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INTERNATIONAL COOPERATION FOR THE PEACEFUL USES OF ATOMIC ENERGY UNDER THE ATOMIC ENERGY ACT OF 1954

By RAM KRISHNA DIXIT *

INTRODUCTION

ONE OF THE main objects of the Atomic Energy Act of 1954 [1] is to expand the United States' cooperation with friendly nations in certain atomic energy matters. Representative Cole, the chairman of the Joint Committee on Atomic Energy, in referring to the President's message, stated that:

> "The message did recommend that the following objectives be sought through amendments to the Atomic Energy Act of 1946 at this time:
>
> "First, widened cooperation with our allies in certain atomic energy matters;
>
> "Second, improved procedures for the control and dissemination of atomic energy information; and
>
> "Third, encouragement of broadened participation in the development of peacetime uses of atomic energy in the United States.
>
> "These are the basic objectives sought in the two bills before us." [2]

The Atomic Energy Act of 1946, known as the McMahon Act,[3] imposed stringent limitations, with penalties, on international activities. The export of goods including fissionable material, services or exchange of information relating to Atomic energy was prohibited. Only the export of certain component parts of reactor facilities, of source materials and of radioisotopes was permitted under license.[4] The McMahon Act prohibited any person from engaging "directly or indirectly—in the production of any fissionable material outside the United States." [5] The words "directly and indirectly" are so vague and susceptible of very wide interpretation that doubts were raised as to whether lecturing and teaching abroad were covered by the Act. The Act did not make any distinction between friendly and unfriendly nations for this purpose.

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[1] 68 STAT. 919 (1954).

[2] *Hearings Before the Joint Committee on Atomic Energy on S. 3323 and H. R. 8862 to Amend the Atomic Energy Act of 1946*, 83d Cong., 2d Sess., pp. 2-3 (1954).

[3] 79th Cong., P.L. 585, ch. 724.

[4] *Id.* at §§ 5, 7, and 10.

[5] Section 5(3)(c) of the Atomic Energy Act of 1954.

But as the years passed it was soon realized that the United States alone did not have the monopoly of atomic weapons. The Secretary of State, Mr. Dulles, emphasized this point clearly in his testimony before the Joint committee on Atomic energy:[6]

> "In 1946 it seemed that, subject to possible internationalization, total secrecy would best serve the interests of our nation and of all humanity. Since 1946 such monopoly as we had has ended. To some extent that was due to treachery and treason. But we would be foolish not to rate highly the scientific capabilities of the Soviet Society . . . that our potential enemies have a knowledge vastly superior to that of most of the nations which we count as friends.
>
> "This is an unhealthy state of affairs. It means that the present very strict secrecy requirements of the 1946 Act no longer represent the wisest international policy. We need to assert leadership in turning atomic energy to the peaceful service of mankind. . . . Also we need to equip our Allies with the knowledge which will enable them to counter the kind of atomic warfare which we know the communist forces are equipped to wage.
>
> "The pending bills would serve these foreign policy objectives."

The Atomic Energy Act of 1954 seeks to achieve the above-mentioned objectives. The Act provides for the negotiation of bilateral agreements with *foreign nations* in the area of peace-time uses of atomic energy under carefully stipulated guarantees and safeguards. The related provision, Section 123, entitled, "Cooperation with other Nations", provides as follows:

> "No cooperation with any nation or regional defense organization pursuant to sections 54, 57, 64, 82, 103, 104 or 144 shall be undertaken until—
>
> "a. the commission, or, in the case of agreements for cooperation arranged pursuant to subsection 144, the department of Defense has submitted to the President the proposed agreement for cooperation, together with its recommendation thereon, which proposed agreement shall include (1) the terms, conditions, duration, nature and scope of the cooperation; a guarantee by the cooperating party that security safeguards and standards as set forth in the agreement for cooperation will be maintained; (3) a guaranty by the cooperating party, that any material to be transferred pursuant to such agreement will not be used for atomic weapons, or for any other military purpose; and (4) a guaranty by the cooperating party that any material or any restricted data to be transferred pursuant to the agreement for cooperation will not be transferred to unauthorized persons or beyond the jurisdiction of the cooperating party, except as specified in the agreement for cooperation;
>
> "b. the President has approved and authorized the execution of the proposed agreement for cooperation, and has made a determination in writing that the performance of the proposed agreement will pro-

