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110th Congress, 2d Session – – – – – – – – – – – – – – House Document 110–90

# PROPOSED AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF TURKEY CONCERNING PEACEFUL USES OF NUCLEAR ENERGY

## MESSAGE

FROM

## THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE PROPOSED AGREEMENT FOR COOPERATION BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF TURKEY CONCERNING PEACEFUL USES OF NUCLEAR ENERGY, PURSUANT TO 42 U.S.C. 2153(d)

JANUARY 23, 2008.—Message and accompanying papers referred to the Committee on Foreign Affairs and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
69–011 WASHINGTON : 2008

*To the Congress of the United States:*

I transmit to the Congress, pursuant to sections 123 b. and 123 d. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b), (d)) (the "Act"), the text of the proposed Agreement for Cooperation between the United States of America and the Republic of Turkey Concerning Peaceful Uses of Nuclear Energy (the "Agreement") together with a copy of the unclassified Nuclear Proliferation Assessment Statement (NPAS) and of my approval of the proposed Agreement and determination that the proposed Agreement will promote, and will not constitute an unreasonable risk to, the common defense and security. The Secretary of State will submit the classified NPAS and accompanying annexes separately in appropriate secure channels.

The Agreement was signed on July 26, 2000, and President Clinton approved and authorized execution and made the determinations required by section 123 b. of the Act (Presidential Determination 2000–26, 65 FR 44403 (July 18, 2000)) . However, immediately after signature, U.S. agencies received information that called into question the conclusions that had been drawn in the required NPAS and the original classified annex, specifically, information implicating Turkish private entities in certain activities directly relating to nuclear proliferation. Consequently the Agreement was not submitted to the Congress and the executive branch undertook a review of the NPAS evaluation.

My Administration has completed the NPAS review as well as an evaluation of actions taken by the Turkish government to address the proliferation activities of certain Turkish entities (once officials of the U.S. Government brought them to the Turkish government's attention). The Secretary of State, the Secretary of Energy, and the members of the Nuclear Regulatory Commission are confident that the pertinent issues have been sufficiently resolved and that there is a sufficient basis (as set forth in the classified annexes, which will be transmitted separately by the Secretary of State) to proceed with congressional review of the Agreement and, if legislation is not enacted to disapprove it, to bring the Agreement into force.

In my judgment, entry into force of the Agreement will serve as a strong incentive for Turkey to continue its support for nonproliferation objectives and enact future sound nonproliferation policies and practices. It will also promote closer political and economic ties with a NATO ally, and provide the necessary legal framework for U.S. industry to make nuclear exports to Turkey's planned civil nuclear sector.

This transmittal shall constitute a submittal for purposes of both section 123 b. and 123 d. of the Act. My Administration is prepared to begin immediate consultations with the Senate Foreign Relations Committee and the House Foreign Affairs Committee as provided in section 123 b. Upon completion of the period of 30 days

of continuous session provided for in section 123 b., the period of 60 days of continuous session provided for in section 123 d. shall commence.

GEORGE W. BUSH.

THE WHITE HOUSE, *January 22, 2008.*

[Presidential Determination No. 2008–8]

THE WHITE HOUSE,
*Washington, January 22, 2008.*

Memorandum for the Secretary of State and the Secretary of Energy.

Subject: Determination on the Proposed Agreement for Cooperation Between the United States of America and the Republic of Turkey Concerning Peaceful Uses of Nuclear Energy.

I have considered the proposed Agreement for Cooperation Between the United States of America and the Republic of Turkey Concerning Peaceful Uses of Nuclear Energy, signed at Ankara on July 26, 2000, along with the views, recommendations, and statements of interested agencies.

I approve the proposed Agreement and have determined the performance of the Agreement will promote, and will not constitute an unreasonable risk to, the common defense and security.

The Secretary of State is authorized to publish this determination in the *Federal Register*.

GEORGE W. BUSH.

# AGREEMENT FOR COOPERATION BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF TURKEY CONCERNING PEACEFUL USES OF NUCLEAR ENERGY

The Government of the United States of America and the Government of the Republic of Turkey;

Reaffirming their support for strengthening nuclear non-proliferation measures worldwide;

Mindful of their respective obligations under the Treaty on the Non-Proliferation of Nuclear Weapons ("NPT") to which both the United States of America and the Republic of Turkey are parties;

Reaffirming their intention to work closely together and with other states to urge universal adherence to the NPT and full realization of the purposes of the preamble and of all the provisions of the Treaty;

Reaffirming their commitment to ensuring that the international development and use of nuclear energy for peaceful purposes are carried out under arrangements which will to the maximum possible extent further the objectives of the NPT;

Recalling and reaffirming their obligation under the NPT, when engaging in nuclear commerce with non-nuclear weapon states, not to render assistance to unsafeguarded activities in such states;

Affirming their support of the objectives of the International Atomic Energy Agency ("IAEA");

Recognizing the indispensable role of the safeguards system of the IAEA in the maintenance of an effective non-proliferation regime;

Confirming their commitment to the strengthening of IAEA safeguards, including their readiness to take such steps as are necessary to allow the Agency to apply safeguards effectively and efficiently and to attain its inspection goal at facilities in their respective jurisdictions;

