Curbing the spread of nuclear weapons and the technologies to make them has long been and remains strongly in the U.S. national security interest, especially in the troubled Middle East.

As President Donald Trump decides in the coming weeks whether to continue implementing the successful 2015 Iran nuclear deal, lawmakers could soon be asked to consider a lower-profile, but nonetheless hugely consequential, agreement which would provide for civilian nuclear cooperation with Saudi Arabia.

Energy Secretary Rick Perry led an interagency delegation to London in late February to discuss a pact, known as a 123 agreement, with a Saudi delegation led by Minister of Energy and Industry Khalid Bin Abdulaziz al-Falih. A 123 agreement, named after a section of the 1954 Atomic Energy Act, sets the terms for sharing U.S. peaceful nuclear energy technology, equipment, and materials with other countries.
The Trump administration has not commented on the status of the talks and no agreement was announced during Saudi Crown Prince Mohammed bin Salman’s visit to Washington the week of March 19.

Though Saudi Arabia says that it is seeking nuclear power for peaceful purposes to diversify its sources of energy, recent statements by the Saudi leadership have cast doubt on the kingdom’s commitment to its obligations under the nuclear Nonproliferation Treaty (NPT) not to acquire nuclear weapons.

In a bombshell interview with CBS News March 15 bin Salman warned: “Without a doubt, if Iran developed a nuclear bomb, we will follow suit as soon as possible.” The Saudi government has also made it clear that it seeks to make its own nuclear fuel.

Engaging in nuclear cooperation with a country that has threatened to leave the NPT carries significant risks. The Trump administration should insist on nonproliferation safeguards that go beyond those required by existing U.S. law, including a Saudi commitment not to engage in uranium enrichment or spent fuel reprocessing activities. These activities are considered sensitive because they can be used to make fuel for nuclear power reactors and for nuclear weapons.

Unfortunately, the administration’s interest in revitalizing the U.S. nuclear industry, disdain for the Iran deal, and desire to strengthen the U.S. alliance with Saudi Arabia casts doubt on whether it will use the significant leverage it has over the kingdom to push for adequately strong safeguards. If Trump walks away from the Iran deal—as seems increasingly likely—and strikes a pact with Saudi Arabia that does not include a Saudi pledge not to enrich or reprocess, the prospects for a dangerous and destabilizing nuclear fuel-making race in the Middle East will greatly increase.

Fortunately, bipartisan opposition in Congress to an agreement that does not block Saudi fuel-making appears to be mounting. Lawmakers should closely scrutinize any agreement with Saudi Arabia to ensure that it contains adequate safeguards. And if it does not, Congress should use its authority to put conditions on the agreement to ensure it does not leave the door open to further proliferation of nuclear fuel-making technologies in the Middle East.

In addition, as Congress reviews the agreement and prepares to consider potentially other agreements in the near future, Congress should strengthen the nonproliferation standards and procedures for congressional review of 123 agreements.

**123 Agreements and U.S. Nonproliferation Policy**

The United States has appropriately sought to deny the transfer of enrichment and reprocessing technologies to states that do not already possess them through several avenues, including the terms of nuclear cooperation agreements.

After the Indian nuclear test explosion in 1974, Congress amended the Atomic Energy Act in 1978 to mandate that nuclear cooperation agreements include tougher bulwarks to prevent U.S. nuclear assistance from being diverted to military uses. The amendment put in place nine provisions, including the requirement that recipients of U.S. civil nuclear cooperation have in place full-scope international safeguards and may not conduct activities such as uranium enrichment and spent fuel reprocessing unless Washington first consents. The Atomic Energy Act has not been updated since 1978.

In recent years Washington has urged states seeking nuclear cooperation with the United States to agree to a legally-binding commitment to forswear the pursuit of enrichment and reprocessing as a complement to other U.S. efforts to prevent the spread of these technologies.

