

PROPOSED PROTOCOL AMENDING THE AGREEMENT
FOR COOPERATION BETWEEN THE UNITED STATES
AND THE GOVERNMENT OF THE REPUBLIC OF
INDONESIA

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TEXT OF A PROPOSED PROTOCOL AMENDING THE AGREEMENT FOR COOPERATION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF INDONESIA CONCERNING PEACEFUL USES OF NUCLEAR ENERGY, PURSUANT TO 42 U.S.C. 2153(b), (d)



MARCH 4, 2004.—Message and accompanying papers referred to the Committee on International Relations and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

To the Congress of the United States:

I am pleased to transmit to the Congress, consistent with sections 123 b. and 123 d. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b), (d)) the (the "Act"), the text of a proposed Protocol Amending the Agreement for Cooperation Between the Government of the United States of America and the Government of the Republic of Indonesia Concerning Peaceful Used of Nuclear Energy, signed at Washington on June 30, 1980. I also transmit my written approval, authorization, and determination concerning the Protocol, and an unclassified Nuclear Proliferation Assessment Statement (NPAS) concerning the Protocol. (Consistent with section 123 of the Act, as amended by title XII of the Foreign Affairs Reform and Restructuring Act of 1998 (Public Law 105-277), a classified Annex to the NPAS, prepared by the Secretary of State in consultation with the Director of Central Intelligence, summarizing relevant classified information, will be submitted to the Congress separately.) The joint memorandum submitted to me by the Secretary of State and the Secretary of Energy and a letter from the Chairman of the Nuclear Regulatory Commission stating the views of the Commission are also enclosed.

I am advised that the proposed Protocol has been negotiated consistent with the Act and other applicable law and that it meets all statutory requirements. This Protocol will advance the non-proliferation and other foreign policy interests of the United States.

The Protocol amends the Agreement for Cooperation Between the Government of the United States of America and the Government of the Republic of Indonesia Concerning Peaceful Uses of Nuclear Energy in two respects:

1. It extends the Agreement, which expired by its terms on December 30, 2001, until December 30, 2031, with effect from the former date; and
2. It updates certain provisions of the Agreement relating to the physical protection of nuclear material subject to the Agreement.

As amended by the proposed Protocol, the Agreement will continue to meet all requirements of U.S. law.

Indonesia is a party to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and has an agreement with the IAEA for the application of full-scope safeguards to its nuclear program. It was also among the early sponsors of, and is a current party to, the Southeast Asia Nuclear Weapons Free Zone. The United States and Indonesia have had a long and positive history of cooperation in the peaceful uses of nuclear energy, with our earliest agreement for this purpose dating back to 1960.

I have considered the views and recommendations of the interested agencies in reviewing the proposed Protocol and have determined that its performance will promote, and will not constitute an

unreasonable risk to, the common defense and security. Accordingly, I have approved the Protocol and authorized its execution and urge that the Congress give it favorable consideration.

This transmission shall constitute a submittal for purposes of both sections 123 b. and 123 d. of the Atomic Energy Act. My Administration is prepared to begin immediately the consultations with the Senate Foreign Relations Committee and House International Relations Committee consistent with section 123 b. Upon completion of the 30-day continuous session period provided for in section 123 b., the 60-day continuous session period provided for in section 123 d. shall commence.

GEORGE W. BUSH.

THE WHITE HOUSE, *March 4, 2004.*

**PROTOCOL AMENDING THE AGREEMENT FOR COOPERATION
BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE REPUBLIC OF INDONESIA
CONCERNING
PEACEFUL USES OF NUCLEAR ENERGY**

The Government of the United States of America and the Government of the Republic of Indonesia (hereinafter referred to as "**the Parties**"),

Desiring to amend the Agreement for Cooperation between the Government of the United States of America and the Government of the Republic of Indonesia concerning Peaceful Uses of Nuclear Energy, signed at Washington on June 30, 1980, as extended by the agreement effected by exchange of notes at Jakarta on August 23, 1991 (hereinafter referred to as "**the Agreement**");

Have agreed as follows :

Article 1

Paragraph 2 of Article 7 of the Agreement is amended to read in its entirety :

"2. To fulfill the requirement in paragraph 1, each Party shall apply measures in accordance with levels of physical protection at least equivalent to the recommendations published in IAEA document INFCIRC/225/Rev.4 entitled 'The Physical Protection of Nuclear Material and Nuclear Facilities,' and in any subsequent revisions of that document agreed to by the Parties."

