

## The Impact of the U.S.-India Deal on the Nonproliferation Regime

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Washington, D.C.

February 15, 2006

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Unless it is substantially modified as a result of ongoing negotiations, the U.S.-India nuclear deal announced on July 18, 2005 will contribute to an increased risk of proliferation and nuclear war in at least five ways:

1. It permits India, with few concessions, to accelerate its production of nuclear weapons by reserving its entire indigenous production of uranium and stockpile of plutonium for weapons manufacture or weapons-related R&D.
2. It undermines the Nuclear Nonproliferation Treaty (NPT) by devaluing the commitments made by non-weapon states in order to receive peaceful nuclear technology assistance, and by weakening weapon-state commitments under Article I.
3. It strengthens the resolve of Iranian nationalists to defy the international community by creating a bad precedent for treating violators of nuclear agreements.
4. It demolishes the norm of full scope safeguards as a criterion for exporting nuclear materials, equipment, and technology to non-signers of the NPT.
5. It raises questions about the commitment of the weapon states to nuclear disarmament under Article VI of the NPT.

I will now discuss these five points in detail.

### **1. India's weapon production**

Currently, India must divide its indigenous uranium production between military and civilian applications. Indeed, one of the reasons that India is interested in a nuclear deal is that it does not have the uranium fuel production capacity to fulfill its weapon and civilian nuclear power goals simultaneously. Thus, the U.S.-India deal enables India to ramp up its weapon production, an arguable violation of the U.S. obligation under Article I of the NPT to not assist "in any way" a non-weapon state (defined by the NPT to include India) to make nuclear weapons.

Pakistan, having fought three wars with India since 1948, is sure to follow suit in ramping up its own production of nuclear weapons, perhaps with foreign help, thereby accelerating the nuclear arms race in South Asia.

In the February 13 and 20 issue of the New Yorker, Steve Coll recounts how, over a few months between December 2001 and late May 2002, India and Pakistan went to the brink of war as a result of vicious jihadist attacks on India that the Indians believed were assisted by Pakistan. At the same time, Pakistan believes that India provides covert support for insurgent groups in Pakistan, including the separatists in Baluchistan. Both are probably correct in their beliefs, and are using surrogates to inflict damage on each other. But, as Coll points out, the surrogates are not completely controllable,

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have their own agendas, and might even conclude that their cause could benefit from war between India and Pakistan.

Terrorist attacks, as we have seen in our own country, can put an attacked nation in a jingoistic mood and cloud judgment. During the crisis in 2001-2, some Indians were quoted as boasting they could lose Delhi, Bombay, and Calcutta, and still annihilate Pakistan. This kind of talk contributed to a discussion of evacuation plans by our embassy (then headed by Ambassador Robert Blackwill, a major proponent of the U.S.-India nuclear deal). The national security advisor to then Prime Minister Vajpayee told Coll that India did indeed come very close to launching an attack on Pakistan, but that Vajpayee decided against it because he wanted to retire being known as a man of peace.

The jihadi groups are still operating and the risk of an event that could bring on war between India and Pakistan still exists. Is this the time to provide impetus for both sides to ramp up their weapon production? How is this in the U.S. national security interest?

## 2. The NPT

There are 189 countries in the world that have signed the NPT. Except for the recognized 5 weapon states, and leaving aside North Korea, that leaves 183 nations that have pledged to not make nuclear weapons and have their pledge verified through full scope safeguards applied by the International Atomic Energy Agency (IAEA). In return, under Article IV of the Treaty, these countries are entitled to develop nuclear energy for peaceful purposes and to receive assistance in that development. For at least some of those countries, including Japan, Germany, and Brazil, the decision to give up their right to make nuclear weapons was not an easy one. So let's compare what these countries must do to receive nuclear trade with what the Indians must do under the U.S.-India agreement.

First, as mentioned, non-weapon states under the NPT cannot make nuclear weapons while India can make all the weapons it wants.

