NON-PROLIFERATION AND NUCLEAR COOPERATION --
ACCOMPLISHMENTS AND CHALLENGES

HARRY R. MARSHALL, JR.
PRINCIPAL DEPUTY ASSISTANT SECRETARY
DEPARTMENT OF STATE
WASHINGTON, D.C.
NON-PROLIFERATION AND NUCLEAR COOPERATION —
ACCOMPLISHMENTS AND CHALLENGES

HARRY R. MARSHALL, JR.*
INTERENATIONAL NUCLEAR LAW ASSOCIATION
SAN FRANCISCO, CALIFORNIA
12 SEPTEMBER 1983

THE MEETINGS OF THE INTERNATIONAL NUCLEAR LAW
ASSOCIATION (INLA) EVERY TWO YEARS PROVIDE A TIMELY
OPPORTUNITY TO REFLECT ON INTERNATIONAL NUCLEAR ENERGY
DEVELOPMENT AND NON-PROLIFERATION POLICIES. AS NUCLEAR
LAWYERS WE ARE SPECIALISTS ENGAGED IN NEGOTIATING,
CONTRACTING AND OTHER PURSUITS WHICH IN SOME MANNER RELATE
TO NUCLEAR ENERGY — A TECHNOLOGY WHICH CAN PROVIDE THE
ANSWERS TO OUR ENERGY SECURITY NEEDS, BUT A TECHNOLOGY
WHICH IF MISUSED CAN LEAD TO PROFOUND CONSEQUENCES.
Indeed this concern has been a cause of frustration in
many of our legal endeavors, but hopefully we can view it
as a challenge to be overcome through the exercise of our
legal skills. The problems posed by proliferation
obviously can not be ignored in our work in the nuclear
field, and indeed we have the opportunity, through our
efforts in international lawmaking, to make meaningful
contributions to preventing the further spread of nuclear
arms. With this premise in mind, I would like to assess

*Principal Deputy Assistant Secretary, Department of State, Washington, D.C.
WHAT HAS BEEN ACCOMPLISHED SINCE THE BEGINNING OF THE ADMINISTRATION OF PRESIDENT REAGAN AND WHAT CHALLENGES REMAIN IN REACHING NON-PROLIFERATION GOALS AND IMPROVING INTERNATIONAL NUCLEAR COOPERATION. LET ME FIRST REFLECT ON SOME HISTORICAL BACKGROUND.

HISTORICAL PERSPECTIVE (1975-81)

EIGHT YEARS AGO, AT THE TIME OF THE INLA MEETING IN 1975, MANY OF THE NON-PROLIFERATION PROBLEMS THE INTERNATIONAL COMMUNITY NOW FACE WERE ALREADY BEFORE US OR WERE LOOMING ON THE HORIZON. A NUCLEAR DEVICE HAD BEEN DETONATED THE PREVIOUS YEAR IN INDIA, AND THERE WERE GROWING CONCERNS IN SOME QUARTERS THAT ADDITIONAL PROLIFERATION WOULD FOLLOW.

IN 1977 A NEW ADMINISTRATION HAD ESTABLISHED ITSELF IN WASHINGTON WITH SOME STRONG VIEWS ON HOW BEST TO DEAL WITH PROLIFERATION. BY THE TIME OF THE INLA MEETING THAT YEAR, THAT ADMINISTRATION HAD ANNOUNCED ITS NON-PROLIFERATION POLICY AND HOW IT WOULD BE CARRIED OUT. THIS POLICY INCLUDED SOME APPROACHES WHICH DEPARTED QUITE SIGNIFICANTLY FROM PREVIOUS U.S. PRACTICES. BY 1979, WHEN INLA NEXT MET, THE FULL EFFECT OF THE NEW U.S. POLICY HAD BEEN EXPERIENCED IN VARYING WAYS IN THE UNITED STATES AND AROUND THE WORLD. MANY ASPECTS OF THIS POLICY WERE NOT WELL RECEIVED BY OTHER NATIONS ENGAGED IN NUCLEAR POWER DEVELOPMENT. MUCH OF THE NEW U.S. EFFORT CENTERED AROUND AN INITIATIVE TO SEEK ABANDONMENT OF REPROCESSING SPENT FUEL IN FAVOR OF A ONCE THROUGH CYCLE.
In January, 1981, when the Reagan Administration assumed office in Washington, it was immediately confronted with a number of proliferation concerns. One of a serious magnitude centered principally on certain extant activities and intentions in South Asia. A general problem that was readily apparent was that cooperation with other suppliers had been hampered by their dissatisfaction with the policies of the previous administration. This was particularly true with respect to controlling exports of nuclear equipment of a sensitive nature and preventing exports for unsafeguarded purposes.

