



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

June 20, 1980

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MEMORANDUM FOR: Chairman Ahearne
Commissioner Gilinsky
Commissioner Kennedy
Commissioner Hendrie
Commissioner Bradford

FROM: Carlton Kammerer, Director
Office of Congressional Affairs

SUBJECT: EXPORTATION OF NUCLEAR FUEL TO INDIA FOR THE TARAPUR
POWER PLANT

On June 19, 1980, the Senate Committees on Foreign Relations and Governmental Affairs resumed their hearings on the exportation of enriched uranium to India to fuel the Tarapur Reactor. According to the agenda, the witnesses were to be Mr. Warren Christopher, Deputy Secretary of State; Mr. Gerald Smith, Ambassador-at-Large for Nuclear Non-Proliferation; and a panel consisting of James Barnes of the Center for Law and Society, Jacob Scherr of the National Resources Defense Fund and Richard Betts of the Brookings Institute. Mr. Christopher and Mr. Smith were the only witnesses to come before the Committee during this segment of the hearing.

Before Mr. Christopher gave his opening remarks, Mr. Percy (R-IL), Mr. Glenn (D-OH), Mr. Pell (D-RI), and Chairman Church (D-ID) made it clear that the Senate Committee on Foreign Relations had jurisdiction in this matter and that those from the Committee on Governmental Affairs were included in order to provide assistance as to the intent of the original Nuclear Non-Proliferation Act of 1978 (NNPA). Also before Mr. Christopher spoke, Mr. Church, Mr. Percy and Mr. Glenn stated their concerns about the Administration's apparent intention of allowing the export of the nuclear fuel by Executive Order.

Interestingly enough, Mr. Christopher began his statement by saying:

I wish to inform you that the President has decided to authorize the exports in question and is transmitting to the Congress today an Executive Order and a Message explaining why he believes the exports should be made. I would like to use this opportunity to explain the geopolitical and non-proliferation concerns that underlie the President's decision.

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Please find attached Mr. Christopher's entire prepared message to the Committees. After giving a short history of the events stemming from the 1963 agreement for nuclear cooperation between the U.S. and India, Mr. Christopher assured the Senators that India would not go beyond Mrs. Gandhi's statement concerning her intention to possibly continue "nuclear experiments."

As presented by the Deputy Secretary, the Administration's rationale for authorizing the shipments to India consisted of two essential arguments 1) U.S. foreign policy concerns would most favorably be served by allowing the export, and 2) this unique situation would not serve as a precedent for further emasculation of the NNPA. If the U.S. chose not to ship the nuclear fuel, the Indians could possibly consider themselves free from the obligations of the 1963 agreement and from the obligations of the safeguards agreement. By authorizing the shipments, the U.S. has bound the Indian Government to the requirements of the previous nuclear cooperation agreements.

Furthermore, the granting of the Indian requests would contribute to the solidification of a constructive bilateral relationship between the U.S. and India. The importance of an improved relationship between these two nations is emphasized by the Soviet invasion of Afghanistan and the turmoil in Iran. According to the State Department, there is a real possibility that the USSR will replace the U.S. as India's supplier of nuclear fuel if the U.S. refuses India's applications.

The Carter Administration professes that this decision will not be a precedent for further emasculation of the U.S.'s policy of nuclear non-proliferation. The State Department openly disputed the NRC's interpretation of the Congressional intent of the NNPA, specifically concerning the grace period. As explained by Mr. Christopher, the Administration believed that the applications should be accepted without a consideration of full-scope safeguards since the applications were filed before September 10, 1979 and the shipment was reasonably expected to be shipped before March 10, 1980. Since these requests fall within what the Administration considers the grace period, a precedent for future applications would not be established.

However, the State Department did acknowledge that within the next two years the Indian Government will once again request the export of nuclear fuel for the Tarapur facility.

In response to Mr. Christopher's opening remarks, Mr. Church expressed his dismay over the entire sale of fuel to India and the President's hasty issuance of the Executive Order. Mr. Percy pointed out that India and the Soviet Union have just concluded a 17 year, \$1.6 billion arms agreement and that the immediate authorization of the fuel shipments was not the most prudent course for the U.S. at the present time.

