

U.S.-India Nuclear Cooperation

A Strategy for Moving Forward

Michael A. Levi
Charles D. Ferguson

CSR NO. 16, JUNE 2006
COUNCIL ON FOREIGN RELATIONS

Founded in 1921, the Council on Foreign Relations is an independent, national membership organization and a nonpartisan center for scholars dedicated to producing and disseminating ideas so that individual and corporate members, as well as policymakers, journalists, students, and interested citizens in the United States and other countries, can better understand the world and the foreign policy choices facing the United States and other governments. The Council does this by convening meetings; conducting a wide-ranging Studies program; publishing *Foreign Affairs*, the preeminent journal covering international affairs and U.S. foreign policy; maintaining a diverse membership; sponsoring Independent Task Forces and Special Reports; and providing up-to-date information about the world and U.S. foreign policy on the Council's website, www.cfr.org.

THE COUNCIL TAKES NO INSTITUTIONAL POSITION ON POLICY ISSUES AND HAS NO AFFILIATION WITH THE U.S. GOVERNMENT. ALL STATEMENTS OF FACT AND EXPRESSIONS OF OPINION CONTAINED IN ITS PUBLICATIONS ARE THE SOLE RESPONSIBILITY OF THE AUTHOR OR AUTHORS.

Council Special Reports (CSRs) are concise policy briefs, produced to provide a rapid response to a developing crisis or contribute to the public's understanding of current policy dilemmas. CSRs are written by individual authors—who may be Council fellows or acknowledged experts from outside the institution—in consultation with an advisory committee, and typically take sixty days or less from inception to publication. The committee serves as a sounding board and provides feedback on a draft report. It usually meets twice—once before a draft is written and once again when there is a draft for review; however, advisory committee members, unlike Task Force members, are not asked to sign off on the report or to otherwise endorse it. Once published, CSRs are posted on the Council's website.

For further information about the Council or this Special Report, please write to the Council on Foreign Relations, 58 East 68th Street, New York, NY 10021, or call the Communications office at 212-434-9400. Visit our website at www.cfr.org.

Copyright © 2006 by the Council on Foreign Relations®, Inc.

All rights reserved.

Printed in the United States of America.

This report may not be reproduced in whole or in part, in any form beyond the reproduction permitted by Sections 107 and 108 of the U.S. Copyright Law Act (17 U.S.C. Sections 107 and 108) and excerpts by reviewers for the public press, without express written permission from the Council on Foreign Relations. For information, write to the Publications Office, Council on Foreign Relations, 58 East 68th Street, New York, NY 10021.

CONTENTS

Foreword	v
Acknowledgments	vii
Council Special Report	1
The U.S.-India Deal	3
History and Strategy	7
Nonproliferation	11
A Three-Part Approach for Congress	14
About the Authors	27

FOREWORD

The recent nuclear deal concluded between the Bush administration and the government of India has highlighted tensions between two widely held American foreign policy objectives: strengthening bilateral relationships with major powers and preventing the spread of nuclear weapons. The agreement, which proposes to change decades-old policy, has stirred considerable controversy, particularly in Congress, which must amend long-standing law if the deal is to go through. In hearings during the past two months, members of Congress from both parties have expressed a desire to find a strategy that contributes to an improved relationship with India without sacrificing American nonproliferation interests.

In this Council Special Report, Council Fellows Michael A. Levi and Charles D. Ferguson propose such a strategy. Rather than focusing on only one dimension of the challenge, they explain the implications of the nuclear deal for both U.S. policy toward India and U.S. nonproliferation policy. This leads them to propose a focused set of nonproliferation bottom lines that Congress should enforce through its legislation, while also prompting them to counsel against more extreme nuclear-related measures that would certainly scuttle the U.S.-India accord and set back prospects of improvement in an increasingly important bilateral relationship. They also argue that Congress should hold hearings to promote a broad reassessment of American nonproliferation strategy. The result is a thoughtful product that merits careful consideration by members of Congress, the administration, and other interested parties in both the United States and India.

Richard N. Haass
President
Council on Foreign Relations
June 2006

ACKNOWLEDGMENTS

In developing this Council Special Report (CSR), we interviewed individuals who were supportive of, ambivalent toward, and opposed to the U.S.-India deal. These included current congressional and administration staff; former U.S. government officials, including ambassadors to India and senior nonproliferation officials; current or former officials of the Indian, Pakistani, Chinese, and Brazilian governments; and staff at nongovernmental organizations (NGOs) and think tanks on both sides of the nuclear issue.

During the course of writing this report, we consulted with an advisory group that met twice to offer constructive feedback. We are grateful to George R. Perkovich for chairing the advisory committee meetings and to William Clark Jr., Stephen P. Cohen, Lee Feinstein, Francine R. Frankel, Sherri W. Goodman, Robert M. Hathaway, Gary Samore, and Henry D. Sokolski for participating.

We thank Council President Richard N. Haass for his support in producing this CSR. We are grateful for the advice of Vice President and Director of Studies James M. Lindsay. Research Associates Ripal H. Patel and Lisa Obrentz were instrumental in assisting with research, helping us meet deadlines, and preparing the report for wide distribution. We also thank the publications team of Patricia Dorff and Molly Graham and the communications team headed by Lisa Shields and Anya Schmemann.

