

Policy Dialogue Brief

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The US-India Nuclear Cooperation Agreement: Issues for the Nuclear Suppliers Group

In July 2005, US President George W. Bush and Indian Prime Minister Manmohan Singh agreed in principle to greatly expand strategic cooperative efforts. While most agree that strengthening bonds between the United States and India is valuable for a multitude of reasons, the signed agreement included one component that continues to be dramatically contentious and worthy of special attention: the desire to engage in nuclear cooperation. The agreement would, for the first time in history, actively encourage and facilitate nuclear cooperation between the United States and a country—India—that is not a signatory to the Non-Proliferation Treaty (NPT) and has not yet accepted the accompanying international obligations, such as rigorous safeguards over its civilian nuclear activities. US law has prohibited nuclear cooperation with states not meeting these standards since the creation of the treaty and the modern nonproliferation regime.

Following up on the July 2005 meeting, US President Bush and Indian Prime Minister Singh met again in March 2006 to solidify their overall cooperation agreement. In order to move forward with the nuclear cooperation component, India was required to complete a policy plan to separate civilian and military components of their nuclear infrastructure and to declare which facilities will be available to international safeguards and oversight from the International Atomic Energy Agency (IAEA). Having now completed that step, the Bush administration is set to move forward on the two legal hurdles they will need to overcome to achieve this radical departure from nonproliferation policy. First, the US Congress will need to amend the 1954 Atomic Energy Act to allow for nuclear sharing between the United States and a country that is not part of the NPT and has not accepted full-scope safeguards

(India's stated position). Second, if Congress approves, the United States will need to get further approval from the Nuclear Suppliers Group (NSG), whose nonproliferation regulations closely follow US law.

The issue has proved contentious for the US Congress, which according to many observers is in a "no-win" situation: if they reject the agreement, they risk damaging their relationship with an increasingly powerful and influential democracy; yet, if they accept it, they could jeopardize the stability of current global nonproliferation policy. The issue has faced fierce debate in Congress, and though the leaders of both countries are hoping to see passage of the agreement by the end of the year, the level of controversy surrounding the issue puts it at risk of being put aside until next year, an outcome that would be viewed as unfavorable by both sides.

To date, the US House of Representatives has passed a resolution that would allow cooperation between the two countries, although in a sign of concern over the arrangement, the House bill added conditions that would encourage India to work toward a fissile material cutoff and take preapproval of any deal out of the hands of the president. The US Senate has not yet voted on its version of the bill and has only a narrow window of time to address the issue in September if it adheres to its current legislative calendar and recesses early for the year to prepare for congressional elections. Additionally, Senator Richard Lugar (R-IN) has attached a provision that would commit India to adhering to the IAEA Additional Protocol, which would allow for more stringent inspections and monitoring of India's civilian nuclear activities.

India has strongly opposed any preconditions added to the president's agreement.

This brief summarizes the primary findings of the conference as interpreted by the rapporteur, Natasha Wilson, and Program Officer Matthew Martin. Participants neither reviewed nor approved this brief. Therefore, it should not be assumed that participants subscribe to all of its recommendations, observations, and conclusions.

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Outstanding issues in Congress remain, then, regarding passage of the US Senate bill, reconciliation between the House and Senate bills and, finally, what actions President Bush will take to ameliorate the disparate concerns posed by the US Congress and the government of India.

The Stanley Foundation's UN NSG Briefing

In April 2006 the Stanley Foundation hosted a luncheon and briefing entitled "The US-India Nuclear Cooperation Agreement: Issues for the Nuclear Suppliers Group" at the United Nations in New York. This meeting brought together 35 representatives from the 45 countries in the NSG and two congressional staff members from Washington, DC, to discuss the issues surrounding this agreement. If the US Congress passes its nuclear cooperation legislation, whether in 2006 or later, the NSG will play a critical role in approving and implementing the agreement and, as such, briefings to inform and discuss the issue are essential.

The briefing was led by two keynote speakers who presented and debated both sides of the issue, bringing to light some of the major divisions forming this controversy and making some of their own recommendations for the future of the agreement. Both President Bush and Prime Minister Singh have pointed to India's growing electricity and energy needs as the heart of this agreement, stating that Indian civilian nuclear progress is crucial if it is to support its growing population and changing development needs in a sustainable way. The speakers addressed the validity of this argument and contrasted it with concerns about the possible expansion of India's nuclear arsenal, nuclear stability in the region (especially relating to Pakistan and China), potential threats to the legitimacy of the NPT and other agreements among the declared nuclear states, and likely effects on the US-Indian relationship. While the speakers displayed a high level of contention surrounding nearly all of these issues, both did agree that the agreement ultimately should pass, though they disagreed somewhat on the ideal terms of agreement. Both also challenged the fear that this agreement would generate a nuclear arms race between India and Pakistan or India and China, portraying this outcome as unlikely. Finally, they presented their recommendations for the agreement and the future of US-Indian relations and responsibilities of nuclear states.