Perhaps the most vocal opponent to the Administration's position was Mr. Glenn, who co-sponsored the NNPA of 1978. Since the Indians have 18 months of fuel on hand, he advocated the position of waiting one more year before allowing the export. He felt that the U.S. was under no obligation to sustain the continuous operation of the fuel fabrication plant near the Tarapur site under the 1963 Agreement. This facility would be shut down without the fuel shipment, but the power plant could continue to operate. Mr. Glenn was in complete concurrence with the NRC's interpretation of the NNPA and stated that the Administration should amend the law if it wished to continue its case-by-case examination of applications for the sale of nuclear fuel. Mr. Glenn suggested that since NNPA seemed to be ineffective, perhaps American business should be allowed to reenter the international market, unhindered by non-proliferation requirements.

The hearing took an interesting twist when Congressman Markey (D-MASS), who sits on the House Committee on Interior and Insular Affairs and the Committee on Interstate and Foreign Commerce, obtained permission from Mr. Church to give his remarks and question Mr. Christopher. Essentially, Mr. Markey told the Deputy Secretary that he was introducing a Concurrent Resolution of Disagreement in opposition to the Executive Order and that the resolution was being co-sponsored by 35 congressmen. Mr. Markey termed the Administration's new policy as "selective proliferation." Please find attached Mr. Markey's Concurrent Resolution.

According to the NNPA, the Congress has 60 days in which to review the President's authorization of the nuclear fuel shipment by Executive Order. If both Houses agree, by a majority vote, to such a concurrent resolution, the shipment can be stopped, and the President has no authority to veto the concurrent resolution.

Before the hearing was adjourned, Mr. Percy requested that Mr. Christopher submit the complete legal basis for the President's decision, even though it most probably would have to be done on a classified basis. Before declaring the adjournment, Mr. Church stated that the hearing would continue in the near future.

Just after the hearing ended, Mr. Markey and Mr. Waxman (D-CA) held a press conference on behalf of those Congressmen sponsoring the resolution. Both claimed that their support was bipartisan and that their motives were not explicitly political. On page one of the Washington Post of Friday, June 20, 1980, it was reported that Mr. Bingham (D-NY), Chairman of the House Subcommittee on International Economic Policy of the Committee on Foreign Affairs, would also co-sponsor a Concurrent Resolution of Disagreement. Please find attached Mr. Markey's and Mr. Waxman's statements made at the press conference.

Later Thursday afternoon, June 19, 1980, the Executive Order and the President's Message became available to the NRC. It was circulated late yesterday, and please find it attached to this subsequent memorandum. The President's explanation is similar in content to Mr. Christopher's remarks made at the hearing.

The Concurrent Resolution will now be referred to the House Committee on Foreign Affairs, and when one is introduced in the Senate, it will go to the Committee on Foreign Relations. According to a staff member of the House Committee on Foreign Affairs, full committee hearings on the resolution could begin as early as next week, June 23-27. It is not presently known if the NRC will be requested to appear before either committee.

Attachments:
As stated

cc: EDO
OPE
OGC
DIA
MPA
SECY

IN 1963 THE UNITED STATES AND INDIA ENTERED INTO AN AGREEMENT FOR NUCLEAR COOPERATION. UNDER THIS AGREEMENT, THE U.S. AGREED TO SUPPLY ALL OF THE ENRICHED URANIUM NEEDED TO FUEL THE REACTORS AT THE TARAPUR ATOMIC POWER STATION DURING THEIR ESTIMATED THIRTY-YEAR LIFETIME. IN RETURN INDIA AGREED THAT IT WOULD USE ONLY U.S. SUPPLIED FUEL AT TARAPUR, THAT SAFEGUARDS WOULD BE MAINTAINED ON THE FUEL, THAT IT WOULD NOT BE REPROCESSED WITHOUT U.S. AGREEMENT, AND THAT THE SUPPLIED MATERIAL AND EQUIPMENT WOULD BE USED ONLY FOR PEACEFUL PURPOSES AND NOT FOR "ATOMIC WEAPONS OR FOR ANY OTHER MILITARY PURPOSE." IN 1974 THE U.S. OBTAINED FROM INDIA AN EXPLICIT COMMITMENT THAT U.S. FUEL SUPPLIED TO TARAPUR WOULD BE USED AT TARAPUR FOR THE NEEDS OF THE POWER STATION, AND THUS NOT FOR ANY NUCLEAR EXPLOSIVE DEVICE.