Recognizing the importance of maintaining effective nuclear material control and accountancy and physical protection in accordance with international standards;

Desiring to cooperate in the development, use and control of peaceful uses of nuclear energy; and

Mindful that peaceful nuclear activities must be undertaken with a view to protecting the environment from radioactive, chemical and thermal contamination;

Have agreed as follows:

**ARTICLE 1 - DEFINITIONS**

For the purposes of this Agreement:

(A) "Byproduct material" means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material;

(B) "Component" means a component part of equipment, or other item so designated by agreement of the Parties;

(C) "Conversion" means any of the normal operations in the nuclear fuel cycle, preceding fuel fabrication and excluding enrichment, by which uranium is transformed from one chemical form to another -- for example, from UF6 to UO2 or from uranium oxide to metal;

(D) "Decommissioning" means the actions taken at the end of a facility's useful life to retire the facility from service in a manner that provides adequate protection for the health and safety of the decommissioning workers and the general public, and for the environment. These actions can range from closing down the facility and a minimal removal of nuclear material coupled with continuing maintenance and surveillance, to a complete removal of residual radioactivity in excess of levels acceptable for unrestricted use of the facility and its site;

(E) "Equipment" means any reactor, other than one designed or used primarily for the formation of plutonium or uranium 233, or any other item so designated by agreement of the Parties;

(F) "High enriched uranium" means uranium enriched to twenty percent or greater in the isotope 235;

(G) "Low enriched uranium" means uranium enriched to less than twenty percent in the isotope 235;

(H) "Major critical component" means any part or group of parts essential to the operation of a sensitive nuclear facility;

(I) "Material" means source material, special nuclear material, byproduct material, radioisotopes other than byproduct material, moderator material, or any other such substance so designated by agreement of the Parties;

(J) "Moderator material" means heavy water or graphite or beryllium, of a purity suitable for use in a reactor to slow down high velocity neutrons and increase the likelihood of further fission, or any other such material so designated by agreement of the Parties;

(K) "Parties" means the Government of the United States of America and the Government of the Republic of Turkey;

(L) "Peaceful purposes" include the use of information, material, equipment and components in such fields as research, power generation, medicine, agriculture and industry but do not include use in, research on or development of any nuclear explosive device, or any military purpose;

(M) "Person" means any individual or any entity subject to the jurisdiction of either Party but does not include the Parties to this Agreement;

(N) "Reactor" means any apparatus, other than a nuclear weapon or other nuclear explosive device, in which a self-sustaining fission chain reaction is maintained by utilizing uranium, plutonium or thorium or any combination thereof;

(O) "Restricted Data" means all data concerning (1) design, manufacture or utilization of nuclear weapons, (2) the production of special nuclear material, or (3) the use of special nuclear material in the production of energy, but shall not include data of a Party which it has declassified or removed from the category of Restricted Data;

(P) "Sensitive nuclear facility" means any facility designed or used primarily for uranium enrichment, reprocessing of nuclear fuel, heavy water production, or fabrication of nuclear fuel containing plutonium;

(Q) "Sensitive nuclear technology" means any information (including information incorporated in equipment or an important component) which is not in the public domain and which is important to the design, construction, fabrication, operation or maintenance of any sensitive nuclear facility, or other such information which may be so designated by agreement of the Parties;

(R) "Source material" means (1) uranium, thorium, or any other material so designated by agreement of the Parties, or (2) ores containing one or more of the foregoing materials in such concentration as the Parties may agree from time to time;

(S) "Special nuclear material" means (1) plutonium, uranium 233, or uranium enriched in the isotope 235,
or (2) any other material so designated by agreement of the Parties.

**ARTICLE 2 - SCOPE OF COOPERATION**

1. Cooperation between the Parties in the use of nuclear energy for peaceful purposes shall be subject to the provisions of this Agreement, and the applicable treaties, laws, regulations and license requirements in force in their respective countries.

2. Transfer of information, material, equipment and components under this Agreement may be undertaken directly between the Parties or through authorized persons. Such transfers shall be subject to this Agreement and to such additional terms and conditions as may be agreed by the Parties.

3. In particular, transfer of information concerning nuclear reactor and fuel technology, nuclear safety and other uses of nuclear energy for peaceful purposes may be undertaken directly between the Parties or through authorized persons. Such transfers shall, if the Parties agree, be subject to this Agreement and to such additional terms and conditions as may be agreed by the Parties. Such transfers may also be undertaken outside this Agreement, in a manner consistent with the Parties' respective laws, regulations and license requirements.

4. The Parties may cooperate in nuclear research and development for peaceful purposes. Such cooperation may include, but need not be limited to, training, exchange of personnel, meetings and participation in joint studies and projects.

**ARTICLE 3 - TRANSFER OF TECHNOLOGY**

1. Information concerning the use of nuclear energy for peaceful purposes may be transferred. Transfers of information may be accomplished through various means, including reports, data banks, computer programs, conferences, visits, participation in joint studies and projects, training and assignments of staff to facilities. Fields which may be covered include, but shall not be limited to, the following:

(A) Development, design, construction, commissioning, operation, maintenance and use of reactors, reactor fuel fabrication, reactor experiments, and decommissioning;

(B) The use of material in physical and biological research, medicine, agriculture and industry;

(C) Fuel cycle studies of ways to meet future world-wide civil nuclear needs, including multilateral approaches to guaranteeing nuclear fuel supply and appropriate techniques for management of nuclear wastes;

(D) Safeguards and physical protection of materials, equipment, and components;

(E) Health, safety and environmental considerations related to the foregoing; and

(F) Assessing the role nuclear power may play in national energy plans.

