The original documents are located in Box 31, folder "NSSM 209 - Future Uranium Enrichment in the U.S. (5)" of the NSC Institutional Files at the Gerald R. Ford Presidential Library.

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

~~SECRET~~ GDS

December 31, 1974

MEMORANDUM FOR:

The Secretary of the Treasury
The Secretary of Defense
The Secretary of Commerce
The Director, Office of Management and Budget
The Deputy Secretary of State
The Administrator, Federal Energy Administration
The Director, Arms Control and Disarmament Agency
The Chairman, Joint Chiefs of Staff
The Director of Central Intelligence
The Chairman, Atomic Energy Commission
The Executive Director, Council on International Economic Policy

SUBJECT: Future Uranium Enrichment Capacity: NSSM 209

For purposes of clarification, the progress report on recent initiatives by the Uranium Enrichment Associates circulated on December 23, 1974 was prepared by OMB and not by the ad hoc study group, and is for informational purposes. Your comments and recommendations on the NSSM 209 study response are requested on or about January 2, 1975.

Jeanne W. Davis
Staff Secretary

~~SECRET~~ GDS

HR 10/8/04

MEMORANDUM INFORMATION - 5768 2a

NATIONAL SECURITY COUNCIL

~~SECRET~~ December 6, 1974

MEMORANDUM FOR: GENERAL SCOWCROFT ✓

FROM: DAVID ELLIOTT DE

SUBJECT: Status of NSSM 209

As you recall, we got an incomplete NSSM 209 study dumped back in our lap because Dixy was miffed at State's way of doing business. I've been working with the contributing agencies to complete the study, and believe we will have an interagency approved package by December 20.

I don't know why State sent you a copy of a two week old memorandum from Simon to Dixy which addresses the incomplete study. Treasury is working with us currently. I'd just forget it.

~~SECRET~~/GDS
HR 10/8/04

2b

THE WHITE HOUSE
WASHINGTON

Why should we be getting this from State? Why did State even get it?

2c

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Presidential Libraries Withdrawal Sheet

WITHDRAWAL ID 019169

REASON FOR WITHDRAWAL	National security restriction
TYPE OF MATERIAL	Letter
CREATOR'S NAME	William E. Simon
CREATOR'S TITLE	Secretary
RECEIVER'S NAME	Dixy Lee Ray
RECEIVER'S TITLE	Chairman
DESCRIPTION	re NSSM 209
CREATION DATE	11/25/1974
VOLUME	1 page
COLLECTION/SERIES/FOLDER ID	039800392
COLLECTION TITLE	U.S. NATIONAL SECURITY COUNCIL INSTITUTIONAL RECORDS
BOX NUMBER	31
FOLDER TITLE	NSSM 209 - Future Uranium Enrichment in the U.S. (5)
DATE WITHDRAWN	11/10/2004
WITHDRAWING ARCHIVIST	HJR

NSC CORRESPONDENCE PROFILE

DOC MO	DOC DA	RECD MO	RECD DA	RECD HR	LOG NBR	INITIAL ACTION O
12	06	12	09	16	7405768	

2d

SOURCE/CLASS/DESCRIPTION

Elliott

TO: PRES _____ FROM: ~~KISSINGER, H~~ _____ REFERENCE: _____ CIRCLE AS APPROPRIATE

KISSINGER _____ COLBY, W _____ S/S _____ UNCLAS (LOG IN/OUT)

SCOWCROFT + SCHLESINGER, J _____ OTHER _____ LOU NO FORN NODIS

DAVIS _____ ST EX SEC _____ C EYES ONLY EXDIS

(S) CODEWORD

TS SENSITIVE

SUBJECT: Status of NSSM 209

DISTRIBUTION/INITIAL ACTION ASGMT

INTERNAL ROUTING AND DISTRIBUTION	ACTION	INFO	REC CY FOR
ADVANCE CYS TO HAK/SCOWCROFT	■		
STAFF SECRETARY			*
FAR EAST			
SUB-SAHARAN AFRICA			
MID EAST / NO. AFRICA / SO. ASIA			
EUROPE / CANADA			
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UNITED NATIONS			
ECONOMIC			
SCIENTIFIC			*
PROGRAM ANALYSIS			
NSC PLANNING			
CONGRESSIONAL			
~~OCEANS POLICY~~ Barnum			*
INTELLIGENCE			
Inley			*

ACTION REQUIRED

MEMO FOR HAK . . . . . (_____)

MEMO FOR PRES . . . . . (_____)

REPLY FOR _____ (_____)

APPROPRIATE ACTION . . . . . (_____)

MEMO _____ TO _____ . . . . . (_____)

RECOMMENDATIONS . . . . . (_____)

JOINT MEMO . . . . . (_____)

REFER TO _____ FOR: _____ (_____)

ANY ACTION NECESSARY? . . . . . (_____)

CONCURRENCE . . . . . (_____)

DUE DATE:

COMMENTS: (INCLUDING SPECIAL INSTRUCTIONS)

SUBSEQUENT ROUTING/ACTIONS

DATE	FROM	TO	S	SUBSEQUENT ACTION REQUIRED (OR TAKEN):	CY TO
12/06			C	Noted by Scroft	

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DEC 13 1974

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NSSM 209

(NBC-74-21 533-147)

NATIONAL SECURITY COUNCIL

June 20, 1975

Mrs. Davis:

Col. MacDonald called and would like the due date for the attached extended to July 16, 1975.

Cathy

4a

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Presidential Libraries Withdrawal Sheet

WITHDRAWAL ID 019170

REASON FOR WITHDRAWAL	National security restriction
TYPE OF MATERIAL	Memorandum
CREATOR'S NAME	W. P. Clemens, Jr.
CREATOR'S TITLE	Deputy Secretary
RECEIVER'S NAME	[Henry Kissinger]
RECEIVER'S TITLE	Assistant to the President for National Security Affairs
DESCRIPTION	re NSSM 209
CREATION DATE	11/26/1974
VOLUME	2 pages
COLLECTION/SERIES/FOLDER ID	039800392
COLLECTION TITLE	U.S. NATIONAL SECURITY COUNCIL INSTITUTIONAL RECORDS
BOX NUMBER	31
FOLDER TITLE	NSSM 209 - Future Uranium Enrichment in the U.S. (5)
DATE WITHDRAWN	11/10/2004
WITHDRAWING ARCHIVIST	HJR

4b

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Presidential Libraries Withdrawal Sheet

WITHDRAWAL ID 019171

REASON FOR WITHDRAWAL	National security restriction
TYPE OF MATERIAL	Letter
CREATOR'S NAME	Dixy Lee Ray
CREATOR'S TITLE	Chairman
RECEIVER'S NAME	Henry A. Kissinger
RECEIVER'S TITLE	Assistant to the President for National Security Affairs
DESCRIPTION	re NSSM 209
CREATION DATE	11/21/1974
VOLUME	1 page
COLLECTION/SERIES/FOLDER ID	039800392
COLLECTION TITLE	U.S. NATIONAL SECURITY COUNCIL INSTITUTIONAL RECORDS
BOX NUMBER	31
FOLDER TITLE	NSSM 209 - Future Uranium Enrichment in the U.S. (5)
DATE WITHDRAWN	11/10/2004
WITHDRAWING ARCHIVIST	HJR

Add on 5730

4c

~~SECRET~~

UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY
WASHINGTON

November 25, 1974

OFFICE OF
THE DIRECTOR

MEMORANDUM FOR THE ASSISTANT TO THE PRESIDENT
FOR NATIONAL SECURITY AFFAIRS

SUBJECT: ACDA Comments on NSSM 209

On November 12, 1974 the NSC Staff requested our comments on the AEC Interim Report "Policy on the Development of Future Uranium Enrichment Capacity, NSSM 209" dated November 7, 1974. ACDA has participated with the Department of State in preparing a detailed statement of our views on the non-proliferation and foreign policy issues associated with this problem. This statement is being forwarded by the Department under a separate memorandum. I am aware that many factors will have to be considered in arriving at the decision on future U.S. enrichment policy. It is not my intent to review these factors, the arguments for privatization which are covered in AEC's 209 Interim Report, or the alternative modes of ownership which are examined in our detailed statement. Rather, I would like to highlight specifically my concern for the serious impact on our non-proliferation efforts of continued uncertainty surrounding the U.S. role in the world enrichment market.