This so-called “Gold Standard” was enshrined in a 2009 agreement with the United Arab Emirates (UAE) and the renewal in 2014 of a pact with Taiwan. Three of the past four 123 agreements that the United States has negotiated not involving a nuclear-armed state have included either a legally or politically binding commitment not to enrich or reprocess.
In addition to the UAE, the United States has negotiated several nuclear cooperation agreements with other partners in the Middle East, including Morocco (1980) and Egypt (1981). The agreements with Morocco and Egypt expire in 2022 and 2021, respectively.

Over the past decade, the United States has also conducted discussions on cooperation with Jordan and Saudi Arabia. But these discussions have not resulted in agreements, in large part due to the unwillingness of either country to forswear enrichment and reprocessing.

**Saudi Arabia’s Interest in Nuclear Power**

Saudi Arabia has ambitious plans for nuclear power. The kingdom says it wants to construct 16 nuclear power reactors over the next 20 to 25 years at a cost of more than $80 billion. Many observers believe Riyadh will be hard pressed to build even half that many. The kingdom has solicited bids for the first two reactors and hopes to sign contracts by the end of this year.

The Trump administration has pledged to revitalize the U.S. nuclear industry and sees in Saudi Arabia’s nuclear ambitions a major commercial opportunity. The administration is currently conducting a review of U.S. policy toward civil nuclear power.

Riyadh claims that the primary motivation for its pursuit of nuclear power is to help meet the country’s rising demand for electricity and conserve its oil resources for export. However, it is questionable whether Saudi Arabia needs nuclear power to meet these objectives. According to several analyses commissioned by the Nuclear Policy Education Center, development of the kingdom’s natural gas resources and investment in renewable energy sources such as wind and solar would be safer and more economically rational alternatives.

Until recently, Saudi Arabia’s official position had been that it would choose not to enrich or reprocess. The kingdom has no near-term practical need for these capabilities and they would be more expensive than relying on the open market for enrichment services. In a May 2008 U.S.-Saudi memorandum of understanding on nuclear energy cooperation, Saudi Arabia declared “its intention to rely on international markets for nuclear fuel and to not pursue sensitive nuclear technologies, which stands in direct contrast to the actions of Iran.”

The Saudi government, however, would not agree to forgo fuel cycle capabilities in negotiations with the Obama administration and is now stating publicly that it intends to acquire them (though on what timeline is uncertain). In an interview with Reuters in March 2018, Saudi Arabia’s Minister of Energy and Industry Khalid Bin Abdulaziz al-Falih stated: “It’s not natural for us to bring enriched uranium from a foreign country to fuel our reactors.” Al-Falih also said he hopes Washington will “help us with the fuel cycle,” suggesting that Riyadh may be seeking Washington’s blessing and active assistance to enrich or reprocess.

In reality, relying on the international market is what most states with nuclear reactors do to fuel them. How Saudi Arabia would acquire fuel-making technology is unclear and there would be significant obstacles. The Nuclear Suppliers Group (NSG), a group of 48 supplier countries who implement export guidelines to try to prevent peaceful nuclear trade from contributing to nuclear proliferation, adopted new guidelines in June 2011 that strongly discourage the transfer of enrichment and reprocessing technology. For its part, the United States does not transfer this technology to anybody. Riyadh could seek to acquire it from Pakistan or North Korea, neither of which are members of the NSG. But this would present its own problems.

Ultimately, Saudi Arabia’s pursuit of nuclear power and interest in enrichment appears motivated primarily by its security competition with Iran, which has violently manifested itself in the ongoing conflicts in Syria and Yemen. Riyadh also believes the 2015 Iran nuclear deal is highly problematic, both because it limits and does not eliminate Iran’s uranium enrichment capacity and, in Riyadh’s view, enhances Iran’s position in the region.

Recent statements from the country’s leadership suggest the kingdom wants to keep open the option to acquire nuclear weapons under the cover of a NPT-compliant civilian nuclear power program. Disturbingly, neither Trump nor any member of his administration has publicly condemned...
Bin Salman’s threat to acquire nuclear weapons if Iran does. It has long been U.S. policy to prevent the spread of nuclear weapons, including to U.S. allies and partners. The administration’s silence is even more worrisome in light of statements from Trump during the 2016 election campaign that the acquisition of nuclear weapons by U.S. allies such as South Korea, Japan, and Saudi Arabia is “going to happen anyway.”