[6] *Hearings, supra* note 2, Part II of two parts at 684.

mote and will not constitute an unreasonable risk to the common defense and security; and

"c. the proposed agreement for cooperation, together with the approval and the determination of the President, has been submitted to the joint committee and a period of thirty days has elapsed while Congress is in session (in computing such thirty days, there shall be excluded the days on which either house is not in session because of an adjournment of more than three days)." [6a]

For the purposes of discussion different aspects of this section shall be taken one by one.

THE PROCEDURE TO ENTER INTO BILATERAL AGREEMENTS FOR COOPERATION

According to Section 123 no agreement for cooperation shall be entertained until the commission has submitted to the president the proposed agreement for cooperation together with its recommendation. It does not appear from this section or from any other provision of the Act who is primarily responsible for the initiation of these agreements. In the light of other provisions of the Act where the commission has been expressly authorized to do certain things this language creates confusion. For example, Section 53(a) provides that "the commission is authorized to issue licenses . . ."; and in Sections 55, 63, 67, etc., where the commission has authority to do certain things, affirmative language to the same effect has been used. Even in Sections 54, 64, 82, and 104, where the commission has been given the authority to cooperate with other nations in different aspects of the Atomic Energy Program, this affirmative language has been used. For example, Section 82 (a) states:

"The commission is authorized to cooperate with any nation by distributing by-product material. . . ."

On the contrary Section 123 starts with a negative statement:

"No cooperation with any nation or regional defense organization pursuant to sections 54, 57, 64, 82, 103, 104, or 144 shall be undertaken until—

(a) The commission . . . has submitted to the President the proposed agreement for cooperation together with its recommendations thereon. . . ."

Thus it may be inferred or interpreted that the State Department, or any other officer of the government, a senator or a representative may submit a draft of the proposed agreement to the commission and then the commission shall submit to the president the proposed agreement for cooperation together with its recommendation. Two things are clear: first, the commission should submit to the president the proposed agreement for cooperation; secondly, the

[6a] Atomic Energy Act of 1954, 68 STAT. 939 (1954), 42 U.S.C. § 2152 (1956).

commission should submit it together with its recommendation. But this language does not exclude the inference that in origin any government agency or member of congress or any citizen may suggest and propose to the commission to undertake cooperative agreement with a foreign nation.

While in the course of hearings Representative Durham, referring to sections 122 and 123, asked the Secretary of State during his testimony:

> "You do not refer so much to the provision of the law which primarily you are speaking to or which primarily you will be interested in, or your agency which you head will have to perform and carry out these agreements, and that is in Section 122 and Section 123. . . .
>
> "SECRETARY DULLES: I think we can get along all right with these provisions as they are now drafted, Congressman." [7]

The United States has entered into bilateral agreements for cooperation with twenty-seven foreign nations, and they have been signed on behalf of the United States by some officer of the State Department and the chairman of the commission concurrently; the signature of the officer of the Department of State appears first. It is not objected as to who signs first; rather, the objection is to the law which is not clear on the subject. Unless authorized otherwise in some special cases, the usual practice is that the Department of State enters into such agreements with foreign nations on behalf of the United States. There is no doubt that all these agreements are entered into on behalf of the government of the United States, but somebody is supposed to be responsible for their conclusion. In almost all agreements except in the case of agreements with the United Kingdom and Belgium the words used are as follows:

> "Whereas the Government of the United States of America represented by the United States Atomic Energy Commission" . . .[8]

But in the agreements with the United Kingdom and Belgium language to that effect does not appear, and the inference may be drawn that the State Department is the representative of the United States in these agreements. Thus it is not clear what the relationship of the State Department and the commission is so far as these agreements are concerned. It is accepted that the State Department is the best judge in foreign matters, but its position should have been brought into the light, like the Department of Defense, in the Act.