In the past, decisions and actions taken within the U.S. Government on enrichment policy have been primarily aimed at encouraging private industry to finance and operate any future expansion of U.S. uranium enrichment capacity. Generally, the foreign policy/non-proliferation consequences of these actions were not the subject of careful interagency review prior to their implementation. In the present circumstances, however, full consideration must be given to the impact of our domestic decisions on our foreign policy and especially on the factors influencing nuclear proliferation.

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There are three important areas where our enrichment decisions have had direct impact on our non-proliferation efforts. The first is related to the U.S. position of leadership in the world enrichment market. This position is seriously eroding because our existing enrichment capacity is fully committed, and the U.S. has been unable to resolve the ownership issue for either the next enrichment plant or those that must soon follow. The non-proliferation consequences of this situation are that not only will we lose the opportunity to apply the compelling safeguards leverage that accompanies long-term, U.S. nuclear fuel contracts, but also the relatively easily safeguarded U.S. light-water reactors may well be replaced in certain very sensitive areas by the natural uranium fueled CANDU reactors which are ideally suited to produce weapons grade plutonium and which are extremely difficult to safeguard.

Second, the U.S. abruptly announced new contractual terms for enriched uranium designed especially to facilitate private entry into the enrichment business. This announcement was followed in Europe by a rapid expansion of the UK-FRG-Dutch tripartite plans for their centrifuge enrichment plants and by the French decision to build a major gaseous diffusion plant in Europe. Not only will these plants capture a significant share of the European enrichment market, but also there is a real possibility that these non-U.S. enrichment technologies will spread to areas where the potential for proliferation is high. Our present experience suggests that the nuclear safeguards applied to these foreign enrichment technologies will probably be less effective than those that would have been required by the U.S.

Finally, U.S. participation in multinational enrichment plants and the sharing of U.S. enrichment technology have been delayed pending the decision on U.S. industry's role in the enrichment of uranium. As a result, the U.S. may be soon preempted by the French who are actively negotiating with the Province of Quebec to build an additional major increment of enrichment capacity in Canada. Obviously, the use of U.S. technology would give us more influence in matters of classification, safeguards, export policy and the orderly planning of future enrichment capacity.

In all of these areas the opportunities for the application of effective safeguards have been reduced with no satisfactory alternatives available. Continued uncertainties in U.S. enrichment policies will only accelerate these trends.

The areas of U.S. enrichment policy and non-proliferation are also joined in the recently approved NSDM 255 and the NSSM 202 study currently being reviewed by the Under Secretaries Committee. NSDM 255 authorizes a U.S. approach to other suppliers to facilitate the construction of multinational reprocessing and enrichment plants. However, foreign groups have been informed they can explore the use of U.S. technology only through negotiation with U.S. private industry after its entry into enrichment business is assured. As a result, U.S. involvement in such multinational plants is essentially ruled out at the present time. The NSSM 202 study recommends that urgent attention be given to strengthening the NPT by implementation of Article IV of the Treaty and using preferential policies for NPT signatories. Application of this principle in the enrichment field might involve preferential action with respect to fuel availability and price. The ability of the U.S. Government to implement Article IV in the critical matter of nuclear fuel supply should accelerate the process of NPT ratification.

From the non-proliferation point of view, the NSSM 209 review of future U.S. enrichment policy raises the critical issues of near-term timing and longer term of future fuel supply. To the extent that continuation of our present privatization policies contributes to a substantial delay in resolving the decision to commit the next major increment of U.S. enrichment capacity and to the problem of providing firm U.S. assurance of adequate supplies of enriched uranium both at home and abroad, our non-proliferation interests would be best served by a modification of these policies. The U.S. efforts to influence enrichment developments abroad by encouraging multinational enrichment plants, effective export agreements, improved safeguards, and controlled sharing of enrichment technology will meet with little success until the United States takes positive action on the question of its future uranium enrichment capacity.

J. Owen Zurhellen, Jr.
Acting

S/S 7423130

5730

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DEPARTMENT OF STATE

Washington, D.C. 20520

~~SECRET~~

November 23, 1974

MEMORANDUM FOR MAJOR GENERAL BRENT SCOWCROFT
THE WHITE HOUSE

Subject: Response to NSC Staff Request for the Department's Views on NSSM 209 (Future Uranium Enrichment Capacity)

In response to the request of the NSC Staff of November 12, 1974, I am forwarding herewith a Department of State analysis of the issues and options associated with future US uranium enrichment policy. ACDA has worked with the Department in preparing the enclosed reply and wishes to identify itself with the Department's position. We understand that ACDA will also submit a separate memorandum.

Rather than offering specific comments on the interim report of November 8, the Department concluded that it would be most helpful for the next step in the process if we were to develop an independent analysis of two major aspects of this question which, in our view, were not adequately treated in that study: (1) the specific foreign policy criteria which should be given weight in analyzing alternatives for providing expanded US enrichment capacity; and (2) the possible forms of ownership which should be considered by the President in evaluating alternative courses of action.

In the latter point, we have identified a wide range of options involving mixtures of ownership over a period of time, combining patterns of pure Government, private, and Public Corporation modes. Each of these alternative

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strategies could include the possibility of US participation in or support of multilateral enrichment plants abroad as well as foreign participation in US-based facilities. For this reason, we do not believe that multilateral plants should be considered as a separate option, as presented in the interim report.

Attached to our analysis is an annex which details the implications of enriched uranium decisions for US foreign policy objectives. We have also attached a second annex outlining the elements of various Government Corporation approaches which we believe should be explicitly considered in the range of options for ownership of future US enrichment capacity.

The Department recognizes that final decisions on future US enrichment capacity will depend on weighing domestic factors as well as foreign policy objectives. We therefore have reserved taking a final position on a preferred alternative until a comprehensive evaluation of these two sets of issues can be made. We would urge that the NSC staff ensure that expertise from appropriate agencies is brought to bear in amplifying the domestic implications of alternative options beyond the level of these matters which is contained in the interim report.

The Department will participate actively in the efforts of the NSC-Chaired Ad Hoc Group to develop a single coordinated report which will present options for the President's consideration. The Department's representatives on this group will be Justin Bloom (OES) and Jerome Kahan (S/P).

Attachments:

Study of Enriched Uranium Policy
Annex A - Foreign Policy Interests
Annex B - Government Corporation for Enrichment

George S. Springsteen
Executive Secretary

~~SECRET~~

NSSM 209
DEPARTMENT OF STATE ANALYSIS OF
U.S. URANIUM ENRICHMENT POLICY

National Security Study Memorandum 209 directs that issues associated with U.S. policy on the development of future uranium enrichment capacity be reexamined. Present U.S. policy has been designed to encourage private ownership of future uranium enrichment facilities. Among the factors identified for consideration in conducting this review are implications for U.S. foreign policy generally and implications for safeguards and non-proliferation, as well as trade and energy policies. The NSSM requests a study which outlines the policy options open to the President together with their domestic and international advantages and disadvantages.

The U.S. Government until recently had been the supplier of virtually all the non-communist world's enriched uranium fuel. Developments over the past several years have, however, generated substantial uncertainty domestically and internationally concerning the future role of the U.S. as a supplier of services to provide enriched uranium for use in power reactors.

This analysis is concerned in particular with foreign policy aspects. However, our domestic as well as our foreign policy interests require that we develop a long-term strategy for assuring an adequate supply of enriched uranium.