The Case for Stringent Nonproliferation Conditions

The likelihood that Saudi Arabia will actually decide to engage in enrichment and/or reprocessing—to say nothing about acquiring nuclear weapons—is unknown but would face significant hurdles. Saudi statements could be designed to deter Iran and/or elicit greater protection from the United States.

Developing the capability to produce nuclear fuel is time-consuming, technically challenging, expensive, and, in a region as volatile as the Middle East, potentially threatening to one’s neighbors. Indeed, Israeli Prime Minister Benjamin Netanyahu reportedly told Trump in a March 5 meeting at the White House that the United States should insist on a Saudi commitment not to enrich and reprocess.

Most importantly, Saudi acquisition of the capability to make the key explosive ingredients of nuclear weapons runs a high risk of undermining the kingdom’s alliance with the United States. There is no other country—nor technology—that Riyadh’s leaders can turn to that can provide the same level of proven support and protection.

But Saudi Arabia’s increasingly unabashed nuclear hedging is a threat to the nonproliferation regime that the United States has led for decades. To be consistent with the U.S. historical record of seeking to prevent the spread of nuclear weapons, the Trump administration should seek safeguards in any 123 agreement that go beyond the existing nine nonproliferation conditions required by the Atomic Energy Act.

As Harvard University Senior Fellow and former Bush administration official Will Tobey testified to Congress last month, “the United States has never before contemplated, let alone concluded, a nuclear cooperation agreement with a state that is threatening even provisionally to leave the [nuclear] nonproliferation treaty.”

At a bare minimum, the United States should insist that Saudi Arabia sign and ratify the Additional Protocol to its safeguards agreement with the International Atomic Energy Agency, which allows for expanded agency access to information, sites, and materials to guard against diversion for illicit activities. No non-nuclear country has ever built nuclear weapons under the Additional Protocol.

Saudi Arabia is one of the few countries that has yet to adopt the Additional Protocol (Iran has signed and is provisionally implementing it). Washington has not in recent years negotiated a 123 agreement with a state that had not signed up to the measure.

The United States should also seek a prolonged, legally-binding Saudi commitment not to pursue enrichment and reprocessing that does not sunset for the duration of the agreement. The absence of a ban on them would depart from the policy pursued by both the Bush and Obama administrations and open the door for the kingdom to pursue fuel cycle capabilities without U.S. approval if it uses technology or materials provided by other suppliers. A typical 123 agreement requires that the U.S. consent to any request to enrich or reprocess U.S.-origin materials or fuel.

In addition, an agreement that does not include the “Gold Standard” could lead the UAE to invoke a provision in its 123 agreement that allows for amending the agreement if Washington strikes a more “favorable” 123 pact with another Middle East country. Egypt’s 123 agreement, which is up for renewal in 2021, contains a similar provision.

Whether the Trump administration is insisting on these safeguards in discussions with the Saudis is unknown. It has not yet briefed Congress on the talks since they formally began.
pushing for a prohibition on fuel-making or would consent to or assist in the development of a Saudi fuel-making program. (A permissive agreement that facilitates Saudi fuel-making would exacerbate the negative consequences described above.)

Critics of insisting on tougher nonproliferation standards in an agreement with Saudi Arabia, particularly restrictions on fuel cycle technologies, argue that the United States lacks leverage to convince Riyadh to accept these terms. They also argue that such terms could prompt Saudi Arabia to engage in cooperation with countries, such as Russia and China, that would demand less stringent nonproliferation, nuclear security, and nuclear safety provisions than those contained in the Atomic Energy Act.

These arguments are unconvincing for several reasons.