2. This Agreement does not require the transfer of any information which the Parties are not permitted under their respective treaties, national laws, and regulations to transfer.

3. Restricted Data shall not be transferred under this Agreement.

4. Sensitive nuclear technology shall not be transferred under this Agreement unless provided for by an amendment to this Agreement.

**ARTICLE 4 - TRANSFER OF MATERIAL, EQUIPMENT AND COMPONENTS**

1. Material, equipment and components may be transferred for applications consistent with this Agreement. Any special nuclear material transferred to the Republic of Turkey under this Agreement shall be low enriched uranium, except as provided in paragraph 4. Sensitive nuclear facilities and major critical components thereof shall not be transferred under this Agreement, unless provided for by an amendment to this Agreement.

2. Low enriched uranium may be transferred for use as fuel in reactor experiments and in reactors, for conversion or fabrication, or for such other purposes as may be agreed by the Parties.

3. The quantity of special nuclear material transferred under this Agreement shall not at any time be in excess of that quantity the Parties agree is necessary for any of the following purposes: use in reactors or reactor experiments, the economic, safe, efficient and continuous operation of reactors or conduct of such reactor experiments, and the accomplishment of other purposes as may be agreed by the Parties.

4. Small quantities of special nuclear material may be transferred for use as samples, standards, detectors, targets and for such other purposes as the Parties may agree. Transfers pursuant to this paragraph shall not be subject to the quantity limitations in paragraph 3.

5. The United States of America shall endeavor to take such actions as may be necessary and appropriate to ensure a reliable supply of nuclear fuel to the Republic of Turkey required for the economic, safe, efficient and continuous operation of reactors, including the export of nuclear material from sources in or outside the United States of America on a timely basis.

**ARTICLE 5 - STORAGE AND RETRANSFERS**

1. Plutonium and uranium 233 (except as contained in irradiated fuel elements) and high enriched uranium transferred pursuant to this Agreement or used in or produced through the use of material or equipment transferred pursuant to this Agreement shall only be stored in a facility to which the Parties agree.

2. Material, equipment and components transferred pursuant to this Agreement and any special nuclear material produced through the use of material or equipment transferred pursuant to this Agreement shall not be transferred to unauthorized persons or, unless the Parties agree, beyond the recipient Party's territorial jurisdiction.

**ARTICLE 6 - REPROCESSING AND ENRICHMENT**

1. Material transferred pursuant to this Agreement and material used in or produced through the use of material or equipment transferred pursuant to this Agreement shall not be reprocessed unless the Parties agree.

2. Plutonium, uranium 233, high enriched uranium and irradiated source or special nuclear material, transferred pursuant to this Agreement or used in or produced through the use of material or equipment transferred pursuant to this Agreement, shall not be altered in form or content, except by irradiation or further irradiation, unless the Parties agree.

3. Uranium transferred pursuant to this Agreement or used in any equipment transferred pursuant to this Agreement shall not be enriched after transfer unless the Parties agree.

ARTICLE 7 - PHYSICAL PROTECTION

1. Adequate physical protection shall be maintained with respect to source or special nuclear material and equipment transferred pursuant to this Agreement and special nuclear material used in or produced through the use of material or equipment transferred pursuant to this Agreement.

2. To fulfill the requirement in paragraph 1, each Party shall apply measures in accordance with levels of physical protection at least equivalent to the recommendations published in IAEA document INFCIRC/225/Rev.4 entitled "The Physical Protection of Nuclear Material and Nuclear Facilities," and subsequent revisions of that document as agreed by the Parties.

3. The adequacy of physical protection measures maintained pursuant to this article shall be subject to review and consultations by the Parties from time to time and whenever either Party is of the view that revised measures may be required to maintain adequate physical protection.

4. The Parties will keep each other informed through diplomatic channels of those agencies or authorities having responsibility for ensuring that levels of physical protection for nuclear material in their territory or under their jurisdiction or control are adequately met and having responsibility for coordinating response and recovery operations in the event of unauthorized use or handling of material subject to this article. The Parties will inform each other through diplomatic channels, as well, of the designated points of contact within their national authorities to cooperate on matters of out-of-country transportation and other matters of mutual concern.

5. The provisions of this article shall be implemented in such a manner as to avoid hampering, unnecessary delay or undue interference in the Parties' nuclear activities and so as to be consistent with prudent management practices required for the economic and safe conduct of their nuclear programs.

ARTICLE 8 - NO EXPLOSIVE OR MILITARY APPLICATION

Material, equipment and components transferred pursuant to this Agreement and material used in or produced through the use of any material, equipment or components transferred pursuant to this Agreement shall not be used for any nuclear explosive device, for research on or development of any nuclear explosive device, or for any military purpose.

ARTICLE 9 - SAFEGUARDS

1. Cooperation under this Agreement shall require the application of IAEA safeguards with respect to all nuclear activities within the territory of the Republic of Turkey, under its jurisdiction or carried out under its control anywhere. Implementation of a Safeguards Agreement pursuant to Article III (4) of the NPT shall be considered to fulfill this requirement.

