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THE U.S. INDIA NUCLEAR COOPERATION AGREEMENT – the end of the nuclear non-proliferation regime ?

EXECUTIVE SUMMARY

SHAUN BURNIE, AUGUST 28TH 2008

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“This would be a sweet deal for India, but a body blow to the non-proliferation regime, so-called.” Paul Leventhal, Nuclear Control Institute, 2005.¹

“There is nothing in the Agreement which places an embargo on India’s right to carry out a nuclear test if it thinks this is necessary in India’s supreme national interest.” Indian Prime Minister Singh, July 2008²

“If the [safeguards] agreement is approved today, and if an exception to the NSG directives is adopted [for India], it will be necessary to conclude that the non-proliferation regime that we know has reached its end.” Government of Switzerland to IAEA Board of Governors August 1st 2008³

Three years after proposing a nuclear cooperation agreement with India, the United States is seeking and requires approval from all 35 member nations of the Nuclear Suppliers

¹ “Cirus reactor’s role in a U.S.-India nuclear agreement” Paul Leventhal, Nuclear Control Institute Presentation to Center for Nonproliferation Studies Washington, DC December 19th, 2005

² The Rediff Special/ Sheela Bhatt in New York ‘It is sad that the N-deal is smeared in murky politics’ July 08, 2008, <http://www.rediff.com/news/2008/jul/08sheela.htm>

³ See, “Some in NSG predict prolonged debate over conditions for Indian exemption” Nuclear Fuel, August 11th 2008

Group. This being the most contentious issue since its founding after India's nuclear weapons test in 1974, the meetings are to be held in Vienna on August 21st-22nd with likely follow-up meetings in September. The decisions taken by governments attending these meetings will determine whether or not the nuclear non-proliferation regime which has existed since 1970 will end or whether a new dangerous proliferation age will begin.

BACKGROUND

In July 2005, U.S. President Bush and Indian Prime Minister Singh announced plans for an Indian–U.S. Civil Nuclear Cooperation Initiative (CNCI). Nuclear trade between the two states had been frozen following India's first nuclear weapons test in 1974. India also was unable to conduct nuclear trade with the rest of the world. India has refused to sign the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), and is therefore not legally recognized as a nuclear weapons state.⁴ The new proposal if implemented would overturn long-standing U.S. policy and international efforts to control nuclear proliferation.

Under the nuclear proposal, India would be allowed to purchase U.S. nuclear material and technology. Other countries would also be able to conduct nuclear trade with India. In turn, it is claimed by proponents of the proposal that India would be required to separate its military nuclear program from its commercial program, strengthen its nuclear export controls, and open up some of its nuclear infrastructure to international inspection. India would also commit to supporting efforts to negotiate a global ban on the production of nuclear materials for military use.

There are complex motives behind the United States and India proposal. For the U.S. it is largely a combination of non-nuclear economic interests seeking access to India's billion-plus market matched by the strategic and military objectives of allying India with U.S. policy in relation to China. For India, access to western technology (including military) and recognition of its true global significance are clear incentives. But unlike for the U.S. the nuclear benefits for India are clear and likely to be immediate.

More than three years after first being proposed the U.S./India proposal has not yet entered into force. This is due in part to the complexity of international agreements and the domestic political contexts in both the U.S. and in particular India. In , hearings and debates in both the U.S. House of Representative and Senate during 2006 convincing arguments were made as to why the U.S.-India proposal effectively destroyed U.S. non-proliferation policy. Despite this, on December 9th 2006, the "Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006" was passed by both the U.S. Senate and House of Representatives. On December 18th, President Bush signed into

⁴ The NPT recognizes only those states to have conducted a nuclear weapons test before 1968 to be nuclear weapons states. Despite India having tested in 1974 and 1998, and possessing an arsenal of nuclear weapons it is legally not a nuclear weapon state under the NPT. For a more detailed analysis of this and other aspects of the Agreement in relation to the NPT see, The U.S. India Nuclear Cooperation Initiative and Article I obligations under the Nuclear Non-Proliferation Treaty (NPT), Sharon Squassoni, Foreign Affairs, Defense and Trade Division, Congressional Research Service, report prepared for House Representative Ed Markey, June 19th 2006.

law the Hyde legislation passed by Congress. Hereafter referred to as the U.S./India Agreement, one long-standing and leading non-proliferation Congress member described it as a

“sad day in the history of efforts to halt the spread of nuclear weapons and materials around the world.”⁵

However, the U.S. Congress is committed to reviewing the U.S./India Agreement to determine whether it conforms to the terms of the Hyde Act. Before final approval by Congress the International Atomic Energy Agency (IAEA) and India are required to agree a new nuclear safeguards agreement; and the 45-nation Nuclear Suppliers Group must agree to permit the U.S.-India proposal to be exempt from their nuclear guidelines.

