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The U.S.-India Nuclear Deal

Mr. Chairman, thank you for the opportunity to testify before the Committee on the nonproliferation implications of the recent agreement between the United States and India on civil nuclear cooperation.

The United States has an important national interest in strengthening relations with India and making it a strategic partner in the 21st century. But efforts to strengthen the U.S.-Indian relationship should not be pursued in a way that undermines a U.S. national interest of equal and arguably greater importance – preventing the proliferation of nuclear weapons. That is precisely what the Bush Administration has done in the nuclear deal reached this past summer during Prime Minister Manmohan Singh's visit to Washington.

In the Joint Statement released on July 18th, India agreed to take several steps to demonstrate its commitment to being a responsible nuclear power and a supporter of nonproliferation goals. In exchange, the U.S. Administration agreed to seek changes in U.S. law and multilateral commitments to permit exports of nuclear equipment and technology to India – a radical departure from longstanding legal obligations and policies that precluded nuclear cooperation with states not party to the Nonproliferation Treaty (NPT).

Administration officials have claimed that the deal, by aligning India more closely with the policies and practices of the international nonproliferation regime, is a net gain for nonproliferation. In his testimony before this Committee on September 8th, Under Secretary of State Robert Joseph maintained that "India's implementation of its agreed commitments will, on balance, enhance our global nonproliferation efforts, and we believe the international nuclear nonproliferation regime will emerge stronger as a result." Upon close scrutiny, however, it appears that the nonproliferation benefits of the July 18th Joint Statement are rather limited.

Nonproliferation gains are modest

Several of the steps pledged by India are simply reaffirmations of existing positions, including India's commitments to continue its unilateral moratorium on nuclear weapons testing, strengthen its national system of export controls, and work toward the conclusion of a multilateral fissile material cutoff treaty. In view of unsuccessful efforts for over a decade to get negotiations underway on a fissile material cut-off treaty and no

near-term prospect of removing obstacles to beginning negotiations, this last pledge is unlikely in the foreseeable future to have any effect on India's ongoing program to produce more fissile materials for nuclear weapons.

Other Indian commitments in the Joint Statement break new ground, but their actual nonproliferation gain is modest. For example, the pledge to refrain from transferring enrichment and reprocessing technologies to countries that do not already possess them is welcome. But since India – to its credit – has never transferred those technologies and has no plans to do so, it will have little practical consequence. Moreover, adherence to the guidelines of the Missile Technical Control Regime and the Nuclear Suppliers Group (NSG) is also positive; but it is a step New Delhi was already planning to take before the July 18th Joint Statement as part of a U.S.-Indian dialogue on technology transfer and export control called “Next Steps in the Strategic Partnership.”

The commitment that has drawn the most criticism within India is the pledge to separate civilian and military nuclear facilities and place civilian facilities voluntarily under IAEA safeguards and the Additional Protocol. Indian critics claim that, because of the co-location of civilian and military activities at a number of Indian nuclear facilities, implementation of the commitment could be expensive and time-consuming and could impose unwarranted constraints on military programs. In response to these concerns, Indian officials have stressed that India alone will decide which facilities are subject to safeguards and have suggested that only a relatively small number will be put on the civilian list. While recognizing that the designation of civilian facilities (i.e., those eligible for safeguards) is an Indian prerogative, U.S. officials have made clear that, to be credible, any list should be complete.

However, regardless of how inclusive or selective the list turns out to be, the nonproliferation value of India's commitment to place certain nuclear facilities under IAEA safeguards will be rather limited. The purpose of IAEA safeguards for non-nuclear weapon states party to the NPT is to verify that no nuclear materials are diverted to a nuclear weapons program. But as long as India continues to produce fissile materials for nuclear weapons (at facilities not included on the safeguards list), its willingness to apply safeguards to facilities designated as civilian serves primarily a symbolic function – to reduce the perceived discrimination between countries that are obliged to accept safeguards on all their facilities and those that are not.

Beyond this symbolic value, willingness to put civilian facilities under safeguards also serves a more practical function. If members of the Nuclear Suppliers Group change their rules and permit nuclear cooperation with India, they will presumably confine such cooperation to safeguarded facilities in India. (NPT Article III(2) obliges them to engage in nuclear cooperation only with safeguarded facilities in non-weapon states. Since the Bush Administration is not seeking to give India nuclear weapon state status under the NPT, III(2) will continue to apply to India.) The list of safeguarded Indian facilities will therefore serve to define the scope of permissible nuclear cooperation. For India, the trade-off will be between broadening the list (to expand opportunities for cooperation) and narrowing the list (to shield facilities from international scrutiny). However it

chooses, the fundamental shortcoming of India's July 18th safeguards commitment remains – it has no effect on India's ability to continue producing fissile material for nuclear weapons at facilities not designated as eligible for safeguards.

