

Clarifying the Record on the July 18 Proposal for Nuclear Cooperation with India

February 14, 2006

United States House of Representatives
Washington, D.C. 20515

Dear Member of Congress,

Along with several of our other colleagues, we wrote you on November 18 to outline the potentially adverse nonproliferation and international security ramifications of the July 18, 2005 U.S.-India Joint Statement for broad nuclear cooperation with India.¹

Later this year the executive branch is expected to formally ask Congress to make special exceptions to longstanding U.S. nonproliferation law in order to allow the United States and other countries to sell nuclear materials and reactors to India. Current law and international export rules bar trade with states (including India) that do not accept comprehensive international safeguards. U.S. nuclear Nonproliferation Treaty (NPT) commitments also forbid the United States from assisting another state's nuclear weapons program "in any way."

The November 18 letter also appended a list of questions about the proposal. The State Department recently responded to these and other questions as a result of detailed inquiries from members of the House of Representatives and the Senate.² Several of us have had the opportunity to analyze them. In the attached memo, we have highlighted some of the most notable State Department comments and offer our responses to help clarify the record.

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

However, we continue to believe that, 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. At a minimum, this requires permanent, facility-specific safeguards on a mutually agreed and broad list of current and future civil Indian nuclear facilities and material, as well a cutoff of Indian fissile material production for weapons.

(over, please)

¹ "Issues and Questions on the July 18 Proposal for Nuclear Cooperation with India," November 18, 2005, Bengelsdorf, Bunn, *et al*, available at <www.armscontrol.org/pressroom/2005/20051123_India_Ltr_Congress.asp>

² Letter from the U.S. Department of State Responding to Questions from Representative Edward J. Markey from Jeffrey T. Bergner, Asst. Secretary for Legislative Affairs, January 17, 2006; and Responses to Questions for the Record Submitted to Under Secretaries Nicholas Burns and Robert Joseph by Senator Richard G. Lugar, released Jan. 17, 2006. Both are available at www.armscontrol.org.

We respectfully encourage you to look further into this important matter. Please do not hesitate to contact us if we can be of assistance to you or your staff.

Sincerely,

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Amb. Robert Grey,
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Leonard Weiss,
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ATTACHMENT

Clarifying the Record on Key Issues Relating to the July 18, 2005 Proposal for Nuclear Cooperation with India

1. Safeguards Against the Diversion of Nuclear Technology for Military Purposes

The July 18, 2005 Joint Statement on nuclear cooperation suggests that India will only allow “voluntary” International Atomic Energy Agency (IAEA) safeguards on its civil nuclear facilities, a practice now limited to the original five NPT nuclear-weapon states (United States, Russia, United Kingdom, France, and China). Since then and in response to questions from Rep. Markey and Sen. Lugar, the State Department has clarified its position and says that “we would view a “voluntary offer” safeguards arrangement—one that allowed facilities and material to be removed from safeguards at will—as ... not defensible from a nonproliferation standpoint.”

We concur with the State Department position. As we recommend in our November letter and as the administration now suggests, only permanent, facility-specific IAEA safeguards (a.k.a. INFCIRC/66 safeguards) should be considered.

2. India’s Civil-Military Separation Plan

To date, U.S. and Indian officials have not reached agreement on which nuclear facilities will be declared military, and which will be declared civilian and subject to IAEA safeguards as called for in the July 18 Joint Statement. The State Department says that it is seeking “a civil-military separation in India that is credible, transparent, and defensible from a nonproliferation standpoint.” We remain deeply concerned that the separation plan being contemplated does not meet these basic criteria.

The State Department responses suggest that the U.S. may allow India to keep significant amounts of its existing spent fuel from its nuclear power reactors free of IAEA safeguards. Addressing a question from Senator Lugar, the State Department writes that were a nuclear facility to be placed under safeguards, “those safeguards would be applicable in perpetuity to any material produced by, used by, or stored in the plant after the effective date of the agreement.” In response to another question, the State Department said “The United States is not seeking to impose restrictions on India’s use of India-origin fuel.”

India’s 11 unsafeguarded operating power reactors may have produced as much as 9,000 kilograms of unseparated plutonium, which is enough to help manufacture more than 1,000 nuclear weapons devices (based on the IAEA’s conservative estimate of 8 kilograms per bomb). India is estimated to have an arsenal of more than 50 nuclear weapons, with a plutonium stockpile enough for dozens more, and plans for an arsenal of 300-400 weapons in a decade.

India also reportedly seeks to exclude its “fast breeder” reactors entirely from safeguards, though it has claimed in the past that they are for civilian purposes. In a Feb. 7 interview, the chairman of India’s Atomic Energy Commission, Anil Kakodkar, claims that such reactors, which are particularly suitable for the production of plutonium for weapons, are needed for India’s nuclear weapons program.