Article 2

Pursuant to the final sentence of paragraph 1 of Article 14 of the Agreement, and with effect from December 30, 2001, the Agreement is hereby extended until December 30, 2031.

Article 3

The Annex to the Agreement, including its table, and, in the Agreed Minute to the Agreement, the first paragraph following the heading "Transitional Arrangements" are deleted from the Agreement.

Article 4

This Protocol shall enter into force on the date on which the Parties exchange diplomatic notes informing each other that the Parties have complied with all applicable requirements for its entry into force.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Protocol.

DONE at Jakarta on this^{20th}..... day of February, 2004, in duplicate, in the English and Indonesia languages, both texts being equally authentic.

**FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA:**

**FOR THE GOVERNMENT OF
THE REPUBLIC OF INDONESIA:**



RALPH L. BOYCE
Ambassador



Dr. SOEDYARTOMO SOENTONO
Chairman of the National Nuclear
Energy Agency

THE WHITE HOUSE

WASHINGTON

October 10, 2003

MEMORANDUM FOR THE SECRETARY OF STATE
THE SECRETARY OF ENERGY

SUBJECT: Proposed Protocol Amending the Agreement
for Cooperation Between the Government of the
United States of America and the Government of
the Republic of Indonesia Concerning Peaceful
Uses of Nuclear Energy

I have considered the proposed Protocol Amending the Agreement
for Cooperation Between the Government of the United States
of America and the Government of the Republic of Indonesia
Concerning Peaceful Uses of Nuclear Energy, signed at Washington
on June 30, 1980, along with the views, recommendations, and
statements of the interested agencies.

I have determined that the performance of the Protocol will
promote, and will not constitute an unreasonable risk to, the
common defense and security. Consistent with section 123 b. of
the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)),
I hereby approve the proposed Protocol and authorize you to
arrange for its execution.

A handwritten signature in black ink, appearing to be "George W. Bush", written in a cursive style.

NUCLEAR PROLIFERATION ASSESSMENT STATEMENT

**Pursuant to Section 123 a. of the
Atomic Energy Act of 1954, as Amended,
With Respect to the
Proposed Protocol Amending the Agreement for Cooperation
Between the Government of the United States of America
And the Government of the Republic of Indonesia
Concerning Peaceful Uses of Nuclear Energy**

A. Introduction

This Nuclear Proliferation Assessment Statement ("NPAS") relates to the proposed Protocol ("the Protocol") Amending the Agreement for Cooperation Between the Government of the United States of America and the Government of the Republic of Indonesia Concerning Peaceful Uses of Nuclear Energy, signed at Washington on June 30, 1980 ("the Agreement"). The Protocol is being submitted to the President jointly by the Secretary of State and the Secretary of Energy for his approval and authorization for signature.

Section 123 a. of the Atomic Energy Act ("the Act"), as amended by Title XII of the Foreign Affairs Reform and Restructuring Act of 1998 (P.L. 105-277), provides that an NPAS be submitted by the Secretary of State to the President on each new or amended agreement for cooperation concluded pursuant to that section. Pursuant to Section 123 a., the NPAS shall analyze the consistency of the text of the proposed agreement with all the requirements of the Act, with specific attention to whether the proposed agreement is consistent with each of the criteria set forth in this subsection, and address the adequacy of the safeguards and other control mechanisms and the peaceful use assurances contained in the agreement for cooperation to ensure that any assistance furnished thereunder will not be used to further any military or nuclear explosive purpose.