The cooperation is supposed to be undertaken pursuant to Sections 54, 57, 64, 82, 103, 104 or 144 of the Act. These sections specifically authorize the

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[7] *Hearings, supra* note 2, Part II of two parts at 690-691.

[8] Agreement Between the United States of America and Turkey, Department of State Publication 5968; Treaties and Other International Acts, Series 3320, p. 1.

commission to do or not to do certain things for cooperation purposes with foreign nations. Sections 54, 64, and 82 authorize the distribution of special nuclear material, the source material and the byproduct material respectively by the commission to any nation that is a party to the agreement for cooperation. Likewise, Section 103 authorizes the issuance of commercial licenses for utilization facilities for use in medical therapy and research and development. Section 57 is a prohibitory clause. It makes it unlawful for any person to possess or transfer any special nuclear material and to transfer or receive any special nuclear material in interstate commerce except as authorized by the commission pursuant to subsection 53(a). Furthermore, this section also prohibits engaging directly or indirectly in the production of any special nuclear material outside of the United States except under an agreement for cooperation made pursuant to Section 123, or upon authorization by the commission after a determination that such activity will not be inimical to the interest of the United States. Clause (b) of Section 57 provides that the commission shall not distribute any special nuclear material to any person for a use which is not under the jurisdiction of the United States except pursuant to Section 54, or to any person within the United States if the commission finds that it would be "inimical to the common defense and security." Section 144 provides that the president may authorize the commission to communicate to the cooperating nation Restricted Data regarding certain matters as provided in the Act.[8a] The president may also authorize the Department of Defense to communicate Restricted Data for certain purposes.[8b] But no such cooperation shall involve the communication of Restricted Data relating to the design or fabrication of atomic weapons.

THE CONTENTS OF THE AGREEMENT

Section 123 contains carefully drawn conditions according to which the agreements for cooperation may be entered into. The drafters of the bill were very careful not to leave the conclusion of the agreements solely at the pleasure of the parties. The Act specifically provides that the proposed agreement shall include "the terms, conditions, duration, nature, and scope of the cooperation."

[8a] Section 144a of the Atomic Energy Act of 1954, *supra* note 1, includes the following:
"(1) refining, purification, and subsequent treatment of source material;
(2) reactor development;
(3) production of special nuclear material;
(4) health and safety;
(5) industrial and other applications of atomic energy for peaceful uses; and
(6) research and development to the foregoing."

[8b] "(1) the development of defense plans;
(2) the training of personnel in the employment of and defense against atomic weapons; and
(3) the evaluation of capabilities of potential enemies in the employment of atomic weapons."
Section 144b of the Atomic Energy Act of 1954, *supra* note 1.

These bilateral agreements for cooperation have been concluded with twenty-seven nations [9] and it will be appropriate to examine them in the light of the above-mentioned conditions.

It must be said at the outset that agreements with twenty-four countries are to a great extent identical in their scope; hence the agreement with Turkey will henceforth be referred to as an example for these twenty-four countries unless something otherwise appears in other agreements. Agreements with Canada, the United Kingdom and Belgium are more elaborate because of the special relations existing with these countries and need separate discussion. These will be referred to only at appropriate places. All these agreements are entitled "Agreements for Cooperation Concerning Civil Uses of Atomic Energy." Thus it is clear that these agreements are for civil uses and not for military uses. The chief aim of these agreements is cooperation in atomic energy research for peaceful and humanitarian uses. The agreements provide for exchange of information between the parties. The agreements with twenty-four nations provide that the parties will exchange information in the following fields:

> "A. Design, construction and operation of research reactors[10] and their use as research development and engineering tools and in medical therapy.
>
> "B. Health and Safety problems related to the operation and use of research reactors.
>
> "C. The use of radio-active isotopes in physical and biological research, medical therapy, agriculture and industry." [11]