From a foreign policy perspective, unless the U.S. moves to correct the growing perception abroad that we are an uncertain and unreliable source of enrichment services

-- our overall political relations with major allies will continue to be adversely affected;

-- the credibility of our commitments in the field of energy cooperation will be called into question;

-- our non-proliferation objectives will tend to be set back due to loss of leverage and inability to impose adequate safeguards; and

-- the share of American nuclear exports in the world market will decline.

Annex A presents a detailed exposition of these U.S. foreign policy interests.

I. THE PROBLEM

Approximately seven percent of the output of U.S.-owned enrichment plants is needed for projected U.S. Government activities. The remainder is available for fueling civilian nuclear power plants. According to AEC projections, this capacity is sufficient to meet U.S. domestic needs and that part of foreign needs now contracted with the U.S. until the early 1980s. Thereafter major and continuing expansion of U.S. capacity will be required -- the equivalent of one large enrichment plant every eighteen months to two years. The projected growth requirement is predicated on the assumption that the U.S. will capture approximately half the foreign market for enrichment services.

In 1971, the President decided to transfer responsibility to private industry for providing future enrichment capacity beyond the output of existing AEC plants. This decision led to the imposition of increasginly stringent contract terms and higher prices for the AEC's enrichment services during the past few years in order to pave the way for a transition to private industry. Although foreign enrichment programs were already underway to strengthen energy independence abroad, the consequences of our policy to encourage private entry stimulated foreign enrichment efforts and catalyzed a still greater interest on the part of foreign users in developing alternative sources of enriched uranium supply.

The recent uncertainty over whether private entry will occur, and when such a decision might be made, has exacerbated foreign concerns already heightened by the "capacity crisis" during the summer of 1974. In response to these concerns, the U.S. Government found it necessary to issue Presidential-level assurances that this nation intended to remain a credible supplier of foreign as well as domestic enrichment services in the future. We have

not, however, supported these assurances with concrete plans and programs.

II. FOREIGN POLICY CRITERIA

From a foreign policy standpoint, the mode of ownership of future U.S. enrichment capacity is not in itself the crucial issue -- whether this mode be one of private ownership, some form of Public Corporation, or continued U.S. Government operations. Although some foreign countries and utility customers may prefer dealing directly with the U.S. Government in the future on enrichment services, other foreign clients may welcome a commercial U.S. enrichment industry which permits them to deal with American firms on a businesslike basis devoid of any political or diplomatic overtones.

The key question from the foreign policy perspective is which mode of ownership will enable the U.S. to assure that its foreign policy concerns and objectives will be accommodated through its decisions on future enrichment capacity. To facilitate evaluation of the available alternatives in terms of responsiveness to foreign policy interests, four criteria have been developed. Each is discussed briefly below:

1. Restoration of confidence in the U.S. as a reliable supplier of enriched uranium services through a prompt decision to construct the next increment of enrichment capacity and a credible program designed to assure long-term supply for foreign as well as domestic users.

An early commitment to construct a fourth U.S. enrichment plant would have considerable benefit in restoring confidence in the U.S. as a reliable and credible source of supply. Although the AEC believes that a delay in a private commitment to build the fourth plant could be tolerated until at least June 1975 and the U.S. could still meet domestic needs, there is general agreement among the agencies involved that U.S. access to the foreign market would be adversely affected by such a delay. The present "contracting gap" is expected to have deleterious foreign policy consequences abroad if permitted to continue even until the middle of next year.

As other countries turn increasingly to indigenous enrichment programs and alternative sources, the U.S. will lose significant portions of the foreign market, thereby diminishing our ability to impose effective non-proliferation safeguards and reducing revenues derived from service contracts and the sale of light-water reactors. At this formative stage of cooperation in the overall energy field, particularly in the IEA, U.S. failure to resolve promptly the current uncertainty over the establishment of the next increment of capacity in the U.S. may weaken our strong leadership position in multilateral enrichment planning.

In addition to the need for an early decision on the next increment of capacity, the ability of the U.S. to restore foreign confidence and thereby capture a reasonable share of the future world enrichment market will depend upon the development of a means to assure longer-term supply that meets the need for (1) a succession of clear commitments to build subsequent plants, (2) decisions on which technology is to be chosen, and (3) the proper phasing of new capacity to efficiently satisfy future domestic and foreign demands.

We emphasize that in designing a U.S. policy for assuring long-term enrichment supplies, the crucial aspect from a foreign policy standpoint is not our own confidence in the success of any selected program but rather the <u>perception</u> of such a program by foreign suppliers and consumers. Only to the degree that our program is seen abroad as being credible will we be able to achieve our objectives of maintaining political relations, reducing proliferation risks, strengthening energy cooperation, and capturing foreign markets.

2. <u>Assurance of competitive price and contract terms for enrichment services provided on a non-discriminatory basis as between foreign and domestic users and among foreign clients</u>.

For foreign as well as domestic consumers, reliability of future enriched uranium supply seems to be more of an issue than price and contract terms, against the background of the international energy crisis. However, assuming that alternative sources of supply are available throughout the world, buyers of enriched services will seek competitive prices and contract terms. The price of U.S. enrichment services is likely

to remain roughly competitive with that charged by other suppliers under any of the available alternatives for developing new U.S. capacity. Under comparable contract terms, however, minor price disparities between these alternatives could produce significantly different sales in a tightly competitive international market.

At the present time, contract terms offered by European enrichment organizations are more favorable with respect to advance commitments, lead-times, and withdrawal terms than those offered by the AEC or proposed by UEA. Future U.S. contract terms will of necessity have to made competitive with those of foreign sources if we are to meet the objective of capturing a substantial share of the foreign market. Beyond this minimum requirement for a competitive international position, foreign policy objectives would be further advanced with flexibility to support special diplomatic needs, for example, by offering shorter-term contracts and priority allocations.

Assurance of non-discriminatory treatment is a particularly crucial concern for foreign policy interests. In this respect there are differences associated with particular ownership alternatives, both in their ability to assure equal treatment as between foreign and domestic users and willingness to supply services in cases where high risks may be perceived for certain non-U.S. customers.

3. Facilitation of cooperation with foreign nations in planning and executing worldwide enrichment programs, including construction of multilateral plants abroad as well as foreign participation in U.S.-based enrichment plants.

A successful foreign policy requires the closest possible advance consultation with other governments on matters of common interest; the negative effects of our past enrichment decisions on foreign policy have in part resulted from our failure to provide for such consultations.

The United States has a clear interest and standing commitments to consult and cooperate in the energy field, and has put forth specific proposals in the IEA for coordinating enrichment planning. Early resolution of U.S. intentions in building the next increment of enrichment

capacity would facilitate foreign participation in U.S.-based plants, and is also a pre-requisite for effective pursuit of broader U.S. multilateral proposals. In addition to furthering the orderly introduction of additional capacity for needs of all major consumer nations, the U.S. would stand to gain economic benefits from royalties and licensing arrangements through multilateral ventures using American technology.

The ability of the U.S. to propose and respond to initiatives leading to the establishment of multinational enrichment facilities, possibly involving OPEC as well as OECD nations, will require a clear U.S. national program for assuring a long-term supply of enriched uranium. Under proper safeguards such multinational arrangements can also serve U.S. non-proliferation objectives.

It is important for our ability to maintain our effectiveness in enriched uranium cooperation that the U.S. Government speak with one voice concerning enrichment policy, and that there be a central authority for developing such policy. Not only would a cohesive policy mechanism contribute to integrated energy planning, but it would also ensure adequate multilateral consultations among suppliers in developing an effective regime of safeguards and export controls in the enriched uranium field.

4. Responsiveness to national security policy in achieving effective safeguards and export control mechanisms in the enrichment field as well as the ability to offer preferential treatment to NPT parties in enrichment services.

From the non-proliferation point of view, it is essential for the U.S. to capture a substantial share of the foreign enrichment market in order to ensure that effective safeguards, physical security, and export controls are applied as foreign nuclear power programs increase dramatically over the next decade. Accordingly, non-proliferation interests would be served by adopting that mode of ownership which would lead to an early decision to proceed with the next major increment of enrichment capacity in the United States. Long-term assurances of supply can offer continuing leverage in the enforcement of safeguards and place the U.S. in a

position of strength in negotiating common export control measures with other key suppliers.

