



DEPARTMENT OF STATE
ACTION MEMORANDUM

Doc. 13

S/S

SECRET/SENSITIVE

January 18, 1979

MEMORANDUM

TO: The Secretary

THROUGH: P - Under Secretary Newsom
T - Under Secretary Benson

FROM: NEA - Harold H. Saunders *HHS*
OES - Thomas R. Pickering *A*

SUBJECT: Pakistan's Nuclear Program : Policy and
Legal Implications for the United States

You recently asked us to reexamine the status of Pakistan's nuclear programs and the policy implications for US/Pakistan relations. We have also reviewed steps already taken to deflect the Pakistanis from efforts to acquire nuclear explosive capability.

Pakistan is moving rapidly and secretly toward the construction of facilities which will give it nuclear explosive capability perhaps within two to four years. Some of the equipment necessary to these efforts has been obtained from abroad or is on order. Current indications suggests that a serious question is raised under the Symington Amendment which prohibits furnishing aid to a country that receives nuclear enrichment equipment after August 1977. We all agree that our objective is to persuade Pakistan to terminate its enrichment and reprocessing program. All also agree that termination of aid under the Symington Amendment would further complicate our position in the turbulent Persian Gulf region and would not contribute to achievement of our non-proliferation objectives. Gerry Smith agrees with this approach.

The actions recommended in the memorandum will take time to implement.

SECRET/SENSITIVE
RDS-4 (1/18/99)

SECRET/SENSITIVE

2

We propose to explain the problem and our plan of action to key members of the relevant Senate and House committees in the context of seeking legislative changes which would assist us in carrying out our non-proliferation objectives.

In parallel with the above, we would also propose to do the following on an urgent basis:

-- Continue direct U.S. approaches to the Pakistanis, including an invitation to President Zia when the dust has settled on the Bhutto case, to visit Washington with a view to using that visit for a direct Presidential demarche on the nuclear problem.

-- Use the Dung-Xiaoping visit to try to enlist China's help in turning off Pakistan's nuclear program.

-- Approach the Saudi Government to weigh in with Pakistan.

-- Suggest to Ambassador Dobrynin the desirability of a Russian demarche in Islamabad.

-- The delivery of a Presidential letter to Desai, suggesting an Indo/Pakistani agreement in the form of a joint declaration of non-development and non-nuclear weapons.

-- Development and circulation to other nuclear suppliers a list of key components with a view to obtaining cooperation of these suppliers to prevent export of such components to Pakistan.

Attached is a paper that covers this subject in more detail. We apologize for its length.

Recommendation:

That you approve the above action plan.

Approve _____ Disapprove _____

SECRET/SENSITIVE

SECRET/SENSITIVE

3

Clearances:

L	-	Mr. Bettauer	<i>SB</i>
H	-	Mr. Flaten	<i>at B</i>
OES	-	Mr. Nosenzo	<i>SB</i>
S/AS	-	Mr. Kelley	<i>SB</i>
INR	-	Mr. Gallucci	<i>SB</i>
PM	-	Mr. Humphreys	<i>SB</i>
ACDA	-	Mr. Van Doren	<i>SB</i>

OES:LHBrown:NEA:JCoon:mc
1/18/79

SECRET/SENSITIVE

PAKISTAN'S NUCLEAR PROGRAM
POLICY AND LEGAL IMPLICATIONS FOR THE U.S.

I. Nuclear Weapons Related Activity in Pakistan

There are two ways to produce fissile material for a nuclear explosive device--reprocessing spent fuel to produce plutonium and enriching natural uranium to produce highly enriched uranium (HEU). Pakistan appears to be following both. Reprocessing is clearly the quick, technically easier route, but it is complicated for Pakistan by safeguards commitments to the IAEA and Canada. Pakistan's international commitments do not constrain its pursuit of the uranium enrichment path, but gas centrifuge development is technically difficult. Moreover, Pakistan's still secret centrifuge program is heavily dependent upon imports of foreign material and equipment. H I

The Pakistanis are building a facility capable of small-scale reprocessing, near the PINSTECH research center near Islamabad. (Although the so-called French reprocessing plant under construction at Chasma is considerably larger, it is unlikely to be finished by the Pakistanis in less than eight years now that the French have ended their participation.) The facility on the PINSTECH site probably will be able to separate enough plutonium for one explosive device per year, and possibly several times that amount. If they were prepared to risk the charge of having violated safeguards, it is reasonable to expect that Pakistan could have enough plutonium for one device--but not nearly enough for a weapons program--in two to four years.