But "Restricted Data" shall not be communicated under this agreement. The agreement provides:

> "Restricted data shall not be communicated under this Agreement and no materials or equipment and devices shall be transferred and no services shall be furnished under this agreement if the transfer of any such materials or equipment and devices or the furnishing of any such services involves the communication of Restricted data." [12]

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[9] Turkey, Colombia, Brazil, Israel, Spain, Philippines, Switzerland, the Netherlands, Argentina, Lebanon, China, Denmark, Italy, Portugal, Greece, Venezuela, Chile, Japan, Pakistan, Uruguay, Peru, Korea, Sweden, Thailand. More elaborate agreements have been entered into with Canada, Belgium, and the United Kingdom.

[10] The term "research reactor" has been defined as follows: "C. Research reactor means a reactor which is designed for the production of neutrons and other radiations for general research and development purposes, medical therapy, or training in nuclear science and engineering. The term does not cover power reactors, power demonstration reactors, or reactors designed primarily for the production of special nuclear materials." Agreement with Turkey, Article X.

[11] Article I, Agreement with Turkey.

[12] Article V, Agreement with Turkey. The Act defines "Restricted Data" as follows: "Section 11 . . . r. The term 'Restricted Data' means all data concerning (1) design, manufacture, or utilization of Atomic weapons ; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the restricted data category pursuant to Section 142."

It seems clear from the above provisions that data which touch the military aspect fall out of the sphere of exchange of information. The design and manufacture of atomic weapons are highly technical, and the mere production of special nuclear material does not necessarily lead to the manufacture of weapons, but even this subject falls out of the category of exchange of information. It is not clear whether classified information will be exchanged or not. Nothing is said expressly about it. The presumption might be that since only restricted data, expressly mentioned in the agreement, shall not be communicated, that classified information might be exchanged ("Classified" information is the lowest category of security classification). But in the agreements with Belgium,[13] Canada [14] and the United Kingdom,[15] it has been expressly said that classified information will be exchanged and this express mention in other agreements might take away the above presumption.

The Supply of Uranium and Other Materials

The commission will lease uranium enriched in the isotope U-235 as may be required as initial and replacement fuel in the operation of research reactors, but the quantity of such uranium shall not at any time be *in excess of* six (6) kilograms unless the commission specifically determines otherwise. The uranium will also be leased to individuals or private organizations for the operation of reactors as are authorized by the various governments within their jurisdictions "in consultation with the commission . . . provided the government shall . . . at all times maintain sufficient control of the material and the operation of the reactor to enable the government . . . to comply with the provisions of this Agreement and the applicable provisions of the lease arrangement."

The words "in consultation with the commission" make it obligatory on the cooperating nation to consult the commission if it decides to authorize private individuals or private organizations to operate reactors. The question arises what will happen if the commission does not agree in a particular authorization case? One might argue that virtually the commission might dictate the standards for authorization to private individuals. This provision seems to go too far and seems to interfere in the internal matters of a state. It may be argued that atomic energy is a highly technical matter and that it is the interest of the commission that such precious material (U-235) should not be wasted but should be utilized for the maximum advantage of the lessee

[13] Article III C 2(a) and (b), Agreement with Belgium, Department of State Press Release, June 20, 1955.

[14] Article II, Agreement with Canada, Department of State Press Release, June 20, 1955.

[15] Article II, Agreement with the United Kingdom concerning the civil uses of atomic energy, Department of State Press Release, June 20, 1955.

state. Furthermore, the commission is the best judge in these matters and shall give valuable advice to the government after judging the technical strength of an organization or of a person as it is its usual business in the United States. No doubt it is true to a great extent at present, but the above words do not prevent the commission from exerting its political influence. Let it be assumed for the sake of argument that an organization, which imports material and technical assistance to construct and operate a reactor from a communist country which has trade relations with the cooperating nation, might not get the favorable opinion of the commission, but the cooperating nation considers it fit to authorize the organization to construct and operate a reactor and to utilize U-235 leased by the commission. Can the commission prevent the use of U-235 by such authorized private individuals or private organizations? The language, "provided the government . . . shall at all times maintain sufficient control of the material and the operation of the reactor to enable the government to comply with the provisions of this agreement and the applicable provisions of the lease arrangement," [16] does not warrant this presumption. It is the government that is responsible for its use, and the agreement seeks it through the control by the cooperating state of the material and the operation of the reactor.