The publication of this report was made possible, in part, by grants from the Carnegie Corporation of New York and the John D. and Catherine T. MacArthur Foundation. We also greatly appreciate generous financial support from the Richard Lounsbery Foundation and the Ploughshares Fund. The statements made and views expressed in this report are solely our responsibility.

Michael A. Levi
Charles D. Ferguson

COUNCIL SPECIAL REPORT

THE U.S.-INDIA DEAL

The United States has long sought to prevent the spread of nuclear weapons and to build a relationship with India, a rising power but a nuclear pariah since it first exploded an atomic bomb in 1974. In announcing a sweeping negotiated framework for nuclear cooperation with India on July 18, 2005, followed by an agreement on details on March 2, 2006, the Bush administration has stirred deep passions and put Congress in the seemingly impossible bind of choosing between approving the deal and damaging nuclear nonproliferation, or rejecting the deal and thereby setting back an important strategic relationship. Yet patience and a few simple fixes would address major proliferation concerns while ultimately strengthening the strategic partnership—provided Congress and the administration work together.

On its side of the deal, the Bush administration has promised to help India become a partner with the United States in the realm of nuclear energy. This promise entails three obligations. The administration must negotiate a formal nuclear cooperation agreement (technically referred to as a “123 agreement”) with India, which would provide a legal framework for nuclear commerce. It must persuade Congress to change U.S. laws that currently bar civilian nuclear trade with India. And it must convince the Nuclear Suppliers Group (NSG)—the international cartel that controls most trade in nuclear technologies, of which the United States is a founding member—that it should relax its rules that currently prevent most nuclear trade with India.

In exchange, the Indian government has reaffirmed its intent not to test nuclear weapons, promised to adhere to the highest international standards for controlling sensitive nuclear exports, and committed to separating its civilian from its military nuclear facilities, with only civilian facilities becoming eligible for American cooperation. To implement that final step, India has agreed to negotiate a system of permanent inspections (technically referred to as “safeguards”) for its civilian facilities with the International Atomic Energy Agency (IAEA).

The deal has been controversial, though, most prominently for what it lacks. India has made a political promise to refrain from testing nuclear weapons as long as other

nations are similarly restrained, but it has not signed the Comprehensive Test Ban Treaty (CTBT), which would legally bind it to that obligation. Nor has India excluded the possibility of testing its own weapons should other states test theirs first. India has agreed to submit fourteen of its twenty-two nuclear reactors to international inspections, but it has kept the remaining eight potentially available for producing nuclear weapons material, has made no definite commitments whether future reactors will be inspected or used for weapons production, and has made no promises to end its production of nuclear weapons material. In contrast, the United States, Great Britain, France, Russia, and China, the officially recognized nuclear weapons states under international law, have stopped producing nuclear weapons material.

Indian attempts to dilute even its limited commitments have further antagonized many in Congress. Though negotiations over the formal U.S.-India nuclear cooperation agreement have been secret, India is widely believed to have resisted elements of the Bush administration's proposal that conditions nuclear cooperation on India not testing nuclear weapons. The Bush administration's refusal to share its draft nuclear cooperation agreement with Congress has fueled suspicions that the administration might concede (or already might have conceded) to Indian demands. India has also expressed uneasiness with the requirement, which it accepted as part of its deal with the Bush administration, that inspections of its facilities be permanent. This reluctance has led many to worry that India will negotiate a less-than-ironclad inspection agreement with the IAEA, and the administration has failed to reassure Congress that it will hold a firm bottom line against that possibility. Exacerbating matters further is the reality that the administration has not yet been able to get the NSG to approve changes to its rules. This has fueled speculation that the United States and India might engage in nuclear cooperation without explicit NSG sanction, or, alternatively, that the United States might make the unwise concession of allowing China-Pakistan nuclear commerce in order to get its own cooperation with India approved.

This long list of specific questions has been amplified by concerns that opening U.S.-India nuclear cooperation will undermine efforts to oppose nuclear weapons in Iran and North Korea. Unlike the other concerns, these worries are largely misplaced. Iran and North Korea are driven toward nuclear weapons by their immediate security situations,

not by the Indian nuclear program or by U.S. policy toward it. And if Iranian or North Korean leaders believe that the U.S. opening to India is a sign that their own nuclear programs will soon be accepted, they are mistaken, as American leaders have regularly pointed out. Meanwhile, those states whose support is critical to confronting Pyongyang and Tehran—the five Security Council members, along with Germany, Japan, and South Korea—appear to have held firm to their past strategies despite the U.S.-India deal.

Yet even these concerns are balanced by widespread sympathy, and often enthusiasm, for strengthening the strategic relationship between the United States and India, the world's largest democracy, home to more Muslims than any state other than Indonesia, and next-door neighbor to a rising China. Many, if not most, in Congress accept that rejecting the high-profile nuclear deal, explicitly or otherwise, would reinforce Indian impressions of the United States as an unreliable partner, substantially setting back efforts to develop a real strategic relationship. They accept that they cannot fix every flaw in the deal without effectively undermining the prospect of U.S.-India nuclear cooperation, but they are unsure about what they can reasonably do.