The secret gas centrifuge program is intended to yield significant quantities of HEU. The Pakistanis reportedly have succeeded in operating small numbers of centrifuge units. They have plans for 7,000 units, and have begun to construct buildings to house the facility and to acquire equipment for the plant. We estimate that the first thousand unit cascade is unlikely to come on line in less

than two years; production of enough HEU for one device would probably then take at least two more years. In contrast to the plutonium route, however, the capacity would then be in place to support a small nuclear weapons program.

In sum, the reprocessing-plutonium route could produce material for one device in 2-4 years, but would not be capable then of supporting a weapons program. The centrifuge enrichment route could produce material for one device after 4 years and then be capable of supporting a small nuclear weapons program.

In addition to their efforts to acquire fissile material for a nuclear device, a nuclear weapons design group was formed in 1974 to produce the necessary detonation package. Reports indicate that the group still exists, but the amount of progress is unknown. If sufficient fissile material were produced in two to five years, however, it is likely that a design for a simple device could be prepared in time.

(A code word description of our intelligence collection efforts will be submitted separately.)

II. Legal Implications

Sections 669 and 670 of the Foreign Assistance Act of 1961, as amended, known as the Symington and Glenn Amendments, respectively, prohibit the furnishing of certain economic or military assistance to a country which, after August 4, 1977, delivers to or receives from another country enrichment or reprocessing "equipment, materials, or technology."

Section 669 (concerning enrichment) provides that the President may waive the aid cut-off: 1) if he certifies to the Congress that such action would have a serious adverse effect on vital United States interests and 2) that he has received reliable assurances that the country in question will not acquire or develop nuclear weapons or assist other nations in doing so. (Section 670 concerning reprocessing is not currently at issue, given a lack of adequate evidence that reprocessing equipment, material or technology has been transferred or received by Pakistan since August 4, 1977.)

In applying Section 669 (Tab 1) to the current situation in Pakistan, there are two considerations: whether the transfer or receipt has taken place after August 4, 1977; and whether the nature of the equipment, materials, or technology transferred or received falls under the definition of the amendment.

With regard to the timing issue, available information suggests that a significant quantity of items for the Pakistani enrichment plant has been exported to and received by Pakistan since August 4, 1977 from a variety of Western European suppliers. An intelligence estimate of which items have been sent or received after that date is attached at Tab 2. However, the presently available information on the timing of all the transfers is not complete.

With regard to the nature of the equipment transferred, we will have to make a judgment whether it is "nuclear enrichment equipment" within the meaning of Section 669. There is no precise definition of the phrase in the Symington amendment. Accordingly, in making such a judgment we will have to look to standards that are internationally accepted, as well as to any applicable guidance in other United States law.

The Nuclear Suppliers Guidelines define enrichment equipment as equipment "especially designed or prepared for the separation of isotopes of uranium", which is further clarified to include "each of the major items of equipment especially designed or prepared for the separation process," including gas centrifuge assemblies, corrosion-resistant to UF₆. A separate section of the guidelines defines as a "major critical component" (a sensitive part) of an enrichment facility as "gas centrifuge assemblies, corrosion-resistant to UF-6" and further specifies that for facilities for which no major critical component is described, the transfer "in the aggregate [of] a significant fraction of the items essential to the construction and operation of the facility," should be deemed a transfer of the facility. Under the Non-Proliferation Act, nuclear "equipment" includes both facilities and components that are licensed by the NRC in

view of their significance for explosive purposes. (We understand that some of the particular items transferred to or received by Pakistan would be subject to licensing by Commerce, rather than the NRC, but may be subject to special interagency review procedures because of their potential non-proliferation significance.) Further, some of these items are classified and could not be legally exported from the United States.

Current indications concerning both the timing of the transfers and the nature of the equipment transferred suggest that a serious question is raised under the Symington Amendment. In this regard, Section 669 was initially designed to prevent international transfers of essentially completed facilities (the FRG-Brazil, French-Pakistan deals were clearly in mind) and did not seek to prevent indigenous development of these types of facilities. The definitions which have been followed in implementing the law have been geared to the limited range of equipment and components which are subject to the export controls under the Nuclear Suppliers' Guidelines and the later enacted United States Nuclear Non-Proliferation Act. Pakistan appears to have imported items which are not necessarily within these guidelines.

