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RUSSIA, IRAN, AND NUCLEAR WEAPONS: IMPLICATIONS OF THE PROPOSED U.S.-RUSSIA AGREEMENT

HEARING

BEFORE THE

COMMITTEE ON FOREIGN AFFAIRS
HOUSE OF REPRESENTATIVES

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RUSSIA, IRAN, AND NUCLEAR WEAPONS: IMPLICATIONS OF THE PROPOSED U.S.-RUSSIA AGREEMENT

THURSDAY, JUNE 12, 2008

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:32 a.m., in room 2172, Rayburn House Office Building, Hon. Howard L. Berman (chairman of the committee) presiding.

Chairman BERMAN. The committee will come to order. Because we have, in a sense, three panels—one of them, I am going to ask that we do not do any questioning on because one panel is one person—we are not going to have opening statements other than by the chair and ranking member at this hearing, and it will now come to order, and I will start before anybody can complain.

We are here this morning to begin to assess the proposed agreement between the United States and Russian Governments to expand civil nuclear cooperation. One key factor we will take into account, during this process, is the extent to which Russia is cooperating with the United States, the European Union, and others to discourage Iran's development of a nuclear weapons capability.

One of the greatest potential threats to the security of the United States and its allies is an Iranian bomb. We have all heard the crude threats that President Ahmadinejad makes against Israel, which he repeated as recently as last week. But Israel is not the only state feeling the heat from Tehran's radioactive rhetoric.

Other states in the Middle East are now, suddenly, interested in developing their own nuclear energy programs, emulating Iran. I do not believe this is a pure coincidence. As we know all too well, allegedly peaceful nuclear power programs can be used as a cover for the clandestine development of nuclear weapons.

Not only would a nuclear-armed Tehran have the ability to intimidate other states in ways that could cripple U.S. national interests in the region and beyond—it would also effectively end the global nonproliferation regime.

Unfortunately, we currently face a situation in which Iran is enriching uranium faster than sanctions are being applied to stop it.

To date, the multilateral sanctions imposed on Iran by the United Nations are woefully inadequate. They have failed to change Tehran's calculation that the benefits of a nuclear weapons capability outweigh the costs.

In other words, our current policy at this particular point—and I hope it changes, but, at this particular point—is not working.

Russia's role in persuading and pressuring Iran to cease its dangerous nuclear activities is absolutely crucial. Yet in the past, Moscow has often been the main stumbling block to tougher sanctions.

While Russia recently has been more supportive, its commitment to effective international action remains in question. Just 2 weeks ago, Russian Prime Minister Putin publicly declared that there is no evidence that Iran is pursuing a nuclear weapons capability; he said this the very same week that the International Atomic Energy Agency seemed to be moving toward the opposite conclusion.

It is in this context that the Bush administration has signed a new agreement for peaceful nuclear cooperation with Moscow, something that has long been promised and upon which Russia places a high value.

The Foreign Affairs Committee formally received the proposed nuclear cooperation agreement on May 13th. For the record, we are now on Day 19 of the statutory congressional review period of 90 continuous days of session.

The agreement will enter into force if, during this 90-day period, Congress does not enact a joint resolution of disapproval or approves a resolution of approval with conditions over the President's veto. This committee has statutory responsibility to review the proposed agreement and report to the House on whether it should be approved or disapproved. This hearing is an initial step in that process.

There has already been a significant amount of commentary on the benefits and drawbacks of this agreement. Its proponents argue that it may encourage Russia to be more forthcoming on tougher sanctions on Iran; critics counter that Russia will only do so if we hold the agreement back as a point of leverage.

Proponents claim this agreement will allow the United States and Russia to work together to create a nuclear fuel bank and multilateral fuel assurances to reduce incentives for countries, like Iran, to develop their own uranium enrichment and plutonium reprocessing plants that can make fuel for reactors or bombs. Critics respond that these things can be done now without this agreement.

Advocates claim that this agreement will allow greater cooperation with Russia to develop proliferation-resistant reprocessing methods to extract useful uranium and plutonium from spent reactor fuel with minimal risk of diversion to military ends. Opponents charge that any reprocessing is dangerous, and efforts to expand reprocessing globally will inevitably encourage other states to start their own reprocessing efforts. To the extent that the Russia cooperation agreement assists this effort, opponents charge, it actually works against nonproliferation efforts to reduce the amount of plutonium available for nuclear weapons.

We are going to hear from several distinguished witnesses, whom I will introduce individually, and the committee is asking all of you to address all aspects of this agreement, including its relative value for promoting greater nuclear cooperation in U.S. nuclear nonproliferation goals and policies.

And we are particularly interested in the degree to which Russia is cooperating with United States nonproliferation and sanctions

policy toward Iran. As you know, for years there have been reports and rumors of Russian entities conducting WMD-related business in Iran. We want to hear whether, to your knowledge, this cooperation has ceased—and what assurances, if any, Moscow has given our Government.

Further, I want our witnesses to tell us whether this proposed agreement advances or undermines United States efforts to pressure Iran to halt its uranium enrichment and other activities that could support a nuclear weapons program. Does the United States have more leverage over Russian policies and behavior toward Iran by bringing this proposed agreement into force now? Or could we gain leverage by delaying its implementation or by insisting on Presidential certifications regarding Russian behavior before it can be implemented?

Today's hearing is meant to address these and other questions. But, in our limited time, let me offer up the single most important issue of all with respect to nuclear cooperation with Russia: In light of the potential threat posed by a nuclear-armed Iran, has Moscow been a good enough partner in helping us bring Iran's pursuit of nuclear weapons to a halt—and, if not, shouldn't we make this goal the highest priority in our relations with Russia from this point on?

In my prepared statement, one focuses on this, and one wants to wander off into issues about, generally, to what extent this administration has, by its decisions and policies with respect to treaty ratifications and its own position on further arms control and reduction of nuclear weapons, has effectively promoted sensible nonproliferation policies.

One wants to wonder whether our current approach toward Iran generally makes a lot of sense and is achieving those goals.

I am resisting the temptation to get into all of those because I do not have any time left, and, with that, I yield to my ranking member, Ms. Ros-Lehtinen, for her opening remarks.

Ms. ROS-LEHTINEN. Thank you so much, Mr. Chairman. There have been many concerns expressed regarding this agreement by Members of both parties in the House and the Senate, in public and private, as well as in writing, and they have in common a request that the administration not submit this agreement to Congress at this time. But, sadly, those requests were ignored.

Last August, former Chairman Lantos and I sent letters to Secretary of State Condoleezza Rice and National Security Adviser Stephen Hadley asking that the agreement not be sent to Congress until Members' concerns had been addressed, especially those relating to Russia's links to the Iranian regime. The reply we received was vague and noncommittal. The House, as a whole, has clearly spoken on this issue.

By a vote of 397 in favor to 16 against, the House adopted the Iran Counterproliferation Act of 2007, which prohibits the submission to Congress of a nuclear agreement with any country that is assisting Iran's nuclear, conventional weapons, or missile program. Seventy-three Senators, nearly three-fourths of that chamber, have signed on to Senate Bill 970, the companion bill in the Senate. Even though the Senate has yet to act on it, the intent of the Congress is unmistakable. Yet the administration decided to ignore this clear, forcefully expressed, and widespread opinion and pro-

ceeded with an agreement that it admits will be of little or no benefit to the United States. There are, however, very real drawbacks.

The most important drawback, Mr. Chairman, is that the agreement will inevitably be seen, in Moscow and elsewhere, as a political reward, one bestowed by the United States despite the Russian Government's continued assistance to Iran. The support of the Russian Government and the private sector to Iran's nuclear program is extensive, and it is well documented.

This includes direct and open assistance, such as constructing Iran's first nuclear plant in Bushehr, as well as that given to Iran's covert nuclear weapons program. Russia's strenuous efforts to weaken U.N. Security Councils on Iran are especially objectionable.

I emphasized the nuclear aspects, but there are many other Russian policies toward Iran that are as troubling. The sale of advanced, conventional weapons and missiles to Iran poses a very real threat to our interests, as Tehran is using these to expand its influence in the region and threaten our friends and allies. Tied to this, Moscow has vigorously opposed United States plans to construct an antiballistic system defense in Europe to guard us and to guard our allies against Iran's growing missile capabilities.

The regime in Tehran has good reason to believe that it has a reliable ally in Moscow. Why, then, does the United States seek to reward the Russian Federation?

When asked, the State Department has agreed that little or no commercial benefit to the U.S. is expected from this agreement, in terms of sales of reactors, equipment, or materials, and it is difficult to see how our strategic interests will be advanced. Nevertheless, it is certain to be regarded around the world as a major political victory by the Russian Government.

The administration's principal argument for this agreement is that Russia's recently improved record on Iran merits expanded nuclear cooperation. This is an interesting assertion, for many reasons.

The most interesting is that the administration itself apparently does not believe it. The administration has requested that this committee extend the President's authority to waive sanctions in the Iran, North Korea, and Syria Nonproliferation Act. Without this waiver, the United States could no longer purchase spacecraft from the Russian Space Agency to be used for emergency or other purposes regarding the international space station. But this waiver would not be needed if the President certifies that Russia has stopped proliferation of weapons of mass destruction and missiles to Iran, along with Syria and North Korea.

It is obvious that, as was the case a few years ago when the first waiver was requested, the President cannot make that certification, and, therefore, an extension of the waiver is needed. But either Russia is assisting Iran, or it is not. You cannot have it both ways.

At a minimum, the President should not have submitted this agreement until Russia halted all cooperation with Iran's nuclear sector, including its obstruction of tough, U.N. Security Council resolutions and sanctions, and also stopped selling to Tehran advanced conventional weapons, including missiles.

But Russia's arming of rogue regimes is not limited to Iran. It has followed a similar track with Syria, another country of pro-

liferation concern, designated by our own Department of State as a state sponsor of terrorism.

So, given the widespread opposition to this agreement, the conflicting requests for a waiver of nonproliferation laws due to Russia's problematic activities with Iran and the likelihood that there is too little time remaining for its approval, I believe the soundest course would be to withdraw this agreement until a more appropriate time. I know that I speak for many others as well and strongly encourage the administration to reconsider this approach.

Mr. Chairman, our esteemed witnesses will excuse me and Congressman Dana Rohrabacher in a little bit, as we leave for a memorial service in honor of our esteemed former Chairman Tom Lantos in the Victims of Communism Memorial that was passed into law, thanks to Dana's efforts. So if you see me slinking out, that is the reason. Thank you, Mr. Chairman.

Chairman BERMAN. You do not slink anywhere. Thank you very much.

This is an interesting hearing. It is one of those rare hearings where, at least, I have not made up my mind yet. So I look forward to it with great anticipation.

We are going to have, as I said, three different panels. The first panel—he can fill a panel all by himself—is our distinguished colleague, Edward J. Markey, my friend from Massachusetts. He is a longtime leader in Congress on nonproliferation issues. He is chairman of the Select Committee on Energy Independence and Global Warming, which also reflects his career as an environmental leader in the House, and is co-chair of the Bipartisan Caucus on Nonproliferation.

I did mention at the beginning that I am going to ask members, not that he could not handle them if they were asked—we will not do questions for Mr. Markey because we have Under Secretary Rood and then a panel of experts after him, and we will get all of our questions out there. Ed?

STATEMENT OF THE HONORABLE EDWARD J. MARKEY, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF MASSACHUSETTS

Mr. MARKEY. Thank you, Mr. Chairman, very much, and thank you, Ranking Member Ros-Lehtinen, for allowing me to testify here today.

I am opposed to the agreement for nuclear cooperation with Russia because Russia continues to proliferate nuclear and missile technologies to Iran. It is finalizing construction and fueling of the Bushehr nuclear reactor and is providing Iran with advanced conventional weapons.

Furthermore, this agreement is part of President Bush's Global Nuclear Energy Partnership program, or GNEP, an unnecessary, expensive, and very dangerous plan to reinvigorate civilian nuclear reprocessing but also to spread nuclear materials across the world.

A more recent example of this is the visit that President Bush made to Saudi Arabia just 3 weeks ago, in which Condoleezza Rice and President Bush promised to send nuclear materials, nuclear equipment, into Saudi Arabia.

So what we would have across the Persian Gulf: The Iranians being helped by Russia and the Saudi Arabians being helped by the United States. This is a very dangerous policy, and we have to have high standards if we do not want to see the Middle East continue to see an escalation of introduction of nuclear materials that have a dual use.

In our country, we see nuclear power generating electricity that has an unfortunate side effect of nuclear waste, but, in other countries, they see it as a provider of nuclear bomb material that has a wonderful side effect of electricity. But neither Iran nor Saudi Arabia needs nuclear power to generate electricity, given the amount of oil and gas and solar power that they could rely upon.

The nuclear cooperation agreement rewards Russia for a few marginal improvements in its generally poor record with respect to Iran's nuclear program. It is true that Russia has supported sanctions and resolutions at the United Nations Security Council and secured a spent fuel take-back arrangement from Iran for the Bushehr reactor.

These are positive steps, but are they significant enough to cause the United States to ignore Russia's ongoing proliferation activities with Iran? I would submit that the answer is a resounding no.

Unfortunately, the Bush administration's proposed nuclear agreement will enter into force after 90 days of continuous session from its date of submission, which was May 13th, unless the Congress takes action to block the deal. That is why I have introduced H.J. Res. 85, a resolution of disapproval, pursuant to the Atomic Energy Act, to block this dubious and dangerous agreement for nuclear cooperation.

Let me walk through some of Russia's proliferation activities with respect to Iran that, in my mind, should make Russia ineligible for nuclear cooperation with the United States.

First, Russia continues to assist Iran's nuclear program. Serious questions have been raised by nonproliferation experts about the proliferation risks associated with the Bushehr nuclear power plant and whether the Russian institutions which are carrying out this work possess adequate controls to prevent the flow of sensitive materials, technology, equipment, and training to Iran.

Second, Russia continues to assist Iran's missile program. Just last year, the director of national intelligence provided this committee an unclassified assessment of Russia's missile proliferation to Iran. He stated that Russia continues to provide missile assistance to Iran and that this assistance "has helped Iran move toward self-sufficiency in the production of ballistic missiles."

Third, Russian companies and individuals continue to face United States sanctions for WMD and missile-related transfers. Since 2001, 10 Russian companies and individuals have been sanctioned by the United States on 11 separate occasions.

Fourth, Russia has sold Iran advanced conventional weapons and air defense systems. By January 2007, Russia had delivered to Iran Tor M–1 advanced anti-aircraft missile systems, among other advanced systems.

I am deeply concerned by the casual treatment given to these crucial issues by the unclassified Nuclear Proliferation Assessment Statement, which was submitted along with the text of this agree-

ment. This document states: "The United States has received assurances from Russia at the highest levels that its government would not tolerate cooperation with Iran and violations of its U.N. Security Council obligations," assurances.

How can we rely upon assurances in such a sensitive areas a nuclear materials transfer? Better to use the Ronald Reagan standard of trust but verify.

As we all know, the Bush administration does not really believe that Russia's proliferation activity has halted. We know this because they have requested a waiver from this committee-passed Section 6(b) of the Iran, North Korea, and Syria Nonproliferation Act, which requires the President to make a determination that Russia is fully committed to preventing the transfer of WMD and missile technologies to Iran, Syria, and North Korea.

If the administration cannot make a determination that Russia is not a proliferator, how can it ask this Congress to allow nuclear cooperation with Russia?

I think that this is, without question, the central issue for this committee to deal with. You cannot have a waiver and then accept assurances. It is inconsistent.

I would also note that the Government Accountability Office is currently investigating the development of the Nuclear Proliferation Assessment Statement and its classified annex. The report will detail whether the administration omitted information "which could invalidate, modify, or impair the conclusions of the document."

I urge this committee to take into consideration the apparently flawed Nuclear Proliferation Assessment Statement and to consult with the GAO on the findings of their ongoing investigation.

Some have argued that the defeat of this agreement would prevent valuable nuclear nonproliferation work between the United States and Russia. As an ardent and committed proponent of effective nonproliferation policies, let me assure this committee that nonproliferation programs, such as Nunn-Lugar and highly enriched uranium blending programs, will not be affected whatsoever whether this agreement goes forward or not.

I appreciate the opportunity to testify here today as this committee continues to shine a spotlight on Russia's proliferation policies. It will be clear that the United States-Russia agreement for nuclear cooperation should be rejected.

Again, in conclusion, it is my honor to have been allowed to testify before you, and I want to compliment you, Chairman Berman, and you, Ranking Member Ros-Lehtinen, for your leadership on these issues and for the opportunity to be able to testify before you.

[The prepared statement of Mr. Markey follows:]

PREPARED STATEMENT OF THE HONORABLE EDWARD J. MARKEY, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF MASSACHUSETTS

Good morning Chairman Berman, Ranking Member Ros-Lehtinen, and Members of the Foreign Affairs Committee. Thank you for giving me the opportunity to testify today.

I am opposed to the Agreement for Nuclear Cooperation with Russia because Russia continues to proliferate nuclear and missile technologies to Iran, is finalizing construction and fueling of the Bushehr nuclear reactor, and is providing Iran with advanced conventional weapons. Furthermore, this agreement is part of President

Bush's Global Nuclear Energy Partnership program, or GNEP, an unnecessary, expensive, and very dangerous plan to reinvigorate civilian nuclear reprocessing.

This Nuclear Cooperation Agreement rewards Russia for a few marginal improvements in its generally poor record with respect to Iran's nuclear program. It is true that Russia has supported sanctions resolutions at the United Nations Security Council and secured a spent-fuel take-back arrangement from Iran for the Bushehr reactor. These are positive steps. But are they significant enough to cause the United States Congress to ignore Russia's ongoing proliferation activities with Iran? I would submit that the answer is a resounding, "No."

Unfortunately, the Bush Administration's proposed nuclear agreement will enter into force after 90 days of continuous session from its date submission, which was May 13th, unless the Congress takes action to block the deal. That's why I have introduced H.J.Res. 85, a Resolution of Disapproval pursuant to the Atomic Energy Act, to block this dubious—and dangerous—Agreement for Nuclear Cooperation.

Let me walk through some of Russia's proliferation activities with respect to Iran that, in my mind, should make Russia ineligible for nuclear cooperation with the United States:

- *First, Russia continues to assist Iran's nuclear program.* Serious questions have been raised by nonproliferation experts about the proliferation risks associated with the Bushehr nuclear power plant, and whether the Russian institutions which are carrying out this work possess adequate controls to prevent the flow of sensitive materials, technology, equipment, and training to Iran.
- *Second, Russia continues to assist Iran's missile program.* Just last year, the Director of National Intelligence provided this committee an unclassified assessment of Russia's missile proliferation to Iran. He stated that Russia continues to provide missile assistance to Iran, *and that this assistance "has helped Iran move toward self-sufficiency in the production of ballistic missiles."*
- *Third, Russian companies and individulas continue to face U.S. sanction for WMD- and missile-related transfers.* Since 2001, ten Russian companies and individuals have been sanctioned by the United States on eleven separate occasions.
- *Fourth, Russia has sold Iran advanced conventional weapons and air-defense systems.* By January of 2007, Russia had delivered to Iran Tor M1 advanced anti-aircraft missile systems, among other advanced weapons.

I am deeply concerned by the casual treatment given to these crucial issues by the unclassified Nuclear Proliferation Assessment Statement, which was submitted along with the text of the agreement. This document states, "The United States has received assurances from Russia at the highest levels that its government would not tolerate cooperation with Iran in violation of its UN Security Council obligations."

Assurances? How can we rely on assurances? Better to use the Ronald Reagan standard of "Trust But Verify?"

As we all know, the Bush Administration *does not really believe* that Russia's proliferation activity has halted. We know this because they have requested a waiver from this Committee of Section 6(b) of the Iran, North Korea, and Syria Nonproliferation Act, which requires the President to make a determination that Russia is fully committed to preventing the transfer of WMD and missile technologies to Iran, Syria, and North Korea.

If the Administration cannot make a determination that Russia is not a proliferator, how can it ask this Congress to allow nuclear cooperation with Russia? I commend Ranking Member Ros-Lehtinen for the excellent work she has done to expose this blatant contradiction.

I would also note that the Government Accountability Office is currently investigating the development of the Nuclear Proliferation Assessment Statement, and its classified annex, at the request of Chairman Dingell of the Energy and Commerce Committee and Chairman Stupak of the Oversight and Investigation Subcommittee. The report will detail whether the Administration omitted information "which could invalidate, modify, or impair the conclusions" of the document.

I urge this Committee to take into consideration the apparently flawed Nuclear Proliferation Assessment Statement, and consult with the GAO on the findings of their ongoing investigation.

Some have argued that the defeat of this agreement would prevent valuable nuclear nonproliferation work between the United States and Russia. As an ardent and committed proponent of effective nonproliferation policies, *let me assure this Committee that nonproliferation programs such as Nunn-Lugar Cooperative Threat*

Reduction and highly-enriched uranium blend-down will not be affected whatsoever whether this agreement goes forward or not.

I appreciate the opportunity to testify here today. As this committee continues to shine a spotlight on Russia's proliferation practices, it will be clear that the US-Russia Agreement for Nuclear Cooperation should be rejected.

Thank you.

Chairman BERMAN. Thank you very much, Congressman Markey. You certainly presented the issue before us very well, and we thank you for being here, and we take our charge very seriously. We agree with you about the importance of the issue.

Mr. MARKEY. Thank you.

Chairman BERMAN. I am going to introduce the rest of the witnesses now.

First, we will hear from the Honorable John C. Rood. He is the acting under secretary for arms control and international security at the Department of State. In this position, he is the principal State official for nonproliferation matters, as well as for arms control verification and disarmament compliance, arms transfers, regional security, and defense relations and security assistance.

John Rood previously served as assistant secretary of state for international security and nonproliferation, and, before that, as special assistant to the president and senior director for counterproliferation strategy at the National Security Council.

After he has testified and we have questioned him, we will hear from the Honorable Robert Einhorn, who is one of the most respected experts on issues involving nonproliferation. He is a senior adviser in the CSIS International Security program, where he works on a broad range of nonproliferation, arms control, and other national security issues.

Before joining CSIS, Mr. Einhorn served in the U.S. Government for 29 years, working for the Department of State and the U.S. Arms Control and Disarmament Agency on Nonproliferation and Security Matters in a wide variety of countries.

Finally, we will hear from another expert, who we have had the pleasure of having before this committee in the past, Mr. Henry Sokolski, the executive director of the Nonproliferation Policy Education Center, an educational, nonprofit research center in Washington, DC. Mr. Sokolski is a member of the congressionally appointed Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism and is an adjunct professor at the Institute of World Politics in Washington, DC.

Mr. Sokolski previously served as deputy for nonproliferation policy in the Bush 41 administration.

Secretary Rood, it is good to have you with us. Your entire statement will be in the record, and we look forward to your summary of your testimony.

STATEMENT OF THE HONORABLE JOHN C. ROOD, ACTING UNDER SECRETARY FOR ARMS CONTROL AND INTERNATIONAL SECURITY, U.S. DEPARTMENT OF STATE

Mr. ROOD. Thank you, Mr. Chairman. As you mentioned, I will summarize my prepared remarks.

Thank you for the opportunity to testify before the committee in support of the U.S.-Russia Agreement for Peaceful Nuclear Co-

operation, or so-called "123 Agreement," which is required by Section 123 of the Atomic Energy Act of 1954, as amended.

