April 9, 1980

Memorandum to the Secretary of State from Gerard C. Smith, 'Policy Review Committee (PRC) Meeting'

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Summary:

The memorandum describing Smith's argument that President Carter's nonproliferation policy of making distinctions between countries over reprocessing is discriminatory.

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DEPARTMENT OF STATE
AMBASSADOR AT LARGE
WASHINGTON

SECRET

April 9, 1980

TO: The Secretary

CV

Re PRC Meeting, April 9

You chair.

1. '77 objectives remain valid.

2. After 3 years we have opportunity to consider the extent to which '77 assumptions on achieving those objectives remain valid.

3. I gather we have not been as effective as we had hoped and have caused a good deal of resentment with our allies. This may even be counterproductive in tending to lead some countries to "go it alone".

4. It seems clear we need to respond to the energy needs of our friends abroad, and that this may lead them to be more cooperative in setting up a better international nonproliferation regime.

GCS will discuss the proposed new planning assumptions which have the approval of State, DOE and ACDA.

I hope we can agree here to send the paper before us to the President recommending his approval. This will help us prepare for negotiations with EURATOM and Japan and the NPT Review Conference.

Gerard Smith

NOTE: 1. At appropriate time you might weigh in on the discrimination argument (see attached talking points).

2. Also attached is a proposed memorandum (prepared by Tom Pickering and me) attempting to reflect a desirable outcome of the meeting. I have sent it to John Sawhill, Spurgeon Keeny and Henry Owen. This could go from either you or Zbig.

Attachments: a/s

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Discrimination

1. From the start, non-proliferation policy has involved discrimination -- witness the NPT distinction between weapons and non-weapons treaty parties.

- Yet some 100 NPT non-weapons parties so far have not considered discrimination a "fatal" flaw.

- The most vocal objectors to NPT discrimination are non-members of the NPT -- Argentina, India, Pakistan and South Africa.

2. Our present policy is discriminatory.

- In 1977 the President recognized that for reprocessing the UK, France, Japan and Germany are special cases.

- We have already authorized Japan to extract plutonium from U.S. origin spent fuel and have to grant further approvals this year.

- Yet we have done our best to prevent reprocessing in Brazil and Argentina.

- And we were in good part responsible for France killing the Pak reprocessing deal.

- We already recognize that France and a few other countries have a justification for breeder development which other countries do not.

- We have not opposed the Israeli nuclear program.

3. If no discrimination is to be the criterion, we have but two alternatives -- no exports or treat all nations alike -- Iraq and Libya like Japan and Germany.

4. The proposed program would distinguish between countries mainly according to practical differences involving their stage of nuclear development and their facility for integrating breeders into their electric grids. That is not an arbitrary or unreasonable criterion. INFCE recognizes that the breeder makes sense only for countries with large electrical grids and well developed nuclear power programs. There will be time enough to adopt our policy toward additional countries who may reach this stage in the decades to come.

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DRAFT (4/9/80)

MEMORANDUM FOR: THE PRESIDENT

FROM:

SUBJECT: Post-INFCE Non-Proliferation Planning Assumptions

This memorandum recommends, on behalf of the PRC, your approval of planning assumptions contained in the attached paper approved by State, DOE and ACDA.

Policy Setting

Non-proliferation has been a key element of our foreign policy from the beginning of your Administration. Net assessments of the policy's success are difficult but, without U.S. leadership, the international effort in this area would be well behind where it is now. The end of INFCE marks an opportunity and a need for us to take stock and plan for the future.

In dealing with specific cases of near-term proliferation concern, we must reduce the tensions and insecurity that motivate a nuclear weapons program as well as inhibit acquisition of weapons-usable material. We must be responsible and flexible enough to strike the best balance between these elements. Allied cooperation is essential in dealing with these specific country problems; it is also central to successful nuclear negotiations with EURATOM and Japan. We no longer have the nuclear supply leverage to impose our will on others. This, in turn, requires that we carefully take into account the legitimate energy needs of other countries.

The key for our Allies will be the degree to which we can provide a predictable and practical basis for their use of plutonium derived from U.S.-origin spent fuel.

Planning Assumptions: Alternatives

State, DOE and ACDA have recommended the planning assumptions spelled out in Gerry Smith's memorandum. Two alternative approaches were also considered:

A. Continue Current Practice

This would avoid any greater US acquiescence in European and Japanese reprocessing and plutonium use.

1. Staying on our present course means that the US will continue to lose its influence and leadership:

-- The EC countries will not agree to renegotiate the U.S./EURATOM agreement, and we will not obtain rights of approval over reprocessing and plutonium use. This will hold up other key negotiations, for example with Japan.

-- We will continue to seem insensitive to energy needs of major allies who favor the breeder notwithstanding our reluctance.

-- Other countries will continue to reduce their dependence on us and try to go it alone.

2. Such a unilateral approach will reduce the likelihood (possibly to zero) of achieving:

(a) agreement among suppliers requiring full-scope safeguards as a condition of nuclear trade;

(b) postponement for some years of commercial plutonium recycle in current generation reactors and of spread of more national reprocessing plants;

(c) an effective international plutonium system including international plutonium storage (IPS);

(d) increased leverage over countries pursuing nuclear weapons programs; and

(e) maintenance and expansion of supplier commitments not to export sensitive technologies.

3. Sooner or later under current policy, we will probably authorize retransfers for reprocessing and plutonium return for specified programs in the major allied countries. The questions are when and how.

B. Code on Nuclear Trade/International Plutonium System

1. This approach would move toward a universal, non-discriminatory code on nuclear trade and an international plutonium system which would replace national controls over plutonium use. Some Allies, including the UK and possibly Canada, appear to favor this approach as an objective.