Downsides of the deal

Administration officials are right that the various pledges contained in the Joint Statement move India closer, both in rhetorical and practical terms, to the international nonproliferation mainstream it has shunned for over 30 years. Still, the nonproliferation gains of the U.S.-India nuclear deal are meager compared to the major damage to nonproliferation goals that would result if the deal goes forward as it currently stands.

The U.S.-India deal would make it harder to achieve key Bush Administration nonproliferation initiatives. The U.S. is now asking the 45-nation Nuclear Suppliers Group to permit nuclear cooperation only with countries that adhere to the IAEA's Additional Protocol and to ban transfers of enrichment and reprocessing technologies to states that do not already possess fuel-cycle facilities. But getting NSG partners to tighten the rules in ways favored by the U.S. will be an uphill battle if they are also being asked to bend one of their cardinal rules (i.e., no nuclear trade with non-parties to the NPT) because it no longer suits the U.S.

By seeking an exception to the rules to accommodate America's new special friendship with India, the deal would reinforce the impression internationally that the U.S. approach to nonproliferation has become selective and self-serving, not consistent and principled. Rules the U.S. initiated and championed would be perceived as less binding, more optional. Russia and China would feel less inhibited about engaging in nuclear cooperation that the U.S. might find risky and objectionable with special friends of their own – Iran and Pakistan, respectively.

The nuclear deal in its present form has produced resentment on the part of close U.S. friends like Japan, Germany, and Brazil who were forced to choose between nuclear weapons and civil nuclear cooperation. They chose the latter, giving up the weapons option and joining the NPT to realize the benefits of nuclear cooperation. Now that India has been offered the opportunity to have its cake and eat it too, many non-nuclear NPT parties feel let down. Not wishing to harm relations with either India or the United States, they are unlikely to make a public fuss over the sudden reversal of U.S. policy (on which they were not consulted). But they will be less inclined in the future to make additional sacrifices in the name of nonproliferation.

The U.S.-India deal could also reduce the perceived costs to states that might consider "going nuclear" in the future. In calculating whether to pursue nuclear weapons, a major factor for most countries will be how the U.S. is likely to react. Implementation of the deal would inevitably send the signal, especially to countries with good relations with Washington, that the U.S. will tolerate and eventually accommodate to a decision to acquire nuclear weapons.

In the near term, U.S. plans to engage in nuclear cooperation with India will make it more difficult to address proliferation challenges such as Iran. Of course, Iran's interest in nuclear weapons long pre-dated the India deal. But the deal has strengthened the case Iran can make – and is already making – internationally. Why, Iranian officials ask publicly, should Iran give up its right as an NPT party to an enrichment capability when India, a non-party to the NPT, can keep even its nuclear weapons and still benefit from nuclear cooperation? It is an argument that resonates well with many countries and weakens the pressures that can be brought to bear on Tehran.

In general, the Bush Administration's policy shift conveys the message that the United States – the country the world has always looked to as the leader in the global fight against proliferation – is now de-emphasizing nonproliferation and giving it a back seat to other foreign policy goals. Other countries can be expected to follow suit in assigning nonproliferation a lower priority relative to political and commercial considerations in their international dealings, and this would have negative, long-term consequences for the global nonproliferation regime.

Making the deal a nonproliferation gain

The damage can be minimized – and the deal transformed from a net nonproliferation loss to a net nonproliferation gain – if several improvements are made in the course of implementing the July 18th Joint Statement, either by the governments of India and the U.S. themselves, by the U.S. Congress in adopting new legislation, by the Nuclear Suppliers Group in modifying its guidelines, or by a combination of these.

The most important improvement would be an Indian decision to stop producing fissile materials for nuclear weapons. India need not stop such production unilaterally, but as part of a multilateral moratorium pending completion of an international fissile material cutoff treaty. A multilateral production halt would make a major contribution to fighting nuclear proliferation and nuclear terrorism by capping stocks of bomb-making materials worldwide and thereby making those stocks easier to secure against theft or seizure – in India, Pakistan, or elsewhere.