2. Source or special nuclear material transferred to the Republic of Turkey pursuant to this Agreement and any source or special nuclear material used in or produced through the use of material, equipment or components transferred pursuant to this Agreement shall be subject to safeguards in accordance with the agreement between the Republic of Turkey and the IAEA for the application of safeguards in connection with the NPT, signed on June 30, 1981 and entered into force on September 1, 1981.

3. Source or special nuclear material transferred to the United States of America pursuant to this Agreement and any source or special nuclear material used in or produced through the use of any material, equipment or components transferred pursuant to this Agreement shall be subject to the agreement between the United States of America and the IAEA for the application of safeguards in the United States of America, signed on November 18, 1977 and entered into force on December 9, 1980.

4. If either Party becomes aware of circumstances which demonstrate that the IAEA for any reason is not or will not be applying safeguards in accordance with the agreement as provided for in paragraph 2 or paragraph 3, to ensure effective continuity of safeguards the Parties shall consult and immediately enter into arrangements with the IAEA or between themselves which conform with IAEA safeguards principles and procedures, which provide assurance equivalent to that intended to be secured by the system they replace, and which conform with the coverage required by paragraph 2 or paragraph 3.

5. Each Party shall take such measures as are necessary to maintain and facilitate the application of safeguards provided for under this article.

6. Each Party shall establish and maintain a system of accounting for and control of source and special nuclear material transferred pursuant to this Agreement and source and special nuclear material used in or produced through the use of any material, equipment or components transferred pursuant to this Agreement. The procedures for this system shall be comparable to those set forth in IAEA document INFCIRC/153 (Corrected), or in any revision of that document agreed to by the Parties.

7. Upon the request of either Party, the other Party shall report or permit the IAEA to report to the requesting Party on the status of all inventories of material subject to this Agreement.

8. The provisions of this article shall be implemented in such a manner as to avoid hampering, delay or undue interference in the Parties' nuclear activities and so as to be consistent with prudent management practices required for the economic and safe conduct of their nuclear programs.

**ARTICLE 10 - MULTIPLE SUPPLIER CONTROLS**

If any agreement between either Party and another state or group of states provides such other state or group of states rights equivalent to any or all of those set forth under Article 5 or 6 with respect to material, equipment or components subject to this Agreement,

the Parties may, upon request of either of them, agree that the implementation of any such rights will be accomplished by such other state or group of states.

**ARTICLE 11 - CESSATION OF COOPERATION**

1. If either Party at any time following entry into force of this Agreement:

(A) does not comply with the provisions of Article 5, 6, 7, 8, or 9; or

(B) terminates, abrogates or materially violates a safeguards agreement with the IAEA;

the other Party shall have the rights to cease further cooperation under this Agreement and to require the return of any material, equipment and components transferred under this Agreement and any special nuclear material produced through their use.

2. If the Republic of Turkey at any time following entry into force of this Agreement detonates a nuclear explosive device, the United States of America shall have the same rights as specified in paragraph 1.

3. If either Party exercises its right under this Article to require the return of any material, equipment or components, it shall, prior to the removal from the territory or from the control of the other Party, compensate promptly that Party for the fair market value thereof and for the costs incurred as a consequence of such removal. If the return of such nuclear items is to be required, the Parties shall determine jointly the relevant quantity of such items, taking account of the circumstances involved. The Parties shall further satisfy themselves that full safety, radiological and physical protection measures, in accordance with their existing obligations, are taken in relation to the return of the items, that no unreasonable risks are incurred and that the return of the items takes place in a manner consistent with all the relevant laws and regulations of the Parties.

**ARTICLE 12 - CONSULTATIONS AND ENVIRONMENTAL PROTECTION**

1. The Parties undertake to consult at the request of either Party regarding the implementation of this Agreement and the development of further cooperation in the field of peaceful uses of nuclear energy.

2. The Parties shall consult, with regard to activities under this Agreement, to identify the environmental implications arising from such activities and shall cooperate in protecting the environment from radioactive, chemical or thermal contamination arising from peaceful nuclear activities under this Agreement and in related matters of health and safety.

**ARTICLE 13 - SETTLEMENT OF DISPUTES**

1. The Parties shall seek in good faith and in a spirit of cooperation an early and equitable resolution to any dispute arising from the application or interpretation of this Agreement, and shall negotiate promptly in order to arrive at a settlement, acceptable to both, in the shortest possible time.

2. Any dispute arising out of the interpretation or application of this Agreement shall be settled by negotiation, mediation, conciliation or other similar procedure or, if both Parties agree, by submission to an arbitral tribunal that shall be composed of three arbitrators appointed in accordance with the provisions of this Article. Each Party shall designate one arbitrator and the two arbitrators so designated shall elect a third, a national of a country other than the United States of America or the Republic of Turkey, who shall be the Chairman. If, within thirty days of the request for arbitration, a Party has not designated an arbitrator, the other Party may request the President of the International Court of Justice to appoint an arbitrator. The same procedure shall apply if, within thirty days of the designation or appointment of the second arbitrator, the third arbitrator has not been elected, provided that the third arbitrator so appointed shall not be a national of the United States of America or the Republic of Turkey. All decisions shall require the concurrence of two arbitrators. The arbitral procedure shall be fixed by the tribunal. The decisions of the tribunal shall be binding on the Parties.