THUS FAR, THE U.S. HAS SUPPLIED UNDER THE AGREEMENT MORE THAN 200 TONS OF LOW ENRICHED URANIUM TO FUEL THE TARAPUR REACTORS. THE FUEL IS UNDER SAFEGUARDS AND HAS NOT BEEN REPROCESSED; AND INDIA HAS MET ALL OF ITS OTHER OBLIGATIONS UNDER THE 1963 AGREEMENT.

THE NUCLEAR NON-PROLIFERATION ACT OF 1978 PROVIDES THAT, AFTER A GRACE PERIOD, A RECIPIENT OF U.S. NUCLEAR EXPORTS MUST HAVE ALL OF ITS NUCLEAR ACTIVITIES UNDER INTERNATIONAL SAFEGUARDS AS A CONDITION OF CONTINUED EXPORT. INDIA HAS ACCEPTED SAFEGUARDS ON TARAPUR AND OTHER FACILITIES THAT CONTAIN MATERIAL SUPPLIED FROM ABROAD, BUT IT HAS A NUMBER OF INDIGENOUSLY DEVELOPED FACILITIES THAT ARE NOT UNDER INTERNATIONAL SAFEGUARDS. INDIA TAKES THE POSITION THAT IT WILL ACCEPT SAFEGUARDS ON ALL OF ITS NUCLEAR FACILITIES ONLY WHEN ALL OTHER STATES, INCLUDING THE NUCLEAR WEAPON STATES, DO THE SAME.

DURING THE GRACE PERIOD PROVIDED IN THE 1978 ACT, TWO SHIPMENTS OF ENRICHED URANIUM HAVE BEEN MADE TO INDIA. TWO ADDITIONAL EXPORT LICENSE APPLICATIONS WERE FILED DURING THE GRACE PERIOD: ONE IN SEPTEMBER 1978, AND ONE IN AUGUST 1979.

IF WE DISAPPROVE THESE SHIPMENTS, INDIA IS VERY LIKELY TO CONSIDER ITSELF FREE OF ITS OBLIGATIONS UNDER THE 1963 AGREEMENT. IN THAT EVENT, INDIA MIGHT REPROCESS THE U.S.-ORIGIN FUEL IN INDIA AND USE THE PLUTONIUM IN THE TARAPUR REACTORS. THIS WOULD BE AN UNFORTUNATE PRECEDENT, BECAUSE IT WOULD BE SEEN BY SOME AS A DEMONSTRATION THAT THERMAL RECYCLE IS A PRACTICAL ALTERNATIVE, AT LEAST AS AN INTERIM MEASURE, TO AVOID DEPENDENCE ON EXTERNAL SUPPLY.

IF WE DISAPPROVE THESE SHIPMENTS, INDIA MIGHT ALSO WITHDRAW FROM THE SAFEGUARDS AGREEMENT AND MIGHT DECIDE TO DISREGARD OUR VETO OVER ANY OTHER USE OF THE MATERIAL ALREADY SUPPLIED BEYOND ITS USE AS FUEL FOR TARAPUR. IT ALSO COULD END THE PRESENT U.S. VETO OVER ANY RETRANSFER TO ANOTHER COUNTRY OF THIS MATERIAL.

ON THE OTHER HAND, IF THESE SHIPMENTS ARE APPROVED, WE WILL AT A MINIMUM HAVE PRESERVED INDIA'S OBLIGATIONS UNDER THE EXISTING AGREEMENTS FOR ANOTHER YEAR OR TWO. WE CAN USE THAT TIME TO GOOD ADVANTAGE IN CONTINUED DISCUSSIONS WITH THE INDIAN GOVERNMENT.

BEYOND OUR NON-PROLIFERATION CONCERNS, A REFUSAL AT THIS TIME TO FULFILL OUR OBLIGATIONS UNDER THE SUPPLY AGREEMENT WOULD CAST A LONG SHADOW ON OUR OVERALL RELATIONSHIP WITH INDIA. INDIA IS THE LARGEST DEMOCRACY IN THE WORLD. ITS GOVERNMENT, LIKE OURS, RESTS ON THE CONSENT OF THE GOVERNED, EXPRESSED AGAIN IN JANUARY IN THE MOST MASSIVE POPULAR ELECTION THE WORLD HAS EVER SEEN. WE SHARE WITH INDIA A FAITH IN HUMAN RIGHTS, A BELIEF IN THE RULE OF LAW, AND A PRIDE IN STRONG DEMOCRATIC INSTITUTIONS.