The agreement further provides for the replacement of the fuel elements. The fuel elements containing U-235 leased by the commission "shall be returned to the commission and, except as may be agreed, the form and content of the irradiated fuel elements shall not be altered after their removal from the reactor and prior to delivery to the commission." [17]

The lease of the uranium shall be on such terms and conditions as may be mutually agreed.

The agreement further provides for the sale or lease of such reactor materials by the commission as are not obtainable on the commercial market but are needed for the operation of the reactors, upon the terms mutually agreed by the parties.[18]

Role of Private Industry

It need not be emphasized that to broaden the scope of private enterprise was also one of the reasons for amending the McMahon Act. This object has been fully kept in mind while making agreements. Accordingly, private individuals and private organizations may deal directly with the private individuals

[16] Article II A, Agreement with Turkey.
[17] Article II C, Agreement with Turkey.
[18] *Id.*, Article III.

and organizations of other countries. The government of the United States, with respect to the subjects of agreed exchange of information referred to in Article I of the Agreements, will permit persons under its jurisdiction to perform services and transfer and export materials either to the cooperating state or to private individuals who are authorized by it. But there are two limitations. First are the limitations set forth in Article V, that restricted data shall not be communicated; secondly, the performance of services and the transfer and export of materials shall be subject to the applicable laws, regulations and license requirements of both governments.[19]

This provision is consistent with the commission's policy expressed as follows during the joint committee hearings:

> "It is contemplated that with respect to the furnishing of equipment facilities and materials (other than special nuclear materials) United States industry will play a major role in implementing agreements for cooperation.
>
> "As permitted by the Atomic Energy Act of 1954, it is the intention of the Commission that all agreements for cooperation with other governments shall provide for industry to supply equipment, facilities, services, and materials (other than special nuclear materials) to the extent that such activities shall fall within the scope of the particular agreement.
>
> "Under the Act a license issued by the Commission is required for the export of production facilities, utilization facilities, source materials and by-product materials. The Commission is now formulating licensing regulations and in discharging its licensing functions under these regulations, the Commission will be guided by the principle of facilitating industry's participation in the arrangements for cooperation with other governments to the fullest extent permitted by the act." [20]

The chairman of the Joint Committee, Representative Cole, has also described the procedure for the exportation of facilities as follows:

> "It was intended that these Sections operate as follows: The United States might enter into an agreement for cooperation with another nation, requiring the export to that nation of, for instance, a reactor. The firm in this country from whom that nation desires to purchase the reactor must then obtain a license to export that reactor pursuant to the terms of the agreement and rules and regulations promulgated by the Commission.
>
> "I see no undue complications in this method of procedure. The rights of the exporter within this country are established by rules and regulations. The rights of the importer within the country receiving the facilities are, of course, to be determined by the laws of that country. Both are subject to the terms of the agreement for cooperation." [21]

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[19] Article IV, Agreement with Turkey.

[20] *Hearings Before the Joint Committee on Atomic Energy,* 84th Cong., First Session on Development, Growth and State of the Atomic Energy Industry, Part I of three parts, pp. 208-209.

[21] Cole, *Regulating International Nuclear Activities,* 13 NUCLEONICS, No. 3, March, 1955.