During the first months, we witnessed increasing politicization of the International Atomic Energy Agency. The right of Israel and South Africa to fully participate in IAEA activities was affected by extraneous issues and the selection of a new Director General created unnecessary divisiveness along various regional and political lines.

U.S. Policy regarding the exercise of control rights under U.S. agreements for cooperation had caused considerable consternation among our allies and friends. Because of this, many nations had lost confidence in the United States as a supplier that would deliver on a predictable basis and in accordance with agreements and contracts which had been solemnly and duly concluded.
One other item relates to the internationally accepted guidelines with respect to exports of nuclear equipment and material. Although for the most part these guidelines were viewed as satisfactory, they had not been seriously reviewed on a collective basis since the development of the Suppliers Guidelines in 1975. Collaborative work was needed.

These were but a few of the non-proliferation issues which faced the incoming Administration.

Now, when I addressed this group at its 1981 meeting in Palma, the new Administration was in its first year. We had recognized that many friends and allies of the United States had, during recent years, lost confidence in the ability -- or willingness -- of the United States to recognize their legitimate energy security needs, and this in turn created a less than optimum climate for cooperation in dealing with proliferation issues. To remedy this situation a number of changes and initiatives had been announced by President Reagan in July of 1981. This announcement foreshadowed the emergence, about a year later, of a Plutonium Use Policy designed to ensure greater predictability regarding the exercise of U.S. rights in agreements for cooperation, particularly approval of reprocessing and use of Plutonium produced from U.S. supplied material or equipment. Ironically, I might add, with this change in policy designed to improve
INTERNATIONAL COOPERATION, THE INTERNATIONAL MARKET FOR REACTOR SALES SEEMED TO HAVE ENDED, IN MOST PART DUE TO ESCALATING INTEREST RATES AND REDUCED DEMANDS FOR ELECTRICITY.

As many of you recall, on the eve of the 1981 meeting a new IAEA Director General had just been named with the selection of Hans Blix. Although a consensus choice in the end, the struggle over his selection was indicative of problems which seemed to be sapping the Agency's efforts and diverting it from effective pursuit of the purposes set out in the IAEA statute. In my statement at Palma, I made a number of points regarding the new U.S. policy as follows:

-- If universally accepted non-proliferation objectives were to be attained, the nations of the world would have to find ways to work together in a determined effort. For our part, it had become clear to U.S. policy-makers that past unilateral and non-discriminatory approaches, which impose solutions without recognizing individual circumstances, simply would not work.

-- Non-proliferation efforts would have to be directed at specific, identifiable threats on a case-by-case basis, and in doing so, we should address the underlying causes which motivate nations to develop or acquire nuclear arms.
STRONGER COOPERATIVE EFFORTS ON THE PART OF SUPPLIERS TO INHIBIT THE TRANSFER OF SENSITIVE MATERIAL, EQUIPMENT AND TECHNOLOGY WOULD BE ESSENTIAL.

REGARDING THE INTERNATIONAL ATOMIC ENERGY AGENCY, WE WOULD STRIVE TO PREVENT FURTHER POLITICIZATION OF THE ORGANIZATION AND TAKE STEPS TO FURTHER STRENGTHEN ITS TECHNICAL ASSISTANCE AND SAFEGUARDS PROGRAMS.

