

Why Congress Must See the IAEA Safeguards and U.S.
Nuclear Cooperative Agreements with India *before* It
Amends the Atomic Energy Act

Testimony

By

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The single most important thing the Senate Foreign Relations Committee can do in implementing the proposed U.S. – India nuclear deal properly is to avoid rushing to get it wrong. At the very least, the committee should make sure that nuclear cooperation with India does not significantly weaken and undermine existing nonproliferation law and international institutions. Congress can do this only if it makes sure that whatever amendments it makes to the Atomic Energy Act for India come *after* it has seen all three of the following:

1. the final nuclear cooperation agreement that the U.S. is now negotiating with New Delhi,
2. the final nuclear safeguards agreement that New Delhi is negotiating with the International Atomic Energy Agency (IAEA), and
3. a Nuclear Suppliers Group (NSG) consensus decision to make an exception for India.

It also important that the committee works closely with the House International Relations Committee, and that both committees time the passage of any amendments with each other. The very worst thing the committee could do is to pass freestanding legislation so soon and so prematurely that it gets placed on some other “must-pass” bill and, as a result, is conferenced—before the House International Relations Committee has a chance to formulate its own views—in a conference committee that includes far many more people with interests unrelated to India than would otherwise have been the case.

The Administration, of course, wants Congress to act immediately on its proposed legislative package. Immediate action, however, would weaken Congress’ legal requirement to review and vote on a nuclear cooperative agreement with a state, like India, that is not a member of the Nuclear Nonproliferation Treaty (NPT), that has tested nuclear weapons, and that has only a handful of facilities under international nuclear inspections. The Administration is making any number of arguments as to why Congress should do act immediately. Congress should reject this for at least three important reasons:

First, the Executive is already having difficulties in getting India to agree to important, standard nonproliferation conditions for U.S. nuclear assistance. These include prior consent for Indian handling and reprocessing of U.S. nuclear fuel, and the suspension of U.S. nuclear assistance if India should decide to test nuclear explosives again—as it did in 1974 and 1998. Congress has not yet seen a draft of what the U.S. has submitted to India, and Administration officials have made it clear that they do not intend to show Congress the final nuclear cooperative text until some time *after* Congress votes away the current legal requirement, which calls on both houses to approve the Indian nuclear deal by a majority vote. In light of this, it is important to note that, under the Administration’s legislation, Congress could revise the deal only if it had a two-thirds majority in both houses.

Administration officials also have made it clear that they want Congress to act on its package before the IAEA completes safeguards negotiations with New Delhi. These talks have already encountered difficulties. The Indians want an “Indian specific” set of safeguards that would only apply against their facilities if foreign fuel was present. The IAEA has made it clear that the only safeguards it has to offer India are those contained in Information Circular 66. India reportedly has rejected this as unsuitable, and left the negotiating table. If Congress were to pass the Administration’s package before the IAEA or the White House completes its negotiations, then it would only encourage New Delhi to dig in its heels on these points. This would hardly strengthen either the cause of nonproliferation, or American negotiating leverage.

Second, passing the Administration’s legislation before the NSG has approved making India an exception would only undermine this important and, until now, effective nonproliferation control group. Russia already has reacted to the U.S.-India deal by breaking the NSG’s rules. Last month, it sent India reactor fuel for Tarapur on the pretext that it was for safety reasons, and that the NSG has a “safety” exception. If the U.S. does nothing to clarify this safety clause in the NSG guidelines in the upcoming NSG meeting in May 2006, and instead announces that Congress has approved making nuclear exports to India before the NSG approved an exception, then it is very likely to encourage Russia and other states to use the NSG safety exception as a pretext for getting around the NSG as well.

Third, Congress needs to remember that the exceptions it makes for India are very likely to be used as a new standard for dealing with other troublesome nuclear cooperative cases. Senior officials within the Department of Energy have expressed interest in reaching a nuclear cooperative deal with Russia. Some members of Congress have voiced support for extending nuclear cooperation, in time, to Pakistan. If Congress follows the White House’s advice and passes legislation on India before actually seeing the safeguards and nuclear cooperative agreement first, then it can count on this being the Executive’s demand in other “difficult” nuclear cooperative arrangements in the future. Again, this will only undermine Congressional review, due diligence and the leverage that is needed to get the very best nonproliferation terms.

Finally, Congress must understand that America’s and the IAEA’s leverage to get the terms they want in the safeguards and nuclear cooperative agreement with India will only grow over time. The reason why is that India is running out of uranium. The longer it digs its heels in – assuming Congress does not cave in – the more India will feel the pinch.

India has roughly 50,000 tons of uranium in reserve, but this ore is of low quality, and all of it is still buried in the ground. In fact, it costs five times as much to mine and produce India’s low-concentration ore than simply buying foreign uranium on the spot market. India’s actual domestic uranium production (i.e., the amount it mines, mills and processes into yellowcake) is a far lower and more telling figure — only about 300 tons per year. Unfortunately, India’s reactors consume 435 tons annually (400 for power reactors and

another 35 for India's two military production machines). That's the rub: India is consuming more uranium than it produces. It has gotten away with this so far by relying on yellowcake that it stockpiled years before. This store, however, has all but run out, and Indian nuclear experts expect Indian reactors to run out of fuel next year. This is why India is so eager to buy foreign uranium ore and wants the U.S. deal sealed and completed soon. Currently, the rules of the NSG prohibit uranium sales to states like India — nonmembers of the NPT who refuse to open all of their facilities to IAEA inspections.

