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SECURITY ASSISTANCE ACT OF 2008

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Mr. DODD, from the Committee on Foreign Relations,  
submitted the following

REPORT

[To accompany S. 3563]

The Committee on Foreign Relations, having had under consideration an original bill (S. 3563) to authorize appropriations under the Arms Export Control Act and the Foreign Assistance Act of 1961 for security assistance for fiscal years 2009 and 2010, and for other purposes, reports favorably thereon and recommends that the bill do pass.

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I. PURPOSE

The Committee on Foreign Relations is the committee of jurisdiction in the Senate for most foreign military and related assistance, including Foreign Military Financing (FMF) and International Military Education and Training (IMET), for international arms transfers, and for a variety of arms control, nonproliferation and anti-terrorism programs under the purview of the Under Secretary of State for Arms Control and International Security. The principal laws governing these functions are the Foreign Assistance Act of 1961, as amended (P.L. 87-195), the Arms Export Control Act (P.L. 90-629), the Atomic Energy Act of 1954, as amended (P.L. 83-703), and the Nuclear Non-Proliferation Act of 1978 (P.L. 95-242). The principal means of authorizing these programs and up-dating the law in this area are regular security assistance acts or similar pro-

visions incorporated in Department of State and foreign relations authorization acts.

The Security Assistance Act of 2008 covers all the above programs and includes both routine updates and important policy adjustments. Titles I and III authorize funding for fiscal years 2009 and 2010 for military and related assistance, for nonproliferation, anti-terrorism, humanitarian demining, and related programs, and for certain contributions to international organizations carrying out critical nonproliferation tasks.

Title II, the Naval Vessel Transfer Act of 2008, grants the legally required approval for the transfer, as a grant, of six naval vessels: a guided missile frigate for Pakistan; two minehunter coastal ships for Greece; an oiler for Chile; and two amphibious tank landing ships for Peru.

Title IV, the Nuclear Safeguards and Supply Act of 2008, provides increased support to the International Atomic Energy Agency's (IAEA) safeguards system by addressing a funding shortfall in the safeguards system. It furthers the policy of the United States to discourage the development of enrichment and reprocessing capabilities in additional countries, encourage the creation of bilateral and multilateral assurances of nuclear fuel supply, and ensure that all supply mechanisms operate in strict accordance with the IAEA safeguards system and do not result in any additional unmet verification burdens for the system. It authorizes the President to negotiate, on both a bilateral and multilateral level, mechanisms to assure nations that forgo national nuclear fuel-cycle capabilities a supply of nuclear fuel for peaceful purposes. It also ties the supply of nuclear fuel and an expansion of nuclear power to the ability of the IAEA to assure, through safeguards implementation, the absence of undeclared nuclear materials and activities involving them in states receiving nuclear fuel under such mechanisms.

Title V, the Global Pathogen Surveillance Act of 2008, is designed to enhance the capability of the international community to detect, identify, and contain infectious disease outbreaks, whether the cause of those outbreaks is intentional or natural in origin. This bill targets U.S. assistance to developing nations in the following areas:

- Training of public health personnel in epidemiology, including diagnosis and containment of likely bioterrorism agents;
- Acquisition of laboratory and diagnostic equipment;
- Acquisition of communications technology to quickly transmit data on disease patterns and pathogen diagnoses to national public health authorities and to international institutions such as the World Health Organization (WHO);
- Expansion of overseas Centers for Disease Control and Prevention (CDC) and Department of Defense laboratories engaged in infectious disease research and disease surveillance, with the approval of host countries, through the establishment of additional laboratories, enlargement of existing facilities, increases in the number of personnel, and/or expanding the scope of their activities; and

- Expanded assistance to the WHO and regional international disease surveillance efforts, including expansion of U.S.-administered Field Epidemiology Training Programs.

Title VI, the International Space Station Payments Act of 2008, permits the National Aeronautics and Space Administration (NASA) to continue payments to Russia related to the International Space Station after 2011.

## II. COMMITTEE ACTION

On September 23, 2008, the committee, by voice vote, ordered an original bill to be reported favorably.

## III. SUMMARY

This legislation covers matters of American foreign policy that are critical to ensuring the peace and security of the American people. Combating the threat posed to the United States by the proliferation of nuclear, chemical, and biological weapons, and their means of delivery, must be a central focus of our relations with the rest of the world, because the threat posed by those weapons is unlike any other that our country and the world face. As the 9/11 Commission concluded, “The greatest danger of another catastrophic attack in the United States will materialize if the world’s most dangerous terrorists acquire the world’s most dangerous weapons. . . . Preventing the proliferation of these weapons warrants a maximum effort.”<sup>1</sup>

The current National Security Strategy of the United States notes that because nuclear weapons “are unique in their capacity to inflict instant loss of life on a massive scale,” the proliferation of nuclear weapons “poses the greatest threat to our national security.”<sup>2</sup> “Biological weapons,” the National Security Strategy goes on to say, “also pose a grave WMD [weapons of mass destruction] threat because of the risks of contagion that would spread disease across large populations and around the globe.”<sup>3</sup> Additionally, chemical weapons “are a serious proliferation concern and are actively sought by terrorists, including al-Qaida.”<sup>4</sup>

These assessments were written in prior years, but the threat remains no less stark today. The Director of National Intelligence testified to the Armed Services Committee in February 2008 that:

In addition to terrorism, the ongoing efforts of nation-states and terrorists to develop and/or acquire dangerous weapons and delivery systems constitute major threats to the safety of our nation, our deployed troops, and our friends. We are most concerned about the threat and destabilizing effect of nuclear

<sup>1</sup>National Commission on Terrorist Attacks upon the United States, *Final Report of the National Commission on Terrorist Attacks upon the United States* (New York: Norton, 2004), <http://govinfo.library.unt.edu/911/report/index.htm>.

<sup>2</sup>*The National Security Strategy of the United States of America* (Washington, D.C.: The White House, May 23, 2006), <http://www.whitehouse.gov/nsc/nss/2006/>.

<sup>3</sup>*Ibid.*

<sup>4</sup>*Ibid.*

proliferation. We also are concerned about the threat from biological and chemical agents.<sup>5</sup>

This legislation addresses some important facets of the United States' response to the threat posed by the proliferation of nuclear, chemical, and biological weapons. This committee is not the only one in the Senate with a role to play in responding to this threat, and certainly agencies other than the Department of State—in particular, the Departments of Defense, Energy, and Homeland Security—have responsibilities for policies and programs that are vital to dealing with this danger. But nonproliferation, export control, and related assistance will continue to be an important part of the State Department's mission.

This legislation also amends the Atomic Energy Act of 1954, as amended, which governs civil nuclear cooperation between the United States and other nations, groups of nations, and international organizations. As discussed in more detail in connection with Title IV, civilian nuclear power is receiving renewed attention domestically and globally. The Atomic Energy Act of 1954, as amended, and the Nuclear Nonproliferation Act of 1978 ensured that decisions about cooperation in civil nuclear power were treated as important foreign policy decisions in which Congress must participate. Those acts also ensured that decisions about the extent of civilian nuclear cooperation with other nations are balanced explicitly against the threat posed by the proliferation of nuclear weapons, and the technology that might be used to build those weapons. The Nuclear Nonproliferation Act of 1978, in particular, also sought to ensure that decisions the United States makes about cooperation with other nations in the field of civilian nuclear energy are firmly grounded in decisions about cooperation with those nations on all forms of energy production and conservation. Framing conversations with other countries on nuclear energy in the larger energy context was a smart idea 30 years ago, and is an absolute necessity today.

At the same time, decisions on conventional military and related assistance, and policies related to the sale or transfer of military equipment, are also a vital aspect of American diplomacy. Those decisions can have far-reaching and long-lasting implications for the security environment the United States and its allies face. Other countries certainly view U.S. decisions on such questions as an important part of their relations with the United States. The United States should never use military assistance as a substitute for its strategy in dealing with foreign states. But military and related assistance can and will continue to be an important aspect of U.S. strategy in the world.

The committee is concerned about any suggestion—either explicit or as implied by certain proposals—that overall policymaking authority for military and related assistance and international arms transfers should rest with anyone other than the Secretary of State, reporting to the President. The Secretary of State is, and should be, the nation's chief foreign policy officer, and choices on

<sup>5</sup> J. Michael McConnell, Testimony before the Senate Armed Services Committee on the Current and Future Worldwide Threats to the National Security of the United States (Washington, D.C.: Office of the Director of National Intelligence, 2008), [http://www.dni.gov/testimonies/20080227\\_testimony.pdf](http://www.dni.gov/testimonies/20080227_testimony.pdf).

military and related assistance and arms exports are of central importance to U.S. foreign policy. There is room for experimentation and flexibility in cooperation with foreign governments on these matters, but such efforts should be firmly grounded within larger U.S. foreign policy, and should be guided by those setting that policy.

Regarding Title IV, significant international attention has focused in recent years on the problem of the increasing number of states seeking access to technical capabilities in the enrichment of uranium and the reprocessing of spent nuclear fuel. At the same time, increasing interest in nuclear power has led many countries to make new policy determinations that favor the use of nuclear power. A decision by any country to enter into the nuclear power field requires a clear understanding of the nuclear fuel cycle facilities for the storage or production of fuel to run reactors, the numbers and types of reactors that will be built, and the disposition of spent nuclear fuel and waste that will result from the operation of reactors. New nuclear facilities, be they production or utilization facilities, carry with them safeguards burdens. A substantial increase in the use of nuclear power throughout the world could result in many new facilities with nuclear material in new states over the coming decades. Such a situation poses inherent risks for U.S. national security and global peace and stability if the international community does not plan for an expansion of nuclear power in a manner that ensures that the nuclear nonproliferation system—which depends heavily on the IAEA’s safeguards system—has the resources and technology available to it to cope with an expansion of civilian nuclear power. The committee believes that support for IAEA safeguards is thus an urgent priority.

Most projections regarding the expansion of nuclear power show some increase in the number of facilities and the amount of power generated, but are uncertain regarding the rate and scope of the rise in the use of nuclear power for electricity generation and the pace in construction of new utilization facilities or reactors. There are currently 435 commercial nuclear power plants operating in 30 countries around the globe, with a combined capacity of 370 GW(e). These plants supply 16 percent of the world’s electricity.<sup>6</sup>

A number of states, including China, India, Pakistan, Japan, Russia, the Republic of Korea, and the United States, have stated their intention to expand their nuclear power sectors. In the past year, there have been more than 25 announcements of license applications by the U.S. Nuclear Regulatory Commission (NRC) and various U.S. nuclear power entities for planned activities in the United States. Canada has recently undertaken preparatory activities for additional nuclear power plants. The United Kingdom has concluded in a major government review that nuclear power would form a key part of that country’s energy strategy over the next century. The governments of Egypt, Nigeria, Indonesia, Turkey, and Belarus have all announced their intention to build their first nuclear reactors. The February 2005 Report of the IAEA Experts Group on Multilateral Approaches to the Nuclear Fuel Cycle found that “In light of existing, new and reawakened interest in many re-

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<sup>6</sup> See <http://www.world-nuclear.org/info/inf01.htm>.

gions of the world, the prospect of new nuclear power stations on a large scale is therefore real. A greater number of States will consider developing their own fuel cycle facilities and nuclear know-how, and will seek assurances of supply in materials, services and technologies.”

There has also been an expansion of the capacity to make nuclear fuel within the last several years. In 2006–2007, Brazil completed work on its uranium enrichment facility at Resende. In the United States construction is underway on the National Enrichment Facility, and France also began building a new enrichment facility, to be called Georges Besse II.

The United States has for many years maintained a policy that it will not transfer enrichment and reprocessing technology to any state. President Bush has stated that his administration’s policy is to prevent the further spread of such technology to new states. At the same time, the rising interest in nuclear power has challenged the international community to find ways to assure states contemplating nuclear power that they do not need to create national fuel cycles, which necessitate enrichment and reprocessing, to enjoy the benefits of nuclear power.

In 2005, Senator Lugar, then chairman of the committee, formed a Policy Advisory Group (PAG) on nuclear nonproliferation, which made and forwarded certain recommendations to President George W. Bush regarding the future of the nuclear fuel cycle and the dangers of proliferation. Co-chaired by Ronald F. Lehman II, formerly Administrator of the U.S. Arms Control and Disarmament Agency, and Ashton B. Carter, formerly Assistant Secretary of Defense for International Security Policy, the group included notable experts in the fields of nuclear nonproliferation, verification and arms control.<sup>7</sup>

The PAG focused on the future of the Nuclear Non-Proliferation Treaty (NPT) and the larger nonproliferation system it supports. The PAG found that the existing safeguards regime has failed to keep pace with the increase in the global availability of nuclear weapons technology, especially the technology and equipment for uranium enrichment and spent nuclear reactor fuel reprocessing. While the number of recognized nuclear-weapon states has not dramatically increased over the years, the dangers of proliferation have become more apparent, as demonstrated by the A.Q. Khan network and the Iranian, North Korean and Libyan examples.

The PAG found that the construction of new facilities for the enrichment of uranium and reprocessing of spent nuclear fuel, even for ostensibly peaceful purposes, poses an unacceptable long-term risk to the national security of the United States. The enrichment technology intended to produce fuel for nuclear power reactors can also be used to create material for a nuclear weapon, and the plutonium that is produced from reprocessing spent nuclear fuel is weapons-usable. Safeguards, even if applied as envisioned by the IAEA’s Model Additional Protocol to country safeguards agreements (hereinafter, “additional protocol”), cannot solve the fundamental problems inherent in detecting enrichment facilities, which can be easily hidden. The spread of enrichment and reprocessing

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<sup>7</sup> For more information, see also Senate Report 110–151, and the Appendix contained therein.

capabilities dangerously increases the possibility that more nations could develop their own nuclear weapons or that terrorists might obtain fissile or radiological materials for a dirty bomb. Given such threats, the PAG called on the United States to lead an international effort to halt the expansion of enrichment and reprocessing to new countries.

The PAG found that the use of nuclear power is likely to increase, both in developed countries and, in particular, in developing countries. Importantly, however, the PAG concluded that expansion of nuclear power does not require—either technically or economically—the construction of new enrichment and reprocessing facilities in countries that do not currently have them. “Under most scenarios,” the PAG found, “excess capacity already exists and will continue to exist for many years.”<sup>8</sup>

The increasing international focus on nuclear power and consequent concerns about nonproliferation have resulted in the world’s leading nuclear states offering a variety of proposals that not only favor the expansion of nuclear power, but also draw attention to the dangers of proliferation. In 2006, the United States announced a major initiative called the “Global Nuclear Energy Partnership” (GNEP). According to the administration, GNEP would seek to increase energy security and promote nonproliferation through the expanded use of proliferation-resistant nuclear energy facilities to meet growing electricity demand. The key elements of GNEP would include expanding domestic use of nuclear power; demonstration of proliferation-resistant actinide recycling of irradiated nuclear fuel; the minimization of nuclear waste; the development of advanced burner reactors; the establishment of reliable global fuel services; the demonstration of small- and medium-scale, proliferation-resistant reactors; and the revitalization of programs for advanced nuclear safeguards.

With regard to safeguards, GNEP may include such enhanced activities (which remain largely undefined) as:

- Incorporation of nuclear safeguards technology into designs for recycle facilities, advanced fast reactors, and associated nuclear materials storage and transportation, making them proliferation resistant.
- Development of high-reliability, remote, and unattended monitoring technologies; advanced containment and surveillance; smart safeguards information collection, management, and analysis systems; nuclear facility use-control systems; and next generation nondestructive analysis and process monitoring sensors.
- Research and development of advanced material tracking methodologies, process control technologies, and plant engineering.
- Remote sensing, environmental sampling and forensic verification methods.
- International facilities for conducting testing and demonstration.

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<sup>8</sup> See the Appendix to Senate Report 110–151.

- Continued support for global best practices for security and accounting of nuclear materials.<sup>9</sup>

In January 2006, President Vladimir Putin of Russia also proposed creation of “a system of international centres, providing nuclear fuel-cycle services, including enrichment, on a non-discriminatory basis and under the control of the IAEA.”<sup>10</sup>

In addition to the U.S. and Russian proposals, a number of other ideas have been placed before the IAEA by major nuclear states, which were considered at a Special Event on a New Framework for the Utilization of Nuclear Energy in the 21st century during the 50th IAEA General Conference.<sup>11</sup>

Despite the wide expectation of increased nuclear facility construction, there has been little increase in financial support to the IAEA’s Department of Safeguards to ensure that it can meet both existing and future safeguards demands. The committee notes that all of the work conducted by the IAEA to implement existing safeguards is carried out under a budget that is not sufficient to meet the growing demands for safeguards. With activities likely to resume in North Korea, as well as verification of North Korean compliance with agreements reached in the Six Party Talks, ongoing activities in Iran, increasing activities in many European states, a likely new and costly set of safeguards requirements that will result from renewed international nuclear cooperation with India, expanded reprocessing activities in Japan, and the welcome implementation of additional protocols by more states, along with stresses the IAEA is already experiencing in its verification program, particularly as more environmental samples come to it for analysis under additional protocols, funding for safeguards now demands immediate attention. The IAEA must maintain an ability to implement unprogrammed safeguards and verification activities when issues arise, but maintaining routine safeguards grows difficult in times when many of its resources are already engaged. The United States and all IAEA member states must prevent a scenario in which the IAEA is forced to reduce—or cease altogether—safeguards efforts in key states because of budget shortfalls.

Historically, certain policies have adversely affected the ability of the IAEA to meet growing safeguards challenges. In 1985, the Geneva Group (the 14 largest contributors to the United Nations) imposed a policy of “zero real growth” on the IAEA’s budget, save for staff salaries. This policy was reversed by the IAEA’s Board of Governors in July 2003. The committee strongly supported the decision to end the zero real growth policy, a decision consistent with previously-enacted legislation.<sup>12</sup>

Nevertheless, overall budgetary support remains insufficient to meet existing safeguards needs, much less the dramatically expanded requirements that may present themselves in the future. Moreover, additional constraints on the IAEA’s verification effort, such as those on the amount of time staff may work at the IAEA’s

<sup>9</sup> See <http://www.gnep.energy.gov/gnepNuclearSafeguards.html>.

<sup>10</sup> “Paper Profiles Russian-Kazakh-Uzbek Uranium Enrichment Deal,” Text of a Report from the Kommersant Newspaper, January 29, 2006, BBC Monitoring Former Soviet Union, available on Nexis.com.

<sup>11</sup> See <http://www-pub.iaea.org/MTCD/Meetings/Announcements.asp?ConfID=147>.

<sup>12</sup> See section 1305 of P.L. 107–228, *The Foreign Relations Authorization Act, Fiscal Year 2003*.



Safeguards Analytical Laboratory, pose other challenges. In this regard, certain provisions of S. 1138 again call to attention the need for reform.

Title IV deals with the realities of expanding nuclear power given the existing demands on IAEA safeguards. Much of the work that will create a more proliferation-resistant, nuclear-powered future can be done today, but this requires more than technical progress in the design of new nuclear facilities. Such technologies are many years away from being commercially available. What are needed now are sustained U.S. leadership and increased financial support for IAEA safeguards. The committee finds that S. 1138 will positively contribute to and enhance existing safeguards and will enhance nuclear fuel supply mechanisms that take into account important nonproliferation criteria, and to these ends has reported favorably this legislation.

Regarding Title V, the Global Pathogen Surveillance Act of 2008, in January 2000, the National Intelligence Council released a National Intelligence Estimate entitled, *The Global Infectious Disease Threat and Its Implications for the United States*. The key judgments in that report were sobering:

New and reemerging infectious diseases will pose a rising global health threat and will complicate US and global security over the next 20 years. These diseases will endanger US citizens at home and abroad, threaten US armed forces deployed overseas, and exacerbate social and political instability in key countries and regions in which the United States has significant interests.<sup>13</sup>

Development of an effective global surveillance and response system probably is at least a decade or more away, owing to inadequate coordination and funding at the international level and lack of capacity, funds, and commitment in many developing and former communist states.<sup>14</sup>

The probability of a bioterrorist attack against US civilian and military personnel overseas or in the United States also is likely to grow as more states and groups develop a biological warfare capability. Although there is no evidence that the recent West Nile virus outbreak in New York City was caused by foreign state or non-state actors, the scare and several earlier instances of suspected bioterrorism showed the confusion and fear they can sow regardless of whether or not they are validated.<sup>15</sup>

The Estimate went on to elaborate regarding the challenges to maintaining an effective world-wide disease surveillance system:

A major obstacle to effective global surveillance and control of infectious diseases will continue to be poor or inaccurate national health statistical reporting by many developing countries and lack of both capacity and will to properly direct aid . . . and to follow WHO and other recommended health care

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<sup>13</sup>National Intelligence Council, "The Global Infectious Disease Threat and Its Implications for the United States," National Intelligence Estimate NIE 99-17D (January 2000), p. 5.

<sup>14</sup>*Ibid.*, p. 8.

<sup>15</sup>*Ibid.*, p. 11.

practices. Those areas of the world most susceptible to infectious disease problems are least able to develop and maintain the sophisticated and costly communications equipment needed for effective disease surveillance and reporting. In addition to the barriers dictated by low levels of development, revealing an outbreak of a dreaded disease may harm national prestige, commerce, and tourism.<sup>16</sup>

In January 2001, the National Intelligence Council released another National Intelligence Estimate, entitled, *The Biological Warfare Threat*. The report pointed to the growing biological warfare capabilities of state and non-state actors and, more importantly, highlighted the similar patterns and symptoms of a deliberately initiated disease outbreak and a naturally occurring outbreak. Once an outbreak is detected and begins to spread, it is very difficult to distinguish between a deliberate and a natural disease outbreak. Both are potentially devastating to human, animal, and plant life, moreover, as well as economically costly. Epidemiologists and public health experts rely on similar tools to help prevent, detect, and contain both intentional and naturally occurring disease outbreaks.

