NUCLEAR ENERGY: 1982, PROCEEDINGS OF THE SIXTH INTERNATIONAL SYMPOSIUM HELD BY THE URANIUM INSTITUTE* (1983).

21. DEP'T ST. BULL., Sept. 1981, at 60-61 (President's statement, July 16, 1981).

22. See generally *Legislation to Amend the Nuclear Non-Proliferation Act of 1978: Hearings on H.R. 6032 and H.R. 6318 before the Comm. on Foreign Affairs and its Sub-*

trading partners a firmer and more predictable basis upon which to plan their vital energy programs, while at the same time furthering our non-proliferation objectives, including the strengthening of controls over civil plutonium.

Specifically, we are offering Japan and the countries of the European Atomic Energy Community (EURATOM) new, long-term arrangements for implementation of United States consent rights over the reprocessing and use of material subject to our agreement for peaceful nuclear cooperation. This advance, long-term approval would apply only for facilities and activities that we determine meet our strict statutory criteria. These offers are being made in the context of seeking new or amended peaceful nuclear cooperation agreements, which would be subject to congressional review. Our willingness to take these steps presumes the continued strong commitment of these countries to our common non-proliferation efforts and to developing and implementing more effective controls over plutonium.

We are proposing this arrangement only to those few nations which have well defined and coherent, advanced nuclear programs and where reprocessing and plutonium use do not constitute a proliferation danger. Moreover, these countries have reprocessing technology as well as active research, development and demonstration programs for advanced nuclear fuel cycles using plutonium, and already possess sizable quantities of separated plutonium. Our policy does not endorse or encourage the spread of reprocessing and plutonium but recognizes that major programs already exist and that we must work realistically with our most important allies to ensure vigorous safeguards and controls over sensitive technology and materials.

This arrangement is not a radical departure from past practice. During the past two administrations, requests for reprocessing and plutonium use were approved on a case-by-case basis.<sup>23</sup> Past approvals have involved primarily reprocessing in Japan at Tokai Mura or the shipment of spent fuel from Japan, and a few other countries, to France and the United Kingdom for reprocessing.

In the time remaining I would like to mention several other impor-

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*comm. on Int'l Security and Scientific Affairs and on Int'l Economic Policy and Trade, 97th Cong., 2nd Sess. (1982). Mr. Richard Kennedy, Under Secretary of State and Ambassador-at-large for non-proliferation, predicted that "quiet, diplomatic steps and measured technical approach had the best chance of achieving nonproliferation objectives." N.Y. Times, Jun. 21, 1982, at A4, col. 4. See also R.T. Kennedy, Nonproliferation: Where We Are and Where We're Going, DEP'T ST. BULL., Dec. 1983, at 52-57; R.T. Kennedy, Challenges of the Nuclear Nonproliferation Regime, DEP'T ST. BULL., Jul. 1983, at 60-62.*

23. W. POTTER, *supra* note 19, at 46-50.



tant non-proliferation initiatives we have put in motion.

The subject of the International Atomic Energy Agency (IAEA) has been the topic of intense discussion in the United States government since September 24, 1982, when the United States and about fifteen other nations walked out of the IAEA's General Conference upon the rejection of the credentials of Israel's delegation to the meeting.<sup>24</sup> As a result of this unlawful action, the United States announced that it would reassess its participation in IAEA activities. For the period of this reassessment, we suspended our financial contributions to the IAEA and cancelled participation by United States representatives in IAEA meetings, seminars and other activities.<sup>25</sup>

We took this step because of our growing concern about the increased politicization of an agency having crucial safeguard and technical responsibilities. Although the Israeli credentials denial triggered our reassessment, the trend of events in the IAEA—a trend in which political disputes not germane to the IAEA's responsibilities were increasingly being allowed to frustrate the effective conduct of IAEA business—could not be ignored. The United States reassessment was undertaken in full recognition of the extremely important, in fact, unique role that the IAEA plays in the international nuclear field.<sup>26</sup>

The United States has devoted considerable attention to concrete measures to strengthen the IAEA and its safeguards system. While the technical effectiveness of IAEA safeguards has improved steadily in recent years, it is still more uneven than is desirable. We are working both bilaterally, in cooperation with the IAEA secretariat, and multilaterally, through a number of special projects, to improve IAEA safeguards. Several of these efforts focus on the particular problem of safeguarding sensitive nuclear facilities.

For example, we are working to improve the quality and capabilities of the IAEA's inspectorate. Through courses given at United States laboratories and by United States experts who go to Vienna

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24. Miller, *U.S. Walks Out as Atom Parley Bars the Israelis*, N.Y. Times, Sept. 25, 1982 at A1, col. 5.