This Council Special Report lays out a plan for getting the deal right. The bargain among Congress, the administration, and India should be simple. Congress should accept the basic framework negotiated between the United States and India—including the Indian commitment to its moratorium on nuclear tests and to stronger controls on sensitive exports; the American acceptance that India will not formally cap its nuclear arsenal as part of the deal; the American desire, though not insistence, that future Indian nuclear reactors be placed under inspections; and the Indian desire that future nuclear cooperation be free from potentially onerous annual congressional review—and express that acceptance quickly and formally through “Sense of Congress” resolutions. In exchange, the administration should accept that Congress will play a meaningful role in shaping the details of that framework through its handling of legislation that would enable nuclear cooperation. Congress should issue a set of bottom-line requirements for the formal U.S.-India nuclear cooperation agreement, for India's inspection agreement with the IAEA, and for new NSG rules that would allow nuclear commerce with India, and enforce those requirements by refusing to pass final legislation enabling nuclear cooperation until the agreements are in place and are satisfactory. U.S. legislation, while

not mandating the future shape of the Indian nuclear complex, should provide incentives to steer India in the right direction.

To make that work, the administration will have to be a genuine partner, explaining to India that demanding complete deference from Congress, an equal branch of the U.S. government, would be a real gamble. It would, at a minimum, create the perception of undermining congressional authority, risking congressional resistance simply on principle. And taking time to build stronger congressional support, while frustrating now, will benefit the U.S.-Indian relationship in the long term.

At the same time, Congress should accept that it will not solve all of America's nonproliferation challenges just by getting the U.S.-India deal right. It should thus seize the moment to spark debate on how the United States should address those real nuclear challenges that many have wrongly tied too closely to the U.S.-India deal.

HISTORY AND STRATEGY

American options are limited by some simple realities of Indian strategy and politics, many of which have been learned the hard way through three decades of frustrating attempts to deal with a nuclear India. American choices are also limited by the need to reinforce the nonproliferation regime. Finding a path forward requires understanding both sets of boundaries.

For three decades, Indian nuclear weapons have confounded American policymakers. Beginning in 1974, when India tested its first nuclear explosive, through the late 1990s, when India conducted a round of five additional tests, successive Democratic and Republican administrations held a hard and consistent line: until India gave up its nuclear arms, it would be ostracized by the community of responsible nuclear states and denied the civil nuclear cooperation and the recognition as a nuclear power it desired.

American efforts delivered important, and enduring, benefits. Isolation helped slow arms buildups on the subcontinent at times when passions were high and nuclear doctrines uncertain; India and Pakistan's decisions to keep their arsenals at relatively low levels would require significant political shifts in each state to reverse today. Moreover, no state contemplating acquisition of nuclear arms will be able to ignore the thirty-two years of penalties that India has endured when assessing the potential consequences of its own decision to acquire such arms. But the United States learned that denuclearizing India was an unachievable objective: India insisted that its own disarmament would require global elimination of nuclear weapons, and its unwavering position left little reason to doubt that.

After India conducted a series of nuclear tests in 1998, the United States began a fundamental reexamination of its policy. The Clinton administration sought Indian actions short of denuclearization, chief among them accession to the CTBT and agreement to end production of fissile material for nuclear arms. In exchange, it offered India civil nuclear cooperation. Dealing more directly with India on its nuclear program could, many judged, restrain Indian nuclear activities, yield benefits in controlling

sensitive Indian exports, and help prevent nuclear war on the subcontinent. At the same time, the United States was driven by a desire to work with India on a broader, strategic level and judged that the nuclear issue was a thorn best removed, though not at any cost. The Clinton administration, as a result, engaged in extensive dialogue with New Delhi, but India would not budge on its insistence that it not unilaterally cap its nuclear arsenal.

Thus, in 2001, the Bush administration faced the same competing demands that had confounded its predecessor. This administration differed fundamentally, though, in the weights it accorded to those demands, as relations with great and rising powers assumed much higher priority in its calculus. Early in its first term, the administration made a strategic decision to build a much stronger relationship with India. A more robust U.S.-Indian relationship, it rightly reasoned, would lessen the chances that China could dominate the future of Asia. A better U.S.-Indian relationship could help the United States more effectively combat terrorism; like America, India has suffered from terrorist attacks, and working more closely together, each country might learn from the other's experiences. India also has the world's second largest Muslim population, and a stronger relationship could help U.S. efforts to develop better relations with the Islamic world. Indeed, despite having endured much sectarian conflict, India has enjoyed much success in building a secular state.

The decision to strengthen ties with India, however, did not force the administration to make its nuclear deal with India. The 1990s had convinced many reasonable people that India would never formally and unilaterally cap its nuclear arsenal. Yet there were other options that might have been more carefully explored. Might India have agreed to set a future limit on its stockpile of nuclear materials? Might it have agreed to subject all future power reactors to inspections? Might it have passed legislation deepening its unilateral moratorium on nuclear tests? The administration did not ignore these possibilities, but it ultimately made clear to New Delhi that it was willing to open nuclear cooperation even if India refused additional restrictions. That decision reflected a certain realism about the political situation in India, as many on the Indian right oppose any restrictions on the Indian nuclear program. But the Indian right does not dictate Indian policy, and what might ultimately have been possible within the constraints

of Indian politics—and whether further Indian concessions might have been forthcoming had the administration taken a harder line—is unknown.

