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The U.S.-Russia Civil Nuclear Agreement

Mr. Chairman, thank you for the opportunity to testify before the Committee on the U.S.-Russia Agreement on Civil Nuclear Cooperation and its implications for U.S. efforts to prevent Iran from acquiring a nuclear weapons capability.

Since the collapse of the Soviet Union, the United States and Russia have engaged in important but circumscribed areas of nuclear cooperation, such as the Nunn-Lugar cooperative threat reduction assistance programs and the 1993 HEU Purchase Agreement under which 500 tons of highly-enriched uranium from dismantled nuclear weapons are being blended down to low-enriched uranium and sold to the U.S. as fuel for its civil nuclear reactors. But for the two countries to enter into full-scale nuclear engagement – including U.S. transfers to Russia of nuclear materials, nuclear reactors, and their major components – an agreement on the peaceful uses of nuclear energy (a so-called “123 Agreement” which is required by Section 123 of the U.S. Atomic Energy Act) must be in force.

The United States has 123 Agreements with almost all countries with major nuclear energy programs. A major exception is Russia, a country with one of the most extensive, diverse, technologically advanced, and commercially active nuclear industries in the world. The reasons for this anomaly include the mutual mistrust that prevailed during the Cold War, the dormancy of the U.S. nuclear industry in the post-Cold War period, and the differing approaches of the two countries toward the nuclear fuel cycle. Since the mid-1990s, the main impediment to a U.S.-Russia 123 Agreement has been Russian nuclear assistance to Iran, which the United States believes is pursuing a nuclear weapons capability under the cover of a civil nuclear program. In an effort to induce Moscow to end such assistance, the Clinton Administration and initially the Bush Administration refused to negotiate a 123 Agreement with Russia unless it halted all nuclear cooperation with Iran, including its construction of a nuclear power reactor at Bushehr.

In recent years, the case for pursuing a 123 Agreement with Russia has gotten stronger. Growing energy needs and concerns about greenhouse gas emissions are improving the outlook for nuclear power worldwide which, in an increasingly globalized nuclear industry, places a premium on working with foreign partners. The 9/11 attacks and the nuclear programs of North Korea and Iran have elevated preventing nuclear proliferation and nuclear terrorism to the top of the national security agenda, generating strong interest in more proliferation-resistant nuclear technologies and approaches to the fuel cycle that could be advanced through U.S.-Russian collaboration. Moreover, following revelations about Iran’s clandestine enrichment program and other illicit nuclear activities, Russia’s policy – while still committed to the completion of the

Bushehr reactor – became more supportive of U.S. and European efforts to press Iran to end its pursuit of fuel cycle programs that would give it a nuclear weapons capability.

In light of these developments, the Bush Administration in early 2006 relaxed its linkage between the Iran issue and a U.S.-Russia 123 Agreement. Instead of insisting that Moscow terminate all nuclear cooperation with Iran (including its construction of the power reactor at Bushehr) before negotiations on a 123 Agreement could get underway, it would now be willing to enter into negotiations but would only be prepared to complete the agreement and allow it to enter into force if Russia played a constructive role on the Iran nuclear issue.

At the July 2006 meeting of G-8 leaders in St. Petersburg, Presidents George W. Bush and Vladimir Putin announced that bilateral negotiations would begin. The talks proceeded smoothly. An agreement was initialed in Moscow in June 2007 and signed in Moscow on May 6, 2008. On May 13th, the White House transmitted the 123 Agreement and its supporting documentation to the Congress for its consideration.

The U.S.-Russia agreement negotiated by the two sides meets all the legal requirements set forth in Section 123 of the Atomic Energy Act. In particular, it contains all the required nonproliferation guarantees and controls, including a U.S. right of prior consent to re-transfers, a guarantee that adequate physical protection measures will be maintained with respect to U.S. exports, and a guarantee that no U.S.-origin nuclear material will be enriched or reprocessed without the prior approval of the United States. Indeed, the U.S.-Russia agreement is more restrictive than the 123 Agreement negotiated (but not yet submitted to the Congress) with non-NPT party India which provides U.S. advanced consent (rather than case-by-case approval) for reprocessing and offers U.S. assistance in ensuring uninterrupted fuel supplies in the event that an Indian nuclear test results in the termination of U.S. nuclear assistance to India.

Entry into force of the U.S.-Russia 123 Agreement can be expected to bringing significant benefits. At a technical level, an agreement could help accelerate U.S. nuclear energy research and development plans in such areas as fast neutron reactors and advanced fuel-cycle technologies where the Russians possess both experience and facilities not available in the U.S. For example, the Department of Energy would like to send fuel elements for testing in Russian fast neutron reactors but can only do so with a 123 Agreement in place. The Agreement also supports U.S. commercial interests by allowing U.S. firms to sell nuclear materials, equipment, and technologies to Russia and to team up with Russian companies in joint ventures to develop and market nuclear reactors and other products to third countries.

A 123 Agreement cannot, by itself, mend the U.S.-Russian bilateral relationship which has deteriorated markedly in recent years. Differences on such issues as NATO expansion, Kosovo, and missile defenses can be expected to persist. But by building on areas of clear common ground, the Agreement can help stop and reverse the downward slide in bilateral relations and perhaps have a positive spillover effect on other issues, which is especially important at a time of presidential transitions in both countries.

