

Issues and Questions on July 18 Proposal for Nuclear Cooperation with India

November 18, 2005

United States House of Representatives
Washington, D.C. 200515

Dear Member of Congress,

We are writing to urge you and your colleagues to critically examine the July 18 proposal to allow for “full” U.S.-Indian civilian nuclear cooperation, which would require significant changes to U.S. nonproliferation laws and longstanding international nonproliferation policy that have been supported and advanced by past Republican and Democratic administrations.

We believe that the United States and India can and should expand their ties and common interests as free democracies through expanded cooperation in trade and human development, scientific and medical research, energy technology, humanitarian relief, and military-to-military contacts. In addition, both the United States and India have a vital interest in reducing the global dangers posed by nuclear weapons through effective nonproliferation and disarmament endeavors.

Unfortunately, the proposal for civil nuclear cooperation with India poses far-reaching and potentially adverse implications for U.S. nuclear nonproliferation objectives and promises to do little in the long-run to bring India into closer alignment with other U.S. strategic objectives.

President Bush pledged to seek changes in the Atomic Energy Act (AEA) of 1954 as amended by the 1978 Nonproliferation Act, which bars civilian nuclear cooperation with non-nuclear-weapon states as defined by the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) that do not allow full-scope IAEA safeguards. This includes India. The President also pledged to seek changes to relevant Nuclear Suppliers Group (NSG) guidelines, which make full-scope safeguards a condition of civil nuclear cooperation with non-nuclear-weapon states as defined by the NPT—a U.S. policy objective adopted by NSG consensus during the George H. W. Bush administration.

We have read the statements of the President and administration officials concerning the proposed agreement, but key details needed to help the Congress fully understand the implications of the proposal, in our view, have not yet been provided. Accordingly, we urge that before any action is taken on any legislation sent up by the administration to implement the proposal, Congress should obtain detailed answers to a number of questions. (See attached list.)

Based on what is known, the nonproliferation benefits of the July 18 proposal are vastly overstated by its proponents and the damage to the nonproliferation regime is potentially very high. Contrary to assertions by the administration, the current proposal *would not* bring India sufficiently into conformance with nonproliferation behavior expected of responsible states.

So far, India has pledged only to accept voluntary safeguards over “civilian” nuclear facilities of its choosing. This could allow India to withdraw any nuclear facility from (IAEA) safeguards for national security reasons. Such an arrangement would be purely symbolic and would do nothing to prevent the continued production of fissile material for weapons by India.

The supply of nuclear fuel to India would free-up its existing stockpile and capacity to produce highly enriched uranium and plutonium for weapons. To help ensure that U.S. civilian nuclear cooperation is not in any way advancing India’s weapons program, it would be essential to apply permanent, facility-specific safeguards on a mutually agreed and broad list of current and future Indian nuclear facilities involved in civilian activities and electricity production in combination with a cutoff of Indian fissile material production for weapons.

Unfortunately, the communiqué does not call for any additional measures that would constrain India's nuclear arsenal. Specifically, civilian nuclear assistance should not be extended to India until it implements a cessation of the production of fissile material for weapons, which has been adopted by the five original nuclear-weapon states.

In the July 18 communiqué India also pledged to a set of export control measures that it had already committed to or is obligated to pursue under UN Security Council Resolution 1540.

The proposed arrangement could also trigger a significant erosion of the guidelines of the 45-member NSG, which are an important barrier against the transfer of nuclear material, equipment, and technologies for weapons purposes. No civilian assistance should be extended to India without the full concurrence of the NSG and approval of India's safeguards agreement with the IAEA.

Non-nuclear-weapon states have for decades remained true to the original NPT bargain and forsworn nuclear weapons and accepted full-scope IAEA safeguards in return for access to peaceful nuclear technology under strict and verifiable control. Many of these states made this choice despite strong pressure to spurn the NPT and pursue the nuclear weapons path. They might make a different choice in the future if non-NPT members receive civil nuclear assistance under less rigorous terms. The proposed civil nuclear cooperation arrangement may also undermine our ability to win necessary international support for persuading Iran to abandon its fuel cycle plans and to make its nuclear program fully transparent to the IAEA.

On balance, India's commitments under the current terms of the proposed arrangement do not justify making far-reaching exceptions to U.S. law and international nonproliferation norms.

We urge you to consider the full implications of the proposed agreement for cooperation between the United States and India, and pursue additional stipulations that might result in a positive outcome to U.S. and international security. Congress must also ensure it retains the authority to review whether the terms of any such arrangement are being implemented and take appropriate action if they are not.