Foreign participation in U.S.-based plants and the construction of multilateral enrichment plants abroad with U.S. cooperation can support our non-proliferation objectives by limiting independent programs and offering a means of establishing effective safeguards on nuclear fuel and associated facilities. The ability to pursue such cooperative endeavors should be an important element in establishing future modes of ownership for U.S. enrichment capacity. Close policy control would be necessary in formulating such programs and in ensuring that technology transferred to support foreign-based enrichment facilities would not contribute to nuclear proliferation.

The requirement to insure appropriate international safeguards on transfers of U.S.-enriched uranium abroad will remain equally applicable under any mode of ownership. Export control requirements, including controls over Restricted Data or the need for government approval on transfers of unclassified technology in the enrichment field, would remain valid under any form of ownership of future enrichment capacity presently visualized. On the other hand, the formulation of <u>new</u> U.S. non-proliferation policies affecting uranium enrichment, such as agreements among major suppliers to work toward limiting the spread of enrichment technology to sensitive regions and attempts to arrange multilateral enrichment facilities, can only be taken by close consultation among governments.

The option of providing preferential treatment in enrichment services for NPT parties under Article IV of the Treaty could be an important component of our non-proliferation policy. In choosing among alternatives for future U.S. capacity, the ability to offer such treatment in the form of preferential price, contract terms, termination clauses, etc., should be an important consideration. Continued government ownership of present enrichment facilities may lay the basis for preferential treatment for NPT parties to be given directly on such matters as price, contract terms, and termination clauses, if such steps were considered necessary. A conflict could arise, however, between preferential treatment and the desire to provide non-discriminatory

services among all foreign clients. Solutions to this dilemma could involve reliance on preferred credit or loans for enrichment services to NPT parties or the use of Government stockpiles for short-term fuel supply -- thus permitting uniform terms to be retained in the actual contracts associated with new U.S. enrichment plants.

III. ALTERNATIVE ENRICHMENT STRATEGIES

The fundamental issue in determining future U.S. uranium enrichment policy concerns the respective roles of Government and private industry in the construction and operation of future enrichment plants. These modes of ownership are not, however, mutually exclusive; between the pure cases of Government and private ownership is a range of possible combined Government/private alternatives in the form of Public Corporations. Representative Hosmer has advocated one type of such a corporation to acquire the existing AEC plants and to assist in the transition of responsibility for future plants to the private sector. Another possibility is a Public Corporation, responsive to policy concerns through greater U.S. Government involvement, to build and operate at least the next plant to ensure timely expansion of capacity.*

Enrichment policy decisions need not rely on any single organizational alternative, but might involve combinations in order to satisfy differing short-term and long-term requirements and constraints. In terms of practical courses of action, therefore, a mixed strategy involving combinations of broad alternatives over time should be considered and provides a wider range of options than would otherwise be the case. In addition to the variables of organizational alternatives and timing, specific sub-variations are possible on such issues as degree of Government support of private entry and the role of the U.S. Government

*Annex B presents a discussion of the Public Corporation concept, including State Department comments on the Hosmer legislation and a non-Governmental view of the Government Corporation concept as applied to uranium enrichment.

in a Public Corporation. Each strategy, moreover, could include the possibility of U.S. participation in or support of multinational enrichment plants abroad, as well as foreign participation in a U.S.-based facility.

For purposes of policy analysis, a range of possible enrichment strategies is described using a graded approach which begins with an alternative highly emphasizing current policy and ends with one favoring complete Government control of future enrichment supply. Each strategy is evaluated against the foreign policy criteria developed in Section II above. It is emphasized that a final determination as to the relative desirability of alternative strategies must be based upon careful weighing of domestic factors together with foreign policy considerations. This paper does not address domestic factors since the required expertise does not reside within the Department of State. For example, it is recognized that in the alternative strategies treated below, various levels of Governmental involvement are proposed, and that each of these entails budgetary or financial commitments by the Government to cover head-end costs. The relative magnitude of these costs is an important factor in the overall policy determination process.

Alt. 1: USG Support of Early Private Entry

a) Present strategy, unmodified. Assumes UEA commitment within the year and subsequent private development and ownership of all additional U.S. capacity. The USG would retain existing AEC plants.

b) Present strategy, but with substantial and immediate USG assistance, in the form of loan guarantees, direct Governemnt contracting, standby takeover authority, etc., to strongly accelerate an early UEA commitment.

-- Unless there is an almost immediate (i.e., within the next few months) UEA commitment to construct a fourth plant, variation (a) of this alternative is unlikely to meet even the minimal foreign policy requirement of restoring confidence in U.S. near-term supply, with potentially serious effects upon our political relations, our nonproliferation and energy cooperation objectives,

and our ability to capture a substantial share of foreign enrichment contracts.

-- Variation (b), if successful in inducing early private entry for the next plant, could restore confidence in the U.S. as a near-term supplier. Under either variant, the prospects for continued downstream private commitments to avoid recurrent contracting gaps over the long-term will probably be viewed by foreign consumers as highly uncertain. From this perspective, both variants would fall short of significantly reducing foreign concerns over the reliability of a privatization policy.

-- Even if sustained private entry can be accomplished and made credible to foreign customers, this alternative imposes limitations over the ability of the U.S. Government to assure non-discriminatory treatment of foreign enrichment requests, to carry forward programs of energy consultation and cooperation (including possible construction and multinational enrichment plants abroad), and to negotiate new export control policies in the enrichment field consistent with our multilateral non-proliferation efforts.

-- There is also a question as to the degree to which a diversified private U.S. enrichment industry would be able to compete with the contract terms of foreign enrichers, where governments may continue to play a more direct role. Retention by the U.S. Government of existing AEC plants could, however, offer some flexibility in providing preferential treatment to certain foreign needs for diplomatic or national security purposes.

Alt. 2: Public Corporation Absorbs Present AEC Plants and Assists Private Entry

This is essentially the concept of the Hosmer proposal for the formation of a U.S. Enrichment Corporation. Such a corporation would be specifically charged with stimulating and assisting early private entry, taking into account the need to incorporate new technology. In the Hosmer Bill, additional legislation would be

required for the Corporation to construct any additional capacity if timely private entry does not materialize.

-- A concrete plan for the establishment of a Hosmer-type Public Corporation may in itself help to remove doubt over the credibility of our commitment to remain a reliable supplier of international enrichment services. If this approach succeeds in stimulating a prompt private decision to build a fourth plant, short-term foreign policy benefits would accrue. The longer-term foreign policy advantages of the Hosmer proposal would be strengthened if explicit stand-by authority to construct additional capacity, if necessary, were included in the Corporation's charter.

-- Since the principal purpose of the Hosmer approach is to accomplish a complete transition to private ownership, this approach, if successful, would entail all of the foreign policy limitations cited above inherent in a private U.S. enrichment industry. Additional foreign policy disadvantages would arise from the loss of U.S. Government flexibility resulting from the ultimate transfer of existing AEC plants to private control.

-- There is a serious question whether the Hosmer Bill, in its current version, incorporates adequately the need for policy-responsive direction. There are no provisions for policy involvement by U.S. foreign policy agencies or for the participation of foreign governments in a manner which could help to assure future supply.

Alt. 3: Public Sector Builds Next Plant(s) with Goal of Future Privatization; U.S. Government Retains Existing AEC Plants

a) Fourth and possibly fifth plants built by ERDA; private entry postponed to somewhat later (2-3 years) initial date. A version of this strategy would enable the USG to construct a fourth diffusion plant, and a fifth USG plant would then launch centrifuge technology on a commercial scale.

b) Fourth and possibly fifth plants built by a new Public Corporation with the goal of ensuring that

subsequent plants are built by the private sector. Although the goal of such a Corporation would be to ensure eventual private enrichment operations, it differs from the Hosmer approach in that the U.S. Government would retain existing AEC plants and in its explicit authority to construct a limited number of new plants.