INTERNATIONAL TREATY REGIMES WERE VITAL IN ENCOURAGING ALL NATIONS TO ACCEPT MUTUAL NON-PROLIFERATION GOALS. CONSEQUENTLY, WE WOULD SEEK FURTHER ACCEPTANCE OF THE NON-PROLIFERATION TREATY, AND WE WOULD RATIFY PROTOCOL I TO THE TREATY OF TLATELOLCO.

TO STRENGTHEN THE INTERNATIONAL NUCLEAR COOPERATION REGIME, WE WOULD SEEK TO CONCLUDE ADDITIONAL BILATERAL AGREEMENTS.

FINALLY, UNDERLYING OUR NON-PROLIFERATION AGENDA, WE HAD ANNOUNCED THAT TO MAINTAIN OUR INFLUENCE IN THE INTERNATIONAL COMMUNITY THE UNITED STATES MUST BE A PREDICTABLE AND COMPETITIVE PARTICIPANT IN INTERNATIONAL NUCLEAR COOPERATION.

NOW WITH THIS ADMINISTRATION NEARING THE END OF ITS THIRD YEAR, I WOULD LIKE TO POINT OUT THE ACCOMPLISHMENTS WHICH HAVE BEEN MADE IN THE ATTAINMENT OF NON-PROLIFERATION
OBJECTIVES AND NOTE WHAT REMAINS TO BE DONE. THE ACHIEVEMENTS DO NOT BENEFIT THE UNITED STATES ALONE, OF COURSE, BUT RATHER THE GLOBAL COMMUNITY. SIMILARLY, I SHOULD NOTE, PROGRESS IN THIS REGARD HAS NOT BEEN POSSIBLE SOLELY THROUGH OUR EFFORTS, BUT RATHER THROUGH MUTUAL COOPERATION IN AN INCREASINGLY INTERDEPENDENT WORLD.

SOUTH ASIA

SINCE EARLY 1981, THE UNITED STATES HAS UNDERTAKEN A MAJOR EFFORT IN SOUTH ASIA TO DEAL WITH THE UNDERLYING CAUSES THAT MIGHT LEAD TO PROLIFERATION IN THE SUBCONTINENT. THE UNITED STATES HAS PROVIDED SIGNIFICANT FOREIGN ASSISTANCE TO PAKISTAN TO IMPROVE UPON OUR LONGTIME ALLIANCE. FOR EXAMPLE, NEARLY $275 MILLION WAS PROVIDED IN 1982 AND $585 MILLION IS ESTIMATED FOR 1983 WHICH AMOUNTS TO A DOUBLING OF OUR EFFORTS -- MUCH OF THIS IN THE FORM OF INCREASED MILITARY ASSISTANCE.

STABILITY IN SOUTH ASIA HAD BECOME UNDERSTANDBLY SHAKEN IN LATE 1979 BY THE SOVIET INVASION AND OCCUPATION OF NEIGHBORING AFGHANISTAN. A U.S. ASSISTANCE HAS PERMITTED PAKISTAN TO STRENGTHEN ITS CONVENTIONAL DEFENSIVE CAPABILITY. THIS SERVES TO BOLSTER ITS STABILITY AND THUS REDUCE ITS MOTIVATION FOR ACQUIRING NUCLEAR EXPLOSIVES.

