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(Thomas R. Gibbon)

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MEMORANDUM FOR:

Chairman Hendrie
Commissioner Gilinsky
Commissioner Kennedy
Commissioner Ahearne
P.B.

FROM:

Peter A. Bradford

SUBJECT:

TARAPUR

☒ Declassify 2/9/85
or on 2/9/85
☐ Review (Date or Event)

(U) Following our second Tarapur discussion, I am setting forth a few thoughts on the confidence one can have that the Agreement for Cooperation and other assurances will continue in force for a period long enough to cover the initial existence of any plutonium made from this export, and thereby to give any meaning to the criteria dealing with nuclear explosions and with reprocessing. As noted below, I do not feel that even the continuation in force of the Agreement for Cooperation is by itself enough to meet the criteria in this case.

(U) The events that can preserve the necessary assurances are as follows:

- ~~(S)~~ 1. The Indians could adopt full scope safeguards before claiming a breach of the Agreement. Given the vehemence and unanimity of the statements of Indian political leaders on this subject and the fact that their conditions include events involving the weapons states that will not happen in the near future,* it seems to me that a realistic assessment must put this possibility very close to zero.
- ~~(S)~~ 2. The Indians could give the requisite assurances as to U.S. fuel and the reactor already in India even if fuel supply ceased and the agreement were terminated. Nothing that we have heard from the State Department gives us the slightest reason to think that such assurances are in prospect, and the IP analysis suggests that the Indians have thus far explicitly refused to do so. Furthermore, such assurances would clearly contradict Desai's position that India will be free to do as it likes with the spent fuel if U.S. shipments cease. As to the reactor, India has certainly refused to give any assurances unrelated to U.S. fuel.

(U) * During our deliberations on XSNM-1060, the Department of State reported that the Prime Minister had taken the "consistent position that India would accept such safeguards when at least the U.S., the U.K., and the USSR agreed to a complete nuclear test ban, agreed not to add further to their nuclear arsenals, and came to an agreement to have a gradual reduction of nuclear stockpiles, with a view to the eventual destruction of such stockpiles."

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(S) 3. (The only item on this list that is within the sole control of the U.S. Government), the U.S. might grant the yearly extensions necessary to string this matter out for several years. Note that this would require the President to do several times that which his spokesmen have already said was "highly unlikely" to happen once and would also require Congressional acquiescence each time. I would assess the probabilities of the full chain of extensions and Congressional ratifications actually taking place as being very low. However, this event is far more within the control of the Executive Branch than within our control, and consequently the Executive Branch is much better able to assess the precise probabilities in deciding that the President should authorize the export than we are in our deliberations. For purposes of our own decision, it seems to me to be unwise to speculate that Presidential spokesmen did not mean what they said to the Congress.

(S) 4. The U.S. might be able to arrange a firm return provision as to all of the spent fuel. This would take care of the fourth and fifth criteria. To satisfy the first, it would have to be accompanied by assurances on continued safeguarding of the fuel and the reactor. To satisfy the second, it would also require a "no explosives" assurance as to plutonium produced from non-U.S. fuel in the reactor, which India has thus far explicitly refused to provide. Such a return would have to be on Indian terms in the absence of enforceable U.S. rights over the spent fuel. This would mean repurchase, which contravenes our present spent fuel policy. No such discussions are under way at present to my knowledge.

(S) 5. Even if none of the above events take place and the shipment of fuel ceases, the Indians could choose not to claim a breach of the Agreement.* It is possible that the Desai government would maneuver to avoid an outright claim of breach for as long as possible. However, public opinion and a Parliament which remembered Desai's past statements about the consequences of a cutoff in fuel shipments

(S) * IP to the contrary notwithstanding, it is not enough for India voluntarily to forgo the removal of safeguards, the resumption of a weapons program, or the reprocessing of the fuel. Without binding assurances, the criteria cannot possibly be satisfied by speculations on possible conduct. Even if the Agreement were technically still in existence, its assurances would be of little value if they depended on continued voluntary conduct by the recipient nation.

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would make this course difficult,* especially if Hyderabad or Tarapur had to reduce operations substantially. India would, of course, need to claim a breach in order to be able to secure fuel elsewhere for the Tarapur reactors, and this need would be a powerful impetus toward an early claim of a breach even if the U.S. postponed a formal refusal to license.

- (S) 6. Somewhat more plausible than any of the above is the possibility that some combination of them might occur. For example, the U.S. might find some pretext (the safeguards committee, for example, though that does not seem promising at the moment**) to extend the deadlines once or twice, or to avoid formally refusing to send more fuel, during which time the Indians might see their way clear to full scope safeguards, to give assurances unrelated to future fuel supply, or to return of the spent fuel.

(S) I don't think that the chances of a combination improve a great deal over the chances of the components, but even more important, NRC consideration of them involves the purest guessing on our part while an Executive Branch decision to send the fuel would be based on relatively precise knowledge at least of their own intentions.

- (U) * Here and in several subsequent paragraphs, indicated by lines in the margin, I have speculated about future conditions and circumstances in India and in other countries in a manner that goes beyond known laws, agreements, and publicly stated positions. My own view is that such speculation has little place in our deliberations. As far as I am concerned, we are confronted by an Agreement for Cooperation and supplementary assurances which, according to India, depend on the fuel supply and the fuel supply will be cut off in the near future in the absence of events whose present unlikelihood is generally conceded. No speculation on these points is necessary to reach the conclusion that the criteria are not met.

