

# THE Lawyers Committee on Nuclear Policy INC.

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March 14, 2012

The Honorable John Kerry  
Chairman, Senate Foreign Relations Committee

The Honorable Richard G. Lugar  
Ranking Member, Senate Foreign Relations Committee

The Honorable Ileana Ros-Lehtinen  
Chairman, House Foreign Affairs Committee

The Honorable Howard L. Berman  
Ranking Member, House Foreign Affairs Committee

Dear Chairman Kerry, Ranking Member Lugar, Chairman Ros-Lehtinen, and  
Ranking Member Berman,

We write on behalf of the Lawyers Committee on Nuclear Policy (LCNP) to express our deep concern over developments which could have grave adverse consequences for efforts to restrain the spread of nuclear weapons capabilities. LCNP is a nonprofit association of lawyers and legal scholars devoted to examining nuclear weapons policy within the framework of national and international law.

In a letter to members of Congress dated January 10, 2012, Undersecretary of State Ellen Tauscher and Deputy Secretary of Energy Daniel Poneman stated that the administration will not uniformly seek nonproliferation safeguards with respect to enrichment of uranium and reprocessing of plutonium (ENR) in future 123 agreements for civilian nuclear cooperation. Instead, they stated that the issue of ENR nonproliferation safeguards will be approached "on the basis of a case-by-case review."

Such an approach would represent a serious retreat from the nonproliferation policies reflected in the 123 agreement with the United Arab Emirates in 2009. That agreement, which included express pledges on ENR backed by specific disincentives, was widely praised by nonproliferation experts as a template for future civilian nuclear agreements. As recently as 2010, an administration

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spokesperson referred to the UAE agreement as the “gold standard” for such future agreements.

Any new 123 agreements which lack safeguards as to ENR can only damage the credibility of U.S. non-proliferation efforts. This would send precisely the wrong signal at a time when the U.S. is seeking to rally international support against Iran’s enrichment program, and it would increase the danger of a nuclear arms race in the Middle East. Future agreements without ENR safeguards would encourage the UAE to seek revision of its agreement, and would lead other prospective trading partners like Jordan to seek similar treatment. Among the countries which has expressed interest in a civil nuclear cooperation agreement with the U.S. is Saudi Arabia, which has never accepted the Additional Protocol amplifying IAEA inspection powers under safeguards agreements, and which has publicly stated that developments in Iran could lead it to launch its own nuclear weapons program.

Even if the state receiving nuclear technology does not intend to divert it to use in a weapons program, a significant proliferation risk is presented if inadequate security renders enrichment and reprocessing materials and information vulnerable to acquisition by other states, or by non-state actors, through diversion or theft. Vietnam, for example, is one of the countries which have expressed an interest in a 123 agreement. Senior Vietnamese nuclear scientists were quoted in a March 2, 2012 New York Times story as expressing concern about corruption, inadequate regulation, the country's "bad safety culture", and the government's "lack of vigorous assessment of the inherent problems of nuclear power."

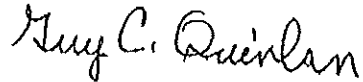
Dropping the requirement of ENR safeguards would also be contrary to the spirit if not the letter of our treaty obligation, under the Nonproliferation Treaty, not to in any way assist, encourage, or induce any non-nuclear-weapon state to manufacture nuclear weapons. In accordance with commitments made in the NPT review process to encourage adherence to the Additional Protocol, a state’s full acceptance of the protocol should also be an explicit condition for any nuclear trade agreement. As of February 12, 2012, Vietnam had not ratified the protocol.

We recognize that the United States cannot compel, though it should certainly seek to persuade, other potential nuclear exporters to follow all aspects of U.S. non-proliferation policy. However, commercial considerations should not be permitted to exacerbate such a serious threat to national security. Congress should insist, if necessary by specific legislative action (cf. H.R. 1280), that non-proliferation remains an integral part of nuclear trade policy. We urge your committees to hold hearings on this important matter.

Very truly yours,



Peter Weiss  
President



Guy Quinlan  
Board of Directors



John Burroughs  
Executive Director

cc:

Rose Gottemoeller, Acting Under Secretary of State for Arms Control and International Security  
Daniel B. Poneman, Deputy Secretary of Energy  
Anne M. Harrington, NNSA Deputy Administrator for Defense Nuclear Nonproliferation  
Gary Samore, White House Coordinator for Arms Control and Weapons of Mass Destruction,  
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