The Bush administration had made a strategic judgment: a stronger U.S.-Indian relationship would greatly improve America's position in Asia and the world, but American barriers to nuclear cooperation made stronger U.S.-India ties much harder to achieve. U.S. policymakers of both political parties had long been concerned about a rising China, and by strengthening relations with China's next-door neighbor, the administration saw the potential for a strategic hedge. Meanwhile, as U.S. policy increasingly focused on promoting democracy worldwide, the appeal of a deeper relationship with the world's largest democracy was undeniable. Other arguments for engagement—most notably those focused on energy policy—bolstered these basic convictions, but they were not persuasive in and of themselves.¹

This set of judgments was an effective and widely accepted case for stronger ties with India, but it was much weaker as an argument for nuclear cooperation. The material effect of nuclear cooperation (or its absence) on the U.S.-Indian relationship will be minimal. The political impact is more important: American exclusion of India from nuclear commerce has long grated on New Delhi, proving an irritant in the bilateral relationship, and removing this point of friction would no doubt strengthen the relationship. But there are many other barriers to a stronger relationship, most notably Indian economic ties with China and Iran, and there is little evidence that the United States would have suffered appreciably had it held out one or two more years for deeper nonproliferation concessions. Indeed, when the nuclear deal was made in March 2006, India was facing a looming uranium shortage. Had the United States withheld nuclear cooperation and had India faced a more acute need to obtain foreign uranium, it might have accepted a deal for nuclear cooperation on terms more favorable to the United States.

¹ Indeed, these arguments were generally weak. Some believed that boosting Indian nuclear energy would take pressure off tight oil resources at a time when gas prices were skyrocketing, but most Indian oil is used by cars and trucks, not by power plants, so nuclear power will not significantly change the demand for oil. Others saw the potential to reduce greenhouse gas emissions, but, absent much broader efforts on that front, which the Bush administration has not pursued (and has often opposed), modest reductions in Indian emissions will have little effect.

Since then, though, the dynamics have shifted. In the immediate aftermath of the U.S.-India deal, Russia supplied India with uranium for two reactors at Tarapur, partially alleviating near-term pressures for outside sources of nuclear fuel. More fundamentally, the high-profile announcement of a U.S.-India nuclear deal has changed the choices available to American policymakers. If Congress blocks cooperation after the Bush administration has made strong and public commitments to India, it would damage the bilateral relationship. Rejecting the nuclear deal now would leave the United States in a substantially worse position than had that deal not been made in the first place, reinforcing unfortunate Indian perceptions of the United States not only as anti-Indian but also as an unreliable partner.

The U.S. Congress, of course, should not defer passively to the president, nor should it allow the effect of its actions on U.S.-India relations to trump all nonproliferation concerns. But the new reality should make it think carefully about its nonproliferation priorities and about precisely how those intersect with the U.S.-India deal. Fortunately, a rebalancing of the deal is possible, protecting nonproliferation needs without sacrificing the U.S.-Indian relationship—as long as the administration and India show a small amount of flexibility in moving forward.

NONPROLIFERATION

Finding a workable path forward requires that Congress reserve the bulk of its political capital for a handful of top-tier objectives. It should focus on preventing Indian nuclear testing and fundamental changes in Indian nuclear strategy, rather than on blocking growth in the number of Indian nuclear weapons. It should focus on obtaining cooperation—from India as well as other countries—in controlling the spread of sensitive nuclear technologies, instead of on measures that would shape the development of nuclear technology in India itself. And it must also be careful not to assume that all its top nonproliferation ends can be met simply by getting the U.S.-India deal right. These priorities, described in greater detail below, are driven both by American nonproliferation needs and by recognition that imposing new, unnegotiated limits on India would be much more difficult than enforcing and supporting commitments India has already made. They also recognize that it is easier to shape U.S. policy than Indian policy.

NUCLEAR TESTING MATTERS MORE THAN THE SIZE OF THE INDIAN NUCLEAR ARSENAL

A return to nuclear testing would be much more likely to spur an Asian arms race than would a modest increase in the size of India's nuclear arsenal. Nuclear testing by India might enable it to wield nuclear weapons with much larger explosive power than those currently in the Indian arsenal. That in turn would allow important changes in Indian nuclear strategy—for example, it might let India target Chinese or Pakistani nuclear sites that were previously safe—driving Beijing or Islamabad to develop new weapons themselves or to change their currently restrained strategies for using nuclear arms. Indian nuclear testing would also provide political cover for both China and Pakistan to test. American analysts believe that a small number of nuclear tests would permit Beijing to perfect warheads that would allow it to target the United States much more effectively. Thus, Indian testing could lead, through a short sequence of events, not only to danger in Asia, but also to very direct nuclear risk for the United States. Moreover, an Indian

nuclear test would be a highly visible event, sending a clear signal to the rest of the world that the nuclear nonproliferation regime had been weakened.

In contrast, were India simply to produce more nuclear material, or even to modestly increase the size of its arsenal (which presently numbers roughly fifty weapons), it would not likely provoke a change in Chinese strategy because these Indian steps would not threaten China in any fundamentally new way. Moreover, such steps would give neither China nor Pakistan cover to test. Pakistan, though, might react more directly to a simple numerical buildup in Indian weaponry and build new weapons itself, since Islamabad appears driven as much by a desire to match New Delhi tit for tat as by any sophisticated strategic calculations. Beyond South Asia, slow growth in the Indian stockpile—the current status quo—would be considered relatively unimportant, eliciting little reaction. This limited reaction suggests that while the size of the Indian arsenal matters, it is less important—symbolically, politically, or materially—than whether India tests a nuclear bomb.