As you know, President Bush submitted this agreement to Congress on May 13 for review. The agreement satisfies all of the U.S. legal requirements, as set forth in Section 123 of the Atomic Energy Act and elsewhere in U.S. law for an agreement of this type with a "nuclear weapon state," as defined by the Nonproliferation Treaty.

In particular, this agreement contains all of the required nonproliferation measures and controls, including a requirement that adequate physical protection measures be maintained on U.S. exports, a United States right to prior consent to retransfers from Russia, and a requirement that no U.S.-origin nuclear material can be enriched or reprocessed without the prior approval of the United States.

The United States has 123 Agreements with almost all countries with major nuclear energy programs, including China, Japan, and the European Atomic Energy Community, which permits cooperation with the 27 EU Member States.

The administration believes that it is important to have a 123 Agreement with Russia, both to build a closer relationship, as well as to improve our ability to address major challenges we face in the 21st century, such as growing energy needs, nuclear nonproliferation, and combating nuclear terrorism.

Growing energy needs and concerns about greenhouse gas emissions have increased international demand for nuclear power, which, in an increasingly globalized nuclear industry, places a premium on working with foreign partners.

In addition, nuclear nonproliferation and the need to prevent nuclear terrorism are at the top of the U.S. national security agenda, generating strong interest in the development of more proliferation-resistant nuclear technologies and approaches to the fuel cycle that can be advanced through cooperation between the United States and Russia.

Upon entry into force, this agreement would establish a legal basis for what we expect to be mutually beneficial, peaceful nuclear cooperation between the United States and Russia.

Some United States-Russia cooperation is already ongoing on nuclear safety and security, and Russia commercial fuel sales to the United States under the HEU Agreement are occurring as well. We believe that this existing cooperation will be enhanced by having this agreement in place.

At the same time, the agreement looks to additional possibilities in the future, both commercial and government to government. It establishes a framework of nonproliferation conditions and controls for transfers of civil nuclear commodities between the two countries but, in itself, does not deal with specific projects. Implementation of this agreement would take place on the basis of export licenses issued in conformity with the requirements of U.S. law and policy at the time the license is applied for.

For the United States, having the agreement in place will provide a framework for potential commercial sales of civil nuclear commodities like reactor fuel and major reactor components to Russia by United States industry. Under Russia's export system, such

commodities may be transferred to the United States without such an agreement, and, in fact, are taking place right now. Having this agreement in place will rectify an imbalance between the two countries in terms of the legal structure available to accommodate commercial opportunities for the United States.

The agreement would facilitate greater United States-Russia cooperation in developing technologies that are important to our nuclear nonproliferation objectives under the Global Nuclear Energy Partnership, or GNEP, program, where we are seeking to cooperate with other nations to develop new technologies like fast-burner reactors that would consume plutonium and new forms of recycling spent fuel that would not produce separated plutonium that could be used by rogue states or terrorists for nuclear weapons.

In areas like advanced fast-burner reactors and advanced nuclear fuel and fuel-cycle facilities, the Russians possess experience in facilities not available in the United States. For example, the Department of Energy would like to send fuel elements for testing in Russian fast-neutron reactors but can only do so with a 123 Agreement in place.

The agreement also advances our mutual nonproliferation goals by facilitating the transfer of nuclear materials for forensic purposes in potential nuclear smuggling cases.

Mr. Chairman, let me address concerns that some have raised about how the United States and Russia are working together to deal with the challenges posed by North Korea and Iran.

With respect to North Korea, the United States and Russia fully support the Six-Party Talks and will continue to cooperate in accordance with the agreements reached, as well as the provisions, of U.N. Security Council Resolution 1718 in order to achieve the ultimate goal of the denuclearization of the Korean Peninsula.

With respect to Iran, Russia and the United States are both committed to political and diplomatic efforts to find a negotiated solution under which Iran's nuclear program is exclusively for peaceful purposes and which prevents Iran's acquisition of nuclear weapons. Both Russia and the United States agree that Iran must comply with its NPT, United Nations Security Council, and IAEA obligations.

In particular, both of our Governments agree that Iran must suspend its proliferation-sensitive, nuclear activities, as required by U.N. Security Council Resolution 1737 and reiterated in Resolutions 1747 and 1803. Both countries are committed to a dual-track strategy with respect to Iran of offering negotiations and incentives and increasing pressure on Iran to take the necessary steps to begin those negotiations, as expressed in the March 3, 2008, statement by the P5+1 Foreign Ministers.

As is the case with any two nations, the United States and Russia sometimes do differ on the means for accomplishing these shared goals.

With respect to the Bushehr issue, in particular, which was mentioned in some of the opening statements, some have raised this as an objection to bringing the agreement into force. The administration examined this issue closely and determined that the steps Russia has put in place in its agreement with Iran mitigated our concerns.

These measures included Russia's supply and take-back of spent fuel from Iran. These measures also underscore the larger point that Iran does not need to possess the complete nuclear fuel cycle, including the proliferation risks posed by enrichment and reprocessing, to take advantage of the peaceful uses of nuclear energy.

Moreover, the administration has reason to believe that United States willingness to enter into negotiations that Russia had long sought for a 123 Agreement, as well as the United States decision to carry them forward to a successful conclusion, had a definite and positive impact on the way Russia came to regard certain nonproliferation issues and to take steps to deal with them. I cannot go into the details here in open session, but I would note that the classified annex to the Nuclear Proliferation Assessment Statement submitted to the committee, which the President submitted, covers these matters very thoroughly.

In conclusion, let me say that this is a good, solid agreement. It contains all of the necessary nonproliferation conditions and controls that Congress has written into law. The agreement helps us build a stronger relationship in areas of cooperation with Russia in a mutually beneficial way. It advances our ability to combat the critical challenges of nuclear proliferation and nuclear terrorism in the 21st century, aids the development of new nuclear energy technologies, and allows commercial opportunities for American industry.

Mr. Chairman, thank you again for the opportunity to testify before the committee. I would, of course, be happy to take any questions that you have.

[The prepared statement of Mr. Rood follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN C. ROOD, ACTING UNDER SECRETARY FOR ARMS CONTROL AND INTERNATIONAL SECURITY, U.S. DEPARTMENT OF STATE

Mr. Chairman:

Thank you for the opportunity to testify before the Committee in support of the U.S.-Russia Agreement for Peaceful Nuclear Cooperation or so-called 123 Agreement, which is required by section 123 of the Atomic Energy Act of 1954, as amended.

As you know, President Bush submitted this agreement to Congress on May 13 for review. This agreement satisfies all U.S. legal requirements as set forth in section 123 of the Atomic Energy Act and elsewhere in U.S. law for an agreement of this type with a nuclear weapon state as defined by the Nonproliferation Treaty. In particular, this agreement contains all of the required nonproliferation measures and controls, including a requirement that adequate physical protection measures be maintained on U.S. exports, a U.S. right of prior consent to retransfers from Russia, and a requirement that no U.S.-origin nuclear material can be enriched or reprocessed without the prior approval of the United States.

The United States has 123 agreements with almost all countries with major nuclear energy programs, including China, Japan, and the European Atomic Energy Community, which permits cooperation with the 27 EU Member States.

The Administration believes it is important to have a 123 agreement with Russia both to build a closer relationship as well as to improve our ability to address major challenges we face in the 21st century, such as growing energy needs, nuclear nonproliferation, and combating nuclear terrorism.

Growing energy needs and concerns about greenhouse gas emissions have increased international demand for nuclear power, which in an increasingly globalized nuclear industry places a premium on working with foreign partners. In addition, nuclear nonproliferation and the need to prevent nuclear terrorism are at the top of the U.S. national security agenda, including with Russia, generating strong interest in the development of more proliferation-resistant nuclear technologies and ap-

proaches to the fuel cycle that can be advanced through cooperation between the U.S. and Russia.

Upon entry into force, this agreement would establish a legal basis for what we expect to be mutually beneficial peaceful nuclear cooperation between the United States and Russia.

Some U.S.-Russia cooperation is already ongoing on nuclear safety and security, and Russian commercial nuclear fuel sales to the United States under the HEU Agreement. We believe that this existing cooperation will be enhanced by having this agreement in place.

At the same time, the agreement looks to additional possibilities in the future, both commercial and government-to-government. It establishes a framework of nonproliferation conditions and controls for transfers of civil nuclear commodities between the two countries, but in itself it does not deal with specific projects. Implementation of this agreement would take place on the basis of export licenses issued in conformity with the requirements of U.S. law and policy at the time the license is applied for.

For the United States, having the agreement in place will provide a framework for potential commercial sales of civil nuclear commodities like reactor fuel and major reactor components to Russia by U.S. industry. Under Russia's export system such commodities may be transferred to the United States without such an Agreement (and in fact are taking place right now). Having the Agreement in place will rectify an imbalance between the two countries in terms of the legal structure available to accommodate commercial opportunities for the United States.

The Agreement would facilitate greater U.S.-Russia cooperation in developing technologies that are important to advancing our nuclear nonproliferation objectives under the Global Nuclear Energy Partnership (GNEP), where we are seeking to cooperate with other nations to develop new technologies like advanced reactors that would consume plutonium and new forms of recycling spent fuel that would reduce the risk of proliferation by not separating plutonium that could be diverted for use by rogue states or terrorists for nuclear weapons. In areas like advanced fast burner reactors and advanced nuclear fuel and fuel cycle facilities, Russia possesses experience and facilities not widely available in the United States. For example, the Department of Energy would like to send advanced fuel for testing in Russian fast neutron reactors, but can only do so with a 123 Agreement in place.

The Agreement also advances mutual nonproliferation goals by facilitating the transfer of nuclear materials for forensic purposes in potential nuclear smuggling cases.

The Administration views this agreement as an important achievement. As Ambassador Burns stated when he signed the Agreement in Moscow on May 6, the United States and Russia—once nuclear rivals—today nuclear partners—at last have a basic framework to develop nuclear energy for peaceful purposes and to advance nuclear energy worldwide while enhancing our efforts to prevent nuclear proliferation. By expanding the ties between our governments and our nuclear industries, this agreement will add to the strength and stability of the U.S.-Russia relationship as we confront important global challenges of the 21st century.

Conclusion of the proposed Agreement with Russia has been a high U.S. priority over the past year. The President's commitment to finalizing it was highlighted in the *Declaration on Nuclear Energy and Nonproliferation: Joint Actions*, issued together with then-President Putin on July 3, 2007, and more recently in the *Strategic Framework Declaration* that they issued at the Sochi Summit on April 6 of this year.

The July 2007 Declaration makes plain how concrete, wide-ranging and ambitious the U.S.-Russia partnership is in this area so crucial to national and global security. In the Declaration, the United States and Russia jointly state their determination to play an active role in making the advantages of peaceful use of nuclear energy available to a wide range of interested countries, and in particular developing countries, provided that the common goal of prevention of proliferation of nuclear weapons is achieved. The two leaders state their common vision of growth in the use of nuclear energy, including in developing countries, to increase the supply of electricity, promote economic growth and development, and reduce reliance on fossil fuels, thus leading to a decrease in pollution and greenhouse gasses.

They state their firm belief that the expansion of access to nuclear energy should be conducted in a way that strengthens the nuclear nonproliferation regime. They also voice their strong support for the Treaty on the Non-Proliferation of Nuclear Weapons, as well as for the International Atomic Energy Agency and in particular the IAEA Additional Protocol.

They further state their readiness to support expanded access to civil nuclear energy, consistent with national law and international legal frameworks, by working together and with other nations in the following ways:

- Facilitating the supply of a range of modern, safe, and more proliferation resistant nuclear power reactors and research reactors appropriate to meet the varying energy needs of developing and developed countries.
- Facilitating and supporting financing to aid construction of nuclear power plants through public and private national and multinational mechanisms, including international financial institutions.
- Providing assistance to states to develop the necessary infrastructure to support nuclear energy, including development of appropriate regulatory frameworks, safety and security programs to assist states in meeting international standards, and standards for training of personnel.
- Developing solutions to deal with the management of spent fuel and radioactive waste, including options for leasing of fuel, storage of spent fuel, and over time development of new technologies for recycling spent fuel.
- Ensuring that the IAEA has the resources it needs to meet its safeguards responsibilities as nuclear power expands worldwide.
- Supporting expanded IAEA Technical Cooperation to help states build the necessary infrastructure for safe, secure, and reliable operations of nuclear power plants.
- Assisting development and expansion of regional electricity grids, to permit states without nuclear reactors to share in the benefits of nuclear power.
- Providing nuclear fuel services, including taking steps to ensure that the commercial nuclear fuel market remains stable and that states are assured of reliable access to nuclear fuel and fuel services for the lifetime of reactors, including through establishment of international nuclear fuel cycle centers, and provision of nuclear fuel cycle services, including uranium enrichment, under IAEA safeguards, as an alternative to developing indigenous capabilities.
- Supporting negotiation of long-term contracts for power reactors and research reactors, including assured supply of fuel and arrangements for management of spent fuel.

This is the ambitious civil nuclear partnership agenda that the United States and Russia have set for themselves as a common undertaking. The proposed U.S.-Russia Agreement for Cooperation will serve as the cornerstone of the U.S.-Russia civil nuclear relationship across the whole range of these activities for many years to come.

The 123 Agreement provides a comprehensive framework for U.S. peaceful nuclear cooperation with Russia based on a mutual commitment to nuclear nonproliferation.

- It has a term of 30 years, and permits the transfer of technology, material, equipment (including reactors), and components for nuclear research and nuclear power production, subject to stated nonproliferation conditions and controls.
- The agreement does not permit transfers of any Restricted Data, and permits transfers under the agreement of sensitive nuclear technology, sensitive nuclear facilities (such as facilities for enrichment or reprocessing), and major critical components of such facilities only by amendment of the Agreement.
- The Agreement permits enrichment of uranium subject to the agreement to less than 20 percent. It permits reprocessing of nuclear material subject to the Agreement only by further agreement of the Parties. For the United States, giving such consent would entail a "subsequent arrangement" pursuant to section 131 of the Atomic Energy Act, including an opportunity for Congress to review the intended approval for 15 continuous session days under ordinary circumstances.
- In the event that the proposed Agreement is terminated, key nonproliferation conditions and controls continue with respect to material and equipment subject to it.

Please allow me to enumerate a few of the many areas where the United States and Russia are working together in a concrete way to prevent the spread of nuclear weapons. These areas include:

Global Nuclear Energy Partnership: The United States and Russia are working with a wide range of other states to develop the next generation of civil nuclear capability that will be safe and secure, improve the environment, and reduce the risk

of nuclear proliferation. GNEP is aimed at accelerating the development and deployment of advanced fuel cycle technologies, including recycling, that do not involve separating plutonium. Such advanced technologies, when available, will substantially reduce nuclear waste, simplify its disposition, and draw down existing inventories of civilian spent fuel in a safe, secure and proliferation resistant manner.

International Uranium Enrichment Center: Russia has announced, and the United States has expressed support for, an initiative to create a global nuclear energy infrastructure that will provide for effective access to the benefits of nuclear energy without need on the part of aspiring countries to acquire their own enrichment and reprocessing capabilities. As a first step, Russia and Kazakhstan have established on the territory of Russia the International Uranium Enrichment Center.

Reliable Access to Nuclear Fuel: Recognizing the need for an assured fuel supply as an incentive for countries that do not currently possess enrichment and reprocessing capabilities to forgo acquiring them, the United States and Russia are committed to measures aimed at establishing reliable access to nuclear fuel. Russia is working on the establishment of a stockpile of low enriched uranium to be available to the IAEA for ensuring reliable nuclear fuel supply. The United States is downblending 17.4 metric tons of excess HEU from its defense programs for use as an enriched uranium reserve to support reliable fuel supply, and is pledging $50 million to the IAEA to support establishment of an international fuel bank for this purpose.

Global Initiative to Combat Nuclear Terrorism: The Global Initiative launched by the United States and Russia in July 2006 has grown to include 71 partner nations, ranging from all EU member states to, more recently, the United Arab Emirates and Saudi Arabia. Partner nations are cooperating in strengthening their individual and collective capabilities to prevent terrorists from acquiring nuclear materials, to deny them safe haven and financial and other support, to share information on terrorist activities, to cooperate on law enforcement matters, and to deal with the consequences of an attack. The United States and Russia are committed to expanding and strengthening this initiative and to fully implementing the agreed program of work.

Nuclear Security: The United States and Russia expect to complete agreed-upon nuclear security upgrades under the Bratislava Nuclear Security Initiative by the end of 2008. The two countries look forward to these upgraded systems continuing to serve their purpose reliably for years to come. A Senior Interagency Group will report annually on implementation of the agreed actions under the Bratislava Initiative on emergency response, best practices, security culture, research reactors, and nuclear security upgrades. The United States and Russia will continue to work together to share nuclear security best practices with other nations, including through international fora.

Proliferation Security Initiative: The United States and Russia remain committed to the Proliferation Security Initiative, which constitutes an important means to deter and prevent trafficking in nuclear, biological and chemical weapons, their delivery means, and related materials. Our two countries are working cooperatively to prevent and disrupt proliferation finance in furtherance of the objectives of UNSCR 1540.

Mr. Chairman, let me address concerns that some have raised about how the United States and Russia are working together to deal with nuclear challenges like those posed by North Korea and Iran.

With respect to North Korea, the United States and Russia fully support the Six-Party Talks and will continue to cooperate in accordance with the agreements reached at them as well as the provisions of United Nations Security Council Resolution 1718 in order to achieve the ultimate goal of the denuclearization of the Korean Peninsula.

With respect to Iran, Russia and the United States are both committed to political and diplomatic efforts to find a negotiated solution under which Iran's nuclear program is exclusively for peaceful purposes and which prevents Iran's acquisition of nuclear weapons. Both Russia and the United States agree that Iran must comply with its NPT, United Nations Security Council, and IAEA obligations. In particular, both our governments agree that Iran must suspend its proliferation-sensitive nuclear activities as required by UN Security Council Resolution 1737 and reiterated in Resolutions 1747 and 1803. Both countries are committed to a dual track strategy with respect to Iran of offering negotiations and incentives, and increasing pressure on Iran to take the steps necessary to begin those negotiations as expressed in the March 3, 2008 statement by the P5+1 Foreign Ministers.

As is the case with any two nations, the United States and Russia can and sometimes do differ on the means for accomplishing these shared goals.

With respect to the Bushehr issue in particular, which some have raised as an objection to bringing this agreement into force, the Administration examined this issue closely and determined that the steps Russia has put in place in its agreement with Iran mitigated our concerns. These measures included Russia's supply and take back of spent fuel from Iran. These measures underscore the larger point that Iran does not need to possess the complete nuclear fuel cycle—including the proliferation risks posed by enrichment and reprocessing—to take advantage of the peaceful uses of nuclear energy.

Moreover, the Administration has reason to believe that U.S. willingness to enter into negotiations that Russia had long sought, as well as the U.S. decision to carry them forward to a successful conclusion, had a definite and positive impact on the way Russia came to regard certain nonproliferation issues and take steps to deal with them. I cannot go into the details here, but would note that the classified annex to the Nuclear Proliferation Assessment Statement, which the President has submitted to Congress together with the Agreement, covers these matters thoroughly.

In conclusion, let me say that this is a good, solid agreement. It contains all the necessary nonproliferation conditions and controls that Congress has written into law. This agreement helps us build a stronger relationship and areas of cooperation with Russia in mutually beneficial ways, advances our ability to combat the critical challenges of nuclear proliferation and nuclear terrorism in the 21st century, aids development of new nuclear energy technologies, and allows commercial opportunities for U.S. industry.

Mr. Chairman, thank you again for the opportunity to testify before the Committee. I would be happy to take any questions you have.

Chairman BERMAN. Thank you very much, Mr. Rood. We appreciate your testimony.

I will yield myself 5 minutes to begin the questioning.

Let us take the issue that I referred to obliquely, that Congresswoman Ros-Lehtinen developed more specifically, and then Ed Markey quite concisely summed up, and ask you to respond.

Can you explain why the administration can claim that Russia is cooperating with the United States' Iran policy when the President cannot certify, under the Iran, North Korea, and Syria Nonproliferation Act, that proliferation has ceased and has requested a waiver of that act in order to allow NASA to by Russian space transportation services? There seems to be, at least on the surface, a bit of a problem there.

Mr. ROOD. Mr. Chairman, we do not believe there is an inconsistency in the two actions. The Iran, North Korea, and Syria Nonproliferation Act contains a different legal standard than that in the Atomic Energy Act of 1954, which is the relevant provision of law with respect to a 123 Agreement.

Chairman BERMAN. Summarize those differences, please.

Mr. ROOD. With respect to the INKSNA Report on the Iran, North Korea, and Syria Nonproliferation Act, firstly, the standards for consideration of whether an activity by the Russian Government or a Russian entity meets that standard are different. The standard in that law is any credible information indicating transfers not only of nuclear but chemical, biological, missile, and conventional weapons. So, in that sense, it is a different standard.

There are three provisions in that law, one of which deals with the degree to which the President can certify that a country is committed to oppose the proliferation to or from Iran, North Korea, or Syria of WMD and missile systems capable of delivering weapons.

The second standard is where the government has demonstrated, and continues to demonstrate, a commitment to seek out and prevent transfers to Iran of goods and services for these purposes.

Then the third standard is whether there is any entity that is connected to the Russian space agency, or ever was connected to the Russian space agency, that has transferred anything to or from Iran, North Korea, or Syria, and this includes conventional weapons, missiles, nuclear weapons, chemical weapons, and biological weapons.

So, as was mentioned earlier by some members, there have been Russian conventional arms sales to Iran. Those would be covered by the Iran, North Korea, and Syria Nonproliferation Act. The administration has imposed sanctions in some cases as a result of those. So it is a different legal standard.

Chairman BERMAN. Apply the standard simply to the issue of nuclear transfers. Put aside chemical, put aside biological, put aside conventional, and put aside missiles. Could you make a certification, at this particular point, with respect to nuclear transfers under that law?

Mr. ROOD. Under the Iran, North Korea, and Syria Nonproliferation Act, if you limited it to nuclear matters, which I believe is what you are asking, the three standards—one, whether the policy of Russia is to oppose the proliferation to or from Iran of WMD or, in this case, nuclear, technologies that could be used for nuclear weapons—I believe we could make that certification, and the reason is that the Russian Government has supported U.N. Security Council resolutions which limit the scope of Iran's nuclear activities; that prohibit enrichment and reprocessing, as an example; that prohibit assistance to heavy water reactor projects; things that are determined to be proliferation sensitive.

In those cases, the Russian Government, indeed, not only supported those efforts but authored some of the provisions in the Security Council resolutions in that area.

Chairman BERMAN. Let us divide the issue, and my time for this will be pretty quick because my time has almost expired.

Proliferation to Iran, the level of sanctions necessary to get Iran to change behavior. Put aside to the extent they are supporting those kinds of sanctions. We have not gotten too many people yet to support those kinds of sanctions, as far as I can tell.

Proliferation. On the issue of proliferation of nuclear technologies, is Russia still a problem with respect to Iran? Yes or no?

Mr. ROOD. We think that the Russian Government is cooperating with us, not only in the political efforts to persuade the Iranians not to pursue technologies of proliferation sensitivity that could be applied to——

Chairman BERMAN. I am not talking about the political efforts; I am talking about the proliferation efforts.

Mr. ROOD. Trade between Russia and Iran, sir?