ARTICLE 14 - AMENDMENTS

This Agreement may be amended at any time by agreement of the Parties.

ARTICLE 15 - ENTRY INTO FORCE AND DURATION

1. This Agreement shall enter into force on the date on which the Parties exchange diplomatic notes informing each other that they have completed all applicable requirements for its entry into force.

2. This Agreement shall remain in force for a period of 15 years, and shall continue in force thereafter for additional periods of five years each. Either Party may, by giving six months' written notice to the other Party, terminate this Agreement at the end of the initial 15-year period or at the end of any subsequent five-year period.

3. The provisions of this Agreement shall apply to material and equipment subject to the Agreement for Cooperation Concerning Civil Uses of Atomic Energy Between the Government of the United States of America and the Government of the Turkish Republic, signed June 10, 1955, as amended.

4. Notwithstanding the termination or expiration of this Agreement or any cessation of cooperation hereunder for any reason, Articles 5, 6, 7, 8, 9, and 11 shall continue to be in effect so long as any material, equipment or components subject to these articles remains in the territory of the Party concerned or under its jurisdiction or control anywhere, or until such time as the Parties agree that such material, equipment or components are no longer usable for any nuclear activity relevant from the point of view of safeguards.

IN WITNESS WHEREOF the undersigned, being duly authorized, have signed this Agreement.

DONE at Ankara, this 26th day of July 2000, in duplicate, in the Turkish and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE REPUBLIC OF TURKEY:

# AGREED MINUTE

During the negotiation of the Agreement for Cooperation Between the United States of America and the Republic of Turkey Concerning Peaceful Uses of Nuclear Energy ("the Agreement") signed today, the following understandings, which shall be an integral part of the Agreement, were reached.

## Coverage of Agreement

Material, equipment and components transferred from the territory of one Party to the territory of the other Party, whether directly or through a third country, will be regarded as having been transferred pursuant to the Agreement only upon confirmation, by the appropriate government authority of the recipient Party to the appropriate government authority of the supplier Party, that such material, equipment or components will be subject to the Agreement.

For the purposes of implementing the rights specified in Articles 5 and 6 with respect to special nuclear material produced through the use of nuclear material transferred pursuant to the Agreement and not used in or produced through the use of equipment transferred pursuant to the Agreement, such rights shall in practice be applied to that proportion of special nuclear material produced which represents the ratio of transferred material used in the production of the special nuclear material to the total amount of material so used, and similarly for subsequent generations.

## Safeguards

If either Party becomes aware of circumstances referred to in paragraph 4 of Article 9, either Party shall have the rights listed below, which rights shall be suspended if both Parties agree that the need to exercise such rights is being satisfied by the application of IAEA safeguards under arrangements pursuant to paragraph 4 of Article 9:

(1) To review in a timely fashion the design of any equipment transferred pursuant to the Agreement, or of any facility which is to use, fabricate, process, or store any material transferred pursuant to the Agreement or any special nuclear material used in or produced through the use of material or equipment transferred pursuant to the Agreement;

(2) To require the maintenance and production of records and of relevant reports for the purpose of assisting in ensuring accountability for material transferred pursuant to the Agreement and any source material or special nuclear material used in or produced through the use of any material, equipment or components transferred pursuant to the Agreement; and

(3) To designate personnel, in consultation with the other Party, who shall have access to all places and data necessary to account for the material in paragraph 2, to inspect any equipment or facility referred to in paragraph 1, and to install any devices and make such independent measurements as may be deemed necessary to account for such material. Such personnel shall, if either Party so requests, be accompanied by personnel designated by the other Party.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

FOR THE GOVERNMENT OF THE REPUBLIC OF TURKEY

Cengiz Yaksin

Side Letter

Excellency:

I have the honor to refer to the Agreement for Cooperation Between the United States of America and the Republic of Turkey Concerning Peaceful Uses of Nuclear Energy, signed today ("the Agreement"), and to record the following understandings with respect to certain provisions of the Agreement.

1. Article 10 of the Agreement is intended to provide for the situation in which the same nuclear material is subject to the non-proliferation controls of several different suppliers. To illustrate, if the Republic of Turkey concludes a nuclear cooperation agreement with Germany, and under that agreement Germany retransfers to the Republic of Turkey nuclear material in Germany subject to the U.S.-Euratom Agreement, the Republic of Turkey would owe obligations to both Germany and the United States of America on the same nuclear material. It might happen that some of these

rights – for example, the right to approve retransfer of the material from the Republic of Turkey to some other country – are equivalent, albeit exercisable separately and individually by the United States of America and Germany. In order to simplify such a situation, Article 10 provides that in principle the United States of America might agree to permit Germany to exercise the right on behalf of the United States of America as well as itself.