According to an August 2001 report by the U.S. General Accounting Office (GAO, now known as the U.S. Government Accountability Office), WHO officials said that more than 60 percent of laboratory equipment in developing countries was either outdated or non-functioning, and that the vast majority of national personnel were not familiar with quality assurance principles for handling and analyzing biological samples. Deficiencies in training and equipment meant that many public health units in Africa and Asia were simply unable to perform accurate and timely disease surveillance.<sup>17</sup>

On September 5, 2001, the Senate Foreign Relations Committee held a hearing regarding the threat of bioterrorism and the spread of infectious diseases. Witnesses included former Senator Sam Nunn, Dr. Donald A. Henderson of Johns Hopkins University (later a scientific advisor to the White House and the Department of Health and Human Services), and Dr. David L. Heymann, then Executive Director for Communicable Diseases at the WHO. After the appearance, later in September 2001, of letters containing anthrax spores, which left 5 dead and caused major disruptions in the U.S. Senate and elsewhere, the committee held a March 19, 2002, hearing on the chemical and biological weapons threat. At that hearing, Dr. Alan P. Zelicoff, Senior Scientist at Sandia National Laboratories, testified on the role of syndromic surveillance in bioterrorism prevention.

The committee believes that the threat of bioterrorism poses significant challenges not only for the United States, but for the entire world. It is difficult to protect our nation's health without international cooperation in an age of unprecedented air travel and international trade, as infectious pathogens are transported across borders each day. The global outbreak of severe acute respiratory

<sup>16</sup> *Ibid.*, p. 34.

<sup>17</sup> United States General Accounting Office, "Global Health: Challenges in Improving Infectious Disease Surveillance Systems," GAO-01-722 (August 2001), p.3.

syndrome, or SARS, was an unfortunate reminder of this vulnerability. More recently, a man thought at the time to have extensively drug-resistant tuberculosis flew across an ocean—twice—and drove across several national borders, reminding us how readily a disease can be spread in the modern world. Fortunately, although extensively drug-resistant TB is especially difficult to treat, it does not spread as readily as influenza or some other diseases. Authorities knew who the disease vector was, moreover, and they knew (more or less) what he had. The risk with H5N1 avian influenza or a bioterrorism attack is heightened by the likelihood that the disease will spread before its presence is even evident.

Infectious disease outbreaks are transnational threats and the defense of our homeland is not an isolated activity. Rather it requires a comprehensive strategy, including a critical international component. Whether intentional or natural, infectious diseases do not recognize the boundaries set by national borders.

Developing nations represent one of the weak links in a comprehensive global surveillance and monitoring network. For example, even though the world has made substantial efforts to combat and prepare for the possibility of a global avian influenza pandemic, a recent GAO report suggests that the surveillance capabilities of many countries—even when focused on a single disease—remain dangerously inadequate. The report cites a senior WHO official as saying that numerous “disease blind spots” around the world hamper the organization’s ability to identify H5N1 outbreaks. It goes on to say that studies conducted in 2006 by the UN System Influenza Coordinator, in collaboration with the World Bank, found that about one-third of the countries surveyed lacked the capacity to diagnose avian influenza in humans.<sup>18</sup>

Unfortunately, naturally occurring disease outbreaks are most likely to occur in these areas where poor sanitary conditions, poverty, and a weak medical infrastructure combine to offer ideal breeding grounds for pathogens. In addition, some developing countries border rogue states or states that offer sanctuaries for international terrorist groups, which have a documented interest in biological agents.

In 2005, two sets of researchers reported in the journals *Nature* and *Science* that, based on computer simulations, if an outbreak of human-to-human-transmitted avian flu were to occur in a rural part of Southeast Asia, it might be possible to stem that dangerous epidemic by using anti-viral drugs to treat the tens of thousands of people who might have been exposed in the initial outbreak. One key requirement, however, was that the outbreak would have to be discovered, identified and reported very quickly; in one study, the assumption was that countermeasures were instituted when only 30 people had observable symptoms.<sup>19</sup> These simulations underscore both the challenge of disease surveillance and the potential

<sup>18</sup>United States Government Accountability Office, “Influenza Pandemic: Efforts to Forestall Onset Are Under Way: Identifying Countries at Greatest Risk Entails Challenges,” GAO-07-604 (June 2007), pp. 16n and 18–19.

<sup>19</sup>Neil M. Ferguson, Derek A.T. Cummings, Simon Cauchemez, Christophe Fraser, Steven Riley, Aronrag Meeyai, Sopon Iamsirithaworn and Donald S. Burke, “Strategies for containing an emerging influenza pandemic in Southeast Asia,” *Nature*, August 3, 2005. See also I.M. Longini Jr., A. Nizam, S. Xu, K. Ungchusak, W. Hanshaoworakul, D.A. Cummings, and M.E. Halloran, “Containing pandemic influenza at the source,” *Science*, August 3, 2005.

benefits if effective and timely surveillance can be made available where it is most needed.

So it is vital to give these countries the capability to track epidemics and to feed that information into international surveillance networks. Disease surveillance is a systematic approach that requires trained public health personnel, proper diagnostic equipment to identify viruses and pathogens, and prompt transmission of data from the doctor or clinic level all the way to national governments and the WHO.

The Global Pathogen Surveillance Act will offer such help to those countries that agree to give the United States and the WHO prompt access to disease outbreaks, so that we can help determine their origin. Recipients of this training will also be able to learn to spot diseases that might be used in a bioterrorist attack.

The Global Pathogen Surveillance Act was first introduced in 2002. The Senate Foreign Relations Committee reported this bill, either separately or as a title of a larger bill, on several occasions since 2002, and the Senate passed the bill in 2002 and 2005. The original bill was drafted in consultation with the WHO, the CDC, the Department of Defense and others, and later versions benefited from suggestions from the State Department and, in 2005, from staff of the Senate Health, Education, Labor, and Pensions Committee.

The primary authority for implementation of the bill's provisions is vested in the Department of State. The committee expects that the Department of Health and Human Services will also play a critical role, however, including being consulted to the greatest extent possible.

Two years ago the Secretary of State, Dr. Condoleezza Rice, expressed her strong backing for this legislation in an answer for the record:

We believe that the Global Pathogen Surveillance Act will indeed help strengthen developing countries' abilities to identify and track pathogens that could be indicators of dangerous disease outbreaks—either naturally-occurring or deliberately released. Improved disease surveillance and communication among nations are critical defenses against both bioterrorism and natural outbreaks. We look forward to working with you in support of the Global Pathogen Surveillance Act. . . .

One of the true "nightmare" scenarios—of a bioterrorist attack or a naturally occurring disease—involves a contagious biological agent moving swiftly through a crowded urban area of a densely populated developing nation. Thus, we believe that it is critical to increase efforts to strengthen the public health and scientific infrastructure necessary to identify and quickly respond to infectious disease outbreaks—and that the Global Pathogen Surveillance Act will provide valuable support in these efforts.<sup>20</sup>

The WHO also shares the committee's concern. During the SARS epidemic, Dr. Michael Heymann, who was the highest-ranking

<sup>20</sup> "The Nomination of Dr. Condoleezza Rice to be Secretary of State," *Hearings before the Committee on Foreign Relations, U.S. Senate, January 18 and 19, 2005*, S. Hrg. 109-151, pp. 253-254.

American in the WHO, stated at a press conference: “it is clear that the best defense against the spread of emerging infections such as SARS is strong national public health—national disease detection and response capacities that can identify new diseases and contain them before they spread internationally.” He went on to highlight the important role that disease surveillance plays in combating both natural and terrorist outbreaks:

Global partnerships to combat global microbial threats make good sense as a defense strategy that brings immediate benefits in terms of strengthened public health and surveillance systems. The resulting infectious disease intelligence brings dual benefits in terms of protecting populations against both naturally occurring and potentially deliberately caused outbreaks. As SARS has so vividly demonstrated, the need is urgent and of critical importance to the health of economies as well as populations.

Support to developing countries such as proposed in the Global Pathogen Surveillance Act . . . will help strengthen capacity of public health professionals and epidemiologists, laboratory and other disease detection systems, and outbreak response mechanisms for naturally occurring infectious diseases such as SARS. This in turn will strengthen WHO and the world’s safety net for outbreak detection and response, of which the United States is a major partner. And finally, strengthening this global safety net to detect and contain naturally occurring infectious diseases will strengthen the world’s capacity to detect and respond to infectious diseases that may be deliberately caused.

Title VI, the “International Space Station Payments Act of 200.” was also introduced by Senators Biden and Lugar as stand-alone legislation at the request of the National Aeronautics and Space Administration (NASA) to permit payments to Russia relating to the International Space Station after the year 2011. The administration says that this legislation is necessary now so that NASA can contract for space on additional International Space Station missions and Russia can build the necessary additional Soyuz vehicles.

Existing law only permits NASA to make payments to Russia in support of the International Space Station until December 31, 2011. The Russian vehicles provide transportation and, if necessary, rescue services for the Space Station, but there is a three-year time lag between when NASA signs a contract and when Russia completes the needed vehicle for a Space Station mission. According to NASA:

The Russian Federal Space Agency has communicated to NASA that a contract must be in place 36 months prior to launch, in order to begin procurement of longlead items to produce the Soyuz vehicles for the U.S., which are in addition to their own spacecraft manufacturing needs.

Since Soyuz crew rotations for fall 2011 will return in spring 2012. NASA must have new legislative authority in place by fall of 2008, if we are to maintain a U.S. and international

partner (Europe, Canada, and Japan) presence onboard the International Space Station after October 2011. The legislative authority would allow for contract payments to be made beyond 2012.

Title VI includes provisions to encourage the space industry in the United States. It does not authorize the use of Russia's Progress vehicle for cargo deliveries after 2011. It does not authorize use of the Soyuz vehicle for crew transportation after Orion—the successor to the Space Shuttle—is fully operational. The bill also discontinues use of the Soyuz vehicle if a U.S. commercial provider “demonstrates the capability to meet mission requirements of the International Space Station.”

The committee understands NASA's urgency on this matter, though it notes its concern that the United States has become as reliant as it apparently has on Russia for a mission as critical to the International Space Station's success as cargo and crew transportation. The committee also believes that the only certain result of any attempt to block this legislative change, in a misguided attempt to punish Russia for its recent actions, would in fact be to ensure that the United States, Canada, Europe, and Japan would not be able to continue to make use of the International Space Station after 2011.

Included in an appendix are three letters from the Honorable Michael D. Griffin, Administrator of the National Aeronautics and Space Administration, dated April 11, July 17, and September 8, 2008, explaining NASA's request for this change.

#### IV. SECTION-BY-SECTION ANALYSIS

##### SECTION 1. SHORT TITLE

This Act may be cited as the “Security Assistance Act of 2008”.

##### Title I—Military and Related Assistance

##### Subtitle A—Funding Authorizations

##### SECTION 101. FOREIGN MILITARY FINANCING PROGRAM.

This section authorizes Foreign Military Financing (FMF) for fiscal year (FY) 2009 at \$4,982,000, matching the Senate's appropriations mark, and authorizes FY 2010 funding for the program. It amends the Security Assistance Act of 2000, as amended by the Security Assistance Act of 2002, to authorize the requested increase in FMF for Israel (in line with the plan to provide \$30 billion of FMF to Israel over the next 10 years), and to ensure that FMF funds are provided to Israel early in the fiscal year after such funds are appropriated. Subsection (c) amends the Security Assistance Act of 2000, as amended by the Security Assistance Act of 2000, to authorize FMF assistance for Egypt and continues the requirement to disburse such assistance for Egypt to an interest-bearing account.

Except for the updated funding amounts and time periods, this section matches Section 2126 from the *Foreign Affairs Authorization Act, Fiscal Years 2006 and 2007* (S. 600 in the 109th Congress), which was ordered to be reported by the Committee on Foreign Relations by a vote of 18–0 on March 3, 2005.

**SECTION 102. INTERNATIONAL MILITARY EDUCATION AND TRAINING**

This section authorizes funding for FY 2009 for International Military Education and Training at \$91,500,000, matching the Senate's appropriations mark, and authorizes FY 2010 funding for the program. Subsection (b) authorizes the use of these funds for training personnel of international organizations.

Except for the updated funding amounts and time periods, this section matches Section 2123 from the *Foreign Affairs Authorization Act, Fiscal Years 2006 and 2007* (S. 600 in the 109th Congress), which was ordered to be reported by the Committee on Foreign Relations by a vote of 18–0 on March 3, 2005.

Subtitle B—Foreign Assistance Act of 1961 Amendments and Related Provisions

**SECTION 111. WAIVER OF NET PROCEEDS RESULTING FROM DISPOSAL OF UNITED STATES DEFENSE ARTICLES PROVIDED TO A FOREIGN COUNTRY ON A GRANT BASIS**

This section amends section 505(f) of the Foreign Assistance Act to broaden the existing authority of the President to waive the requirement that net proceeds resulting from the disposal of defense articles provided to a foreign country on a grant basis be paid to the United States. Existing law limits the waiver authority to items delivered before 1985.

This section matches Section 2207 from the *Foreign Affairs Authorization Act, Fiscal Years 2006 and 2007* (S. 600 in the 109th Congress), which was ordered to be reported by the Committee on Foreign Relations by a vote of 18–0 on March 3, 2005.

**SECTION 112. ADDITIONS TO WAR RESERVE STOCKPILES FOR ALLIES FOR FISCAL YEARS 2009 AND 2010**

This section extends through FY 2010 the President's authority to transfer excess items to the Department of Defense War Reserve Stockpile.

Except for the updated time period, this section matches Section 2208 from the *Foreign Affairs Authorization Act, Fiscal Years 2006 and 2007* (S. 600 in the 109th Congress), which was ordered to be reported by the Committee on Foreign Relations by a vote of 18–0 on March 3, 2005.

**SECTION 113. ASSISTANCE FOR LAW ENFORCEMENT FORCES**

This section amends section 660 of the Foreign Assistance Act of 1961.

Paragraph (1) amends subsection (b)(6), consistent with current law, to make it clear that the authority of this paragraph may be used in cases where instability has occurred at the sub-national level. Paragraph (1) further amends subsection (b) to add exceptions to the prohibition on assistance for law enforcement forces. New paragraph (8) permits the provision of assistance to combat corruption consistent with the objectives of section 133 of the Foreign Assistance Act. New paragraph (9) is the same as current law but is included as a separate paragraph to make it clear that the authority to provide human rights, rule of law, and other training is not limited to post-conflict situations. New paragraph (10) is an authority related to assistance to combat trafficking in persons. New paragraph (11) permits the provision of assistance for constabularies and gendarmes.

Paragraph (2) amends section 660 to provide the President with the authority to waive the limitations of this section on a case-by-case basis if the President determines that it is important to the national interest to do so. It is anticipated that this authority will be exercised by the Secretary of State under appropriate delegations of authority. The obligation of funds pursuant to such a waiver is subject to prior notification of the appropriate congressional committees under section 634A of the Foreign Assistance Act.

This section matches Section 2220 from the *Foreign Affairs Authorization Act, Fiscal Years 2006 and 2007* (S. 600 in the 109th Congress), which was ordered to be reported by the Committee on Foreign Relations by a vote of 18–0 on March 3, 2005.

#### **SECTION 114. DATABASE OF UNITED STATES MILITARY ASSISTANCE**

The Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (P.L. 106–113) first established the requirement that the annual U.S. military assistance report required under Section 655 of the Foreign Assistance Act of 1961 be made available to the public on the Internet. In the years since, the State Department has complied with this requirement; however, the current report is posted on the Internet only in a PDF document, thus making it difficult for users to manipulate the data in any meaningful fashion. For example, users are not able to compare data over time and across countries and different munitions categories.

In an effort to make the Section 655 report more user-friendly, this section requires the State Department to establish an Internet-accessible, interactive database, consisting of all the unclassified information currently available in the printed report. The database would be searchable by various criteria. Such criteria could include, among others, the recipient country, the United States Munitions List category of article or service provided, and the year of the sale or grant. With such a database, interested parties from academia, non-governmental organizations, the defense industry, and the Congress could access immediately cumulative data, cross-referenced among several categories. Because the Department already organizes the data in the Section 655 report through electronic processing, no new data collection will be required.

This section matches Section 2225 from the *Foreign Affairs Authorization Act, Fiscal Years 2006 and 2007* (S. 600 in the 109th Congress), which was ordered to be reported by the Committee on Foreign Relations by a vote of 18–0 on March 3, 2005.

#### **SECTION 115. ANNUAL REPORT ON FOREIGN MILITARY TRAINING**

This amendment changes the date upon which the report is due to the Congress from January 31 to March 1, and limits the content to military training provided during the previous fiscal year.

This section matches Section 2503 from the *Foreign Affairs Authorization Act, Fiscal Years 2006 and 2007* (S. 600 in the 109th Congress), which was ordered to be reported by the Committee on Foreign Relations by a vote of 18–0 on March 3, 2005.

#### **SECTION 116. DEMINING PROGRAMS**

Subsection (a) amends section 551 of the Foreign Assistance Act to make it clear that, in accordance with previous interpretations of the Peacekeeping program's statutory authorities, the program may include demining activities and other efforts to destroy small



arms, light weapons and other conventional weapons. Subsection (b) continues and makes permanent an authority contained in prior year appropriations acts to allow the Department of State and USAID to dispose of demining equipment on a grant basis in foreign countries.

This section matches Section 2211 from the *Foreign Affairs Authorization Act, Fiscal Years 2006 and 2007* (S. 600 in the 109th Congress), which was ordered to be reported by the Committee on Foreign Relations by a vote of 18–0 on March 3, 2005.

#### **SECTION 117. SPECIAL WAIVER AUTHORITY**

This section amends section 614 of the Foreign Assistance Act by updating authorities and funding limitations in that section.

New subsection (a)(1) provides that the authority of section 614 may be used to waive provisions of law that limit the President's ability to authorize assistance under the authority of the Foreign Assistance Act, the Arms Export Control Act, and any Act authorizing or appropriating foreign assistance funds without regard to the provisions of law cited in subsection (b), as revised by this section. The standards used to allow the provision of both economic and military assistance are the same as current law. The provision also increases one of the annual country limitations.

New subsection (b) lists the provisions of law that may be waived. In addition to provisions contained in foreign assistance authorization and appropriations acts, provisions of law contained in other legislation that limit the provision of assistance under those acts may also be waived under the authority of this section.

The requirements for prior consultation with the appropriate committees of the Congress and submission of a written policy justification before the President may exercise the authority contained in section 614 remain unchanged.

This section matches Section 2212 from the *Foreign Affairs Authorization Act, Fiscal Years 2006 and 2007* (S. 600 in the 109th Congress), which was ordered to be reported by the Committee on Foreign Relations by a vote of 18–0 on March 3, 2005.

#### **SECTION 118. MILITARY COUPS**

This section amends the Foreign Assistance Act to prohibit assistance to a country if the duly elected head of government of such country is deposed by decree or military coup. Similar restrictions have been included in appropriations acts since 1986. Exempted from this restriction is assistance to promote democratic elections, and a presidential waiver would permit assistance upon a determination that such assistance is important to the national security interest of the United States.

This section matches Section 2214 from the *Foreign Affairs Authorization Act, Fiscal Years 2006 and 2007* (S. 600 in the 109th Congress), which was ordered to be reported by the Committee on Foreign Relations by a vote of 18–0 on March 3, 2005.

#### **SECTION 119. FOCUS OF INTERNATIONAL MILITARY EDUCATION AND TRAINING**

This section adds a component to the International Military and Education Program focused on training foreign militaries to protect civilians who are refugees and internally displaced persons.

This section matches Section 2734 from the *Foreign Affairs Authorization Act, Fiscal Years 2006 and 2007* (S. 600 in the 109th Congress), which was ordered to be reported by the Committee on Foreign Relations by a vote of 18–0 on March 3, 2005.

Subtitle C—Arms Export Control Act Amendments and Related Provisions

**SECTION 121. THRESHOLDS FOR ADVANCE NOTICE TO CONGRESS OF SALES OR UPGRADES OF DEFENSE ARTICLES, DESIGN AND CONSTRUCTIONS SERVICES, AND MAJOR DEFENSE EQUIPMENT**

This section raises the minimum dollar thresholds at which sales of certain defense articles, design and construction services, and major defense articles (or upgrades of such sales) must be reported to the Congress under Section 36 of the Arms Export Control Act, and at which transfers must be consented to by the President.

This section raises the level of notification thresholds from \$14,000,000 to \$50,000,000 for major defense equipment, from \$50,000,000 to \$100,000,000 for defense articles and defense services, and from \$200,000,000 to \$350,000,000 for design and construction.

This section also allows for notification of additional cases “if the President determines it is appropriate.”

This section matches Section 2231 from the *Foreign Affairs Authorization Act, Fiscal Years 2006 and 2007* (S. 600 in the 109th Congress), which was ordered to be reported by the Committee on Foreign Relations by a vote of 18–0 on March 3, 2005.

**SECTION 122. CLARIFICATION OF REQUIREMENT FOR ADVANCE NOTICE TO CONGRESS OF COMPREHENSIVE EXPORT AUTHORIZATIONS**

This section requires the President to make certifications to the Congress under Section 36(c)(1) of the Arms Export Control Act before issuing comprehensive authorizations under Section 126.14 of the International Traffic in Arms Regulations (ITAR) for the export of defense articles or defense services to an eligible foreign country or foreign partner.

This section matches Section 2232 from the *Foreign Affairs Authorization Act, Fiscal Years 2006 and 2007* (S. 600 in the 109th Congress), which was ordered to be reported by the Committee on Foreign Relations by a vote of 18–0 on March 3, 2005.

**SECTION 123. TRANSFERS OF SMALL ARMS AND LIGHT WEAPONS**

For any proposed sale, export, or transfer of firearms listed in category I of the United States Munitions List, this section would REQUIRE that the President, in the congressional notification on such sale, provides a description of any assistance or other measures, whether provided by the United States or undertaken by the foreign end user to deal with the firearms in the recipient’s possession that are being replaced by the proposed sale, export, or transfer, along with an analysis of the impact the sale, export, or transfer would have on United States efforts to collecting and destroying small arms and light weapons around the world.

In its 2007–2012 Strategic Plan, under its strategic goal of Achieving Peace and Security, the State Department stated the following about its efforts to deal with the threat posed by small arms, light weapons, and other conventional weapons:

We will reduce stockpiles of destabilizing conventional weapons and munitions, and control their proliferation to areas of concern. Small arms and light weapons fuel civil wars, regional conflicts, and terrorist and criminal activity. We help limit illicit proliferation by strengthening multilateral export control regimes, and destroying surplus, poorly protected, or otherwise at-risk arms and munitions.<sup>21</sup>

The committee includes this provision simply to ensure that the pursuit of other valid security goals—ensuring that allies receive appropriate security assistance for legitimate defense requirements—does not run counter to, or set back, the Department’s efforts to combat the threat posed by certain destabilizing small arms and light weapons.