It could be argued, therefore, that the plant, or at least its post-August 1977 component, is basically indigenous and thus beyond the ambit of this law. Such an interpretation, however, seems narrower than either the terms or the purpose of the Statute. Even if none of the imported items is itself "nuclear enrichment equipment", it is clear nevertheless that the items are being imported for use in combination in the same facility and in a way that is only consistent with the construction of gas centrifuges for enrichment. Most if not all of the critical items in the plant have been or are being imported to Pakistan. It is because of these circumstances that there is a serious question regarding Section 669.

If, after further study of the evidence (and, perhaps, the receipt of additional evidence), it is decided that the Symington Amendment is applicable because of Pakistan's

imports since August 1977, you could recommend a waiver to the President. In order to waive termination, the President would have to determine that: 1) "the termination of such assistance would have a serious adverse effect on vital United States interests" and 2) "he has received reliable assurances that the country in question will not acquire or develop nuclear weapons or assist other nations in doing so." Obviously, reaching this determination and obtaining these assurances would take some time. However, we could not delay application of the termination requirement in Section 669 beyond the minimum time necessary to arrange for a waiver.

Policy Implications:

We clearly have a shorter time fuse on the Pakistan nuclear problem than we had anticipated, both in terms of preventing Pakistan from developing nuclear capability and in terms of the legal problems. Pakistan's aggressive efforts to develop enrichment and reprocessing capacity and the foregoing legal analysis suggest that we may find in the fairly near future that we are legally required to cut off aid to Pakistan. Thereafter, if it is decided to pursue the steps leading to a waiver, we will have only a limited period in which to obtain reliable assurances from the Pakistanis that they will not proceed with nuclear weapons development. We have not determined what would constitute "reliable assurances", but our overall objective would remain termination of Pakistan's sensitive nuclear activities.

If the Symington Amendment is triggered and not waived, we have to cut off current programs of development assistance (\$40 million in FY 79) and military training (IMET). Although not legally affected (because FMS credits are not involved), we believe it would be extremely difficult even to obtain Congressional acquiescence in continued significant military cash sales to Pakistan under these circumstances. Such a disruption of our relations, could have unpredictable consequences both internally in Pakistan and in the region, especially at a time of such turmoil in the area. Among other things, Pakistan could seek compensating assistance from Libya or other oil-rich Arab countries on the grounds that the Muslim world needs a nuclear deterrent to Israel. Given Pakistan's acute anxiety about

potential Afghan subversion, a withdrawal of U.S. support could lead Islamabad more actively to seek accommodation with the Soviet Union.

Our European allies, as well as our friends in the region, hope we will move toward a more supportive relationship with Pakistan in the context of the critical situation in the Persian Gulf and revolutionary developments in Iran. The regional moderates, in particular, would be deeply disturbed by a withdrawal of American support for Pakistan, and this concern would certainly be echoed by domestic observers of American policy -- including many in Congress. Our position would be rendered more difficult by the fact that our knowledge of Pakistani activities is derived from extremely sensitive intelligence primarily of third-country origin, which we presumably could not use publicly.

A triggering of the Symington Amendment may have serious repercussions in India, most immediately by undercutting our efforts to resolve the Indian safeguards question. A cut off of aid would confirm publicly GOI suspicions about Pakistan's nuclear intentions -- suspicions based on rather good Indian intelligence on the Pakistan enrichment program. There would be growing domestic pressure in India for resumption of work on an explosives program, perhaps leading to weaponization and development of delivery capability. Needless to say, a nuclear arms race on the subcontinent could have a profound effect on the implementation of our non-proliferation policy.

IV. Proposed Strategy

We conclude that it is essential to move on a very urgent basis to bring pressure to bear on Pakistan to terminate its nuclear explosive program, including construction of sensitive facilities.

A. Steps Already Taken

We have already taken the following steps to counter Pakistan's nuclear ambitions.

-- We and the British have alerted 11 supplier countries to Pakistan's intentions and urged them to restrict exports of items related to reprocessing and enrichment. The response has been encouraging but many countries do not have an export control apparatus adequate to catch many important dual-use items that are important for Pakistani completion of the enrichment facilities.

-- We have alerted the IAEA on the need for very careful inspection of all safeguarded Pakistani nuclear facilities.

