

April 25, 2018

The Honorable Bob Corker
Chairman
Senate Foreign Relations Committee
United States Senate
Washington, DC 20510

The Honorable Bob Menendez
Ranking Member
Senate Foreign Relations Committee
United States Senate
Washington, DC 20510

The Honorable Ed Royce
Chairman
House Foreign Affairs Committee
United States House of Representatives
Washington, DC 20515

The Honorable Eliot Engel
Ranking Member
House Foreign Affairs Committee
United States House of Representatives
Washington, DC 20515

Dear Chairman Corker, Ranking Member Menendez, Chairman Royce and Ranking Member Engel:

The undersigned strongly oppose the proliferation of nuclear weapons and weapon-usable materials in the Middle East and any arms race in the region. We understand that the United States and Saudi Arabia are negotiating a peaceful nuclear cooperation agreement (a so-called “123” agreement). We write to urge you to support the conclusion of a 123 agreement between the United States and the Kingdom of Saudi Arabia that meets all the requirements of U.S. law and that erects effective barriers to prevent the misuse of civil nuclear power for nuclear explosive or military purposes, but does not seek to impose conditions that the Saudis will ultimately reject.

Saudi Arabia plans to construct a large number of nuclear power reactors over the next 20 to 25 years at a cost of potentially more than \$80 billion. China, France, the Republic of Korea, and Russia are competing with the United States to perform engineering, procurement, and construction work on an initial purchase of two nuclear reactors, and it is anticipated that the winner of the competition will have an advantage with regard to the further construction.

Questions have been raised about Saudi nuclear intentions, particularly after the recent statement by Crown Prince Mohammed bin Salman that,

“Saudi Arabia does not want to acquire any nuclear bomb, but without a doubt, if Iran developed a nuclear bomb, we will follow suit as soon as possible.”

To prevent the Kingdom from entertaining such a step, the United States must continue to strive to prevent Iran from acquiring a nuclear weapon capability. In addition, the nonproliferation commitments that Saudi Arabia would undertake in a 123 agreement with the United States can serve as an effective means of dissuading the Kingdom from considering a nuclear weapon option.

123 agreements are necessary for the United States to export nuclear reactors, fuel and equipment and contain nonproliferation controls on nuclear exports that are more stringent and comprehensive than those of other suppliers. However, some in Congress are insisting that an agreement with Saudi Arabia contain a legally binding commitment by the Kingdom to forswear the acquisition of uranium enrichment and spent fuel reprocessing capabilities because such technologies can produce nuclear materials that can be directly used in nuclear weapons. (Some lawmakers have introduced legislation that would limit all future U.S. 123 agreements to countries that make this legal commitment.) However well intentioned, these efforts may limit the influence of the United States in preventing proliferation in the Middle East and damage U.S. national security.

Of the twenty-three agreements the United States has concluded with other nations, including the 28 member states of EURATOM, only two have accepted an obligation to forswear enrichment and reprocessing—the United Arab Emirates (UAE) and the authorities in Taiwan. Both of them had their own reasons for undertaking such a commitment. The UAE simply put into its 123 Agreement what is in its national law. The UAE made its own decision to forgo enrichment and reprocessing in its national law well before signing the 123 agreement, not because of pressure from the United States or anyone else. The UAE also has a provision in its national legal structure committing the government to adopt technology developed in the future which serves to inhibit proliferation risk. The authorities in Taiwan agreed to forswear enrichment and reprocessing because Taiwan is extraordinarily dependent on the United States and agreed under U.S. pressure.

In a 2008 memorandum signed with the United States, Saudi Arabia registered “its intent to rely on international markets for nuclear fuel and to not pursue sensitive

nuclear technologies, which stands in direct contrast to the actions of Iran.” However, it refused to accept a legally binding commitment to forego such technologies. Both the Saudi Energy Minister and the Foreign Minister have recently reiterated this position.