Chairman BERMAN. Yes.

Mr. ROOD. In that area, we think that Russia's trade is limited to that with regard to the Bushehr nuclear reactor.

As I mentioned in my opening statement, we think the steps the Russian Government has taken have mitigated our concerns. The provision of fuel and the take-back of spent fuel will not give the Iranians, therefore, if the agreement is adhered to, the capability to extract plutonium for nuclear weapons. It takes away——

Chairman BERMAN. All right. So Bushehr, with the current conditions, is no longer a proliferation problem, as far as the administration is concerned.

Mr. ROOD. We believe that our concerns have been mitigated, yes. That is right.

Chairman BERMAN. "Mitigated" is a funny term here. Anyhow, my time has expired. We will find some time to pursue that a little further. I now am pleased to yield 5 minutes to the gentleman from South Carolina, Mr. Wilson.

Mr. WILSON. Thank you, Mr. Chairman. Thank you, Secretary, for being here today, and I share a common view with the chairman that I want to hear more about this agreement. I am not here to be negative.

In fact, I have, over the past 18 years, visited Russia a number of times. I was so impressed by the people of Russia. The culture of Russia is a shared culture of America, in terms of architecture, art, literature. I am just really hopeful for truly a realization of how positive it would be for the people of Russia and the people of the United States to be working together.

But I am very concerned also that we should have a common interest to deter the development of nuclear weapons which could fall into the hands of terrorists, and I just do not understand why Moscow does not understand that the most direct threat would be to them. With the terrorist attacks that have already occurred in Moscow, it is much easier for terrorists, by a land bridge, to go straight to Moscow.

So we should have a shared interest. Yes, the target may be the United States, but, indeed, Moscow, St. Petersburg, and Novosibirsk are much easier and closer targets.

As I face this, this agreement being essential to the United States, how is it that buying and selling nuclear facilities and fuel can already take place without the 123 Agreement? In fact, Russia currently accounts for around half of the nuclear fuel used in United States reactors. What will we be able to do that we cannot do now without having this agreement?

Mr. ROOD. As you mentioned, Congressman, there are a number of nuclear activities presently underway between the United States and Russia that are valuable. You correctly, I think, pointed to one of the most valuable, which is the purchase by the United States of nuclear fuel which has been down blended from highly enriched uranium that was formerly in nuclear weapons, and that, as you correctly pointed out, accounts for about half of the nuclear fuel purchased in the United States. Nuclear energy accounts for about 20 percent of America's electricity supply.

So, put simply, about one in 10 light bulbs in America is lit by electricity produced from material that was formerly in a nuclear weapon targeted on the United States. It is a hugely successful program, and we have down blended the equivalent of 13,000 nuclear weapons' worth of nuclear material into fuel that is used to light factories and homes in the United States and provide other electricity.

What this agreement, though, would do is it would facilitate and allow for cooperation in some new areas. One example is that we are pursuing, under the Global Nuclear Energy Partnership, a pro-

gram to develop fast reactors and new types of nuclear fuel that would allow you to, instead of today's situation where the spent fuel has plutonium that can easily be separated for nuclear weapons, it would burn some of that down and consume the waste, burn the plutonium down and consume the waste. Those are the two key attributes.

The Department of Energy would like to take fuel assemblies prepared in the United States and ship them to Russia to be used in their existing fast reactors. We do not have those capabilities or those facilities in the United States. So, therefore, this would advance our effort to develop a nuclear, proliferation-resistant type of reactor.

Mr. WILSON. And, indeed, my home State of South Carolina would like to cooperate fully at the Savannah River site with those activities.

Elements of the Russian Government and private sector have been implicated on many occasions for providing assistance to Iran's nuclear program. Has that all ceased? What is our level of confidence? What measures are in place, indeed, trust and verify, to avoid a future recurrence?

Mr. ROOD. Congressman, we have had concerns, as you mentioned, in the past. We have raised those with our Russian colleagues. I think, as was mentioned in the nonproliferation assessment by the President, we do not believe there is ongoing Russian nuclear assistance, outside of the Bushehr project, that causes us a concern in the administration.

Indeed, in the classified nonproliferation assessment, we talk about some ways in which we believe our willingness to pursue the 123 Agreement that is presently before the Congress has had a positive effect in encouraging greater Russian cooperation than we had previously.

Mr. WILSON. And do you anticipate, with President Medvedev, additional progress? Will there be improvement with Prime Minister Putin and President Medvedev, the change in positions?

Mr. ROOD. It is difficult to tell, at this stage, the degree to which President Medvedev will strike a different form of foreign policy. However, thus far, our interactions with him have been positive. The President and Secretary Rice and other officials have met with him. So we are encouraged that we can continue to have, I think, a very positive relationship.

When the President last met with then-President Putin at Sochi, they agreed on a strategic framework for United States-Russia relations that we hope will be a guide for United States-Russia relations for many years to come.

Mr. ROOD. Thank you.

Chairman BERMAN. The time of the gentleman has expired. The gentleman from New York, Mr. Ackerman.

Mr. ACKERMAN. Thank you, Mr. Chairman.

If Russia were certifiable, under the Iran, North Korea, and Syria, et cetera, without waiver, would that be a good thing?

Mr. ROOD. There are some aspects of Russia's behavior that are captured by the certifications in the Iran, North Korea, and Syria Nonproliferation Act. We would prefer the Russian behavior to be improved and different.

Mr. ACKERMAN. Now, if they were certifiable, if we could certify——

Mr. ROOD. Certainly, we would prefer to be in a position to be able to certify all of the conditions in the Iran, North Korea, and Syria Nonproliferation Act.

Mr. ACKERMAN. So it would be a good thing if Russia were certifiable, able to be certified under that.

Mr. ROOD. I was just reacting to calling Russia "certifiable," but I think the gist of your question is, would it be valuable if the administration could certify that all of those conditions had been met.

Mr. ACKERMAN. Yes. That is the question.

Mr. ROOD. The answer is yes.

Mr. ACKERMAN. So you would not object if this committee modified the 123 Agreement that said it was in effect only if it could be certified under the Syria Act.

Mr. ROOD. Well, we would not support that, and the reason is that we think the 123 Agreement——

Mr. ACKERMAN. Would you go ahead with it anyway?

Mr. ROOD. We have already submitted the agreement to the Congress for the review period, sir, so our plan is to proceed to request the Congress' assent to allow for the agreement to enter into force.

Mr. ACKERMAN. If we modified it, would the administration sign the agreement?

Mr. ROOD. We would not support the inclusion of the present——

Mr. ACKERMAN. Would you sign it? If we did it anyway, even though you did not support it—you do not have to sign it as a bill, if we modify it, but would you sign the 123 Agreement if we modified it, making it conditional?

Mr. ROOD. We would not support making the agreement conditional.

Mr. ACKERMAN. Would you sign it? I know you would not like it, but would you sign it? It is a take-it-or-leave-it proposition, then. Would you sign it?

Mr. ROOD. Well, I guess, on the first order, as I mentioned, we would not——

Mr. ACKERMAN. Half of my time is up. I need to know what your position would be.

Mr. ROOD [continuing]. Like to be placed in a take-it-or-leave-it proposition. Sir, I am sorry?

Mr. ACKERMAN. I said half of my time is up. I just want to know what your position would be. If it was a take-it-or-leave-it proposition that we modified the 123 Agreement using the——

Mr. ROOD. Our position would be to oppose the take-it-or-leave-it proposition.

Mr. ACKERMAN. I know you would oppose it, but would you sign the 123 Agreement with Russia? You are answering your question. I want you to answer my question.

Mr. ROOD. First of all, I think it is a hypothetical question, so——

Mr. ACKERMAN. Every question is hypothetical.

Mr. ROOD. Sir, correct.

Mr. ACKERMAN. Otherwise, it would not be a question. You are running the clock pretty good. I just need a yes or a no.

Mr. ROOD. With regard to the——

Mr. ACKERMAN. "I don't know" is also acceptable.

Mr. ROOD. I do not believe that we would want to be in a position where we would be placed in that situation.

Mr. ACKERMAN. I know you would not want to be in a position. I know all of those——

Mr. ROOD. Furthermore——

Mr. ACKERMAN. I know all of the ways not to answer a question.

Mr. ROOD. If we arrived at the hypothetical destination you have described, we would have to evaluate it at that period of time.

Mr. ACKERMAN. So you do not know.

Mr. ROOD. We would work very hard not to allow ourselves to be placed in that hypothetical position.

Mr. ACKERMAN. Would this 123 Agreement be used as a template for all other 123 Agreements with all other countries?

Mr. ROOD. This 123 Agreement follows the standard practice that has been applied and meets the criteria in the Atomic Energy Act, as described. So we think it already is consistent with the existing template, sir.

Mr. ACKERMAN. Could you explain, then, this is exactly identical to what we are doing with India?

Mr. ROOD. No. This is not exactly identical because, with regard to India, that was not——

Mr. ACKERMAN. I do not understand the answer that you just gave, then.

Mr. ROOD. The agreement that we concluded with India was of a different nature and did not fit, in some ways, the standard——

Mr. ACKERMAN. Could you explain the differences between the two 123 Agreements?

Mr. ROOD. Well, firstly, under the Nonproliferation Treaty, Russia is recognized as a nuclear weapons state. India is neither a party to the NPT nor recognized as a nuclear weapon state by the United States. Therefore, into the standards in the Atomic Energy Act of 1954, as amended, there is a different set of requirements applied to Russia, as a nuclear weapon state, than a non-nuclear weapon state or, indeed, a country that is not a party to the NPT.

Mr. ACKERMAN. Right.

Mr. ROOD. As an example——

Mr. ACKERMAN. India is not in the club, but what is the difference in the two agreements?

Mr. ROOD. Well, as an example, in the Russia agreement, because Russia is a nuclear weapon state, as defined by the NPT, there is not a requirement for comprehensive, full-scope safeguards. There is not a requirement for other IAEA safeguards, although, in some cases, the IAEA does apply those in Russia. That is something that, of course, was in the India 123 Agreement, a requirement for India to have safeguards on civilian nuclear facilities.

Mr. ACKERMAN. So the India 123 Agreement could be used as a template for all other states.

Mr. ROOD. I would not see the India agreement as functioning as a template for other agreements because, again, India's status is somewhat unique. I think that we would prefer to maintain the type of template and agreements that we have previously con-

cluded with non-nuclear weapon states, in the future for non-nuclear weapon states.

Mr. ACKERMAN. Thank you, Mr. Chairman.

Chairman BERMAN. The time of the gentleman has expired. The gentleman from Indiana, Mr. Burton, is recognized for 5 minutes.

Mr. BURTON. Is Iran considered a terrorist state?

Mr. ROOD. They are on the state sponsors list of terrorism, sir.

Mr. BURTON. And during the administration's first term, we opposed, and the administration opposed, giving assistance for Iran's light water reactor at Bushehr. Correct?

Mr. ROOD. Yes, and that was prior to——

Mr. BURTON. That is all I asked. That is correct, isn't it?

Mr. ROOD. Yes, under the different circumstances that existed at that time, that is correct.

Mr. BURTON. Didn't the Department of Energy estimate that that reactor could produce 50 to 60 nuclear weapons?

Mr. ROOD. Not 50 or 60 nuclear weapons but spent fuel containing plutonium that could then be fashioned——

Mr. BURTON. Well, the report I have before me says: "The Department of Energy estimated that the reactor could produce enough plutonium to build between 50 and 60 nuclear weapons." Now, that is what the Department of Energy says. If you want to take issue with them, talk to them.

Mr. ROOD. I would agree with the statement that you read, sir, but your oral remarks were slightly different. The Department of Energy statement states that they could produce plutonium that could be used to fashion nuclear weapons. The reactor itself does not produce nuclear weapons.

Mr. BURTON. Look, do not eat up my time. I just asked that question. You answered it.

They could have produced plutonium that could produce 50 to 60 nuclear weapons.

Now, in a March 2007 letter to the State Department, the Office of the Director of National Intelligence concluded, "We assessed that individual Russian entities continue to provide assistance to Iran's ballistic missile programs."

So, a year ago, the director of national intelligence said that they "assessed that Russian entities continue to provide assistance to Iran's ballistic missile programs." That is correct, is it not?

Mr. ROOD. I have no reason to know that the statement you read is inaccurate. I do not have that document in front of me, so I cannot verify its authenticity.

Mr. BURTON. Well, I am sorry you are not prepared for the question, but, nevertheless, let me just say that we are dealing with a terrorist state. We have not always had the best relations with Russia. Mr. Putin has taken issue with us and given weapons materials and other things that we do not want given to Iran on a fairly regular basis, and now we are to believe that this agreement is going to dissuade Iran from going ahead with their nuclear weapons program and that they will not go ahead with their ballistic missile program, or, at least, that is the inference that I got from this hearing.

You know, I have been a very strong supporter of the President and our policies internationally, but this really creates a great deal

of concern for me. I do not trust Iran. I am not sure I trust everything that Putin says. And we are talking about a country that has threatened to destroy Israel, wipe them off the face of the Earth, and to try to do what they can to hurt the United States of America.

And we are talking about trusting somebody—I think Reagan would have said "trust but verify"—trusting somebody like Putin to go ahead and give nuclear material, material that will create nuclear material, to Iran, and we are also, at the same time, giving technology, or allowing technology to get to Iran from Russia that will allow them to build more and better ballistic missiles, and we are not supposed to be concerned about that.

Unless the administration can come up with some very strong answers as to why we should ratify or support this agreement, I am probably going to support Mr. Markey's agreement.

So I hope that the administration, if they have more of an explanation for this, will contact me and other members of the committee on the majority side who have been very supportive of the President to give us some assurances that we are going to be able to trust Russia and that we are going to be able to see this nuclear material returned to Russia, and it will not be used to build nuclear weapons that can be used on ballistic missiles to destroy Iran and destabilize the Middle East.

We get a lot of our oil from the Middle East. We have got to be very, very, very careful about who has nuclear weapons and who has nuclear material, and, as far as energy production is concerned, I think Iran has a lot of oil, and they ought to be able to produce enough energy from their oil reserves so that they do not need nuclear equipment, and they have told us in the past that they are going ahead with their nuclear weapons program.

I think this is something we should look at very, very hard, and I hope that the administration will give us more information than we have had today. Thank you.

Chairman BERMAN. The time of the gentleman has expired. The gentleman from Georgia, Mr. Scott, is recognized for 5 minutes.

Mr. SCOTT. Thank you very much, Mr. Chairman.

I guess what my concern is, what do we get out of this? What do we get out of this deal? When you look at the fact of Russia, which compounds this nuclear issue, there is another issue that exacerbates the situation between Russia and Iran. Between Russia and Iran, they control nearly 50 percent of the known natural gas reserves.

Secondly, we have got a situation with the missile defense system. As people may know, I serve on the NATO Parliamentary Assembly. These are some very serious issues that we are dealing with there. It just seems to me that we have no leverage when we are dealing with our opposition, and we have failed to do what is important to do when you are dealing with your enemy, and that is put your mind in your enemy's mind.

Iran is sitting there. There is no question in my mind that they are after a nuclear weapon. Why wouldn't they be? Iran, more than anything else, wants respect. They want respect. They are sitting in the middle of a situation where everywhere they turn, to their north, their neighbors have nuclear weapons; to their east, they

have nuclear weapons; to their west, they have nuclear weapons. They want to be the big kid on the block.

It is clear to me that, I think, that Russia is playing with the upper hand here.

So I guess my issue is, what do we gain out of this? What are we getting out of this? It seems to me that they are getting the store and running away with it because, when we are sitting down, we have no leverage when we are dealing with this situation.

I do not trust Russia, and I certainly do not trust Iran, and I think there is nothing in this agreement that merits our consideration of it. I would just like for you to respond to those concerns, if you differ.

Mr. ROOD. Yes, sir. Congressman, we think there are substantial advantages. I think you have asked the right question, which is, what would the United States gain from the agreement? And that is what it should be, I think, evaluated upon.

But we do think that we gain substantially from the agreement. First, in the area of nonproliferation and assistance to Iran that you mentioned in your statement, that is of great concern to us, and we have worked for many years to try to dissuade Russia, as, indeed, have other countries, from engaging in certain types of nuclear cooperation with Iran.

We think we are better positioned with this agreement, and, indeed, I think the recent track record, which is described in the classified nonproliferation assessment, demonstrates that we have had greater success in that area with Russia as a result of the negotiation of the 123 Agreement.

So, firstly, I think, with regard to Russian assistance to Iran, we have gained greater cooperation from Russia as the result of this agreement.

Secondly, I think, in terms of advancing our nuclear nonproliferation agenda and energy security in trying to develop technologies that are more advantageous, not only for energy production but for nonproliferation reasons, we think there are substantial advantages, if we have this agreement than if we do not.

I think you also described in your statement concerns about Iranian activities, and I certainly do not think that our concerns have been ameliorated with respect to Iran's nuclear activities or missile activities or support for terror or other things. We have very strong concerns about those activities. Indeed, we think they pose a major, perhaps the preeminent, security challenge to the United States in the 21st century.

But this agreement with Russia, we think, puts us in a better position to deal with those activities and does advance our security, whether it is measured in our ability to combat nuclear terrorism through the ability to share samples from nuclear smuggling cases and other activities, develop new technologies that help with energy production, and nuclear nonproliferation, and, indeed, with Russian assistance to Iran, we think we have got greater cooperation.

Mr. SCOTT. Let me just ask you one point, and my time is about up. Do you believe Iran is after building a nuclear weapon?

Mr. ROOD. The intelligence community has submitted their recent National Intelligence Estimate, which talks about troubling

Iranian activities and made some conclusions with respect to the Iranian nuclear weaponization activities. I am guided by that, although I will say, personally, I have deep, deep suspicions about Iran's intentions. I think that it is difficult to explain their activities as being purely aimed at peaceful pursuits of nuclear energy. So I, personally, have real concerns about that.

Mr. SCOTT. So you believe that——

Chairman BERMAN. The time of the gentleman has expired. The gentleman from New Jersey, Mr. Smith.

Mr. SMITH OF NEW JERSEY. Thank you, Mr. Chairman.

Let me say at the outset that I have some very deep concerns about the transfer of nuclear reactors, components, and material in general, but when it comes to Russia, I think, at best, this proposal is premature. Let me just ask a couple of questions.

I have chaired, in the past, several hearings on Chernobyl, at 10 years after, 20 years after, and have met many of the victims and advocates of the victims who have suffered so immensely, and that whole Chernobyl incident, obviously, impacting the Belorussians and the Ukrainians so severely, was absolutely shrouded in secrecy. When it came to Captain Nikitin, I remember meeting with his lawyer. He was the one who broke the story about the nuclear subs leaking, and, for that, he was accused of treason.

The Russians, I do not think, have turned the page on secrecy. You may disagree, and I would appreciate your thoughts on that, but, you know, we may be having cooperation with some higher, upper-level people, but when it comes to really bona fide, on-the-ground cooperation, and when it comes to the FSB, I think there are still significant secrecy issues. So we will not know what has happened, whether or not there was diversion necessarily of these materials to Iran.

Let me ask you, in addition to that issue of transparency, or lack of it, have we asked the Russian Government to stop weakening U.N. Security Council resolutions regarding Iran as a precondition to this agreement, and, if not, why not?

Let me also ask you, with regard to the issue of waste, we have not solved our own waste problems with nuclear energy. I have two nuclear reactors which I have visited in New Jersey. Yucca Mountain is probably never going to receive shipments. That is going to be mired in controversy forever.

As for the cooling pools, the only thing that separates a terrorist effort at those is 40 feet of water. I was shocked myself to see how vulnerable our own nuclear capabilities and our own nuclear reactors really are.

On the ground, I do not think a land assault would ever succeed; something from the air sends shivers down my spine. Now we are talking about a place where Chechnyan terrorists and others are always on the loose looking for high-value targets.

How do we respond to that? If we grow the nuclear facilities in Russia, in the United States, everywhere, it certainly raises significant questions about dirty bombs, not to mention the diversion of material for the creation of weapons.

Then, finally—I will run out of time, so let me ask those questions first.

Mr. ROOD. Okay. With regard to your question about Russian transparency and excessive secrecy, I think we do have concerns that, in a number of cases, the Russian Government has not been as transparent as we would like.

Your second question; you asked whether we had worked with the Russians to strengthen U.N. Security Council resolutions and the degree to which we had raised that with the Russians. Clearly, that has been something, during the passage of the three U.N. Security Council resolutions, we have spent a great deal of time talking to our Russian colleagues about. As I mentioned——

Mr. SMITH OF NEW JERSEY. But they always are on the side of weakening them, if you do not mind me interrupting. Why aren't they on the side of strengthening?

Mr. ROOD. Well, we think it is substantial that the Russians have agreed to three Chapter 7 resolutions, which are defined as a threat to international peace and security, sort of the highest standard for a U.N. Security Council resolution.

I do not want to say that there are not differences of opinion at times with our Russian colleagues about how to proceed on particular issues. That is evident. So we would have preferred, in some cases, for the Russian Government to support different positions. But that does not diminish the fact that we are working, in a cooperative fashion, with the major nations in the world, the P–5-plus-1, at the U.N. Security Council, as a group, to try to confront Iran's nuclear ambitions.

I think that strategic level of cooperation is of great value to us. We value that multilateral framework.

With regard to your questions about transfers of nuclear equipment to Russia, one thing I would hasten to add is that the 123 Agreement establishes merely a legal framework under which nuclear commerce can take place. It does not obligate the United States to transfer any particular items.

Mr. SMITH OF NEW JERSEY. But that will happen.

Mr. ROOD. Well, when those requests are made to transfer A, B, or C to Russia, they will go through the export licensing procedures that we have, and we would look at each and every one of those instances to examine questions such as the safety of the issues, risks of diversion, and so on.

Mr. SMITH OF NEW JERSEY. We are almost out of time. In 2005, Putin said, Russia is successfully developing a new generation of super missiles, both submarine- and land-launched ICBMs. He also said that they would deploy them. They are opposed to our deployment in Eastern Europe of antimissile defense. You know, the trend line seems not to be in our direction.

Chairman BERMAN. The time of the gentleman has expired. The gentleman from California, Mr. Sherman, is recognized for 5 minutes.

Mr. SHERMAN. Thank you. I thought that there would be opening statements from the relevant subcommittee chairs, so I wrote this brilliant opening statement. I will use some of my 5 minutes to do that, sparing the under secretary my sharp, biting questions for a minute or 2, and then I will have a question for you.

First, I think the President is all over Europe screaming that Iran should not be allowed to develop or use a nuclear weapon. He

appears to believe that if he can scream it often enough, that history will not hold him responsible for the fact that he has no policy to prevent Iran from having a nuclear weapon. I do not know whether historians are quite that obtuse, but they may be.

This is a situation of powerlessness, a self-imposed powerlessness. First, Congress, where, in order to stop this 123 Agreement, we would have to have a two-thirds majority in both Houses to overcome a resolution of disapproval, something that we have imposed on ourselves. If we had a different statute in place, then it would take a positive resolution to approve a 123 Agreement. Our Constitution assumed that international agreements would be treaties and that they would be approved, at least, by the Senate.

This is also a situation of self-imposed powerlessness of the United States because if we are going to have the power to change Russia's behavior toward Iran, it is going to take all of our carrots and all of our sticks in a cogent foreign policy, not a 123 Agreement today and discussions of missile defense in the Czech Republic and Poland tomorrow, and then refusing to talk about South Ossetia the next day, but, rather, we have to lay before the Russian Government all of the incentives and all of the disincentives that we are willing to put together.