The Agreement was signed on June 30, 1980 and brought into force on December 30, 1981 pursuant to the requirements of the Act, as amended by the Nuclear Non-Proliferation Act of 1978 ("the NNPA"). At that time, the U.S. Arms Control and Disarmament Agency ("ACDA"), as authorized and required by law at that time, prepared a detailed NPAS, which concluded that the Agreement met all statutory requirements and advanced U.S. nuclear non-proliferation policy goals. U.S.

law has added no new substantive requirements for agreements of this type since 1978, and there has been no material change in Indonesian nuclear non-proliferation policies since ACDA prepared the earlier NPAS. Moreover, the proposed Protocol being submitted to the President concurrently with this NPAS makes no substantive change to the Agreement, except to extend its duration and update the physical protection provisions. As a result, there is no need to repeat in this NPAS the detailed analysis prepared earlier, which concluded that the Agreement fully complied with U.S. law. Other sections of this NPAS will also be briefer and offer only an overview and update of relevant information. The sections that follow provide background on Indonesia's nuclear program and nuclear non-proliferation policies, address relevant legal issues, review pertinent policy questions, and set forth the assessment, conclusions, views and recommendations of the Department of State as contemplated by Section 123 a.

B. Background on Indonesia's Nuclear Program, Non-Proliferation Policy, and Previous Cooperation with the United States in the Peaceful Uses of Nuclear Energy

Program

Indonesia's nuclear activities are directed by the Indonesian Atomic Energy Agency (BATAN) and regulated by the nuclear regulatory agency known as BAPETEN. The country has no nuclear power reactors, and none are under construction at this time. Ambitious plans developed in the late 1980s to have a first power reactor on line by 2003, with a total of twelve 600-1,000 MW power reactors in operation by 2025, have so far not been realized, owing to political uncertainties, scarce capital, and doubts whether nuclear power is a cost-effective way of providing for Indonesia's energy needs given the abundance of alternative energy resources (petroleum, gas, coal, geothermal and hydro) that the country enjoys. Indonesia has no enrichment or reprocessing capability.

Indonesia does have three research reactors. Two of them have recently been operating at 50 percent or less of rated capacity; the third has been operating only intermittently.

The principal research reactor (rated at 30 MW(th), but recently operating at 15 MW) is situated at Serpong, 30 kilometers southwest of Jakarta, where it serves as the centerpiece of a

nuclear research complex that also includes a radioisotope production center and a radiometallurgy laboratory. The Serpong reactor, built by Germany, reached criticality in July 1987. Germany continues to supply the fuel, which is enriched (to 20 percent) in the United States and is therefore subject in Indonesia to the controls contained in the U.S.-Indonesia Agreement. The primary function of the Serpong reactor is to produce isotopes, including molybdenum 99, for medical purposes.

Indonesia also has (1) a U.S.-provided 1 MW TRIGA Mark II research reactor located at Bandung in central Java, operating (intermittently) on 19.8 percent enriched uranium supplied by the United States, which it has used for neutron physics studies and isotope production; and (2) a 250 kw TRIGA Mark II research reactor located at Yogyakarta in eastern Java, also operating (at 100 kw) on U.S.-supplied fuel, which is used as a training reactor. Both the Bandung and the Yogyakarta reactors have spent fuel that Indonesia wants to ship back to the United States as soon as possible under the U.S. Foreign Research Reactor (FRR) Spent Nuclear Fuel (SNF) Acceptance Program administered by the U.S. Department of Energy. One relatively small shipment of spent fuel has already taken place under this program.

Policies

Indonesia signed the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) on March 2, 1970 and deposited its instrument of ratification on July 12, 1979, becoming at that time the 110th Party to the Treaty. All peaceful nuclear activities in Indonesia are covered by IAEA safeguards under the safeguards agreement required by Article III of the NPT. Indonesia is also a member of the International Atomic Energy Agency (IAEA). It was among the early sponsors of, and is a current party to, the Southeast Asia Nuclear Weapons Free Zone (SEANWFZ).