-- Both variations under this alternative share the substantial foreign policy advantages of assuring the construction of additional U.S. capacity in the relatively near future. Variation (a) calling for USG construction would permit more rapid expansion since the establishment of a Public Corporation under (b) necessarily involves some delay before ground is actually broken. The primary benefits of both variations would be rapid restoration of foreign confidence.

-- While residual uncertainty over the ultimate direction of U.S. enrichment policy could persist, the demonstrated willingness of the USG to intervene when private entry falters could be critical for foreign perceptions of the future. In the long-term, however, the continued pursuit of privatization would entail the foreign policy disadvantages associated with a private enrichment industry.

-- Concern has been expressed that U.S. Government intervention for the next plants could in some respects undercut industry confidence and incentives. However, such actions could be seen as assisting eventual private entry by permitting industry to defer critical decisions until a time of less technological and economic uncertainty, and by planning to transfer Government contracts to the private sector under appropriate conditions.

Alt. 4: Public Corporation Builds Fourth and Subsequent Plants

a) This would involve a clear U.S. Government commitment to rapid formation of such a Corporation, with the charter to construct and operate additional enrichment facilities indefinitely to meet foreign as well as domestic policy objectives.

b) A variant of this strategy would call for U.S. Government construction of a fourth (diffusion) plant, pending establishment of the Public Corporation.

-- The establishment of a properly-designed Corporation for permanent control of future enrichment capacity and with direct U.S. Government involvement would effectively satisfy the full range of foreign policy criteria by offering a concrete program to assure future supply and by providing close policy control on such matters as non-discrimination, energy cooperation (including construction of multinational plants), and export controls for non-proliferation purposes. Retention of the present AEC plants by the U.S. Government would offer additional foreign policy flexibility.

-- Although the announcement of plans for the establishment of such a Corporation would have an immediate beneficial effect on foreign policy interests, this approach would involve a delay in actual construction of the next enrichment plant. There could also arise uncertainties and delays over passage of necessary legislation and ability to obtain requisite financing.

-- Variant b) of this strategy would avoid the initial delay involved in a) by permitting ERDA to construct promptly the next plant, thereby dealing with the immediate contracting gap pending the formation of a Public Corporation which would then be responsible for future U.S. enrichment capacity with a charter highly responsive to the range of foreign policy objectives.

Alt. 5: USG Continues to Build Future Capacity

This strategy would abandon both privatization and Public Corporation approaches to assuring U.S. enriched uranium supply. It would require large Government financial outlays for construction of plants, offset in subsequent years by even larger revenues from the sale of services.

-- This alternative would provide optimum foreign policy benefits measured by all of the criteria identified.

IV. CONCLUSIONS AND OBSERVATIONS

It is recognized that a final position on a preferred course of action cannot be reached on the grounds of foreign policy alone, but must take into account domestic factors. However, the foregoing analysis leads to a number of key conclusions and observations regarding foreign policy objectives and enrichment capacity decisions. These judgments are not only designed to ensure that foreign policy considerations are brought to bear with sufficient force in Presidential consideration of options, but are also presented to assist in the formulation of alternative approaches to assuring adequate future U.S. enrichment capacity.

1. In addition to private and Government ownership, various forms of Public Corporations should be evaluated as a means of providing added enrichment capacity.

2. Enrichment options should be viewed as strategies which might combine steps involving Government, private, or Public Corporation ownership over time.

3. It is essential for foreign policy purposes to restore confidence in the U.S. as a supplier by early construction of the next increment of enrichment capacity, preferably in early 1975.

4. If early private entry occurs, there is still a need to avoid recurring "contract gaps" flowing from uncertainty over whether industry will continue to build needed follow-on capacity.

5. If it is determined that sustained private ownership cannot be assured, either through Governmental support or as a consequence of a Hosmer-type Corporation, the creation of another form of Public Corporation to construct and operate U.S. enrichment plants would appear to offer a sound solution to the problem of long-term supply.

6. Even if the private route seems achievable, a policy-responsive Public Corporation, with Government involvement and retention by the Government of the existing AEC plants, would be preferable over the longer-run on foreign policy grounds.

7. Whatever path is chosen, a credible and coherent strategy for future U.S. enrichment policy is required at

this juncture to help shape and support foreign policy efforts in the fields of non-proliferation and energy cooperation, to repair damage in our political relations, and to strengthen our position in the international commercial nuclear market.

11/22/74

4b

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Presidential Libraries Withdrawal Sheet

WITHDRAWAL ID 019172

REASON FOR WITHDRAWAL	National security restriction
TYPE OF MATERIAL	Report
RECEIVER'S NAME	[Brent Scowcroft]
DESCRIPTION	re foreign policy aspects of U.S. uranium enrichment supply policy
CREATION DATE	11/1974
VOLUME	24 pages
COLLECTION/SERIES/FOLDER ID	039800392
COLLECTION TITLE	U.S. NATIONAL SECURITY COUNCIL INSTITUTIONAL RECORDS
BOX NUMBER	31
FOLDER TITLE	NSSM 209 - Future Uranium Enrichment in the U.S. (5)
DATE WITHDRAWN	11/10/2004
WITHDRAWING ARCHIVIST	HJR

A GOVERNMENT CORPORATION FOR URANIUM ENRICHMENT

The option of creating a Government Corporation to provide enriching services offers the opportunity to structure a legal entity in a manner well-suited to accommodate foreign policy concerns. Subject to the Government Corporation Control Act of 1945, such a corporation may be structured and empowered in a wide variety of ways to achieve the goals of (1) reasonable autonomy and flexibility in its day to day decisions; and (2) reasonable accountability and responsiveness to domestic and foreign policy concerns. On questions of providing the necessary autonomy and flexibility to conduct the affairs of such a corporation in a business-like manner, the Department of State largely defers to those agencies with greater expertise in such matters.*

As a body corporate, a Government Corporation has a separate legal personality from that of the United States. As with any corporation, its powers and obligations are limited to those provided in the corporate charter. A charter can be structured in an almost infinite variety of ways, provided that the law of the state of incorporation is not violated. In the case of a Government Corporation, the charter is the legislation which authorizes the legal entity. Unlike a government agency, however, a Government Corporation is exempt from most appropriation and fiscal restrictions which allows it to conduct its business in a more efficient manner.

The Hosmer Bill (S. 4148, H.R. 17322) is an example of legislation authorizing a Government Corporation, the United States Enrichment Corporation (USEC), which has the power to enrich urnaium and conduct other specified activities related thereto. Several features of the Hosmer Bill make it unsatisfactory from a foreign policy perspective, although certain amendments could be made to increase its responsiveness to foreign policy interests. **

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* For a brief review of these aspects of a Government Corporation for Uranium Enrichment, see the attached analysis by John F. Cuneo of the Wharton School.
** The official Department of State comments on the Hosmer Bill, as requested by OMB, are attached.

First, unless it succeeds in stimulating an early industry decision to build the next plant and in maintaining private entry for subsequent plants, it is unclear how the creation and operation of the USEC will substantially restore confidence in the United States as a reliable supplier of enriched uranium. Although the creation of USEC could itself help alleviate certain foreign concerns, long-term U.S. supply policy would remain in doubt, since USEC would have no authority to construct new capacity or add to existing plants, should the need to do so arise, without specific authorizing legislation.

Second, there is no assurance that the USEC will offer enriched uranium at a competitive price and on a non-discriminatory basis as between foreign and domestic users and among foreign users. The Hosmer Bill does not contain any directive to this effect, particularly with respect to non-discrimination. The absence of an institutional structure which ensures adequate supervision and control of the USEC's international activities by those responsible for the conduct of our foreign affairs aggravates this drawback in the Bill.