#### **SECTION 124. PLAN REGARDING CLUSTER MUNITIONS SOLD TO FOREIGN COUNTRIES**

This section requires the Secretary of State, in consultation with the Secretary of Defense, to report on a plan to eliminate the risk posed to innocent civilians by cluster munitions previously sold or transferred to other countries under the Arms Export Control Act that are beyond their design life. A 2005 report by the Defense Science Board Task Force on Munitions System Reliability found that cluster munitions are more likely to fail, and therefore leave unexploded ordnance, as they age past their designed service life. The committee notes the June 2008 memorandum by the Secretary of Defense concerning “DoD Policy Cluster Munitions and Unintended Harm to Civilians.” The memorandum establishes a policy, consistent with other U.S. law and policy, concerning transfers to foreign governments of cluster munitions following the issuance of the memorandum.

#### **SECTION 125. AUTHORITY TO PROVIDE CATALOGING DATA AND SERVICES TO NON-NATO COUNTRIES**

This section authorizes the President to provide cataloging data and services to non-NATO countries on a reciprocal basis. Currently, authority exists only to provide such data and services to NATO and to NATO-member governments.

This section matches Section 2233 from the *Foreign Affairs Authorization Act, Fiscal Years 2006 and 2007* (S. 600 in the 109th Congress), which was ordered to be reported by the Committee on Foreign Relations by a vote of 18–0 on March 3, 2005.

#### **SECTION 126. HAITIAN COAST GUARD**

This section grants eligibility to the Government of Haiti for the purchase of defense articles and services for the Haitian Coast Guard under the Arms Export Control Act subject to existing notification requirements.

This section matches Section 2237 from the *Foreign Affairs Authorization Act, Fiscal Years 2006 and 2007* (S. 600 in the 109th Congress), which was ordered to be reported by the Committee on Foreign Relations by a vote of 18–0 on March 3, 2005.

<sup>21</sup>United States Department of State and United States Agency for International Development, Strategic Plan: Fiscal Years 2007–2012 (May 7, 2007), available at <http://www.state.gov/documents/organization/86291.pdf>.

**SECTION 127. SECURITY COOPERATION WITH THE REPUBLIC OF KOREA**

This section would amend Section 36 of the Arms Export Control Act so that proposed sales, licenses for export, and commercial technical assistance and manufacturing licensing agreements of defense articles and sales involving the Republic of Korea are treated the same way as such sales, licenses, and agreements involving NATO member countries, Australia, Japan, and New Zealand. Certifications to Congress would be required 15 days before proceeding with such sales, licenses, and agreements, as opposed to 30 days, as is currently required in the case of the Republic of Korea.

**SECTION 128. SENSE OF CONGRESS ON AGREEMENTS RELATING TO ASSISTANCE, TRANSFER, OR SALE OF CERTAIN MILITARY TECHNOLOGIES.**

This section states the sense of Congress that it is the responsibility of the United States Government to negotiate with foreign governments any agreement pursuant to section 646(b)(2) of the Consolidated Appropriations Act, 2008 (Public Law 110–161) specifying that qualifying cluster munitions or cluster munitions technology will only be used against clearly defined military targets and will not be used where civilians are known to be present. The committee sees such agreements as a governmental responsibility to secure, not something to be left to private companies seeking to engage in otherwise legitimate defense sales. It could disadvantage U.S. firms when competing with firms in other nations for certain sales if such requirements are left to them to negotiate with foreign governments.

*Title II—Authority to Transfer Naval Vessels*

This title matches the language of S. 3052, the Naval Vessel Transfer Act of 2008, which was introduced by Senators Biden and Lugar on May 22, 2008.

**SECTION 201. SHORT TITLE**

This title may be cited as the “Naval Vessel Transfer Act of 2008.”

**SECTION 202. TRANSFER OF NAVAL VESSELS TO CERTAIN FOREIGN RECIPIENTS**

This section permits the transfer of certain U.S. Navy vessels to particular foreign countries.

Pursuant to section 824(b) of the National Defense Authorization Act for FY 1994, as amended, 10 U.S.C. 7307(a), a naval vessel that is in excess of 3,000 tons or that is less than 20 years of age may not be disposed of to another nation unless the disposition of that vessel is approved by law enacted after August 5, 1974. This section would provide that required approval for six transfers: a guided missile frigate for Pakistan; two minehunter coastal ships for Greece; an oiler for Chile; and two amphibious tank landing ships for Peru. These would all be grant transfers under section 516 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j).

This section also contains provisions that are traditionally included in ship transfer bills, relating to transfer costs and repair and refurbishment of the ships, and exempting the value of a vessel transferred on a grant basis from the aggregate value of excess defense articles in a given fiscal year.

The authority provided by this bill would expire 2 years after the date of enactment of the bill. All of the proposed ship transfer authorizations have been requested by the U.S. Navy, with the approval of the Office of Management and Budget.

*Title III—Nonproliferation, Antiterrorism, and Export Control Assistance*

Subtitle A—Funding Authorizations

**SECTION 301. NONPROLIFERATION, ANTI-TERRORISM, DEMINING, AND RELATED PROGRAMS**

This section authorizes \$578,500,000 for FY 2009, an increase of \$75 million over the President's request, and such sums as may be necessary for FY 2010 for the Nonproliferation, Anti-terrorism, Demining, and Related Programs (NADR) account at the State Department. The NADR account funds voluntary U.S. contributions to certain organizations supporting important nonproliferation goals, and provides assistance for export control, border security, nonproliferation, anti-terrorism, and conventional weapons destruction assistance programs at the Department of State.

Within the funds authorized in this section, subsection (c) authorizes funding levels for FY 2009 for the various individual programs in the NADR account. In addition to the \$66 million for a voluntary contribution to the International Atomic Energy Agency, subsection (c) authorizes an additional \$10 million to be contributed to the IAEA's Nuclear Security Fund, provided such contributions are matched by contributions from other governments or private entities. Subsection (c) also authorizes \$31 million for FY 2009 for a voluntary contribution to pay the current and outstanding United States share of construction and provisional operation of the International Monitoring System and related functions.

**SECTION 302. CONTRIBUTIONS TO INTERNATIONAL ORGANIZATIONS SUPPORTING KEY NONPROLIFERATION GOALS**

This section authorizes, in addition to funds otherwise authorized for such purposes, \$50,000,000 for FY 2008 for the Contributions to International Organizations (CIO) account at the State Department for U.S. obligations to the International Atomic Energy Agency and the Organization for the Prohibition of Chemical Weapons, two international organizations that directly contribute to U.S. national security and U.S. nonproliferation efforts. Because the United States defers payment of most of its annual dues to these organizations to the fiscal year starting near the end of the organization's calendar year, the United States is often unable to pay its dues before the end of organization's budget year.

This section also requires the Secretary of State to report by June 30, 2009, on the amounts of any assessments by the International Atomic Energy Agency and the Organization for the Prohibition of Chemical Weapons for calendar year 2009 or any prior year that the Secretary determines will remain unpaid by the United States on October 1, 2009, and the reasons for those unpaid assessments.

Subtitle B—Program Authorizations, Restrictions, and Limitations

**SECTION 311. AMENDMENTS TO THE ATOMIC ENERGY ACT OF 1954**

This section modifies existing provisions in the Atomic Energy Act of 1954, as amended. Subsection (a) requires that any agreement for nuclear cooperation submitted pursuant to Section 123 of the Act be accompanied by a report on the actions taken and planned with the country involved to fulfill the purposes of the program authorized in Section 502 of the Nuclear Nonproliferation Act of 1978, which focuses on reducing the dependence of countries on petroleum fuels, with emphasis given to utilizing solar and other renewable energy resources. This section seeks to ensure that specific agreements on civil nuclear cooperation are reached within the context of larger discussions between the United States and other nations, or groups of nations, on those countries complete energy strategy. Civilian nuclear energy might be a part of a nation's energy strategy, and the United States may certainly, subject to its laws and policies, seek to cooperate with that nation in the nuclear component of its energy strategy, but this provision would require the executive branch, when submitting to Congress an agreement for nuclear cooperation, to inform Congress at the same time of the actions taken to cooperate on energy sources in the context of the larger U.S. policy in such countries.

Subsections (b) and (c) would ensure that subsequent arrangements and amendments, respectively, to agreements for nuclear cooperation that required a joint resolution of approval by Congress to enter into force would similarly require specific approval by Congress before coming into force. This section would seek to remove any doubts that may exist that substantive changes to the types of cooperation permitted under an agreement requiring congressional assent also require such assent.

**SECTION 312. BIOSECURITY ENGAGEMENT PROGRAM**

This provision would require the Secretary of State to establish a program to combat bioterrorism world-wide by providing training, equipment, and financial and technical (including legal) assistance in such areas as biosecurity, biosafety, pathogen surveillance, and timely response to outbreaks of infectious disease, and by providing increased opportunity for scientists who possess expertise that could make a material contribution to the development, manufacture, or use of biological weapons to engage in remunerative careers that promote public health and safety. This provision is intended as a complement to, but not a replacement for, Title V, the Global Pathogen Surveillance Act of 2008.

The committee notes that the State Department has already begun a "Biosecurity Engagement Program" within its Bureau for International Security and Nonproliferation. The program states that its objectives include:

"Assisting partner countries in maintaining a balance between developing sustainable public and agricultural health infrastructure, and ensuring safe and secure pathogen collections.

"Training in biosafety and pathogen security to promote sound laboratory management practices.

“Engaging bioscience laboratories in collaborative pathogen security and biosafety projects, including assistance in risk assessment, safety and security consultations, design and implementation.

“Training in infectious disease surveillance and molecular diagnostics, and laboratory capacity building activities.

“Integrating advances in international biosafety and pathogen security into efforts to enhance international infectious disease surveillance, diagnostics, response and control.”

The committee applauds this effort, and anticipates that this program will satisfy, at least in part, the mandate of this section.

#### Subtitle C—Reporting Requirements

#### **SECTION 321. AMENDMENTS TO THE ARMS CONTROL AND DISARMAMENT ACT**

This section adds the term “formal commitments” to the elements for which the Verification and Compliance Bureau of the Department of State shall provide compliance analysis (arms control, nonproliferation, and disarmament agreements) under the Arms Control and Disarmament Act. To facilitate faster submission of the annual report on objectives and negotiations, it separates that report from the annual report on compliance, which is required to be prepared in coordination with the Director of National Intelligence. This section also allows the annual report on Chemical Weapons Convention compliance, required by condition 10(C) of the resolution of advice and consent to U.S. ratification of that Convention, to be incorporated in the annual compliance report required by Section 403 of the Arms Control and Disarmament Act.

This section matches Section 2511 from the *Foreign Affairs Authorization Act, Fiscal Years 2006 and 2007* (S. 600 in the 109th Congress), which was ordered to be reported by the Committee on Foreign Relations by a vote of 18–0 on March 3, 2005.

#### **SECTION 322. ADEQUATE FUNDING FOR IAEA SAFEGUARDS**

This section amends the Nuclear Nonproliferation Act of 1978 to state that the United States shall seek to act with other nations to ensure that the IAEA safeguards mission has the resources it needs, and that safeguards activities are funded, to the maximum extent possible, through the regular, assessed portion of the IAEA budget, as opposed to voluntary contributions by IAEA member states.

#### **SECTION 323. ANNUAL REPORT ON NUCLEAR NONPROLIFERATION**

This section revives and amends the annual report by the President on United States efforts to prevent nuclear proliferation originally required by Section 601 of the Nuclear Nonproliferation Act of 1978.

The committee believes that this report has been a vital source of information for the Congress in evaluating efforts of the United States to prevent proliferation of nuclear weapons. The committee was therefore surprised to have been informed by the State Department that the Department now believes that, pursuant to Public Law 104–66, the *Federal Reports Elimination and Sunset Act of 1995*, the requirement to submit this report lapsed in 2000. The

committee notes that the State Department submitted the annual report as late as April 2007, for the 2006 reporting year, and also submitted reports for 2005, 2004, 2003, 2002, and 2001. The committee also notes that the President, as part of Executive Order 13313 (July 31, 2003), further directed that the Secretary of State “shall submit.” the “Report on Nuclear Nonproliferation, consistent with section 601(a) of Public Law 95–242, as amended by Public Law 103–236 (22 U.S.C. 3281(a)).” Nevertheless, the committee includes this provision to ensure that the committee and the Congress continue to benefit from the timely information and analysis that the report promises.

This section permits the report to be submitted by March 1 of each year, and would permit the report to be submitted by June 1 in the first year of a new administration. The section adds a requirement to the original language that the President report on steps being taken to ensure that the IAEA safeguards system is adequately funded. This section consolidates other reporting requirements on nonproliferation, and permits the President to cite other reports by reference rather than reprinting duplicative information in this report.

#### **SECTION 324. AMENDED ADDITIONAL REPORTS ON NONPROLIFERATION**

This section requires the Director of National Intelligence to keep the Committees on Armed Services in both House, as well as the Committee on Foreign Relations in the Senate and the Committee on Foreign Affairs in the House of Representatives, fully and currently informed on activities to prevent proliferation of nuclear, chemical, and biological weapons and their means of delivery, as well as on the relevant actions of foreign nations.

#### **SECTION 325. CONSOLIDATION OF REPORTS ON NON-PROLIFERATION IN SOUTH ASIA**

This section requires that the annual report on nonproliferation in South Asia to be submitted by April 1 of each year, pursuant to Section 620F(c) of the Foreign Assistance Act of 1961, include a description of the efforts of the United States Government to achieve objectives on nuclear and missile nonproliferation in the region, as described in Section 1601 of the *Foreign Relations Authorization Act, FY 2003*, the progress made toward achieving such objectives, and the likelihood that such objectives will be achieved within the following year. This avoids the need for a separate report on those efforts.

This section is largely similarly to Section 2236 from the *Foreign Affairs Authorization Act, Fiscal Years 2006 and 2007* (S. 600 in the 109th Congress), which was ordered to be reported by the Committee on Foreign Relations by a vote of 18–0 on March 3, 2005.

#### **SECTION 326. REPEAL OF ANNUAL REPORT ON RUSSIAN DEBT REDUCTION FOR NONPROLIFERATION**

This section repeals the annual report on actions to implement a program to direct reduced debt owed by Russia toward non-proliferation programs.



## **SECTION 327. ANNUAL ASSESSMENTS OF NONPROLIFERATION AND DISARMAMENT FUND PROJECTS**

This section requires three assessments from the Comptroller General of projects carried out, and submitted for consideration by, the State Department's Nonproliferation and Disarmament Fund.

### *Title IV—Nuclear Safeguards and Supply*

This title is virtually the same as S. 1138, the Nuclear Safeguards and Supply Act of 2007, which was ordered to be reported favorably by the Foreign Relations Committee on June 27, 2007 (see Senate Report 110–151). The only changes are the updating of the short title, the definition of “appropriate congressional committees” for purposes of this title, an update to the fiscal year for which funds are authorized for a voluntary contribution to the International Atomic Energy Agency to refurbish or possibly replace the IAEA Safeguards Analytical Laboratory, and the addition of a new section on a safeguards cadre program.

The Nuclear Safeguards and Supply Act of 2008 augments existing U.S. activities in support of IAEA safeguards and provide authority to the President to negotiate agreements or create mechanisms for the supply of nuclear fuel to countries forgoing enrichment and reprocessing and meeting certain criteria.

#### **SECTION 401. SHORT TITLE.**

This title may be referred to as the “Nuclear Safeguards and Supply Act of 2008.”

#### **SECTION 402. APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED**

This section defines the term “appropriate congressional committees,” for the purposes of this title, as the Committee on Foreign Relations in the Senate and the Committee on Foreign Affairs in the House of Representatives.

### **Subtitle A—Nuclear Safeguards and Nuclear Fuel Supply**

This subtitle on provides a set of findings, stipulates both existing and new policies of the United States with respect to assurances of nuclear fuel supply, increases budgetary support for the IAEA's Safeguards Analytical Laboratory, and calls for an enhanced safeguards technology development program.

#### **SECTION 411. FINDINGS**

Sections 411(1)–(19) provide important findings. In the past two years, major studies, both in the United States and under the auspices of the IAEA, have highlighted critical questions confronting the world as it contemplates the nuclear future and begins to examine proposals for nuclear supply that would use nonproliferation criteria as conditions of supply. Particularly significant was the 2005 *Report of the IAEA Experts Group on Multilateral Approaches to the Nuclear Fuel Cycle*, which was chaired by the former Deputy Director General of the IAEA for Safeguards, Dr. Bruno Pellaud. The Experts Group noted:

Two primary deciding factors dominate all assessments of multilateral nuclear approaches, namely “Assurance of non-proliferation” and “Assurance of supply and services”. Both are recognised overall objectives for governments and for the NPT community. In practice, each of these two objectives can sel-

dom be achieved fully on its own. History has shown that it is even more difficult to find an optimum arrangement that will satisfy both objectives at the same time.<sup>22</sup>

This statement highlights the difficulty that will confront the international community as it works to create international fuel supply mechanisms. The committee notes that many supply-side assurance efforts have been initiated in the past. Importantly, Congress proposed in the Nuclear Nonproliferation Act (NNPA) of 1978 (22 U.S.C. 3201 et seq.) that the President create and submit to Congress such mechanisms as “initial fuel assurances, including creation of an interim stockpile” of low enriched uranium fuel “to be available for transfer pursuant to a sales arrangement to nations which adhere to strict policies designed to prevent proliferation when and if necessary to ensure continuity of nuclear fuel supply to such nations.”<sup>23</sup> Congress also mandated that the provision of this fuel be equivalent to generation of up to “100,000 MW(e) years of power from light water reactors.”<sup>24</sup>

Yet serious negotiations were never pursued for such a proposal by the executive branch. Over the next 20 years, the IAEA and other expert groups also initiated studies on fuel assurances and nonproliferation. These included the IAEA study on Regional Nuclear Fuel Cycle Centers, the International Nuclear Fuel Cycle Evaluation, the Expert Group on International Plutonium Storage, and the IAEA Committee on Assurances of Supply. No countries substantially changed their nuclear policies as a result of these efforts. Consensus was difficult to achieve because of the declining interest in (and in some cases opposition to) nuclear power and a failure to agree on what criteria would govern supply assurances.

With regard to nonproliferation factors that should influence the evaluation of any proposals for assurance of supply, the Pellaud report noted:

The non-proliferation value of a multilateral arrangement is measured by the various proliferation risks associated with a nuclear facility, whether national or multilateral. These risks include the diversion of materials from [a multilateral nuclear approach or MNA] (reduced through the presence of a multinational team), the theft of fissile materials, the diffusion of proscribed or sensitive technologies from MNAs to unauthorised entities, the development of clandestine parallel programmes and the breakout scenario. The latter refers to the case of the host country “breaking out,” for example, by expelling multinational staff, withdrawing from the NPT (and thereby terminating its safeguards agreement), and operating the multilateral facility without international control.<sup>25</sup>

The committee strongly concurs with this assessment, and notes that proposals for the creation of supply mechanisms must directly address these issues at the point of their creation, rather than offer only vague understandings that may result in later difficulties. Thus, section 411(16) concludes:

<sup>22</sup> See <http://www.iaea.org/Publications/Documents/Infocircs/2005/infocirc640.pdf>, hereinafter, “Pellaud Report.”

<sup>23</sup> 22 U.S.C. 3223(b).

<sup>24</sup> *Ibid.*

<sup>25</sup> Pellaud Report.

Any proposals for the creation of bilateral or multilateral assurances of supply mechanisms must take into account, and be achieved in a manner that minimizes, the risk of nuclear proliferation or regional arms races and maximizes adherence to international nonproliferation regimes, including, in particular, the Guidelines of the Nuclear Suppliers Group (NSG), and the IAEA Additional Protocol.

There appears to be wide international support for limiting enrichment and reprocessing, based on supply incentives. For instance, the 2004 *Report of the United Nations Secretary-General's High-Level Panel on Threats, Challenges and Change* found (and section 411(6) notes) that “creating incentives for countries to forego the development of domestic uranium enrichment and reprocessing facilities is essential, and that such suggestions, if implemented swiftly and firmly, offer a real chance to reduce the risk of a nuclear attack, whether by states or non-state actors, and that such proposals should be put into effect without delay.”<sup>26</sup>

The committee strongly believes that any mechanism developed for the provision of nuclear fuel should be country-neutral, should be based on solid nonproliferation criteria, and should, to the maximum degree possible, reinforce the existing safeguards system and prevent additional proliferation by limiting the spread of enrichment and reprocessing. Even if a recipient state were to forgo enrichment and reprocessing, the supply of nuclear fuel to that state would require effective safeguards measures to be in place. Should an international fuel storage facility be located in a nuclear-weapon state, it would be preferable from a nonproliferation standpoint for comprehensive safeguards to be applied to that facility, so as to maintain strict accounting for all fuel set aside for non-nuclear weapons states.

#### **SECTION 412. DECLARATION OF POLICY**

Section 412(a) continues U.S. policies already enacted in the NNPA, namely that it is the policy of the United States:

(1) to create mechanisms to provide adequate supplies of nuclear fuel consistent with the provisions of the Nuclear Non-Proliferation Act of 1978, in particular title I of such Act (22 U.S.C. 3221 *et seq.*);

(2) to strengthen the IAEA safeguards system consistent with the provisions of the Nuclear Non-Proliferation Act of 1978, in particular title II of such Act (22 U.S.C. 3241 *et seq.*); and

(3) to cooperate with other nations, international institutions, and private organizations to assist in the development of non-nuclear energy resources under title V of the Nuclear Non-Proliferation Act of 1978 (22 U.S.C. 3261 *et seq.*).

The committee notes that it has long been U.S. policy, as embodied in the NNPA, to create assurances of nuclear supply, to strengthen the IAEA safeguards system, and to work to provide nations seeking new sources of electricity with non-nuclear options.

<sup>26</sup> See <http://www.un.org/secureworld/>.