Conversely, blocking the Agreement is likely to adversely affect U.S.-Russian cooperation more broadly.

The most important benefit of a 123 Agreement is that it can facilitate cooperation in preventing nuclear proliferation and nuclear terrorism. For example, it can foster collaboration in the development of advanced, proliferation-resistant nuclear reactors and fuel management technologies. It can allow the U.S. to contribute materially to the Russian multilateral uranium enrichment facility at Angarsk, which would reduce incentives for countries embarking on nuclear power programs to acquire their own enrichment plants. It can also create the necessary legal basis for Russia – should it decide to do so in the future – to establish an international spent fuel storage facility that could accept U.S.-origin spent fuel and spent fuel from other countries and thereby reduce incentives for them to have their own reprocessing facilities. And a 123 Agreement can promote a more promising political and legal environment for pursuing a range of threat reduction programs (e.g., nuclear security upgrades in Russia, plutonium disposition) and for developing a new international civil nuclear energy architecture, as agreed in the U.S.-Russia Declaration on Nuclear Energy and Nonproliferation of 2007, that can boost reliance on nuclear power worldwide without increasing the dangers of proliferation.

It is understandable and appropriate that, in evaluating the 123 Agreement, Members of Congress will focus heavily on Russia's role vis-à-vis Iran's nuclear program. Moscow's record in that connection is mixed. On the one hand, Russia has resisted tough U.N. Security Council sanctions against Iran, reduced its leverage with Iran by shipping fuel for the Bushehr reactor, and failed to stop all Russian entities from engaging in sensitive cooperation with Iran. But on the other hand, Moscow has insisted on taking back to Russia all spent fuel from the Bushehr reactor, proposed that Iran join an enrichment center in Russia rather than have its own enrichment program, and voted for three modest but increasingly strong U.N. Security Council sanctions resolutions. Although those resolutions were all weaker than the United States preferred, they have given legitimacy to U.S.-led efforts outside the Council with foreign governments, banks, and businesses to impose financial and other economic pressures on Iran. The Russians have also pressed Iran publicly and privately to suspend its enrichment program as unnecessary and uneconomic.

On the question of Russian entities transferring sensitive nuclear technology to Iran, the record is also uneven. Despite a substantial decrease in such sensitive assistance from the period of the late 1990s, when Russian-Iranian cooperation was a significant irritant in U.S. relations with Moscow, concerns have persisted about nuclear cooperation between Russian entities and Iran outside the openly acknowledged interactions taking place between the two countries on the Bushehr project. Indeed, some such cooperation has reportedly taken place – and was the focus of high-level U.S. diplomatic efforts with Russian leaders – in the period following the initialing of the 123 Agreement. However, those diplomatic efforts, including during a March 2008 visit to Moscow by Secretary of State Condoleezza Rice and Robert Gates, have apparently resulted in strong assurances

at the highest levels of the Russian government that any further sensitive cooperation between Russian entities and Iran will stop.

If Iran is to be persuaded to give up its enrichment program and nuclear ambitions, Russia must be prepared to work more closely and forcefully with the U.S. and other concerned states to exert strong pressures on Tehran and to make clear that its future will be much brighter if it heeds the demands of the Security Council and international community. Russian authorities must also be prepared to exercise careful oversight in ensuring that Russian entities are not assisting Iran's nuclear and missile programs by providing sensitive technology.

A key question for this Committee and the Congress is whether Russia will be a more willing and energetic partner for the United States on the Iran nuclear issue if we proceed to implement the 123 Agreement or if we walk away from it.

Some have argued that Russia's desire for the 123 Agreement gives the U.S. powerful leverage that can be used to demand that Moscow apply much greater pressure on Iran as a condition for proceeding with the agreement. This argument assumes Russia wants or needs the 123 Agreement more than the U.S. does. But while the Russians clearly would like an agreement, they can live without it. Indeed, in the 1990s, when Russia was in desperate economic shape, the lure of a 123 Agreement (and the economic rewards that might flow from it) was not sufficient to persuade Russian leaders to terminate all nuclear cooperation with Iran. Today, when Russia is riding high economically, U.S. leverage is even weaker. And as the Russians are already proving by establishing nuclear energy partnerships with a variety of Western and other countries, they have alternatives to the United States and U.S. companies.

A 123 Agreement can give the U.S. leverage with the Russians. But the leverage, and the ability to influence Russian behavior, comes not from withholding U.S. approval of the agreement; it comes from implementing the agreement and giving the Russians a tangible, vested interest in continuing to cooperate with the United States.

This is especially the case in seeking to hold Russian leaders to their pledge to prevent any future sensitive cooperation between Russian entities and Iran. It is important to note in this connection that the 123 Agreement is not self-executing. Even after entry in force, each nuclear export pursuant to the agreement must receive specific approval by U.S. authorities. Moreover, Section 129 of the Atomic Energy Act calls for termination of nuclear exports to any country that contributes to a nuclear weapons program by transferring sensitive nuclear technology to a third country. So if the Russians do not honor their pledge, nuclear cooperation with Russia can be stopped.

Critical U.S. nonproliferation objectives, especially the goal of preventing Iran from acquiring nuclear weapons, cannot be achieved without the active cooperation of Russia. The best way to gain that cooperation – on Iran and a wide range of other nonproliferation issues – is to bring the U.S.-Russia 123 Agreement into force at an early date.