Thirdly, the USEC would not be in a position to participate in a multinational enrichment plant or to accept foreign participation in U.S. plants. This prevents a potential form of cooperation with our partners in the International Energy Agency which could help implement our commitment to joint efforts to reduce dependence on oil imports. The combination of foreign capital and U.S. enrichment technology would result in earlier additional capacity.

A Government Corporation could be created which would not have the drawbacks we see in the Hosmer Bill. The charter should specify that the corporation's international activities should be conducted in a manner consistent with the foreign policy of the United States. High-level officials of the Department of State, ERDA, ACDA, DOD, and other appropriate U.S. agencies with international responsibilities could be represented on the Board of Directors for the purpose of deliberations relating to foreign activities. Disputes over policy between these agencies and the corporation would be resolved by the President, who must have ultimate authority to control the corporation. Of course, many government agencies with responsibilities over domestic policy concerns regarding the corporation's activities should play similar roles.

If enrichment capacity is to be increased in the short term, the corporation must have authority to increase capacity to meet demand. The power to enter into joint ventures or other cooperative arrangements with private firms in the United States or with foreign states and firms seems essential to our energy cooperation efforts as well as taking advantage of the benefit of foreign capital investment. The introduction of foreign participation in the Government Corporation requires further study but should be considered. The charter should also specify that enrichment services shall be provided on a non-discriminatory basis as between foreign and domestic users.

In sum, a Government Corporation appears to be a highly adaptable form for accommodating the need for adequate foreign (and domestic) policy input on uranium enrichment matters. At the same time, the corporate form is able to provide the necessary flexibility to conduct an enrichment business in an efficient manner. It is obvious that this brief discussion is a starting point for the creation of such a corporation. Many details must be filled out by those with appropriate expertise. Some of the ideas herein may prove, upon close examination, to be unnecessary and others not discussed herein may prove to be necessary. Further study on an interagency basis is needed before firm decisions are made in this matter.

COMMENTS ON THE USE OF A GOVERNMENT CORPORATION FOR URANIUM ENRICHMENT IN THE UNITED STATES

(By John F. Cuneo, The Wharton School, University of Pennsylvania, Philadelphia, Pa.)

4h

FOREWORD

This paper is a response to Rep. Craig Hosmer's (R-Calif.) request for suggestions and analyses by Graduate business schools of the uranium enrichment problem in the United States. The author expects to receive his Master of Business Administration Degree from The Wharton School in May, 1974. This work was sponsored by Burns and Roe, Inc., of Oradell, New Jersey.

September 27, 1973.

The successful development of the uranium enrichment industry in the United States is a clear and present problem facing the American people. With the entire enrichment capacity of the Atomic Energy Commission likely to be committed by contract sometime in 1974, prompt and decisive leadership must be exercised by Congress to meet the increasing needs of both the domestic and foreign markets for nuclear energy. President Nixon had hoped that the next increment of enrichment capacity would be supplied by private industry. However, a quick survey of the present industrial participants clearly indicates that this hope will not be met. Little interest has been shown as yet by the industrial consortia in providing the service of enriching uranium. Many firms would like to supply the hardware—build the machines. But the private sector has not shown sustained initiative in providing the enriching service that will avert a nuclear fuel gap after 1984.

On September 5, 1973, Rep. Craig Hosmer (R-Calif.) proposed the use of a government corporation to meet the expanding needs for enriched uranium—the United States Enrichment Corporation. This paper addresses itself to the use of a government corporation to usher in the enrichment industry in this country.

Use of the corporate form of organization for public or quasi-public purposes considerably antedates the modern business corporation. Indeed, early corporations have more in common with present government corporations than their private counterparts. Under the mercantilist political philosophy, corporations were looked upon as arms of state, performing for the state certain functions of a public character. Even in America, during the nineteenth century state legislatures rarely were willing to grant corporate privileges, except upon showing that some public purpose would be fulfilled thereby. As a result, American corporations were at first largely limited to turnpikes, canals, and local utilities. Thus the corporate form has enjoyed a place among the instruments of government.

It was not until World War I that the Federal Government utilized the corporate form on a large scale. Corporations such as the United States Shipping Board Emergency Fleet Corporation and the War Finance Corporation came into existence. This was done primarily to meet the emergency needs of a country at war. An important factor common to all the corporations created during the war was their temporary nature. The United States Enrichment Corporation is likewise intended to be of temporary duration.

The Government Corporation Control Act of 1945 marked the coming of age of the government corporation in the United States. Through this act, the government corporation was accepted as an important instrument of government and should embrace all the privileges and burdens that such status entails. The government corporation is an integral part of the Federal structure and therefore, should not be completely autonomous. Relationships with the President, Congress, and pertinent agencies and departments of government must be defined to focus responsibility and insure consistency in overall government policy. In a certain sense the government corporation is no different than the familiar government agency. What, then, are the specific characteristics of the government corporation?

There are seven distinguishing characteristics of a government corporation:

1. Legal Status.
2. Authority to Make Expenditures.
3. Accounts.
4. Budget.
5. Audit.
6. Method of Financing.
7. Personnel.

The government corporation is a separate entity for legal purposes. Because of this, the corporation can sue and be sued, enter into contracts, and acquire property in its own name. This has generally resulted in greater flexibility than that of the agency. Since it is important to engage the private sector in the enrichment industry in the United States and since it is apparent that the government must take the first step, it is felt that the legal status of the corporation provides a more familiar mechanism for business dealings for the businessman. Thus business may be conducted in a conventional manner on familiar ground with greater dispatch.

A corporation is usually given the power to determine the character of and necessity for its expenditures, and the manner in which they shall be incurred and paid. A corporation is thus exempted from most of the regulatory statutes applicable to the expenditure of public funds. As long as the annual budget is

approved by Congress, no limit is placed on operating expenditures so long as these expenditures are within the corporate charter. Here again the flexibility of USEC would enable programs to be funded without specific need for Congressional appropriation. In an area of high technology and rapid development, this flexibility is vitally important.

With a form of organization similar to that of a private company, the accounting procedures would follow normal business practices. A thorough cost accounting system would properly reflect all costs attributable to operations with due consideration for government investment, depreciation of capital assets, and services provided by other government agencies. Moreover front end costs for adding new increments of enrichment capacity can be folded in with existing prices for separative work units to distribute the burden of new additions over the entire enrichment network. A modern accounting system could accurately reflect the total asset structure of USEC through allocation of costs and thus determine a price level profitable to the corporation. In this manner, both domestic and foreign customers can bear their fair share to obtain enriched uranium.

USEC would submit a budget closely tied to its accounting practices. This plan of operation would be subject to Congressional approval. However, unlike the agency, it does not need Congressional approval for specific projects. This avoids the need for appropriations for every project and the inherent delays and red tape associated with the required hearings. The budget would also include balance sheet statistics, an income statement, and a sources and uses of funds disclosure. The purpose of these statements is to make the financial condition of the corporation known and to indicate to the responsible government bodies the direction which the organization is taking. The budget would thus make known to Congress and the President the status of USEC so that they can exercise their proper roles in monitoring the corporation's activity. Moreover, the budget would communicate to the businessman the vital information he needs about the enrichment business in a form he understands so that he can make a decision regarding entry into the industry.

The government corporation is audited by the General Accounting Office in accordance with the principles and procedures of commercial business transactions. Unlike the audit of government agencies under principles and procedures prescribed by GAO, the corporate audit does not contemplate a review of the legality of each expenditure. This maintains the financial flexibility of the body to respond quickly and efficiently in the marketplace. The audit is intended to provide information for Congress and the President to evaluate the effectiveness of the corporations and to move to provide additional controls when necessary.

A great part of the difference between a corporation and an agency arises from the method of financing its operations. Agencies are generally funded through annual appropriations from Congress with unobligated funds unable to be carried over to the subsequent fiscal year. Revenues derived from operations ordinarily are turned over to the Treasury. However, the government corporation is sourced from three main areas: subscriptions by Congress to the capital stock of the corporation with freedom from annual appropriations, borrowings from the Treasury, and revenue with authorization generally for its use and re-use.