It will be difficult to convince Saudi Arabia to accept a permanent ban on uranium enrichment when the Joint Comprehensive Plan of Action allows existing and future uranium enrichment activities in Iran. Iran’s uranium enrichment activities were the fundamental basis for international concerns about its peaceful nuclear intentions which then led to the JCPOA.

Saudi Arabia is a proud country, seeing itself as a leader of the Islamic world, and is particularly sensitive to such sovereignty concerns. The vast majority of parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) take the position that article IV of the treaty entitles a party in good-standing to acquire its own independent fuel cycle, including enrichment and reprocessing, so long as it fully abides by the treaty’s provisions.

The 120 members of the Non-Aligned Movement (NAM) have been particularly vocal in their opposition to such restrictions and made this position known in strongly worded working papers submitted to the 2010 and 2015 NPT Review Conferences. The NAM document submitted to the 2015 conference read,

“The Group of Non-Aligned States Parties to the Treaty rejects, in principle, any attempt aimed at discouraging certain peaceful nuclear activities on the grounds of their alleged “sensitivity”. The Group further underlines that concerns related to nuclear proliferation shall not, in any way, restrict the inalienable right of any State party to develop all aspects of nuclear science and technology for peaceful purposes, without discrimination, as stipulated in article IV of the Treaty.” <http://undocs.org/NPT/CONF.2015/WP.5>

The United States does not share these views of the NPT and does not regard article IV of the treaty as providing any right to a specific technology irrespective of the proliferation risk.

Nevertheless, the United States has to reckon with the reality that few countries are willing to trade away what they see as a sovereign right, even if they have no near-term interest in pursuing either enrichment or reprocessing.

Other suppliers do not require their cooperating partners to forswear enrichment and reprocessing as a condition of their supply and do not impose the comprehensive restraints that the United States does. Saudi Arabia has made clear that it is prepared to contract with other suppliers if the Kingdom cannot reach an agreement with the United States. Khalid al-Falih, the kingdom's energy minister recently said, "The irony is that if the U.S. chooses not to (seal a deal) then somebody else will and we are fortunate to have many other alternative sources that have agreed to work with us and they will be competing for our program." In that case, he said, "the U.S. will not have a seat at the table."

In short, if the United States insists on requiring the UAE model in an agreement with Saudi Arabia, Riyadh will buy its nuclear reactors from China, Russia, France or South Korea¹ and thereby undercut the U.S. ability to influence nuclear power, security and safety programs in Saudi Arabia.²

U.S. agreements require strict nonproliferation controls that go beyond those of other suppliers, such as consent rights on reprocessing, enrichment, and storage of weapons-usable materials subject to our agreements. These controls continue in perpetuity even if an agreement is terminated or expires, so that International Atomic Energy Agency (IAEA) safeguards would continue to apply even if Saudi Arabia were to withdraw from the NPT.

In addition to these legal requirements, the United States should urge that the Saudis accept the Additional Protocol to its safeguards agreement so that the IAEA will have greater information about, and access to, that country's nuclear activities. The United States should also call upon other nuclear suppliers to promote widespread acceptance of the Additional Protocol.

U.S. 123 agreements provide a framework for establishing invaluable person-to-person and institution-to-institution contacts and collaboration, including discussions of fuel cycle, nuclear safety, security and nonproliferation issues that can help advance our objectives in these areas.

¹ If the Republic of Korea supplies reactors of the type that it sold to the UAE, it will need the approval of the United States if they contain U.S. components or technology.

² In the 123 agreement with the United Arab Emirates (UAE), the UAE agreed to forswear the acquisition of enrichment and reprocessing. A U.S. - Saudi agreement that does not contain a similar commitment would allow the UAE to invoke a provision of their agreement with the United States that, in the event the United States concludes a more "favorable" 123 agreement with another Middle East non-nuclear-weapon state, the UAE would be entitled to consult with the United States regarding the possibility of amending its agreement to make its terms equally favorable. However, given the smooth implementation of the U.S.-UAE agreement and the Emiratis' interest in ensuring its continued operation, it is doubtful that the UAE would press to renegotiate their agreement with the United States in order to abandon their commitment to forsake enrichment and reprocessing.