IN ADDITION THERE HAVE BEEN DISCUSSIONS BETWEEN OUR TWO COUNTRIES AT THE HIGHEST LEVELS WHICH HAVE LED TO GREATER UNDERSTANDING OF THE NEED TO AVOID ACTIVITIES WHICH RAISE CONCERNS REGARDING PROLIFERATION IN THE REGION.
THE UNITED STATES DOES REMAIN CONCERNED WITH CERTAIN PAKISTANI PLANS -- SPECIFICALLY ANY UNSAFEGUARDED OPERATION OF ITS NEW LABS REPROCESSING PLANT AND ITS CONTINUED EFFORTS TO COMPLETE CONSTRUCTION OF AN UNSAFEGUARDED ENRICHMENT PLANT. BECAUSE OF THE DEVELOPMENT OF THESE UNSAFEGUARDED FACILITIES, BUILT IN LARGE PART THROUGH THE USE OF IMPORTED WESTERN TECHNOLOGY AND EQUIPMENT, OUR POSITION HAS BEEN THAT SUPPLIERS SHOULD NOT COOPERATE IN THE DEVELOPMENT OF THE NUCLEAR POWER STATION NOW PLANNED TO BE BUILT IN PAKISTAN. THIS POSITION IS CONSISTENT WITH LONG-STANDING U.S. POLICY OF SEEKING TO HAVE ALL NATIONS REQUIRE COMPREHENSIVE SAFEGUARDS AS A CONDITION OF MAJOR NEW SUPPLY. WE HARDLY BELIEVE IT APPROPRIATE FOR WESTERN SUPPLIERS TO PROVIDE PAKISTAN WITH NUCLEAR TECHNOLOGY WHILE THE GOVERNMENT THERE CONTINUES WITH ITS DEVELOPMENT OF UNSAFEGUARDED FACILITIES WHICH HAVE A DESTABILIZING EFFECT ON THE GLOBAL NON-PROLIFERATION REGIME.

WHAT WILL EVOLVE IN PAKISTAN, AND INDIA AS WELL, REMAINS TO BE SEEN, OF COURSE. THE UNITED STATES INTENDS FOR ITS PART TO CONTINUE TO TAKE ACTIONS TO BOLSTER SECURITY IN THE SOUTH ASIAN REGION IN FURTHERANCE OF ITS APPROACH OF DEALING WITH THE UNDERLYING CAUSES OF PROLIFERATION.

INTERNATIONAL ATOMIC ENERGY AGENCY (IAEA)

THE IAEA IN RECENT YEARS HAS FACED THE GREATEST OF CHALLENGES. POLARIZATION OF MEMBER NATIONS' VIEWS ON ISSUES SUCH AS THE SELECTION OF A DIRECTOR GENERAL AND
ISRAELI AND SOUTH AFRICAN PARTICIPATION IN AGENCY ACTIVITIES CONTINUES TO UNDERMINE THE EFFECTIVENESS OF THE IAEA. AS LAWYERS WE CAN AGREE THAT LAW-MAKING THROUGH INTERNATIONAL INSTITUTIONS IS MOST EFFECTIVE WHEN THERE IS UNIVERSAL PARTICIPATION BY THOSE NATIONS WHICH CHOOSE TO BE INVOLVED. EXCLUDING NATIONS FROM FULL IAEA PARTICIPATION FOR POLITICAL REASONS TAINTS THE RESULTS OF THE AGENCY'S ENDEAVORS.

DESPITE THE TROUBLES IN RECENT YEARS, U.S. COMMITMENT IS AS STRONG AS EVER AND OUR MATERIAL SUPPORT IS INCREASING. SINCE 1981 THE UNITED STATES WILL HAVE PROVIDED BY THE END OF THIS YEAR APPROXIMATELY $101.7 MILLION TO THE AGENCY OF WHICH APPROXIMATELY $23.4 MILLION, WILL HAVE BEEN FOR TECHNICAL ASSISTANCE. DURING THIS SAME PERIOD THE UNITED STATES WILL HAVE EXPENDED APPROXIMATELY $34.6 MILLION TO ASSIST THE IAEA IN ITS SAFEGUARDS ACTIVITIES INCLUDING THE DEVELOPMENT OF TECHNIQUES NEEDED FOR LARGER AND MORE SOPHISTICATED FACILITIES WHICH CAN BE ANTICIPATED IN THE FUTURE. BEYOND THE CONTRIBUTION OF THESE RESOURCES, CONSIDERABLE TIME AND EFFORT HAS BEEN EXPENDED BY U.S. OFFICIALS IN DEALING WITH AGENCY PROBLEMS.