But since this administration is unwilling to tie its policy on Transdniester or South Ossetia or Abkhazia, or a host of other issues to Iran's nuclear weapons program, it is extremely unlikely that we will bring to bear on Moscow a sufficient number of carrots and sticks to change their policies. This is self-imposed powerlessness.

The one thing that we, in Congress, may be able to do is deal with the 90-day requirement because we are going to be getting a new administration, an administration that may decide to have a coherent and cogent foreign policy toward Russia and toward Russia's approach toward Iran.

We can dream of such a day. It may happen. We would weaken that new administration if we allow this 123 Agreement to go into effect before that administration takes office.

As I understand it, the easier way for us to stop this is for the 90 days not to go into effect, and I look forward to discussing with the chairman perhaps a letter both to the Senate leadership, but especially the House leadership, urging that we not have any pro forma sessions between now and the end of the 110th Congress. I realize that there may be big appropriations, omnibus bills, that we have to deal with, and the 90 days may end up being met on that basis, but pro forma days, we do not need.

So turning to the 90-day requirement, Under Secretary Rood, what is the administration's understanding with regard to the 90-day requirement? That is to say, if the 110th Congress ends after 89 days, does the clock reset when the new speaker is sworn in next year, or do you just have one more day to go?

Mr. ROOD. I believe the answer to your question is, yes, that at the end of the 110th Congress, if the Congress has adjourned before the 90-day requirement has been met, then the agreement would need to lie again before the Congress for the 90 continuous session days, as defined by the Atomic Energy Act.

Mr. SHERMAN. Is it your understanding that pro forma sessions count as a day toward the 90 days?

Mr. ROOD. It is my understanding that that would be determined, firstly, by the parliamentarian in the House, but, secondly, I believe that for pro forma days, our understanding is that the parliamentarian would consider those a day of session, as defined by the Atomic Energy Act.

Mr. SHERMAN. And, finally, it is 90 days in the House, 90 days in the Senate. So if it is 89 days in the House and 95 days of Senate session, that does not count as 90 days. Correct?

Mr. ROOD. Yes, sir. My understanding is it must lie before both Houses for 90 days, so you must hit the 90-day clock, if you will, that figure, in both Houses.

Mr. SHERMAN. And is it your understanding that it is a separate clock, so if the House is in session on Thursday, and the Senate is not in the session on Friday, and the House is not, that counts as 1 day on each clock, or does neither day count because neither day was a day that all of Congress was in session?

Mr. ROOD. My understanding is that you have to get to 90 in both Houses.

Mr. SHERMAN. But it is two separate clocks.

Mr. ROOD. That is my understanding, yes, sir.

Mr. SHERMAN. Thank you.

Chairman BERMAN. I thank the gentleman for bringing up those points, and I yield 5 minutes to the gentleman from California, Mr. Rohrabacher.

Mr. ROHRABACHER. Thank you very much, Mr. Chairman. I apologize. The ranking member and myself rushed over to the memorial for Tom Lantos, and we dearly miss Tom, but let me congratulate you, Mr. Chairman. Those are tough shoes to fill, and you are doing an excellent job in trying to be fair and trying to handle these issues that are of great significance to America and to the world.

About the issue of the day, as most people note, during the Cold War, I was the Soviet Union's worst nightmare, and I participated in military action against Soviet troops in Afghanistan. I was Ronald Reagan's speech writer for 7 years and wrote many of his very tough, anti-Soviet, Cold War speeches.

Let me note that we are not dealing with the Soviet Union anymore; this is Russia. Let me say that after the fall of Communism, I believe that the United States policies, and what we did to an emerging democratic Russia, was pitiful and a blot on us, on the United States.

We did not treat the newly democratic Russian Government and their people who were struggling, economically struggling, to go through this transition, we did not treat them as we should have, did not reach out and try to do what was necessary to ease that transition, as we should have. Instead, Russia was invaded by scavengers and crooks from the West that just robbed the people of their natural resources, et cetera.

Now, what happened during that time period was that we pushed, by not opening up our own markets, much less the EU opening their markets, we pushed Russia onto the fringe, and what is the fringe? The fringe is having to deal with countries like Iran,

and it was during this time period that the Russians started their dealings with Iran.

I remember that because I went, during the Clinton administration and the early months of the Bush administration, and pointed out that Russia could not just simply withdraw from any economic relationship with Iran unless we gave them an alternative.

I said, "Let us, for Pete's sake, before they start building this thing, let us give the Russians an alternative to build plants in Turkey or perhaps a nuclear power plant in Malaysia." But, instead, the administration, both Clinton and Bush administrations, chose to use the stick, just saying, "We are going to punish these guys," rather than offering an alternative to a country that was economically just down and out.

Now, with that said, obviously, an Iranian bomb, a nuclear weapon, is not in our interests, nor in the interests, if I might say, Russia as well. I would hope that we do everything we can to cooperate with the Russians rather than using the stick again, rather than trying to punish them, to find ways of cooperating to reach our goal. The stick did not work when Russia was down and out, and it is not going to work now that they are actually economically well off. So we should find incentives.

Now, let me suggest, Mr. Chairman, there is a technological way out of this dilemma, and I recently, during the last break, I went to Russia to talk to their nuclear power people. Okay?

Let me just note, before I go into my basic point, that they were complaining again that the United States had made an agreement on the sale of uranium, for example, and now Senator Domenici has offered a bill in the Senate that totally negates the concessions that they made and we made in those agreements over the sale of uranium and will actually freeze them out of the legitimate uranium market.

How are they going to take that? How is it that we can expect them to deal with us honestly if that is the way we are dealing with them?

Now, there is the technological alternative, and let me put this on the record. There is a new type of nuclear reactor. It has been developed by General Atomics in California, in cooperation with the Russian nuclear agency. It is called a "high-temperature, gas-cooled reactor."

I keep reminding people of this. It has been ignored for years here. This reactor will not produce plutonium as a result. If we make that the standard reactor of what we are trying to do, there will be no nuclear proliferation based on atomic power being used to produce electricity.

We should demand that all of the cooperation we have, nuclear cooperation we have, with Russia, and with any other country, I might add, will be based on this type of new technology rather than the old technologies, the water-cooled reactors, which will end up with plutonium.

Now, let me suggest this—I know my time is running out here—that there are forces in this society that want to build the old technology. They are people who own the blueprints from this 50-year-old technology that ends up with plutonium. We have to overcome

those forces in our society, and if we do, we have a technological solution to this problem.

Chairman BERMAN. The time of the gentleman has expired. The gentlelady from California, Ms. Woolsey, is recognized for 5 minutes.

Ms. WOOLSEY. Thank you, Mr. Chairman. Mr. Chairman, recognizing the dangers posed by nuclear weapons, I have crafted and introduced two pieces of legislation calling on the President to engage in nonproliferation strategies designed to eliminate these weapons of mass destruction from the United States and from worldwide arsenals.

One piece of legislation, H. Res. 68, and the other one, H. Res. 227, include, in their resolve statements, words urging the President, in the interest of protecting and enhancing human, national, and global security, to, with H. Res. 68, cooperate with the Russian Federation to remove from deployment nuclear weapons that presently are operational and ready to be launched on short notice.

In H. Res. 227, which is called "Smart Security," which is a very popular piece of legislation with individuals who are aiming at peace around the world, the resolve states that prioritizing and providing adequate funding for the Cooperation Threat-reduction program of the Department of Defense and programs within the Department of Energy to secure fissile materials in Russia and other countries, to dismantle nuclear warheads, reduce nuclear stockpiles, secure nuclear weapons and materials, and prevent the outflow of nuclear weapons expertise from Russia and those other countries.

So, obviously, I think we should do away with all of it, and I am in good company because, in 2007, a joint statement by former United States national security officials Henry Kissinger, Sam Nunn, George Schultz, and Bill Perry called for a establishing a goal for the global elimination of nuclear weapons.

So I asked you, Mr. Rood, how does 123 move us along that path to our goal for global elimination of nuclear weapons?

Mr. ROOD. The 123 Agreement would support a number of important nuclear nonproliferation and countering-nuclear-terrorism objectives, and, in this area, we have had some good cooperation with the Russians. As an example, next week, I will co-chair with my Russian counterpart, Deputy Foreign Minister Kislyak, a meeting of about 70 countries who are part of the Global Initiative to Combat Nuclear Terrorism. This was an initiative launched by President Bush and President Putin.

The 123 Agreement will facilitate things such as if there is a nuclear-smuggling case, the ability to share samples to examine who may have been the perpetrators of this case. You spoke, in your statement, about the importance of securing fissile materials and being able to combat nuclear smuggling. In this way, this agreement would help in that regard.

The other part, when you talked about eliminating material that can be used for nuclear weapons; as I mentioned, the Department of Energy would like to send fuel assemblies to Russia to be used in a new kind of reactor that Russia has, and we do not have in the United States, a fast reactor.

If this technology could be developed, you would not have nuclear waste containing plutonium. You could burn that spent fuel in a fast reactor, consume the plutonium so it cannot be used for nuclear weapons, and burn down the waste. It is a very valuable technology, and we think that this agreement will help us reach that objective.

Ms. WOOLSEY. So is this new to our 123 Agreements, or is it what has been in place up until now?

Mr. ROOD. We have not had a 123 Agreement with Russia, but the 123 Agreement would provide a legal framework under which you could do this kind of cooperation, so, in that way, it is new.

Ms. WOOLSEY. Thank you. Mr. Chairman, I yield back.

Chairman BERMAN. I thank the gentlelady, and I yield 5 minutes to the gentleman from California, Mr. Royce.

Mr. ROYCE. Thank you, Mr. Chairman.

Under Secretary Root, you suggest that this agreement is going to pave the way for the United States, for our companies here, to sell nuclear material, equipment, and technologies to Russia, and my question is whether the Russian environment today would really allow us to do that because you have a case where President Putin nationalized the energy sector. Then you had blatant use of Russian energy resources as a means there to political ends.

Our own attorney general here, last month, said, "Organized criminals control significant positions in the global energy and strategic materials market in Russia." He said, "They are expanding their holdings, which corrupt the normal functioning of these markets and may have a destabilizing effect on U.S. geopolitical interests."

So that is a pretty rough business environment to be in, and I know that British Petroleum and Royal Dutch Shell are having very, very difficult times in Russia. So my question is, do United States companies really have a chance there, and, under that kind of environment, do we want them in Russia?

Mr. ROOD. Obviously, U.S. commercial firms would have to make their own business decisions about whether a specific project merited consideration, whether the risk factors were low enough that they would want to proceed with that area.

But I would say, with the legal framework that the 123 Agreement would put in place, that it would address an imbalance. Today, Russia's export laws allow Russian firms to export a number of things to the United States, but without a 123 Agreement, our firms are legally barred in a number of areas from having specific types of commerce with Russian firms.

So, at first, you have a legal barrier. I think a second issue that you point to is you would have to consider the business environment and the specifics of a particular case.

In the nuclear area, most of those things are owned by the Russian Government—the Russian institutes and the facilities and things of that nature—so we think this agreement would provide an advantage to our industry.

Mr. ROYCE. Okay. Well, the other thing that I think we might want to keep in mind, the other point I would like to make as we weigh this, is the testimony, and you will probably be around to hear some of the witness panel or have their report—we are going

to have one witness testify that there are 1,300 Russian nuclear technicians in Iran. Now, that number is set to double.

So the question I would have is, what are their activities, first; and, second, how confident are we in our ability to really know what they are up to in Iran?

I have had discussions with senior scientists in Russia who developed their biological program. One of them told me that some of his senior scientists were missing, and he suspected they were in the Middle East. I just wonder what kind of handle the Russians have on this and what kind of handle we have on their activities and our ability to know what they are doing.

Mr. ROOD. There are Russian technicians in Iran working on the Bushehr reactor. If their activities are related to the Bushehr reactor, as I mentioned, we do not have substantial concerns in that regard because the Russian agreement with Iran to provide fuel to take it back, we think, is very valuable.

For the sake of argument, if you were to argue that, at this point, Russia should cease all nuclear cooperation with Iran and, therefore, not meet the terms of its agreement with Iran, that could pose a risk in the sense that that would be a material breach of the agreement, it would allow the Iranians to use the reactor as they wish, to use the fuel provided by the Russians as they wish. So, at this point, we would like to see the Russian agreement with Iran fully adhered to by the Iranians, and we think that is valuable.

So, from what we know of the activities of Russian nuclear technicians at the Bushehr reactor, that does not pose us particular concern. Obviously, if there were activities at other facilities or other locations, it would depend on the type of nuclear work being done. If it was related purely to the Bushehr project, again, that would not pose us a major concern, but we would, obviously, have to watch that, and we are watching that carefully, Congressman.

Mr. ROYCE. A quick implementation question: Right now, there is no liability protection in Russia for United States nuclear vendors who may wish to do business in Russia. Any observations on that as maybe placing that as a condition on implementation until Russia signs the Convention on Supplementary Compensation or some other means for liability protection? There are some things that I do not think have been fully thought out.

Mr. ROOD. There have been a number of attempts, not only in Russia but elsewhere in the world, to encourage countries to adopt more stringent nuclear liability practices and regulations. In Russia, we would like to encourage the Russians to have better nuclear liability protections.

That will be a concern, as you correctly point out, for American firms. That is something that we will continue to work with our Russian colleagues about, but it is not limited merely to Russia; there are other countries in the world where we would like to do that as well.

Mr. ROYCE. Thank you, Mr. Chairman.

Chairman BERMAN. The time of the gentleman has expired. The gentleman from New Jersey, Mr. Sires, is recognized for 5 minutes.

Mr. SIRES. Thank you, Mr. Chairman, and thank you for holding this hearing.

As I listened to some of the other members, and as I listened to some of the things that you said, I had a couple of thoughts, and one of the thoughts—you mentioned that we get half of our nuclear fuel from Russia, and I thought I heard you say that that may increase in the future.

Mr. ROOD. It is unclear whether it will increase as a percentage, but we would like to continue purchases of fuel. It will be market driven whether it could grow to a higher percentage, Congressman.

Mr. SIRES. Is there a concern that we may be becoming too dependent on one particular country to deliver this nuclear fuel, and are you concerned that they may hold all of the cards in any kind of agreement that we have if we keep increasing our purchase of nuclear fuel. It seems to me that they are in the driver's seat on this issue. Is there any other place we can get the fuel besides Russia?

Mr. ROOD. The concern that you cite about becoming overly dependent on a single source for nuclear fuel is something that we share. Under the agreement that was described by Mr. Rohrabacher in his statement earlier, we have negotiated an agreement with the Russians that will limit market access for Russia to the United States for the sale of uranium fuel for nuclear reactors.

The reason that that agreement was important to us is that, in the past, there had been some antidumping actions taken by the United States, and we wanted to regulate the amount of nuclear fuel that Russia could sell to the United States market, and so if this agreement takes effect, we think that that will be accomplished.

Mr. SIRES. Limited to what, 60 percent?

Mr. ROOD. No. It allows for gradual increases over time.

Mr. ROHRABACHER. It is 20 percent of the market, but the Dominici rule will actually undermine that.

Mr. SIRES. But a bill is not a law.

Mr. ROOD. So we share your concern. We do believe that it is important to limit access to the U.S. market to a reasonable level for a single supplier of uranium. There are other suppliers in the world of uranium, though, the price of it has increased significantly because it is becoming a more scarce commodity.

Mr. SIRES. Are you concerned at all that this plays a role in any kind of negotiation, the fact that we get half of the nuclear fuel from Russia?

Mr. ROOD. Well, we would like to continue purchasing the fuel because it was highly enriched uranium used in nuclear weapons, and we wanted to have an agreement whereby the Russians would down blend, convert that material to that which is used in nuclear reactors, and then sell it to us here in the United States for use in our power reactors.

It was a way to create a commercial mechanism to dispose of Russian nuclear weapons, and it has been very successful. Over 13,000 nuclear weapons' worth of material has been used in this program.

So, in that sense, we want to see the program continue, and it is supposed to, indeed, grow to eventually dispose of 20,000 nuclear weapons' worth of material from Russia. We would like to have additional material that was in Russian nuclear weapons used for

this purpose, but mainly for the elimination of the nuclear weapons, and we think, so long as market access is limited in the manner that we have negotiated with the Russians, that our concerns about overreliance on a single supplier are dealt with.

Mr. SIRES. Thank you very much.

Chairman BERMAN. The time of the gentleman has expired. The gentleman from Nebraska, Mr. Fortenberry.

Mr. FORTENBERRY. Thank you, Mr. Chairman. Thank you, Mr. Under Secretary, for coming today.

I want to examine an operational premise here. We are trying to leverage Russian cooperation regarding Iran by selling them nuclear technology or entering into an agreement regarding nuclear technology. This seems a bit peculiar, again, given Iranian intentions, the development of a certain hostile positioning of Iran. Clearly, they are developing nuclear weapons capabilities.

The Russians have been, at a level, cooperative, but, at best, I think you could say that passively cooperative, and yet here we are trying to get them to cooperate more fully with us by leveraging help from them with regards to selling them additional, or agreeing to share additional, technology with them.

It is an underlying premise of all of this that seems a bit peculiar. I would like for you to address that.

Mr. ROOD. Well, my first reaction would be that we desire this nuclear cooperation agreement with Russia because we desire nuclear cooperation with Russia. On its own merits, we want the agreement for its stated purpose. There is very valuable nuclear cooperation, as I mentioned, to develop new forms of proliferation-resistant technologies that is important to us.

We think it is also important in our efforts to combat nuclear terrorism, which are going very well with Russia.

A second question, which is outside the four corners, if you will, of the agreement, is the issue of Russian cooperation with respect to Iran, and I would say, on that question, which, again, I do not think is the subject of the agreement, we are better off with the agreement than without it.

Mr. FORTENBERRY. But given the context of the circumstances at the moment, that is a clearly defining underlying premise, at least an operational premise, creating the spirit of negotiation at this point, the negotiation between you and the Russians, the negotiation between you and the Congress. If the Iranian question did not exist, you might have a cooperation agreement proceeding the way you would prefer, but, nonetheless, this question is completely intertwined with the cooperation agreement, leveraging help by the Russians to dampen, or potentially diminish, Iranian nuclear weapon capability.

Mr. ROOD. I think, on that question, we are better off with the agreement with respect to gaining greater Russian cooperation on Iran than without it, and I think our recent track record is a demonstration of that. There were some that argue in favor of the policy that existed during the Clinton administration and, indeed, the first part of the Bush administration, saying that the United States would not enter into negotiations for a 123 Agreement unless Russia ceased all nuclear cooperation, all missile cooperation, all conventional arms cooperation with Iran.

I think the stated objective of that, the first part of the objective was to prevent the construction of the Bushehr reactor. I think any objective analysis of the success of that policy would have to conclude it did not succeed. The Bushehr reactor was constructed, and U.S. policy did not succeed in stopping it. It did not succeed in stopping other Russian nuclear cooperation with Iran.

Our willingness to engage in a 123 Agreement with Russia has already demonstrated some effects that are described in our classified Nonproliferation Assessment, where we have gained greater cooperation with Russia than we had previous to entering the negotiation on the 123 Agreement.

Mr. FORTENBERRY. Is this the best we can do? It appears to be two schools of thought developing here, one in the administration that this mitigates potential for increased fissile material in the world, and it increases the opportunity for us to develop further relationships with the Russians to decrease the probability of nuclear proliferation. But if it was such a good deal, I think, and this might be the general disposition you are hearing, why don't the Russians more actively, instead of passively, cooperate on the Iranian question, given its entanglement at the moment?

Mr. ROOD. First, in response to your question, "Is this the best we can do with regard to gaining greater cooperation from Russia on Iran?" clearly, we can do better, and we would like to have more cooperation from Russia than we do today, but that does not mean we do not value the cooperation that we have received, the fact that we would like an even higher level of cooperation.

Mr. FORTENBERRY. Is this agreement the way to achieve it, though?

Mr. ROOD. It is not the sum total of what will achieve that, but——

Mr. FORTENBERRY. What could?

Mr. ROOD [continuing]. It makes a contribution to achieve that.

Mr. FORTENBERRY. Sure. I understand. List other elements that might achieve that type of cooperation in 5 seconds.

Chairman BERMAN. Take your 5 seconds to list them.

Mr. ROOD. Okay. I think that we would like greater cooperation from Russia, and maybe we hope, over time, to see the problem, in terms of the tools that will be effective, the specific tools, not broad tools, but some specific tools, that would be effective in shaping Iranian behavior. Hopefully, our view and the Russian view become more closely aligned.

Chairman BERMAN. The time of the gentleman has expired. This is a very important subject. It has been raised by a number of us. It does not just implicate your areas of concern. The regional secretary, the entire administration, on the full scope of the United States-Russia relationship is something that we are going to want to pursue in great depth.

I now yield 5 minutes to the gentlelady from California, Ms. Watson.

Ms. WATSON. Thank you so much, Mr. Chairman, and I want to thank Under Secretary Rood for not being drawn into talking about the other options except diplomatic options, and I strongly, strongly suggest that we exhaust all diplomatic options.

I was reading an article, and the headline is, "Bush Doesn't Rule Out Military Strike in Iran." It is by Jennifer Lohan with the Associated Press, and she covers his trip throughout Europe, and apparently he says one thing in one place and one thing in another place, and it is very scary to many of us who were against the initial attack on Iraq because it was that kind of saber rattling that took us into a conflict that we cannot seem to get out of.

So I would like you to further explain and define for me what happens if 123 is signed. We are facing a new administration in a matter of months—I am counting the days and the weeks, the hours and the minutes for that—and if Congress adjourns on September 26th, as planned, there will not have been the 90 days of continuous session for congressional review of this agreement, as required by the Atomic Energy Act. Therefore, the President will not be able to bring the Russian agreement into effect.

So can you explain and kind of clarify—I have been in and out—maybe you have gone over this, but I would appreciate you explaining again, what is the Department of State's understanding as to what would happen in the next Congress?

Will the 90-day clock be set, consisting of a 30-day consultation and 60-day review period, as now, or will it be some lesser period that the President will need to resubmit the agreement to Congress to start the clock? So can you kind of clarify that for me, please?

Mr. ROOD. Yes. Under the standard established in the Atomic Energy Act, as you pointed out, the agreement must lie before Congress for 90 continuous session days.

Ms. WATSON. Correct.

Mr. ROOD. It has been submitted. First of all, the person that is the definer of the number of days is the parliamentarian in the respective Houses. But our count is that, by September 26th, if the Congress adjourns on the target date, we will not reach 90 days. It is unclear to us whether the Congress will, in fact, adjourn on September 26, or there might be a pro forma session, for example, after the elections, at which time 90 days of continuous session could be achieved.

So if we achieve 90 continuous session days, the President will have the authority to sign the agreement, assuming there is no resolution of disapproval from the Congress.

Ms. WATSON. Let me ask you this. Will this agreement, if it addresses the correct time requirements, would it bind the next administration, and, if so, how long?

Mr. ROOD. If it enters into force, it will establish a legal framework with a term of 30 years that can be extended by agreement of the parties. It only establishes a legal framework. If there was a project that an American firm was doing with a Russian firm, they would need to submit an export license, and it would be reviewed by the various agencies and would have to be approved by whoever the officials were in a future administration. So, in that sense, it just establishes a legal framework.