-- Ambassador Smith raised our concerns in a general way with his Soviet counterpart at IAEA in November.

-- Ambassador Hummel warned the Pakistanis when we resumed aid in October of the consequences of continued activity in the nuclear field. We have reiterated this warning and have instructed Ambassador Hummel to put the GOP on notice that we are aware of their activity in the nuclear field and that it will jeopardize our ability to assist Pakistan.

B. Further Steps Proposed:

In our judgment, U.S. leverage alone is not sufficient to deter the Pakistanis. We had hoped to have time to rebuild our ties with Pakistan, including significant sales of military equipment, in order to increase the perceived cost of their proceeding on a nuclear course. At the present juncture, a cut-off of aid in fact risks enhancing Pakistan's sense of isolation and insecurity which are the primary motivating factors prompting their search for a nuclear deterrent. However, given the probable short time fuse on the Symington Amendment, we cannot wait and must move quickly to maximize the influence we can bring to bear by seeking the diplomatic support of others who have influence in Islamabad. The timing and coordination of our efforts will be important.

1. China: The PRC is Pakistan's most influential friend. During the Teng Hsiao-Ping visit we recommend a very strong approach at the highest level pointing out the

danger that Pakistan's nuclear program will provoke Indian development of nuclear weapons and delivery capability and increase regional tensions. We should also stress that continued U.S. ability to continue support for Pakistan depends on Pakistan's foregoing its nuclear weapons program. (To date, the PRC has not shared our approach to non-proliferation; however, the PRC has not supported Pakistan's earlier efforts on reprocessing.)

2. Saudi Arabia: The Saudis also have very considerable leverage in Islamabad. We propose to clearly point out to the Saudis the disastrous consequences for US/Pakistani relations if Pakistan pursues a nuclear weapons option and to urge the Saudis to press the Pakistanis. We have promised the Pakistanis that we would weigh in for Saudi financing of military purchases by Pakistan. We would prefer to make our demarche to Saudi Arabia on the nuclear question at the same time in order to put the issue on the broad context of our shared concerns with the SAG over regional instability. However, we may not be able to wait and we will keep the timing under review.

3. USSR: We have raised the issue of Pakistan's nuclear intentions with the Soviet Union in the context of our common non-proliferation concerns. In a meeting with Ambassador Dobrynin, you may wish to suggest the desirability of a Russian demarche in Islamabad, pointing to the destabilizing impact on the region of a nuclear-armed Pakistan. (We assume the Russians would have little sympathy for our Symington Amendment problem.) Given current Pakistani efforts to seek limited accommodation with Moscow, a Russian demarche could have considerable impact.

4. India: Up until now in our discussions with India on safeguards, we have not linked that issue to the problem of Pakistan. We now know that India is concerned about the Pakistani enrichment program. However, Morarji Desai's principled stand against nuclear explosive testing will rapidly become untenable in domestic political terms if Pakistan approaches the nuclear threshold. We suggest that a high level, but low profile emissary, armed with a Presidential letter, discuss the problem with Desai and suggest the need for Indo-Pak agreement in the form of a

joint declaration on non-development and non-use of nuclear weapons -- a proposal made by the Pakistanis last year. Ideally, we would hope India and Pakistan would accept full-scope safeguards as a means of verifying such a declaration, but this appears to be difficult to achieve in the near term. In any event, a joint declaration could provide Zia with some rationale permitting him to reverse his present course and terminate the enrichment and reprocessing programs.

5. Other Suppliers:

We have already alerted other potential suppliers of inverters and other items related to construction of an uranium enrichment centrifuge plant of Pakistan's efforts to procure from abroad these items. We are now in the process of developing a list of other key identifiable components. We will circulate this list to other suppliers and discuss with them the best means of ensuring that the export of such components to Pakistan is controlled. If this effort is successful it could slow significantly Pakistan's enrichment program. (The degree to which we can effectively obstruct Pakistan's efforts to obtain equipment abroad will depend in large part on the extent to which we can share U.S. and third-country intelligence with these suppliers.)

6. Western Allies:

We should discuss quite frankly, initially with the British and subsequently with the French and Germans, our problem with the Symington Amendment, its implications for our role in the region, and the need for early action to turn the Pakistanis around. We should recognize, however, that the French, for example, believe they have made a major contribution already by ceasing cooperation on the reprocessing plant and they look forward to re-couping some of their losses through increased military sales. We doubt that these countries would be prepared to make a common front with U.S. by threatening to cut off economic assistance to Pakistan; a number would argue that this would only isolate Pakistan and give further impetus to its weapons program. However, we should seek their political support in coordinated approaches to Pakistan.