The A.E.C. has issued a general authorization under which Americans may engage in unclassified foreign atomic energy activities without prior commission approval when the activity does not involve classified information. This authorization makes an exception in the case of those countries and areas listed as sub-group A countries or destinations in Section 371.3 of the Comprehensive Export Schedule of the Department of Commerce.[22] A prior agreement for cooperation is not required in the above case. But the classified activities still require that a bilateral agreement be in force.[23] It was doubted whether the commission had the authority to make a general statement rather than a particular finding in each case. General Counsel to the A.E.C. has advised the commission that it does have the authority that is exercised in this action.[24]

Duration of the Agreement

The agreement with Turkey is for ten years and is subject to renewal as may be mutually agreed.[25] The agreements with other nations are for five years and are subject to renewal.[26] It is hoped and expected that "this initial agreement for cooperation will lead to consideration of further cooperation extending to the design, construction, and operation of power producing reactors. Accordingly, the parties will consult with each other from time to time concerning the feasibility of an additional Agreement for cooperation with respect to the production of power from Atomic Energy . . .".[27] It should be noted that the definition of research reactor which has been put in the agreement does not cover—power reactor.

The agreement further provides that "At the expiration of this Agreement or any extension thereof the government . . . shall deliver to the United States all fuel elements containing reactor fuels leased by the Commission and any other fuel material leased by the Commission. Such fuel elements and such fuel materials shall be delivered to the commission at a site in the United States designated by the Commission at the expense of the government . . . and such delivery shall be made under appropriate safeguards against radiation hazards while in transit." [27a]

Safeguards

In connection with safeguards the cooperating state, according to agreement, agrees to maintain proper safeguards so as to assure the proper use and safekeeping of uranium U-235 and other reactor materials including equipment

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[22] United States Atomic Energy Commission Press Release, Monday, October 3, 1955.
[23] United States Atomic Energy Commission Press Conference, October 3, 1955.
[24] *Ibid.*
[25] Article VIII, Agreement with Turkey.
[26] All other nations except Canada, Belgium, and the United Kingdom. See note 9 *supra.*
[27] *Ibid.*
[27a] Article VIII, Agreement with Turkey.

and devices and further agrees that they shall be used solely for the design, construction and operation of research reactors, except as may be agreed otherwise.[28]

MAINTENANCE OF RECORDS AND REPORTS

The agreement also provides on the part of the cooperating state:

". . . to maintain records relating to power levels of operation and burning of reactor fuels and to make annual reports to the commission on these subjects. If the commission requests, the government . . . will permit commission representatives to observe from time to time the condition and use of any leased material and to observe the performance of the reactor in which the material is used." [29]

GUARANTY PROVISIONS

The Atomic Energy Act of 1954 provides that guaranty provisions should be put into the agreements. These guaranties should provide that:

"Security safeguards and standards as set forth in the agreement will be maintained; . . . that any material to be transferred pursuant to such agreement will not be used for atomic weapons, or for research or development of atomic weapons or for any other military purpose; and . . . that any material or any Restricted data to be transferred pursuant to the agreement for cooperation will not be transferred to unauthorized persons or beyond the jurisdiction of the cooperating party, except as specified in the agreement for cooperation." [30]

These are the statutory conditions which should be complied with. Hence the provisions to this effect have been incorporated into various agreements.

Article VII of the agreement begins with the heading "Guaranties Prescribed by the U. S. Atomic Energy Act of 1954" and provides as follows:

"The government . . . guarantees that:

"A. Safeguards provided in Article VI shall be maintained.

"B. No materials, including equipment and devices, transferred to the government . . . or authorized persons under its jurisdiction, pursuant to this Agreement, by lease, sale or otherwise will be used for atomic weapons or for any other military purposes, and that no such material . . . will be transferred to unauthorized persons or beyond the jurisdiction . . . except as the commission may agree to such transfer to another nation and then only if in the opinion of the commission such transfer falls within the scope of an agreement for cooperation between the United States and the other nation." [30a]

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[28] Article VI, A and B, Agreement with Turkey.

[29] *Id.*, Article VI C.

[30] Section 123a, Atomic Energy Act of 1954, note 1 *supra.*

[30a] Article VII, Agreement with Turkey.