To your earlier question, if we do not hit 90 session days, then we have to reset the clock at zero for when this agreement is lying before Congress.

Ms. WATSON. I thank you for that explanation. I would just say that, in dealing with several of the European Union countries, they

informed us very strongly, including Russia, Moscow, the Duma, that, you know, we might have great power, but we do not have the influence, and this article says, as this reporter follows the President, that he is highly unliked in many of the countries. I am reading the words, too, of the secretary, and they are also, to me, pugilistic.

So I would hope that recommendations to the remaining time that this administration is in power that we soften our tone, but we strengthen our sanctions, and we try to convince the other countries of the EU to come along with us on sanctions. Thank you very much, Mr. Chairman.

Chairman BERMAN. The time of the gentlelady has expired. The gentlelady from California, Ms. Lee, is recognized for 5 minutes.

Ms. LEE. Thank you, Mr. Chairman. Good morning.

First of all, let me just clarify one thing, in terms of the Nuclear Proliferation Assessment Statement that was sent with this 123 Agreement. It says: "The United States has received assurances from Russia at the highest levels that its government would not tolerate cooperation with Iran, in violation of relevant U.N. Security Council resolutions."

So I guess I would just have to ask, because this whole agreement makes me very nervous, in terms of the nature of these assurances, do these assurances match what United States intelligence communities and others have observed? And, of course, how is Russian compliance with these resolutions being monitored?

One thing, I guess, following up to that question, I would just like to get your perspective on the fact that I think, personally, that direct talks with Iran, in terms of nonproliferation efforts, probably would work a lot better than trying to work it through Russia, and why we cannot achieve our goal of dissuading Iran from trying to become a nuclear power through direct talks.

We have tried with North Korea and Libya with some success, and so, for the life of me, this does not make a lot of sense, you know, short of direct talks with Iran.

The other part of that—I want to follow up what Congresswoman Watson said—with regard to the President's continuing very vocal statements about the military option not being off the table, understanding that direct talks, sanctions, negotiations, this dual track which you mentioned in your statement, is what, you know, we are engaged in. But does Russia get a little nervous about this, in terms of the military option being talked about so much, at this point, and what does that do to this possible 123 Agreement?

Finally, let me just say, I would hope any agreements we are entering into really have as their goal nonproliferation and disarmament on both sides. Thank you very much.

Mr. ROHRABACHER. Would the gentlelady yield for a question? Is it not the policy of the Democratic Party apparent candidate for president to have the same type of strike option against Iran that this President has also articulated?

Ms. LEE. Well, let me just say, I am not going to engage in partisan political discussions here, Mr. Rohrabacher. Thank you very much.

Mr. ROOD. Congresswoman, with regard to your points on our policy with Iran, I would say that we are seeking not to work

through Russia but, rather, to work with the major powers in the world, the P–5-plus-1, not just Russia, but China, the U.K., France, and Germany, as well as ourselves, in a coordinated group because we think that gives our prospects for diplomacy the greatest chance of success, if the major nations in the world are working together in this area.

We are also trying to work with those major countries, this group of six countries, at the U.N. Security Council, and that is where we have had success in passing three U.N. Security Council sanctions resolutions overwhelmingly with the support of these nations.

We have offered, and the secretary of state has been clear about this, to engage in dialogue with the Iranians, but we want it to be as part of this broader group because we think, as we have experienced in the North Korea case, that this multilateral grouping would be more effective than a United States-only approach to the Iranians.

If the Iranians verifiably suspend their enrichment activities, as they are required to do by the U.N. Security Council resolutions, the secretary of state has indicated a willingness to meet with the Iranians as part of this multilateral grouping.

Ms. LEE. So preconditions are still on the table for discussions. There are preconditions that we have before we would enter into direct dialogue with Iran.

Mr. ROOD. That is the position of the United States, that the Iranians must adhere to the U.N. Security Council resolutions, including verifiable suspension of their uranium-enrichment activities.

With regard to the President's statements, I would refer you to the article that Congressman Watson spoke to, and there, in the Associated Press article, the President is quoted as saying three times that he called a diplomatic solution "my first choice."

Ms. LEE. Sure, it is his first choice, but to continue say, "But I am going to always have the military option, should I need it," sort of puts a sting on the diplomatic option as being a first choice.

Mr. ROOD. Well, I think our view on that is that you cannot take the military option out of your tool kit. That will always remain an option, and should, not only for this president, but any future president, we think, should retain that option. It is, obviously, not what I would argue, or others would argue, should be featured as our first or second or third priority, but, nonetheless, I do agree that it should be an option that we not rule out completely ever.

Ms. LEE. That does not make Russia nervous?

Chairman BERMAN. I will point out, we are planning to have a hearing on Iran and United States policy toward Iran in July, and try to exhaust—we will never exhaust it, but get into that more specifically.

Ms. LEE. Thank you, Mr. Chairman.

Chairman BERMAN. Secretary Rood, I do appreciate your coming today. I have a feeling this is not the first, because we have had several conversations about this, but it is not the last conversation we have as we get into more of the specifics of this.

Thank you for being here today, and I look forward to talking with you in the future about it.

Mr. ROOD. Thank you, Mr. Chairman.

Chairman BERMAN. Please come forward.

We are expecting a vote at some point soon, and it will not be just a vote; it will be about five votes. We will go as far as we can now, and I am coming back for the whole thing. I do not know if anyone else will, but, for people who are interested in the subject, these two folks are extremely knowledge and understandable and, therefore, I think, have a valuable contribution to make.

Mr. Einhorn, why do not you go first?

STATEMENT OF THE HONORABLE ROBERT J. EINHORN, SENIOR ADVISER, INTERNATIONAL SECURITY PROGRAM, CENTER FOR STRATEGIC & INTERNATIONAL STUDIES (FORMER ASSISTANT SECRETARY FOR THE BUREAU OF NONPROLIFERATION, U.S. DEPARTMENT OF STATE)

Mr. EINHORN. Mr. Chairman, thank you very much for the opportunity to appear before the committee this morning.

An Agreement on Civil Nuclear Cooperation with Iran can bring significant benefits for the United States, in terms of our nuclear energy plans. It can accelerate our research and development efforts by enabling us to take advantage of Russian facilities and experience not widely available in the United States in such areas as fast neutron reactors.

Commercially, a 123 Agreement can allow United States firms to sell nuclear equipment, materials, and technology to Russia and to team up with Russian companies in joint ventures to develop and market nuclear reactors and other nuclear products in third countries.

In terms of our foreign policy goals, it can help stop, and perhaps even reverse, the downward slide in United States-Russian bilateral relations, and this is especially important during a period of presidential transitions in both countries.

A major benefit, in my view, is that a 123 Agreement can facilitate bilateral cooperation in preventing nonproliferation and nuclear terrorism. For example, it would foster collaboration in developing advanced, proliferation-resistant nuclear reactors and fuel-management technologies. It would allow the United States to contribute materially to Russia's multilateral uranium-enrichment facility at Angarsk, which would reduce incentives for countries embarking on nuclear power programs to acquire their own enrichment plants.

It would create the necessary legal basis for Russia to establish an international spent fuel storage facility that would accept United States-origin spent fuel from around the world and reduce incentives for countries to build their own reprocessing facilities.

In general, a 123 Agreement would reinforce the willingness of the United States and Russia to work together on a broad range of nonproliferation and counterterrorism projects, including completing security upgrades at Russian nuclear facilities, interdicting illicit shipments of nuclear materials, and providing fuel supply assurances to countries willing to forego their own fuel cycle capabilities.

It is understandable and appropriate for this committee to focus heavily on the implications of the proposed 123 Agreement for the Iran nuclear issue. That is not only because Iran is the most pressing proliferation issue we face today; it is also because both the

Clinton and Bush administrations have long linked a U.S.-Russia 123 Agreement with Moscow's behavior on Iran.

Russia's record on the Iran nuclear question has been mixed. On the one hand, it has resisted tough U.N. Security Council sanctions against Iran, reduced its leverage with Iran by shipping fuel for the Bushehr reactor, and failed to stop Russian entities from engaging in sensitive nuclear and missile cooperation with Iran.

On the other hand, Moscow has insisted on taking back to Russia all spent fuel from the Bushehr reactor, proposed that Iran join an enrichment center in Russia rather than build its own enrichment plant, and voted for three modest, but increasingly strong, sanctions resolutions in the Security Council. It has also pressed Iran, both publicly and privately, to suspend its enrichment program as uneconomic and unnecessary.

Russia's record has also been uneven in terms of preventing Russian entities from engaging in sensitive cooperation with Iran. On the one hand, concerns have persisted about nuclear cooperation between Russian entities and Iran outside the openly acknowledged interactions on the Bushehr project.

On the other hand, there has been a major decrease in such sensitive cooperation since the 1990s, and, in March, Secretaries Rice and Gates received explicit assurances from the highest levels of the Russian Government that any further assistance would be stopped.

Russia will be critical to any successful effort to persuade Iran to give up its enrichment program and its nuclear ambitions. So a key question for this committee is whether Russia will be a more willing and energetic partner for the United States on the Iran nuclear issue if we proceed to implement the 123 Agreement or if we walk away from it.

Some have argued that Russia's desire for the 123 Agreement gives us leverage we can use to demand that Moscow apply much greater pressure on Iran. This assumes Russia wants or needs the 123 Agreement more than we do, but while the Russians would clearly like an agreement, they can clearly live without it. Indeed, in the 1990s, when Russia was in desperate economic shape, the lure of a 123 Agreement and the economic rewards expected to flow from it were not sufficient to persuade Russia to terminate all nuclear cooperation with Iran.

Today, when Russia is riding high economically, our leverage is even weaker. As the Russians are already proving by setting up nuclear energy partnerships with a wide variety of western countries, they are not dependent on the United States. They have several good alternatives to choose from. A 123 Agreement can give us leverage with the Russians, but the leverage comes not from withholding United States approval until they change their behavior; it comes from implementing the agreement and giving the Russians a tangible, vested interest in continuing to cooperate with the United States.

This is especially the case in holding Russian leaders to their pledge to prevent any future sensitive cooperation between Russian entities and Iran. It is important to recognize that the 123 Agreement is not self-executing. Even after entry into force, each nuclear export must receive specific approval by U.S. authorities. Moreover,

Section 129 of the Atomic Energy Act calls for termination of exports to any country that contributes to a nuclear weapons program by transferring sensitive technologies to a third country.

So if the Russians do not honor their pledge, nuclear cooperation with Iran can be stopped.

Mr. Chairman, in our discussion period, I would be happy to discuss other means of strengthening our leverage vis-à-vis Russia on the Iran issue.

In the last analysis, Russian behavior on the Iran nuclear issue will depend on many factors, including Moscow's perceived geopolitical and commercial stake in Iran, its assessment of whether Iran is determined to acquire nuclear weapons, and the role it sees for itself, both in the world at large and vis-à-vis the United States.

Not the least of the factors bearing on Russia's behavior on Iran will be the policies pursued by the United States on a range of issues considered by the Russians to be central to their interests, including NATO enlargement, missile defense components in Eastern Europe, and Kosovo.

The 123 Agreement is only one of these factors. We cannot say that implementing the agreement will guarantee Russia's active and forceful cooperation on the Iran nuclear issue, but what we can say with confidence is that rejecting the agreement, or imposing conditions on its implementation that would have the same effect, would trigger a Russian reaction that would adversely affect prospects for cooperation on Iran and perhaps also have a wider negative impact on the bilateral relationship.

Critical United States nonproliferation objectives, especially the goal of preventing Iran from acquiring nuclear weapons, cannot be achieved without the active cooperation of Russia. We are much more likely, in my view, to gain that cooperation on Iran and a wide range of other nonproliferation issues if we bring the 123 Agreement into force at an early date than if we reject it or otherwise ensure that it will not be implemented. Thank you, Mr. Chairman.

[The prepared statement of Mr. Einhorn follows:]

PREPARED STATEMENT OF THE HONORABLE ROBERT J. EINHORN, SENIOR ADVISER, INTERNATIONAL SECURITY PROGRAM, CENTER FOR STRATEGIC & INTERNATIONAL STUDIES (FORMER ASSISTANT SECRETARY FOR THE BUREAU OF NONPROLIFERATION, U.S. DEPARTMENT OF STATE)

THE U.S.-RUSSIA CIVIL NUCLEAR AGREEMENT

Mr. Chairman, thank you for the opportunity to testify before the Committee on the U.S.-Russia Agreement on Civil Nuclear Cooperation and its implications for U.S. efforts to prevent Iran from acquiring a nuclear weapons capability.

Since the collapse of the Soviet Union, the United States and Russia have engaged in important but circumscribed areas of nuclear cooperation, such as the Nunn-Lugar cooperative threat reduction assistance programs and the 1993 HEU Purchase Agreement under which 500 tons of highly-enriched uranium from dismantled nuclear weapons are being blended down to low-enriched uranium and sold to the U.S. as fuel for its civil nuclear reactors. But for the two countries to enter into full-scale nuclear engagement—including U.S. transfers to Russia of nuclear materials, nuclear reactors, and their major components—an agreement on the peaceful uses of nuclear energy (a so-called "123 Agreement" which is required by Section 123 of the U.S. Atomic Energy Act) must be in force.

The United States has 123 Agreements with almost all countries with major nuclear energy programs. A major exception is Russia, a country with one of the most extensive, diverse, technologically advanced, and commercially active nuclear industries in the world. The reasons for this anomaly include the mutual mistrust that

prevailed during the Cold War, the dormancy of the U.S. nuclear industry in the post-Cold War period, and the differing approaches of the two countries toward the nuclear fuel cycle. Since the mid-1990s, the main impediment to a U.S.-Russia 123 Agreement has been Russian nuclear assistance to Iran, which the United States believes is pursuing a nuclear weapons capability under the cover of a civil nuclear program. In an effort to induce Moscow to end such assistance, the Clinton Administration and initially the Bush Administration refused to negotiate a 123 Agreement with Russia unless it halted all nuclear cooperation with Iran, including its construction of a nuclear power reactor at Bushehr.

In recent years, the case for pursuing a 123 Agreement with Russia has gotten stronger. Growing energy needs and concerns about greenhouse gas emissions are improving the outlook for nuclear power worldwide which, in an increasingly globalized nuclear industry, places a premium on working with foreign partners. The 9/11 attacks and the nuclear programs of North Korea and Iran have elevated preventing nuclear proliferation and nuclear terrorism to the top of the national security agenda, generating strong interest in more proliferation-resistant nuclear technologies and approaches to the fuel cycle that could be advanced through U.S.-Russian collaboration. Moreover, following revelations about Iran's clandestine enrichment program and other illicit nuclear activities, Russia's policy—while still committed to the completion of the Bushehr reactor—became more supportive of U.S. and European efforts to press Iran to end its pursuit of fuel cycle programs that would give it a nuclear weapons capability.

In light of these developments, the Bush Administration in early 2006 relaxed its linkage between the Iran issue and a U.S.-Russia 123 Agreement. Instead of insisting that Moscow terminate all nuclear cooperation with Iran (including its construction of the power reactor at Bushehr) before negotiations on a 123 Agreement could get underway, it would now be willing to enter into negotiations but would only be prepared to complete the agreement and allow it to enter into force if Russia played a constructive role on the Iran nuclear issue.

At the July 2006 meeting of G–8 leaders in St. Petersburg, Presidents George W. Bush and Vladimir Putin announced that bilateral negotiations would begin. The talks proceeded smoothly. An agreement was initialed in Moscow in June 2007 and signed in Moscow on May 6, 2008. On May 13th, the White House transmitted the 123 Agreement and its supporting documentation to the Congress for its consideration.

The U.S.-Russia agreement negotiated by the two sides meets all the legal requirements set forth in Section 123 of the Atomic Energy Act. In particular, it contains all the required nonproliferation guarantees and controls, including a U.S. right of prior consent to re-transfers, a guarantee that adequate physical protection measures will be maintained with respect to U.S. exports, and a guarantee that no U.S.-origin nuclear material will be enriched or reprocessed without the prior approval of the United States. Indeed, the U.S.-Russia agreement is more restrictive than the 123 Agreement negotiated (but not yet submitted to the Congress) with non-NPT party India which provides U.S. advanced consent (rather than case-by-case approval) for reprocessing and offers U.S. assistance in ensuring uninterrupted fuel supplies in the event that an Indian nuclear test results in the termination of U.S. nuclear assistance to India.

Entry into force of the U.S.-Russia 123 Agreement can be expected to bringing significant benefits. At a technical level, an agreement could help accelerate U.S. nuclear energy research and development plans in such areas as fast neutron reactors and advanced fuel-cycle technologies where the Russians possess both experience and facilities not available in the U.S. For example, the Department of Energy would like to send fuel elements for testing in Russian fast neutron reactors but can only do so with a 123 Agreement in place. The Agreement also supports U.S. commercial interests by allowing U.S. firms to sell nuclear materials, equipment, and technologies to Russia and to team up with Russian companies in joint ventures to develop and market nuclear reactors and other products to third countries.

A 123 Agreement cannot, by itself, mend the U.S.-Russian bilateral relationship which has deteriorated markedly in recent years. Differences on such issues as NATO expansion, Kosovo, and missile defenses can be expected to persist. But by building on areas of clear common ground, the Agreement can help stop and reverse the downward slide in bilateral relations and perhaps have a positive spillover effect on other issues, which is especially important at a time of presidential transitions in both countries. Conversely, blocking the Agreement is likely to adversely affect U.S.-Russian cooperation more broadly.

The most important benefit of a 123 Agreement is that it can facilitate cooperation in preventing nuclear proliferation and nuclear terrorism. For example, it can foster collaboration in the development of advanced, proliferation-resistant nuclear

reactors and fuel management technologies. It can allow the U.S. to contribute materially to the Russian multilateral uranium enrichment facility at Angarsk, which would reduce incentives for countries embarking on nuclear power programs to acquire their own enrichment plants. It can also create the necessary legal basis for Russia—should it decide to do so in the future—to establish an international spent fuel storage facility that could accept U.S.-origin spent fuel and spent fuel from other countries and thereby reduce incentives for them to have their own reprocessing facilities. And a 123 Agreement can promote a more promising political and legal environment for pursuing a range of threat reduction programs (e.g., nuclear security upgrades in Russia, plutonium disposition) and for developing a new international civil nuclear energy architecture, as agreed in the U.S.-Russia Declaration on Nuclear Energy and Nonproliferation of 2007, that can boost reliance on nuclear power worldwide without increasing the dangers of proliferation.

It is understandable and appropriate that, in evaluating the 123 Agreement, Members of Congress will focus heavily on Russia's role vis-à-vis Iran's nuclear program. Moscow's record in that connection is mixed. On the one hand, Russia has resisted tough U.N. Security Council sanctions against Iran, reduced its leverage with Iran by shipping fuel for the Bushehr reactor, and failed to stop all Russian entities from engaging in sensitive cooperation with Iran. But on the other hand, Moscow has insisted on taking back to Russia all spent fuel from the Bushehr reactor, proposed that Iran join an enrichment center in Russia rather than have its own enrichment program, and voted for three modest but increasingly strong U.N. Security Council sanctions resolutions. Although those resolutions were all weaker than the United States preferred, they have given legitimacy to U.S.-led efforts outside the Council with foreign governments, banks, and businesses to impose financial and other economic pressures on Iran. The Russians have also pressed Iran publicly and privately to suspend its enrichment program as unnecessary and uneconomic.

On the question of Russian entities transferring sensitive nuclear technology to Iran, the record is also uneven. Despite a substantial decrease in such sensitive assistance from the period of the late 1990s, when Russian-Iranian cooperation was a significant irritant in U.S. relations with Moscow, concerns have persisted about nuclear cooperation between Russian entities and Iran outside the openly acknowledged interactions taking place between the two countries on the Bushehr project. Indeed, some such cooperation has reportedly taken place—and was the focus of high-level U.S. diplomatic efforts with Russian leaders—in the period following the initialing of the 123 Agreement. However, those diplomatic efforts, including during a March 2008 visit to Moscow by Secretary of State Condoleezza Rice and Robert Gates, have apparently resulted in strong assurances at the highest levels of the Russian government that any further sensitive cooperation between Russian entities and Iran will stop.

If Iran is to be persuaded to give up its enrichment program and nuclear ambitions, Russia must be prepared to work more closely and forcefully with the U.S. and other concerned states to exert strong pressures on Tehran and to make clear that its future will be much brighter if it heeds the demands of the Security Council and international community. Russian authorities must also be prepared to exercise careful oversight in ensuring that Russian entities are not assisting Iran's nuclear and missile programs by providing sensitive technology.

A key question for this Committee and the Congress is whether Russia will be a more willing and energetic partner for the United States on the Iran nuclear issue if we proceed to implement the 123 Agreement or if we walk away from it.

Some have argued that Russia's desire for the 123 Agreement gives the U.S. powerful leverage that can be used to demand that Moscow apply much greater pressure on Iran as a condition for proceeding with the agreement. This argument assumes Russia wants or needs the 123 Agreement more than the U.S. does. But while the Russians clearly would like an agreement, they can live without it. Indeed, in the 1990s, when Russia was in desperate economic shape, the lure of a 123 Agreement (and the economic rewards that might flow from it) was not sufficient to persuade Russian leaders to terminate all nuclear cooperation with Iran. Today, when Russia is riding high economically, U.S. leverage is even weaker. And as the Russians are already proving by establishing nuclear energy partnerships with a variety of Western and other countries, they have alternatives to the United States and U.S. companies.

A 123 Agreement can give the U.S. leverage with the Russians. But the leverage, and the ability to influence Russian behavior, comes not from withholding U.S. approval of the agreement; it comes from implementing the agreement and giving the Russians a tangible, vested interest in continuing to cooperate with the United States.

This is especially the case in seeking to hold Russian leaders to their pledge to prevent any future sensitive cooperation between Russian entities and Iran. It is important to note in this connection that the 123 Agreement is not self-executing. Even after entry in force, each nuclear export pursuant to the agreement must receive specific approval by U.S. authorities. Moreover, Section 129 of the Atomic Energy Act calls for termination of nuclear exports to any country that contributes to a nuclear weapons program by transferring sensitive nuclear technology to a third country. So if the Russians do not honor their pledge, nuclear cooperation with Russia can be stopped.

Critical U.S. nonproliferation objectives, especially the goal of preventing Iran from acquiring nuclear weapons, cannot be achieved without the active cooperation of Russia. The best way to gain that cooperation—on Iran and a wide range of other nonproliferation issues—is to bring the U.S.-Russia 123 Agreement into force at an early date.

Chairman BERMAN. Thank you, Mr. Einhorn. There were a number of issues in the testimony that we would like to pursue.

I think, rather than rush you to get in before we have to vote, I think we should recess now. We are on the second bells. This is going to take 40 minutes, my guess is, because we have five votes and maybe 30 short votes.

So when we come back, I will have you, Mr. Henry, and then go to the questions. Thank you very much.

[Whereupon, at 11:35 a.m., a short recess was taken.]

Chairman BERMAN. The committee will resume. I believe, Mr. Einhorn, you had finished your opening statement, and, Mr. Sokolski, your turn.

Mr. SOKOLSKI. I was just going to say, the downside is pretty clear, but what people do not realize is what the upside is. We are looking at it, two or three very focused people and lots of time.

Chairman BERMAN. "Lots of time" is about an hour.

Mr. SOKOLSKI. Okay. That can be done.

