

September 24, 2008



A program of the
Global Security Institute

The Honorable Howard L. Berman
Chairman
House Committee on Foreign Affairs
2170 Rayburn House Office Building
Washington, D.C. 20515

RE: US-India Nuclear Cooperation

Dear Chairman Berman:

September 6th, 2008, the Bush Administration obtained a waiver through the NSG that is not consistent with the substance and clear aspirations of the Hyde Act and global non-proliferation norms. Four days later he sent the agreement to Congress in hopes of doing the exact same thing. It is incumbent upon Congress to do its due diligence and not hastily accept this agreement without taking time to carefully consider its ramifications.

The US-India 123 agreement clearly does not incorporate the restrictions and conditions on U.S. nuclear trade mandated by the Hyde Act, such as the requirement that nuclear cooperation be immediately halted if India conducts a nuclear test. We urge you to take all necessary time to carefully review the President's submission, hold hearings, and seek answers to any outstanding questions. Furthermore, we urge you to take whatever steps are necessary to bring this proposal into full conformity with the Atomic Energy Act, the Hyde Act of 2006, and international standards and practices, as you described in your August 5th, 2008, letter to Secretary Rice.

The adverse effect on the Nuclear Nonproliferation Treaty's review in 2010 cannot be ignored any longer. The core bargain of the NPT to reward countries that do not proliferate and encourage universal membership is being challenged as never before. There must be a thorough analysis with hearings on the effect of the "deal" as it now stands formally before Congress.

President Bush is seeking hurried Congressional approval of this unprecedented proposal in the waning days of the 110th Congress. As you know, the Atomic Energy Act requires that this proposal sit before Congress for 30 days of continuous session, and that the relevant committees hold hearings, before a vote may be held. However, as of today there are only 3 days of session remaining before the date of targeted adjournment on September 26, 2008. Therefore, honoring President Bush's request for Congressional approval of the Nuclear Cooperation Agreement this year could only be accomplished by waiving U.S. law through an unorthodox procedure.

110 Maryland Ave, Suite 508
Washington, DC 20002
Tel: +1 202 543 9017
Fax: +1 202 543 0799
bsg@gsinstitute.org
www.bipartisansecuritygroup.org

BIPARTISAN SECURITY GROUP

Amb. Robert T. Grey Jr., Director
Former U.S. Representative
to the Conference on Disarmament

Amb. Thomas Graham Jr., Chair
Chairman
Lawyers Alliance for World Security

Gloria Duffy
CEO, The Commonwealth Club of California
Former Deputy Asst. Secretary of Defense

Amb. James Goodby
Senior Fellow
Brookings Institution

Rose Gottemoeller
Senior Associate
Carnegie Endowment for International Peace

Jonathan Granoff
President
Global Security Institute

John Holum
Former Undersecretary of State
for Arms Control and International Security

Barry Kellman
Director, International Weapons Control Center
DePaul University College of Law

David Koplow
Former Deputy General Counsel
of the Department of Defense
Director, Center for Applied Legal Studies
Georgetown Law Center

John B. Rhinelanders
Senior Counsel, Shaw Pittman, L.L.P.
Former General Counsel
Department of Health, Education and Welfare

Suzanne Spaulding
Former Executive Director
National Commission on Terrorism
Former General Counsel
Senate Select Committee on Intelligence

U.S. firms will not be at a disadvantage due to any delay in the consideration of the 123 agreement. The Indian government has stated publicly that other bilateral nuclear cooperation agreements will not proceed until and unless the U.S. Congress approves this agreement. In addition, no supplier state can engage in nuclear trade with India until such time as it signs its new IAEA-Indian safeguards agreement. Furthermore, U.S. nuclear vendors will not be in a position to engage in nuclear trade with India until such time as India ratifies the Convention on Supplementary Compensation for Nuclear Damage and the convention enters into force.

We strongly oppose rushing consideration of the proposal to adhere to an imaginary clock, since the process of full Congressional oversight and deliberation necessarily and properly requires a significant investment of time. We urge you to insist that this unprecedented agreement be subject to full and complete review by the Congress, even if that necessitates deferring any vote on the Agreement until the next Congress.

Sincerely,

A handwritten signature in black ink, appearing to be "R. Grey Jr.", written in a cursive style.

Ambassador Robert Grey Jr.
Director
Bipartisan Security Group

A handwritten signature in black ink, appearing to be "Jonathan Granoff", written in a cursive style.

Jonathan Granoff
President
Global Security Institute