Much work is already done under the U.S. Program of Technical Assistance to IAEA Safeguards (POTAS).

Section 412(b) would enact into law the policy announced in President Bush's speech at the National Defense University on February 11, 2004:

The world's leading nuclear exporters should ensure that states have reliable access at reasonable cost to fuel for civilian reactors, so long as those states renounce enrichment and reprocessing. Enrichment and reprocessing are not necessary for nations seeking to harness nuclear energy for peaceful purposes.<sup>27</sup>

Thus, section 412(b) makes it the policy of the United States

[T]o discourage the development of enrichment and reprocessing capabilities in additional countries, encourage the creation of bilateral and multilateral assurances of nuclear fuel supply, and ensure that all supply mechanisms operate in strict accordance with the IAEA safeguards system and do not result in any additional unmet verification burdens for the system.

#### **SECTION 413. SAFEGUARDS ANALYTICAL LABORATORY**

This section would authorize, in addition to the amount requested by the President for U.S. voluntary contributions to the IAEA for FY 2009, \$10 million for the refurbishment or possible replacement of the IAEA Safeguards Analytical Laboratory (SAL).

Committee staff and, on one occasion, Senator Lugar, have visited SAL. Each time, staff was impressed with the level of professionalism and dedication of the laboratory staff but was troubled by the apparent state of the facility. Located in Seibersdorf, Austria, outside Vienna, the SAL provides analytical support to the IAEA Department of Safeguards by receiving samples of materials taken during inspections at key measurement points of the nuclear fuel cycle for destructive chemical and isotopic analysis. This complements physical inspections and measurements performed by IAEA inspectors in nuclear facilities. Such technical analysis capabilities help the IAEA to assure that nuclear material under IAEA safeguards is not diverted to military purposes and, at times, to locate undeclared nuclear material. When SAL is unable to perform certain types of analysis, or when increased verification of results is needed, SAL will often involve its Network of Analytical Laboratories (in other IAEA member states) to assist it in its work.

During staff site visits, which occurred in February 2004 and in October and November 2006, staff found that considerable investment is needed for the laboratory to meet future IAEA requirements. The SAL's workload is growing, laboratory infrastructure is aging, and IAEA requirements have become more demanding. While initial plans have been made for laboratory enhancement, there is no escaping the fact that, as more countries implement IAEA safeguards and additional protocols, many more nuclear samples are coming to the SAL for analysis.

Because of the way the laboratory's responsibilities have grown over the years, the facilities are not optimal: facilities are dispersed

<sup>27</sup> See <http://www.whitehouse.gov/news/releases/2004/02/20040211-4.html>.

throughout the Seibersdorf site, which presents a security problem; almost all of the laboratory space is rented; the nuclear chemistry lab is 31 years old and has outdated infrastructure; and overall, the facility lacks space to deal with demands of the future.

The laboratory also has significant personnel issues that stem from rules governing U.N. agencies. The rules create problems for the SAL in finding and keeping experienced professional staff. As experienced technicians retire, the SAL has been unable to replace them with experienced staff, largely because the IAEA has been unwilling to provide long-term contracts to laboratory personnel.

The committee finds that, while certain personnel policies may be required for most U.N. agencies, the tremendously complicated and technical work of IAEA safeguards verification represents an especially critical function since that work directly enhances international nuclear accountability and transparency through safeguards, which in turn allow nations to make decisions relating to their future peace and security. The IAEA and its Board of Governors should reevaluate staffing policies at the SAL, with an eye toward improving staff retention through more long-term contracts, increasing budgetary support, and ensuring the effective operation of the SAL well into the future. Current funding and equipment planning is not sufficient to meet these goals, and attention to these problems is an urgent matter.

Significantly, previous years' State Department budget requests have noted that a goal of U.S. contributions to the IAEA was "[s]trengthening quality control and sensitivity of analyses by the Safeguards Analytical Laboratory (SAL) and the Network of Analytical Laboratories, and reviewing needs for possible refurbishment or replacement of SAL."<sup>28</sup>

Section 413(b), therefore, requires the Secretary of State to submit a report to Congress not later than 180 days after the date of the enactment of this Act on the refurbishment or possible replacement of the SAL. In such a report, the committee expects the Secretary to examine equipment, personnel, and budgetary issues associated with the SAL, including estimates of the total costs of completely refurbishing the SAL or replacing it.

#### **SECTION 414. SAFEGUARDS TECHNOLOGY DEVELOPMENT PROGRAM**

This section requires the Secretary of State, in cooperation with the Secretary of Energy and the Directors of the National Laboratories and in consultation with the Secretary of Defense and the Director of National Intelligence, to pursue a program to strengthen technical safeguards research and development; to increase resources, identify near-term technology goals, formulate a technology roadmap, and improve interagency coordination on safeguards technology; and to examine proliferation resistance in the design and development of all future nuclear energy systems.

The committee notes that much of this work is already done under POTAS, but that significant research done by various non-governmental organizations has called for greater emphasis in this area. In particular, the May 2005 Report of the Nuclear Energy Study Group of the American Physical Society Panel on Public Affairs, titled "Nuclear Power and Proliferation Resistance: Securing

<sup>28</sup> See <http://www.state.gov/documents/organization/60647.pdf>.

Benefits, Limiting Risks,” contained important recommendations for future safeguards work.<sup>29</sup>

The report noted:

The current Safeguards program largely implements or transfers technologies that are the result of [research and development] carried out 10–20 years ago. Revitalizing Safeguards [research and development] is the most significant technical investment that can enhance the proliferation resistance of nuclear power within the next five years.<sup>30</sup>

#### **SECTION 415. SAFEGUARDS CADRE PROGRAM.**

This section authorizes the Secretary of State, in cooperation with the Secretary of Energy and the Directors of the United States Department of Energy National Laboratories and Technology Centers, to establish a program to create a dedicated cadre of professionals assigned to the task of promoting, strengthening, and providing technical assistance to the IAEA safeguards system. Subsection (b) provides for certain requirements for ensuring that the careers of detailees to the IAEA are in no way damaged by their detail.

#### **Subtitle B—Nuclear Fuel Supply**

This subtitle is identical to the corresponding title in S. 1138, the Nuclear Safeguards and Supply Act. It provides Presidential authority, consistent with existing law, for negotiation of bilateral and multilateral assurances of nuclear fuel supply to states meeting certain criteria, requires a report on the establishment of an International Nuclear Fuel Authority, and contains a sense of the Senate provision on IAEA activities for nuclear fuel supply.

#### **SECTION 421. AUTHORITY FOR BILATERAL AND MULTILATERAL NUCLEAR FUEL SUPPLY MECHANISMS.**

Section 421(a) authorizes the President to create, consistent with title I of the NNPA and other applicable provisions of law, bilateral and multilateral mechanisms to provide a reliable supply of nuclear fuel to those countries and groups of countries that adhere to policies designed to prevent the proliferation of nuclear weapons and that decide to forgo a national uranium enrichment program and spent nuclear fuel reprocessing facilities. The committee recognizes that forgoing enrichment and reprocessing strikes many countries as restricting rights they understand themselves to have acquired by ratifying or acceding to the NPT. Section 421(a) does not require countries to forswear any rights. Rather, they must refrain from investing in sensitive fuel cycle facilities. The committee believes that there would be little value added to the existing nonproliferation regime by any assurance of nuclear fuel supply that did not rest on at least this basic assurance of nonproliferation. Notwithstanding such assurances, moreover, as a general matter, the committee believes that enrichment and reprocessing transfers should be denied to states that do not already operate full-scale enrichment and reprocessing facilities.

<sup>29</sup> See <http://www.aps.org/policy/reports/popa-reports/proliferation-resistance/upload/proliferation.pdf>.

<sup>30</sup> *Ibid.*

Section 421(a) would, again, provide a statutory embodiment of the President's policy regarding the supply of nuclear fuel and the proliferation of enrichment and reprocessing technology announced on February 11, 2004. It is also written so as to require consistency with the NNPA. Many proposals for the expansion of nuclear power have included substantial programs for international cooperation on reprocessing. While the nuclear fuel cycle envisioned by some more than 50 years ago included substantial re-use of plutonium in fast neutron reactors, many became concerned regarding the inherent proliferation risks posed by the use of such reactors and reprocessing. Today, some proposals contemplate expanded use of long-lived, separated actinides, including plutonium, in new, more sophisticated fast neutron reactors. Such reactors appear to be many years from being commercially viable. Several important studies, including a recent study commissioned by the Keystone Center, have also noted:

No commercial reprocessing of nuclear fuel is currently undertaken in the U.S. . . . while reprocessing of commercial spent fuel has been pursued for several decades in Europe, overall fuel cycle economics have not supported a change in the U.S. from a "once-through" fuel cycle. Furthermore, the long-term availability of uranium at reasonable cost suggests that reprocessing of spent fuel will not be cost-effective in the foreseeable future.<sup>31</sup>

Given this assessment of the domestic nuclear picture, and recalling the conclusions of the 2005 PAG on nonproliferation, it is unclear when reprocessing technologies would be prudent to advocate as a part of assured fuel supply to certain states. Given the current supply of natural uranium, the undemonstrated nature of certain new technologies, and uncertainties regarding the proliferation resistance of new fast neutron reactor designs, the committee believes it prudent at this time to offer instead light water thermal reactors, and a supply of low-enriched uranium for them.

The committee notes that the administration has already taken steps toward just such a mechanism, with an announcement by the National Nuclear Security Administration (NNSA) that it has awarded a contract to Wesdyne International and Nuclear Fuel Services, Inc., to down-blend 17.4 metric tons of U.S. highly enriched uranium and store the resulting low-enriched uranium for a reliable fuel supply program.<sup>32</sup>

The material would be converted, by 2010, to a stockpile of some 290 metric tons of low-enriched uranium fuel. According to the NNSA, "[t]he fuel will be available for use in civilian reactors by nations in good standing with the International Atomic Energy Agency (IAEA) that have good nonproliferation credentials and are not pursuing uranium enrichment and reprocessing technologies."<sup>33</sup>

This proposal was first announced by Secretary of Energy Samuel Bodman at the 49th General Conference of the IAEA in 2005, when he stated that "the U.S. Department of Energy will reserve

<sup>31</sup> See [http://www.keystone.org/spp/documents/FinalReport--NJFF6--12--2007\(1\).pdf](http://www.keystone.org/spp/documents/FinalReport--NJFF6--12--2007(1).pdf).

<sup>32</sup> See <http://www.nnsa.doe.gov/docs/newsreleases/2007/PR--2007-06-29--NA-07-26.htm>.

<sup>33</sup> *Ibid.*

up to 17 metric tons of highly enriched uranium for an IAEA verifiable assured supply arrangement.”<sup>34</sup>

The committee notes the importance of such progress. This title envisions such initiatives as a part of assurance of supply mechanisms, instead of simply authorizing additional money to the IAEA to achieve such purposes. While money for an IAEA-administered nuclear fuel bank may well be needed, the provision of materials, particularly down-blended former weapons materials, also supports a fuel assurance policy and demonstrates U.S. nonproliferation leadership by permanently removing such materials from our weapons program.

Section 421(b) provides a set of factors that the President shall take into account when creating mechanisms for fuel supply under this title. Section 421(b) is intended to be a partial, not exhaustive, list of relevant criteria that should inform decisions regarding to which nations nuclear supply should be extended. Importantly, this provision states that these factors shall be taken into account “to the maximum extent practicable.” To the extent that one or more factors included in this section prove impracticable, or that other factors should be taken into account given a particular country’s circumstances, the provision is intended to permit flexibility.

The committee notes that no aspect of the creation of multilateral or bilateral mechanisms assuring nuclear fuel supply will be more difficult than the criteria for access to that supply. Section 421(b) sets forth factors the President shall examine in addition to the basic criteria related to nonproliferation of nuclear weapons or fuel cycle facilities:

- (1) The economic rationale for a country or countries pursuing nuclear power, including existing sources of power for such country or countries.
- (2) Whether such country or countries are in compliance with their obligations under applicable safeguards agreements and additional protocols with the IAEA.
- (3) Whether or not the development in such country or countries of the complete nuclear fuel cycle would impose new, costly IAEA safeguards measures that cannot be supported by current IAEA safeguards implementation in such country or countries, such that there is a reasonable assurance that all nuclear materials in such country or countries are for peaceful purposes and that there are no undeclared nuclear materials or activities in such country or countries.
- (4) An evaluation of the proliferation dangers of such country or countries developing nuclear fuel cycle facilities for the production and disposition of source and special nuclear materials.
- (5) Whether or not the country or countries that would be recipients of nuclear fuel or other assistance provided by the United States are or have ever been designated as state sponsors of terrorism pursuant to section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), section 40 of the Arms Export Control Act (22 U.S.C. 2780), or section 6(j) of the Export Administration Act (50 U.S.C. App. 2405(j)).

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<sup>34</sup> See <http://www>



(6) If done under a bilateral supply mechanism, whether IAEA safeguards are being applied or will be applied to any facility, site, or location where international nuclear fuel supply activities are to be carried out.

(7) Whether, in the case of a multilateral supply mechanism, procedures are in place to ensure that when United States funds are used or when United States nuclear materials are to be used, exported, or reexported, all applicable provisions of United States law are followed.

(8) Whether the recipient country or countries of any fuel provided under this Act are or will become a party, prior to the commencement of any nuclear fuel supply under this Act, to—

(A) the Nuclear Non-Proliferation Treaty;

(B) in the case of a non-nuclear-weapon State Party to the Nuclear Non-Proliferation Treaty, a comprehensive safeguards agreement that is in force, pursuant to which the IAEA has the right and obligation to ensure that safeguards are applied, in accordance with the terms of the agreement, on all source or special fissionable material in all peaceful nuclear activities within the territory of such country, under its jurisdiction, or carried out under its control anywhere, for the exclusive purpose of verifying that such material is not diverted to nuclear weapons or other nuclear explosive devices;

(C) an additional protocol;

(D) the Convention on Nuclear Safety, done at Vienna September 20, 1994, and entered into force October 24, 1996;

(E) the Convention on Physical Protection of Nuclear Materials, done at Vienna October 26, 1979, and entered into force February 8, 1987; and

(F) the Convention on Supplementary Compensation for Nuclear Damage, done at Vienna September 12, 1997.

(9) The extent to which the recipient country or countries have or will have prior to the commencement of any nuclear fuel supply under this Act effective and enforceable export controls regarding nuclear and dual-use nuclear technology and other sensitive materials comparable to those maintained by the United States.

(10) The conformity of the safety and regulatory regimes in the recipient country or countries regarding the nuclear power sector with similar United States laws and regulations.

(11) The history of safety or environmental problems associated with any nuclear site, facility, or location in the recipient country or countries in the past, and the potential for future safety or environmental problems or issues in connection with the civilian nuclear power development plan of the country or countries.

(12) Whether the recipient country or countries have resident within them any persons or entities involved in the illicit trafficking of nuclear weapons, nuclear materials, or dual-use nuclear technology.

(13) Whether the recipient country or countries have or will have sufficiently open and transparent civilian power markets such that United States firms may benefit from any such bilateral or multilateral supply mechanisms.

The committee notes that one of these factors, section 421(b)(7), requires an examination by the President of compliance with relevant U.S. laws when providing funds or materials for international fuel assurances. For example, United States law would appear to prohibit supply in cases where ultimate use of material is to be by a state sponsor of terrorism. Section 421(b)(5) would also provide that the President take into account whether state sponsors of terrorism would be involved in any assurance of supply. In view of the complexity presented by this question, the committee hopes the administration will initiate consultations with the committee regarding its own analysis of U.S. laws and regulations at the earliest possible time, so as to permit clearer understandings of the various problems that may present themselves.

Section 421(c) provides a rule of construction, stipulating that nothing in this Act shall be construed to provide any authority with respect to bilateral cooperation with another country or countries or any international organization or organizations in atomic energy that is additional to the authority provided under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) and all other applicable laws and regulations in effect on the date of the enactment of this Act. This provision guards against an overbroad reading of the Act's terms to obviate restrictions in current law regarding nuclear cooperation with other nations.

**SECTION 422. REPORT ON THE ESTABLISHMENT OF AN INTERNATIONAL FUEL AUTHORITY.**

This section requires a new report from the executive branch regarding the creation of an International Nuclear Fuel Authority or INFA, which Congress first required in section 104(a)(1) of the NNPA (22 U.S.C. 3223(a)(1)). In addition to the factors that were reported many years ago, this section would call for an updated and expanded report that would take into account, under subsection (b), new elements:

- (1) United States laws and regulations that could be affected by the establishment of an INFA.
- (2) What the cost to the United States Government could be of establishing an INFA.
- (3) Potential locations for the INFA.
- (4) The potential for creating a fuel supply bank under the control of the INFA.
- (5) Nuclear materials that should be placed within the control of the INFA, including which nuclear activities should be carried out by the INFA for the production of nuclear fuel or for use as fuel.
- (6) Whether the INFA should provide nuclear fuel services to recipient countries.
- (7) Whether a multilateral supply mechanism, such as the INFA, is, in the judgment of the President, superior to bilateral mechanism for nuclear fuel supply.

(8) How such an international organization should operate to preserve freedom of markets in nuclear fuel and avoid undue interference in the efficient operation of the international nuclear fuel market.

(9) The degree and extent to which such a multilateral supply mechanism should be under the control of, or a subordinate organization within, the IAEA, including whether establishing such an INFA would be superior or preferable to allowing the IAEA, pursuant to Article IX of the Statute of the IAEA, to become an international broker of nuclear fuel and nuclear fuel services, including with respect to an examination of the costs to IAEA Member States of effectively carrying out clauses (1) through (4) of paragraph (H) of such Article.

(10) The likely receptivity of the major countries involved in the supply of nuclear fuel and nuclear services to the creation of a multilateral supply mechanism such as the INFA or one under the IAEA.

#### **SECTION 423. SENSE OF THE SENATE ON IAEA FUEL SUPPLY.**

This section provides a sense of the Senate on an IAEA-administered fuel bank. It concludes that

[A] combination of public and private efforts, including the provisions of law previously enacted in the Nuclear Non-Proliferation Act of 1978 (22 U.S.C. 3201 et seq.) and other applicable laws, initiatives supported by the President, efforts provided for by private groups, and the recommendations of many relevant studies, such as those cited in section 101, will be necessary to effectively and flexibly manage the growth of civilian nuclear power in a manner that does not result in undue burdens on the IAEA safeguards system.

#### *Title V—Global Pathogen Surveillance*

This title matches S. 1687, the Global Pathogen Surveillance Act of 2007, which the committee ordered to be reported on favorably on June 27, 2007.

#### **SECTION 501. SHORT TITLE**

This title is called the “Global Pathogen Surveillance Act of 2008.”

#### **SECTION 502. FINDINGS; PURPOSE**

This section lays out the findings and purposes of this Act.

#### **SECTION 503. DEFINITIONS**

This section defines five terms of art and sets forth one routine definition. The definition of “International Health Organization” in definition (3) is meant to be illustrative, rather than exclusive; additional organizations to those cited in the definition may also qualify as international health organizations under the Act.

#### **SECTION 504. ELIGIBILITY FOR ASSISTANCE**

This section requires, in general, that assistance under the provisions of this Act be given only to those eligible developing countries that permit personnel from the World Health Organization (WHO) and the Centers for Disease Control and Prevention (CDC) to investigate infectious disease outbreaks on their territory and that

provide pathogen surveillance data derived from such assistance to appropriate U.S. departments and agencies in addition to international health organizations. The committee intends that this requirement be met in a manner that does not reveal any classified information to persons not authorized to receive such information. Subsection (b) authorizes the Secretary of State to waive the limitation in subsection (a) if the Secretary determines that it is in the national interest of the United States to provide such a waiver.

#### **SECTION 505. RESTRICTION**

This section restricts access by foreign nationals participating in programs authorized under this title to select agents that may be used as, or in, a biological weapon, except in a supervised and controlled setting. The committee does not believe that such a restriction will constrain foreign nationals from fully participating in various training and educational programs under this Act. Subsection (b) makes clear that this restriction may not be construed to limit the ability of the Secretary of Health and Human Services to prescribe, through regulation, standards for the handling of a select agent or toxin or an overlap select agent or toxin.

#### **SECTION 506. FELLOWSHIP PROGRAM**

This section authorizes the Secretary of State to award fellowships to eligible nationals of eligible developing countries to pursue a master of public health degree or advanced public health training in epidemiology within the United States. Each fellow may also take courses of study at the CDC or at an equivalent facility on diagnosis and containment of likely bioterrorism agents. The committee believes that carefully chosen programs of this sort should be encouraged as they not only impart technical skills utilizing state-of-the-art technology, but also help cultivate the management and organizational skills of future leaders for developing country public health programs.

Subsection (c) requires that fellows enter into an agreement with the Secretary of State under which the fellow will maintain satisfactory academic performance and, upon completing the education or training, will return to his or her country of nationality or last habitual residence (so long as it is an eligible developing country) and complete at least four years of employment in a public health position in the government or a non-governmental, not-for-profit entity in that country. Alternatively, with the Secretary's consent, the fellow can complete part or all of this four-year requirement with an international health organization. If the fellow is unable to meet these requirements, he or she will be required to reimburse the U.S. government for the value of the assistance provided; the Secretary may waive the limitation in this subsection if the Secretary determines that it is in the national interest of the United States to provide such a waiver.

Subsection (d) authorizes the Secretary of State, in consultation with the Secretary of Health and Human Services, to enter into an agreement with any eligible developing country to establish the procedures for implementing the program.

Subsection (e) allows for the participation of U.S. citizens on a case-by-case basis, if the Secretary of State determines that it is in the national interest of the United States to provide for such par-

ticipation. Such participants would be required, upon completion of education or training, to complete at least five years of employment in a public health position in an eligible developing country or at an international health organization.

Subsection (f) allows the Secretary, with the concurrence of the Secretary of Health and Human Services (HHS), to use existing HHS programs to provide the education and training described in this section, if the requirements of subsections (b), (c) and (d) will be substantially met under such existing programs.