There have always been those who have opposed the granting of this financial flexibility to government corporations. The arguments generally reduce to a complaint that public money is spent and received without the adequate control of Congress. Claims of waste and irresponsibility are common.

There can be no disputing the fact that government corporations must be held responsible for their use of public funds. However, overly-detailed regulations and restrictions may be imposed on the corporate administration so that the advantages of the corporate form are effectively nullified.

The uranium enrichment industry needs a large scale infusion of funds and a flexible organization working with the private sector to administer them. With the next step apparently to be taken by the Federal Government, a government corporation offers a viable solution. USEC would have access to funds and, with effective corporate management, could fill the emerging nuclear fuel gap.

The final area of distinction between the agency and the corporation is that of personnel. Several corporate charters have recognized the need for greater flexibility in the handling of personnel. These corporations are exempted from Civil Service regulations and have special powers to employ agents and attorneys. USEC would be an excellent example where Civil Service regulations might hinder the interaction of the corporation with the private sector as USEC moves to disseminate enrichment technology, business knowledge, and financial information. There could conceivably be a continuing flow of people through USEC as a private corporation attempts to qualify for a license to enrich uranium. This flow could be restricted if Civil Service regulations are in force.

While the government corporation has demonstrable advantages over the agency as indicated in the seven areas covered above, it should not be employed indiscriminately. President Truman in his 1948 Budget Message laid down the criteria for the use of corporations. The use of the corporate form of organization is normally indicated when a program

Is predominately of a business nature;

Is revenue producing and potentially self-sustaining;

Involves a large number of business-type transactions with the public;

Requires greater flexibility than the customary type of appropriation budget ordinarily permits.

With these criteria in mind, where does a USEC stand?

The uranium enrichment industry is a business. Basically it involves providing a service at a price. Currently the AEC spends about $400 million per year on its enrichment program, taking in roughly $200 million in revenue. These figures over the next few decades should grow to staggering billion dollar levels. In addition, forty percent of the AEC's output is taken by foreign customers. Thus in the fullest sense, this is an international service business demanding flexibility for funding, organization, and operations far beyond the scope of the AEC.

Presently it is known that U.S. companies are reticent about entering the enrichment business. A few of the reasons cited are the enormous capital investments necessary, potential antitrust problems, and new frontiers in technology with the concomitant risks associated with that technology. This leaves the U.S. in the difficult position of facing a nuclear fuel gap because the necessary increments of enrichment capacity have not come-on-line. To avoid this the government must respond quickly. Since the nature of the response will necessarily involve substantial business transactions, it appears that President Truman's guidelines are met and the government corporation is the appropriate vehicle.

At this point a brief look at the successful TVA experience may be helpful. TVA is a government corporation created by Congress. The full-time members of the Board of Directors are appointed for staggered nine-year terms by the President with the consent of the Senate. The Board is authorized to exercise all the powers of the corporation exactly as a private board would be. TVA controls its own expenditures. GAO audits TVA's books and reports to Congress any disagreements with TVA as to the propriety of these expenditures, but the expenditures cannot be disallowed. The TVA Act makes it possible for TVA to determine within its own organization, using its own staff and lawyers, what expenditures come within its scope of authority. Many of TVA's expenditures are projected in its annual budget and reviewed by Congress. TVA also controls its own revenues. After depositing surplus receipts with the Treasury and paying back capital invested by the Government as prescribed by schedule, TVA can reinvest its earnings.

TVA maintains flexibility in control of its personnel because it is not within the Civil Service System. Thus it is free to develop policies and procedures which serve its particular needs. Moreover, because of its legal status, TVA can acquire property for its programs and dispose of surplus property. Finally it maintains its own legal counsel to handle the problems arising in this area.

The seven distinguishing characteristics of a government corporation are found in TVA. More importantly, these characteristics give TVA a profile to operate successfully where a government agency may have fared less well. TVA is an excellent example of a successful government corporation. But what impact can this sketch of the corporate form have on the Phase II hearings before the Joint Committee on Atomic Energy?

As a conceptual framework within which one might elicit and analyze testimony, the seven distinctive features of the corporation could serve as topical areas for investigation. Viewing testimony as addressing these topical areas, the substance of that testimony can then be examined to determine whether the corporation is the form suitable to handle the enrichment problem. Statements about financial investment, staffing, pricing, site location, legal problems, etc. can be set within this conceptual framework. Essentially this approach establishes a reference condition, that of the government corporation. Testimony is then studied as falling within one or more of the seven topical areas. In this manner each important feature of the corporate form is tested against existing testimony. The output of this analysis should strongly indicate whether the operative conditions can be suitably configured in the corporate form. Rather than have a great amount of testimony and no method for reducing it to recommendations, this process would enable the testimony to be classified, analyzed, and reduced to conclusions.

It has been the object of this paper to present some comments on the use of a government corporation to solve the enrichment problem in the United States. In closing, some mention should be made of the elements of a government corporation's charter. If the Congress is to create a corporation, it must have a charter and there are basically six elements that should be contained therein. The general headings are listed as follows:

1. *Formal parts*, including the words of corporate creation, the corporate name, the legal residence, and the duration of its existence.
2. *General powers*, consisting of an itemization of the basic acts which the corporation is permitted to perform, such as making contracts, expending its funds, and using the courts to sue and be sued.
3. *Specific powers*, describing the particular activities in which the corporation may be engaged. The specific powers constitute the substantive program of the corporation.
4. *Management*, specifying the persons who are to determine the policies of the corporation and are to control its operations.
5. *Financing*, covering the amounts and sources of its capital and other funds as well as possible repayment schedules for invested capital.
6. *Miscellaneous provisions*, such as payments in lieu of taxes and other grants of authority necessary for operation.

This very brief treatment of the corporate charter is included to indicate the elements necessary for the creation of the United States Enrichment Corporation.

It is hoped that the Phase II hearings will go a long way toward resolving the enrichment problem facing this country. It is also hoped that these comments are in some way useful in attaining that goal.

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DEPARTMENT OF STATE

Washington, D.C. 20520

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Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. Ash:

The Department of State has been requested by your office to comment on H.R. 17322, a bill "To amend the Atomic Energy Act of 1954, as amended, to establish the U.S. Enrichment Corporation, and for other purposes."

The Executive and Legislative branches of the Government have been engaged in intensive discussions for at least the past three years on how the United States should assure itself that it will have sufficient uranium enrichment capacity in the future to meet the fuel needs of the burgeoning number of nuclear power plants scheduled to come into operation. The Department of State has played an active role in the Executive branch discussions, wishing to make certain that our foreign policy interests were preserved. We are particularly concerned that the United States remain a reliable supplier of uranium enrichment services to other nations. We thereby may be able to reduce the uncontrolled spread of sensitive enrichment technology that can be used to produce highly enriched uranium for weapons purposes, and we may be also able to require the imposition of international safeguards on the slightly enriched uranium and nuclear power plants using this material that the U.S. furnishes to other nations.

Furthermore, the United States gains substantial revenues from abroad in the sale of enrichment services and from the sale of U.S.-type nuclear power plants. Our international position in this market has deteriorated markedly during the past few years, and an increasing amount of enrichment sales, of potential significant dollar value, are being lost to European enrichment organizations and to the USSR. This adverse situation

is due not only to the desire of our customers to seek alternative sources of supply but also--and more importantly--to their distrust of the United States as a reliable future supplier, engendered by the changes adopted by the AEC in its Uranium Enrichment Criteria and contracting practices. Foreign suspicions have been heightened in recent months by the suspension of further contracting for enrichment services by the AEC and by the delay that is being experienced in attracting private industry in the U.S. to invest in a fourth enrichment plant.

Because of our foreign policy concerns in this field, as well as concerns about private entry and the need to assure domestic supplies of enriched uranium, the President directed, through NSSM 209, that an interagency study of the matter be made. The study has not been completed. The National Security Council is now obtaining on an urgent basis independent agency views in order to complete the study for the President as soon as possible. We believe that the Executive branch should not take a position on the Hosmer Bill until this study has been completed and reviewed by the President.