Energy Crisis?

As stated, the argument driving this agreement is that India's stability is directly related to its ability to sustain its energy needs in support of its steadily growing and developing population. For those in favor of the agreement, this is the focal point of the argument: that the agreement has "nothing to do" with the development of India's nuclear weapons arsenal and everything to do with energy and poverty issues. Furthermore, this line of thinking addresses the critics' argument that the import of foreign uranium for civilian development will allow domestic uranium to be

used for military purposes instead of civilian ones by explaining that India, if forced to choose between civilian and military purposes because of a lack of resources, will choose security because of its regional situation. Accordingly, this agreement is essential in order to ensure that India has enough uranium available to supply its security and energy needs.

The opposing argument counters that there would be little or no disagreement if the deal were only about electricity and energy but that in fact it encompasses nuclear weapons as well. Constraints that would have made the deal only about electricity were intentionally left out because neither country wanted them in place. The United States has promised India fuel supply in perpetuity without calling on India neither to sign the Comprehensive Test Ban Treaty (CTBT) nor to agree to a moratorium on production of fissile material, both of which are characteristics of the five recognized nuclear states (the United States, Great Britain, France, Russia, and China).

On the other hand, the "in perpetuity" provision not only includes US fuel supply to India but also requires in perpetuity safeguards from India, which, according to some, were a large concession from India. This provision means that India cannot elect to shift fissile material back and forth between civilian and military reactors—an especially large concession as the five officially declared nuclear states does not have to follow this same rule.

Singular Exception

For those who prioritize maintenance of the nonproliferation regime as paramount, making a singular exception to the NPT rules-based system for the case of India is dangerous on its face, as it may weaken international norms. From this perspective, this deal could make it easier for dangerous weapons and materials to fall into the wrong hands and would ultimately force more exceptions to be made, as historical precedence has proven that one exception will always lead to another. There may be a fault line in the NPT that makes the most important stakeholders in the NPT the same countries who have the most to gain if nuclear commerce rules are relaxed. This fault line would become the base of an unfortunate future in which profit taking supersedes concerns about proliferation, ultimately weakening the nonproliferation system. In short, as one observed, "If the exceptions are so severe that the general rule-making that guides others is weakened, then there is a net nonproliferation loss."

Conversely, it has been argued that the singular exception that should be of greatest concern is not that of India, but rather the exception that has been made for the United States and the other four nuclear countries (Great Britain, France, Russia, China) in terms of their obligations to reduce and eliminate their own nuclear weapons. Article VI of the NPT stipulates that the five declared nuclear weapon states ("P-5") would negotiate on nuclear reduc-

tions and eventual disarmament; however, these countries have, by and large, ignored this commitment. They refused to follow it even when India offered in 1988 to stop its nuclear development program if the five nuclear states would fulfill the promises of Article VI over a 22-year period. It is then hypocritical to disallow one exception, while simultaneously basing national security strategies on another.

Pushing the point, contained in the current nuclear agreement is another double standard that India must agree to while the P-5 do not: the “in perpetuity” safeguards that will rigidly separate their civilian and military sectors. In the face of such a significant concession on the part of India, then, ultimately the issue is not one of making a singular exception but rather the need to promote equity in the international power structure by holding India to the same rules and standards that other nuclear powers follow.

Despite the diverse opinions expressed regarding the exceptionality of the US-India nuclear cooperation agreement, there was broad agreement on this point: neither more nor less should be expected of one nuclear power versus another.

Recognition and Effect on US-Indian Relations

This classification of India as a nuclear power brought up another point of contention: the prudence of openly recognizing India as a nuclear state. Though it has not done so officially, through this agreement, the United States has implicitly recognized India’s nuclear weapon status by agreeing to a separation of civilian and military reactors; until this point, states that were not part of the NPT have not generally been recognized as legitimate nuclear powers and have themselves been hesitant to acknowledge or make public their nuclear weapon status. From one perspective, the recognition of India as a nuclear power is a positive move as it could open the way to more honest and inclusive dialogue on global nuclear arms reductions. However, critics point to the danger of recognizing a state’s nuclear capacity without obligating them to sign the NPT as potentially opening a floodgate for other states to demand similar privileges. The recognition of India’s nuclear status could lead to pressure for equal treatment for Pakistan and Israel and perhaps, eventually, Iran. Still, the growing stature of US-Indian relations might have been hampered without this recognition of India’s status and without US willingness to overcome this historical “hang-up” and acknowledge India as a nuclear weapon state without their signature on the NPT.