**SECTION 507. IN-COUNTRY TRAINING IN LABORATORY TECHNIQUES AND DISEASE AND SYNDROME SURVEILLANCE**

This section authorizes the provision of short-term training courses outside the United States for laboratory technicians and public health officials in laboratory techniques relating to the identification, diagnosis, and tracking of pathogens responsible for infectious disease outbreaks. This training may take place in overseas facilities of the CDC or the Overseas Medical Research Units of the Department of Defense, as appropriate. Any such training shall be coordinated with existing programs and activities of international health organizations. Such training courses offer the opportunity for public health personnel to train in their indigenous environment, utilizing the available technology.

Subsection (b) authorizes short training courses, which shall be conducted either via the Internet or in appropriate facilities located in a foreign country, on disease and syndrome surveillance techniques. Using disease and syndrome surveillance, the emergence of a disease in a population is monitored based on geographic patterns of clinician-reported patient complaints and signs derived from physical examination and laboratory data.

**SECTION 508. ASSISTANCE FOR THE PURCHASE AND MAINTENANCE OF PUBLIC HEALTH LABORATORY EQUIPMENT AND SUPPLIES**

This section authorizes the President to furnish assistance to eligible developing countries to purchase and maintain public health laboratory equipment and supplies that are needed to collect, analyze, and identify expeditiously a broad array of pathogens, including mutant strains, which may cause disease outbreaks or be used in a biological weapon. The equipment and supplies are to be appropriate for use in the intended geographic area and compatible with general standards set forth by the WHO and, as appropriate, the CDC. They must not be defense articles or articles that would be subject to the Arms Export Control Act or likely be barred or subject to special conditions under the Export Administration Act of 1979 if purchased in the United States. This section does not exempt the exporting of goods or technology from compliance with applicable provisions of the Export Administration Act of 1979 (as in effect pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701 et seq.).

Subsection (e) provides that preference should be given to the purchase of equipment and supplies of U.S. manufacture. Subsection (f) requires that the eligible developing country agree to properly house, maintain, support, secure, and maximize the use of equipment and supplies provided under this section.

**SECTION 509. ASSISTANCE FOR IMPROVED COMMUNICATION OF PUBLIC HEALTH INFORMATION**

This section authorizes the President to provide assistance to eligible developing countries to purchase and maintain communications equipment and information technology to effectively and quickly collect, analyze, and transmit public health information within and among developing countries and to and from international health organizations. The requirements and limitations applied to assistance in section 8 are also applied to section 9. In addition, subsection (f) authorizes the President to provide assistance to international health organizations to facilitate standardization in the reporting of public health information.

**SECTION 510. ASSIGNMENT OF PUBLIC HEALTH PERSONNEL TO UNITED STATES MISSIONS AND INTERNATIONAL ORGANIZATIONS**

This section authorizes the heads of Executive branch departments and agencies to assign public health personnel to U.S. diplomatic missions and international health organizations when requested, with the concurrence of the Secretary of State and of the employee concerned, for the purpose of enhancing disease and pathogen surveillance efforts in developing countries. The Department of State is authorized, under certain circumstances, to reimburse an agency or department for the costs incurred by reason of the detail of such personnel.

**SECTION 511. EXPANSION OF CERTAIN UNITED STATES GOVERNMENT LABORATORIES ABROAD**

This section mandates the expansion of the overseas laboratories and other related facilities of the CDC and the Department of Defense, subject to the availability of appropriations. This expansion applies to both numbers of personnel and the scope of operations. The intent of this provision is to further the goals of global pathogen surveillance and monitoring. Overseas CDC and Department of Defense facilities, working with host governments, play a crucial role in enhancing the capability of developing countries to monitor disease outbreaks and possible biological weapons attacks. The committee intends that the expansion of CDC and Department of Defense overseas laboratory activities be undertaken in close cooperation with host countries, to benefit their well-being and national security as well as that of the United States.

Subsection (b) provides that the expansion be carried out in such a manner as to foster cooperation and avoid duplication between and among laboratories. Subsection (c) provides that the expansion may not detract from the established core missions of the laboratories or compromise the security of those laboratories.

**SECTION 512. ASSISTANCE FOR INTERNATIONAL HEALTH NETWORKS AND EXPANSION OF FIELD EPIDEMIOLOGY TRAINING PROGRAMS**

This section authorizes the President to provide assistance for the purposes of enhancing the surveillance and reporting capabilities of the WHO and existing international regional and international health networks and for developing new international regional and international health networks, as a means of continuing to expand the reach of a global surveillance network.

Subsection (b) authorizes the Secretary of Health and Human Services to establish new country or regional international Field Epidemiology Training Programs in eligible developing countries.

These programs offer two years of intense training for health professionals in entry- or mid-level positions to help build up indigenous capacity in epidemiology and public health.

#### **SECTION 513. REPORTS**

This section requires the Secretary of State to submit a report to the Senate Foreign Relations Committee and the House Foreign Affairs Committee, not later than 90 days after the date of enactment of this Act, on the implementation of programs under this Act, including an estimate of the level of funding required to carry out such programs at a sufficient level.

#### **SECTION 514. AUTHORIZATION OF APPROPRIATIONS**

This section authorizes appropriations for carrying out provisions of this title for Fiscal Years 2008 and 2009. The section authorizes \$115 million in total. Of this amount, \$40 million is authorized for FY 2008 and \$75 million for FY 2009. Subsection (b) provides that the amounts appropriated pursuant to subsection (a) are authorized to remain available until expended. Subsection (c) provides that not more than 10 percent of the amount appropriated for FY 2008 may be obligated before the date on which a report is submitted, or required to be submitted, whichever first occurs, under section 13.

#### *Title VI—International Space Station Payments*

This title matches S. 3103, the International Space Station Payments Act of 2008, which was submitted by Senators Biden and Lugar, by request, on June 9, 2008.

#### **SECTION 601. SHORT TITLE**

Provides that this title may be cited as the “International Space Station Payments Act of 2008”.

#### **SECTION 602. AUTHORITY TO MAKE CERTAIN EXTRAORDINARY PAYMENTS IN CONNECTION WITH THE INTERNATIONAL SPACE STATION.**

The administration has informed the committee that this legislation is necessary now so that NASA can contract for space on additional International Space Station missions and Russia can build the necessary additional Soyuz vehicles. The Russian vehicles provide transportation and, if necessary, rescue services for the Space Station. There is a 3-year time lag between when NASA signs a contract and when Russia completes the needed vehicle for a Space Station mission.

The NASA language includes provisions to encourage the space industry in the United States. It does not authorize the use of Russia’s Progress vehicle for cargo deliveries after 2011, and it does not authorize use of the Soyuz vehicle for crew transportation after Orion—the successor to the Space Shuttle—is fully operational. This section also bars continued use of the Soyuz vehicle if a U.S. commercial provider “demonstrates the capability to meet mission requirements of the International Space Station.”

#### **V. COST ESTIMATE**

Rule XXVI, paragraph 11(a) of the Standing Rules of the Senate requires that committee reports on bills or joint resolutions contain

a cost estimate for such legislation. To date, the committee has not received the Congressional Budget Office cost estimate.

## VI. EVALUATION OF REGULATORY IMPACT

Rule XXVI, paragraph 11(b) of the Standing Rules of the Senate requires an evaluation of the regulatory impact of the bill. Section 121 increases the monetary thresholds for notification of arms exports to Congress under section 36 of the Arms Export Control Act, and will therefore require minor modifications to existing regulations issued under the authority of Section 38 of that Act.

## VII. CHANGES IN EXISTING LAW

In compliance with Rule XXVI, paragraph 12 of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman).

### Foreign Assistance Act of 1961

\* \* \* \* \*

### PART II

\* \* \* \* \*

### Chapter 2—Military Assistance

\* \* \* \* \*

(f) Effective July 1, 1974, no defense article shall be furnished to any country on a grant basis unless such country shall have agreed that the net proceeds of sale received by such country in disposing of any weapon, weapons system, munition, aircraft, military boat, military vessel, or other implement of war received under this chapter will be paid to the United States Government and shall be available to pay all official costs of the United States Government payable in the currency of that country, including all costs relating to the financing of international educational and cultural exchange activities in which that country participates under the programs authorized by the Mutual Educational and Cultural Exchange Act of 1961. [In the case of items which were delivered prior to 1985, the] *The* President may waive the requirement that such net proceeds be paid to the United States Government if he determines that to do so is in the national interest of the United States.

\* \* \* \* \*

SEC. 514. STOCKPILING OF DEFENSE ARTICLES FOR FOREIGN COUNTRIES.—(a) \* \* \*

(b)(1) The value of defense articles to be set aside, earmarked, reserved, or intended for use as war reserve stocks for allied or other foreign countries (other than for purposes of the North Atlantic Treaty Organization or in the implementation of agreements with Israel) in stockpiles located in foreign countries may not exceed in any fiscal year an amount that is specified in security assistance authorizing legislation for that fiscal year.



(2)(A) The value of such additions to stockpiles of defense articles in foreign countries shall not exceed \$200,000,000 ~~for each of fiscal years 2007 and 2008~~ *for each of fiscal years 2009 and 2010.*

\* \* \* \* \*

(B) Of the amount specified in subparagraph (A) for a fiscal year, not more than \$200,000,000 may be made available for stockpiles in the State of Israel.

\* \* \* \* \*

#### SEC. 516. AUTHORITY TO TRANSFER EXCESS DEFENSE ARTICLES.

(a) AUTHORIZATION.— \* \* \*

\* \* \* \* \*

(f) ADVANCE NOTIFICATION TO CONGRESS FOR TRANSFER OF CERTAIN EXCESS DEFENSE ARTICLES.—

(1) IN GENERAL.—The President may not transfer excess defense articles that are significant military equipment (as defined in section 47(9) of the Arms Export Control Act) or excess defense articles valued (in terms of original acquisition cost) at \$7,000,000 or more, under this section or under the Arms Export Control Act (22 U.S.C. 2751 et seq.) until 30 days after the date on which the President has provided notice of the proposed transfer to the congressional committees specified in section 634A(a) in accordance with procedures applicable to reprogramming notifications under that section.

(2) CONTENTS.—Such notification shall include—

(A) a statement outlining the purposes for which the article is being provided to the country, including whether such article has been previously provided to such country;

(B) an assessment of the impact of the transfer on the military readiness of the United States;

(C) an assessment of the impact of the transfer on the national technology and industrial base and, particularly, the impact on opportunities of entities in the national technology and industrial base to sell new or used equipment to the countries to which such articles are to be transferred~~;~~ and~~]~~

*(D) for any proposed transfer of firearms listed in category I of the United States Munitions List that would require a license for international export under section 36 of the Arms Export Control Act (22 U.S.C. 2776)—*

*(i) an analysis of the impact of the 23 proposed sale on efforts by the United States relating to the collection and destruction of excess small arms and light weapons; and*

*(ii) a detailed description of any provision or requirement for the recipient state to dispose of firearms that would become excess as a result of the proposed transfer; and*

~~[(D)]~~ (E) a statement describing the current value of such article and the value of such article at acquisition.

\* \* \* \* \*

## Chapter 5—International Military Education and Training

SEC. 541. GENERAL AUTHORITY.—(a) The President is authorized to furnish, on such terms and conditions consistent with this Act as the President may determine (but whenever feasible on a reimbursable basis), military education and training to military and related civilian personnel of foreign countries *and comparable personnel of international organizations*. Such civilian personnel shall include foreign governmental personnel of ministries other than ministries of defense, and may also include legislators and individuals who are not members of the government, if the military education and training would (i) contribute to responsible defense resource management, (ii) foster greater respect for and understanding of the principle of civilian control of the military, (iii) contribute to cooperation between military and law enforcement personnel with respect to counternarcotics law enforcement efforts, [or (iv)] *(iv) improve military justice systems and procedures in accordance with internationally recognized human [rights.] rights, or (v) improve the protection of civilians, especially women and children, including those who are refugees or displaced persons.* Such training and education may be provided through—

\* \* \* \* \*

SEC. 542. AUTHORIZATION.—[There are authorized to be appropriated to the President to carry out the purposes of this chapter \$56,221,000 for the fiscal year 1986 and \$56,221,000 for the fiscal year 1987] *There are authorized to be appropriated to the President to carry out the purposes of this chapter \$91,500.000 for fiscal year 2009 and such sums as may be necessary for fiscal year 2010.*

\* \* \* \* \*

## Chapter 6—Peacekeeping Operations

SEC. 551. GENERAL AUTHORITY.—The President is authorized to furnish assistance to friendly countries and international organizations, on such terms and conditions as he may determine, for peacekeeping operations and other programs carried out in furtherance of the national security interests of the United States. [Such assistance may include reimbursement]

(1) *Reimbursements* to the Department of Defense for expenses incurred pursuant to section 7 of the United Nations Participation Act of 1945, except that such reimbursements may not exceed \$5,000,000 in any fiscal year unless a greater amount is specifically authorized by this section.

(2) *Demining activities, clearance of unexploded ordnance, destruction of small arms, light weapons, and other conventional weapons, and related activities, notwithstanding any other provision of law.*

\* \* \* \* \*

## CHAPTER 9—NONPROLIFERATION AND EXPORT CONTROL ASSISTANCE

\* \* \* \* \*

**SEC. 584. INTERNATIONAL NONPROLIFERATION EXPORT CONTROL TRAINING.**

\* \* \* \* \*

**SEC. 584A. GLOBAL PATHOGEN SECURITY PROGRAM.**

(a) *ESTABLISHMENT.*—*The Secretary of State shall establish a program to combat bioterrorism world-wide by providing training, equipment, and financial and technical (including legal) assistance in such areas as biosecurity, biosafety, pathogen surveillance, and timely response to outbreaks of infectious disease, and by providing increased opportunity for scientists who possess expertise that could make a material contribution to the development, manufacture, or use of biological weapons to engage in remunerative careers that promote public health and safety.*

(b) *ACTIVITIES INCLUDED.*—*Activities in the program established pursuant to subsection (a) may include such activities as the Biosecurity Engagement Program of the Office of Cooperative Threat Reduction in the Department of State.*

\* \* \* \* \*

**PART III**

**Chapter 1—General Provisions**

\* \* \* \* \*

**SEC. 614. SPECIAL AUTHORITIES.**—(a) [(1) The President may authorize the furnishing of assistance under this Act without regard to any provision of this Act, the Arms Export Control Act, any law relating to receipts and credits accruing to the United States, and any Act authorizing or appropriating funds for use under this Act, in furtherance of any of the purposes of this Act, when the President determines, and so notifies in writing the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate, that to do so is important to the security interests of the United States.]

(1) The President may authorize any assistance, sale, or other action under this Act, the Arms Export Control Act (22 U.S.C. 2751 et seq.), or any other law that authorizes the furnishing of foreign assistance or the appropriation of funds for foreign assistance, without regard to any of the provisions described in subsection (b) if the President determines, and notifies the Committees on Foreign Relations and Appropriations of the Senate and the Committees on Foreign Affairs and Appropriations of the House of Representatives in writing—

(A) with respect to assistance or other actions under chapter 2 or 5 of part II of this Act, or sales or other actions under the Arms Export Control Act, that to do so is vital to the national security interests of the United States; and

(B) with respect to other assistance or actions, that to do so is important to the security interests of the United States.

[(2) The President may make sales, extend credit, and issue guarantees under the Arms Export Control Act, without regard to any provision of this Act, the Arms Export Control Act, any law relating to receipts and credits accruing to the United States, and any Act authorizing or appropriating funds for use under the Arms

Export Control Act, in furtherance of any of the purposes of such Act, when the President determines, and so notifies in writing the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate, that to do so is vital to the national security interests of the United States.】

【(3)】 (2) Before exercising the authority granted in this subsection, the President shall consult with, and shall provide a written policy justification to, the Committee on Foreign Affairs and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate.

【(4)】 (3)(A) The authority of this subsection may not be used in any fiscal year to authorize—

(i) more than \$750,000,000 in sales to be made under the Arms Export Control Act;

(ii) the use of more than \$250,000,000 of funds made available for use under this Act or the Arms Export Control Act; and

(iii) the use of more than \$100,000,000 of foreign currencies accruing under this Act or any other law.

(B) If the authority of this subsection is used both to authorize a sale under the Arms Export Control Act and to authorize funds to be used under the Arms Export Control Act or under this Act with respect to the financing of that sale, then the use of the funds shall be counted against the limitation in subparagraph (A)(ii) and the portion, if any, of the sale which is not so financed shall be counted against the limitation in subparagraph (A)(i).

(C) Not more than 【\$50,000,000】 *\$75,000,000* of the \$250,000,000 limitation provided in subparagraph (A)(ii) may be allocated to any one country in any fiscal year unless that country is a victim of active aggression, and not more than \$500,000,000 of the aggregate limitation of \$1,000,000,000 provided in subparagraphs (A)(i) and (A)(ii) may be allocated to any one country in any fiscal year.

【(5)】 (4) The authority of this section may not be used to waive the limitations on transfers contained in section 610(a) of this Act.

【(b) Whenever the President determines it to be important to the national interest, he may use funds available for the purposes of chapter 4 of part I in order to meet the responsibilities or objectives of the United States in Germany, including West Berlin, and without regard to such provisions of law as he determines should be disregarded to achieve this purpose.

【(c) The President is authorized to use amounts not to exceed \$50,000,000 of the funds made available under this Act pursuant to his certification that it is inadvisable to specify the nature of the use of such funds, which certification shall be deemed to be a sufficient voucher for such amounts. The President shall fully inform the chairman and ranking minority member of the Committee on Foreign Affairs of the House of Representatives and the chairman and ranking minority member of the Committee on Foreign Relations of the Senate of each use of funds under this subsection prior to the use of such funds.】

(b) *INAPPLICABLE OR WAIVABLE LAWS.*—*The provisions referred to in subsection (a) are those set forth in any of the following:*

- (1) Any provision of this Act.  
 (2) Any provision of the Arms Export Control Act (22 U.S.C. 2751 et seq.).  
 (3) Any provision of law that authorizes the furnishing of foreign assistance or appropriates funds for foreign assistance.  
 (4) Any other provision of law that restricts assistance, sales or leases, or other action under a provision of law referred to in paragraph (1), (2), or (3).  
 (5) Any provision of law that relates to receipts and credits accruing to the United States.

\* \* \* \* \*

**SEC. 620. PROHIBITIONS AGAINST FURNISHING ASSISTANCE.—**  
 (a)(1) \* \* \*

\* \* \* \* \*

(1) The President shall consider denying assistance under this Act to the government of any less developed country which, after December 31, 1966, has failed to enter into an agreement with the President to institute the investment guaranty program under section 234(a)(1) of this Act, providing protection against the specific risks of inconvertibility under subparagraph (A), and expropriation or confiscation under subparagraph (B), of such section 234(a)(1).

*(m)(1) No assistance may be furnished under this Act or the Arms Export Control Act (22 U.S.C. 2751 et seq.) for the government of a country if the duly elected head of government for such country is deposed by decree or military coup. The prohibition in the preceding sentence shall cease to apply to a country if the President determines and certifies to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives that after the termination of assistance a democratically elected government for such country has taken office.*

*(2) Paragraph (1) does not apply to assistance to promote democratic elections or public participation in democratic processes.*

*(3) The President may waive the application of 2 paragraph (1), and any comparable provision of law, to 3 a country upon determining that it is important to the 4 national security interest of the United States to do so.*

(o) In determining whether or not to furnish assistance under this Act, consideration shall be given to excluding from such assistance any country which hereafter seizes, or imposes any penalty or sanction against, any United States fishing vessel on account of its fishing activities in international waters. The provisions of this subsection shall not be applicable in any case governed by international agreement to which the United States is a party.

\* \* \* \* \*

**SEC. 620F. NUCLEAR NON-PROLIFERATION POLICY IN SOUTH ASIA.**

(a) FINDINGS.— \* \* \*

\* \* \* \* \*

(c) REPORT ON PROGRESS TOWARD REGIONAL NON-PROLIFERATION.— Not later than April 1 of each year, the President shall submit a report to the Committees on Appropriations, the Speaker of the House of Representatives, and the chairman of the Com-

mittee on Foreign Relations of the Senate, on nuclear proliferation in South Asia, including efforts taken by the United States to achieve a regional agreement on nuclear non-proliferation, and including a comprehensive list of the obstacles to concluding such a regional agreement. *Such report shall also include a description of the efforts of the United States Government to achieve the objectives described in subsections (a) and (b) of section 1601 of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107-228; 116 Stat. 1459), the progress made toward achieving such objectives, and the likelihood that such objectives will be achieved within the year following the reporting period.*

\* \* \* \* \*

### Chapter 3—Miscellaneous Provisions

\* \* \* \* \*

#### SEC. 655. ANNUAL MILITARY ASSISTANCE REPORT.

(a) **REPORT REQUIRED.**—Not later than February 1 of each year, the President shall transmit to the Congress an annual report for the fiscal year ending the previous September 30.

\* \* \* \* \*

[(c) **AVAILABILITY ON INTERNET.**—All unclassified portions of such report shall be made available to the public on the Internet through the Department of State.]

(c) **AVAILABILITY OF REPORT INFORMATION ON THE INTERNET.**—

(1) **REQUIREMENT FOR DATABASE.**—*The President shall make available to the public the unclassified portion of each such report in the form of a database that is available via the Internet and that may be searched by various criteria.*

(2) **SCHEDULE FOR UPDATING.**—*Not later than April 1 of each year, the President shall make available in the database the information contained in the annual report for the fiscal year ending the previous September 30.*

\* \* \* \* \*

#### SEC. 656. ANNUAL FOREIGN MILITARY TRAINING REPORT.

(a) **ANNUAL REPORT.**

(1) **IN GENERAL.**—Not later than [January 31] *March 1* of each year, the Secretary of Defense and the Secretary of State shall jointly prepare and submit to the appropriate congressional committees a report on all military training provided to foreign military personnel by the Department of Defense and the Department of State during the previous fiscal year[ and all such training proposed for the current fiscal year].

\* \* \* \* \*

SEC. 660. **PROHIBITING POLICE TRAINING.**—(a) On and after July 1, 1975, none of the funds made available to carry out this Act, and none of the local currencies generated under this Act, shall be used to provide training or advice, or provide any financial support, for police, prisons, or other law enforcement forces for any foreign government or any program of internal intelligence or surveillance on behalf of any foreign government within the United States or abroad.

