



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

leg. 4

OFFICE OF THE  
COMMISSIONER

January 30, 1978

The Honorable John Glenn  
United States Senate  
Washington, D.C. 20510

Dear Senator Glenn:

In your letter of January 27th, you asked for my comments on the issues raised in Commissioner Kennedy's January 26th letter to Senator Church in which Mr. Kennedy provided his "reflections" on S. 897, the nuclear export bill now before the Senate. These reflections led him to the conclusion that Congress should instruct the Nuclear Regulatory Commission, in determining whether nuclear export licenses should be issued, to accept without question Executive Branch assessments of the adequacy of international safeguards.

The difficulty with this conclusion -- leaving aside for the moment the loss of an independent NRC check in the export review process -- is that his rationale for not examining country-specific safeguards applies also to every agency of the United States government, not just to the NRC. As Mr. Kennedy sees it, we should not look behind "safeguards regimes which we have agreed by treaty should be applied." In other words, once we transferred U.S. safeguards arrangements to the International Atomic Energy Agency, we relinquished any right to question whether or not they satisfied U.S. safeguards requirements for nuclear exports.

Practically speaking, blind acceptance of international safeguards of unknown effectiveness discounts safeguards altogether, leaving United States exports protected by little more than a simple reliance on promises by recipients that American exports will not be used for nuclear explosives. Even allowing for whatever can be gathered through our own intelligence activities, such a situation would represent a substantial deterioration of the protection Congress thought it was obtaining when it originally insisted on international inspection for U.S. exports.

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It is my view that these safeguards are too important, and the IAEA system at too early a stage of development, to be placed beyond the scrutiny of participating governments. In some cases the need for country-specific information in the consideration of export licenses arises because the implementation of international safeguards is not uniform. The IAEA's own recent assessment, the Special Safeguards Implementation Report, reveals deficiencies in the application of international safeguards in recalcitrant countries, where, for example, national systems for keeping track of nuclear materials cannot be audited because records, if they exist at all, are not kept systematically. But the IAEA report does not identify the countries in which these problems occur. Common sense dictates that such information is importantly relevant to a recommendation that an export license be issued. The NRC should not have to trust to luck that the recipient is not in the questionable category. Yet the State Department has told NRC that it cannot provide a list of safeguards-deficient countries, even on a classified basis, because the confidentiality of the IAEA system precludes the Department (and presumably any agency of the U.S. government) from receiving it in the first place.

This is the source of the dilemma of the NRC safeguards office, to which Commissioner Kennedy alludes. That office is, in fact, "equipped" to examine assessments of international safeguards -- it is well staffed and expert in accordance with Congress' specific mandate. The difficulty is that no agency in the government is in a position to provide safeguards assessments in connection with export licenses. What information is available in the Executive Branch is gathered on an informal, ad hoc, and intuitive basis, and is blended into an overall judgment in which "foreign policy" considerations may be balanced off against any suspicion that safeguards are inadequate. NRC has been informed by the Executive Branch that its recommendation for issuance of a license should not be taken as an approval of how safeguards are operating in any particular country. We are now seeking a resolution of the dilemma in discussions with the State Department.

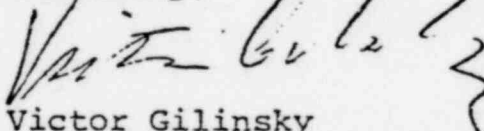
However the U.S. government ultimately decides to handle the problem, it advances nothing to follow Mr. Kennedy's advice to eliminate any NRC safeguards review and relegate the Commission to rubber stamping license recommendations.

On the positive side, it is a healthy sign that the IAEA inspectorate has produced a straightforward and critical account of its activities and will continue to do so on an

annual basis. It is clear that the international inspectorate is dedicated to its mission, is aware of the flaws in the system, and is looking to its principal members for assistance in gaining universal acceptance of stricter safeguards. There is much lip service paid to "strengthening the IAEA." But the Agency's self-styled protectors would do it a disservice to close off discussion of the effectiveness of its safeguards system. The only beneficiaries of such an approach will be those countries interested in limiting IAEA's efforts to develop a more effective system.

As for the Nuclear Regulatory Commission, I believe (as I stated at somewhat greater length in the enclosed Washington Post column) that its greatest contribution to the nuclear export process lies in providing the vital element of consistency which derives, more than anything, from an objective and independent evaluation of the recommendations presented to it by the Executive Branch. Whatever other considerations enter into a decision to allow nuclear exports, the one fixed point must be their protection against diversion to military uses.

Sincerely,



Victor Gilinsky  
Commissioner

Enclosure

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