Without a moratorium on fissile material production, the U.S.-India deal could actually facilitate the growth of India's nuclear weapons capability. India's indigenous uranium supplies are quite limited. Under current nonproliferation rules – with India unable to buy natural uranium on the world market – India must use those limited supplies for both civil power generation and nuclear weapons, and the trade-off will become increasingly painful. Under new rules, India could satisfy the needs of the civil program through imports, freeing up domestic uranium supplies for the weapons program and permitting, if the Indian government so decided, a continuing and even major increase in bomb-making material. A production moratorium would preclude such an increase.

Indian Foreign Secretary Shyam Saran said in July that India “is willing to assume the same responsibilities and practices – no more and no less – as other nuclear

states.” It so happens that the five original nuclear weapon states (U.S., Russia, France, U.K., China) have all stopped producing fissile materials for nuclear weapons. Applying the “no more, no less” standard, it would be reasonable to ask India to join the others. India claims that it does not have a strategic requirement for parity with the other nuclear powers (including China) and that it seeks only a “credible minimum deterrent capability.” If that is the case, then perhaps it can soon decide that it has sufficient plutonium for its deterrence needs and can afford to forgo further production.

Another way to strengthen the July 18th agreement would be for India to assume a more active and constructive role in helping the United States address today’s most acute proliferation challenges, especially the challenge posed by Iran. Given its desire to make Iran a long-term source of energy supplies, India has been reluctant to press Iran on its nuclear program. During a September visit to Tehran, Indian Foreign Minister Natwar Singh made public remarks supportive of Iran’s position on the nuclear issue and critical of the approach taken by the United States. The remarks produced a sharp backlash by Members of Congress across the political spectrum, including several strong supporters of India, who made clear that India’s failure to side with the U.S. on the Iran nuclear issue would jeopardize Congressional support for the legislative changes needed to implement the U.S.-India nuclear deal.

In response to these Congressional warnings and tough messages conveyed in person by President Bush and Secretary Rice to their Indian counterparts, the Indians on September 24th joined the U.S. and Europeans in voting yes on an International Atomic Energy Agency Board resolution finding Iran in noncompliance with its nonproliferation obligations but deferring the matter of when and how the Iran question would be referred to the United Nations Security Council. This was a positive step but not yet an indication that India is prepared to use its influence in a sustained and determined way to get Iran to abandon its plans for an enrichment facility capable of producing both fuel for civil nuclear reactors and fissile material for nuclear bombs. Indeed, since the IAEA vote, the Indians have sought to mollify the Iranians, stating that they had acted in Iran’s interest by persuading the Europeans to back down from seeking an immediate referral to the UNSC. The key test in the months ahead will be whether India makes a real effort to persuade Iran to forgo an enrichment capability and whether it eventually supports referral to the Council, which is required by the IAEA Statute after a Board finding of noncompliance.

The risks of the nuclear deal could also be reduced by preserving some distinction between NPT parties and non-parties in terms of the nuclear exports they would be permitted to receive. A long-standing element of the nonproliferation regime has been the “NPT preference policy” – giving NPT parties benefits in the civil nuclear energy area not available to those outside the NPT. The Joint Statement undermines that policy by calling for “full” nuclear cooperation with India. A way of maintaining some preferential treatment for NPT parties would be to modify U.S. law and the NSG guidelines to permit nuclear-related exports to non-parties *except* equipment, materials, or technologies related to sensitive fuel-cycle facilities, including enrichment, reprocessing, and heavy water production. Such a distinction would permit India to acquire natural

uranium, enriched fuel, nuclear reactors, and a wide range of other nuclear items, but would retain the ban on transfers of those items that are most closely related to a nuclear weapons program.

In addition to precluding any cooperation with India in the area of sensitive fuel-cycle capabilities (even under IAEA safeguards), the U.S. should permit cooperation in less sensitive nuclear areas only under safeguards. As noted earlier, India will remain a non-nuclear weapons state (NNWS) as defined by the NPT, and Article III(2) allows nuclear exports to NNWSs only under IAEA safeguards. Moreover, consistent with existing U.S. law, such exports should only be permitted to facilities that are under safeguards *in perpetuity* (under facility-specific, or INFCIRC/Rev.2, safeguards agreements with the IAEA) – not to facilities under voluntary safeguards arrangements that allow countries to withdraw materials or facilities from safeguards for national security reasons. The choice would be up to India. If it wished to benefit from nuclear cooperation at a particular facility, it would have to put in place a facility-specific safeguards agreement at that facility.