(b) Subsection (a) of this section shall not apply—

(1) with respect to assistance rendered under section 515(c) of the Omnibus Crime Control and Safe Streets Act of 1968 with respect to any authority of the Drug Enforcement Administration or the Federal Bureau of Investigation which relates to crimes of the nature which are unlawful under the laws of the United States, or with respect to assistance authorized under section 482 of this Act;

(2) to any contract entered into prior to the date of enactment of this section with any person, organization, or agency of the United States Government to provide personnel to conduct, or assist in conducting, any such program;

(3) with respect to assistance, including training, in maritime law enforcement and other maritime skills;

(4) with respect to assistance provided to police forces in connection with their participation in the regional security system of the Eastern Caribbean states; **[or]**

(5) with respect to assistance, including training, relating to sanctions monitoring and enforcement;

(6) with respect to assistance provided to reconstitute civilian police authority and capability in the post-conflict restoration of host nation infrastructure for the purposes of supporting a nation emerging from instability, **[and the provision of professional public safety training, to include training in internationally recognized standards of human rights, the rule of law, anti-corruption, and the promotion of civilian police roles that support democracy]** *including any regional, district, municipal, or other sub-national entity emerging from instability;*

(7) with respect to assistance provided to customs authorities and personnel, including training, technical assistance and equipment, for customs law enforcement and the improvement of customs laws, systems and procedures**].** ;

(8) *with respect to assistance to combat corruption in furtherance of the objectives for which programs are authorized to be established under section 133 of this Act;*

(9) *with respect to the provision of professional public safety training, including training in internationally recognized standards of human rights, the rule of law, and the promotion of civilian police roles that support democracy;*

(10) *with respect to assistance to combat trafficking in persons; or*

(11) *with respect to assistance for constabularies or comparable law enforcement authorities in support of developing capabilities for and deployment to peace operations.*

Notwithstanding clause (2), subsection (a) shall apply to any renewal or extension of any contract referred to in such paragraph entered into on or after such date of enactment.

\* \* \* \* \*

(c) Subsection (a) shall not apply with respect to a country which has a longstanding democratic tradition, does not have standing armed forces, and does not engage in a consistent pattern of gross violations of internationally recognized human rights.

**[(d)** Notwithstanding the prohibition contained in subsection (a), assistance may be provided to Honduras or El Salvador for fiscal

years 1986 and 1987 if, at least 30 days before providing assistance, the President notifies the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, in accordance with the procedures applicable to reprogramming notifications pursuant to section 634A of this Act, that he has determined that the government of the recipient country has made significant progress, during the preceding six months, in eliminating any human rights violations including torture, incommunicado detention, detention of persons solely for the non-violent expression of their political views, or prolonged detention without trial. Any such notification shall include a full description of the assistance which is proposed to be provided and of the purposes to which it is to be directed.】

*(d) Subsection (a) shall not apply to assistance for law enforcement forces for which the President, on a case by-case basis, determines that it is important to the national interest of the United States to furnish such assistance and submits to the committees of the Congress referred to in subsection (a) of section 634A of this Act an advance notification of the obligation of funds for such assistance in accordance with such section.*

\* \* \* \* \*

### **The Arms Export Control Act**

\* \* \* \* \*

## **Chapter 1—FOREIGN AND NATIONAL SECURITY POLICY OBJECTIVES AND RESTRAINTS**

\* \* \* \* \*

### **Sec. 3. Eligibility.—(a) \* \* \***

\* \* \* \* \*

(d)(1) 【Subject to paragraph (5), the】 *The* President may not give his consent under paragraph (2) of subsection (a) or under the third sentence of such subsection, or under section 505(a)(1) or 505(a)(4) of the Foreign Assistance Act of 1961, to a transfer of any major defense equipment valued (in terms of its original acquisition cost) at 【\$14,000,000】 *\$50,000,000* or more, or any defense article or related training or other defense 【service valued (in terms of its original acquisition cost) at \$50,000,000】 *service valued (in terms of its original acquisition cost) at \$100,000,000* or more, unless the President submits to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate a written certification with respect to such proposed transfer containing—

\* \* \* \* \*

(3)(A) 【Subject to paragraph (5), the】 *The* President may not give his consent to the transfer of any major defense equipment valued (in terms of its original acquisition cost) at 【\$14,000,000】 *\$50,000,000* or more, or of any defense article or defense 【service valued (in terms of its original acquisition cost) at \$50,000,000】 *service valued (in terms of its original acquisition cost) at \$100,000,000* or more, the export of which has been licensed or approved under section 38 of this Act, unless before giving such consent the President submits to the Speaker of the House of Rep-



representatives and the Chairman of the Committee on Foreign Relations of the Senate a certification containing the information specified in subparagraphs (A) through (E) of paragraph (1). Such certification shall be submitted

\* \* \* \* \*

[(5) In the case of a transfer to a member country of the North Atlantic Treaty Organization (NATO) or Australia, Japan, or New Zealand that does not authorize a new sales territory that includes any country other than such countries, the limitations on consent of the President set forth in paragraphs (1) and (3)(A) shall apply only if the transfer is—

[(A) a transfer of major defense equipment valued (in terms of its original acquisition cost) at \$25,000,000 or more; or

[(B) a transfer of defense articles or defense services valued (in terms of its original acquisition cost) at \$100,000,000 or more).]

\* \* \* \* \*

## Chapter 2—Foreign Military Sales Authorizations

### SEC. 21. SALES FROM STOCKS.—(a)(1) \* \* \*

\* \* \* \* \*

(h)(1) The President is authorized to provide (without charge) quality assurance, inspection, contract administration services, and contract audit defense services under this section—

(A) in connection with the placement or administration of any contract or subcontract for defense articles, defense services, or design and construction services entered into after the date of enactment of this subsection by, or under this Act on behalf of, a foreign government which is a member of the North Atlantic Treaty Organization or the Governments of Australia, New Zealand, Japan, or Israel, if such government provides such services in accordance with an agreement on a reciprocal basis, without charge, to the United States Government; or

(B) in connection with the placement or administration of any contract or subcontract for defense articles, defense services, or design and construction services pursuant to the North Atlantic Treaty Organization Security Investment program in accordance with an agreement under which the foreign governments participating in such program provide such services, without charge, in connection with similar contracts or subcontracts.

(2) In carrying out the objectives of this section, the President is authorized to provide cataloging data and cataloging services, without charge, [to the North Atlantic Treaty Organization or to any member government of that Organization if that Organization or member government provides] *to the North Atlantic Treaty Organization, to any member government of that Organization, or to the government of any other country if that Organization, member government, or other government provides such data and services in ac-*

cordance with an agreement on a reciprocal basis, without charge, to the United States Government.

\* \* \* \* \*

### Chapter 3—Military Export Controls

\* \* \* \* \*

SEC. 36. REPORTS ON COMMERCIAL AND GOVERNMENTAL MILITARY EXPORTS; CONGRESSIONAL ACTION.—(a) \* \* \*

\* \* \* \* \*

(b)(1) **【Subject to paragraph (6), in】** *In* the case of any letter of offer to sell any defense articles or services under this **【Act for \$50,000,000】** *Act for \$100,000,000* or more, any design and construction **【services for \$200,000,000】** *services for \$350,000,000* or more, or any major defense equipment for **【\$14,000,000】** *\$50,000,000* or more, *and in other cases if the President determines it is appropriate*, before such letter of offer is issued, the President shall submit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate a numbered certification with respect to such offer to sell containing the information specified in clauses (i) through (iv) of subsection (a), or (in the case of a sale of design and construction services) the information specified in clauses (A) through (D) of paragraph (9) of subsection (a), and a description, containing the information specified in paragraph (8) of subsection (a), of any contribution, gift, commission, or fee paid or offered or agreed to be paid in order to solicit, promote, or otherwise to secure such letter of offer. Such numbered certifications shall also contain an item, classified if necessary, identifying the sensitivity of technology contained in the defense articles, defense services, or design and construction services proposed to be sold, and a detailed justification of the reasons necessitating the sale of such articles or services in view of the sensitivity of such technology. In a case in which such articles or services listed on the Missile Technology Control Regime Annex are intended to support the design, development, or production of a Category I space launch vehicle system (as defined in section 74), such report shall include a description of the proposed export and rationale for approving such export, including the consistency of such export with United States missile nonproliferation policy. Each such numbered certification shall contain an item indicating whether any offset agreement is proposed to be entered into in connection with such letter of offer to sell (if known on the date of transmittal of such certification). In addition, the President shall, upon the request of such committee or the Committee on Foreign Affairs of the House of Representatives, transmit promptly to both such committees a statement setting forth, to the extent specified in such request—

\* \* \* \* \*

(A) a detailed description of the defense articles, defense services, or design and construction services to be offered, including a brief description of the capabilities of any defense article to be offered;

(B) an estimate of the number of officers and employees of the United States Government and of United States civilian contract personnel expected to be needed in such country to carry out the proposed sale;

(C) the name of each contractor expected to provide the defense article, defense service, or design and construction services proposed to be sold and a description of any offset agreement with respect to such sale;

(D) an evaluation, prepared by the Secretary of State in consultation with the Secretary of Defense and the Director of Central Intelligence, of the manner, if any, in which the proposed sale would—

- (i) contribute to an arms race;
- (ii) support international terrorism;
- (iii) increase the possibility of an outbreak or escalation of conflict;
- (iv) prejudice the negotiation of any arms controls; or
- (v) adversely affect the arms control policy of the United States;

(E) the reasons why the foreign country or international organization to which the sale is proposed to be made needs the defense articles, defense services, or design and construction services which are the subject of such sale and a description of how such country or organization intends to use such defense articles, defense services, or design and construction services;

(F) an analysis by the President of the impact of the proposed sale on the military stocks and the military preparedness of the United States;

(G) the reasons why the proposed sale is in the national interest of the United States;

(H) an analysis by the President of the impact of the proposed sale on the military capabilities of the foreign country or international organization to which such sale would be made;

(I) an analysis by the President of how the proposed sale would affect the relative military strengths of countries in the region to which the defense articles, defense services, or design and construction services which are the subject of such sale would be delivered and whether other countries in the region have comparable kinds and amounts of defense articles, defense services, or design and construction services;

(J) an estimate of the levels of trained personnel and maintenance facilities of the foreign country or international organization to which the sale would be made which are needed and available to utilize effectively the defense articles, defense services, or design and construction services proposed to be sold;

(K) an analysis of the extent to which comparable kinds and amounts of defense articles, defense services, or design and construction services are available from other countries;

(L) an analysis of the impact of the proposed sale on United States relations with the countries in the region to which the defense articles, defense services, or design and construction services which are the subject of such sale would be delivered;

(M) a detailed description of any agreement proposed to be entered into by the United States for the purchase or acquisition by the United States of defense articles, defense services, design and construction services or defense equipment, or other articles, services, or equipment of the foreign country or international organization in connection with, or as consideration for, such letter of offer, including an analysis of the impact of such proposed agreement upon United States business concerns which might otherwise have provided such articles, services, or equipment to the United States, an estimate of the costs to be incurred by the United States in connection with such agreement compared with costs which would otherwise have been incurred, an estimate of the economic impact and unemployment which would result from entering into such proposed agreement, and an analysis of whether such costs and such domestic economic impact justify entering into such proposed agreement;

(N) the projected delivery dates of the defense articles, defense services, or design and construction services to be offered;

(O) a detailed description of weapons and levels of munitions that may be required as support for the proposed sale; and

(P) an analysis of the relationship of the proposed sale to projected procurements of the same item; and

(Q) for any proposed sale of firearms listed in category I of the United States Munitions List that require a license for international export under this section—

(i) an analysis of the impact of the proposed sale on efforts by the United States relating to the collection and destruction of excess small arms and light weapons; and

(ii) a detailed description of any provision or requirement for the recipient state to dispose of firearms that would become excess as a result of the proposed sale.

A certification transmitted pursuant to this subsection shall be unclassified, except that the information specified in clause (ii) and the details of the description specified in clause (iii) of subsection (a) may be classified if the public disclosure thereof would be clearly detrimental to the security of the United States, in which case the information shall be accompanied by a description of the damage to the national security that could be expected to result from public disclosure of the information. The letter of offer shall not be issued, with respect to a proposed sale to the North Atlantic Treaty Organization, any member country of such Organization, the Republic of Korea, Japan, Australia, or New Zealand, if the Congress, within fifteen calendar days after receiving such certification, or with respect to a proposed sale to any other country or organization, if the Congress within thirty calendar days after receiving such certification, enacts a joint resolution prohibiting the proposed sale, unless the President states in his certification that an emergency exists which requires such sale in the national security interests of the United States. If the President states in his certification that an emergency exists which requires the proposed sale in the national security interest of the United States, thus waiving the congressional review requirements of this subsection, he shall set

forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate the immediate issuance of the letter of offer and a discussion of the national security interests involved.

(2) Any such joint resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976, except that for purposes of consideration of any joint resolution with respect to the North Atlantic Treaty Organization, any member country of such Organization, *the Republic of Korea*, Japan, Australia, or New Zealand, it shall be in order in the Senate to move to discharge a committee to which such joint resolution was referred if such committee has not reported such joint resolution at the end of five calendar days after its introduction.

(3) For the purpose of expediting the consideration and enactment of joint resolutions under this subsection, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(4) In addition to the other information required to be contained in a certification submitted to the Congress under this subsection, each such certification shall cite any quarterly report submitted pursuant to section 28 of this Act which listed a price and availability estimate, or a request for the issuance of a letter of offer, which was a basis for the proposed sale which is the subject of such certification.

(5)(A) If, before the delivery of any major defense article or major defense equipment, or the furnishing of any defense service or design and construction service, sold pursuant to a letter of offer described in paragraph (1), the sensitivity of technology or the capability of the article, equipment, or service is enhanced or upgraded from the level of sensitivity or capability described in the numbered certification with respect to an offer to sell such article, equipment, or service, then, at least 45 days before the delivery of such article or equipment or the furnishing of such service, the President shall prepare and transmit to the chairman of the Committee on Foreign Affairs of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report—

(i) describing the manner in which the technology or capability has been enhanced or upgraded and describing the significance of such enhancement or upgrade; and

(ii) setting forth a detailed justification for such enhancement or upgrade.

(B) The provisions of subparagraph (A) apply to an article or equipment delivered, or a service furnished, within ten years after the transmittal to the Congress of a numbered certification with respect to the sale of such article, equipment, or service.

\* \* \* \* \*

(C) **【Subject to paragraph (6), if】** *If* the enhancement or upgrade in the sensitivity of technology or the capability of major defense equipment, defense articles, defense services, or design and construction services described in a numbered certification submitted under this subsection **【costs \$14,000,000】** *costs \$50,000,000* or more in the case of any major defense **【equipment, \$50,000,000】**

equipment \$100,000,000 or more in the case of defense articles or defense services, ~~or \$200,000,000~~ *or \$350,000,000* or more in the case of design or construction services, *and in other cases if the President determines it is appropriate*, then the President shall submit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a new numbered certification which relates to such enhancement or upgrade and which shall be considered for purposes of this subsection as if it were a separate letter of offer to sell defense equipment, articles, or services, subject to all of the requirements, restrictions, and conditions set forth in this subsection. For purposes of this subparagraph, references in this subsection to sales shall be deemed to be references to enhancements or upgrades in the sensitivity of technology or the capability of major defense equipment, articles, or services, as the case may be.

(D) For the purposes of subparagraph (A), the term “major defense article” shall be construed to include electronic devices, which if upgraded, would enhance the mission capability of a weapons system.

[(6) The limitation in paragraph (1) and the requirement in paragraph (5)(C) shall apply in the case of a letter of offer to sell to a member country of the North Atlantic Treaty Organization (NATO) or Australia, *the Republic of Korea*, Japan, or New Zealand that does not authorize a new sales territory that includes any country other than such countries only if the letter of offer involves—

[(A) the sale of major defense equipment under this Act for, or the enhancement or upgrade of major defense equipment at a cost of, \$25,000,000 or more, as the case may be; and

[(B) the sale of defense articles or services for, or the enhancement or upgrade of defense articles or services at a cost of, \$100,000,000 or more, as the case may be; or

[(C) the sale of design and construction services for, or the enhancement or upgrade of design and construction services at a cost of, \$300,000,000 or more, as the case may be.]

(c)(1) [Subject to paragraph (5), in] *In* the case of an application by a person (other than with regard to a sale under section 21 or section 22 of this Act) for a license for the export of any major defense equipment sold under a contract in the amount of ~~[\$14,000,000]~~ *\$50,000,000* or more or of defense articles or defense ~~[services sold under a contract in the amount of \$50,000,000]~~ *services sold under a contract in the amount of \$100,000,000* or more, (or, in the case of a defense article that is a firearm controlled under category I of the United States Munitions List, \$1,000,000 or more) *and in other cases if the President determines it is appropriate*, before issuing such license the President shall transmit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate an unclassified numbered certification with respect to such application specifying (A) the foreign country or international organization to which such export will be made, (B) the dollar amount of the items to be exported, and (C) a description of the items to be exported. Each such numbered certification shall also contain an item indicating whether any offset agreement is proposed to be entered into in con-

nection with such export and a description of any such offset agreement. *Each numbered certification regarding the proposed export of firearms listed in category I of the United States Munitions List shall include an analysis of the impact of the proposed sales on efforts by the United States relating to the collection and destruction of excess small arms and light weapons and a detailed description of any provision or requirement for the recipient state to dispose of firearms that would become excess as a result of the proposed export.* In addition, the President shall, upon the request of such committee or the Committee on Foreign Affairs of the House of Representatives, transmit promptly to both such committees a statement setting forth, to the extent specified in such request a description of the capabilities of the items to be exported, an estimate of the total number of United States personnel expected to be needed in the foreign country concerned in connection with the items to be exported and an analysis of the arms control impact pertinent to such application, prepared in consultation with the Secretary of Defense and a description from the person who has submitted the license application of any offset agreement proposed to be entered into in connection with such export (if known on the date of transmittal of such statement). In a case in which such articles or services are listed on the Missile Technology Control Regime Annex and are intended to support the design, development, or production of a Category I space launch vehicle system (as defined in section 74), such report shall include a description of the proposed export and rationale for approving such export, including the consistency of such export with United States missile nonproliferation policy. A certification transmitted pursuant to this subsection shall be unclassified, except that the information specified in clause (B) and the details of the description specified in clause (C) may be classified if the public disclosure thereof would be clearly detrimental to the security of the United States, in which case the information shall be accompanied by a description of the damage to the national security that could be expected to result from public disclosure of the information.

(2) Unless the President states in his certification that an emergency exists which requires the proposed export in the national security interests of the United States, a license for export described in paragraph (1)—

(A) in the case of a license for an export to the North Atlantic Treaty Organization, any member country of that Organization or *the Republic of Korea*, Australia, Japan, or New Zealand, shall not be issued until at least 15 calendar days after the Congress receives such certification, and shall not be issued then if the Congress, within that 15-day period, enacts a joint resolution prohibiting the proposed export;

(B) in the case of a license for an export of a commercial communications satellite for launch from, and by nationals of, the Russian Federation, Ukraine, or Kazakhstan, shall not be issued until at least 15 calendar days after the Congress receives such certification, and shall not be issued then if the Congress, within that 15-day period, enacts a joint resolution prohibiting the proposed export; and

(C) in the case of any other license, shall not be issued until at least 30 calendar days after the Congress receives such certification, and shall not be issued then if the Congress, within that 30-day period, enacts a joint resolution prohibiting the proposed export.

If the President states in his certification that an emergency exists which requires the proposed export in the national security interests of the United States, thus waiving the requirements of subparagraphs [(A) and (B)] (A), (B), and (C) of this paragraph, he shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate the immediate issuance of the export license and a discussion of the national security interests involved.

(3) (A) Any joint resolution under this subsection shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(B) For the purpose of expediting the consideration and enactment of joint resolutions under this subsection, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(4) The provisions of subsection (b)(5) shall apply to any equipment, article, or service for which a numbered certification has been transmitted to Congress pursuant to paragraph (1) in the same manner and to the same extent as that subsection applies to any equipment, article, or service for which a numbered certification has been transmitted to Congress pursuant to subsection (b)(1). For purposes of such application, any reference in subsection (b)(5) to "a letter of offer" or "an offer" shall be deemed to be a reference to "a contract".

\* \* \* \* \*

[(5) In the case of an application by a person (other than with regard to a sale under section 21 or 22 of this Act) for a license for the export to a member country of the North Atlantic Treaty Organization (NATO) or *the Republic of Korea*, Australia, Japan, or New Zealand that does not authorize a new sales territory that includes any country other than such countries, the limitations on the issuance of the license set forth in paragraph (1) shall apply only if the license is for export of—

[(A) major defense equipment sold under a contract in the amount of \$25,000,000 or more; or

[(B) defense articles or defense services sold under a contract in the amount of \$100,000,000 or more.]]

(d)(1)(A) In the case of an approval under section 38 of this Act of a United States commercial technical assistance or manufacturing licensing agreement which involves the manufacture abroad of any item of significant combat equipment on the United States Munitions List, before such approval is given, the President shall submit a certification with respect to such proposed commercial agreement in a manner similar to the certification required under subsection (c)(1) containing comparable information, except that the last sentence of such subsection shall not apply to certifications submitted pursuant to [this subsection] *this subparagraph*.



(B) *Notwithstanding section 27(g), in the case of a comprehensive authorization described in section 126.14 of title 22, Code of Federal Regulations (of any corresponding similar regulation) for the proposed export of defense articles or defense services in an amount that exceeds a limitation set forth in subsection (c)(1), before the comprehensive authorization is approved or the addition of a foreign government or other foreign partner to the comprehensive authorization is approved, the President shall submit a certification with respect to the comprehensive authorization in a manner similar to the certification required under subsection (c)(1) of this section and containing comparable information, except that the last sentence of such subsection shall not apply to certifications submitted pursuant to this subparagraph.*

(2) A certification under this subsection shall be submitted—

(A) at least 15 days before approval is given in the case of an agreement for or in a country which is a member of the North Atlantic Treaty Organization or *the Republic of Korea*, Australia, Japan, or New Zealand; and

(B) at least 30 days before approval is given in the case of an agreement for or in any other country; unless the President states in his certification that an emergency exists which requires the immediate approval of the agreement in the national security interests of the United States.