In March 2008 it was reported that the IAEA and India had reached agreement on a new safeguards agreement.⁶ After delays of months when the Indian government was unable to submit the agreement to the IAEA, in early July the text was finally presented to the IAEA Board of Governors for consideration. On August 1st, the 35 nation Board of Governors approved the IAEA safeguards agreement with India. The next stage in the U.S./India Agreement is for the 45 nation Nuclear Suppliers Group meeting in Plenary to adopt or reject a request from the U.S. for an exemption from NSG nuclear export guidelines. Having missed the annual NSG Plenary in Berlin in May 2008, the U.S. has now pushed for a special Plenary to be held September 21st – 22nd in Vienna. Follow up meetings in September are expected.

U.S. India proliferation implications in brief

The U.S./India Agreement undermines two fundamentals of nuclear non-proliferation – the Comprehensive Test Ban Treaty (CTBT) and the Fissile Material Treaty. India is not required to sign either under the terms of the Agreement. The Test Ban treaty was agreed in 1996 but has yet to enter into force, while the Fissile treaty has yet to be negotiated.

Prime Minister Singh assured the Indian Parliament in 2007 that ***“The agreement does not in any way affect India's right to undertake future nuclear tests if it is necessary in India's national interest,”***⁷ To make matters worse, the United States has committed under the Agreement to assist India with the securing of alternative sources of nuclear fuel if for whatever reason it terminated supply, such as following a nuclear weapons test. The Bush Administration has rejected the cornerstones of U.S. non-proliferation policy in seeking agreement with India. The U.S. Congress through the Hyde Act has at least

⁵ See, 11/16/2006--Passed Senate amended, Title I - United States-India Peaceful Atomic Energy Cooperation United States-India Peaceful Atomic Energy Cooperation Act, as cited in “Congress Exempts India From Nuclear Trade Rules”, Wade Boese Arms Control Today, January/February 2007 http://www.armscontrol.org/act/2007_01-02/CongressExempts.asp.

⁶ “India may submit ‘interpretation’ of safeguards agreement to board” see, Mark Hibbs, Nuclear Fuel March 24th 2008

⁷ “India free to test nuclear weapons under U.S. deal” The Associated Press, August 13, 2007

demanded automatic termination of all nuclear trade with India for the U.S. and NSG members in the event of a nuclear test as a condition of approval for the Agreement.

The U.S. India Agreement by securing future nuclear fuel supplies for India removes one major impediment for Indian planners when considering future nuclear testing. It is tacit endorsement by the United States of India's nuclear weapons arsenal and its right to increase and enhance its warheads.

Under the terms of the Agreement, India will be able to massively increase its production of nuclear weapons-usable fissile material – plutonium and highly enriched uranium. By importing uranium under the Agreement from countries such as Australia and Canada, it will be able to use its limited stocks of domestic uranium for military purposes. This is endorsed by the United States under the Agreement, with the IAEA only permitting limited access to some India stocks of fissile material. India is expanding its nuclear weapons program to become a triad based system – sea based (submarine), mobile land-based, and air-launched. Under the Agreement, India will be able to use its increased stocks of weapons material to fuel these programs. Pakistan is already preparing to increase its stocks of fissile materials.

The United States is seeking to bring India into a strategic alliance that will contain and in future confront China in an emerging new cold war.⁸ China is likely to react accordingly to an increased nuclear threat.

Under the Agreement, the United States administration and India are seeking approval to permit the importation of reprocessing and uranium enrichment technology. This is despite United States law, including the 2006 Hyde Act, expressly prohibiting transfer of such technology to states not signatories of the NPT. India is seeking with U.S. support no restrictions on such transfers from the Nuclear Suppliers Group, again despite prohibitions under the NSG Export Guidelines.

The double standards being adopted by the United States and those large nuclear states supporting the Agreement – France, the UK, Russia, Germany and Japan - will directly undermine their ability to oppose other states from accessing sensitive nuclear technology. The most obvious example being the current confrontation with Iran, an early signatory of the NPT, but unlike India a non-NPT party, being challenged over its rights to acquire uranium enrichment technology. The failures in the existing non-proliferation regime, in particular NPT, which actively support countries acquiring peaceful nuclear technology which can be used for military purposes, does not justify the proposed Agreement with India. The risk is that nations that have withheld developing nuclear weapons by signing the NPT will see a nation that refused to sign the NPT and conducted nuclear weapons tests only 10 years before being rewarded by the large industrial nuclear powers with access to the technology and materials unavailable to them.

⁸ For a critically important insight into the emerging U.S./China conflict see, "Chinese Nuclear Forces and U.S. Nuclear War Planning" Hans M. Kristensen Robert S. Norris Matthew G. McKinzie, The Federation of American Scientists & the Natural Resources Defense Council November 2006.