CONTROLLING EXPORTS MATTERS MORE THAN SHAPING THE INDIAN NUCLEAR COMPLEX

Today, the greatest nuclear danger facing the United States is the prospect of hostile states or terrorist groups acquiring nuclear weapons. This possibility is directly affected by steps that advanced nuclear states take to control exports of sensitive nuclear technologies, as well as by how they protect their weapons and weapons-usable materials. India affects this challenge directly as a potential exporter of nuclear technologies, a source of nuclear weapons or materials, and a partner in interdicting dangerous nuclear traffic. It can help by adhering to NSG rules governing nuclear exports and by refraining from exporting sensitive technologies that are critical components of bomb-making programs—two promises that it has made as part of the U.S.-India deal. It might contribute further by becoming a full partner in the Proliferation Security Initiative (PSI), a U.S.-led effort to interdict seaborne shipments of weapons of mass destruction and missile technologies, and in broader efforts to coordinate law enforcement and border control efforts against nuclear trafficking. India has substantial shipping capabilities and

intelligence resources in the Indian Ocean region that could aid PSI. And India's experience in clandestinely procuring nuclear-related technology could provide insights to efforts to prevent illicit commerce by other states in the future. Indeed, cooperation on controlling sensitive exports may be the greatest nonproliferation benefit of U.S.-India nuclear cooperation.

The U.S.-India deal will also affect export controls more broadly: the deal might change the incentives for other states to cooperate in controlling the flow of sensitive nuclear technologies. The sources of such cooperation are poorly understood; they include not only direct security interests but also economic and political factors. In crafting the final deal, Congress has room to shape these incentives, most notably by imposing the same restrictions on sales of sensitive, bomb-usable technologies to India that it is currently seeking to impose on other states, thus countering the perception that the United States seeks to establish a new system of nuclear haves and have-nots. If Congress and the administration can also create incentives for India to subject future reactors to inspections, it will alleviate frustration among potential export control partners who see a double standard. International cooperation on future export controls, however, will be determined, as it always has been, by factors unrelated to India, implying that Congress ought not to worry too much about how its actions on the deal will affect other states' decisions to cooperate on export controls.

As it clarifies its goals, Congress also should not worry that U.S.-India nuclear cooperation will drive other states to acquire nuclear weapons. Some critics have argued that by allowing India flexibility in developing its nuclear complex that others have had to sign the Nonproliferation Treaty (NPT) to acquire, the deal removes an important incentive for states to remain in the NPT. Yet regional security environments, prestige, and internal political pressures influence states' decisions to obtain nuclear weapons much more than the contours of the nuclear complex in an already nuclear-armed state like India, and the U.S.-India deal, whatever its form, will not change that.

A THREE-PART APPROACH FOR CONGRESS

The Bush administration's approach to U.S.-India nuclear cooperation has been designed primarily to strengthen the strategic U.S.-Indian relationship. Nonproliferation, though not ignored, has consistently been a lower priority. But if Congress simply tries to reverse these priorities and make nonproliferation its sole objective, it will derail the nuclear deal, setting back the U.S.-Indian relationship substantially, and possibly stimulate a disappointed and more isolated India to pursue a less responsible nuclear policy. A balanced approach is possible, but it requires concessions on all sides and a long-term vision. Building on the priorities just outlined, Congress should focus first on nuclear testing and on controls over sensitive exports, and second on the shape of the future Indian nuclear complex, while using attention to the U.S.-India deal to provoke broader reexamination of U.S. nuclear policy.

Congress should ensure that if India breaks its unilateral moratorium on nuclear testing, nuclear cooperation will cease. That limit—already contained in the administration's political deal with India—should be reflected in American law and in the nuclear cooperation agreement between the United States and India. Congress should not, however, deliberately aim to irreversibly end U.S.-India nuclear cooperation if an Indian test follows a Pakistani or Chinese test; the wisdom of continuing U.S.-India nuclear cooperation in that event will depend on the details of any tests, and future presidents should be given flexibility in dealing with such complex situations. It is essentially impossible, though, to write legislation that differentiates clearly between the two cases without providing a road map for an Indian return to testing and without undermining any leverage the United States might have to prevent unwise escalation following a Chinese or Pakistani test. The current Bush administration proposal—legislation that would halt nuclear cooperation following an Indian test even if not unilateral, but which could be overridden by a congressional majority—is the right compromise, and appears to have been accepted by the government of India as part of its deal. Applying a similar formula to the U.S.-India nuclear cooperation agreement is a logical extension. (NSG and IAEA rules should focus on inspection requirements rather than on testing obligations.)

Some Indians have argued that reinforcing India's testing moratorium through U.S. law would reflect American distrust and thus poison the strategic relationship, but that is a misreading of American policy, and the administration should vigorously argue against it. Indians point out that the United States does not legally condition its nuclear trade with China, Russia, Britain, or France on their continued moratoriums on nuclear testing. Each of those countries, though, has signed the CTBT. Given Indian opposition to taking the same step, Congress would be making a special exception for it, not imposing unusual demands. For that very reason, many in Congress would prefer that India sign the CTBT before nuclear cooperation is allowed. But Congress itself rejected ratification of that treaty in 1999, and majorities in both houses still oppose ratification. Conditioning U.S.-India cooperation on the Indian testing moratorium is already a diplomatic stretch for an administration and Congress that have flirted with removing the American signature from the CTBT, and Congress would rightly be charged with hypocrisy if it insisted on immediate Indian signature of the treaty. A formal test ban, in both the United States and in India, should remain a long-term goal, but nuclear cooperation should not be held hostage to it.