2. The paragraph in the Agreed Minute to the Agreement under the heading "Coverage of Agreement" that relates to implementation of the rights specified in Articles 5 and 6 of the Agreement expresses a limited proportionality principle. This paragraph provides that a Party's rights to approve certain activities under Articles 5 and 6 of the Agreement do not apply to special nuclear material produced in a portion of a reactor's fuel if that particular portion of the fuel is itself not subject to the Agreement, provided that the reactor is not subject to the Agreement. However, even in a case such as just described, all special nuclear material produced by the reactor, in all portions of the fuel, is subject to all other provisions of the Agreement. And if the reactor itself is subject to the Agreement, then all nuclear material used in the reactor is subject to all provisions of the Agreement, and all special nuclear material produced through the use of the reactor is also subject to all provisions

of the Agreement. The understandings recorded in this paragraph are illustrated by reference to a "reactor," but apply equally to any other item that may be designated by the Parties as "equipment" pursuant to Article 1(E) of the Agreement.

Accept, Excellency, the renewed assurances of my highest consideration.

(Signed)

Mark Parris

July 26, 2000

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Side Letter

I would like to acknowledge the receipt of the Side Letter relating to the Agreement for Cooperation between the Republic of Turkey and the United States of America Concerning Peaceful Uses of Nuclear Energy signed in Ankara on July 26, 2000.

(Signed)

Cengiz Yalcin

August 11, 2000

[JUNE 2000]

# NUCLEAR PROLIFERATION ASSESSMENT STATEMENT

**Pursuant to Section 123 a. of the Atomic Energy Act of 1954, as Amended, With Respect to the Proposed Agreement for Cooperation Between The United States of America and The Republic of Turkey Concerning Peaceful Uses of Nuclear Energy**

## A. Introduction

This Nuclear Proliferation Assessment Statement (NPAS) relates to the proposed Agreement for Cooperation Between the United States of America and the Republic of Turkey Concerning Peaceful Uses of Nuclear Energy. This Agreement is being submitted to the President jointly by the Secretary of State and Secretary of Energy for his approval and authorization for signature.

Section 123 a. of the Atomic Energy Act, as amended by Title XII of the Foreign Affairs Reform and Restructuring Act of 1998 (P.L. 105-277) provides that an NPAS be submitted by the Secretary of State to the President on each new or amended agreement for cooperation concluded pursuant to that section. Pursuant to Section 123 a., the NPAS shall analyze the consistency of the text of the proposed agreement with all the requirements of the Act, with specific attention to whether the proposed agreement is consistent with each of the criteria set forth in this subsection, and address the adequacy of the safeguards and other control mechanisms and the peaceful use assurances contained in the agreement for cooperation to ensure that any assistance furnished thereunder will not be used to further any military or nuclear explosive purpose.

The sections that follow provide background on Turkey's nuclear program and nuclear nonproliferation policies, address the relevant legal issues, review pertinent policy questions, and set forth the assessment, conclusions, views and recommendations of the Department of State as contemplated by Section 123 a.

## B. Background

### 1. Turkey's Nuclear Program and Nonproliferation Policy

*Program*

The Turkish Atomic Energy Institute (TAEK) is Turkey's nuclear regulatory body. Established in 1982, it is an independent agency reporting to the Prime Ministry. It has five branches: The Nuclear Safety Department, which oversees nuclear facilities; the Radiation Health and Safety Department, which oversees radioactive materials; the Technology Department, which conducts research, quality control, and economic analysis; the Research-Development Coordination Department, which does project development; and an Administrative Department.

Although Turkey has had under consideration a variety of civil nuclear power projects since at least the 1970s, at the present time it has no nuclear power plants. The Turkish Electricity Generation and Transmission Corporation (TEAS), in consultation with TAEK, is currently reviewing bids to build a power reactor at the Akkuyu site in southern Turkey. A consortium led by Westinghouse, and including Raytheon, Mitsubishi, and Duke Power, is among the contenders. The site license was obtained in 1976, evidently from TAEK's predecessor agency, the Atomic Energy Commission. The site was chosen for its relative seismic stability, ease of transportation, access to cooling water, low population density, and short distance to load consumption centers. The nearest population center is Mersin. The location is not in a severe earthquake zone. Even so, the government's plans for Akkuyu will no doubt be seen by environmentalists and others opposed to the project against the backdrop of the severe August and November 1999 earthquakes in northeast Turkey, as well as Turkey's mixed record of success so far in instituting and enforcing measures to ensure industrial safety, adequate building standards, and protection of the environment.

Turkey has a domestic supply of natural uranium, but no enrichment capability.

Turkey has one operating research reactor: A 250 kw TRIGA Mark II at the Istanbul Technical University (ITU), which first achieved criticality in March 1979.

A 5MW MTR (TR-2) at the Cekmece Nuclear Research Center near Istanbul, which first achieved criticality in December 1981, is currently shut down and cannot be restarted without a substantial and expensive seismic upgrade. There is good reason to doubt that the Turkish Government will find this worthwhile.

One other research reactor, the TR-1 at the Cekmece Center, first achieved criticality in January 1962 and was shut down in September 1977.

In 1982 the Cekmece Center entered into a joint study program with Argonne National Laboratory, pursuant to the U.S. Reduced Enrichment for Research and Test Reactors (RERTR) program, for conversion of the TR-2 from use of highly enriched uranium (HEU) fuel to low enriched uranium (LEU) fuel. In 1984, some HEU spent fuel from the TR-2 reactor was returned to the United States for reprocessing, but the reactor was not restarted using LEU. As of October 1999, the core of the TR-2 contained both LEU and HEU. The operators are giving favorable consideration to a U.S. proposal to take back all the remaining HEU as part of a wider European return of HEU fuel to the United States in the spring of 2002. The United States has also proposed a possible upgrade of physical protection at the Cekmece facility as long as HEU remains there.