TREATY OF TLATELOLCO

THE TREATY OF TLATELOLCO HAS BEEN VIEWED FOR SOME TIME AS A VALUABLE MECHANISM FOR THE PURSUIT OF NON-PROLIFERATION OBJECTIVES IN LATIN AMERICA. THE UNITED
States ratified Protocol II to the Treaty some years ago -- a truly one of a kind agreement among all the nuclear weapons states. However, for a variety of reasons, previous Administrations had not carried out the ratification process for Protocol I of the Treaty which essentially bars nations situated outside the region from deploying nuclear weapons in Latin American territories for which they are internationally responsible. The Reagan Administration rapidly completed its constitutional procedures to permit ratification of Protocol I, and in November 1981 Secretary Haig deposited the instrument of ratification in Mexico City. We are hopeful that the nations which have not become full parties to the Treaty will do so in the not too distant future.

Non-Proliferation Treaty

The United States is continuing to seek universal acceptance of the Non-Proliferation Treaty. Since 1981, five additional nations* have adhered bringing the number of parties to 119 so far. These recent adherents include the Arab Republic of Egypt, a nation which has long been interested in the peaceful uses of nuclear energy.

*Egypt (February 1981), Papua New Guinea (January 1982), Nauru (June 1982), Viet Nam (June 1982) and Uganda (October 1982).
In 1985, the Third Review Conference of the Non-Proliferation Treaty will convene. At the last Review Conference in 1980, although the meeting fell short of achieving consensus on the final document, many participants expressed firm backing for the Treaty and emphasized the need to maintain and broaden worldwide support for it. It is critical now more than ever, that there be a successful outcome of the Review Conference.

The United States is engaged in its preparation for this important event, and the U.N. General Assembly will address this matter this fall.

**Agreements for Cooperation**

An area of great interest to me as a lawyer has been the negotiation of agreements for nuclear cooperation. A number of new U.S. agreements have entered into force or been negotiated since 1981. Those with Morocco, Bangladesh, Peru and Indonesia, had been negotiated prior to 1981 but were brought into force in the last two years. Negotiations with Egypt were concluded early in 1981 and the agreement is now in force. Its provisions are tailored to limit cooperation, for the most part, to research and power applications utilizing only low enriched uranium. It has been praised as a model agreement for use in regions of political sensitivity.
Most recently we concluded negotiations with Sweden and Norway on agreements which, upon entering into force, provide advance approval by the U.S. Government for the transfer of U.S. supplied fuel to the United Kingdom or France for the purpose of reprocessing. Such understandings with the United States are obviously important to nations with well developed nuclear power programs. These are the first two agreements negotiated in accordance with the plutonium use policy of the Reagan Administration which was announced in the summer of 1982.

Negotiations are continuing with Japan in an effort to conclude a new agreement for cooperation. Such an agreement will obviate the need for any extension of the US-Japan accord regarding continued reprocessing of U.S. supplied fuel at the Tokai reprocessing facility. Importantly, it will provide objective arrangements for approving the reprocessing of U.S. fuel in yet to be constructed facilities in Japan. It would be an agreement which would provide for close cooperation between the United States and Japan well into the next century.

International Export Guidelines

Extended efforts have been undertaken to consult among supplier nations to refine internationally accepted terms for nuclear export controls. Experts from several nations constituting the NPT Zangger Committee have met on a number of occasions. These efforts have produced improved
UNDERSTANDINGS OF THE PROCEDURES WHICH ARE MOST EFFECTIVE FOR REASONABLE EXPORT CONTROL. DISCUSSIONS HAVE FOCUSED ON A TECHNOLOGY-BY-TECHNOLOGY BASIS, WITH THE MOST CRITICAL TECHNOLOGIES BEING ADDRESSED FIRST. WHEN THIS WORK IS COMPLETED THERE WILL BE IN PLACE AN IMPROVED, INTERNATIONALLY ACCEPTED REGIME WHICH CONTAINS GREATER DETAIL AND CLARITY. THE OUTCOME OF THIS IMPORTANT EFFORT SHOULD PROVIDE INCREASED CONFIDENCE TO EXPORTING AND IMPORTING NATIONS REGARDING UNIFORMITY OF NATIONAL CONTROL MEASURES.