Congress should also ensure that as the deal moves forward, controls over sensitive exports, another priority, are strengthened. This report noted earlier that India has agreed not only to abide by NSG rules and to strengthen security over its nuclear establishment, but also to refrain from transferring sensitive nuclear technologies. Specifically, India has agreed to refrain from transferring technologies related to uranium enrichment or plutonium reprocessing, either of which can contribute to civilian nuclear programs but can also critically help states develop nuclear bombs. That reinforces an important but largely moribund Bush administration initiative aimed at closing a loophole in the NPT that allows states to acquire bomb-making technologies under civilian guise. Congress should further reinforce this initiative by enacting its own moratorium on U.S. transfers of enrichment and reprocessing technologies, not only to India but also to others. That should be politically straightforward, since as a matter of policy, the United States does not currently transfer these sensitive technologies. And by making the moratorium universal, Congress would avoid singling out India.

The NSG also has a critical role to play in making sure that Indian nuclear cooperation does not come at the expense of effective export controls. Congress should make sure that no new loopholes are created in the process of getting NSG agreement. That means not accepting new NSG rules that allow China-Pakistan nuclear cooperation as the price for U.S.-India cooperation. It should also mean requiring explicit NSG sanction for nuclear cooperation with India before such cooperation commences, rather than letting the administration exploit loopholes in current NSG rules.

These should be the main near-term goals for Congress as it confronts the U.S.-India deal; these objectives should be supplemented by efforts to provoke long-term reform in U.S. nuclear nonproliferation policy. Achieving these goals requires a three-part strategy.

ELEMENT I: TIMING

The administration has asked Congress to move quickly to pass legislation that would enable U.S.-India nuclear cooperation.² The legislation that the administration has provided is basically sound, though this report proposes minor changes. But the legislation, regardless of its details, is also the most powerful source of congressional leverage over the Bush administration as the administration develops a nuclear cooperation agreement with India, as India negotiates safeguards with the IAEA, and as the administration pursues changes at the NSG—three processes in which Congress has no direct role. The outcomes of these efforts will determine whether nonproliferation bottom lines are met, but passing legislation now would leave Congress with little power to ensure that those limits are respected. Congress should thus declare its support for cooperation and present its bottom-line requirements now, but wait to pass legislation until the other elements are in place.

This strategy is not without dangers and downsides. A central purpose of the U.S.-India deal is to convince New Delhi that Washington is a reliable partner and that delay

² Congress would technically have a onetime option to reverse that decision later, when presented with a formal nuclear cooperation agreement by the Bush administration. But since President Bush would veto such a move, Congress would require a highly unlikely two-thirds majority.

would feed Indian suspicions that the United States cannot be trusted. Such suspicion could not only weaken overall relations with India, but also prompt the fall of India's pro-American, minority government, which recently suffered significant defeats at the hands of its anti-American left-wing rival in state elections, and hence lead to the demise of the nuclear deal. These ultimately are manageable risks, but Congress and the administration must confront them carefully.

To do that, Congress should quickly pass "Sense of the Senate" and "Sense of the House" resolutions supporting nuclear cooperation with India while laying down simple requirements for the formal nuclear cooperation agreement, for the Indian inspections agreement with the IAEA, and for new NSG rules. The same resolutions, though, must be clear about what Congress will not do as part of its legislation: it will not impose limits on Indian fissile material production, demand Indian signature on the CTBT, or dictate which Indian reactors should be designated as civilian and be subject to inspection, all of which are steps that would validate Indian fears of having formal constraints imposed on it unilaterally. Right-wing Indian opponents of nuclear cooperation, who fear American constraints on the Indian nuclear complex, will seize on any demands Congress makes to argue against the deal; being clear about what is off-limits for Congress will provide more pro-American leaders in India with ammunition to defend U.S.-India cooperation.

The administration should also argue to Indian supporters of a stronger U.S.-Indian relationship that forcing critical legislation through an unenthusiastic Congress would fail to cement a strong, broad, and lasting U.S.-Indian relationship. If quick action by Congress reflected strong support for nuclear cooperation, the administration would be on firm ground to counsel haste. But enthusiasm in Congress for nuclear cooperation with India is at best lukewarm. A compliant Congress may aid India now, but if legislators are not fundamentally supportive of the direction they are enabling, they will not be genuine partners in a stronger relationship. An enduring strategic partnership cannot be founded only on rapport between a single pair of leaders and upon legislative action taken grudgingly. Legislation passed with broad support will benefit both the United States and India in the long term, and the administration should communicate that to India at every opportunity.

The administration and the government of India can further reduce any risk that delay will lead to defeat by moving quickly themselves. All accounts of U.S.-India nuclear negotiations over the past year indicate that both sides can move quickly when they want to. If the government of India and the Bush administration now fear delay, their best strategy is to complete their other agreements; since Congress is demanding nothing new, that should not require lengthy negotiations. If they do that, congressional approval should quickly follow.

There should be no doubt, though, that skepticism will linger on the Indian left even if Congress ultimately passes legislation on nuclear cooperation; opponents of U.S.-India cooperation will still insist that the United States will renege on its promises. Delay will inevitably exacerbate that sentiment, but opponents would make such claims even if legislation were passed immediately. The best way to undermine this claim will be actual nuclear cooperation—not deals signed or legislation passed, but shipments of nuclear equipment and construction on the ground. If Congress passes legislation, the United States should immediately begin real nuclear cooperation, forcefully rebutting those who argue that the United States will never follow through. This clear signal would give the United States the added benefit of not allowing Russia and France, both of which are eager to capitalize on the American nuclear deal, to beat it to the Indian nuclear scene, thus maximizing American leverage over the future of India's nuclear program.