*Policy*

Turkey signed the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) on January 28, 1969. It deposited its ratification on April 17, 1980. It concluded an Agreement with the International Atomic Energy Agency (IAEA) for the application of safeguards in connection with the NPT ("full-scope IAEA safeguards") on September 1, 1981.

Turkey signed the Convention on the Physical Protection of Nuclear Material on August 23, 1983 and ratified it on February 27, 1985.

In July 1988, Turkey enacted an extensive nuclear export licensing system. The United States provided training and support to Turkish officials for its implementation. These stricter export controls appear to have produced favorable results over the past decade. Certain factors leading to the decision by the Government of Turkey to tighten the controls are addressed below. Turkey was accepted as a member of the NPT Exporters Committee ("Zangger Committee") in October 1999. It also was accepted as a member of the Nuclear Suppliers Group (NSG) in April 2000. The United States strongly supported Turkey's application for membership in the latter body.

**2. U.S.-Turkey Civil Nuclear Cooperation**

An earlier U.S.-Turkey nuclear cooperation agreement, the Agreement for Cooperation Concerning Civil Uses of Atomic Energy Between the Government of the United States of America and the Government of the Turkish Republic (TIAS 3320), was signed at Washington June 10, 1955 and entered into force that same day. The 1955 Agreement was subsequently amended on April 27, 1961 (TIAS 4748), June 3, 1965 (TIAS 5828), May 11, 1966 (TIAS 6040), and May 20, 1971 (TIAS 7122). The 1955 Agreement expired by its terms on June 9, 1981. By an exchange of notes of April 15, 1981 and June 9, 1981, the United States and Turkey confirmed that materials, equipment, or devices subject to the 1955 Agreement would continue to be held by Turkey subject to the terms and conditions of the 1955 Agreement, including the requirement for continuing IAEA safeguards. Article 15(3) of the proposed new Agreement for Cooperation provides that the provisions of the new Agreement will apply to all material and equipment subject to the 1955 Agreement.

From 1981 to the present time the United States has not transferred to Turkey any nuclear material or equipment for the export of which an agreement for cooperation pursuant to section 123 of the Atomic Energy Act would be required. In October 1980 the United States did present Turkey with a draft text for a new agreement to

replace the about-to-expire 1955 Agreement. The U.S. draft included the then-new requirements for agreements of this type established by the Nuclear Non-Proliferation Act (NNPA) of 1978. After several years of study, the Turkish Government in 1984 responded with a counter-draft that omitted certain of the U.S. NNPA requirements. No further negotiations ensued until early 1997 when the United States, informed by Westinghouse that it was considering a bid for the Akkuyu reactor project, proposed to Turkey that negotiations be resumed on the basis of a fresh U.S. draft and in expectation of continuing progress by Turkey in applying rigorous nuclear and nuclear-related export controls. The Turkish Government accepted this proposal, and the result, after further negotiations, is the proposed new Agreement for Cooperation, which satisfies all U.S. legal and policy requirements.

**C. Legal Analysis**

Statutory authority for negotiating and concluding agreements for peaceful nuclear cooperation is provided by section 123 of the Atomic Energy Act of 1954, as amended (AEA). The AEA and the Nuclear Non-Proliferation Act of 1978 (NNPA) also set forth substantive conditions that must be included in agreements for cooperation, as well as the domestic procedures for obtaining Executive Branch concurrence and for consulting with Congress prior to entry into force.

Substantive Conditions

Section 123 of the AEA, as amended by the NNPA, sets forth certain substantive requirements for agreements for cooperation. Sections 402 and 407 of the NNPA set forth supplementary requirements. The provisions contained in the proposed agreement and its accompanying agreed minute, which is an integral part of the agreement, satisfy these legal requirements as follows:

-- Safeguards are mandated in perpetuity by article 9(2) on transferred items and on special nuclear material used in or produced through the use of such items, as required by section 123(a)(1) of the AEA. The agreement relies primarily on International Atomic Energy Agency (IAEA) safeguards under the safeguards agreement entered into between Turkey and the IAEA

in connection with the Nuclear Non-Proliferation Treaty. "Fall-back" IAEA or U.S. safeguards are provided for in the event the IAEA is not or will not be applying safeguards under that agreement.

-- Full-scope IAEA safeguards as a condition of cooperation are mandated by article 9(1), as required by section 123(a)(2) of the AEA.

-- A guaranty against explosive or military uses of transferred items and special nuclear material used in or produced through the use of such items is set forth in article 8, as required by section 123(a)(3) of the AEA.

-- A U.S. right to the return of transferred items and special nuclear material used in or produced through the use of such items is provided for in article 11, as required by section 123(a)(4) of the AEA. This right is triggered if Turkey should detonate a nuclear explosive device, fail to comply with the agreement for cooperation, or terminate, abrogate, or materially violate its IAEA safeguards agreement.