Kakodkar and other India officials also insist that “some” Indian pressurized heavy water power reactors (PHWR) also be excluded from safeguards in order to “fuel its fast breeder programme.” This could significantly boost India’s fissile material production capacity. A typical 220-megawatt PHWR could produce about 150-200 kilograms of weapons-grade plutonium a year when operated at 60-80 percent capacity. India also reportedly hopes to exclude its pilot uranium enrichment plant at Mysore from international safeguards.

If any one of these or other possible loopholes are accepted, the separation plan would allow civilian nuclear power-related facilities to be used to support weapons production and would not be credible from a nonproliferation standpoint. The United States should insist that India place all facilities not exclusively engaged in nuclear weapons work (including all civil spent nuclear fuel and its pilot uranium enrichment plant at Mysore) under permanent INFCIRC/66 safeguards to reduce the chance of diversion for military purposes.³

3. Implications of Civil Nuclear Cooperation for India’s Nuclear Bomb Program

Even if India’s civilian-military separation plan is deemed “credible” and all facilities declared civil are placed under permanent INFCIRC/66 safeguards, the supply of foreign nuclear fuel to India would still free-up India’s existing capacity to produce plutonium and highly enriched uranium for weapons and allow for the rapid expansion of India’s nuclear arsenal.

In its response to a question from Rep. Markey about the possibility of imported nuclear fuel freeing up India’s fissile material production capacity, the State Department does not deny the possibility and simply asserts that “the growth of India’s nuclear program is evidently not constrained by access to natural uranium.”

This response does not take into account several scenarios that could allow India to use newly unallocated domestic uranium to support fissile material production for weapons purposes. For instance, if India built a new plutonium-production reactor or designated some of its existing civilian heavy water reactors for the military program to augment its two existing plutonium production reactors (CIRUS and Dhruva), the additional increased consumption of domestic uranium supplies for plutonium production would be compensated for by access to imported uranium for safeguarded power reactors. And, if India no longer needs to rely on domestic uranium to fuel its power reactors, it could also expand its small-scale centrifuge enrichment program to make high enriched uranium to support nuclear weapons production.⁴ Congress should bear these possibilities in mind in evaluating executive proposals on civil nuclear cooperation.

In order to avoid indirect assistance to India’s nuclear weapons program, Congress should ensure that India commits to halt fissile material production for weapons purposes pending a Fissile Material Production Cut Off Treaty (FMCT). We would note that all five of the original NPT nuclear-weapon states are all believed to have suspended fissile material production for weapons.

³ For further information, see: “Separating Indian Military and Civilian Nuclear Facilities,” by David Albright and Susan Basu, Institute for Science and International Security, December 19, 2005.

⁴ For further analysis, see: “Wrong Ends, Means, and Needs: Behind the U.S. Nuclear Deal with India,” by Zia Mian and M. V. Ramana, *Arms Control Today*, Jan./Feb. 2006.

Senior U.S. and Indian officials suggest that a fissile production ban is a “deal-breaker” and note that India is committed to working with the United States to achieve an FMCT.

It is, of course, up to India to choose whether it wants to keep its nuclear weapons options open or whether it wants to expand its energy output with nuclear technology. But it is the responsibility of the president and Congress not to aid and abet any other state’s nuclear bomb program.

4. Improper Use of “Civil” Nuclear Assistance

U.S. efforts to establish the Nuclear Suppliers Group and the 1978 Nuclear Nonproliferation Act were a direct response to India’s 1974 nuclear weapon test explosion. That test device used plutonium produced by a Canadian supplied reactor (CIRUS) moderated with heavy water supplied by the United States under a 1956 contract stipulating that it be used only “for research into and the use of atomic energy ‘for peaceful purposes.’”

To this day, India does not deny the 1974 test device used Canadian and U.S. equipment and materials, but asserts that it did not violate the terms of its U.S. and Canadian “peaceful uses” contract requirements because the test was a “peaceful nuclear explosion.”

In response to a question from Rep. Markey, the State Department states that there is “factual uncertainty as to whether U.S.-supplied heavy water contributed to the production of the plutonium used for the explosive device, and the lack of a mutual understanding between the U.S. and India on the scope of the 1956 contract language. We have since made clear that we exclude so-called ‘peaceful nuclear explosions’ —and any other nuclear explosive activity—from the scope of peaceful nuclear cooperation.”

However, as a recently declassified Feb. 23, 1972 memo from the State Department to the CIA documents,⁵ the United States and Canadian governments interpreted their agreements as “precluding all nuclear explosions on the grounds that any such explosion in tantamount to a nuclear weapons test” and made this interpretation clear to India before the 1974 bomb test.

Most importantly, India continues to utilize CIRUS to produce plutonium for its nuclear weapons program in contravention the original peaceful nuclear use agreement with Canada. The U.S. government should call on India to cease using CIRUS for weapons production purposes in violation of commitments made to other governments.