25. Gwertzman, *U.S. Vows to Halt U.N. Ties if Israel is Denied its Seat*, N.Y. Times, Oct. 17, 1982 at A1, col. 6 (late edition). In a statement issued by Mr. George Shultz, Secretary of State, the United States said it would hold up an \$8.5 million payment owed the IAEA for the rest of 1982. The United States also threatened to withdraw from any United Nations organization that voted to exclude Israel from participation. *Id.*

26. Subsequent to the Nuclear Arms and World Public Order Symposium and the preparation of this commentary, the United States completed its reassessment and returned to the IAEA as a full participant. Since the reassessment, the Agency's meetings have been relatively free from the politicized rhetoric which threatened to undermine its important safeguards and nuclear assistance missions. The U.S. government hopes this positive trend in the IAEA will continue in the future.

solely for this purpose, IAEA inspectors are trained in new techniques and methods designed to enhance the effective and timely application of IAEA safeguards.

Similarly, in the area of safeguards instrumentation, we have developed over the past five years, explicitly for IAEA use, twenty types of equipment for verification of nuclear material. Some of the equipment is in routine use, and most of it is in great demand by the inspectorate. This should, in the next few years, lead to a significant increase in IAEA capabilities in the measurement of uranium and plutonium by non-destructive techniques.

Further, through our program of Technical Assistance to IAEA Safeguards, 213 mutually agreed upon projects have been completed since its inception in 1977 and another 50 are currently underway at a total cost of \$27 million.

Considerable concern has been raised recently about the technical task of safeguarding sensitive enrichment and reprocessing facilities. We recognize the problem and are taking steps in cooperation with other countries to deal with it.

The United States recently concluded a successful multinational exercise called the Hexapartite Safeguards Project, which has now defined effective safeguard approaches for gas centrifuge enrichment plants. The other participants in this initiative were Australia, Japan, the United Kingdom, the Federal Republic of Germany and the Netherlands.<sup>27</sup> We also are continuing our work on reprocessing plant safeguards.

Another area in which the Administration has recently taken action in support of our non-proliferation policy involves the tightening of administrative controls over nuclear technology transfers. Section 57(B) of the Atomic Energy Act provides authority for the control of nuclear technology exports by United States companies and for control over any retransfer of such technology by their licensees or other recipients of the technology.<sup>28</sup> Current regulations on this subject are contained in the Code of Federal Regulations.<sup>29</sup>

On February 4, 1983, a Final Rule revising these regulations was published in the Federal Register by the Department of Energy.<sup>30</sup> Ex-

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27. See *U.S. Policy on Export of Helium-3 and other Nuclear Materials and Technology: Hearings before the Subcomm. on Energy, Nuclear Proliferation, and Government Process of the Senate Comm. on Governmental Affairs, 97th Cong., 2nd Sess. 13 (1982)* (statement of Richard Kennedy, Under Secretary of State).

28. Pub. L. No. 88-489 § 12, 78 Stat. 602, 605 (1964) (codified as amended at 42 U.S.C. § 2077 (b) (1976)).

29. 10 C.F.R. § 810 (1983).

30. 48 Fed. Reg. 5218 (Feb. 4, 1983) (codified at 10 C.F.R. § 810). The major changes

ports of sensitive nuclear technology are subject to stringent controls under the Atomic Energy Act<sup>31</sup> and the Nuclear Suppliers Guidelines.<sup>32</sup> Activities not involving technology sensitive from the point of view of proliferation are generally authorized for nations outside the Communist bloc. Any activity by a foreign licensee or other entity of a United States company involving sensitive nuclear technology would require specific government approval. Until the recent changes, the export of reactor technology by a United States firm to a foreign licensee would have been authorized to all but certain embargoed destinations. Now this list has been expanded to include nations which have not ratified the NPT or accepted fullscope safeguards.<sup>33</sup> Four countries in regions of tension (Iran, Iraq, Libya and Syria) have also been listed, even

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embodied in the revisions are an expanded list of countries to which the general nuclear export authorization no longer applies and a requirement for formal review by the departments of State, Defense and Commerce, the Arms Control and Disarmament Agency and the Nuclear Regulatory Commission of applications submitted pursuant to section 57 of the Atomic Energy Act. *Id.*

31. *See supra* note 28, §§ 2021-2284. The Atomic Energy Act includes various provisions limiting exports of sensitive nuclear technology. Sections 2074 and 2094, referring to foreign distribution of special nuclear material and source material, respectively, require an agreement for cooperation approved by the President and Congress. *Id.* Section 2153 outlines the procedure for Presidential and congressional approval. *Id.* Section 2155 details Nuclear Regulatory Commission and executive approval mechanisms for export licenses, in order to coordinate the export policy with the nuclear non-proliferation policy. *Id.* Finally, section 2156 lists various safety criteria governing United States nuclear exports, including physical security requirements. *Id.*