The United States needs to take a continuing leadership role in preventing the risks of the spread of sensitive nuclear technologies. There are many tools to do this, including: strict export controls, interdiction to cut off black-market procurements, legal rights to approve reprocessing or enrichment of any nuclear material covered by our agreements, and the strengthened criteria adopted by the Nuclear Suppliers Group to restrict the transfer of these technologies. However, no approach will succeed if it is based mainly on attempting to convince nations that abide by their nonproliferation obligations to give up what they see as sovereign rights. The United States needs to adapt its policies to the needs and interests of individual countries. Saudi Arabia may be willing to accept a legal commitment not to proceed with either enrichment or reprocessing for a long-term period and refrain from trying to acquire such capabilities without the approval of the United States, but it will not accept a legally binding blanket obligation to forswear these technologies forever.

Entangling Saudi Arabia's nuclear program in the web of U.S. nonproliferation conditions and controls will erect a robust set of barriers to any nuclear weapons ambitions that Saudi Arabia might entertain in the future by raising the stakes for, and minimizing the likelihood of, Saudi nuclear proliferation.

In sum, U.S. nuclear cooperation with Saudi Arabia will be advantageous to U.S. foreign policy, national security, and nonproliferation interests in the Middle East and beyond, but a 123 agreement with the Kingdom will not be possible if the United States seeks to impose conditions that Saudi Arabia will reject.

Sincerely,

Amb. Linton Brooks, former Administrator, National Nuclear Security Administration

Dr. John Browne, former Director, Los Alamos National Laboratory

Dr. Matthew Bunn, Professor of Practice, Harvard University

Dr. Jay Davis, first Director of the Defense Threat Reduction Agency

Amb. Thomas Graham, former Special Representative of the President for Arms Control, Non-Proliferation and Disarmament

Dr. John Hamre, former Deputy Secretary of Defense

Dr. John R. Harvey, former Principal Deputy Assistant Secretary of Defense for Nuclear, Chemical and Biological Defense Programs

Dr. Siegfried Hecker, Center for International Security and Cooperation, Stanford University and former Director, Los Alamos National Laboratory

General James Jones (Ret.), former National Security Adviser

Dr. Scott A. Jones, Nonresident Fellow, Stimson Center

Amb. Robert Joseph, former Under Secretary for Arms Control and International Security at the U.S. Department of State

Mr. Kenneth N. Luongo, President, Partnership for Global Security and former Senior Advisor to the Secretary of Energy for Non-Proliferation Policy

Dr. Peter B. Lyons, former U.S. NRC Commissioner and Assistant Secretary for Nuclear Energy at the U.S. Department of Energy

Dr. Fred McGoldrick, former Director, Office of Nonproliferation and Export Policy at the U.S. Department of State

Dr. Richard A. Meserve, President Emeritus of the Carnegie Institution for Science and former Chairman of the U.S. NRC

Mr. Franklin C. Miller, former Senior Director for Defense Policy and Arms Control at the National Security Council

Dr. Nicholas Miller, Assistant Professor, Dartmouth College

Amb. Richard L. Morningstar, former U.S. Ambassador to the European Union and the Republic of Azerbaijan

Hon. William Ostendorff, former Principal Deputy Administrator at the National Nuclear Security Administration and U.S. NRC Commissioner

Mr. Daniel B. Poneman, former Deputy Secretary of Energy

Mr. Stephen G. Rademaker, former Assistant Secretary, U.S. Department of State

Dr. Victor H. Reis, former Assistant Secretary for Defense Programs at the U.S. Department of Energy and Director of DARPA

Dr. C. Paul Robinson, President Emeritus, Sandia National Laboratories and former Ambassador to the Nuclear Testing Talks

Admiral Robert F. Willard USN (Ret.), President and Chief Executive of the Institute of Nuclear Power Operations