Nuclear Safeguards - The International Atomic Energy Agency has not emerged well out of the U.S./India Agreement process. Director ElBaredei has been inexplicably a major cheerleader for the Agreement since its announcement. Significant compromise by the IAEA in the drafting of the safeguards agreement has led member states such as Austria to describe it as "an empty shell". There are significant ambiguities within the safeguards agreement text, in particular in the preamble, that have permitted India to claim that it would for example be able to suspend IAEA safeguards if the material conditions of the agreement were to change, such as interruption in supply of nuclear material. This raises the spectre of a future date when having conducted a nuclear test, and nuclear supplies are suspended, India unilaterally opts to suspend safeguards coverage on nuclear material. ElBaredei has been unconvincing in claiming that the safeguards would continue indefinitely.

IAEA safeguards which are already incapable of meeting their goals for detecting the diversion of nuclear materials to weapons purposes will make no significant impact on India's ability to produce nuclear weapons material and warheads. In fact the real significance of the U.S./India Agreement will be that it endorses a two tiered non-proliferation system. India is permitted to retain its military nuclear program outside international inspection and control, whereas other states such as Iran or Japan are required to operate under a full-scope all encompassing safeguards system. The effect will be at the political rather than technical level. Iran and Japan, along with the other 182 non-nuclear weapon states within the NPT do not have the option of a voluntary safeguards system, it's a mandatory requirement of being an NPT party.

IAEA Board of Governors and Nuclear Suppliers Group

Despite the approval of the IAEA/India safeguards agreement by the 35 nation Board of Governors on August 1st, there were strong views expressed by member states in opposition to the Agreement. Amongst a group of nations expressing the strongest concerns are the Netherlands, Ireland, New Zealand, but the Swiss and Austrian government comments stand out. ***"If the [safeguards] agreement is approved today, and if an exception to the NSG directives is adopted [for India], it will be necessary to conclude that the non-proliferation regime that we know has reached its end."*** Swiss Ambassador to the IAEA.⁹ The Austrian Ambassador declared the safeguards agreement ***"an empty shell,"*** and that it was only out of respect for the DG and the Secretariat that Austria had decided to join the consensus in favor of the draft¹⁰.

At the Extraordinary Plenary of the NSG member states held in Vienna on August 21st-22nd 2008, these concerns and proposed amendments confronted the United States in unprecedented numbers. Between a dozen and half the attending states raised objections to the Agreement and its implications.

⁹ See, "debate Some in NSG predict prolonged over conditions for Indian exemption" Nuclear Fuel, August 11th 2008

¹⁰ Opcit, The Hindu, August 2nd 2008.

Other nations however are motivated largely by commercial rather than nuclear non-proliferation motives. France and Russia have already entered into negotiations with India for the future supply of technology and materials awaiting the approval of the IAEA and the NSG. Australia and Canada, despite years of rhetoric on the importance of nuclear non-proliferation have committed to supporting the U.S./India Agreement, driven in part by anticipated uranium sales as well as their strategic relations with the U.S. and India. Other European states, such as Germany who now support the Agreement, would prefer the issue was not talked about in public. As current president of the Nuclear Suppliers Group, that is not possible.

The Nuclear Suppliers Group Plenary¹¹ agrees policy by consensus. Under the Hyde Act, the U.S./India Agreement has to be approved by all members of the NSG. As of the August Plenary it seemed that consensus was very far away, but with further meetings planned in September, the pressure for compromise and ultimate approval of the U.S. request is very possible.

Not since the 1995 NPT Review and Extension Conference have so many nations with little or no nuclear industry been in a position to determine the future of the global nuclear non-proliferation regime. Echoing the words of the government of Switzerland a vote to exempt India will mark the end of the existing global non-proliferation regime. That regime, enshrined in the NPT, has many failings, dangerous contradictions and double standards, all in the past reasons cited by India for its non signature. The promotion by the IAEA of access to the very technology usable in a nuclear weapons program and the fundamental flaws in its safeguards system are two issues that have been largely ignored by NPT states – including those leading the opposition to the India Agreement inside the NSG – these need to be challenged and reversed in the coming years. A robust and renewed commitment to NPT enforced nuclear disarmament is also essential. But without a blueprint for a replacement a decision by nations such as Ireland, New Zealand, Switzerland, Austria, Norway and the Netherlands to support the United States and India and to exempt the Agreement from NSG Guidelines will unleash a new more dangerous age of global nuclear proliferation. For these reasons the U.S. request for an exemption for India must be rejected by the NSG member states.

¹¹ The Nuclear Suppliers Group (NSG) was created following the India 1974 nuclear weapons test. A set of Guidelines. The NSG is one of two arrangements established to set guidelines for multilateral nuclear export controls, the other being the NPT Exporters Committee (Zangger Committee). As of April 2008 there were 45 participating governments are: Argentina, Australia, Austria, Belarus, Belgium, Brazil, Bulgaria, Canada, China, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Kazakhstan, Republic of Korea, Latvia, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russian Federation, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, and United States. The European Commission is an observer. In 2007/08 the Chair was the Government of South Africa, in 2008/09 Germany is chair.