Lawmakers Eye Fixes to Law on Nuclear Pacts

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Key members of Congress from both parties last month expressed support for revising U.S. law on agreements for peaceful nuclear cooperation, citing a number of nuclear pacts that have been recently submitted to Congress or are being negotiated as showing the need for change.

At a Sept. 24 House Foreign Affairs Committee hearing, Chairman Howard Berman (D-Calif.) and Rep. Ileana Ros-Lehtinen (R-Fla.), the ranking member, talked about changes they planned to make or were considering. Ros-Lehtinen said she intended to introduce legislation, although she did not indicate when.

In an interview later that day, a congressional source who is following the issue closely said that “different people [in Congress] are working on different things.” The drafting process is still in the “nascent stages,” and there is no expectation that legislation will move this year, he said. He said he has not heard “any real objections” from congressional offices about pursuing the change. At the same time, no one involved “is under any illusions” that the job will be easy, as the administration is certain to object to any legislation that it sees as restricting its latitude to negotiate with other countries, he said.

A main focus of the hearing was how to use U.S. nuclear cooperation agreements—often called “123 agreements” after the section of the U.S. Atomic Energy Act that requires such pacts with U.S. nuclear trading partners—to control the dissemination of technologies for enriching uranium and reprocessing spent fuel. Those technologies can be used to produce highly enriched uranium or plutonium for nuclear weapons.

The new 123 agreement with the United Arab Emirates (UAE) has been characterized as a model for U.S. nuclear cooperation policy. In that agreement, the UAE commits itself to refrain from pursuing enrichment or reprocessing. Pursuing such programs would be grounds for the United States to halt nuclear cooperation with the UAE, an unprecedented provision in U.S. cooperation agreements.

The agreement was originally negotiated by the Bush administration, which signed it just before leaving office in January 2009. (See ACT, March 2009.) After some lawmakers questioned whether the UAE pledge was legally binding, the Obama administration negotiated a new version of the agreement, signing it and submitting it to Congress in May 2009.

Like the Bush administration, the Obama administration hailed the pact as a model for future agreements, particularly in the Middle East. In his statement accompanying the agreement’s submittal to Congress on May 21, 2009, President Barack Obama said the pact “has the potential to serve as a model for other countries in the region that wish to pursue responsible nuclear energy development.”

However, the administration apparently has had difficulty replicating the provisions of the UAE agreement in pacts with other countries.

Jordan and Vietnam
Negotiations on a 123 agreement with Jordan—another cooperation agreement for which negotiations have spanned the Bush and Obama administrations—reportedly have been held up by Jordanian objections to UAE-style provisions on enrichment and reprocessing. The administration apparently is not insisting on such a provision in discussions with Vietnam, which has signed a memorandum of understanding (MOU)—a possible precursor of a 123 agreement—with the United States. That MOU reportedly does not contain commitments similar to the ones in the UAE agreement and in MOUs with Bahrain and Saudi Arabia.

In an Aug. 5 press briefing, Department of State spokesman P.J. Crowley declined to say directly whether a U.S. nuclear cooperation agreement with Vietnam would require that country to forgo uranium enrichment. With regard to the UAE model, he said, “We certainly want to see other countries make that same kind of decision and that same kind of agreement in their own interest as the administration pursues its nonproliferation agenda.” However, he said that “the interests and needs of particular countries will vary from one to the other” and that “if Vietnam chooses, as part of its own self-interest and exercising its right under the [nuclear Nonproliferation Treaty] to enrichment, that is a decision for them to make. It’s not a decision for the United States to make.”

At a July 27 nuclear industry conference, a U.S. official said of the UAE agreement, “I think that’s the direction we’re going to go in for the Middle East.” In his remarks and a brief interview afterward, he did not say whether the United States was pushing for the same terms with Vietnam.

The Jordan agreement is “very, very close,” but the “pressure is off” because there is not enough time left in the current Congress for the agreement, he said. Under U.S. law, most nuclear cooperation agreements can enter into force without a congressional vote approving them if they lie before Congress for 90 days of so-called continuous session without Congress blocking them. However, if a Congress ends with only part of the 90-day period elapsed, the congressional clock would have to restart after a new Congress takes office.