32. *See supra* note 4. The Nuclear Suppliers Guidelines were established in meetings held in London from 1975 through 1977. The Guidelines set forth a policy of restraint, requiring the recipient state to accept safeguards, such as international inspection, as well as to pledge not to use the transferred material, facility or technology to make a nuclear explosive device. The Guidelines also set limitations on the ability of the recipient to retransfer the materials or technology to third parties. *See* L. DUNN, CONTROLLING THE BOMB 41-2, 117 (1982).

The London Suppliers Group includes Belgium, Canada, Czechoslovakia, France, Democratic Republic of Germany, Federal Republic of Germany, Italy, Japan, the Netherlands, Poland; Sweden, Switzerland, the United Kingdom, the United States and the Soviet Union. *Id.* at 41. Australia has subscribed to the Guidelines, and South Africa has recently stated that it will apply them to its own nuclear export activities as a matter of national policy.

33. *See supra* note 31. The following nations have been included: Afghanistan, Albania, Algeria, Andorra, Angola, Antigua and Barbuda, Argentina, Bahrain, Belize, Bhutan, Brazil, Bulgaria, Burma, Chile, Comoros, Cuba, Czechoslovakia, Democratic People's Republic of Korea, Djibouti, Dominica, Estonia, Equatorial Guinea, German Democratic Republic (and Berlin, eastern sector), Guyana, Hungary, India, Iran, Iraq, Israel, Kampuchea, Kiribati, Kuwait, Laos, Latvia, Libya, Lithuania, Malawi, Mauritania, Mongolian People's Republic, Mozambique, Niger, Oman, Pakistan, People's Republic of China, Poland, Qatar, Romania, Saint Vincent and the Grenadines, Sao Tome and Principe, Saudia Arabia, Seychelles, Solomon Islands, South Africa, Soviet Union, Syria,

though they are NPT signatories.<sup>34</sup> In the latter case, specific authorization again is needed before such non-sensitive technology can be exported.

We believe this revision will provide us with a prior opportunity to review technology exports and is consistent with our efforts to provide an incentive for countries to ratify the NPT or accept fullscope safeguards. It also meets concerns which have been expressed that general authorizations might permit the export of reactor technology to a country of significant proliferation risk.

We have also been working very closely with the principal supplier states to assure that nuclear trade is subject to effective conditions and controls. We have deliberately avoided highly visible steps such as a formal reconvening of the so-called London Suppliers Group because we do not believe this would contribute to our objective of further strengthening nuclear export controls. The London Suppliers Group has been characterized by some developing countries as an effort by a cartel of advanced nuclear states to set unilaterally the rules of international nuclear trade, depriving developing countries of needed nuclear technology.<sup>35</sup> These charges are groundless; however, other suppliers are sensitive about steps which could be construed as a concerted action on the part of the principal exporting states. We, therefore, believe diplomatic exchanges and bilateral discussion are a more effective means of strengthening non-proliferation controls on nuclear exports.

In particular, a so-called Trigger List was established by parties to the NPT in order to carry out their obligations under article III of the treaty.<sup>36</sup> The Trigger List is implemented by the 21-member Non-Proliferation Treaty Exporter's Committee, also known as the Zangger Committee, after its Swiss chairman. The London Suppliers Guidelines established an expanded Trigger List to include exports of sensitive nuclear technology.<sup>37</sup> These lists have been generally effective in assuring that significant nuclear exports are not being made to unsafeguarded programs. Many items on the list, however, are quite gen-

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Tanzania, Uganda, United Arab Emirates, Vanuatu, Vietnam, Yemen Arab Republic, Zambia and Zimbabwe. *Id.*

34. *Id.*

35. One critic, Rikhi Jaipal, India's permanent representative to the United Nations, has characterized current non-proliferation policies as atomic apartheid and nuclear colonialism, creating severe handicaps for developing nations. See *NONPROLIFERATION AND U.S. FOREIGN POLICY 107* (M. Yager ed. 1980).

36. The Trigger List includes items of gray market nuclear materials and components usable for civilian or military purposes, such as frequency inverters and other electrical components. See *DUNN supra* note 32, at 102-3.