The above provision is more or less a repetition of the safeguards mentioned in Article VI, paragraphs A and B, of the agreement with a guaranty by the cooperating nation. Its main purpose is to emphasize that the materials should not be used for any other purpose except as provided in the agreement or in subsequent agreements as are agreed between the parties. The cooperating nation also agrees not to transfer to unauthorized persons or beyond the jurisdiction. Such transfer is possible to another nation if in the opinion of the commission such transfer falls within the scope of an agreement for cooperation between the United States and the other nation.

The next step required by the Act is that the president should approve and authorize the execution of the proposed agreement for cooperation and should make a determination in writing that the performance of the proposed agreement will promote and will not constitute an unreasonable risk to the common defense and security.[31] The determination has two characteristics, one positive and the other negative. The determination that "the proposed agreement will promote" is positive; and the determination, "will not constitute an unreasonable risk," is negative in its aspect. The question might arise how an agreement determined to promote the common defense and security will constitute an unreasonable risk to the common defense and security? Either the positive determination is wrong or the making of the negative determination is futile and unnecessary. It may be further argued that the negative determination is a logical conclusion of the first determination, but in answer to the above arguments it is submitted that the fact seems to be that these two determinations are two different aspects of the same thing. It is submitted that every agreement in such a strategic field is a risk in which, according to the relation of the party, some classified or restricted data might be communicated. It should be noted that this provision is also applicable to agreements like those with the United Kingdom, Belgium, and Canada, which are quite extensive and complicated and contemplate the communication of classified and restricted data. Thus in these cases, though it is determined that these agreements will promote the common defense and security, it does not necessarily mean that they might not promote the common defense and security. Nobody can forecast the future. To provide for these circumstances the president should determine that the proposed agreement will not constitute an unreasonable risk to the common defense and security. It appears that it has been assumed that there is always some risk in these agreements as the Joint Committee on Atomic Energy has properly remarked in its report that:

> "Almost any cooperation with any foreign country can be said to involve some risk to the common defense and security of the United States. The pro-

[31] See above.

> visions incorporated in Section 123 are designed to permit cooperation where, upon weighing those risks in the light of the safeguards provided, there is found to be no unreasonable risk to the common defense and security in permitting the cooperation." [32]

This provision is applicable to all kinds of agreements. But in the case of agreements which provide only for research reactors, this kind of determination seems merely a formality.

As has been said above, the commission should submit the proposed agreement together with its recommendation to the president. This means that recommendation by the commission is necessary before it can be submitted to the president. Originally, the House Bill provided only for submission to the president by the commission, but "the Senate amendment required in addition that the Commission or the Department of Defense favorably recommend the agreement for cooperation." [33] Doubts were raised that this provision subordinates the authority of the president to the will of the commission.

Representatives Holifield and Price, members of the Joint Committee on Atomic Energy, expressed their views jointly on this point as follows:

> "The President cannot make any such agreement unless it is approved by the Atomic Energy Commission. . . . Note that the Antomic Energy Commission is an independent agency whose members serve, not at the pleasure of the President, but for a fixed statutory term.
>
> "We seriously question the subordination of the President's authority in the conduct of foreign affairs to the judgment of officials who may not be in a position to weigh the importance of countervailing risks as is the President. . . . In place of requiring the consent of the Atomic Energy Commission or the Department of Defense, we would prefer merely that the President, before making an agreement, be required to obtain a statement from the Commission or the Department of Defense as to the desirability and sufficiency of the agreement in respect to the matters referred to in Section 123a." [34]

There might seem to be partial truth in the above argument, but it does not seem that the power of the president has been really restricted in any way. The president has broad authority to negotiate treaties under the Constitution in case such an assumed situation arises. Secondly, for the successful carrying out of these agreements the cooperation of the commission is necessary since the commission is in charge of all the Atomic Energy Program. It will be the commission who will carry out the agreement by furnishing information, technical assistance and materials.

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[32] *Report of the Joint Committee on Atomic Energy, Amending the Atomic Energy Act of 1946, As Amended, and for Other Purposes,* S. REP. No. 1699, p. 22.