In his comments at the meeting, the official declined to say whether the Jordan agreement would have a UAE-style provision on enrichment and reprocessing.

Reuters reported Sept. 28 that Jordan expects to sign an agreement by the end of the year. The article quoted Kamal Khder, the director of planning for the Jordan Atomic Energy Commission, as saying the two sides had reached a compromise that allows Jordan to keep open the option of enrichment. The report could not be confirmed by Arms Control Today’s deadline.

A provision in the U.S.-UAE agreement says that the terms of that pact “shall be no less favorable in scope and effect than those which may be accorded, from time to time, to any other non-nuclear-weapon State in the Middle East.” If another Middle Eastern country does obtain more favorable terms, the UAE can request consultations with the United States “regarding the possibility of amending this Agreement so that the position described above is restored.”

In Sept. 7 remarks at the Henry L. Stimson Center, Deputy Energy Secretary Daniel Poneman emphasized that the Vietnam MOU should not necessarily be compared to the UAE agreement. He said the United States is “certainly not offering to Vietnam any kind of deal in which we—certainly at this stage—get into any kind of pledges about what they should or should not be doing to their own fuel cycle; that would be inappropriate.” He also indicated that the United States would not necessarily be pressing for that kind of restraint later in the negotiations with Vietnam or Jordan.

Asked if the administration had criteria that varied from one region to another for determining when it should press for such restraint, he said, “I think the critical factor is going to be that we’re going to try to make sure that the guiding principle throughout is a reliance on market methods.” He was referring to an effort supported by Obama, President George W. Bush, and others to set up an international mechanism that would ensure countries would have reliable access to nuclear fuel at a reasonable cost so that the countries have less incentive to pursue indigenous enrichment programs.

Two sources who follow the issue closely said last month that the administration is reviewing its policy on nuclear cooperation agreements. They suggested that the resulting uncertainty over the policy may account for some of the variations in recent administration descriptions of it.
Enforcing Standards

At the Sept. 24 hearing, Berman asked what leverage the United States has if it presses potential nuclear partners to accept conditions matching those in the UAE agreement. Some observers have argued that the United States currently has very little because of its limited ability to insist that non-U.S. suppliers require the same nonproliferation conditions the United States does.

To address that point, Henry Sokolski of the Nonproliferation Policy Education Center has said Congress should pass legislation disqualifying foreign nuclear companies doing business in the United States from benefits such as U.S. loan guarantees if the companies and their governments undercut U.S. nonproliferation policy.

In his opening statement at the hearing, Berman said the United States should seek the same commitment it received from the UAE “for every new nuclear cooperation agreement that it negotiates in all regions of the world” and “should also consider making this an additional statutory requirement in the Atomic Energy Act.”

Near the end of the hearing, he said, “The Vietnam story is not over yet.”

Ros-Lehtinen said one element of the bill she is drafting is a requirement that “our potential partners permanently forego the manufacture of nuclear fuel.”

She said “the most urgently needed change” in U.S. nonproliferation law is to require an affirmative vote to approve nuclear cooperation agreements.

Ros-Lehtinen cited the pending U.S.-Russian 123 agreement as an example of the need for that revision. She blasted “the inability of the previous and current administrations to certify that the Russian government, businesses, and individuals were no longer assisting Iran’s nuclear and missile programs and that the Russian government was fully cooperating with the U.S. in our efforts to stop Iran from acquiring a nuclear weapon.” (See ACT, June 2010.)

She called the pact a “political payoff to the Russians, pure and simple” and said it “cannot be defended on its merits.”

Thomas Graham Jr., a former U.S. nonproliferation official who is now chairman of Lightbridge Corporation, testified that the agreement would correct a “historical anomaly” and give the United States an agreement with its “indispensable” nonproliferation partner.

The Obama administration submitted the Russian agreement to Congress in May. When Congress adjourned at the end of September, the agreement still needed another 15 days to reach the required 90-day threshold, according to a congressional source. The length of Congress’ postelection sessions will determine whether it meets that mark or if the administration will have to resubmit the agreement, starting a new congressional clock, after the new Congress takes office in January.