Full implementation of the U.S.-India nuclear deal, of course, would change all of this by getting the NSG to make an exception for India. India could then fuel most of its civilian reactors with foreign ore, and free up most of its domestic uranium production for military purposes — something its current lack of uranium does *not* allow. This is why India's security hawks have publicly urged India to embrace the U.S.-India nuclear deal: It is to India's advantage, they argue, to import as much foreign uranium as it can to "conserve our native uranium" to make more bombs.

Congress should not and must not forget this point. It is why I and a bipartisan group of former U.S. security officials urged Congress in a letter earlier this month to condition any transfer of controlled nuclear goods to India upon India working with Pakistan and China to agree not to make any more fissile material for military purposes as a matter of public policy. For a variety of reasons, reaching such an additional agreement is more doable now than it was before the announcement of the Indian nuclear deal. For the record, I have attached a copy of the letter, which makes the case.

Whatever one's view of this nuclear deal, though, this much is clear: It makes no sense for Congress not to demand, as it always has, to see precisely what it is being asked to sign off on. Doing anything less is simply not worthy of this committee, the Senate or the U.S. Congress.

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Dear Senator Lugar and Senator Biden, Congressman Hyde and Congressman Lantos:

The Bush Administration has pledged to provide civil nuclear assistance to India. Some of the signers of this letter support supplying such assistance. Others are skeptical it will advance U.S. interests. All of us, however, believe that having made the offer, the U.S. Government should implement it in a manner that is consistent with America's national security interests and non-proliferation goals. That is why we urge you and the congressional committees you lead not to take any final action on nuclear cooperation with India until the administration has specified what further steps it is planning to take, in the administration's words, to "seek additional nonproliferation results in separate discussions" with the Indian Government. We urge you to consider linking nuclear cooperation with India to such results.

We believe this is necessary because the U.S.-India agreement, unless properly implemented, could undermine international nuclear restraints. It is easy to see why. As the agreement now stands, American cooperation could indirectly help India increase substantially its bomb-producing capabilities. We also understand that the administration has assured India that the U.S. will facilitate a non-U.S. supply of nuclear fuel to India even if New Delhi takes an action that otherwise would force a legal suspension of U.S. nuclear assistance (including resuming Indian nuclear testing).

This and other aspects of the accord could well cause Pakistan to boost its own fissile material production and to seek additional nuclear help from China. China and Russia, meanwhile, have pointed to the agreement as reason to supply reactors and nuclear fuel to friends of their own, perhaps even outside the guidelines of the Nuclear Supplier Group. Moreover, Iran has insisted that it deserves at least as generous a treatment as India since, unlike India, it has no nuclear weapons and is a member of the NPT. Finally, there is a strong likelihood that the prospect of increased Indian nuclear-weapons activity will be used by China as a rationale to increase the pace and scale of its own efforts to modernize its nuclear-weapons arsenal and thereby prompt increased nuclear activity in additional nuclear weapons states.

To avoid these consequences and reduce the chances of an increase in global nuclear proliferation, Congress should seek clarification from the administration on what additional measures it will propose that India and the United States take to supplement the current agreement. Various steps might be taken by India to demonstrate its commitment to nonproliferation and strengthen the global nonproliferation system. But most important, in our view, are steps to curb the worldwide accumulation of bomb-grade nuclear materials.

At the very least, Congress should request that the administration ask the Indian Government to commit itself to producing no new fissile material that could be used for military purposes. Such restraint is currently announced policy in the U.S., the United Kingdom, France, and Russia and is believed to be the defacto, unannounced policy of China. It also is the policy of all NPT parties complying with their obligations -- and it should be a minimum requirement for India as well.

Towards this end, Congress should permit U.S. transfers of Nuclear Suppliers Group-controlled nuclear goods to India but only when the President is able to certify that India has stopped producing fissile material for nuclear weapons as a matter of policy -- either unilaterally, or by having joined with Pakistan, China, and perhaps other states in publicly declaring their adherence to such a policy, or by joining a multilateral fissile material cutoff treaty that has entered into force.

If after five years none of these requirements are met but the President is able to certify that the U.S. has done all it could to encourage India meet one or more of them, then, Congress should authorize trade in nuclear goods with India contingent upon Nuclear Suppliers Group approval.

Again, we believe the U.S.-Indian nuclear cooperation agreement may well be a historic step in U.S.-Indian relations. But we are also convinced that if this agreement is not to have negative -- if unintended -- consequences for American security, it is critical that Congress do all it can to assure that it is implemented in a manner that effectively addresses the concerns we have outlined above.

With the highest respect,

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