Cooperation with the United States

Indonesia has a long and positive history of cooperation with the United States in the peaceful uses of nuclear energy. The first U.S.-Indonesia Agreement for Peaceful Nuclear Cooperation was signed on June 8, 1960. Under it, the United States supplied the Bandung reactor, which has operated since 1964. The Yogyakarta reactor followed in 1979. On June 30, 1980 the United States and Indonesia signed a new Agreement for Peaceful Nuclear Cooperation, which entered into force December 30, 1981 and was subsequently extended until December 30, 2001. The 1980

Agreement continues to satisfy all U.S. legal and policy requirements for agreements of its type, and we are now proposing to extend it until December 30, 2031.

C. Legal Issues

As noted above, the legal analysis contained in the earlier ACDA NPAS concluded that the Agreement met all the requirements of the Act. Since that time, there have been no changes or additions to the requirements specified in the Act for such agreements for cooperation, and the Protocol does not reduce the substantive undertakings by Indonesia contained in the Agreement. Thus, the Agreement as amended by the Protocol will continue to meet all the requirements of the Act.

The primary purpose of the Protocol is to extend the Agreement, which expired by its terms on December 30, 2001. The Protocol would extend the Agreement for a period of thirty years, effective from December 30, 2001.

The Protocol also updates the language in the Agreement by which each Party guarantees that adequate physical protection will be applied to material and equipment subject to the Agreement. It also eliminates an Annex to the Agreement that listed levels of physical protection, in favor of a reference to the levels contained in the most recent guidelines published by the IAEA or in any revision of those guidelines agreed to by both Parties. These changes do not alter the substantive commitment of Indonesia to provide a guarantee of adequate physical protection over U.S. supply under the Agreement.

D. U.S. Policy Issues

In Article IV of the NPT, the United States undertakes "to facilitate . . . the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy" and to cooperate in contributing to the further development of the applications of nuclear energy for peaceful purposes. Establishing bilateral civil nuclear trading relationships with NPT parties like Indonesia strongly serves the goals of the NPT and provides a firm foundation on which the United States can cooperate with other NPT parties on nuclear non-proliferation matters.

When assessing non-proliferation factors in connection with a civil nuclear cooperation agreement, it is appropriate to go beyond the specific terms of the agreement to consider also a country's general non-proliferation credentials. As an NPT party, Indonesia has forsworn the manufacture or acquisition of nuclear explosives. Moreover, it has a long, unblemished history of peaceful nuclear cooperation with the United States. Indonesia faces no direct external threat to its security and there are no readily imaginable circumstances that might result in Indonesia reconsidering its NPT obligation. All the available evidence indicates the durability of Indonesia's NPT commitment. Extending the Agreement for Peaceful Nuclear Cooperation with Indonesia provides an important opportunity for the United States to demonstrate in a concrete way its policy of engaging in civil nuclear cooperation with states that have forsworn nuclear explosives, opened all their nuclear activities to international inspection by the IAEA, and otherwise given strong support to nuclear non-proliferation objectives.

E. Conclusion

Extension of the Agreement will keep in place a framework for mutually beneficial civil nuclear cooperation between the United States and Indonesia and provide a foundation for continued collaboration on nuclear non-proliferation goals.

On the basis of the analysis in this NPAS and all pertinent information of which it is aware, the Department of State has arrived at the following assessment, conclusions, views and recommendations:

1. The safeguards and other control mechanisms and the peaceful use assurances in the Agreement as amended by the proposed Protocol are adequate to ensure that any assistance furnished thereunder will not be used to further any military or nuclear explosive purpose.
2. The Agreement as amended by the proposed Protocol meets all the legal requirements of the Act and the NNPA.
3. Execution of the proposed Protocol is compatible with the non-proliferation program, policy, and objectives of the United States.