THE TURMOIL IN IRAN AND THE SOVIET INVASION OF AFGHANISTAN HAVE HEIGHTENED U.S. SECURITY CONCERNS IN SOUTH AND SOUTHWEST ASIA. WE CONSIDER IT VITAL TO BOLSTER OUR RELATIONS WITH THIS REGION, PARTICULARLY WITH THOSE COUNTRIES, SUCH AS INDIA, WHICH CAN PROMOTE SECURITY AND STABILITY IN SOUTH ASIA.

U.S.-INDIA RELATIONS HAVE NOT ALWAYS BEEN SMOOTH. OUR POLICY PERCEPTIONS AND INTERESTS DO NOT ALWAYS COINCIDE. AT THE SAME TIME, WE SHOULD RECOGNIZE THAT IN PURSUING ITS INDEPENDENT COURSE, MRS. GANDHI'S GOVERNMENT HAS TAKEN POSITIONS ON SEVERAL IMPORTANT MATTERS WHICH WE WELCOME AND HAS SIGNALLED TO US THAT IT WANTS A CONSTRUCTIVE RELATIONSHIP.

-- INDIA HAS MOVED FROM AN UNCRITICAL VIEW OF RECENT EVENTS IN AFGHANISTAN TO ONE OPPOSING THE SOVIET INVASION AND CALLING FOR PROMPT SOVIET WITHDRAWAL.

-- MRS. GANDHI HAS PERSONALLY SPOKEN AGAINST CRITICS OF THE IRAN RESCUE MISSION.

-- INDIA HAS SOUGHT TO IMPROVE RELATIONS WITH PAKISTAN, AND HAS SENT TWO HIGH LEVEL EMISSARIES TO ISLAMABAD TO DISCUSS REGIONAL PROBLEMS WITH THE PAKISTAN GOVERNMENT.

-- IT HAS CONTINUED TO PLAY A MODERATE ROLE IN THE NON-ALIGNED MOVEMENT.

-- INDIA HAS SIGNALLED THAT IT WANTS TO DEVELOP A CLOSER RELATIONSHIP WITH THE U.S. CLARK CLIFFORD AND AVERELL HARRIMAN HAVE HAD CANDID AND USEFUL SESSIONS WITH MRS. GANDHI, AND, AS YOU KNOW, SHE HAS WARMLY WELCOMED SEVERAL OF YOUR CONGRESSIONAL COLLEAGUES TO INDIA.

WE BELIEVE THAT THE BEST WAY TO ENCOURAGE INDIA TO PURSUE POLICIES HARMONIOUS WITH U.S. INTERESTS IS TO BUILD A FRAMEWORK OF CONSTRUCTIVE BILATERAL RELATIONS WHICH UNDERSCORES U.S. CONSTANCY AND RELIABILITY. THE TARAPUR ISSUE IS HIGHLY IMPORTANT IN THIS REGARD. MANY IN INDIA SEE IT AS AN INDEX OF U.S. INTEREST IN MAINTAINING GOOD RELATIONS AND OF OUR RECOGNITION OF THE IMPORTANCE OF CONSTRUCTIVE U.S.-INDIA TIES TO OUR BROADER FOREIGN POLICY CONCERNS IN SOUTH AND SOUTHWEST ASIA.

A POSITIVE DECISION ON TARAPUR WILL ENCOURAGE INDIA IN THE LONG TERM TO ACT IN WAYS CONSISTENT WITH OUR INTERESTS AS IT FACES UP TO THE NEW SITUATION POSED FOR SOUTH ASIA BY THE PROSPECT OF A PROLONGED SOVIET PRESENCE IN AFGHANISTAN. IT WILL ALSO HELP ALLAY INDIAN APPREHENSIONS ABOUT U.S. POLICIES IN AREAS SENSITIVE TO INDIA.