First, the administration has significant leverage in this case. While the U.S. nuclear industry no longer holds the preeminent supply position that it once did, countries still value the imprimatur of legitimacy for their nuclear efforts that comes with a 123 agreement. More importantly, Saudi Arabia relies heavily on the United States for military and economic support and president Trump is pursuing an expansion of cooperation with Riyadh in these areas. Given the dangerous downsides of the proliferation of nuclear fuel-making in the Middle East, the administration should attempt to use the influence this assistance provides.

Second, 123 agreements set the conditions for nuclear trade, but they are not contracts and do not automatically result in commerce. Even if Washington strikes a deal with Riyadh, there is no guarantee the kingdom will choose U.S. vendors. Regardless, as Victor Gilinsky and Henry Sokolski of the Nuclear Policy Education Center note, Russia and China may not be appealing partners for Riyadh. U.S. nuclear technology has a better record of safety and reliability than what Russia and China have available for export. Meanwhile, Russia is the top supplier of nuclear reactors to Riyadh’s archenemy Iran.

South Korea, which is building four of its APR 1400 reactors in the UAE, is likely to be the most desirable vendor for Saudi Arabia. But given the reliance of this reactor on U.S. technology, exporting it to the kingdom could require a Saudi 123 agreement with Washington. This provides the Trump administration with another significant point of leverage.

Flawed Comparisons to the Iran Deal

Opponents of the 2015 agreement restricting Iran’s nuclear program claim that it undermines efforts to impose restrictions on Saudi enrichment and reprocessing since the Iran deal does not prohibit Iranian uranium enrichment activities.

This too is a deeply flawed—and dangerous—argument. The Iran deal, which is not an agreement for nuclear cooperation, severely and verifiably restricts Iran’s uranium enrichment program. Saudi Arabia, on the other hand, does not yet have fuel cycle capabilities and does not need them to produce nuclear energy.

The deal also requires—in perpetuity—stringent monitoring of Iran’s nuclear program under the Additional Protocol, which the Saudis have not yet signed.

During the early years of the Bush administration when Iran’s nuclear program was much smaller, pursuing a deal that eliminated Iran’s uranium-enrichment program may have been feasible. But by 2013 when the Obama administration began negotiating with Iran, such an outcome was not possible.

Obama administration officials also clearly stated that acknowledging Iran’s uranium enrichment program did not change longstanding U.S. policy that there is no “right to enrich” under the NPT as claimed by some states or alter U.S. opposition to the spread of enrichment and reprocessing technology.

It is clear that Saudi Arabia is concerned that the Iran deal leaves Tehran with too much nuclear capacity, especially after certain limitations on enrichment and fuel cycle activities begin to expire in
the mid-2020s. Even more concerning from Saudi Arabia’s perspective is Iran’s destabilizing behavior in the region. Bin Salman stated in a recent interview that Iran’s leadership “makes Hitler look good.”

These anxieties will need to be responsibly managed and addressed. But instead of walking away from the Iran deal, the Trump administration should continue to vigorously implement and enforce it. If Trump kills the deal, Iran could respond by resuming nuclear activities limited by the agreement. This would greatly increase the odds that Saudi Arabia will choose to quickly follow a similar path, and perhaps the UAE, Egypt, and other regional states as well. Attempting to counter Iran by facilitating Saudi fuel-making is also unwise. A cascade of fuel making in the Middle East would have profoundly negative consequences for regional security and the nonproliferation regime. The Iran case demonstrates the crisis that can ensue when a state takes steps toward nuclear weapons while maintaining that its program is entirely peaceful.

Additionally, to address legitimate concerns about the future of Iran’s nuclear program after certain restrictions expire, the administration should pursue opportunities to build on the agreement in ways that strengthens nonproliferation in Iran and regionally and reduces Iran's incentives to expand its enrichment program.

**Strengthening Congressional oversight**

A growing number of lawmakers are justifiably raising concerns about a potential 123 agreement with Saudi Arabia that does not block the kingdom from engaging in fuel-making.