7. U.S.: Ultimately, if a waiver is contemplated, we will need to confront the Pakistanis with the choice between providing reliable assurances that they will not continue with their nuclear explosives program or facing the consequences of a cut-off of aid, probably including significant military supply. We would like to delay this confrontation until some influence has been brought to bear from other quarters as suggested above. We would recommend that President Zia be invited to Washington as soon as the dust has settled from the Bhutto case. We would propose to discuss with Zia Pakistan's important role in the region and our desire to be supportive economically and with military sales, at the same time making clear that the maintenance of constructive ties with the U.S. will require assurances that Pakistan will forego its nuclear explosives program.

Pakistan Reaction: We are under no illusion that it will be easy to turn Pakistan around. The GOP appears to be heavily committed to the nuclear explosive program, presumably on the grounds that a nuclear deterrent to India would be cheaper and more effective than conventional forces. We believe that a very small group of senior military and civilian policy makers are aware of and responsible for the current program. We do not know whether any of this group have doubts about the value of nuclear weapons to Pakistan or to what extent they have thought through the implications of their nuclear program. Having observed international reaction to the Indian nuclear test in 1974, they may assume a flash-in-the-pan international reaction to a Pak test, followed, after an interval, by business as usual. They may be willing to risk a sharp, short-lived reaction, in the expectation that they would benefit in the longer run by increased security vis-a-vis India and a much enhanced status in the Muslim world.

On the other hand, Pakistani leaders have long been susceptible to outside pressures and are particularly sensitive to China and Saudi Arabia. Moreover, the current nuclear efforts on enrichment and reprocessing are entirely covert and thus not an emotional issue in domestic politics, as was the French reprocessing plant. This situation could change if elections are held next fall and a civilian government replaces the present regime. At present President Zia

is in charge but he must depend on the continuing support of his senior military commanders and could not alone make a decision on the nuclear program. His position could be further weakened if he commutes Bhutto's sentence since the military leadership generally would like to see the Bhutto problem solved once and for all.

Thus, we are unable to predict with any assurances that our proposed multi-pronged strategy will work, but in view of the consequences, we must make every effort to turn off Pakistan's nuclear explosive program.

V. Congressional Aspects

Before we resumed aid and military sales in October, Under Secretary Newsom, Ambassador Hummel and Dr. Nye consulted with Senator Glenn, Congressman Zablocki and a handful of key Members and staffers with an interest in non-proliferation. We told them that the French were not proceeding with the reprocessing plant contract, but we quite frankly said that Pakistan is continuing to explore indigenous ways to acquire nuclear explosive capability. Senator Glenn and his colleagues did not object to our proposal to resume normal relations with Pakistan and did not demur when Nye explained that we would try to deal with these other Pakistani efforts in the time gained by the French decision.

We believe Senator Glenn and other key members of the Senate Foreign Relations Committee and House International Relation Committee (e.g., Senators Church and Percy and Congressmen Zablocki, Bingham and Findley) will wish to be helpful if given a candid explanation of the situation, the overall U.S. security interests in the region, and the steps we intend to take to get Pakistan to stop its enrichment efforts.

We believe that key members will concede that broader U.S. security interests in the region are not served by an across-the board cutoff now of AID and military relations with Pakistan, but Glenn and others will not be willing to sacrifice non-proliferation goals to vaguer foreign policy objectives. We will thus need to assure them that the

priority we attach to our non-proliferation objectives with respect to Pakistan has not been diminished by the changed geo-political picture in the region. The essential thing is to be able to tell them that we are proceeding energetically with a coherent strategy within a reasonable time frame to turn Pakistan around.

Members of Congress will not agree to go along with anything that appears to be ignoring the provisions of the law. We suggest therefore that we explore with key members the possibility of a relatively minor change in the law, which would provide us with somewhat greater flexibility or at least more time. In fact, Senate staff suggested we do this at the time the law was written. In seeking this type of change, we would promise to provide Congress periodic reports on our efforts to change Pakistan policy. It will be essential to be able to present these legislative changes as designed to enhance our non-proliferation objectives rather than as compromises prompted by other political considerations.