Building upon the already strong U.S.-Indian partnership is an important goal, and we remain convinced that it can be achieved without undermining the U.S. leadership efforts to prevent the proliferation of the world's most dangerous weapons.

Sincerely,

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ATTACHMENT

Key Issues for Consideration on Proposed Nuclear Cooperation with India

We cannot overestimate the long-term unintentional damage that could be done to the world's nonproliferation effort if the current proposal is allowed to go through as is without a complete vetting of its possible consequences.

Accordingly, we urge that before any action is taken on any legislation sent up by the administration to implement the proposal, Congress should obtain from the administration detailed answers to a number of questions. These include:

1. How reliable is India as a nuclear trading partner based on its past record and how might the proposed deal affect efforts to stop trade to and from states of concern?
 - a. Is there any prospect that there could be a negative impact on attempts to stop Iran and North Korea from obtaining assistance for their nuclear programs?
 - b. How will assistance to Pakistan's nuclear program by China and others be affected by this proposal if implemented?
 - c. Is there any evidence of Indian violations since 1998 of U.S. and other export laws involving nuclear weapons related technology and/or delivery systems, including missiles?
 - d. To what extent might the current proposal stimulate China's and Pakistan's production of nuclear weapons or nuclear weapons material?
 - e. How effective are India's nuclear and missile export laws and enforcement capabilities vis-à-vis those of the NPT nuclear-weapon states and the requirements of Resolution 1540?
2. Will the delivery of U.S. technology or nuclear fuel for the reactors in India free-up indigenous Indian nuclear fuel for its weapons program?
 - a. Could such an action damage the NPT and our ability to help enforce compliance with it?
 - b. What verifiable restrictions on India's use of its own fuel will the United States insist upon?
 - c. Will the U.S. insist on case-by-case consent rights or rights of disapproval on reprocessing and enrichment and retransfers of U.S. origin items?
 - d. Is the administration considering the transfer of uranium enrichment or reprocessing technology to India as part of the U.S.-Indian accord?
3. What kind of IAEA safeguards will be applied to Indian civilian nuclear facilities?
 - a. Will they be INFCIRC 66 Rev.2 safeguards which are applied in perpetuity?
 - b. If other safeguards are contemplated that are not permanent, how would they prevent the diversion of civilian materials or technologies to weapon use once the putative U.S.-India agreement expires or is otherwise terminated?
 - c. Will India be allowed to withdraw a civilian facility from safeguards and declare it a military facility?
 - d. What criteria would be used by the U.S. government to determine which nuclear facilities and materials should be subject to safeguards?
 - e. How much additional funding will the IAEA need in order to meet the additional safeguards requirements?

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4. How will the United States verify Indian nonproliferation commitments beyond safeguards under the proposed agreement?
 - a. Will the U.S. be able to determine independently which Indian facilities are civilian and which are military? If not, how will we know whether India's declaration is appropriate?
 - b. What mechanisms are in place to monitor Indian implementation of its export laws, and how long would it take to ensure that the appropriate Indian laws are in place and are working effectively?
5. Does the administration consider India's 1974 nuclear explosion in which U.S. heavy water was used in the production of the bomb's plutonium a violation of the sale agreement between India and the United States? If so, does India agree with our interpretation of that agreement? If they don't, how can we assure that similar disagreements won't happen with the current proposal? Should the proposal be amended to provide for return of all delivered materials in the event of such a disagreement?
6. Both U.S. and Indian spokesmen have referred to a "phased" approach to implementation of the proposal if approved. If so, what are the steps and what is the sequence? Is the U.S. government working on a plan with a timetable that would phase in our cooperation with India in accordance with India's meeting its obligations?
7. Has the administration obtained any evidence of Pakistani, Israeli, or North Korean interest in civilian nuclear cooperation on terms similar to those proposed for India. What is the argument for doing this favor for India and not for these other states? How will the administration respond if other states, like China or Russia, seek exemptions for their preferred political or commercial partners?
8. What specific proposals, if any, has the U.S. discussed with NSG partners to alter its guidelines so that civilian nuclear trade with India might proceed and what are the specific reactions of other NSG members? Will the administration proceed with "full" civil nuclear cooperation with India if the NSG does not unanimously support such an exception to NSG rules for India? How will the proposed rule changes relating to India affect President Bush's proposal to the NSG to make the Additional Protocol a condition of supply?

These questions suggest that the proposal by the administration requires much more discussion and examination before any legislative action is taken.