ELEMENT II: LEGISLATION

If India and the Bush administration meet the demands set out by the House and Senate—and there is no reason to believe that they cannot—Congress should quickly pass legislation enabling nuclear cooperation. That legislation should be modeled after what the administration has already proposed, with a handful of constructive changes.

Nuclear Testing

If the administration and India meet congressional demands on nuclear testing, the current legislation, which conditions U.S.-India cooperation on a continued testing moratorium, should provide sufficient safeguards against nuclear testing. Some have argued that the current language is sloppy and provides opportunities for a devious administration to avoid reporting Indian tests and thus halt cooperation. Though these fears are likely excessive, Congress would meet little resistance were it to revise the legislation to address the current lack of clarity. As noted earlier, the legislation would, incidentally, halt U.S.-India nuclear cooperation even if India were not the first to test. In such a situation, the United States will have to determine whether withholding continued nuclear cooperation gives it useful leverage or whether penalizing India is unwise. If the president determines that nuclear cooperation should continue, he or she will be able to override any legal barriers with the support of a majority in Congress.³

Export Controls and Nuclear Materials Security

As noted earlier, India has made important commitments to strengthening export controls, the most important nonproliferation element alongside restrictions on nuclear testing, in the nuclear deal. To reinforce these commitments, Congress should ask the administration if it requires any money or legal authority to assist India in improving its export controls, and it should provide whatever is needed. This support would most likely fund American experts to work cooperatively with Indian authorities, rather than comprise direct transfers to India.

Congress should stop short, though, of mandating Indian cooperation in combating illicit nuclear supply networks and participation in the PSI. Both are goals that the United States should pursue. But Congress cannot effectively mandate meaningful

³ Even if legislation enabling nuclear cooperation with India did not automatically end such cooperation following an Indian test, any president, with the support of a majority in Congress, could choose to end cooperation. Thus, if India tests, the decision of the president and a simple majority in Congress, rather than the details of current legislation, will shape the American response.

cooperation on matters such as intelligence cooperation and coordination of operations, which must develop over years rather than be declared now and verified later.

Congress should also fund efforts to help India improve security for its nuclear materials. As India accumulates larger amounts of weapons-usable materials, the risk of nuclear terrorism in India, and elsewhere, will increase. Even if these stockpiles do not grow, existing material in India will not be invulnerable to terrorist theft. The United States should work with India to improve the physical protection of these materials. New Delhi would likely resist an outright assistance program, which would imply Indian inferiority, but truly cooperative physical security efforts based on equal partnership should be pursued. Drawing on the precedent of the Nunn-Lugar Cooperative Threat Reduction program, which began soon after the collapse of the Soviet Union, Congress should allocate funds to form a cooperative nuclear security partnership with India.

Nuclear Material Production

Indian nuclear material production and the shape of the Indian nuclear complex are the remaining issues for Congress. The greatest failings of the U.S.-India deal are on this front, but the current deal has left Congress with few powerful options other than approving the basic contours of the Bush administration approach or rejecting the U.S.-India deal. This report has argued that the shape of the Indian nuclear complex was a lower-priority issue than either nuclear testing or controls over sensitive exports and materials, since Indian accumulation of fissile material is unlikely to fundamentally alter the nuclear decisions or capabilities of other states, while nuclear testing and the potential spread of nuclear technologies will have far more direct effects on that front. Thus, if Congress can achieve its goals in those dimensions, it should not hold the deal hostage to details on fissile material production.

That does not mean, though, that Congress should do nothing about fissile material production. Instead, it should focus on providing incentives for India to move in a positive direction, rather than mandating a specific course.

Instead of imposing immediate limits on Indian nuclear material production, the U.S.-India deal features an Indian commitment to negotiate in good faith on a future Fissile Material Cutoff Treaty (FMCT). An FMCT would be a universal instrument barring the future production of fissile materials for weapons. Since no such treaty currently exists, the approach taken in the U.S.-India deal allows India to wait until Pakistan has stopped producing fissile materials and until China has formalized its current moratorium on fissile material production before stopping fissile material production itself. The Bush administration formally proposed such a treaty on May 18, 2006. Its proposed treaty, which would require the approval of only Britain, China, France, Russia, and the United States to enter into force, is an important first step, and Congress should encourage quick action on it. India, though, has supported an alternative version of the treaty, which would include intrusive monitoring of nuclear sites. Such monitoring would contribute to much-needed transparency in Asia and thus should be supported by Congress as well.

There is nothing, though, that Congress can do to legislate a breakthrough on an FMCT. This suggests that Congress should take more direct steps, as part of its legislation, to control the risk that India will use the nuclear deal to produce large amounts of fissile material. Were Congress to leave current law in place, it would retain a formal right to review nuclear exports each year, giving it leverage on this front. But it ultimately could not stop exports without a two-thirds majority vote or a simple majority vote and a supportive president. Thus, the primary result of the potentially cumbersome and contentious formal annual review would be to undermine the confidence-building purpose of the U.S.-India deal. Instead, in exchange for giving up its annual right of review, Congress should provide less-intrusive incentives for India to label future reactors as civilian and place them under inspection. Congress should require that the administration report annually on whether India has designated additional power reactors and other nuclear facilities as civilian and placed them under inspection or has, inappropriately, designated them as military. This arrangement would not impose any explicit limits on India, but would force any future Indian abuse of the nuclear agreement into the political spotlight, making corrective American action more likely.