4. It is therefore recommended that the President determine that the performance of the proposed Protocol will promote, and will not constitute an unreasonable risk to, the common defense and security; and that the President approve and authorize the execution of the proposed Protocol.

**THE SECRETARY OF STATE
WASHINGTON**

September 4, 2003

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MEMORANDUM FOR THE PRESIDENT

FROM: Colin L. Powell
Secretary of State

Spencer Abraham
Secretary of Energy *Spencer Abraham*

SUBJECT: Proposed Protocol Amending the Agreement
for Cooperation Between the Government of
the United States of America and the
Government of the Republic of Indonesia
Concerning Peaceful Uses of Nuclear Energy

The United States has negotiated a proposed Protocol Amending the Agreement for Cooperation Between the Government of the United States of America and the Government of the Republic of Indonesia Concerning Peaceful Uses of Nuclear Energy signed at Washington on June 30, 1980 ("the Agreement"). This memorandum recommends that you sign the determination, approval and authorization at Attachment 1, which, pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended ("the Act"), sets forth: (1) your approval of the proposed Protocol; (2) your determination that performance of the proposed Protocol will promote, and will not constitute an unreasonable risk to, the common defense and security; and (3) your authorization for execution of the Protocol.

If you authorize execution of the Protocol, it will be signed by representatives of the United States and Indonesia. Afterward, in accordance with section 123 b. and d. of the Act, it will be submitted to both Houses of Congress. A draft letter of transmittal to the Congress is at Attachment 2 for your signature. (This letter will be held until after the Protocol is signed.) The Protocol must lie before Congress for 90 days of continuous session. Unless a joint resolution of disapproval is enacted, the Protocol may thereafter be brought into force.

The text of the proposed Protocol is at Attachment 3. It amends the Agreement in two respects:

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1. It extends the Agreement, which expired by its terms on December 30, 2001, until December 30, 2031, with effect from the former date; and

2. It updates certain provisions of the Agreement relating to the physical protection of nuclear material subject to the Agreement.

As amended by the proposed Protocol, the Agreement will continue to meet all requirements of U.S. law.

In accordance with the provisions of section 123 of the Act, the proposed Protocol was negotiated by the Department of State, with the technical assistance and concurrence of the Department of Energy. The proposed Protocol has also been reviewed by the members of the Nuclear Regulatory Commission. Their views are at Attachment 4.

Indonesia is a party to the Treaty on the Non-Proliferation of Nuclear Weapons ("NPT") and has an agreement with the IAEA for the application of full-scope safeguards to its nuclear program. A more detailed discussion of Indonesia's nuclear non-proliferation policies is provided in the Nuclear Proliferation Assessment Statement ("NPAS") at Attachment 5, and in a classified Annex to the NPAS submitted to you separately.

In our judgment, continued U.S. cooperation with Indonesia in the peaceful uses of nuclear energy under a long-term extension of the Agreement will be supportive of U.S. non-proliferation, foreign policy and commercial interests. We recommend, therefore, that you determine, pursuant to section 123 b. of the Act, that performance of the Protocol will promote, and will not constitute an unreasonable risk to, the common defense and security; and that you approve the Protocol and authorize its execution.

RECOMMENDATION

That you sign the determination, approval and authorization at Attachment 1 and the transmittal to Congress at Attachment 2. (The transmittal will be held until the Protocol itself is signed.)

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

June 20, 2003

The President
The White House
Washington, D.C. 20500

Dear Mr. President :

In accordance with the provisions of Section 123 of the Atomic Energy Act, as amended, the Nuclear Regulatory Commission has reviewed the proposed Agreement for Cooperation with Indonesia and supporting draft documents. It is the view of the Commission that the proposed Agreement includes all of the provisions required by Section 123 of the Atomic Energy Act, as amended. The Commission therefore recommends that you make the requisite statutory determination, approve the Agreement, and authorize its execution.

Respectfully,



Nils J. Diaz

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