STATEMENT OF MR. HENRY D. SOKOLSKI, EXECUTIVE DIRECTOR, NONPROLIFERATION POLICY EDUCATION CENTER, MEMBER, COMMISSION ON THE PREVENTION OF WEAPONS OF MASS DESTRUCTION PROLIFERATION AND TERRORISM

Mr. SOKOLSKI. First, Mr. Chairman and members of the committee, it is an honor to be testifying here today. I really want to emphasize something. This may sound corny, but if it was not for separation of powers and divided government, I think we would all be in big trouble, and this topic demonstrates this in spades, I think. So I feel like I am getting my money's worth, not only testifying, but even if I did not testify, seeing you hold this hearing; it is a good thing.

Second, let me go off script just for a moment. If I understand the administration witness correctly, the argument for this agreement runs as follows. It has three legs.

The first leg is we are better off with this agreement to leverage bad Russian behavior toward Iran than without it.

The second leg, if I understood it correctly, is the Russians can go elsewhere. This opportunity to cooperate with them is a bit of a wasting asset. They do not need this so much that we have the kind of leverage to dictate terms to them.

And the last one, which I do not think the administration witness said explicitly but implicitly, is that if we do not go ahead with this agreement, as the State Department wants and as, I as-

sume, the Russians want, there will be bad consequences and the bad consequences have to do with our relations with the Russians.

Now, I have to say, I thought I had a strong argument for conditioning this deal. But the argument they are making strikes me as a much stronger argument for conditioning this deal than I could ever come up with. If you have any doubts about the need to take exception to that kind of argument, you must not have grown up where I did, where there were bullies on the playground and they took your lunch money.

I think people are going to watch this one and the people that are going to watch it the most are the Russians. If we had a community of interests with them on a lot of fronts, that would be one thing, but, as everyone has noted, both for and against this agreement, things are not going that well with the Russians. I do not think that is the time that you show inattention to this logic tree I have laid out. Now to my formal statement.

This is not the first civil nuclear agreement between Washington and Moscow. The first was signed in 1973. It, too, was designed to promote fast reactor cooperation and to "establish a more stable and long-term basis for cooperation." Because our strategic objectives were so disharmonious in the 1970s and 1980s, though, this diplomatic effort went nowhere. Today, few, if any, even remember that it ever was signed. With this current agreement, though, we are unlikely to be so lucky.

Today, Russia is actively engaged in missile, nuclear, and advanced conventional defense cooperation with Iran. We will get back to that, but let me just say, in passing, I have been in this town long enough to know that when Mr. Dingel asks a question, he has probably got the answer. We will get back to that, and I think you need to know whether he does have specific information because if he does, boy, you would want to know that before you do anything more.

In any case, I think, if the current agreement is implemented without requiring Russia to go much further in ending its cooperation in these various sensitive areas first, the United States will be seen to be endorsing such commerce at the very time it is pleading, pleading with others to sanction and isolate Iran for its nuclear misbehavior.

In the politically charged environment of presidential politics, some might even call this "appeasement."

Another key premise of the proposed agreement is that it will expand nuclear commerce between our nations. Yet Russia lacks adequate liability insurance coverage for nuclear accidents. Private and American nuclear firms have warned the administration that they will not risk their own capital to make commercial sales to Russia until Moscow ratifies the Convention on Supplementary Compensation for Nuclear Damage.

By the way, there is a letter in my testimony from the chief legal organization representing all of the key nuclear firms to the administration telling them precisely that. It is dated at the end of 2003. I have checked with the author of that letter through someone else, and he still maintains the position that they will not risk their own money.

There is no way that the proposed agreement could lead to more business for U.S. industry unless the Department of Energy takes U.S. taxpayer dollars to pay them to do business under government indemnification. So instead of making money, the agreement's implementation now would draw on the public treasury.

The bottom line: Without clear conditions on these points, the U.S. risks backing a nuclear deal that will long be remembered but for reasons that we will all wish we could forget.

That said, I do not think you are going to allow that. H.R. 1400 passed overwhelmingly. It required that, prior to the approval, the White House had to certify that no entity under Moscow's control was lending Iran advanced conventional defense assistance or helping its nuclear missile programs. A similar bill, with 73 co-sponsors, including Senators Obama and McCain, sits in the Senate, S. 970.

The administration is no fan of this legislation. Make no mistake about that. The White House knows that despite whatever progress it may claim is made with Russia, our intelligence agencies are far from being able to give Moscow a clean bill of health. As was pointed out repeatedly, the administration has admitted this with regard to nuclear capable missiles, at a minimum; that it is pleading with Congress to relieve the President from having to certify that Russia has ended this business, I think, is very awkward, extremely awkward.

To say that the criteria, legally, are different is a total dodge. Mr. Ackerman deserves a trophy for his questions on this point. You will notice that the witness from the administration would not say that the President would not sign an agreement with conditions. And do you know why? We have some history here.

In 1983, Cranston, a Senator now deceased, put conditions on the China Agreement. The administration said they would never sign it. Guess what Reagan signed: That agreement with conditions. Mr. Rood knew enough not to go after that one. He did not want to answer.

Of course, proponents do not focus on these points. Instead, they argue, Congress' rejection would aggravate the Russians and our relations and jeopardize whatever limited cooperation we have with them on Iran.

Our Government, however, has several options, which, if taken, would easily avoid such unpleasantness.

First, as the ranking member and 11 other members of this committee made clear, the White House should withdraw this submission. Let it go for the next president. This would give that next president additional leverage. There is no question about that.

Second, the leadership of the Senate and House could decide to adjourn before the 90-day requirement, if they thought this issue was important enough. This could have a similar effect.

Third, Congress could condition the agreement.

Fourth, Congress could let the agreement come into force but, subsequently, in the next Congress, deprive the Executive of any funds to implement it until certain conditions were met.

Finally, none of these options would have to jeopardize continued, or even increased, nuclear cooperation with Russia. There currently is no advanced nuclear fuel to transfer for testing in Russian

reactors or any pending private nuclear sales to Russia, nor is there any likely for several years, independent of whether or not a 123 is finalized.

As for the transfer of intangible know-how, this can be accomplished in regard to nuclear safety, nuclear plant design, and even fast reactor-related work without a 123 under the Atomic Energy Act, Provision 57(p)(2).

There was discussion of fuel banks. My own view is this: What you will not be able to do without a 123 is precisely what you should not do, which is encourage recycling and work with fast reactors, which really translated in Russia means "reprocessing in breeder reactors," which is a policy of using plutonium-based, weapons-usable fuels that Ford and Carter established 30 years ago that you do not want to do lightly. You want to hold lots of hearings before you want to overturn that policy, and that is what you do if you go ahead with this 123.

There was some discussion of, well, you know——

Chairman BERMAN. Just say that again. What policy would we be overturning by pushing that?

Mr. SOKOLSKI. In 1976, President Ford had an announcement right before the election which was very similar to the views of Mr. Carter, and it became U.S. policy under Ford, and it was maintained under Carter, and that is that the United States itself will not use plutonium-based fuels or, for that matter, highly enriched uranium-based fuels in the commercial sector because it is weapons usable directly and because it would set an example that would be proliferation prone.

Now, after 9/11, I think we worry also about theft, like people with ski masks. I do not know how real that is, but we worry about it. That policy has been in place ever since. It is one of the reasons why when they promote GNEP, they say, "Oh, we leave some traces of other elements in there with the plutonium so it would not be purely separated plutonium," but, in fact, GNEP, as many analysts have pointed out at the National Academy of Sciences, is very, very much likely to be nothing more than plutonium-based fuel, and breeder reactors are what use these things.

By the way, these fast reactors in Russia that we are going to test the fuel in; they are breeder reactors. They are not just fast reactors.

So you are really backing into a number of things. Now, the argument is, "Oh, that would not happen unless there was subsequent approval and amendment." Guess how many days you get to block that one: 15. Tell me Congress is going to vote a law to block something in 15 days. A dear colleague maybe, maybe. I am not even sure about that.

So you are really buying more than they are selling to your ear. You are buying a bit more.

One final note, and then I will cease. This agreement comes on the heels of the India Agreement, which required passage of the Hyde Act. Soon you are going to be receiving additional cooperative agreements with a variety of Middle Eastern states. All of these agreements are basically Atomic Energy Act of '54, a law the Congress drafted in haste to accommodate President Eisenhower when he was offering small, zero-powered, research reactors to many

countries as soon as possible under his famous As for Peace program.

Now, since then, we have transferred things that have grown in significance and scale, and it seems to me that if Congress new in '54 that it was authorizing the transfer of these other things, it might not have been so quick to delegate so much of its authority to regulate commerce, the Executive.

It seems appropriate to me, big-picture point, the Atomic Energy Act needs to be adjusted to reflect this change. I realize this is a larger undertaking, but I think it is one that this committee should start considering principally because of these last two experiences and what is coming down the pike. Thank you very much.

[The prepared statement of Mr. Sokolski follows:]

The U.S.-Russia Nuclear Cooperation Agreement:

The Case for Conditioning

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Testimony Presented before a Hearing of
The House Committee on Foreign Affairs

Russia, Iran, and Nuclear Weapons: *Implications of the Proposed US-Russia Agreement*
June 12, 2008 Rayburn House Office Building,
Room 2172 Washington, D.C.

Overview

Mr. Chairman, Ranking Member Ros-Lehtinen, members of the Committee, it's an honor to be asked to testify here today on the implications of formalizing the nuclear cooperation agreement that President Putin and Mr. Bush signed and now is before Congress.

This is not the first civil nuclear cooperation agreement with Moscow. The first was signed in 1973 (*see* Appendix I). It too was designed to promote fast reactor cooperation and to "establish a more stable and long-term basis for cooperation" in the development of peaceful nuclear energy. Because our strategic objectives were so disharmonious in the 1970s and 1980s this diplomatic effort went nowhere. Today, few, if any, even remember that it ever was signed.

With the current agreement, we are unlikely to be so lucky. In 1973, Russia was not proliferating to Iran. Nor was the 1973 nuclear deal sold on how it might increase private U.S. nuclear exports to Russia. Today, Russia is actively engaged in missile, nuclear, and advanced conventional defense cooperation with Iran. If the current nuclear cooperation agreement is implemented without conditions that Russia's cooperation with Iran end, the U.S. will be seen to be endorsing such commerce at the very time Washington is trying to garner international support to sanction and isolate Iran for its nuclear misbehavior. In the politically charged environment of Presidential politics, some might call this appeasement.

Another key premise of the proposed agreement is that it will expand nuclear commerce between our nations. Yet, Russia lacks adequate liability insurance coverage for nuclear accidents and private American nuclear firms have warned the Departments of State, Energy and Defense (*see* Appendix II) that they will not risk their own capital to make commercial sales to Russia until Moscow ratifies the *Convention on Supplementary Compensation for Nuclear Damage* (CSC).[1] To date, Russia has refused to do so. Failing Moscow's ratification of the CSC, the only way the proposed nuclear agreement would lead to more business for U.S. industry is if the Department of Energy takes U.S. taxpayer dollars to pay U.S. firms to do business under government indemnification (*i.e.*, covered, again, with taxpayer funds) in Russia. Instead of making money, the agreement's implementation today would draw on the public treasury.

Bottom line: Without clear conditions on these points, the U.S. risks backing a nuclear deal today that will long be remembered but for reasons we all will wish we could forget.

That said, I doubt Congress will allow this. To date, Congress has been quite clear in spelling out what Russia and the White House must do before a formal nuclear cooperation agreement can be implemented. Last fall, H.R. 1400, which passed overwhelmingly in the House, required that, prior to the approval of any nuclear

[1] For more on the *Convention on Supplementary Compensation for Nuclear Damage of 1997*, *see* IAEA. INFCIRC/567, July 22, 1998, at http://www.iaea.org/Publications/Documents/Infcircs/1998/infcirc567.shtml.

cooperation agreement with Moscow under section 123 of the Atomic Energy Act, the White House must first certify that no entity under Moscow's control is lending advanced conventional defense assistance to Iran or helping Iran's nuclear program or any of its nuclear capable missile programs. A similar Senate bill, S 970, has 73 co-sponsors including Senators Obama and McCain.

This legislation was designed to keep pressure on the White House to get Moscow to clean up its act. The Administration certainly is no fan of the nuclear and missile cooperation provisions in H.R. 1400. The White House knows that despite whatever progress it may claim it has made with Russia, our intelligence agencies are far from being able to give Moscow a clean bill of health. Indeed, the Administration admits that Russia is still helping Iran make nuclear-capable missiles that could hit Europe and is pleading to Congress to relieve the President from having to certify that Russia has ended this loathsome business.

Proponents of the nuclear cooperative agreement do not focus on these points. Instead, they argue that Congressional rejection of the latest nuclear cooperative agreement would aggravate U.S.-Russian relations and jeopardize whatever limited cooperation we have with Moscow on Iran and other nonproliferation issues. At the same time, they warn, though, that Russia is not all that interested in the deal.

In any case, our government has several options that avoid the dangers the proponents warn against. First, as Ranking Member Ros-Lehtinen and 11 other Republican members of this committee made clear in a letter to President Bush dated June 5, 2008, the White House could chose to withdraw its submission of the agreement.[2] This would give the next President of the United State additional political leverage to secure more from Moscow before resubmitting it to Congress. Second, if the president should choose not to withdraw the agreement, the leadership of the Senate or House could decide to adjourn before the 90-day requirement for presentment before the legislative branch has been met. This would produce a similar result.

Third, Congress could always condition the agreement such that the agreement would come into force pending a pledge from Moscow to terminate its nuclear, missile and advanced conventional assistance to Iran and to ratify the CSC. Fourth, if this proved too difficult to achieve during this Congressional session, Congress could always let the agreement come into force but subsequently deprive the U.S. government of any funds to implement it until the conditions noted above were met.

Finally, until these conditions are met, none of these options need necessarily come at the cost of continued or even increased nuclear cooperation with Russia. There currently is no advanced nuclear fuel to transfer for testing in Russian reactors or any pending private nuclear sales to Russia. Nor is any likely for several years independent of whether or not a 123 agreement is finalized. As for the transfer of intangible nuclear know-how, this can be accomplished in regard to nuclear safety, nuclear plant design, and even fast reactor

[2] For the full text of this letter, *see* http://www.npec-web.org/US-Russia/20080605-HouseGOP-LetterRussia123.pdf.

related work, without a 123 agreement, under the Atomic Energy Act's 57b(2) provision.[3]

Our government, then, has several options beyond merely voting up or down on the proposed agreement. As I make clear in the balance of my written testimony, though, it would be a mistake to bring the proposed agreement into force without additional oversight and conditioning. At a minimum, Congress should scrutinize—against the backdrop of additional intelligence—the classified Nuclear Proliferation Assessment Statement on Russia[4] that the Administration sent with this agreement It also should learn more about the liability insurance environment is in Russia. If Congress does, I am sure it will only serve to strengthen the agreement and assure its ultimate success.

One final note. This agreement comes on the heels of the India agreement, which required the passage of the Hyde Act. Soon, Congress may be receiving additional nuclear cooperative agreements with a variety of Middle Eastern states. All of these agreements are based on the Atomic Energy Act of 1954, a law that Congress drafted in haste to accommodate President Eisenhower when he was trying to give zero-power research reactors to as many countries as soon possible under his famous Atoms for Peace Program. Because the reactors were small, most assumed the proliferation risks were too. In a desire to beat the Russians to the punch, Congress delegated enormous powers under the act to the Executive to move quickly.

That was over a half century ago. Since then the nuclear systems the U.S. has transferred under the act have grown much larger as has the sensitivity of the nuclear technology and materials it has shared. If Congress knew in 1954 that it was authorizing the transfer of such sensitive nuclear technology and goods, it might not have been so eager to delegate so much of its authority to regulate commerce to the Executive. In any case, it certainly seems appropriate that the Atomic Energy Act be adjusted to reflect these developments. This is a larger undertaking but one that this Committee now should seriously consider.

Russian Assistance to Iran's Nuclear Program

Perhaps no country has contributed so much to Iran's nuclear program as Russia has. There are currently nearly 1,300 Russian nuclear technicians in Iran and that number is about to double.[5] What each of these nuclear workers may be doing when they are not working on Bushehr is both critical and difficult to know. Even the proponents of the 123 agreement concede that Russia and Iran have been engaged in "sensitive" nuclear

[3] For the text of Section 57(b) of the Atomic Energy Act, *see* http://www.nrc.gov/reading-rm/doc collections/nuregs/staff/sr0980/ml022200075-vol1.pdf#pagemode=bookmarks&page=36. [4] For the full text of the unclassified version of the Administration's Nuclear Proliferation Assessment Statement on Russia, *see* http://www.npec-web.org/US-Russia/.
[5] *See* "Russia, Iran May Set Up JV [Joint Venture] to Operate Bushehr NPP in 3 Months," *RIA Novosti*, February 14, 2008, at http://en.rian.ru/business/20080214/99244034.html; and "[Russian] Nuclear Staff in Iran Doubles," *Reuters*, February 19, 2008, at http://www.sptimes.ru/index.php?story_id=25086&action_id=2.

cooperation outside of the Bushehr project. The question is to what extent such cooperation continues despite Russian assurances to terminate it. Although there is little to guide us in the unclassified literature as to what is in play, Congress must be sure that Russian entities are not still helping Iran's plutonium production efforts and aspects of its enriched uranium program.

In this regard, there is still cause for concern. Recently Congressman Dingell, chair of the House Energy and Commerce Committee, formally requested that the Government Accountability Office investigate whether the Administration's Nuclear Proliferation Assessment Statement on Russia was complete or if "there is contradictory information that was omitted which could invalidate, modify, or impair the conclusions or basis for recommendation to approve the 123 agreement."[6] On what basis did Mr. Dingell launch this investigation? Did he have specific information? This Committee should find out.

As for the Bushehr project, the Bush administration now argues that it serves the cause of nonproliferation by demonstrating that Iran does not need to enrich in order to produce nuclear power. The Clinton administration was more circumspect. It opposed the Bushehr project because of the cover it afforded other illicit nuclear activities in Iran. As already noted, this is still a significant concern. Until last year, the Bush administration opposed Russian completion of Bushehr for this and other reasons as well.

As detailed in a August 2006 House Permanent Select Committee on Intelligence report, the fresh low enriched uranium fuel that the Russians must deliver to Bushehr every 12 to 18 months could be seized and used as feed for Iran centrifuge enrichment plant to make a bomb's worth of weapons uranium—not in roughly a year, as would be the case with natural uranium, but in as little as eight weeks. Similarly, Iran could seize the spent fuel during the first refueling of the reactor some time in 2010 and gain access to 30 crude bombs' worth of near-weapons grade plutonium to make plutonium weapons.[7]

That Russia has pledged to take back the spent fuel a year or so after it is discharged from Bushehr does little to change this threat. Nor does the Administration's decision to stop opposing the project change the project's proliferation risks. Unless we can determine that Iran will not divert fresh or spent fuel from Bushehr to make nuclear weapons fuel at Iran's declared nuclear plants and that Iran has no covert enrichment or reprocessing plants hidden away to process Bushehr's fuel, letting this reactor run is a walk on the wild side. This, among other reasons, is why this Committee included Bushehr among the programs Russia must suspend before the U.S. should proceed to transferring not just
U.S. nuclear know-how, but also U.S. controlled nuclear equipment and goods. It understands that neither the International Atomic Energy Agency nor our own intelligence is certain about what Iran might do.

[6] For the full text of Chairman Dingell's letter to the Government Accountability Office, *see* http://energycommerce.house.gov/Press_110/110-ltr.052208.GAO.123.ltr.pdf

[7] *Recognizing Iran as a Strategic Threat: An Intelligence Challenge for the United States*, staff report of the House Permanent Select Committee on Intelligence, Subcommittee on Intelligence Policy, August 23, 2006, p. 11, at http://intelligence.house.gov/Media/PDFS/IranReport082206v2.pdf.

Russia and Iran's Nuclear-Capable Missile Program

This, then, brings us to the issue of Russia's continued assistance to Iran's nuclear-capable missiles. Last week, Ranking Member Ros-Lehtinen and 11 other committee Republicans wrote President Bush that his request to extend the waiver authority under the *Iran, North Korea, and Syria Nonproliferation Act* directly contradicted the Administration's argument that Russia's record regarding Iran's nuclear and missile program is now sufficiently satisfactory to justify moving forward with the nuclear cooperation agreement.[8]

Under the act, NASA cannot make any progress payments for Russia's work on the International Space Station project until and unless our president first certifies that Russia is not assisting Iran's nuclear and missile programs.[9] Back in 2000, when this law was originally passed it embarrassed the Clinton Administration. In 2005, Bush asked Congress to be relieved of this certification requirement through 2008. Now, he is asking for an additional extension on this certification waiver.

It's pretty clear why. In March of last year, the Director for National Intelligence publicly communicated to Congress that Russia was still assisting Iran's ballistic missile program.[10] This February, Iran launched what it described as a space launch vehicle (SLV) known as Explorer-1. As reported by Ariel Cohen of the Heritage Foundation, this rocket was a version of a 2,000 kilometer-range missile that is based on Russia's single stage SS-4 intermediate-range ballistic missile. As Cohen notes, "The British *Daily Telegraph* reported that the former high ranking members of the Russian military have facilitated a multi-million 2003 missile technology transfer agreement between Iran and North Korea," and that Russia has exported to Iran "production facilities, diagrams and operating instructions so the missile can be built in Iran, as well as liquid propellant (to fuel the rockets)."[11] The British paper goes on to detail how "Russian specialists have also been sent to Iran to help development of its Shahab 5 missile project." The Shahab 5 is a system that is designed to be capable of delivering a crude nuclear warhead to nearly any target in Europe. It is precisely the type of missile that the U.S. and NATO are now working to develop missile defenses against.

Indeed, it is news reports like these that the Administration is emphasizing to garner support for building missile defenses in Poland. How proceeding with nuclear

[8] For the full text of this letter, *see* footnote 2. [9] Carl Behrens and Mary Beth Nikitin, *Extending NASA's Exemption from the Iran, North Korea, and Syria Nonproliferation Act*, report RL34477, Washington, D.C.: Congressional Research Service, May 8, 2008, at: http://www.npcc-web.org/US-Russia/20080508-CRS-NasaRussiaIRNA-RL34477.pdf. [10] For the full text of the Office of the Director of National Intelligence's March 2008 letter to the Department of State, *see* http://www.npcc-web.org/US-Russia/20070301-ODNI RussiaAssistsIranMissileProgram.pdf. [11] Ariel Cohen, "The Real World: Iran's Space Rocket Launch," *Middle East Times*, February 9, 2008, at http://www.heritage.org/Press/Commentary/020808c.cfm.

cooperation with Russia will help in this effort when Russian assistance continues to flow to Iran's nuclear and long-range missile program is difficult to see.

Nuclear Liability, Commercial Prospects, and Proliferation Woes

If there clearly was urgent profitable business to be had with the finalization of the proposed nuclear agreement with Russia, there at least would be some cause for Congress to weigh the deal's security risks versus its commercial benefits. For the next five to ten years, though, it is difficult to see what business would be lost by either party if finalization was deferred.