BEFORE CONCLUDING, I WOULD LIKE BRIEFLY TO ADDRESS THE CONCERN SOME HAVE EXPRESSED THAT APPROVAL OF THESE EXPORTS WOULD FRUSTRATE THE INTENT OF THE NUCLEAR NON-PROLIFERATION ACT THAT FULL-SCOPE SAFEGUARDS BE REQUIRED AS AN EXPORT CRITERION. THIS CONCERN IS UNWARRANTED. THE STATUTE PROVIDES A GRACE PERIOD BEFORE THIS ADDITIONAL EXPORT CRITERION -- FULL-SCOPE SAFEGUARDS -- BECOMES APPLICABLE. THE NRC HAS ADOPTED A MORE RESTRICTIVE INTERPRETATION OF THE GRACE PERIOD THAN WE BELIEVE IS WARRANTED BY EITHER THE TEXT OR THE LEGISLATIVE HISTORY. THE ADMINISTRATION BELIEVES THE TWO LICENSE APPLICATIONS IN THIS CASE FALL WITHIN THAT GRACE PERIOD. IN ANY EVENT, I CAN ASSURE YOU THAT THE ADMINISTRATION WILL REGARD THESE TWO SHIPMENTS AS WITHIN THE GRACE PERIOD AND NOT AS A PRECEDENT FOR DECISIONS ON APPLICATIONS FILED AFTER SEPTEMBER 10, 1979. THEREFORE, APPROVAL OF THESE EXPORTS WILL NOT PREJUDICE THE FUTURE APPLICATION OF THE FULL-SCOPE SAFEGUARDS REQUIREMENT.

WE HAVE, IN FACT, MADE NO DECISION ABOUT THE FUTURE OF U.S.-INDIAN NUCLEAR COOPERATION BEYOND THESE PENDING APPLICATIONS, AND DO NOT EXPECT TO DO SO UNTIL NEXT YEAR OR LATER. HOWEVER, IT IS IMPORTANT THAT WE NOT RULE OUT THE POSSIBILITY OF ADDITIONAL SUPPLY. IT IS UNNECESSARY TO MAKE A FIRM DECISION NOW ON AN ISSUE THAT WE WILL PROBABLY NOT FACE FOR AT LEAST A YEAR WHEN CIRCUMSTANCES MAY HAVE CHANGED.

I WOULD EMPHASIZE THAT THIS ACTION SHOULD NOT BE PERCEIVED AS A WEAKENING OF U.S. PURSUIT OF ITS NON-PROLIFERATION OBJECTIVES OR OF OUR INTENT TO CARRY OUT THE MANDATE AND INITIATIVES OF THE NUCLEAR NON-PROLIFERATION ACT. THESE OBJECTIVES ARE OF PERMANENT IMPORTANCE TO U.S. NATIONAL SECURITY, AND WE WILL CONTINUE TO TRY TO ACHIEVE THEM IN A MANNER THAT BEST SUPPORTS U.S. INTERESTS. IT IS FOR THIS REASON THAT THE CONGRESS BUILT FLEXIBILITY INTO THE LAW, INCLUDING PROVISIONS FOR A GRACE PERIOD AND FOR PRESIDENTIAL ACTION WHEN NECESSARY TO HANDLE DIFFICULT EXPORT DECISIONS IN FURTHERANCE OF U.S. INTERESTS.

CERTAINLY THERE ARE PLAUSIBLE ARGUMENTS ON BOTH SIDES OF THIS DIFFICULT ISSUE. BUT WE ARE CONVINCED THAT THE WEIGHT OF THESE ARGUMENTS LIES DECISIVELY ON THE SIDE OF GOING FORWARD.

IF WE DO NOT PROCEED, WE COULD CLOSE THE DOOR ON ANY OPPORTUNITY FOR INFLUENCING INDIA'S FUTURE NUCLEAR ACTIVITIES.

WE WOULD RISK LOSING OUR VETO OVER INDIA'S USE OF SPENT FUEL FROM THE REACTORS WE HAVE PROVIDED.

WE WOULD JEOPARDIZE THE PROSPECTS FOR STRENGTHENING OUR RELATIONS WITH INDIA -- AN INFLUENTIAL DEMOCRACY IN A CRITICAL REGION AT A CRUCIAL TIME.

IF WE DO NOT GO FORWARD, IT WOULD BENEFIT, NOT OURSELVES, BUT THOSE WHO WOULD MOVE INTO THE BREACH.

WE HOPE WE WILL HAVE YOUR SUPPORT ON THIS MATTER OF REAL IMPORTANCE TO AMERICAN INTERESTS.