We believe that consideration might be given to resorting to further U.S. Government involvement in the construction of new enrichment capacity, if private entry does not occur within a reasonable time frame. One alternative under study is the establishment of a Government Corporation, whether the approach presented in the Hosmer Bill or another approach. On the assumption that the President will wish to examine all feasible options generated by the final NSSM 209 report, we are not in a position to make a firm recommendation for or against H.R. 17322 at this time. However, we do believe that if a decision by private interests to construct the next enrichment plant does not materialize soon, our foreign policy objectives will deteriorate still further, and that suitable contingency plans should be available in that event. The Government Corporation approach, which entails a considerable time delay for the passage of legislation and subsequent organizational arrangements, would not provide the short-term remedy required to overcome foreign policy concerns, whatever the long-term merits of this approach.

If the Administration should decide to support the bill, we believe that certain amendments should be made to it to insure that our foreign policy responsibilities are protected. The changes proposed are as follows:

1. Sec. 301, line 8, page 2. Insert "foreign policy of the United States," between "with" and "the".

2. Sec. 302(i) and Sec. 308(j), pages 5 and 15. Rather than denying the right to the Corporation to construct new capacity or to add to existing capacity without amendment of the Act, these sections would be more in our interest if the President were explicitly authorized to permit the Corporation to increase its enrichment capacity through construction of additional facilities upon a finding that the increase was necessary because of a compelling foreign policy reason, a national emergency or for national security reasons. If financial assistance from the U.S. Government were required to carry out the Presidential directive, then the budget process and normal legislative oversight would insure the involvement of the Congress.

3. Sec. 304(d), line 5, page 4. Insert "foreign policy of the United States," between "with" and "the".

4. Sec. 304(d), line 11, page 4. Insert "on a nondiscriminatory basis as between foreign and domestic customers," between "fuel" and "as".

5. Sec. 308(d), line 19, page 10. Add the following after "States.": "and Provided Further, That the Corporation shall offer such services to foreign and domestic customers alike on a nondiscriminatory basis."

6. Sec. 307, line 18, page 8. In title, change "COMMITTEE" to "COMMITTEES". Line 19: Insert "(a)" before "There". Add new subsection (b) following existing Section 307 as follows: "There shall be an 'Interagency Committee on Uranium Enrichment' to advise the Corporation. This Committee shall consist of senior representatives of the Administrator of ERDA, the

Chairman of the NRC, the Secretary of State, the Secretary of Defense, the Director of the Arms Control and Disarmament Agency, and of such other officers of the United States Government as the President shall designate. The Committee shall meet periodically and shall review the activities and policies of the Corporation and provide advice on matters of domestic and foreign policy concerning the business of the Corporation. The Committee shall prepare an annual report for the President analyzing the domestic and foreign policy consequences of the activities and plans of the Corporation and making recommendations on matters of domestic and foreign policy concern."

7. Sec. 308(a), line 12, page 9. Remove the phrase "To the extent it deems necessary,".

8. Sec. 319(a), page 45. We are concerned that the exemption granted to the Corporation may be too broad, in that the Corporation does not appear to be an appropriate body to be vested with the authority to make national and international security determinations on the import and export of source and special nuclear materials and should be therefore subject to the licensing authority of the appropriate Federal agency, presumably NRC. We defer to the Atomic Energy Commission for its views on how safeguards and physical security requirements would be established and regulated for the Corporation's activities. We note also that the reference to section 18 of the Atomic Energy Act appears to be in error, since the Act contains no such section.

9. Sec. 321, page 45. Add new Sec. 321(b) as follows: "The Chairman shall consult on a regular basis with the NRC, ERDA, State, DOD and ACDA, and other Federal departments and agencies on corporate matters affecting the responsibilities of the respective departments and agencies and shall conduct its international activities under the general foreign policy guidance of the Secretary of State." Renumber present Sec. 321 (b) as (c)

and make the following changes: Line 21: Delete "shall" and insert "may". Line 20: Insert after "commission" but before "is adverse" the words "or any other federal department or agency". Line 13: Change "(b)" to "(c)".

Cordially,

Linwood Holton
Assistant Secretary
for Congressional Relations

Drafted by:
OES/SCI/AE:JLBloom:fe
11/20/74 (Ext. 22432)

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PM/NPO -Mr. Oplinger

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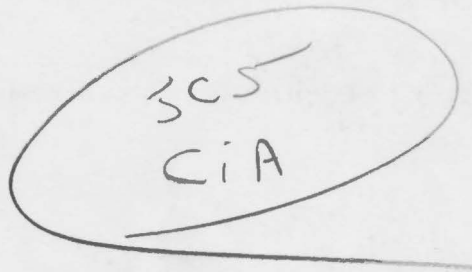

CORRESPONDENCE PROFILE

DOC MO	DOC DA	RECD MO	RECD DA	RECD HR	LOG NBR	INITIAL ACTION O
11	23	11	25	09	7405730	Elliott

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SOURCE/CLASS/DESCRIPTION

REFERENCE: S/S 7405730

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KISSINGER		COLBY, W				LOU	NO FORN NODIS
SCOWCROFT	f	SCHLESINGER, J				C	EYES ONLY EXDIS
DAVIS		ST EX SEC	f			(S)	CODEWORD
						TS	SENSITIVE

SUBJECT: State Response to O/Rpt re NSSM 209: Study of Future Uranium Enrichment Capacity Also AEC Response

DISTRIBUTION/INITIAL ACTION ASGMT

INTERNAL ROUTING AND DISTRIBUTION	ACTION	INFO	REC CY FOR
ADVANCE CYS TO HAK/SCOWCROFT			
STAFF SECRETARY		X ✓	
FAR EAST			
SUB-SAHARAN AFRICA			
MID EAST / NO. AFRICA / SO. ASIA			
EUROPE / CANADA			
LATIN AMERICA			
UNITED NATIONS			
ECONOMIC			
SCIENTIFIC	+		
PROGRAM ANALYSIS		+ ✓	
NSC PLANNING		+ ✓	
CONGRESSIONAL			
OCEANS POLICY			
INTELLIGENCE			
Files		✓	

ACTION REQUIRED

- MEMO FOR HAK ..... ( )
- MEMO FOR PRES ..... ( )
- REPLY FOR ..... ( )
- APPROPRIATE ACTION ..... (+)
- MEMO ____ TO ____ ..... ( )
- RECOMMENDATIONS ..... ( )
- JOINT MEMO ..... ( )
- REFER TO ____ FOR: ____ ( )
- ANY ACTION NECESSARY? ..... ( )
- CONCURRENCE ..... ( )
- DUE DATE: 12-2

COMMENTS: (INCLUDING SPECIAL INSTRUCTIONS)

Memo sgd by Davis to agencies 12/2/74

SUBSEQUENT ROUTING/ACTIONS

DATE	FROM	TO	S	SUBSEQUENT ACTION REQUIRED (OR TAKEN):	CY TO
11/25				Rec'd AEC Response	Same ✓
11/25				Rec'd DoD A Response	Same ✓
11/26				Rec'd DoD Response (orig to Elliott)	Same
1/16/75	—	—	"C"	SEE #6225 FOR FINAL ACTION	

GERALD R. FORD LIBRARY

NSC/S DISP INSTR

DISPATCH ____

CY RQMTS: SEE ABOVE PLUS: ____

NOTIFY ____ & DATE ____ BY ____

SPECIAL DISPOSITION: ____

CROSS REF W/ 7405380

SUSPENSE CY ATTACHED: ____ FOLDER: ____

MICROFILM & FILE RQMTS:

MAR APR 18 1975 BY 15

CRT ID:			
OPEN	TH	SA	(SF)
CLOSE		HP	NS
		WH	EP
		PA	DY

(NBC-74-21 533-147)