

**Putting Security First:  
Principles for Amending the Atomic Energy Act**

Testimony

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Mr. Menendez, Mr. Corker, members of the Committee, I want to thank you for holding this hearing. The principles behind US nuclear export and control policies, nonproliferation, and our diplomacy efforts to reduce the spread of enrichment and reprocessing activities have been matters of keen interest for several years.<sup>1</sup> Generally, these matters have been discussed in the context of promoting nuclear power's further expansion overseas, of increasing the number of jobs or of concluding nuclear agreements and cooperation initiatives more generally. All of these considerations are important. They are not, however, the primarily lens that should be used for weighing these matters

I've served in the US Senate as military legislative aide to a senior member of the Senate Armed Services Committee, in the Pentagon as a deputy assistant secretary-level official responsible for nuclear proliferation matters, as a member of two Congressionally mandated commissions on strategic weapons proliferation threats, as a former consultant on proliferation issues to the CIA and the Commission on Strategic Posture of the US, and as a DoD contractor with a Pentagon office that details future threat assessments directly to the Secretary of Defense. In each of these positions, my key focus has been on clarifying the national and international security implications of the further spread of dual-use nuclear technology.

These security concerns should be the first business of our government. Certainly, the most profound contributions Congress has made to promoting and controlling truly peaceful foreign nuclear activities were premised on putting U.S. national security first. This was true in 1946 when Congress created the Atomic Energy Commission, in 1978 when it passed the Nuclear Nonproliferation Act, in the 1990s when it conditioned the Nuclear Agreed Framework with North Korea, and today as it considers legislation relating to our nuclear negotiations with Iran.

That said, the last time Congress revamped the Atomic Energy Act significantly was over 35 years ago. That overhaul, finalized in 1978, followed Taiwanese and South Korean efforts to acquire nuclear weapons and India's explosion of a "peaceful" nuclear explosive. India's bomb used US civilian nuclear technology and materials in violation of India's peaceful end us pledges to the US. Given these events, Congress demanded that any future US nuclear deals with states that, like India (which did not have all of its nuclear facilities under IAEA safeguards and were not members of the NPT), could only come into force with a Congressional joint resolution of approval.

That was three and half decades ago. Since then, Iraq used its safeguarded "peaceful" nuclear program to develop a nuclear weapons option; India and Pakistan broke their pledges (including several to the US) not to develop nuclear weapons or to test; North Korea developed a covert enrichment program, in violation of the Agreed Framework, and withdrew from the NPT even as it imported and perfected US light water reactor technology; Syria and Libya both violated their IAEA safeguards agreements and nearly completed an enrichment plant (in Libya's case) and a plutonium production reactor (in Syria's) covertly; and Iran imported foreign and US nuclear assistance (which began in 1957) under IAEA safeguards, developed a nuclear weapons option by enriching uranium claiming it is peaceful and now is negotiating to keep as much of its nuclear program as it can.

Most recently, and in light of the concerns that other states might inch closer to making bombs by enriching or reprocessing, the US insisted that the UAE and Taiwan foreswear engaging in these nuclear

activities in their nuclear cooperative agreements with the US. It now is trying to persuade South Korea to do the same.

This is a good deal of history – more than enough to suggest that there is a clear need for Congress to adjust again what kinds of agreements should be expedited under the Atomic Energy Act and which should require a Congressional joint resolution.

In trying to determine the specifics of any such adjustment, three general points are worth keeping in mind:

1. ***One should resist arguments that further Congressional involvement in reviewing and approving nuclear deals is either unnecessary or unhelpful.*** Nuclear industry's supporters and our own government negotiators clearly prefer that no additional Congressional review or voting be allowed. They argued against the Nuclear Nonproliferation Act (NPPA) of 1978 using the very same arguments they are now using for any additional Congressional involvement in nuclear deal making.<sup>2</sup> Passage of the NNPA, though, was critical to raise US nonproliferation standards and impose controls over the export of dual use nuclear goods. This, in turn, made it possible for the US to persuade all of the members of the international Nuclear Suppliers Group (NSG) to adopt similar restraints on their own exports. Without NSG adoption of these controls, the Proliferation Security Initiative would be unable to track the fulsome list of nuclear goods it does with so many other states. This would clearly be against our national security interests. Similarly, if as our government claims, we want other nuclear suppliers to promote the Gold Standard, we must be willing to set an example. Establishing a stronger international presumption against ever more states enriching uranium and reprocessing weapons usable plutonium certainly is unlikely unless Congress makes it clear to the Executive that if it brings new nuclear cooperative agreements to the Hill that don't meet the Gold Standard, they will not come into force until Congress votes to approve them because both Houses are persuaded that they are in the nation's security interest. Delay in voting on these matters should not be allowed.
2. ***Congressional review of nuclear deals ought to be considered beyond what has already been proposed in the House.*** Congress is currently frustrated by its inability to engage the Executive over what the final shape of a nuclear agreement with Iran might look like. It was equally frustrated a decade ago regarding the implementation of the nuclear Agreed Framework with North Korea. Congresswoman Ileana Ros-Lehtinen and Congressman Brad Sherman recently reintroduced draft legislation H.R. 3677 that the House Foreign Affairs Committee first approved back in 2011. It addresses a number of needed changes to the Atomic Energy Act of 1954. What it does not consider, however, is amending the act so that any nuclear understanding that the Executive might reach with a state that is in violation of existing United Nations resolutions relating to suspect nuclear activities, IAEA safeguards agreements or the NPT need to be approved by a joint resolution of Congress before it can come into force. The rationale for such a provision would be the same as for voting on nuclear cooperative agreements with states that fail to meet key nonproliferation criteria: Such agreements and their long-term national security implications should be treated not as executive agreements or as minor understandings that need only sit before Congress a number of legislative days before automatically coming into force. Instead, they should be treated as being as important as a treaty or, at the very least, as being at