37. See IAEA Doc. INFCIRC/254 (1978).

eral. There is a need to clarify and make more precise the particular equipment belonging on these lists, to prevent evasion of controls by duplicitous purchasing strategies by potential proliferators. Moreover, certain dual-use items which do not fall on any list should be subject to export controls to assure that they go only to safeguarded nuclear facilities. We have taken important initiatives on both these fronts. Specifically, on January 24, 1984, members of the Zangger Committee exchanged formal diplomatic notes in Vienna which implemented an agreement to add several items to the list for gas centrifuge uranium enrichment—a technology which can produce weapons material.<sup>38</sup> This significant non-proliferation advance will make it more difficult for nations of proliferation risk to obtain items which might be diverted to an unsafeguarded enrichment facility using the centrifuge process. I led the inter-agency U.S. negotiating team in these discussions, which involved some two years of effort with twenty-one other governments.<sup>39</sup>

Another action we have taken is promoting more widespread acceptance of fullscope safeguards. The NNPA requires that non-nuclear weapons states have all their peaceful nuclear facilities under IAEA safeguards as a condition of United States nuclear exports.<sup>40</sup> In addition, the President's non-proliferation message of July 1981 stated that we would continue to urge other suppliers to require such fullscope or comprehensive safeguards as a condition of any significant new supply.<sup>41</sup> Though several other nuclear exporters are reluctant to adopt this requirement for their exports until all suppliers do the same, we have been stressing the importance of comprehensive safeguards to the non-proliferation regime. This is a difficult and challenging area, but we hope to make progress and will continue to use our diplomatic re-

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38. See IAEA Doc. INFCIRC/209 (1974).

39. The members of the Zangger Committee include Austria, Australia, Belgium, Canada, Czechoslovakia, Denmark, Finland, German Democratic Republic, Federal Republic of Germany, Italy, Ireland, Japan, Luxembourg, Netherlands, Norway, Poland, Sweden, Switzerland, United Kingdom, U.S.A. and U.S.S.R.

40. 22 U.S.C. § 3223(d).

In negotiating the binding international undertakings . . . the President shall . . . seek to ensure that the benefits of such undertakings are available to non-nuclear-weapon states only if such states accept IAEA safeguards on all their peaceful nuclear activities, do not manufacture or otherwise acquire any nuclear explosive device, do not establish any new enrichment or reprocessing facilities . . . and place such existing facilities under effective international auspices and inspection.

*Id.*

41. See N.Y. Times *supra* note 8. President Reagan also stressed that he would endeavor to inhibit unauthorized transfers of nuclear materials, strengthen the International Atomic Energy Agency and encourage the generation of bilateral and multilateral agreements for combating the risks of proliferation. *Id.*

sources to gain wider acceptance of this critical non-proliferation norm.

Finally, President Reagan's non-proliferation statement made clear that "the United States will view a material violation of [the Treaty of Tlatelolco or the NPT] or an international safeguards agreement as having profound consequences for international order and United States bilateral relations and also view any nuclear explosion by a non-nuclear weapon state with grave concern."<sup>42</sup> Of course, the United States response would have to be tailored to our particular relationship with the country in question. Nevertheless, it is important that we and others make clear that our bilateral relations would be substantially disrupted by any such nuclear misconduct. We have done so and will continue to do so. We are also developing approaches to a multilateral sanctions regime for nuclear proliferation events. I am acutely aware of the difficulties in establishing and implementing any agreed set of international sanctions no matter how broad the consensus is that certain kinds of conduct should be sanctioned. For violations of international safeguards there is already a procedure under article XII of the Statute of the International Atomic Energy Agency for concerted action by IAEA members.<sup>43</sup> That procedure, involving referral to the United Nations Security Council, however, has never been utilized and could well be cumbersome in practice. Despite these difficulties, the damage to world public order which would result from an event such as the detonation of a nuclear device by a non-nuclear weapon state or a violation of international safeguards makes it highly desirable that some effort be made to establish a sanctions policy which can help to deter those who might be tempted to develop nuclear explosives.

In conclusion, I would emphasize again the crucial importance placed by this Administration on restraining the spread of nuclear weapons, a policy objective shared by all administrations since the dawn of the nuclear age. We believe that the concrete steps we are taking, and will continue to take, can make significant progress in this difficult field.

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42. *Id.*

43. *See supra* note 2, art. XII. Article XII sets forth the following rights, responsibilities and safeguards: to examine the equipment or facility; to require the observance of health and safety measures; to require recordkeeping; to receive progress reports; to approve the means for chemical processing of irradiated material; to send inspectors and to suspend or terminate assistance in the event of noncompliance. In addition, the Agency is required to take remedial action forthwith to correct any noncompliance or failure to take adequate safety measures. Finally, the Agency has the discretionary power to call for the return of materials and equipment made available to the recipient member or to suspend the noncomplying member. *Id.*