A key reason why is that despite years of urging by the U.S. and other governments, Moscow has refused to ratify the *Convention on Supplementary Compensation for Nuclear Damage* (CSC). Without the protection afforded by this treaty, the Contractors International Group on Nuclear Liability (which represents Babcock and Wilcox Company, Bechtel Power Corporation, BWX Technologies, Inc., General Electric Company, and Westinghouse Electric Company LLC) has warned the Administration that:

> The various bilateral and multilateral indemnity agreements that have been concluded to date are not considered to provide adequate nuclear liability protection by most large, well capitalized U.S. companies.... No such agreement yet has provided a definitive or comprehensive solution to adequate protection of the public in the event of a large nuclear incident or to the nuclear liability risks facing contractors. The critical deficiency of all prior nuclear indemnity agreements with Russia is their lack of any waiver of sovereign immunity. Without waivers by the Russian Federation of immunity from (1) suit and (2) attachment of and from execution against its property, there essentially would be no way for U.S. contractors to enforce the indemnity agreement. Moreover, as private entities, contractors have no independent standing to enforce an agreement to which only the United States and Russia governments are parties.... While each company must make its own risk determination, most contractors have not been persuaded that this is sufficient for them to put their assets at risk. [For the full text of this letter, *see* Appendix II.].

What all this means is that until Russia ratifies the CSC, there will not be any significant, private U.S. nuclear sales to Russia. Instead, the U.S. Department of Energy is likely to contract with individual U.S., French, and Japanese firms to give Russia nuclear technology in the fields of advanced reactors and plutonium fuels and recycling. With each transfer, the U.S. government (*i.e.*, the U.S. taxpayer) will have to provide these firms with the liability coverage they need. The contracts, moreover, will likely be paid directly out of the U.S. Treasury. Money will be spent but it will not be made.

Imposing an increased financial burden upon U.S. citizens, however, is not the prime downside to such trade. A good number of nuclear experts that my center funds, and

others at the Union of Concerned Scientists, the Natural Resource Defense Council and Council for a Livable World, worry that this government-to-government nuclear cooperation agreement will promote the use of nuclear-weapons usable plutonium fuels.[12] This is something the Ford and Carter Administrations opposed on national security grounds. It has been U.S. policy to do so now for over 30 years. Yet, much of what the Administration and the Russians are talking about cooperating on is fast reactors using recycled plutonium-based fuels. Nor are these experts reassured that under the agreement Congress will be given 15-days notification before any such projects proceed. They understand that 15 days is hardly enough time to assess, much less to block such projects legislatively.

Does this mean that there is nothing that the U.S. and Russia should cooperate on in the nuclear field? Hardly. Safety is a topic that the U.S. has been closely cooperating with Russia on since the Chernobyl disaster of 1987. It will and can continue without a 123 agreement. Similarly, the Executive has authority under the Atomic Energy Act to share nuclear reactor information, including that for fast reactors, with Russia, again without a 123 agreement. With regard to plans for an international nuclear enrichment center, the
U.S. can support it too. Russia does not need hardware or fuel from the U.S. but rather financing and contracts, something that does not require a 123. Finally, the U.S. can and will continue to import significant amounts of Russian low enriched uranium to run U.S. civilian power reactors.

All of this should make clear that the U.S. government and Congress have no reason to rush to get this agreement wrong. There certainly is nothing to be lost in demanding more of Russia. Instead, there are significant risks if we refuse to do so.

[12] See, e.g., Ivan Oelrich, "Another Nuclear Trade Deal, This Time with Russia," *Federation of American Scientists' Strategic Security*, May, 206, 2008, at http://www.fas.org/blog/ssp/2008/05/another-nuclear-trade-deal-this-time-with-russia.php.

Appendix I:

Agreement on Scientific and Technical Cooperation in the Field of Peaceful Uses of Atomic Energy between the U.S. and U.S.S.R., June 21, 1973

No. 13344

UNITED STATES OF AMERICA
and
UNION OF SOVIET SOCIALIST REPUBLICS

Agreement on scientific and technical cooperation in the field of peaceful uses of atomic energy. Signed at Washington on 21 June 1973

Authentic texts: English and Russian.

Registered by the United States of America on 30 May 1974.

ÉTATS-UNIS D'AMÉRIQUE
et
UNION DES RÉPUBLIQUES SOCIALISTES SOVIÉTIQUES

Accord relatif à la coopération scientifique et technique en matière d'utilisation pacifique de l'énergie atomique. Signé à Washington le 21 juin 1973

Textes authentiques: anglais et russe.

Enregistré par les États-Unis d'Amérique le 30 mai 1974.

AGREEMENT[1] BETWEEN THE UNITED STATES OF AMERICA AND THE UNION OF SOVIET SOCIALIST REPUBLICS ON SCIENTIFIC AND TECHNICAL COOPERATION IN THE FIELD OF PEACEFUL USES OF ATOMIC ENERGY

The United States of America and the Union of Soviet Socialist Republics;

Attaching great importance to the problem of satisfying the rapidly growing energy demands in both countries as well as in other countries of the world;

Desiring to combine the efforts of both countries toward the solution of this problem through the development of highly efficient energy sources;

Recognizing that solutions to this problem may be found in more rapid development of certain nuclear technologies already under study, such as controlled thermonuclear fusion and fast breeder reactors, as well as in additional basic research on the fundamental properties of matter;

Noting with satisfaction the successful results of previous cooperation between the Parties in the field of peaceful uses of atomic energy;

Wishing to establish a more stable and long-term basis for cooperation in this field for the benefit of both their peoples and of all mankind;

In accordance with and in further development of the Agreement between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics on cooperation in the fields of science and technology of May 24, 1972;[2] the Memorandum on Cooperation in the Peaceful Uses of Atomic Energy of September 28, 1972, between the US Atomic Energy Commission and the USSR State Committee for the Utilization of Atomic Energy; and the General Agreement between the United States of America and the Union of Soviet Socialist Republics on contacts, exchanges and cooperation of June 19, 1973;[3]

Have agreed as follows:

Article 1. The Parties will expand and strengthen their cooperation in research, development and utilization of nuclear energy, having as a primary objective the development of new energy sources. This cooperation will be carried out on the basis of mutual benefit, equality and reciprocity.

Article 2. 1. Cooperation will be concentrated in the following three areas:

a. CONTROLLED THERMONUCLEAR FUSION

The aim of cooperation in this area is the eventual development of prototype and demonstration-scale thermonuclear reactors. Cooperation may include theoretical, calculational, experimental and design-construction studies at all stages up to industrial-scale operations.

[1] Came into force on 21 June 1973 by signature, in accordance with article 7(1).

[2] United Nations, *Treaty Series*, vol. 852, p. 141.

[3] See p. 81 of this volume.

b. FAST BREEDER REACTORS

Cooperation in this area will be directed toward finding solutions to mutually agreed basic and applied problems connected with the design, development, construction and operation of nuclear power plants utilizing fast breeder reactors.

c. RESEARCH ON THE FUNDAMENTAL PROPERTIES OF MATTER

Cooperation in this area will include joint theoretical and experimental studies on mutually agreed subjects, and particularly in high, medium and low energy physics, through utilization of accelerators, data processing equipment and other facilities of the two countries. Cooperation may also be undertaken on the design, planning and construction of joint facilities to be used in this area of research.

2. Further details of cooperation in each of these three areas will be arranged through individual implementing protocols.

3. Other areas of cooperation may be added by mutual agreement.

4. Cooperation under this Agreement shall be in accordance with the laws of the respective countries.

Article 3. 1. Cooperation provided for in the preceding articles may take the following forms:

a. Establishment of working groups of scientists and engineers for design and execution of joint projects;

b. Joint development and construction of experiments, pilot installations and equipment;

c. Joint work by theoretical and experimental scientists in appropriate research centers of the two countries;

d. Organization of joint consultations, seminars and panels;

e. Exchanges of appropriate instrumentation, equipment and construction materials;

f. Exchanges of scientists and specialists; and

g. Exchanges of scientific and technical information, documentation and results of research.

2. Other forms of cooperation may be added by mutual agreement.

Article 4. In furtherance of the aims of this Agreement, the Parties will, as appropriate, encourage, facilitate and monitor the development of cooperation and direct contacts between organizations and institutions of the two countries, including the conclusion, as appropriate, of implementing protocols and contracts for carrying out cooperative activities under this Agreement.

Article 5. 1. For the implementation of this Agreement, there shall be established a US–USSR Joint Committee on Cooperation in the Peaceful Uses of Atomic Energy. Meetings will be convened once a year in the United States and the Soviet Union alternately, unless otherwise mutually agreed.

2. The Joint Committee shall take such action as is necessary for effective implementation of this Agreement including, but not limited to, approval of specific projects and programs of cooperation; designation of appropriate

participating organizations and institutions responsible for carrying out cooperative activities; and making recommendations, as appropriate, to the two Governments.

3. The Executive Agents of this Agreement shall be, for the United States of America, the US Atomic Energy Commission, and for the Union of Soviet Socialist Republics, the USSR State Committee for the Utilization of Atomic Energy. The Executive Agents, on their respective sides, shall be responsible for the operation of the Joint Committee and shall coordinate and supervise the development and implementation of cooperative activities conducted under this Agreement.

Article 6. Nothing in this Agreement shall be interpreted to prejudice other agreements concluded between the Parties.

Article 7. 1. This Agreement shall enter into force upon signature and shall remain in force for ten years. It may be modified or extended by mutual agreement of the Parties.

2. The termination of this Agreement shall not affect the validity of implementing protocols and contracts concluded under this Agreement between interested organizations and institutions of the two countries.

DONE at Washington, this 21st day of June, 1973, in duplicate, in the English and Russian languages, both texts being equally authentic.

For the United States of America:	For the Union of Soviet Socialist Republics:
[*Signed — Signé*][1]	[*Signed — Signé*][2]
President of the United States of America	General Secretary of the Central Committee, CPSU

[1] Signed by Richard Nixon — Signé par Richard Nixon.
[2] Signed by L.I. Brezhnev — Signé par L.I. Brejnev.

Appendix II:

Letter Sent to the Departments of State, Energy and Defense on Behalf of the Contractors International Group on Nuclear Liability (CIGNL), December 18, 2003

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December 18, 2003

Hon. Richard L. Armitage
Deputy Secretary
Harry S Truman Building, Room 7220
Department of State
2201 C Street, N.W.
Washington, DC 20520

Hon. Kyle E. McSlarrow
Deputy Secretary, S-2
Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

Hon. Paul D. Wolfowitz
Deputy Secretary
Department of Defense
The Pentagon, Room 3E944
Washington, DC 20301

Re: Nuclear Liability – Russian Federation

Dear Sirs:

This letter is being sent on behalf of the Contractors International Group on Nuclear Liability (CIGNL) concerning on-going U.S. Government efforts to obtain liability protection for nuclear-related activities in the Russian Federation. CIGNL whose members have reviewed this letter is an *ad hoc* group of major nuclear suppliers: Babcock & Wilcox Company; Bechtel Power Corporation; BWX Technologies, Inc.; General Electric Company; USEC Inc.; Washington Group International Inc.; and, Westinghouse Electric Company LLC.

CIGNL submits that the U.S. Government should place more emphasis on encouraging the Russian Federation to ratify the Convention on Supplementary Compensation for Nuclear Damage (CSC) and to adopt a comprehensive domestic nuclear liability law covering both civilian and defense nuclear facilities, rather than continuing to use the more than decade old, *ad hoc* "interim" indemnity agreement approach. As President Bush stated when he transmitted the

CSC to the Senate in November 2002, lack of liability protection afforded by treaty obligations has limited the scope of participation by major U.S. companies in the provision of safety assistance to Soviet-designed nuclear power plants, increasing the risk of future accidents in these plants. S. Treaty Doc. 107-21 at III. The President noted that, once widely applied, the CSC will create for suppliers of U.S. nuclear equipment and technology substantially the same legal environment in foreign markets that they now experience domestically under the Price-Anderson Act. *Id.* President Bush further stressed that United States leadership is "...essential in order to bring the Convention into force soon." *Id.* at IV. In furtherance of the President's position, there should be greater efforts by the U.S. Government to encourage Russia to ratify the CSC (and for the U.S. Senate to do so as well).

CIGNL members are concerned about the potential effect of another *ad hoc* bilateral indemnity agreement on Russia's perception of the need to finally adopt the international nuclear liability conventions and a domestic law consistent with the conventions' principles (including channeling of liability to the facility operator, an adequate liability limit, a single competent court, etc.). While the conventions apply only to "civilian" nuclear facilities, a domestic Russian law must cover both civilian and defense facilities (as does the Price-Anderson Act in the United States).

Russia signed the 1963 Vienna Convention on Civil Liability for Nuclear Damage in May 1996, but has not ratified it or signed the 1997 Protocol to Amend the Vienna Convention. The *Duma* has considered several nuclear liability bills over the last decade, but none have reached final passage. This probably is in large measure due to resistance from Minatom, which has appeared to be opposed to increasing opportunities for Western contractors (*e.g.*, to supply instrumentation that could improve the safety and efficiency of Soviet-designed nuclear power plants).

The various bilateral and multilateral indemnity agreements that have been concluded to date are not considered to provide adequate nuclear liability protection by most large, well-capitalized U.S. companies. (Chemical activities present a different level of risks.) No such agreement yet has provided a definitive or comprehensive solution to adequate protection of the public in the event of a large nuclear incident or to the nuclear liability risks facing contractors. The critical deficiency of all prior nuclear indemnity agreements with Russia is their lack of any waiver of sovereign immunity. Without waivers by the Russian Federation of immunity from (1) suit and (2) attachment of and from execution against its property, there essentially would be no way for U.S. contractors to enforce the indemnity agreement. Moreover, as private entities, contractors have no independent standing to enforce an agreement to which only the United States and Russian Governments are parties.

In September 1994, the best assurance about enforcement of indemnity agreements the U.S. Government gave to contractors was as follows: "[...] the precise positions and actions the United States might take in a given case will depend on the actual factual, procedural, political and legal situation that exists at such time." While each company must make its own risk determination, most contractors have not been persuaded that this is sufficient for them to put their assets at risk. Another result of continuing to rely on a Russian Government indemnity is expected

to be continuing requests by U.S. contractors for at least "backup" indemnification from the U.S. Government under Public Law 85-804.

Additionally, too much emphasis has been placed by the U.S. Government on resisting Russia's insistence that any agreement exclude coverage for premeditated acts of individuals (as is the case in the June 1992 U.S.-Russian Comprehensive Threat Reduction Agreement). Such a provision has been a feature of the 1963 Vienna and 1960 Paris Conventions under which contractors have done work for four decades. The exclusion does not appear unreasonable, as long as it is clear the "individual" refers only to a natural person and there is not right of recourse to the individual's employer (*i.e.,* the doctrine of *respondeat superior* does not apply). In any case, it is more likely an individual would be held criminally liable for intentional acts than be sued for civil damages.

The members of CIGNL urge that the U.S. Government more actively encourage the Russian Federation to ratify the CSC and to adopt a comprehensive domestic nuclear liability law covering both civilian and defense nuclear facilities.

We stand ready to provide additional information if you have any questions.

Very truly yours,

/S/

Omer F. Brown, II
Counsel for CIGNL

Chairman BERMAN. Okay. I will yield myself 5 minutes, some questions.

Several weeks ago, Senators Lugar and Nunn wrote an op-ed piece basically supporting this 123 Agreement, and when Nunn and Lugar write about this stuff, I listen. Because I have not had time to do yet what I wanted to, which is read all of your prepared testimonies carefully, I am going to use their article sort of as the threshold to get both of your reactions to a couple of points.

They write:

> "Having an agreement with Russia would also permit joint work on projects to inhibit the spread of nuclear weapons technology. Under the agreement, the United States and Russia, working together with other nations, can close the major loophole in the world's nuclear nonproliferation regime: The ability of a nation like Iran to walk up to the threshold of a nuclear bomb by building an enrichment plant for allegedly peaceful energy needs and then simply renounce its binding obligation under the NPT not to build a bomb.
>
> "With this agreement, we can better work with Russia to create an international skill bank and guarantee the availability of nuclear fuel services on the international market in countries that falsely claim they want to enrich and reprocess uranium but only for civilian use. Russia's role is essential."

Why will a bilateral agreement help create an international fuel bank and guarantee fuel services? One could imagine the United States could donate low-enriched uranium to a bank in Russian territory, but it would still be flagged as U.S. fuel and, therefore, have political restrictions on the third parties it could be sent, which undermines the fuel bank.

Suppliers are already seeking to set up a multilateral fuel assurances regime, and 123 is not necessary to do this. It would help if there is United States equipment to go into a Russian international fuel-enrichment center, but Russia is already devoting one of its existing operations centers to this purpose, so 123 is not necessary to do this either. That is the criticism. Your reactions to that assertion, the assertion and the counter assertion.

Mr. EINHORN. I think the assertion that a 123 could help establish such fuel bank arrangements is correct. For example, you mentioned that you need a 123 to send United States-origin uranium to Russia. There is a lot of U.S.-origin uranium around.

When we send fresh fuel to a country like Japan or South Korea, it is burned in a reactor and then often reprocessed. There is a lot of recovered uranium. That could be sent to Russia for further enrichment.

Chairman BERMAN. And that would not have to be flagged within reexporting.

Mr. EINHORN. We would still maintain certain controls on that recovered uranium, but if you had a fuel bank in Russia that had lots of different flagged fuels, there are all kinds of customers for that fuel bank that we would support. In other words, we could retain our rights of approval, but there are many countries which would be eligible to receive U.S.-origin fuel.

So I think it helps. It helps more, frankly, on the back end of the fuel cycle, where, if Russia is able to take United States-origin fuel for long-term storage or reprocessing, that can decrease incentives for countries to have their own reprocessing capability. It is a huge incentive for a country to participate in this kind of fuel-leasing arrangement if it can get rid of the burden of having to store fuel in its own country.

If it can send spent fuel to Russia, that would be a huge incentive to give up its own reprocessing capability, and that is facilitated by a 123. In fact, without a 123 in place, Russia would not be able to pursue this kind of a back-end fuel center because it just would not be profitable.

Chairman BERMAN. Henry?

Mr. SOKOLSKI. The origins of this 123 Agreement have to do with the end of the Clinton administration, in many respects, and the beginning of the Bush administration. You need to talk with a Thomas Cochran at the NRDC.

Before it became this open-ended, "let us reprocess possibly in the future, and maybe we will do a fuel bank" proposition, it was something really quite sensible, and something my center supported. It was, "You can take U.S.-origin spent fuel to store, and you can make $10–20 billion for the fees, but you have to promise that you will not reprocess it because that would undermine the taboo on making plutonium-based fuels."

We have backed off that here. We do not speak about that. If anything, in the Nonproliferation Assessment Statement, it endorses, indirectly, the idea that reprocessing is absolutely critical. I think that is quite astonishing and something this committee needs to understand what it is endorsing by not conditioning this.

Chairman BERMAN. I think my time has more than expired, so we will have a chance to get back to this.

The ranking member, Mr. Wilson, for 5 minutes.

Mr. WILSON. Thank you, Mr. Chairman, and, Secretary Einhorn, thank you for your presentation today. Indeed, in my visits to Russia over the last 18 years, I have seen it evolve from a totalitarian dictatorship, a backward country, a country that seemed so decrepit. Now, when I visit, it is just startling, as I travel around the country, to see the remarkable economic progress. Now you visit a modern country where people actually have opportunities, and I am just very hopeful for the country.

I am still concerned about its democratic, or lack of democratic, full development, but it is a much more open country, a much more positive country, than anything that might have existed in 1973.

As we look ahead, though, with this particular agreement, what, realistically, can the United States expect to sell to Russia as a result of the agreement, and what do we have that they want or need and that they cannot procure elsewhere?

Mr. EINHORN. Well, there are a number of things that the Russians will want. One thing they want is the kind of seal of approval they get from having this agreement, which could, I think, help them market their products in Third World markets.

Given the past and the history of Chernobyl and so forth, there are still lots of countries who are wary about buying Russian reactors and other nuclear products. I think one of the reasons the Rus-

sians want this agreement is to have a United States seal of approval. There are some countries that are concerned about buying Russian reactors with Russian safety and control equipment. There are American vendors of safety and control equipment that could cooperate with Russian reactor vendors and give the Russians a safer and more marketable product. That is one example of why the Russians may want this.

There are all kinds of components, non-nuclear aspects of reactors, and so forth, where collaboration between American firms and Russian firms could be to the interests of both of them.

Mr. WILSON. Additionally, I am impressed, the chairman brought out that Senator Nunn and Senator Lugar are actually supporting this agreement. I have had the privilege of visiting the Kochetov Institute in Moscow, the fruits of their labors of persons working there with the U.S. Department of Energy. So it is really encouraging to see what I have seen, but one of the major objections to the agreement is that it is not clear whether Russia has actually stopped assistance to Iran's nuclear sector.

Wouldn't it be better to wait 6 months, or even a year, to see if assurances are actually implemented? What would be the downside of waiting for a reasonable period of time?

Mr. EINHORN. One way to do that, as you suggest, is to hold off on approval until you see a track record of compliance with these assurances.

Another way, and, I think, a better way, is to go ahead and approve the agreement, but then perhaps condition its continued implementation on the new administration's, the President's ability to certify that Russia is, in fact, abiding by its pledge and not permitting Russian entities to engage in irresponsible nuclear cooperation with Iran.

One could imagine a requirement in legislation that had the President annually, say, either reporting on what Russia is doing, in terms of sensitive cooperation, or having to certify that Russia is not, in any way, assisting Iran's nuclear weapons program, or, if Russian entities are, in fact, engaging in irresponsible cooperation, that Russian authorities have disciplined that Russian entity and stopped such cooperation. But one could imagine various conditions written into legislation which would give you continuing leverage and ability to influence Russia's transfer behavior with respect to Iran.

Mr. WILSON. I appreciate the points you are making. Indeed, I sincerely hope that the people of Russia understand that they have the same interests, and the government does, too, as those of us in the United States, and that is to eliminate the potential for nuclear weapons falling in the hands of terrorists. We will both be targets together, and we should be stopping this. Thank you very much.

Chairman BERMAN. The gentleman from Georgia, Mr. Scott, is recognized for 5 minutes.

Mr. SCOTT. Thank you very much, Mr. Chairman.

I would like to address this to both of you. First of all, going back to where you left off, Mr. Einhorn, it seems to me that your strategy sort of puts us at a weaker position, to agree to this agreement

and put conditions in when we already have evidence that Russia is not adhering to the guidelines.

The Nuclear Proliferation Assessment Statement that was sent with the 123 Agreement states that the United States has received assurances from Russia at the highest levels that its government would not tolerate nuclear cooperation with Iran, in violation of relevant U.N. Security Council resolutions, and yet, even the administration admits that Russia is, right today, violating that, for they are helping Iran make nuclear-capable missiles that could reach and hit Europe and Israel. I do not see where our leverage is sustained.

Furthermore, it seems, to make this decision now, clearly 5 months before a new administration comes in, puts us at an even stiffer advantage.

So I would like to get your comments on that. What are the assurances that Russia would be in compliance with these resolutions when we do not even have any monitoring or oversight infrastructure put into place?

I value Senators Nunn's and Lugar's insight greatly, and that gives us all reason to look at this, but I think we should look at it with a more jaundiced eye, in terms of the very leverage that you talked about, and I think that, if we take your point of view, it puts us in a weaker position and not a strong one, as you advocate, and I would appreciate it if the two of you would respond to that.