Second, all non-weapon states under the NPT must accept IAEA safeguards on all their nuclear materials and facilities. Under the U.S.-India agreement, India need only accept safeguards on its designated peaceful nuclear facilities. Moreover, the Indians are arguing for voluntary safeguards which can be removed at any time, similar to what the weapon states under the NPT now do, although the U.S. is resisting the Indian demand for now. The U.S. is asking the Indians to accept safeguards on their civilian facilities under IAEA INFCIRC 66, Rev.2, which would require that safeguards be applied to those facilities in perpetuity. The Indians have also indicated that they will oppose placing safeguards on their breeder program, including their breeder R&D program and the reactors needed to produce plutonium for the breeder. If this demand is met, it would mean a large scale future increase in India's weapon production capacity. This is in contrast to NPT parties with breeder programs, like Japan, whose programs are completely covered by IAEA safeguards. Although the Administration has indicated that the U.S. has no intention of assisting the Indian breeder program, it is difficult to see how the U.S. will avoid doing so indirectly via sales of dual use equipment and technology, sales that will also likely help India's weapon program more broadly. It is not a stretch to argue that, in carrying out this agreement, the United States will be in violation of its commitment under Article I of the NPT to not assist "in any way" a non-weapon state (as defined under the NPT which includes India) to make nuclear weapons.

The apparent double standard that allows India to escape full scope safeguards and still obtain nuclear assistance while countries like Japan, Germany, and Brazil are held to a tougher standard is a prescription for trouble. Countries may not leave the NPT over this issue, although one cannot be absolutely sure, but the commitments of countries to the Treaty will surely be weakened, and may show up in lower support for tough measures of enforcement for violators of nuclear norms. It will make it easier for China to assist Pakistan in its nuclear weapons program, and for Russia to assist Iran without anyone suggesting that they are violating Article I.

## 3. Iran

The aggressive stance taken toward Iranian nuclear safeguard violations stands in sharp contrast to

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the forgiveness of Indian transgressions represented by the U.S.-India nuclear agreement. Indeed, the chief Iranian negotiator, Ali Larijani, referenced the deal with India in one of his statements complaining of discrimination against Iran.

The Administration has tried to soft pedal India's nuclear violations in its answers to a series of questions posed by Senator Lugar about the nuclear deal. Recall that India claimed at the time of its 1974 test explosion that it was a "peaceful nuclear explosion" and was therefore in keeping with the contracts it signed with Canada and the U.S. for the reactor and heavy water used to produce the plutonium for the explosive device. In its answers to Lugar, the Administration said it was "not possible" to determine whether India's actions in 1974 were inconsistent with a peaceful use pledge for the heavy water. It said that was "due to the factual uncertainty as to whether U.S.-supplied heavy water contributed to the production of the plutonium used for the device and the lack of mutual understanding of the scope of the 1956 contract language" pertaining to the U.S. heavy water in India.

Well, this leaves out two important facts.

First, about the heavy water: The administration has raised an issue which was raised and settled at a hearing of the Senate Committee on Governmental Affairs in 1976. The State Department of the Ford Administration at that time had claimed that the heavy water provided by the U.S. to India for the CIRUS research reactor, which had begun operating in 1960, was gone by 1974 due to a leakage rate of 10% per year in the reactor. However, Canadian nuclear scientists had told the committee that the leakage rate was closer to 1% per year. A simple calculation shows that even with a loss rate of 10% per year, the percentage of U.S. heavy water in the reactor would still be about 23% in 1974, and, of course, most of the plutonium for the test was produced earlier than the date of the explosion. A loss rate of 1% would mean that more than 90% of the heavy water in CIRUS would still be that of the U.S. in 1974, and that, in either case, there was high likelihood of U.S. heavy water involvement in the 1998 tests as well.

Now, as to the mutual understanding of the heavy water contract:

Four years before the Indian test, the U.S. government presented India with a secret aide-memoire that reiterated and clarified what "peaceful purposes" meant. I learned about this document during the Senate debate over the application of the Nuclear Nonproliferation Act (NNPA) to a proposed nuclear fuel shipment for the Tarapur reactors in India. On behalf of Senator Glenn, for whom I was working at the time, I asked the State Department to declassify the document, and they did so on September 19, 1980. I would like to read this 2-page document, which is attached to my statement as an appendix, because it shows the utter disingenuousness of the State Department answer to Senator Lugar.