2. Such an approach would meet much of the Third World criticism of discrimination and of nuclear suppliers' attempting to dictate fuel cycle choices. However, it would likely result in a very low common denominator of non-proliferation measures and safeguards The approach is very different from that underlying your 1977 Statement and would properly cause serious concern in Congress.

3. We believe this approach to be unacceptable.

C. State/DOE/ACDA Approved Memorandum

1. This paper seeks (1) European and Japanese support for an improved non-proliferation regime, with limits and conditions on reprocessing and plutonium use, coupled with approval for use of US-origin material for specified purposes (breeder and advanced reactor RD&D in advanced NPT or equivalent countries), and (2) increased assurance of non-sensitive supply assurance and making NPT or equivalent full-scope safeguards a condition of major new supply commitments. It recognizes that lack of agreement among the US and Europe and Japan on justified reprocessing and plutonium use is a major weakness of the current non-proliferation regime and a cause of tension with Allies. It couples (a) predictability in the exercise of US rights over US origin material with (b) supplier agreement on an improved nonproliferation regime.

2. The State/DOE/ACDA approved memorandum recognizes the inevitability of breeder and advanced reactor RD&D in several advanced countries; it acknowledges an interest in reprocessing and plutonium use by these countries, but continues to resist the undesirable spread of sensitive technologies. The approach has risks and costs, but we believe they are manageable. The approach is consistent with the results of INFCE and your April 1977 Statement where you said you did not wish to interfere with reprocessing in countries like the UK, France, FRG, and Japan which have special energy needs; it can be pursued without amending the law. And, we believe the general thrust of it will be acceptable to those most concerned in Congress.

3. It is objected that the proposal (a) could legitimize movement towards a plutonium economy, or (b) is discriminatory in that it restricts plutonium use to countries with large electric grids and advanced nuclear programs and good nonproliferation credentials. These objections were considered either unjustified or not invalidating the proposed course:

-- Reprocessing and plutonium use already occur in Europe and Japan. Both will continue and increase, the extent of the increase being perhaps less if some harmonization of policy is worked out. INFCE acknowledges the potential of breeders in large advanced countries.

-- Non-proliferation of necessity involves discrimination; we discriminate now in practice in recognition of different national situations; discrimination under the new approach could be rationalized using publicly defensible criteria (NPT obligations and stage of nuclear and economic development) and would not foreclose the possibility of additional countries engaging in breeder and advanced reactor programs in the future. We believe this kind of discrimination can be managed. The risks of discrimination are also minimized by the proposal for improved nonsensitive supply assurance for countries accepting NPT or equivalent obligations.

4. This approach provides broad planning assumptions on the basis of which initial negotiations might take place to define specific agreements. It does not define the details of precise bargains we would attempt to achieve. *Your approval of specific arrangements would be sought as required.

Recommendation:

The consensus at the PRC was to recommend that you approve the planning assumptions in the attached memorandum. Authority for formal negotiations with EURATOM and Japan will be sought later as required.

Approve_____ Disapprove_____

*Suggestions have been made that there are a number of conceivable intermediate implementing possibilities, such as linking use of US material to breeder and advanced reactor RD&D programs in existence in April 1977 or linking it to existing reprocessing capacity. We do not believe such possibilities are either salable or desirable. EURATOM countries would never give us prior consent on that basis, and we cannot treat Japan on a less favorable basis than Europe. Breeder and advanced reactor programs in these countries are already legitimate; they exist; INFCE results are in accord; you have said we should take INFCE results into account and not interfere with these kinds of programs.

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Chronology of US Post INFCE Policy Consideration

November 1978	State/DOE/ACDA/NSC staff approved Illustrative Elements discussed with Allies.
March 1979	President indicates interest in multinational arrangements for fuel cycle; reprocessing, enrichment, spent fuel storage, plutonium storage.
April 1979	Smith sends Owen first cut paper on multinational approach to sensitive fuel cycle facilities.
June 1979	Smith sends Owen memorandum (product of interagency group) for Summit on "Development of Common Approaches to Outstanding Civil Nuclear Fuel Cycle Issues"
July 1979	Brzezinski requests Smith "to develop with the help of an interagency group, and explore... realistic approaches" to meet nonproliferation and energy development objectives.
July 1979	Smith sends President memorandum suggesting general post INFCE directions and indicating his plan to explore with other countries post INFCE regimes.
August 1979	(1) Brzezinski tells Smith President should not be approached until suggestions in July memorandum worked out in considerably greater detail. Brzezinski suggested an interagency paper including specific proposals, required changes in policy guidelines or law, and an assessment of how the proposals might affect the pace of reprocessing and breeder development and restraints on sensitive activities in other countries. Brzezinski suggested PRC review.

August 1979	(2) Brzezinski poses questions to Vance on US-Japan common approach exchange.
September 1979	Smith discussions with Owen and Oplinger of draft memorandum to President indicating thrust of fall post INFCE explorations.
October 1979	(1) Smith/NSC exchange of drafts. (2) Brzezinski agrees to Smith explorations on basis of non papers circulated to capitals.
November/December 1979	Explorations in Europe and on the margins of the IAEA General Conference (Delhi).
December 1979	Smith sends President paper outlining improved nonproliferation regime tied to improved supply assurance.
January 1980	Owen tells Smith he should produce memorandum for President formally cleared by State, DOE and ACDA.
February 1980	State/DOE/ACDA approved memorandum sent to White House.
April 1980	White House tells Smith there will be PRC to consider memorandum.