- (U) Nevertheless, a fair amount of speculation has gone on in our meetings, and the highlighted paragraphs indicate just how debatable and ephemeral such conjecture is as a basis for an export licensing. My points are that there is not much reassurance available for any viewpoint from these speculations if one must resort to them, and, more important, they are not a sound basis for a decision one way or the other.

- (S) ** Looked at at this moment, the status of that Committee two months after its inception is as follows: It has never met, and no chairman has been found. Two of its four proposed members (the Indian choices) are from non-NPT countries that have not accepted full scope safeguards.

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(S) For every unquantifiable plus element such as the Safeguards Committee and the fundamental desire of the two countries to maintain good relationships, it seems to me that there are offsetting uncertainties the other way such as possible developments in Pakistan and Mrs. Ghandi's increasing popularity coupled with her continued intransigence on proliferation questions.

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(S) While the probability that one might assign to the above possibilities might range from "virtually nonexistent" for the first to "long shot" for the sixth, no devoted student of the Rasmussen methodology should overlook the principle that in a series of parallel possibilities the probability that one of them will occur is greater than the probability that any given one will occur.* Nevertheless, I do not see how a realistic assessment of the probability of an end in which assurances remained available for even a few years could come up with much beyond a 40%-60% range. This amounts to being able to say that there is a 50% chance that the assurances essential to the meeting of the criteria will be in effect for the next several years. Another way to put this is that if NRC applies this casual standard as its level of assurance, we would lose U.S. control of five out of ten such problem exports even before the first plutonium was out of the reactor. This simply cannot be what Congress had in mind.

(S) Given the alternative of Presidential approval, I can see no sensible argument to the effect that Congress intended us to take a 50-50 chance that the essential assurances would be gone so quickly. This is especially true when the basis for much of the "confidence" on the assurances lies in decisions entailing changes in previously stated positions by both the recipient country and the Executive Branch.

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(U) To the extent that one regards these findings as being a matter of judgement rather than of law, one must consider the possibility that the NRC's decision will change the odds on proliferation in India or elsewhere.

(U) * Here one wants to be careful of WASH-1400's problem with common cause failures. Each of the individual "solutions" must be negotiated in the context of the same sets of imperatives and attitudes on both sides. The fixed positions on full scope safeguards and the requirements of Indian politics are likely ultimately to mean rather more than the relative reasonableness of any possible solution.

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(S) India has already proliferated, so the broad question as to India is easily answered negatively. As to India's backing away from "Peace Bombs" and adopting safeguards, I do not think we can begin to assess the effect sensibly. My own guess is that the NRC's giving strength to the criteria has a slight negative effect on the Indian press and public and a slight positive effect on those in the Indian government who are actually doing the negotiating. In either case, the final U.S. government decision matters much more. However, the issue has another dimension.

(S) The seriousness with which U.S. non-proliferation intentions are taken, both by our fellow suppliers and by potential customers is very much at issue as well. The extraordinary casualness with which the State Department and the Atomic Energy Commission viewed the 1974 Indian explosion and the use of U.S. material in its development may well have contributed a great deal to the fact that other countries took significant steps in weapons development shortly thereafter, while some peaceful nuclear events went unfavorably in Brazil and other countries as well.

(S) Since then, as U.S. policy strengthened, progress has been made in most if not all of these countries. The spectre of the U.S. licensing agency going out of its way to justify an export to India, of all countries, would suggest a return to the old jokes and familiar punch lines that dominated U.S. nuclear export policy until 1976. The non-proliferation impacts of an international perception of that sort seem to me much more clearly negative than the direct impact of NRC decisions on non-proliferation prospects in India.*

(U) The suggestion that our role as a "reliable supplier" is really at issue here is seriously misplaced unless the term is used to mean that we should export nuclear material to all takers as casually as the law may conceivably be read to allow. The full phrase is "reliable supplier to countries which adhere to effective non-proliferation policies." We made our view of effective non-proliferation policies clear to India several times before and after 1974. India ignored those statements or said that it "did not share" our understandings. Their position has modified in tone but not in substance since then,** and I see no reason why our status as a reliable supplier to other countries is at stake in this case. Other countries, especially other supplier countries, will see this as an example of how we assess the most questionable cases under the new law, not as an example of how we treat countries who clearly share our objectives. If their perception is that supply continues, if at all, only after careful scrutiny by the President and the Congress, that seems to me to be just about right for this case and these assurances.

- (U) * After this was written, my attention was called to the recent EXDIS Cable, Bonn 02077, in memorandum to Commissioners from Ken Pedersen dated February 8, 1979, especially paragraphs four and seven.
- (U) ** For example, they still do not share our policies on peaceful explosions, safeguards, and the Non-proliferation Treaty.

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(8) During our two sets of discussions of this matter, the question was asked about each of the criteria "Is it satisfied if the Agreement remains in effect." The staff answered, "Yes," but I do not agree. The future Indian legal position seems likely to be that failure to deliver fuel will constitute a breach, and the workings of U.S. law will compel just such a failure eventually even with a waiver. Thus, the continuation of the Agreement will eventually become a day-to-day matter, and not under U.S. control once waivers cease. Under those circumstances even more clearly than today, I do not think that the mere existence of the Agreement provides a basis for a finding that the criteria are met any more than the structural integrity of a ship headed for the rocks should provide reassurance to its crew.

Attachment:
As stated

cc: OPE
OGC
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