(3) If the President states in his certification that an emergency exists which requires the immediate approval of the agreement in the national security interests of the United States, thus waiving the requirements of paragraph (4), he shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate the immediate approval of the agreement and a discussion of the national security interests involved.

(4) **Approval for an agreement subject to paragraph (1) may not be given under section 38** *Approval for an agreement subject to paragraph (1)(A), or for a comprehensive authorization subject to paragraph (1)(B), may not be given under section 38 or section 126.14 of title 22, Code of Federal Regulations (or any corresponding similar regulation), as the case may be, if the Congress, within the 15-day or 30-day period specified in paragraph (2)(A) or (B), as the case may be, enacts a joint resolution prohibiting such approval.*

(5)(A) Any joint resolution under paragraph (4) shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(B) For the purpose of expediting the consideration and enactment of joint resolutions under paragraph (4), a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

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## Arms Control and Disarmament Act

### TITLE III—FUNCTIONS

\* \* \* \* \*

#### VERIFICATION OF COMPLIANCE

SEC. 306.(a) IN GENERAL.—In order to ensure that arms control, nonproliferation, and disarmament agreements can be verified, the Secretary of State shall report to Congress, on a timely basis, or upon request by an appropriate committee of the Congress—

(1) in the case of any arms control, nonproliferation, or disarmament agreement *or other formal commitment* that has been concluded by the United States, the determination of the Secretary of State as to the degree to which the components of such agreement can be verified;

(2) in the case of any arms control, nonproliferation, or disarmament agreement *or other formal commitment* that has entered into force, any significant degradation or alteration in the capacity of the United States to verify compliance of the components of such agreement;

(3) the amount and percentage of research funds expended by the Department of State for the purpose of analyzing issues relating to arms control, nonproliferation, and disarmament verification; and

(4) the number of professional personnel assigned to arms control verification on a full-time basis by each Government agency.

(b) ASSESSMENTS UPON REQUEST.—Upon the request of the chairman or ranking minority member of the Committee on Foreign Relations of the Senate or the Committee on International Relations of the House of Representatives, in case of an arms control, nonproliferation, or disarmament proposal presented to a foreign country, the Secretary of State shall submit a report to the Committee on the degree to which elements of the proposal are capable of being verified.

(c) STANDARD FOR VERIFICATION OF COMPLIANCE.—In making determinations under paragraphs (1) and (2) of subsection (a), the Secretary of State shall assume that all measures of concealment not expressly prohibited could be employed and that standard practices could be altered so as to impede verification.

(d) RULE OF CONSTRUCTION.—Except as otherwise provided for by law, nothing in this section may be construed as requiring the disclosure of sensitive information relating to intelligence sources or methods or persons employed in the verification of compliance with arms control, nonproliferation, and disarmament agreements.

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### TITLE IV—GENERAL PROVISIONS

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## [ANNUAL REPORT TO CONGRESS]

【Sec. 403.(a) IN GENERAL.—Not later than April 15 of each year, the President shall submit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate a report prepared by the Secretary of State with the concurrence of the Director of Central Intelligence and in consultation with the Secretary of Defense, the Secretary of Energy, and the Chairman of the Joint Chiefs of Staff, on the status of United States policy and actions with respect to arms control, nonproliferation, and disarmament. Such report shall include—

【(1) a detailed statement concerning the arms control, nonproliferation, and disarmament objectives of the executive branch of Government for the forthcoming year;

【(2) a detailed assessment of the status of any ongoing arms control, nonproliferation, or disarmament negotiations, including a comprehensive description of negotiations or other activities during the preceding year and an appraisal of the status and prospects for the forthcoming year;

【(3) a detailed assessment of adherence of the United States to obligations undertaken in arms control, nonproliferation, and disarmament agreements, including information on the policies and organization of each relevant agency or department of the United States to ensure adherence to such obligations, a description of national security programs with a direct bearing on questions of adherence to such obligations and of steps being taken to ensure adherence, and a compilation of any substantive questions raised during the preceding year and any corrective action taken;

【(4) a detailed assessment of the adherence of other nations to obligations undertaken in all arms control, nonproliferation, and disarmament agreements or commitments, including the Missile Technology Control Regime, to which the United States is a participating state, including information on actions taken by each nation with regard to the size, structure, and disposition of its military forces in order to comply with arms control, nonproliferation, or disarmament agreements or commitments, and shall include, in the case of each agreement or commitment about which compliance questions exist—

【(A) a description of each significant issue raised and efforts made and contemplated with the other participating state to seek resolution of the difficulty;

【(B) an assessment of damage, if any, to the United States security and other interests; and

【(C) recommendations as to any steps that should be considered to redress any damage to United States national security and to reduce compliance problems;

【(5) a discussion of any material noncompliance by foreign governments with their binding commitments to the United States with respect to the prevention of the spread of nuclear explosive devices (as defined in section 830(4) of the Nuclear Proliferation Prevention Act of 1994) by non-nuclear-weapon states (as defined in section 830(5) of that Act) or the acquisi-

tion by such states of unsafeguarded special nuclear material (as defined in section 830(8) of that Act), including—

- 【(A) a net assessment of the aggregate military significance of all such violations;
- 【(B) a statement of the compliance policy of the United States with respect to violations of those commitments; and
- 【(C) what actions, if any, the President has taken or proposes to take to bring any nation committing such a violation into compliance with those commitments; and
- 【(6) a specific identification, to the maximum extent practicable in unclassified form, of each and every question that exists with respect to compliance by other countries with arms control, nonproliferation, and disarmament agreements with the United States.

【(b) CLASSIFICATION OF THE REPORT.—The report required by this section shall be submitted in unclassified form, with classified annexes, as appropriate. The portions of this report described in paragraphs (4) and (5) of subsection (a) shall summarize in detail, at least in classified annexes, the information, analysis, and conclusions relevant to possible noncompliance by other nations that are provided by United States intelligence agencies.

【(c) REPORTING CONSECUTIVE NONCOMPLIANCE.—If the President in consecutive reports submitted to the Congress under this section reports that any designated nation is not in full compliance with its binding nonproliferation commitments to the United States, then the President shall include in the second such report an assessment of what actions are necessary to compensate for such violations.

【(d) Each report required by this section shall include a discussion of each significant issue described in subsection (a)(6) that was contained in a previous report issued under this section during 1995, or after December 31, 1995, until the question or concern has been resolved and such resolution has been reported in detail to the appropriate committees of Congress (as defined in section 1102(1) of the Arms Control, Non-Proliferation, and Security Assistance Act of 1999).】

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#### ANNUAL REPORTS TO CONGRESS

*SEC. 403. (a) REPORT ON OBJECTIVES AND NEGOTIATIONS.—Not later than April 15 of each year, the President shall submit to the Speaker of the House of Representatives and to the Chairman of the Committee on Foreign Relations of the Senate a report prepared by the Secretary of State, in consultation with the Secretary of Defense, the Secretary of Energy, the Director of National Intelligence, and the Chairman of the Joint Chiefs of Staff, on the status of United States policy and actions with respect to arms control, nonproliferation, and disarmament. Such report shall include—*

- (1) a detailed statement concerning the arms control, nonproliferation, and disarmament objectives of the executive branch of Government for the forthcoming year; and*

(2) a detailed assessment of the status of any ongoing arms control, nonproliferation, or disarmament negotiations, including a comprehensive description of negotiations or other activities during the preceding year and an appraisal of the status and prospects for the forthcoming year.

(b) *REPORT ON COMPLIANCE.*—Not later than April 15 of each year, the President shall submit to the Speaker of the House of Representatives and to the Chairman of the Committee on Foreign Relations of the Senate a report prepared by the Secretary of State with the concurrence of the Director of National Intelligence and in consultation with the Secretary of Defense, the Secretary of Energy, and the Chairman of the Joint Chiefs of Staff on the status of United States policy and actions with respect to arms control, nonproliferation, and disarmament compliance. Such report shall include—

(1) a detailed assessment of adherence of the United States to obligations undertaken in arms control, nonproliferation, and disarmament agreements, including information on the policies and organization of each relevant agency or department of the United States to ensure adherence to such obligations, a description of national security programs with a direct bearing on questions of adherence to such obligations and of steps being taken to ensure adherence, and a compilation of any substantive questions raised during the preceding year and any corrective action taken;

(2) a detailed assessment of the adherence of other nations to obligations undertaken in all arms control, nonproliferation, and disarmament agreements or commitments, including the Missile Technology Control Regime, to which the United States is a participating state, including information on actions taken by each nation with regard to the size, structure, and disposition of its military forces in order to comply with arms control, nonproliferation, or disarmament agreements or commitments, including, in the case of each agreement or commitment about which compliance questions exist—

(A) a description of each significant issue raised and efforts made and contemplated with the other participating state to seek resolution of the difficulty;

(B) an assessment of damage, if any, to United States security and other interests;

(C) recommendations as to any steps that should be considered to redress any damage to United States national security and to reduce compliance problems; and

(D) for states that are not parties to such agreements or commitments, a description of activities of concern carried out by such states and efforts underway to bring such states into adherence with such agreements or commitments;

(3) a discussion of any material noncompliance by foreign governments with their binding commitments to the United States with respect to the prevention of the spread of nuclear explosive devices (as defined in section 830(4) of the Nuclear Proliferation Prevention Act of 1994 (22 U.S.C. 6305(4)) by non-nuclear-weapon states (as defined in section 830(5) of that Act (22 U.S.C. 6305(5)) or the acquisition by such states of

*unsafeguarded special nuclear material (as defined in section 830(8) of that Act (22 U.S.C. 6305(8))), including—*

- (A) a net assessment of the aggregate military significance of all such violations;*
- (B) a statement of the compliance policy of the United States with respect to violations of those commitments; and*
- (C) what actions, if any, the President has taken or proposes to take to bring any country committing such a violation into compliance with those commitments; and*
- (4) a specific identification, to the maximum extent practicable in unclassified form, of each and every question that exists with respect to compliance by other countries with arms control, nonproliferation, and disarmament agreements and other formal commitments with the United States.*

*(c) CHEMICAL WEAPONS CONVENTION COMPLIANCE REPORT REQUIREMENT SATISFIED.—The report submitted pursuant to subsection (b) shall include the information required under section 2(10)(C) of Senate Resolution 75, 105th Congress, agreed to April 24, 1997, advising and consenting to the ratification of the Convention 10 on the Prohibition of Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, with annexes, done at Paris January 13, 1993 and entered into force April 29, 1997 (popularly known as the “Chemical Weapons Convention”; T.Doc. 103–21).*

*(d) CLASSIFICATION OF REPORT.—The reports required by this section shall be submitted in unclassified form, with classified annexes, as appropriate. The report portions described in paragraphs (2) and (3) of subsection (b) shall summarize in detail, at least in classified annexes, the information, analysis, and conclusions relevant to possible noncompliance by other countries that are provided by United States intelligence agencies.*

*(e) REPORTING CONSECUTIVE NONCOMPLIANCE.—If the President in consecutive reports submitted to the Congress under subsection (b) reports that any country is not in full compliance with its binding nonproliferation commitments to the United States, then the President shall include in the second such report an assessment of what actions are necessary to compensate for such violations.*

*(f) ADDITIONAL REQUIREMENT.—Each report required by subsection (b) shall include a discussion of each significant issue described in paragraph (4) of such subsection that was contained in a previous report issued under this section during 1995, or after December 31, 1995, until the question or concern has been resolved and such resolution has been reported in detail to the Committee on Foreign Relations and the Select Committee on Intelligence of the Senate and the Committee on Foreign Affairs and the Permanent Select Committee on Intelligence of the House of Representatives.*

### **Foreign Relations Authorization Act, Fiscal Year 2003**

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## DIVISION B—SECURITY ASSISTANCE ACT OF 2002

### TITLE X—GENERAL PROVISIONS

#### SEC. 1001. SHORT TITLE.

This division may be cited as the “Security Assistance Act of 2002”.

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#### Subtitle B—Russian Federation Debt Reduction for Nonproliferation

#### SEC. 1311. SHORT TITLE.

This subtitle may be cited as the “Russian Federation Debt for Nonproliferation Act of 2002”.

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#### [SEC. 1321. ANNUAL REPORTS TO CONGRESS.

[Not later than December 31, 2003, and not later than December 31 of each year thereafter, the President shall prepare and transmit to Congress a report concerning actions taken to implement this subtitle during the fiscal year preceding the fiscal year in which the report is transmitted. The report on a fiscal year shall include—

[(1) a description of the activities undertaken pursuant to this subtitle during the fiscal year;

[(2) a description of the nature and amounts of the loans reduced pursuant to this subtitle during the fiscal year;

[(3) a description of any agreement entered into under this subtitle;

[(4) a description of the progress during the fiscal year of any projects funded pursuant to this subtitle;

[(5) a summary of the results of relevant audits performed in the fiscal year; and

[(6) a certification, if appropriate, that the Russian Federation continued to meet the condition required by section 1317(a), and an explanation of why the certification was or was not made.]]

*[Section 1321 of the Foreign Relations Authorization Act, Fiscal Year 2003 will be repealed by this legislation.]*

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### TITLE XVI—MISCELLANEOUS PROVISIONS

#### SEC. 1601. NUCLEAR AND MISSILE NONPROLIFERATION IN SOUTH ASIA.

(a) UNITED STATES POLICY.—It shall be the policy of the United States, consistent with its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons (21 U.S.T. 483), to encourage and work with the governments of India and Pakistan to achieve the following objectives[ by September 30, 2003]:

(1) Continuation of a nuclear testing moratorium.

(2) Commitment not to deploy nuclear weapons.

(3) Commitment not to deploy ballistic missiles that can carry nuclear weapons and to restrain the ranges and types of missiles developed or deployed.

(4) Agreement by both governments to bring their export controls in accord with the guidelines and requirements of the Nuclear Suppliers Group.

(5) Agreement by both governments to bring their export controls in accord with the guidelines and requirements of the Zangger Committee.

(6) Agreement by both governments to bring their export controls in accord with the guidelines, requirements, and annexes of the Missile Technology Control Regime.

(7) Establishment of a modern, effective system to control the export of sensitive dual-use items, technology, technical information, and materiel that can be used in the design, development, or production of weapons of mass destruction and ballistic missiles.

(8) Conduct of bilateral meetings between Indian and Pakistani senior officials to discuss security issues and establish confidence-building measures with respect to nuclear policies and programs.

(b) **FURTHER UNITED STATES POLICY.**—It shall also be the policy of the United States, consistent with its obligations under the Treaty on the Nonproliferation of Nuclear Weapons (21 U.S.T. 483), to encourage, and, where appropriate, to work with, the Governments of India and Pakistan to achieve [not later than September 30, 2003], the establishment by those governments of modern, effective systems to protect and secure their nuclear devices and materiel from unauthorized use, accidental employment, or theft. Any such dialogue with India or Pakistan would not be represented or considered, nor would it be intended, as granting any recognition to India or Pakistan, as appropriate, as a nuclear weapon state (as defined in the Treaty on the Non-Proliferation of Nuclear Weapons).

[(c) **REPORT.**—Not later than March 1, 2003, the President shall submit to the appropriate congressional committees a report describing United States efforts to achieve the objectives listed in subsections (a) and (b), the progress made toward the achievement of those objectives, and the likelihood that each objective will be achieved by September 30, 2003.]

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## **Atomic Energy Act of 1954**

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### **TITLE I—ATOMIC ENERGY**

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#### **CHAPTER 11. INTERNATIONAL ACTIVITIES**

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**SEC. 123. COOPERATION WITH OTHER NATIONS.—**

No cooperation with any nation, group of nations or regional defense organization pursuant to section 53, 54 a., 57, 64, 82, 91, 103, 104, or 144 shall be undertaken until—

a. the proposed agreement for cooperation has been submitted to the President, which proposed agreement shall include the terms, conditions, duration, nature, and scope of the cooperation; and shall include the following requirements:

\* \* \* \* \*

b. the President has submitted text of the proposed agreement for cooperation (except an agreement arranged pursuant to section 91 c., 144 b., 144 c., or 144 d.), together with the accompanying unclassified Nuclear Proliferation Assessment Statement *and a report on the actions taken and planned by the United States with the country identified in the proposed agreement for cooperation to fulfill the purposes of the program authorized in Section 502 of the Nuclear Nonproliferation Act of 1978 (22 U.S.C. 3262)*, to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, the President has consulted with such Committees for a period of not less than thirty days of continuous session (as defined in section 130 g. of this Act) concerning the consistency of the terms of the proposed agreement with all the requirements of this Act, and the President has approved and authorized the execution of the proposed agreement for cooperation and has made a determination in writing that the performance of the proposed agreement will promote, and will not constitute an unreasonable risk to, the common defense and security;

c. the proposed agreement for cooperation (if not an agreement subject to subsection d.), together with the approval and determination of the President, has been submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate for a period of thirty days of continuous session (as defined in subsection 130 g.): *Provided, however*, That these committees, after having received such agreement for cooperation, may by resolution in writing waive the conditions of all or any portion of such thirty-day period; and

d. the proposed agreement for cooperation (if arranged pursuant to subsection 91 c., 144 b., 144 c., or 144 d., or if entailing implementation of section 53, 54 a., 103, or 104 in relation to a reactor that may be capable of producing more than five thermal megawatts or special nuclear material for use in connection therewith), *or an amendment to such agreement*, has been submitted to the Congress, together with the approval and determination of the President, for a period of sixty days of continuous session (as defined in subsection 130 g. of this Act) and referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, and in addition, in the case of a proposed agreement for cooperation arranged pursuant to subsection 91 c., 144 b., 144 c., or 144 d., the Committee on Armed Services of the House of Representatives and the Committee on Armed

Services of the Senate, but such proposed agreement for cooperation shall not become effective if during such sixty-day period the Congress adopts, and there is enacted, a joint resolution stating in substance that the Congress does not favor the proposed agreement for cooperation: *Provided*, That the sixty-day period shall not begin until a Nuclear Proliferation Assessment Statement prepared by the Secretary of State, and any annexes thereto, when required by subsection 123 a., have been submitted to the Congress: *Provided further*, That an agreement for cooperation exempted by the President pursuant to subsection a. from any requirement contained in that subsection, *or an agreement with a nation or group of nations that does not have in force an additional protocol to its agreement with the International Atomic Energy Agency for the application of safeguards*, or an agreement exempted pursuant to section 104(a)(1) of the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006, *or an amendment to such agreement*, shall not become effective unless the Congress adopts, and there is enacted, a joint resolution stating that the Congress does favor such agreement. During the sixty-day period the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate shall each hold hearings on the proposed agreement for cooperation and submit a report to their respective bodies recommending whether it should be approved or disapproved. Any such proposed agreement for cooperation shall be considered pursuant to the procedures set forth in section 130 i. of this Act for the consideration of Presidential submissions.

\* \* \* \* \*

#### SEC. 131. SUBSEQUENT ARRANGEMENTS.—

a. (1) \* \* \*

\* \* \* \* \*

b. With regard to any special nuclear material exported by the United States or produced through the use of any nuclear materials and equipment or sensitive nuclear technology exported by the United States—

(1) the Secretary of Energy may not enter into any subsequent arrangement for the retransfer of any such material to a third country for reprocessing, for the reprocessing of any such material, or for the subsequent retransfer of any plutonium in quantities greater than 500 grams resulting from the reprocessing of any such material, until he has provided the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate with a report containing his reasons for entering into such arrangement and a period of 15 days of continuous session (as defined in subsection 130 g. of this Act) has elapsed, *except that for any such subsequent arrangement under an agreement for cooperation which did not, pursuant to section 123(d) of this Act, become effective until there was enacted a joint resolution favoring such agreement, the Secretary of Energy may not enter into any such subsequent arrangement until Congress adopts, and there is enacted, a joint resolution approving such subsequent*

*arrangement, which resolution shall be considered pursuant to the procedures set forth in section 130(i) of this Act: Provided, however, That if in the view of the President an emergency exists due to unforeseen circumstances requiring immediate entry into a subsequent arrangement, such period shall consist of fifteen calendar days;*

\* \* \* \* \*

### Security Assistance Act of 2000

\* \* \* \* \*

## TITLE V—INTEGRATED SECURITY ASSISTANCE PLANNING

\* \* \* \* \*

### SEC. 513. ASSISTANCE FOR ISRAEL.

(a) DEFINITIONS.—In this section:

(1) ESF ASSISTANCE.—The term “ESF assistance” means assistance under chapter 4 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2346 et seq.), relating to the economic support fund.

(2) FOREIGN MILITARY FINANCING PROGRAM.—The term “Foreign Military Financing Program” means the program authorized by section 23 of the Arms Export Control Act (22 U.S.C. 2763).

(b) ESF ASSISTANCE.—

(1) IN GENERAL.—Of the amounts made available for each of the fiscal years 2002 and 2003 for ESF assistance, the amount specified in paragraph (2) for each such fiscal year is authorized to be made available for Israel. Such funds are authorized to be made available on a grant basis as a cash transfer.

(2) COMPUTATION OF AMOUNT.—Subject to subsection (d), the amount referred to in paragraph (1) is equal to—

(A) the amount made available for ESF assistance for Israel for the preceding fiscal year, minus

(B) \$120,000,000.

(3) ADDITIONAL ESF ASSISTANCE FOR FISCAL YEAR 2003.—Only for fiscal year 2003, in addition to the amount computed under paragraph (2) for that fiscal year, an additional amount of \$200,000,000 is authorized to be made available for ESF assistance for Israel, notwithstanding section 531(e) or 660(a) of the Foreign Assistance Act of 1961, for defensive, nonlethal, antiterrorism assistance, which amount shall be considered, for purposes of subsection (d), as an amount appropriated by an Act making supplemental appropriations.

(c) FMF PROGRAM.—

(1) IN GENERAL.—Of the amount made available for each of the fiscal years **2002 and 2003** *2009 and 2010* for assistance under the Foreign Military Financing Program, the amount specified in paragraph (2) for each such fiscal year is authorized to be made available on a grant basis for Israel.

(2) COMPUTATION OF AMOUNT.—Subject to subsection (d), the amount referred to in paragraph (1) is equal to—

(A) the amount made available for assistance under the Foreign Military Financing Program for Israel for the preceding fiscal year, plus

(B) \$60,000,000.