5. India’s Export Control Performance

India’s export control performance is less than “impeccable” as claimed by some U.S. and Indian officials. Between 2001 and 2005, the United States levied sanctions on 7 Indian entities a total of 8 times, making Indian entities the third most frequently sanctioned for WMD-related violations under U.S. law (behind North Korea and China). Nevertheless, the State Department asserts that “we believe India has a solid record

⁵ Memorandum from Ray S. Cline, Director of Intelligence and Research, State Department, to Richard Helms, Director Central Intelligence Agency, “Possibility of an Indian Nuclear Test,” Feb. 23, 1972.

overall of ensuring that its nuclear-related expertise and technologies do not pose a proliferation risk”

Although India adopted new export control legislation covering WMD and delivery systems in 2005, the record of implementation of the law has not been established and, according to the State Department’s own admission, it does not contain “catch all” controls to prevent the re-transfer of dual-use foreign technology and equipment.

In addition, independent reports have documented that Indian nuclear organizations use a system that hires domestic or foreign non-nuclear companies to acquire items for these nuclear organizations. Such procurement practices are also being employed for the Indian Department of Atomic Energy’s secret gas centrifuge uranium enrichment plant near Mysore.⁶

Before making changes to U.S. laws to facilitate full civil nuclear cooperation with India, Congress should ensure that private or governmental Indian entities have not been found to have engaged in illicit procurement for Indian nuclear facilities and activities, and that India’s export control system is implemented to the same standards as the United States. Violation of these standards should be grounds for terminating nuclear cooperation.

6. Damage to Other Nuclear Nonproliferation Efforts

In its responses to questions the State Department claims that “While we will continue to work with India and to encourage it to do more on the nonproliferation front ... India’s implementation of its commitments will, on balance, enhance global nonproliferation efforts.” We disagree.

A sober analysis reveals that the nonproliferation benefits of the original proposal are overstated and the damage to the nonproliferation regime is potentially high.

India’s Nonproliferation Pledges

The proposed U.S.-India nuclear cooperation arrangement is premised on the idea that India is prepared to “assume the same responsibilities and practices” as other nuclear-weapon states. Unfortunately, the existing terms of the proposal would not oblige New Delhi to undertake the same practices as the five original nuclear-weapon states, including a halt of production of fissile material for weapons and signature of the Comprehensive Test Ban Treaty (CTBT). Nor would it commit India to an “early cessation of the nuclear arms race” and disarmament, as Article VI of the NPT requires.

It is important to note that in June of 1998, the UN Security Council adopted Resolution 1172, which calls upon India (and Pakistan) to immediately stop their weapon development programs, halt fissile material production for weapons purposes, and to sign the CTBT, among other nonproliferation measures.

On July 18, Indian Prime Minister Singh did reiterate India’s long-standing support for the negotiation of a global FMCT. This is positive but is not a new pledge. India has for several years stated its support for the negotiation of a verifiable FMCT, but negotiations toward such a treaty have been deadlocked since 1997, most recently because of the

⁶ Testimony of David Albright, President of the Institute for Science and International Security, House International Relations Committee, October 26, 2005.

United States' opposition to the negotiation of a "verifiable" FMCT. Until such time as the U.S. government adjusts its position, the realization of the FMCT will remain a distant goal.

In its response to a question from Rep. Markey, the State Department also says: "We would call upon both [Pakistan and China] to also agree, as India has, to work toward a Fissile Material Cutoff Treaty; and we stand ready to explore interim objectives." One interim objective would be a regional fissile production cut off pending the FMCT.

The July 18 Joint Statement also reiterates India's commitment to maintain its moratorium on nuclear test explosions—a pledge that it has made before in other contexts. All of the other original nuclear weapon states are not only observing unilateral moratoria, but they have also signed the 1996 Comprehensive Test Ban Treaty.

The July 18 Joint Statement also commits India to refrain from transfers of sensitive technology, strengthen its national laws against such activity, and harmonize its export control lists with the Missile Technology Control Regime (MTCR) and the NSG. These actions, however, are fundamentally in India's own national interest and were in motion before the July 18 Joint Statement. Furthermore, India is obligated under UNSC Resolution 1540 to strengthen its efforts to prevent WMD-related proliferation.

Bending the Rules

Making exceptions to the NPT and longstanding nonproliferation rules compromises the integrity and enforceability of those rules. Other "responsible" non-nuclear weapon states have for decades remained true to the original NPT bargain and forsworn nuclear weapons 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 different choices on other critical nuclear nonproliferation issues in the future if exceptions are made for other countries.

Finally, civil nuclear assistance with India is currently prohibited by rules adopted in 1992 by the 45-nation NSG at the behest of the United States. In response to questions, the State Department asserts that it is "our firm intention that the NSG maintain its effectiveness, and we will not undercut this important nonproliferation policy tool," and "the U.S. proposal neither seeks to alter the decision-making procedures of the NSG nor amend the current full-scope safeguards requirement in the NSG guidelines."

Seeking a country specific exception to basis NSG rules would, however, undercut the effectiveness of this voluntary body if it encourages others to seek exceptions for their preferred trade and military partners or leads them to ignore NSG rules when it suits them. Congress should insist that possible implementation of broader U.S. nuclear cooperation with India is contingent upon consensus approval of any India-specific exception to NSG guidelines.

Conclusion

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.