Mr. EINHORN. First of all, I have not seen the current evidence that the administration has presented to you. Presumably, they have provided classified briefings to you on the nature of ongoing interactions between Russians and Iranians. I have not seen that, although I thought I heard the administration witness indicate that the current cooperation was with the Bushehr reactor, which is acknowledged safeguarded cooperation.

I did not hear him indicate that there was any cooperation going on outside of Bushehr, but you know better than I do.

Chairman BERMAN. That was just a response to nuclear cooperation, not missile cooperation.

Mr. EINHORN. Okay. This is a nuclear agreement, and nuclear is the most important aspect of the behavior, and it would be important to me if the Russians had, in fact, stopped illicit nuclear cooperation or cooperation in sensitive technologies like enrichment or reprocessing. That would be an important factor.

But if we take the approach that you are suggesting, Congressman Scott, and waited, held off for a year or so and waited, to see whether the Russians started behaving better, we would risk losing whatever leverage we would get from implementing this agreement.

As I mention in my remarks, the Russians have alternatives. They can cooperate with Japan, they can cooperate with western Europeans, and they may well do that. They have already begun doing that. I think the way that we can continue to influence them in an ongoing way is to begin this cooperation with them, give them a continuing vested interest in working with us.

One also has to take into account that we will be dealing with a new Russian President, Medvedev. We want to establish a better relationship with him so that we could do things jointly with the

Russians that serve our own interests, and this, I think, would give us a better basis to do that.

Mr. SCOTT. I have 30 seconds. I wanted to give Mr. Sokolski a chance to respond to that.

Mr. SOKOLSKI. First, Western Europe and Japan cannot cooperate on reactors because they have to ask permission to share mostly American design work that is in their reactors to be shared with Russia. So the idea that they can just go anywhere is not quite right. We still have control over our reactor technology.

Second of all, I urge you to take a look at page 5 of the testimony that I submitted. It describes the missile technology cooperation that has been reported in the press. It is stunning. It is very disturbing.

And then, finally, let me close with this one comment. I took notes on the administration witness' comments. He said, "We feel that what they have done at Bushehr's has mitigated our concerns."

My center has done a study. It was validated by interviews with State, the IAEA, and the National Labs. You can make many, many bombs' worth of material from Bushehr and seize that material for chemical reprocessing and have a bomb in about 10 days, and you would have lots of good material.

Second, the administration witness said, "Nothing outside of the Bushehr that is going on causes us concern." Well, I would submit that that is what they think. You need to get briefed, and I mean reading classified information, to see how you feel. You might feel differently. You owe it to your constituents and to us to go find out.

Chairman BERMAN. The time of the gentleman has expired. The gentleman from California, Mr. Rohrabacher.

Mr. ROHRABACHER. Thank you very much, Mr. Chairman.

Let us just note that China has given cruise missiles to Iran. China gave nuclear weapons technology to Pakistan. China facilitated the transfer of that nuclear technology to North Korea. China is the world's worst human rights abuser and has not had one inch of political reform or liberalization of their freedoms of their people, yet we give Most Favored Nations status to China. We are actually providing China with massive investments, which would not be possible without us offering the legal foundation for those investments. We give them technology transfers. Now, this administration has proposed permitting some degree of the transfer of security technologies.

China gets Most Favored Nations status where Russia, on the other hand, withdraws its troops from their forward positions in Eastern Europe and permits relatively hostile governments to emerge in Eastern Europe, countries which they dominated before. They ended up working with us to help dismantle a large number of their nuclear weapons in the Nunn-Lugar Agreement.

They have permitted opposition parties, and they basically have opened up freedom of religion and other types of freedoms that were restricted during the Communist era, yet Russia—we have not even eliminated the Jackson-Vanik restrictions on Russia, much less tried to bring Russia into the family of nations, in terms of the economic global market among free peoples.

This has been disgraceful. I think the way we have treated has been disgraceful. Coming from an old Cold Warrior, this is exactly the opposite of what we led them to believe. We said we are going to reach out to them. This agreement is an attempt to cooperate with Russia on this end.

Now, I happen to believe that we have a technological way out of the dilemma of having any of our nuclear cooperation result in a greater degree of a nuclear threat, and that is, with this high-temperature, gas-cooled reactor, which is a possibility which has been ignored—basically, frankly, a lot of the elements of this agreement were based on the old technology.

We, in Congress, can insist that any of the implementation of the 123 Agreement be made with technology that will not produce more material that can be turned into bombs, namely, plutonium. We have that technological alternative. If we act upon it legislatively, this agreement could turn out to be a very positive thing for us. This is the type of positive approach that will work.

What has happened is we have not permitted Russia in. We have not cooperated. We have, instead, treated them like the bad boy of the neighborhood still. We have not opened our markets. Certainly, the EU has not opened their markets. We need to bring them into areas of cooperation, and nowhere is that better than perhaps in the area of nuclear energy development in India and elsewhere. And, as I say, we should put the restrictions on this so that we use the new technology, the high-temperature, gas-cooled reactor, which is a joint project between the Russians and the Americans, as the basis of that.

Now, I would like your opinion on my comments, and please feel free, both of you.

Mr. SOKOLSKI. May I comment? The HTGR is a program that continues to get R&D, fixed-fee contract support from DOE and has for several decades. There were two of these machines commercially online. They had to be shut down for safety reasons. They do use weapons-usable, require using——

Mr. ROHRABACHER. They use it, but they do not produce it. That is the important element.

Mr. SOKOLSKI. I understand. I understand.

Mr. ROHRABACHER. Reclaiming my time for one moment, let me just note for the audience on this, this will eat the plutonium and will end up eliminating—this should actually be part of the Nunn-Lugar process. We should develop this reactor to eat that stuff coming out of their weapons. Go right ahead.

Mr. SOKOLSKI. How should I put it? Let us assume all of the benefits and none of the downsides.

Mr. ROHRABACHER. Okay.

Mr. SOKOLSKI. I cannot think of a riskier way to proceed than to take that technology, which has had a troubled past, and try to develop it in a country that does not yet have ratified the CSC.

Mr. ROHRABACHER. Have you studied this reactor? Have you studied this reactor?

Mr. SOKOLSKI. Say again?

Mr. ROHRABACHER. Have you studied this reactor?

Mr. SOKOLSKI. Yes.

Mr. ROHRABACHER. Okay. Have you visited the reactor in Japan that is functioning right now?

Mr. SOKOLSKI. I have gone to Fort Saint Vrain.

Mr. ROHRABACHER. There is a functioning reactor in Japan. Have you gone there?

Mr. SOKOLSKI. I understand. What I am trying to say is——

Mr. ROHRABACHER. I just came back from there.

Mr. SOKOLSKI. If you are in favor of this, why would you want to build it first in Russia?

Mr. ROHRABACHER. Because this is a great opportunity, as was missile defense, which we passed up the opportunity to cooperate with the Russians, this is a great opportunity to show them that we really do consider them friends and bring them in rather than always trying to use a stick to beat them up when they have done something that we do not like.

Mr. SOKOLSKI. I would bring them here, where there is insurance coverage. That is what I would do.

Chairman BERMAN. The time of the gentleman has expired. The gentleman from California, Mr. Sherman, is recognized.

Mr. SHERMAN. It is thought that there is no agriculture within the boundaries of the District of Columbia. This is false. We are sitting in the largest urban mushroom ranch where 435 separate mushrooms are kept in the dark and are fed whatever mushrooms are fed.

The panelists believe that members of this committee have received meaningful classified briefings. They live in a parallel universe in which the United States is a constitutional democracy and in which Congress is given the information necessary to participate in foreign policy decisions. When you return to this separate and parallel universe, please give that Congress our hearty respect and greetings.

This Congress receives no meaningful classified briefings. The gentlemen before us have no more classified information of use than we do, and that is the biggest problem with this 123 Agreement. You see, we are told, we have got to pass it, it has got to go forward, it is really important, and then we ask why, and we are told that it is little more than an atmospheric agreement, kind of a suspension resolution honoring the birth of Peter the Great. I do not, for a minute, think that that is why this agreement is before us.

But we ask, "What specifics are likely to occur, or are designed to occur, if we approve this agreement?" and we are told, "Well, maybe it is this nice, harmless thing, and maybe it is that kind of good thing," without ever being told what is actually going to happen or why Congress cannot simply approve specific elements of cooperation without, instead, writing a blank check to the Kremlin and to the White House and saying, "Go forth. You will tell us you are going to do this or that, but you are really going to do something else."

I will ask our panelists, which financially powerful interests here in the United States see themselves as potentially benefiting from the adoption of this 123 Agreement? Mr. Einhorn?

Mr. EINHORN. I really do not know which financially powerful institutions in the U.S. stand to benefit by it. This is a general

framework for cooperation. It does not specify any particular kind of cooperation. In fact, particular cooperation has to be authorized by subsequent decisions by U.S. Government authorities.

Mr. SHERMAN. The "U.S. Government," meaning, of course, Article 2 of the Constitution, Article 1 being completely cut out of the process as soon as this agreement goes forward.

Mr. EINHORN. Well, I am not a constitutional lawyer, but the executive branch has the authority to——

Mr. SHERMAN. Oh, we trust them. Let me go to our other witness. Who will benefit, so long as they can get the administration to do what they anticipate the administration doing?

Mr. SOKOLSKI. The firms most likely to benefit are those that would get fixed-fee contracts and indemnification from the Department of Energy to do GNEP-related activities with recycling, fast reactor work.

Mr. SHERMAN. So they not only want this agreement; then they expect the Department of Energy to give them subsidies, or was it liability insurance?

Mr. SOKOLSKI. I think the answer is yes to both.

Mr. SHERMAN. And would it take congressional action to enrich these companies in that way?

Mr. SOKOLSKI. You would have to appropriate, but it would be in an energy bill. I think, if you take a look at the companies that are most active in sponsoring research in favor of this agreement, Areva comes up, which does reprocessing and has a fast reactor program in its history; Japan's nuclear utilities that use mixed-oxide fuel——

Mr. SHERMAN. I do have one other question, and it relates to—I will call it "Mr. Rohrabacher's technology." I learn a lot from my colleague from California. The one concern I have is, is the technology he is talking about one that has to employ weapons-grade or near-weapons-grade uranium?

Mr. SOKOLSKI. It has, and it does require that going in. Now, they may be working on power core technology that can go to lower enrichment levels, so we have to take a look. But the big proliferation question with the HTGR is, What are you starting off on?

Mr. SHERMAN. Mr. Einhorn, do you have a different comment?

Mr. EINHORN. This agreement is neutral with respect to any kind of technology. It is not, as many people claim, a way of boosting the recycling of plutonium. It does not favor Mr. Rohrabacher's preferred technology. It is neutral.

Mr. SHERMAN. It is neutral, except to the extent that it is a complete blank check to the executive branch of government, and I believe my time has expired.

Mr. SOKOLSKI. With all due respect, it is not neutral. There is a statement of joint cooperation that focuses precisely on the HTGR and on GNEP, which has to do with recycling. You are sending plutonium-based fuel to a fast reactor, a breeder, in Russia. It is quite clear, if you take a look at the Nonproliferation Assessment Statement that is unclassified, it is there.

Chairman BERMAN. I think Mr. Sherman would say to Mr. Einhorn, Congress has no role in deciding about the export licenses, and, therefore, without even getting into it—let me quit try-

ing to interpret questions and answers and recognize the gentlelady from Texas, Ms. Sheila Jackson Lee, for 5 minutes.

Ms. JACKSON LEE. Let me thank the witnesses and the previous witnesses for their testimony and hope that this hearing is characterized as a very dedicated attempt to reestablish the three branches of government. I think that is the frustration that many of us are now perceiving, which is that, for our own administration to testify today, in a public setting, that this is an important national security element for us, but that we have no leverage, and it is not important for Russia.

So, in essence, in a public setting, the United States Government has indicated that we are impotent, and, you, the United States Congress, need to affirm that impotency. I think that is ludicrous, ridiculous, and unacceptable.

So I would like to pursue with the two gentlemen the question of the Congress' leverage and responsibility, and I know that you may not have in front of you a constitutional document, meaning the Constitution. You may not be constitutional scholars. But, frankly, we cannot move Section 123, or move it in the context of not having leverage.

Now, my friends have indicated, and I agree with them, that relationships with the new Russia have been unique and interesting. Over the next couple of years, there is the possibility that we may be riding with Russians to the international space station. These are new and different and positive relationships, but I refuse to accept that we have no leverage, and I think there is an important point that all of us may ultimately be a target of mishandled nuclear materials.

So let me start my first question so that I can build on the second, which is, I want each of you to give me an assessment of what do you believe the nature of Russian nuclear cooperation with Iran is.

So maybe they feel that because they are comfortably in a good relationship, they do not have any jeopardy, and I believe the leverage has to be, one aspect of the leverage, if you go to the next step, if their cooperation does not dumb down Iran's potential deadly acts, then their cooperation and our leverage should be, we are all in the eye of the storm. Why are we not having leverage?

The other question would be, what should be the heightened responsibility of Congress? I do not need you to adhere to any rules or statutes, but what would the American people perceive our responsibility to be, in terms of an agreement that is made that comes here? Congressman Markey has indicated that we need to just downright be very skeptical and maybe take it to the next step.

So I would be interested in, first, those two questions, Mr. Einhorn, if you would start.

Mr. EINHORN. Thank you, Congresswoman. I think the prospect of a 123 Agreement has already enabled us to exercise some leverage. I think it was a lure to get Russia to do a number of things.

Ms. JACKSON LEE. And, Mr. Einhorn, do not forget to quickly tell me what the relationship between how much of a relationship does Russia have with Iran, in terms of nuclear proliferation or nonproliferation.

Mr. EINHORN. I think Russia has agreed to take back spent fuel from the Bushehr reactor, to offer to have Iran do its enrichment in Moscow, not in its own country; a number of Security Council resolutions. I think leverage has already been exercised there, and I think we can exercise continuing leverage over Russian behavior by implementing this agreement because Russia knows that if they engage in irresponsible cooperation with Iran, we can decide not to issue licenses because every action requires subsequent United States Government approval.

On your question about what kind of cooperation is going on now, well, plenty of cooperation that we know about to complete the Bushehr reactor and sending fresh fuel to fuel that reactor. Now, whether there is any illicit cooperation going on to support their reprocessing effort, I just do not know. I hope that all members have received classified briefings on it. I cannot tell for myself, although the administration witness who was here before suggested that the cooperation is only the above-board cooperation for Bushehr and not this illicit cooperation.

As to the responsibility of Congress, I think Congress can condition this 123 approval on continued Russian responsible behavior by denying United States entities the right to export equipment technology to Russia if Russia behaves irresponsibly and does not crack down on any Russian entities that may be engaged in irresponsible cooperation with Iran.

Ms. JACKSON LEE. Thank you. May I let the other gentleman answer?

Chairman BERMAN. The time of the gentlelady has expired, and the gentleman from Massachusetts.

We will come back. We will do another round, and I recognize myself.

Mr. Einhorn, you referenced the conditionality option as a preferable option to letting the clock run and starting again in January. Let us start with the appropriate conditions.

We have conditions now that affect cooperation with the Russian space program. Some have suggested transferring those conditions, removing from the space program because of some compelling need for Russian launch capabilities in our own efforts and transferring them to this 123 Agreement.

Let us drop out those parts of the conditions that deal with past conduct and with the space agencies and anybody affiliated with the space agencies and focus on the nuclear, the missile, and the advanced conventional cooperation with Iran. Would those be appropriate conditions to put on this?

Mr. EINHORN. My preference would be to associate Russia's behavior on nuclear with nuclear cooperation and Russian behavior on missile with rocket or space cooperation; in other words, to split it up and to condition the licensing of cooperation in the nuclear area on responsible Russian behavior in the nuclear realm and, particularly, on ensuring that Russian entities are not providing assistance in the areas of enrichment, reprocessing, or heavy water technology.

Chairman BERMAN. So confine the conditionality to the nuclear.

Mr. EINHORN. That is right.

Chairman BERMAN. Now, we have two issues with Russia on this, and the broader question that Mr. Sherman first raised in his opening statement that Mr. Rohrabacher and Mr. Wilson both referred to of our overall policy toward Russia; put that aside for this purpose.

One is the proliferation activities. The other one is, as part of a total restructuring of how we deal with Iran, having Russia as a partner and imposing serious sanctions, not that stuff at the U.N. but serious sanctions. Is that an appropriate condition, based on the nuclear issue, not on other issues?

Mr. EINHORN. It is certainly harder to make that an objective condition. I think it is easier to say that if Russian entities are providing assistance in enrichment or reprocessing, then there will be no licenses issued. But I think it is important to try to incentivize Russia to be more helpful in general, diplomatically and otherwise, to prevent Iran from acquiring an enrichment program, and perhaps the Congress would decide to require the President to report annually on the extent to which Russia is being supportive of efforts, in the Security Council and outside the Security Council, to pressure Iran to suspend its enrichment program.

Maybe you impose a reporting requirement that has the administration evaluating how helpful Russia is being, and Congress can receive that information and take whatever action it sees fit.

Chairman BERMAN. Mr. Sokolski, on the issue of conditionality, limiting it to the nuclear, covering the proliferation, what is your reaction? You did, at one point, at least, leave open the possibility of approval with conditions.

Mr. SOKOLSKI. Yes, except I would not go forward and wait for a report. I just would not go forward until the conditions were met, and I think——

Chairman BERMAN. I think Mr. Einhorn had a bifurcated position there.

Mr. SOKOLSKI. Yes, yes, he did. But we are getting closer. Bob and I do work together on a lot of things.

In any case, three comments. I do not understand why you would not focus on ratification of the CSC. They have gotten nowhere pushing. It would seem to me that you are not really going to have private venture nuclear activity until you get that thing ratified. They have signed it. They need to move to the next step. We have been pushing and pushing, and industry has been pushing.

Second, it is nice to separate the nuclear-capable missile from the nuclear program. However, if you go to the IAEA and what they are focusing on, like a laser beam right now, it has to do with missile warhead design, information we got from looking at their missile-capable rockets.

I think, when you realize that the Russians right now are being reported as having built a factory and are sending people down there, how you separate that out from the nuclear, I do not know.

Chairman BERMAN. My time has expired. The gentleman from South Carolina will pass. Mr. Scott? Where did you go? Oh, there you are.

Mr. SCOTT. I will proceed. One of the rationales behind the U.S.-Russia 123 Agreement is that technical cooperation will help both

the United States and Russian commercial nuclear industries compete in an expanding global, nuclear market.

Would you tell me, Mr. Einhorn, what United States national interests will be served by a Russian expansion of its commercial nuclear supply industry, especially in light of the fact that it took the United States 10 years, from 1995 to 2005, to get Russia to scale back its nuclear cooperation with Iran, the part that we can see.

So the issue becomes, will an expanded Russian nuclear infrastructure be easier to rein in?

Let me just say this, too. My real concern is this, that there is a power struggle going on in the world amidst all of this. It is a dangerous game that is being played because we are playing it with nuclear capacities. I cannot think of a more urgent issue facing the future survival of the world than what we are discussing here today.

So I am very much concerned, as you see my line of questioning, when we have not had good experience with Russia cooperating before, I am just wary of giving the store to them when all of the evidence points that I think our kindness will be taken advantage of, just as it has been done in the past.

Mr. EINHORN. You are concerned that giving Russia or facilitating greater Russian commercial opportunities will lead to Russia doing some irresponsible things. Well, we have the experience of the 1990s, where Russia was in very bad shape economically, and they were desperately looking to make a buck through nuclear cooperation with other countries.

What happened was they were prepared to do irresponsible things with Iran, perhaps willing to do that with others, because they really needed to earn hard currency, and that is when some of the sensitive cooperation with Iran began, in the nineties when they were economically hard up.

I think, now, when they are in much better shape, commercial sales of reactor products by Russia carry much less of a proliferation risk. One thing this 123 Agreement would do would be to permit certain kinds of joint ventures between United States and Russian firms, and I think any joint operation like this would give us much greater influence over the nature of that cooperation and a much better window to see what was going on.

So I do not think greater Russian commercial operations necessarily lead you to proliferation dangers.

Mr. SOKOLSKI. It does not necessarily, but I think making the reactors as attractive, or nearly as attractive, given their lower prices than American products, raises a problem when you take a look at what countries Russia wants to make its next sales to.

It will include a lot of Middle Eastern nations, and I think what you really need to do is ask the question, "Are either of our countries making sales that are driven by market demands in the first place?" If they were sales to places where the economics were clearly profitable and profit driven with regard to producing electricity with nuclear power reactors, I would feel a lot more comfortable. These are going to places that are awash with natural gas and oil.

By the way, this is an indictment maybe of what we are doing, too. I am not trying to say that only the Russians have to be cau-

tious. I think we need to be cautious about what we are pushing out to the Middle East as well.

I am not sure that making their products more competitive by sharing our technology with them is a complete thought on that front.

Chairman BERMAN. The time is almost expired. Are you yielding?

Mr. SCOTT. Yes.

Chairman BERMAN. I think there are many other issues, and many of these issues, to explore further but not here today. You have been here for 4 hours. Thank you very much for participating. It is a great start to our inquiry, and we will be in touch with you. The hearing is adjourned.

[Whereupon, at 1:45 p.m., the committee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE RON KLEIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Thank you, Mr. Chairman, for holding this hearing. It is critical that we consider these issues now, because when it comes to the Iranian nuclear program, time is of the essence.

President Bush is in Europe this week. In an interview with a British newspaper, he said that he wanted to spend the last few months of his presidency focusing on a legacy of international diplomacy for tackling Iran.

I'm glad that the President understands the urgency, but I'm not certain that President Bush is using every tool in the toolbox to stop Iran. Certainly, the United States has not used all our diplomatic leverage with our allies, and I believe that that must be a top priority.

With a pending Russian-US agreement, we must explore all options to ensure that Iran understands that the United States *finds a nuclear Iran absolutely unacceptable*. We must be willing to work with all of our allies to show a united front. With strict *and enforced* sanctions, we can send that message to Iran.

PREPARED STATEMENT OF THE HONORABLE DONALD A. MANZULLO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. Chairman, thank you for holding this important hearing on the "Russia 123" nuclear agreement between the United States and Russia. This is a very significant agreement that offers a framework for future nuclear cooperation, transfer of technology, material, and equipment. In principle, this agreement should be a positive addition for the bilateral relationship with Russia. However, there remain significant concerns that must be addressed before I feel comfortable in supporting this proposal.

The Russia 123 agreement comes at a time when relations between our two countries are at an all time low since the end of the Cold War. Under the leadership of former President Vladimir Putin, the Russian government embarked on a systematic effort to defeat the very democratic progress and market reforms that were painfully achieved after the collapse of the Soviet Union. On the international front, Russia's withdraw from the Treaty on Conventional Armed Forces in Europe, its resumption of strategic bomber flights, and its aggressive behavior towards its neighbors are all reasons why I have deep reservations about this agreement.

Russia's on-going relationship with Iran further complicates this agreement. For example, Russia agreed to supply fuel to Iran's nuclear reactor in 2005 despite the international community's concerted efforts to denuclearize that country. Russia's continued support of Iran is one of the primary reasons why Iran is such a strong destabilizing force in the Middle East, which includes threatening American troops and our friend Israel. Thus, I find it very hand to believe that with all this evidence of uncooperative international behavior by Russia, the Administration still proceeded to submit the Russia 123 agreement to Congress for consideration.

Mr. Chairman, I look forward to the testimony of our distinguished panel.