(3) **DISBURSEMENT OF FUNDS.**—[Funds authorized to be available for Israel under subsection (b)(1) and paragraph (1) of this subsection for fiscal years 2002 and 2003 shall be disbursed not later] *Funds authorized to be available for Israel under subsection (b)(1) and paragraph (1) for fiscal year 2009 shall be disbursed not later than 30 days after the date of the enactment of an Act making appropriations for foreign operations, export financing, and related programs for fiscal year 2009, or October 31, 2008, whichever is later than 30 days after the date of enactment of an Act making appropriations for foreign operations, export financing, and related programs for fiscal year 2002, and not later than 30 days after the date of enactment of an Act making appropriations for foreign operations, export financing, and related programs for fiscal year 2003, or October 31 of the respective fiscal year, whichever is later.*

(4) **AVAILABILITY OF FUNDS FOR ADVANCED WEAPONS SYSTEMS.**—To the extent the Government of Israel requests that funds be used for such purposes, grants made available for Israel out of funds authorized to be available under paragraph (1) for Israel for fiscal years [2002 and 2003] *2009 and 2010* shall, as agreed by Israel and the United States, be available for advanced weapons systems, of which not less than [\$535,000,000 for fiscal year 2002 and not less than \$550,000,000 for fiscal year 2003] *\$2,550,000,000 for fiscal year 2009 and not less than \$2,550,000,000 for fiscal year 2010* shall be available for the procurement in Israel of defense articles and defense services, including research and development.

(d) **EXCLUSION OF RESCISSIONS AND SUPPLEMENTAL APPROPRIATIONS.**—For purposes of this section, the computation of amounts made available for a fiscal year shall not take into account any amount rescinded by an Act or any amount appropriated by an Act making supplemental appropriations for a fiscal year.

#### **SEC. 514. ASSISTANCE FOR EGYPT.**

(a) **DEFINITIONS.**—In this section:

(1) **ESF ASSISTANCE.**—The term “ESF assistance” means assistance under chapter 4 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2346 et seq.), relating to the economic support fund.

(2) **FOREIGN MILITARY FINANCING PROGRAM.**—The term “Foreign Military Financing Program” means the program authorized by section 23 of the Arms Export Control Act (22 U.S.C. 2763).

(b) **ESF ASSISTANCE.**—

(1) **IN GENERAL.**—Of the amounts made available for each of the fiscal years 2002 and 2003 for ESF assistance, the amount specified in paragraph (2) for each such fiscal year is authorized to be made available for Egypt.

(2) **COMPUTATION OF AMOUNT.**—Subject to subsection (d), the amount referred to in paragraph (1) is equal to—

(A) the amount made available for ESF assistance for Egypt during the preceding fiscal year, minus  
(B) \$40,000,000.

(c) FMF PROGRAM.—Of the amount made available for each of the fiscal years **2002 and 2003** *2009 and 2010* for assistance under the Foreign Military Financing Program, \$1,300,000,000 is authorized to be made available on a grant basis for Egypt.

(d) EXCLUSION OF RESCISSIONS AND SUPPLEMENTAL APPROPRIATIONS.—For purposes of this section, the computation of amounts made available for a fiscal year shall not take into account any amount rescinded by an Act or any amount appropriated by an Act making supplemental appropriations for a fiscal year.

(e) DISBURSEMENT OF FUNDS.—**Funds estimated to be outlayed for Egypt under subsection (c) during fiscal years 2002 and 2003 shall be disbursed to an interest-bearing account for Egypt in the Federal Reserve Bank of New York not later than 30 days after the date of enactment of an Act making appropriations for foreign operations, export financing, and related programs for fiscal year 2002, and not later than 30 days after the date of enactment of an Act making appropriations for foreign operations, export financing, and related programs for fiscal year 2003, or by October 31 of the respective fiscal year, whichever is later** *Funds estimated to be outlayed for Egypt under subsection (c) during fiscal year 2009 shall be disbursed to an interest-bearing account for Egypt in the Federal Reserve Bank of New York not later than 30 days after the date of the enactment of an Act making appropriations for foreign operations, export financing, and related programs for fiscal year 2009, or by October 31, 2008, whichever is later, provided that—*

(1) withdrawal of funds from such account shall be made only on authenticated instructions from the Defense Finance and Accounting Service of the Department of Defense;

(2) in the event such account is closed, the balance of the account shall be transferred promptly to the appropriations account for the Foreign Military Financing Program.

(3) none of the interest accrued by such account should be obligated unless the Committee on Appropriations and the Committee on Foreign Relations of the Senate and the Committee on Appropriations and the Committee on International Relations of the House of Representatives are notified.

\* \* \* \* \*

### **Nuclear Non-Proliferation Act of 1978**

\* \* \* \* \*

## **TITLE II—UNITED STATES INITIATIVES TO STRENGTHEN THE INTERNATIONAL SAFEGUARDS SYSTEM**

### **POLICY**

SEC. 201. The United States is committed to continued strong support for the principles of the Treaty on the Non-Proliferation of Nuclear Weapons, to a strengthened and more effective International Atomic Energy Agency and to a comprehensive safeguards

system administered by the Agency to deter proliferation. Accordingly, the United States shall seek to act with other nations to—

(a) continue to strengthen the safeguards program of the IAEA and, in order to implement this section, contribute funds, technical resources, and other support to assist the IAEA in effectively implementing safeguards;

[(b) ensure that the IAEA has the resources to carry out the provisions of article XII of the Statute of the IAEA;]

*(b) ensure that the IAEA has the financial, technical, and personnel resources available to fully carry out its safeguards mission and that, to the maximum extent possible, safeguards activities are financed by the regular budget of the IAEA and not by voluntary contributions to the Agency;*

\* \* \* \* \*

## TITLE VI—EXECUTIVE REPORTING

\* \* \* \* \*

### ADDITIONAL REPORTS

SEC. 602.(a) The annual reports to the Congress by the Commission and the Department of Energy which are otherwise required by law shall also include views and recommendations regarding the policies and actions of the United States to prevent proliferation which are the statutory responsibility of those agencies. The Department's report shall include a detailed analysis of the proliferation implications of advanced enrichment and reprocessing techniques, advanced reactors, and alternative nuclear fuel cycles. This part of the report shall include a comprehensive version which includes any relevant classified information and a summary unclassified version.

(b) The reporting requirements of this title are in addition to and not in lieu of any other reporting requirements under applicable law.

(c)(1) The Department of State, the Department of Defense, the Department of Commerce, the Department of Energy, the Commission, and, with regard to subparagraph (B), the [Director of Central Intelligence] *Director of National Intelligence*, shall keep the Committees on Foreign Relations, *Armed Services*, and Governmental Affairs of the Senate and the [Committee on International Relations] of the House of Representatives fully and currently informed with respect to—

(A) their activities to carry out the purposes and policies of this Act and to otherwise prevent proliferation, including the proliferation of nuclear, chemical, or biological weapons, or their means of delivery; and

(B) the current activities of foreign nations which are of significance from the proliferation standpoint.

(2) For the purposes of this subsection with respect to paragraph (1)(B), the phrase “fully and currently informed” means the transmittal of credible information not later than 60 days after becoming aware of the activity concerned.

\* \* \* \* \*

## Iran, North Korea, and Syria Nonproliferation Act

\* \* \* \* \*

### SEC. 7. DEFINITIONS.

For purposes of this Act, the following terms have the following meanings:

(1) **EXTRAORDINARY PAYMENTS IN CONNECTION WITH THE INTERNATIONAL SPACE STATION.**—The term “extraordinary payments in connection with the International Space Station” means payments in cash or in kind made or to be made by the United States Government—

(A) for work on the International Space Station which the Russian Government pledged at any time to provide at its expense; or

(B) for work on the International Space Station, or for the purchase of goods or services relating to human space flight, that are not required to be made under the terms of a contract or other agreement that was in effect on January 1, 1999, as those terms were in effect on such date, **except that such term does not mean payments except that such term does not mean—**

(i) *payments in cash or in kind made or to be made by the United States Government prior to January 1, 2012, for work to be performed or services to be rendered prior to that date necessary to meet United States obligations under the Agreement Concerning Cooperation on the Civil International Space Station, with annex, signed at Washington January 29, 1998, and entered into force March 27, 2001, or any protocol, agreement, memorandum of understanding, [or contract related thereto.] or contract related thereto; or*

(ii) *payments in cash or in kind made or to be made by the United States Government between January 1, 2012, and reentry into Earth’s atmosphere of the International Space Station at its end of life, for work to be performed or services to be rendered during that period necessary to meet United States obligations under the Agreement Concerning Cooperation on the Civil International Space Station, with annex, signed at Washington January 29, 1998, and entered into force March 27, 2001, or any protocol, agreement, memorandum of understanding, or contract related thereto, except that this clause does not allow for payments in cash or in kind to be made by the United States Government for—*

(I) *any cargo services provided by a Progress vehicle; or*

*(II) any crew transportation or rescue services provided by a Soyuz vehicle after—*

*(aa) the Orion Crew Exploration Vehicle reaches full operational capability; or*

*(bb) a United States commercial provider of crew transportation and rescue services demonstrates the capability to meet mission requirements of the International Space Station.*

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VIII. APPENDIX I.—LETTER FROM THE HONORABLE MICHAEL D. GRIFFIN, ADMINISTRATOR OF THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, DATED APRIL 11, 2008

National Aeronautics and Space Administration  
Office of the Administrator  
Washington, DC 20546-0001



April 11, 2008

The Honorable Joseph R. Biden  
Chairman  
Committee on Foreign Relations  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

The National Aeronautics and Space Administration (NASA) proposes the enclosed amendment to the Iran, North Korea, and Syria Nonproliferation Act (50 USC 1701 note). The purpose of the amendment is to permit NASA to continue to procure Russian support for the International Space Station (ISS) until suitable U.S. capabilities are in place. We urge enactment of this important amendment.

The amendment provides a balanced approach, maintaining both U.S. nonproliferation principles and objectives as well as a U.S. presence on ISS. The justification and purpose for this proposed amendment are stated more fully in the enclosed sectional analysis. As an overview, NASA has procured Soyuz services through the fall of 2011, consistent with existing authority under the Act. However, U.S. obligations to provide crew transportation and emergency services to the ISS continue beyond 2011, and Soyuz will be the only viable option for the United States to meet these obligations until the U.S. Orion Crew Exploration Vehicle or U.S. commercial providers can provide such transportation and rescue services. Fabrication of Soyuz vehicles must begin approximately 36 months prior to launch, according to the responsible Russian entities. Thus, unless contractual arrangements for the provision of crew rescue and rotation services beyond 2011 are concluded in 2008, the production of Soyuz vehicles for U.S. crew transportation requirements will be at risk. This, in turn, means that prompt legislative action is needed to provide further relief beyond 2011 and allow for the negotiation of these arrangements.

The Office of Management and Budget advises that there is no objection to the submission of this legislation from the standpoint of the Administration's program.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Griffin".

Michael D. Griffin  
Administrator

2 Enclosures



IX. APPENDIX II.—LETTER FROM THE HONORABLE MICHAEL D. GRIF-  
FIN, ADMINISTRATOR OF THE NATIONAL AERONAUTICS AND SPACE  
ADMINISTRATION, DATED JULY 17, 2008

National Aeronautics and Space Administration  
Office of the Administrator  
Washington, DC 20546-0001



July 17, 2008

The Honorable Joseph R. Biden  
Chairman  
Committee on Foreign Relations  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

The International Space Station (ISS) is the largest, most complex cooperative science and engineering endeavor in history, a partnership of 15 nations led by the United States with major partners Russia, Canada, Europe, and Japan. Our Nation has made a substantial investment in the ISS. We are nearing completion of assembly, enabling NASA, other U.S. Government agencies, and commercial enterprises to conduct cutting-edge research. With the European and Japanese labs now on orbit, our partners are also ready to begin their full utilization and research activities. NASA will also be able to realize its full share of these facilities. Furthermore, the ISS represents a new market for the U.S. space transportation industry that NASA is encouraging through its Commercial Orbital Transportation Services and Commercial Resupply Services procurements. We need to ensure sustained support of the ISS to reap these benefits.

Based on inquiries from several Members of Congress and their staffs, I feel the need to explain further why NASA's legislative request to extend the purchase of Russian *Soyuz* vehicles past 2011 is so urgently needed in the next few months. If the legislative authority NASA requested last April is not enacted this fall, we face the very real prospect of a gap in U.S. crew presence onboard the ISS beginning in late 2011, jeopardizing its safety and viability. U.S. crew is required onboard to operate the Space Station.

Under the Space Station Agreements, the United States and Russia share responsibility for crew transportation and crew rescue for the ISS, and the U.S. responsibility for crew transportation and rescue includes Canadian, European, and Japanese astronauts. Following retirement of the Space Shuttle in 2010, until the *Orion* Crew Exploration Vehicle or U.S. commercial crew services become available, the ISS partnership is dependent on Russia for *Soyuz* crew rescue and crew transportation. Under existing legislative authority, NASA has procured *Soyuz* services through late 2011. In order to sustain a U.S. presence onboard the ISS and meet NASA's commitment to the other ISS partners, NASA will need to continue to purchase *Soyuz* services from Russia past 2011. Further, without concluding contractual arrangements in 2008 for crew rotation and rescue services after 2011, the production of future *Soyuz* vehicles to meet U.S. obligations will be at risk. Negotiations for

the procurement of *Soyuz* must begin approximately 36 months prior to launch in order to support Russia's well-established timeline for the production of the *Soyuz* vehicles.

The timing of enactment of Congressional authority is important. Delays will reduce the time allowed for contract negotiations, which in turn would likely lead to higher prices for these services. It is important that NASA be in a position to sign a contract by October 2008 with the Russian Space Agency, or the continued operation of the ISS after 2011 and U.S. leadership in space could be in jeopardy. Congressional authorization for NASA to purchase Russian services beyond 2011 is a necessary step for NASA to sign such a contract. I ask that Congress and you, in your respective role, help NASA by enacting our proposed time-critical legislative authorization.

Thank you for your consideration of this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "M. D. Griffin", with a stylized flourish at the end.

Michael D. Griffin  
Administrator

X. APPENDIX III.—LETTER FROM THE HONORABLE MICHAEL D. GRIF-  
FIN, ADMINISTRATOR OF THE NATIONAL AERONAUTICS AND SPACE  
ADMINISTRATION, DATED SEPTEMBER 8, 2008

National Aeronautics and Space Administration

Office of the Administrator  
Washington, DC 20546-0001

September 8, 2008



The Honorable Joseph R. Biden  
Chairman  
Committee on Foreign Relations  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

This is to document the grave consequences to the space programs of the United States, Europe, Japan, and Canada if the Congress does not provide, by October 2008, an extension of NASA's existing legislative authority allowing payments to the Russian Space Agency for crew transport and rescue services for the International Space Station (ISS).

Especially in light of recent events, I fully appreciate the policy concerns regarding U.S. reliance upon and relations with Russia. I recognize that reliance on Russia for crew transportation to the ISS is a very serious shortfall in what is a critical U.S. capability. Even prior to the invasion of Georgia, I testified before the Congress on multiple occasions that I considered such U.S. reliance on Russia to be "unseemly in the extreme."

As you know, we are in this position because of a long history of prior decisions, both made and not made, concerning investments in U.S. space transportation. I agree with the conclusion of the *Columbia* Accident Investigation Board, five years ago, that "previous attempts to develop a replacement vehicle for the aging Shuttle represent a failure of national leadership." No one is less pleased than I am with the position in which we find ourselves. We are now, finally, fixing this situation with NASA's *Constellation* program and its *Orion* crew exploration vehicle and *Ares* rocket. But these solutions will not be available in time to avoid long anticipated dependence upon Russia for the support of the ISS during this interim period.

NASA has led a long-standing, highly successful partnership with the space agencies of Russia, Canada, Europe, and Japan on the ISS program. Each partner has provided concrete value to the ISS in the form of laboratories, equipment, robotic manipulator arms, cargo and crew transportation, etc. This is an international collaboration that is working. If this successful collaboration is to continue, our nation must keep its word and honor its agreements.

Russia has been a good and valuable partner on the ISS program and was especially so in the aftermath of the *Columbia* accident. However, because we are still developing the *Orion* crew exploration vehicle (which can provide both ISS transport and rescue capability), we and our partners are, even now, reliant upon Russia for crew rescue and are paying for both *Soyuz* crew transportation and rescue services. In accordance with treaty-level agreements concluded over a decade ago between the U.S. and our ISS partners, NASA must purchase these services from Russia until we can provide them ourselves.

There has been discussion of mitigating our dependence upon Russia by continuing to fly the Space Shuttle past 2010. Due to its design limitations, the Space Shuttle can visit the ISS for no more than about two weeks, two to five times per year. The *Soyuz* can both transport crew and serve as a rescue vehicle for six-month increments. Under our present operational mission rules, we require crew rescue capability for astronauts onboard the ISS. Today, only *Soyuz* can do this. Thus, even if

the Space Shuttle continued to fly beyond 2010 – a policy I do not advocate – we would still be reliant on *Soyuz* until a new U.S. crew vehicle is available.

There is also the matter of risk. With our current best estimate of 1-in-80 for the loss-of-crew risk on a single Space Shuttle flight, 10 additional flights (2 per year in 2011-2015) yield a 12 percent chance of losing another crew – almost 1 in 8.

Continuing to fly the Shuttle past 2010 without Congressional authority to purchase *Soyuz* services would, therefore, relegate the U.S. and our partners to brief visits to the ISS, eliminate long-term utilization and research, and expose our astronauts to greater risk. Russian cosmonauts would continue to operate, utilize, and maintain the ISS full time. Such a bleak scenario will damage relationships with our other international partners. We will have abrogated our long-standing commitments to provide crew transport and rescue, and there will be an understandable reluctance on their part to join us in future missions. U.S. leadership in space will, at the very least, be called into question.

**Thus, if the Congress does not provide NASA's legislative exemption to continue to purchase such crew services by October, the result will be to damage the U.S. and our allies on the ISS, while effectively ceding its control to Russia.** I have reached this conclusion after careful consideration of all technical options available to us. We have looked at numerous options, including many creative concepts from industry. Due to the short development time available, none of these options offers a viable replacement for *Soyuz* in the timeframe of concern. The *Soyuz* option is simply the only sure solution and, in any case, would be needed as a backup even if other options did mature.

NASA needs the legislative authority that I am requesting by October. Our existing authority expires on December 31, 2011. The Russian Space Agency has communicated to NASA that a contract must be in place 36 months prior to launch, in order to begin procurement of long-lead items to produce the *Soyuz* vehicles we require, which are in addition to their own needs. Since *Soyuz* crew rotations occur in the months of October and April, we must have new legislative authority by October 2008 and a contract in place in early 2009, if we are to maintain U.S. and international partner presence aboard the ISS beginning with the six-month increment that starts in October 2011.

I personally seek your favorable consideration of this legislative extension. The enclosed white paper provides further details on what specifically is needed, and I would be happy to discuss the matter with you at your convenience. The development and utilization of the ISS has been a cornerstone of U.S. space policy and international leadership since President Reagan announced the program in 1984. We need your help to capitalize on our nation's \$50 billion investment in space leadership.

Sincerely,



Michael D. Griffin  
Administrator

Enclosure

**NASA Proposed Legislation to Extend Existing Legislative Authority to Make Payments to Russia for Astronaut Crew Transport and Rescue Support for the International Space Station**

**Legislative Amendment:**

“P.L. 106-178, 50 USC 1701 note is amended in subsection 7(1)(B) by striking ‘January 1, 2012’ and inserting in lieu thereof ‘July 1, 2016.’”

**Date Required:**

1 October 2008

**Rationale:**

This amendment extends the exception to the Iran, North Korea and Syria Nonproliferation Act (P.L. 106-178, 50 U.S.C. 1701 note, “INKSNA”), which prohibits “extraordinary payments” both “in cash” and “in kind” by the U.S. Government (whether directly or via contractors) to the Russian government, Roscosmos, and entities under its authority for the International Space Station (ISS) or relating to human spaceflight activities, from January 1, 2012 to July 1, 2016. In 2005, Congress provided an exception for ISS purchases and barter through December 31, 2011—the projected date at that time when NASA’s new crew transportation system was to come online. With the exception granted in 2005, NASA is paying Russia for space vehicles for crew transport, rescue, and cargo supplies between 2006 and 2011.

NASA and the U.S. commercial sector are aggressively developing new domestic U.S. crew transportation capabilities that will remove the dependency on Russian vehicles. However, NASA’s current projected date to bring U.S. crew transportation and rescue capabilities online is now 2016, when the U.S. *Orion* crew exploration vehicle will have reached Full Operational Capability, and U.S. commercial providers of crew transportation and rescue services are not expected to have demonstrated the equivalent capability to meet ISS mission needs before 2016.

This extension is necessary to ensure continued U.S. access to and presence onboard the ISS, including crew transportation and rescue, cargo resupply services from U.S. commercial providers, and Russian-unique equipment and capabilities (e.g. sustaining engineering and spares). After 2011 and until U.S. capabilities are available, the U.S. has no other means to meet these requirements and sustain the ISS. The U.S. has made a major investment in, and been the leader of, the ISS and must be able to meet U.S. obligations under the ISS agreements, retain U.S. leadership of the ISS and ultimately space, and sustain ISS for post-Shuttle operations and utilization until alternative U.S. capabilities are available.

While the current legislative exception does not expire until 2011, this extension is urgently needed now to negotiate contracts for production of more Russian *Soyuz* vehicles, which will take approximately 36 months to develop. The current contract for *Soyuz* services expires in the fall of 2011. In order for the U.S. to have a contract in place providing for *Soyuz* services beginning with the crew rotation in the fall of 2011 until the spring of 2012, legislative authority must be in place three years prior to that.

This extension maintains the core nonproliferation goals of INKSNA and ensures that U.S. commercial providers can use Russian hardware when providing domestic crew and cargo services to the ISS. This extension also is consistent with Section 301 of H.R. 6574, the United States-Russian Federation Nuclear Cooperation Agreement Act of 2008, as reported by the House Committee on Foreign Affairs on July 23, 2008, and with the intent of S. 3103, the International Space Station Payments Act of 2008, as introduced on behalf of the Administration by Senators Biden and Lugar on June 9, 2008.