NUCLEAR SAFETY

LET ME MENTION THE TOPIC OF NUCLEAR SAFETY WHICH I THINK IS OF PARTICULAR INTEREST TO THIS GROUP. EARLIER THIS YEAR, ASSISTANT SECRETARY OF STATE JAMES MALONE PROPOSED THE CONCEPT OF AN ACADEMY TO PROVIDE TRAINING ON AN INTERNATIONAL SCALE IN NUCLEAR SAFETY. ESTABLISHMENT OF SUCH A FACILITY WOULD INTRODUCE A WORLDWIDE AUDIENCE TO NUCLEAR SAFETY TRAINING PROGRAMS AVAILABLE IN THE UNITED STATES AND FACILITATE MORE EFFECTIVE USE OF NUCLEAR POWER BY HELPING REDUCE THE POSSIBILITY OF SAFETY-RELATED PROBLEMS. THE DEPARTMENT OF STATE IS NOW IN THE PROCESS OF CONSULTING WITH REPRESENTATIVES FROM A BROAD SPECTRUM OF THE NUCLEAR ENERGY FIELD, INCLUDING: MAJOR EQUIPMENT MANUFACTURERS, ARCHITECT-ENGINEERS, NATIONAL LABORATORIES, THE UNIVERSITY COMMUNITY AND OTHER U.S. GOVERNMENT AGENCIES. FOLLOWING THESE CONSULTATIONS, IT IS HOPED THAT
A CONSENSUS WILL EMERGE FORMING THE BASIS FOR FURTHER DETAILED RECOMMENDATIONS LEADING TO THE ESTABLISHMENT OF THE ACADEMY.

AS MANY OF YOU MAY KNOW, MANNING MUNTZING, PAST PRESIDENT OF THE AMERICAN NUCLEAR SOCIETY, HAS PROPOSED CONSIDERATION OF AN INTERNATIONAL COMMISSION ON NUCLEAR SAFETY (ICNS). THE PURPOSE OF THE COMMISSION WOULD BE TO BRING ABOUT A GREATER DEGREE OF UNIFORMITY IN NUCLEAR SAFETY STANDARDS THROUGHOUT THE WORLD. THIS IDEA IS BEING CONSIDERED INTER ALIA BY A SPECIAL COMMITTEE CHAIRED BY PROFESSOR CLAUDE ZANGGER. THE UNITED STATES HAS TAKEN THE POSITION THAT THE CONCEPT OF SUCH A COMMISSION HAS CONSIDERABLE MERIT. WE ARE ENCOURAGED BY ITS DEVELOPMENT SO FAR AND LOOK FORWARD TO ITS ULTIMATE IMPLEMENTATION. WE WILL CONTINUE TO TAKE AN ACTIVE PART IN CONTINUING DISCUSSIONS TO GIVE FURTHER SHAPE TO THIS IDEA.

THIS CONCLUDES MY REMARKS -- A PRESENTATION INTENDED TO DEMONSTRATE THE ACCOMPLISHMENTS OF THIS ADMINISTRATION SINCE COMING TO OFFICE. IN CLOSING, I SHOULD NOTE THE OBVIOUS THAT WHILE SUCCESS IS OFTEN MEASURED BY THE OUTCOME OF EVENTS, SOME VERY POSITIVE NON-PROLIFERATION ACCOMPLISHMENTS ARE MEASURED BY EVENTS WHICH HAVE NOT HAPPENED. I THINK WE ALL PREFER IT TO REMAIN THAT WAY. IN THE COURSE OF MY REMARKS I HAVE NOTED SOME SPECIFIC TASKS THAT LIE AHEAD. THESE TASKS, IN MANY RESPECTS, CANNOT BE ACCOMPLISHED WITHOUT THE ACTIVE SUPPORT OF THE
NATIONS OF THIS WORLD DEDICATED TO THE DEVELOPMENT OF NUCLEAR POWER IN A SAFE AND PROLIFERATION FREE ENVIRONMENT. WE ARE CONFIDENT OF SUCCESS IN MAKING SUBSTANTIAL PROGRESS AND IN FACT REACHING MANY OF THESE GOALS IN THE NEAR FUTURE AND BEYOND.