“The idea of Saudi Arabia having a nuclear program with the ability to enrich is a major national security concern,” Rep. Ileana Ros-Lehtinen (R-FL) said at a March 21 House Foreign Affairs Committee hearing on the implications of civilian nuclear cooperation with Riyadh. “Unfortunately from the little we do know from the administration it is looking at this deal in terms of economics and in terms of commerce and national security implications only register as a minor issue—if at all.”

Similarly, Sen. Jack Reed (D-RI), the top Democrat on the Senate Armed Services Committee, told Perry at the March 22 hearing that he “and many others” would oppose a nuclear deal with Saudi Arabia that does not include a fuel-making ban.

Once the executive branch submits a signed cooperation agreement to Congress, lawmakers have 90 days in continuous session to consider the pact, after which it automatically becomes law unless Congress adopts a joint resolution opposing it.

If the Trump administration presents lawmakers with a 123 agreement with Saudi Arabia that does not contain adequate nonproliferation safeguards, Congress, which has the right to vote on the final agreement, should condition its approval on the adoption of several requirements. Options include:

- a provision that would automatically terminate the agreement if it is ever determined that Saudi Arabia has sought or has acquired enrichment and reprocessing technologies, for any reason;
- an annual certification from the president that Saudi Arabia is not seeking, nor has any nuclear technology supplier discussed the transfer of, enrichment and reprocessing technologies to the Saudis;
- a provision that Congress must approve as an amendment to the agreement any decision by the United States to provide consent to Saudi enrichment and reprocessing; and
- a commitment from the Trump administration that the United States will use all available means to encourage other members of the NSG to refrain from transferring sensitive fuel cycle technology to any state that does not already possess such technology.

In addition, it is also past time that Congress pursued revisions to the Atomic Energy Act procedures for Congressional review of 123 agreements.

On March 21, Rep. Ros-Lehtinen and Rep. Brad Sherman (D-CA) introduced HR 5357, the Nuclear Cooperation Reform Act of 2018. The bill, which mirrors legislation unanimously approved by the
House Foreign Affairs Committee in 2011, would add new requirements to the nine conditions already in Section 123 of the Atomic Energy Act that, if met, would be subject to the same Congressional “fast track” approval process as current law.

Agreements with states that cannot meet the higher set of standards would be subject to a more rigorous process requiring affirmative Congressional approval. Among the new requirements for “fast track” approval would be:

- the application of the Additional Protocol; and
- a pledge from countries that do not already possess enrichment and reprocessing capabilities not to acquire these capabilities and/or facilities to conduct them.

A common argument in opposition to earlier versions of the legislation was that by requiring more stringent standards, it would deny NPT members their rights under the treaty.

But asking that states forego enrichment and reprocessing is not about denying rights; it is about asking countries not to exercise rights in the context of a bilateral cooperation agreement with the United States.

In any event, under the bill, Congress could still pass agreements without a fuel-making ban. Such agreements would simply require a higher bar for approval than those containing a ban. This would provide powerful leverage to the executive branch negotiating team in its discussions with the Saudis and future talks with other potential partners.

Another argument is that by requiring tougher standards, other countries will not agree to nuclear cooperation with the United States and instead turn to other suppliers for nuclear trade.

Similar arguments were made at the time Congress was considering the amendments to the Atomic Energy Act via the 1978 Nuclear Non-Proliferation Act, and they were found to be wanting by the Government Accountability Office (GAO) and others. The modifications to existing law proposed in the Ros-Lehtinen and Sherman legislation are less stringent than those enacted in 1978 and these amendments did not inhibit the United States from successfully renegotiating most of the existing 123 agreements at that time.

In light of the growing interest in nuclear power in geopolitically sensitive regions of the globe; the inclusion of the “Gold Standard” in the UAE and Taiwan agreements; and the new NSG rules adopted in 2011, it is prudent to update the Atomic Energy Act to better address the proliferation risks of today-and tomorrow.—KINGSTON REIF, with DARYL G. KIMBALL and KELSEY DAVENPORT

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