[33] *Conference Reports, Statement of the Managers on the Part of the House to the Bill H.R. 9757.* Marks and Trowbridge, Framework for Atomic Industry D-3.

[34] *Op. cit. supra* note 32 at p. 135.

The third step toward the conclusion of these agreements is that:

> "Sec. 123. C. the proposed agreement for cooperation, together with the approval and the determination of the President, has been submitted to the joint Committee and a period of thirty days has elapsed while Congress is in session. . . ." [35]

"The requirement essentially is for informational purposes, as agreements for cooperation do not require congressional approval and the joint committee has no power to approve or disapprove." [36] If the Joint Committee on Atomic Energy does not like the proposed agreement for cooperation, then the only thing which the committee can do is to bring the matter to the floor of the congress in the form of a resolution.

Further, it is important to notice that Section 123 authorizes only bilateral agreements for cooperation; that is to say, the statute does not authorize the president to enter into agreements for cooperation with a group of nations or with an international agency unless, as specified in Section 124, an international agreement has previously been entered into with a group of nations. This means that the president must negotiate a treaty or an executive agreement before he can cooperate with a group of nations.

The argument against multilateral agreements seems to be based on the idea that national security would be in greater jeopardy in dealing with a "group of nations" as against dealing with one nation separately. But it seems difficult to reconcile this distinction, and it is an unwarranted and unreasonable restriction.

Settlement of Disputes under the Agreements

At present most of the international agreements are carefully drawn and provide the machinery for the settlement of disputes or misunderstandings which might arise in the future. These agreements which relate to a very important matter do not mention anything about the settlement of future disputes. One may doubt whether these agreements are of such a nature that no dispute would arise in the future, or whether it is the intention of the parties that they should be settled by conventional methods, i.e., diplomatic channels. The suggested answer is that the essence of agreements for cooperation on atomic energy matters is the desire of the cooperating governments to work together for the attainment of mutual objectives. It would appear, therefore, that discussion through diplomatic channels offers an appropriate means of dealing with disputes or misunderstandings which might arise in the future.

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[35] Atomic Energy Act of 1954, note 1 *supra.*

[36] Remarks by Edward Diamond, Deputy General Counsel, United States Atomic Energy Commission Press Release, August 23, 1955, p. 7.

CONCLUSION

In conclusion it would be reasonable to say that the Act provides enough scope for cooperation with foreign nations in the area of peacetime uses of atomic energy. It is but natural that the scope of cooperation will differ according to the relation of the cooperating party with the United States, but this does not mean that the commission and the president lack power for more detailed and complicated agreements. It has been argued that the conditions stipulated in Section 123 are very stringent and complicate the whole matter. It has also been argued that "it would be utterly unrealistic to suppose that Soviet Russia could ever comply with the security and other requirements laid down in Section 123." [37] But these arguments neglect the present and look to the supposed future. First, atomic energy is still a hidden secret and much has to be done before something could be said with certainty; second, it is a quite well known fact that Russia is also advanced technically in atomic energy matters and naturally will be interested in security safeguards on a mutual basis. Third, no specific security safeguards and standards have been set forth in the Act itself; hence the agreement may stipulate reasonable safeguards on a mutual basis. The president has the broad powers under the Constitution to negotiate treaties on any subject with any nation and this provision does not affect that power in any way. There is no doubt that a series of conditions have been set forth in the Act, but this provides a procedure to insure that full consideration is given to the proposed agreement before it is entered into. Within a short period starting from May 3, 1955, such cooperative agreements with twenty-seven nations have been concluded.

As has been said above, Section 123 authorizes only bilateral agreements and not "agreements with a group of nations." This is an unreasonable restriction and is based on false assumptions. The inclusion of this provision would have greatly facilitated the cooperative program.

On the whole there is enough scope under the Act to cooperate with other nations to advance the peacetime uses of atomic energy. What is needed at the present time is really the true spirit to carry out the program.

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[37] Separate views of Representatives Holifield and Price, *op. cit. supra* note 32 at p. 134.