As if this isn't enough, the former Director of India's nuclear program, Raj Ramanna, speaking to the Press Trust of India on October 10, 1997, said this:

"The Pokhran test was a bomb, I can tell you now. An explosion is an explosion, a gun is a gun, whether you shoot at someone or shoot at the ground...I just want to make clear that the test was not all that peaceful."

Independently of the amount of U.S. heavy water still extant in the CIRUS reactor, India has, for over 30 years, been in continuous violation of the peaceful use requirement that Canada placed on the reactor.

Is it any wonder that Iranian nationalists could look at this record and conclude that they are being singled out for adverse discriminatory treatment?

More to the point, if the Indians don't acknowledge publicly that their claim of not having violated the CIRUS-related contracts was a false claim, then how can we be sure that a similar sham interpretation of a new nuclear agreement with the U.S. will not occur again that might allow a crossover of civilian activities into the military program?

## 4. Full Scope Safeguards

The Nuclear Nonproliferation Act of 1978 was signed into law by President Jimmy Carter on March 10, 1978. It was the culmination of well over a year of intense work, and included months of negotiations with four Executive Branch agencies on aspects of the Bill. Nothing was more contentious than the requirement of full scope safeguards for U.S. nuclear exports. The Carter Administration was initially split on it because of heavy opposition by foreign governments and by the U.S. nuclear industry. But in the wake of Desert Storm and the revelations about the Iraqi nuclear program, the NSG wanted to strengthen export controls. So full scope safeguards was adopted as an export criterion by all members of the NSG in 1992. Subsequent to that, all NPT parties endorsed full scope safeguards at the 1995 NPT Review Conference, a decision that was reaffirmed at the 2000 Conference. In short, full scope safeguards has evolved into a global norm. The U.S.-India agreement flies in the face of this norm. Thus, for the agreement to be implemented, the U.S. will have to exempt India from this fundamental requirement in U.S. law and in the rules of the NSG. Although France and Russia have indicated support for such a move, other members of the NSG are currently opposed.

The abandonment by the U.S. of the requirement of full scope safeguards for India with no countervailing advancement of nonproliferation goals is a serious setback to the cause of nonproliferation. It reduces the political barriers to unrestrained nuclear trade with Pakistan, which, through the Khan network, spread nuclear weapons technology to Iran, North Korea, Libya, and undoubtedly others. China, a long term friend of Pakistan, will watch this reduction of export controls with interest. And, as other countries watch India receive nuclear assistance without the requirement of inspections on all its nuclear activities, it is hard to see how the U.S. will persuade additional countries to agree to the more intrusive safeguards associated with the so-called Additional Protocol to IAEA safeguards agreements.

## 5. India vis-à-vis the weapon states

What is particularly amazing about the U.S.-India deal is that it not only recognizes and legitimizes India's nuclear weapons, it actually requires less of the Indians than what the 5 recognized nuclear weapon states have already committed to do in furtherance of their obligations under Article VI of the Treaty. Unlike India, the U.S., UK, France, Russia, and China have all agreed to cease production of fissile material for nuclear weapons and all have signed on to a Comprehensive Test Ban (though the U.S. has yet to ratify the treaty). India's agreement to continue its voluntary moratorium on testing is less binding than a signature on an international treaty. Moreover, although the U.S. has backtracked from its agreement with the other weapon states at the 2000 NPT Review Conference to follow the "13 practical steps" to fulfill their obligation to pursue systematic and progressive efforts to implement Article VI, the basic requirement of pursuing good faith efforts toward nuclear disarmament is still extant. The U.S.-India agreement puts no such requirement on the Indians. Thus, the Indians are being treated more favorably than the nuclear weapon states under the NPT. This will be interpreted by some as blatant evidence of contempt by the United States and other weapon states toward the requirements of Article VI. The fight over the inclusion of Article VI at the time of the negotiations of the NPT suggests that this will be a continual irritant every time the NPT Review Conference convenes, with unpredictable consequences for nonproliferation in the future. To sum up, unless the negotiations with the Indians produces a clear nonproliferation benefit, including at the very least an end to fissile material production for nuclear weapons, the deal is a net loss in the fight against the spread of nuclear weapons and raises the risk of nuclear war.

- [India](#)
- [Nuclear Nonproliferation Treaty](#)
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