least as important as a law.<sup>3</sup> Certainly, the national security implications of the US-Iran nuclear cooperative agreement of 1957 (which Congress did not even bother to hold a hearing on) now dwarfs the importance of benign trade agreements that Congress routinely votes upon. Finally, it would be useful to amend the Atomic Energy Act to require the Executive to routinely assess what the IAEA's ability is to prevent military diversions of the declared materials and activities it must safeguard and to detect undeclared covert nuclear efforts and materials. This would be in line with the recommendations of the Congressional Commission on the Prevention of WMD Proliferation and Terrorism and the most recent Defense Science Board report on monitoring nuclear threats.<sup>4</sup> These assessments should be shared with Congress and the IAEA. Additional routine assessments should be made of what our own intelligence system can detect. Without this baseline information, there is no way to know whether the risks of nuclear proliferation are growing or are under control.

- 3. *The primary point of departure for considering any revisions to the act should be security.*** Any business the US engages in can only be considered to be good business if it safe. If not, it's not just bad business, it's dangerous. We learned this after conducting nuclear commerce under lax conditions with India in the 1960s. We learned after sharing reactor technology with North Korea with no routine IAEA safeguards in place under the Agreed Framework. We certainly are learning it now with Iran. If we do not take proper care, we may come to learn it with others including South Korea, Japan, Turkey, the UAE, and Saudi Arabia. The most recent Defense Science Board study on nuclear monitoring warns us all that the proliferation threat will be far more challenging in the future than it ever has been in the past. All of this recommends that we take our nuclear dealings and their potential security implications more seriously. We say we want South Korea not to enrich or reprocess. Yet, we have encouraged Japan to do so even now that its nuclear fleet is unlikely ever to be more than half of its pre 911 size. Worse, the State Department believes the US should not bother taking the option of renewing its agreement with Japan even though we are insisting on doing so with our other key Asian ally, South Korea. This not only is insulting to Seoul, but reckless. If Japan ever decided to open its large reprocessing plant at Rokashho, it would be producing roughly 2,000 bombs worth of nuclear weapons usable plutonium a year. This would almost certainly prompt South Korea to initiate nuclear enrichment or reprocessing of their own as hedge or weapons option. And China? What would it do in response? We don't know but whatever it might choose to do would likely challenge not only Japan's and South Korea's security, but our own treaty commitment to defend our Asian allies. For all these reasons, Congress should demand that our government encourage Japan to review its nuclear plans openly by calling for renegotiation of our nuclear cooperative agreement with them. We may not chose to change any of the terms of the current agreement but we should do all we can to encourage Japan to use the negotiations to clarify their own plans. More Congressional review, not less will help assure the best policies are pursued.

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1. This hearing was first requested nearly two years ago. See letter from Senator Richard Lugar to Senator John Kerry, February 10, 2012 available at [http://www.npolicy.org/article\\_file/Letter\\_from\\_Senator\\_Lugar\\_to\\_Senator\\_Kerry.pdf](http://www.npolicy.org/article_file/Letter_from_Senator_Lugar_to_Senator_Kerry.pdf)

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2. See Jodi Lieberman, “Nonproliferation, Congress, and Nuclear Trade: Plus ca chang, plus c’est la meme chose,” *CSIS Policy Perspectives* (Washington, DC: CSIS November 15, 2011), available at [http://csis.org/files/publication/111116\\_nonproliferation\\_congress\\_and\\_nucleartrade.pdf](http://csis.org/files/publication/111116_nonproliferation_congress_and_nucleartrade.pdf).

3. U.S. Senate Committee on Foreign Relations, Treaties and Other International Agreements toe Role of the United States Senate: A Study Prepared for the Senate Foreign Relations Committee, (Washington, DC: Committee Print, January 2001), pp. 24-25. Available at <http://www.gpo.gov/fdsys/pkg/CPRT-106SPRT66922/html/CPRT-106SPRT66922.htm>.

4. See Bob Graham, et. al., *World At Risk*, (New York, NY: Vintage Books, 2008), pp. xx. Also see 44-46. 49-50 and U.S. Department of Defense Defense Science Board, *Task Force Report: Assessment of Nuclear Monitoring and Verification Technologies*, January 2014, available at <http://www.acq.osd.mil/dsb/reports/NuclearMonitoringAndVerificationTechnologies.pdf>.