

# **Keeping Nuclear Energy Peaceful: Why We Must Review the NPT**

Testimony

Of

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Mr. Chairman, I want to thank you for asking me to testify on the Nuclear Nonproliferation Treaty (NPT) and the upcoming NPT review conference. The thrust of my testimony is that the success of the conference and ultimately of the NPT is far less likely to turn on anything that might transpire in New York in the next four weeks than it is on what we are prepared to do over the next five years.

I say this because although what our government is planning to say at the review conference is sound enough, preventing further proliferation will require us and other like-minded nations to say and do much more. In specific, the U.S. and its friends must focus far greater attention to distinguishing between nuclear activities that are safeguardable and peaceful and, therefore authorized under the NPT, and those that are too risky, uneconomical, and close to bomb-making to enjoy this protection .

Certainly, if we fail to do this, the cost to U.S. and international security will be severe. At the very least, it will make a hash of the two soundest aspects of our current nuclear nonproliferation policy – our call on Iran to cease its efforts to make nuclear fuels and President Bush’s appeal to restrict the further spread of reprocessing and enrichment activities. Worse, it will distort the NPT from a nonproliferation treaty into a universal subterfuge for states wishing to acquire the technology and materials necessary to build bombs. If we fail to clarify what’s peaceful, the NPT will be undermined, moreover, even if we act against states who try to make nuclear weapons or who violate their nuclear safeguards obligations.

One can appreciate these points best by considering our current position that Tehran cease its efforts to enrich uranium and chemically reprocess spent fuel – two activities that can bring a state within days of having a bomb. Our government insists Iran is trying to make nuclear weapons. Yet, no matter how much we and the Iranians disagree about their intentions, both our diplomats and theirs too quickly agree that members of the NPT have an “inalienable” right to enrich and reprocess. So long as we and our allies concede this point, the chances of Iran abandoning making nuclear fuel are slim to none.

In fact, the NPT does not mention a right to reprocessing or enrichment, and with good cause. Just before the conclusion of NPT negotiations, Spain and Mexico demanded that nuclear power states share the “entire fuel cycle”. The idea was shot down. Instead, the NPT stipulated that a state’s inalienable right to develop peaceful nuclear energy would only be protected if it was exercised in conformity with the treaty’s prohibitions against acquiring nuclear weapons or receiving or seeking any assistance in their manufacture.

The historiography on these points was first documented in a contract study done for the U.S. Arms Control and Disarmament Agency nearly 30 years ago. More recently, I and George Perkovich, a former foreign affairs aide to Senator Joe Biden, co-authored a piece urging the State Department to back this original understanding. These points, in short, are hardly partisan.

We also need to clarify what can and cannot be safeguarded “with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons.” As I detail in an analysis published in this month’s *Arms Control Today*, safeguarding the production, processing and fabrication of nuclear fuels against their quick diversion to make large numbers of weapons is not yet possible in at least three critical respects. These activities not only can be diverted to making bomb fuel overnight, but involve the production and stockpiling of materials that either can be fashioned into a bomb directly in a matter of hours or days or be used to accelerate the bomb making process. In the course of their normal operation, enrichment, reprocessing and fuel fabrication plants working with plutonium and highly enriched uranium have historically lost account of many bombs worth of nuclear fuel each year. For these reasons, we need to restrict these activities as much as is economically and technically feasible. That said, it will be politically and legally impossible to do so if officials in the U.S., Iran and elsewhere continue to insist that these activities can be safeguarded against diversion when they clearly cannot.

To correct this, the U.S. and other like minded states need sooner rather than later to undertake at least one or more of the following steps:

- ***An indefinite freeze on any expansion anywhere of existing plutonium separation efforts, and of fuel fabrication plants that handle nuclear weapons-usable fuels.***
- ***A five-year, renewable moratorium on the expansion of any nation's net uranium enrichment capacity.*** Under this proposal, states could modernize existing capacity, but whatever new enrichment capacity they put up would have to be balanced by bringing down an equivalent amount of old capacity.
- ***Encourage all states to compare any proposal to build or complete a large nuclear facility against alternatives that could produce similar benefits at a lower cost.*** Here the U.S. could best take the lead by upholding title V of the U.S. Nuclear Nonproliferation Act of 1978. Under this law, the U.S. is "to cooperate with other nations, international institutions, and private organizations in establishing programs to assist in the development of non-nuclear energy resources." To date, key provisions of this law have not been implemented.
- ***An indefinite suspension of international transfers of nuclear weapons-usable materials,*** unless the transfer's purpose is to dispose of the material or to make it less accessible for weapons use.
- ***A reassessment of the limitations of the IAEA's ability to safeguard nuclear facilities and materials.***

These measures will take time and effort to implement. Yet, if we fail to take timely action on them, or similar measures, more and more states will be able overtly to acquire the means to make nuclear bomb-making materials quickly claiming they have a peaceful, legal right do so under Article IV of the NPT. How the U.S. and its friends would then prevent these nuclear activities ‘and materials’ military diversion or use is, at best, unclear.