Nonproliferation risks could also be reduced by implementing the nuclear deal in a country-neutral manner – not as a special exception to the rules for India alone. Although the Administration has been slow to indicate how specifically it would seek to adjust U.S. law and NSG guidelines, it has suggested that one option would be to leave the general rules in place but waive their application in the special case of India because of its qualifications as “a responsible state with advanced nuclear technology.” A problem with that option is that it would accentuate concerns that the U.S. is acting selectively on the basis of foreign policy considerations rather than on the basis of objective factors related to nonproliferation performance. Moreover, in the Nuclear Suppliers Group, where changing the guidelines requires a consensus, some countries – notably China – might well resist a country-specific approach and press for permitting nuclear cooperation with other non-parties to the NPT with whom they are friendly (e.g., Pakistan).

To avoid the pitfalls of making a country-specific exception without opening the door to nuclear cooperation in cases where it is clearly not yet merited, the Administration should propose modifications of U.S. law and the NSG guidelines that would permit nuclear cooperation (except in sensitive parts of the fuel cycle or in unsafeguarded facilities) with any state not party to the NPT that meets certain criteria of responsible nuclear behavior. To avoid creating an incentive for countries to withdraw from the NPT, the modified rules should apply only to countries that were outside the NPT as of a specified date, which should be chosen to exclude North Korea and include only India, Pakistan, and Israel. For such non-NPT states to be eligible to receive U.S. nuclear exports under a revised U.S. law, the President should be required to certify that the state:

- has provided public assurances that it will not test nuclear weapons;
- has provided public assurances that it will not produce fissile materials for nuclear weapons and is fulfilling that assurance;

- has placed under IAEA safeguards its civil nuclear facilities, including all nuclear power reactors and R&D facilities related to electricity generation;
- is playing an active and constructive role in helping address acute nuclear proliferation challenges posed by states of proliferation concern;
- has established, and is rigorously implementing, a national export control system that meets the highest international standards, including stringent rules and procedures banning unauthorized contacts and cooperation by personnel with nuclear expertise;
- has provided public assurances that it will not export enrichment or reprocessing equipment or technologies and is fulfilling that assurance;
- is working actively on its own and in cooperation with other countries in stopping illicit nuclear transactions and eliminating illicit nuclear commercial networks, including by fully sharing the results of any investigations of illicit nuclear activities; and
- is applying physical protection, control, and accountancy measures meeting the highest international standards to any nuclear weapons and to all sensitive nuclear materials and installations, both military and civilian, on its territory.

These criteria could be written into U.S. law. They could also be adopted by the NSG as criteria for deciding, by consensus, whether a particular non-party to the NPT should be eligible for nuclear transfers from NSG member states. While such an approach would be country-neutral, it would enable both the U.S. Government and NSG members to distinguish among the non-parties to the NPT in terms of whether – and how soon – they would be eligible for nuclear cooperation.

Staunch supporters of the NPT can be expected to argue that these criteria do not go far enough – and that only NPT adherence should make a country eligible for nuclear cooperation. But it is unrealistic to expect India or the other non-parties ever to join the NPT, and continuing to insist on adherence as a condition for nuclear cooperation could forfeit the contribution to nonproliferation that steps short of NPT adherence could make.

Those who strongly favor the July 18th Joint Statement can be expected to argue that the criteria are too demanding and could result in India's walking away from the nuclear deal. But even the most demanding criterion – ending fissile material production – is a step India, in principle, supports and says it is willing to take when its minimum deterrence needs are satisfied. If India is prepared now to stop production, it could readily meet the remaining criteria. If not, the door would be open for India to walk through at a time of its own choosing.

The approach suggested here would clearly be less attractive to the Indians than the less demanding one that Bush Administration was prepared to settle for on July 18th. But it would be a major change from the status quo that has prevailed for decades, in which the door to nuclear cooperation for India and the other non-parties has been locked as a matter of law and policy.

In its ardent desire to transform U.S.-Indian relations, the Bush Administration has given too little weight to the damaging implications of its actions for the

nonproliferation regime. The remedy should not be to reject the deal struck in July but to require that it be pursued in a way that enables the U.S. to advance its strategic goals with India as well as its nonproliferation interests – not serve one at the expense of the other.