However, it has been argued that the relationship between the United States and India is not contingent upon the success of this nuclear agreement. The two countries have agreed to move forward in many other areas, including space and defense cooperation, agriculture, trade, etc., and those cooperative efforts are not dependent upon the

nuclear deal. Although the US-Indian nuclear relationship (or lack thereof) has long been a point of contention between the two countries, then, even the failure of the nuclear agreement would almost certainly not be a deal-breaker for US-Indian relations in general.

From an Indian domestic political situation, though, some considered that serious negative consequences would result if this deal was not passed. In this opinion, the failure of the agreement would weaken the current Indian government, which many view as an increasingly important democratic ally. Furthermore, rejection of the nuclear deal might lend strength to the “nuclear hawks” in India who have already been working on and testing nuclear weapons in that country. Ultimately, the failure of the agreement would be viewed as a dismissal by the United States of India as a significant and respected global actor, which would damage both countries’ abilities to perform in global affairs and would greatly weaken the relationship between the two.

Recommendations

Overall, participants saw a possibility of a path forward to a nuclear agreement between the United States and India, offering different suggestions as to how to achieve its successful enactment. The difference of opinion spanned the degree to which the current form of the agreement would need to be amended and the recommendations for such changes. In the words of one, his “advice would be not to say no to this deal, but to set standards that are protective of the regime and leave it to India to choose the time, whenever that may be, to meet your standards that are protective.” As the NSG organizationally works by consensus, these suggested standards would assume that the consensus rule would stand and would encourage the NSG to maintain it and to insist upon high standards for countries seeking special benefits.

For those concerned most about nonproliferation damages stemming from this agreement, the goal of restricting recommendations ultimately is to be more protective of the nonproliferation system, pointing out that a country like India that is seeking special benefits must also be held to special responsibilities to keep them as accountable as the declared nuclear states. Accordingly, four recommendations were proposed:

- India must be required to sign the CTBT, as the P-5 have, in order to control its ability to conduct nuclear tests.
- India should, in line with the P-5, agree to a moratorium on the production of fissile material for weapons.
- India should accept the same rules on export and import controls as other nuclear countries, with special attention being paid to make sure that they are implemented properly.

- India should follow equally rigid protections and security measures on their nuclear facilities and materials, being sure to protect them against theft or diversion.

These recommendations would ask India only to be as responsible and accountable with their nuclear infrastructure as the recognized nuclear states and, with this understanding, these criteria would increase the equity of the situation and would help protect the nonproliferation regime.

Conversely, others countered that any limitations on India's nuclear capacity should ideally include similar limitations on China's and Pakistan's nuclear capacity as well, in order to make reasonable the requests to India, in light of its security concerns. Similarly, support for "an equitable cutoff" of the production of fissile material should be equally conditioned on the involvement of China and Pakistan "in verifiable ways" for it to be feasible. It is worth noting, however, that a unilateral moratorium in India's case would not be equitable in the global environment, as the five nuclear states have not been able to agree on a Fissile Material Cutoff Treaty, either.

So then the priority shifts to equality across the board for all states with nuclear status. As discussed previously, the five established nuclear states have fallen short in many instances of maintaining their own responsibilities. In that light, the question no longer is whether India should be responsible with its nuclear development but rather whether developing strict standards for India is fair when compared with other nuclear weapon state obligations.

Conclusion

With the high level of debate and uncertainty in Congress over this issue, it was surprising that the speakers at the briefing were able to agree in principle that this deal should pass, albeit with different stipulations attached. The debate made clear the difficulties that Congress and the NSG are facing in reconciling this situation, and as debate continues domestically in each country and in the international arena, it is important for the various decision-making bodies to consider the concerns at hand, especially regarding standards for responsibility and accountability for India and their relationships with the five declared nuclear powers. It is clear that in a larger sense, the nonproliferation regime is being challenged in a time of transition, which has been approaching for a long time, not least as a result of countries outside of the NPT demonstrating their own nuclear capacity.

Therefore, the speakers agreed that the future stability of the nonproliferation regime will rest upon the determination and actions of all the nuclear states, which must hold themselves and one another accountable, be responsible, and take careful consideration of nuclear developments. The recognition of India as a nuclear state could change the dynamics of the nonproliferation regime, but the speakers also made it clear that all of the members of this regime are also responsible

for controlling the dynamics of the system and guarding its rules and stability in order to protect against unsafe, uncontrolled, or irresponsible nuclear development.

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Affiliations are listed for identification purposes only. Participants attended as individuals rather than as representatives of their governments or organizations.

The Stanley Foundation

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