-- A guaranty that transferred items and special nuclear material used in or produced through the use of such items will not be transferred to unauthorized persons or beyond the jurisdiction or control of Turkey without U.S. consent is set forth in article 5(2), as required by section 123(a)(5) of the AEA. A retransfer consent right over Restricted Data (RD) is not provided because RD transfers are prohibited under article 3(3) of the agreement.

-- A guaranty that the physical security of transferred items and special nuclear material used in or produced through the use of such items will be adequately maintained is set forth in article 7, as required by section 123(a)(6) of the AEA.

-- A guaranty that specified nuclear materials may not be reprocessed, enriched, or altered in form or content without U.S. consent is provided for in article 6, as required by section 123(a)(7) of the AEA. (In view of the prohibition against post-transfer enrichment, the agreement also satisfies section 402(a) of the NNPA, which states the conditions for such enrichment.) As in other agreements for cooperation, irradiation is excluded from the scope of the alteration consent right.

-- A guaranty of a right of prior U.S. approval over facilities for the storage of specified nuclear materials is provided for in article 5(1), as required by section 123(a)(8) of the AEA.

-- The transfer of sensitive nuclear technology is excluded by article 3(4), so section 123(a)(9) of the AEA is inapplicable. Similarly, section 402(b) of the NNPA precludes the transfer of major critical components of facilities for uranium enrichment, nuclear fuel reprocessing, or heavy water production unless an agreement for cooperation "specifically designates such components as items to be exported pursuant to [such] agreement." Article 4(1) of the proposed agreement precludes the transfer of such components.

-- Article 3(1)(E) of the proposed agreement authorizes the exchange of information concerning "health, safety and environmental considerations" related to peaceful uses of nuclear energy, thereby satisfying the requirements of section 407 of the NNPA.

The proposed agreement thus satisfies all the substantive requirements specified for agreements for cooperation by the AEA and the NNPA.

**D. Policy Issues**

Article IV of the NPT obliges its parties to engage in peaceful nuclear cooperation with other NPT parties so long as such activity is consistent with the basic principles of nuclear nonproliferation contained in Articles I and II of that Treaty. Establishing bilateral civil nuclear trading relationships with NPT parties like Turkey strongly serves the goals of the NPT and provides a firm foundation on which the United States and Turkey can pursue their cooperation on nuclear nonproliferation.

On the basis of its close familiarity with the IAEA safeguards system and its confidence in Turkey's commitment to nuclear nonproliferation, the Department of State is confident that the IAEA safeguards to be applied to the nuclear material subject to the Agreement for cooperation can provide reasonable assurance of its continued, peaceful non-explosive use.

When assessing nuclear nonproliferation factors in connection with a civil nuclear cooperation agreement, it is appropriate to go beyond the specific terms of such an agreement to consider the credibility of a country's commitment to the NPT and what the future might hold. It is impossible to predict with absolute certainty what Turkey's position will be on nuclear nonproliferation over the period of the Agreement. That being said, Turkey has maintained its commitment to the principles of the NPT since it signed the Treaty in 1969. It complied fully and completely with the terms of the previous U.S.-Turkey Agreement for Peaceful Nuclear Cooperation (1955-1981), and agreed to the continued observance of the non-proliferation conditions and controls set forth in that Agreement after the Agreement's expiration in 1981.

As a member of NATO, Turkey benefits from the collective security guarantee of that alliance, which includes three nuclear weapon states. It has shown no sympathy for the misguided notion that the way for non-nuclear powers to earn international respect is through the testing or acquisition of nuclear weapons.

In an earlier period, particularly during the 1980s, there were questions regarding reported cooperation between some private Turkish companies and another country's unsafeguarded nuclear program. These reported exports are discussed in the classified annex to this NPAS.

The Symington Amendment (first adopted in the 1970s as part of the Foreign Assistance Act, and now section 101 of the Arms Export Control Act) requires the United States to cut off all military and economic assistance to countries that transfer uranium enrichment equipment, materials or technology to unsafeguarded nuclear programs.

In 1995, the Senate Government Affairs Committee asked the General Accounting Office (GAO) to investigate whether the U.S. Government was in violation of law by failure to invoke the Symington Amendment in response to the reported exports by the private Turkish companies, as noted above. After an extensive

investigation, the GAO informed the Executive Branch that it had not found a violation of the law.

**E. Conclusions and Recommendations**

Conclusion of the U.S.-Turkey Agreement for Cooperation will support mutually beneficial civil nuclear cooperation between the two countries and provide a foundation for close collaboration on nuclear nonproliferation goals.

On the basis of the analysis in this assessment statement and all pertinent information of which it is aware, the Department of State has arrived at the following assessment, conclusions, views and recommendations:

First, the safeguards and other control mechanisms and the peaceful use assurances in the U.S.-Turkey Agreement for Cooperation are adequate to ensure that any assistance furnished thereunder will not be used to further any military or nuclear explosive purpose.

Second, the U.S.-Turkey Agreement for Cooperation meets all the legal requirements of the Atomic Energy Act and the NNPA.

Third, execution of the proposed Agreement would be compatible with the nonproliferation program, policy, and objectives of the United States.

Therefore, it is recommended that the President determine that the performance of the proposed Agreement will promote, and will not constitute an unreasonable risk to, the common defense and security; and that the President approve and authorize the execution of the proposed Agreement.

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