ELEMENT III: PROMOTING MORE EFFECTIVE NONPROLIFERATION POLICY

The recommendations offered above, if implemented, would still leave the United States facing a host of nuclear dangers that have been raised by both supporters and opponents of the deal. These threats are more a sign of fundamentally ineffective U.S. nonproliferation policy than a reflection on U.S.-India nuclear cooperation. Congress, as this report has argued, cannot fix American nonproliferation policy by simply “fixing” the U.S.-India deal. But Congress should use the unusual current attention on nuclear proliferation to promote serious reappraisal of American nonproliferation policy by holding hearings on a handful of important issues and by requiring the administration to present it with a nuclear nonproliferation strategy.

Congress should not, however, attempt to rewrite American nonproliferation policy around U.S.-India cooperation. Such important shifts in American policy will take longer to properly design than the U.S.-India deal should take to complete. Moreover, while Congress plays an important role in nonproliferation policy, strategic planning is not its institutional strength. Congress should ensure that it focuses attention on broader nonproliferation policy not only as it confronts legislation on U.S.-India cooperation, but also after it has finished work on the deal. This extended time frame would guard against abuse of any hearings simply as tools to promote or attack the U.S.-India deal and would ensure that hearings were not simply window dressing for its passage.

Iran and North Korea

Iran, which might have nuclear arms within several years, and North Korea, which probably has a handful of nuclear weapons, pose the greatest current threats to the nonproliferation regime. Indian acquisition of nuclear weapons was a failure of the nonproliferation regime over thirty years ago, and thus says little about whether the regime is credible today. North Korean retention or Iranian acquisition of nuclear weapons would, in contrast, signal critical weaknesses in the current regime. If Congress

is genuinely worried about the credibility of the nonproliferation regime, it would do well to focus attention on these two problem cases.

The most important tool for Congress in shaping policy on these two challenges is its ability to highlight gaps in American strategy and offer a forum for debating solutions. The Senate Committee on Foreign Relations has recently done just that with Iran, holding five hearings already this year. But policy toward North Korea, the focus of much attention in 2003 and 2004, has been neglected, both by Congress and, to a lesser extent, by the administration. Congress can help refocus attention on these challenges and air potential solutions through additional hearings on both. To the extent that the new U.S. nuclear policy toward India has (incorrectly) led North Korea and Iran to expect similar treatment, congressional hearings on those two states would provide a prominent forum to disabuse them of those beliefs.

Nuclear Arms in South and East Asia

Debate over the U.S.-India nuclear deal has focused attention on the Indian, Chinese, and Pakistani nuclear arsenals and on the dynamics that drive nuclear policy in Asia. Congress should hold hearings to explore options that would reduce the risks of arms racing or a nuclear war in Asia.

Significant nuclear buildups by China, India, or Pakistan could provoke similar actions by the others. Conversely, restraint and transparency by any of the three states could guard against unintended arms racing. Hearings should explore ways in which Cold War arms control models might, or might not, apply usefully in Asia; assess whether efforts to address nuclear dangers, which have traditionally grouped India and Pakistan alone, might be more effective if they also included China or were embedded in global arms control efforts; and investigate the potential role of the United States in promoting progress on these and related fronts. In particular, Congress should seek to promote sustained efforts toward restraint in nuclear buildups, something that the U.S.-India deal was unable to impose. Congress should also explore the role of U.S. nuclear policy in driving Asian nuclear dynamics, particularly through its effects on China, which

could be driven to significant nuclear strategy shifts by certain American missile defense deployments and by American efforts to make foreign nuclear missiles vulnerable to disarming first strikes by precision-guided nonnuclear weapons.

Controls on Enrichment and Reprocessing

Potential worldwide growth in nuclear energy has prompted the Bush administration to propose controls on exports of enrichment and reprocessing technologies. Congress should promote restraint in exports of uranium enrichment and plutonium reprocessing technologies by enacting a moratorium on American exports, but such a step will only be valuable if the United States reinvigorates its efforts to have other states exercise similar restraint.

In 2004, the Bush administration proposed that NSG members agree not to export these sensitive technologies to states that do not already have them. Although well intentioned, this effort fell flat. Indian agreement not to export enrichment and reprocessing technologies as part of the nuclear deal will help reinvigorate the initiative, as will a congressional moratorium on American exports. But they will be far from enough by themselves. Congress should hold hearings to explore ways to move policy forward on this front and to encourage the administration to redouble its own efforts. It should study the relative merits of denying exports to all states, as the administration has proposed, and strategies that provide greater access to sensitive technologies for well-behaved states, as Great Britain has proposed. It should assess whether closing the NPT loophole that allows dangerous commerce in enrichment and reprocessing requires amendment of the NPT, or whether it can be done outside the treaty. It should also investigate the potential role of a verified FMCT—which India has supported but the administration has opposed—in placing new constraints on sensitive civilian facilities and in promoting transparency in Asia.

Punishments for Proliferation

Many have claimed that allowing nuclear cooperation with India to proceed will send states a signal that they can acquire nuclear weapons and later obtain nuclear energy cooperation. The Indian experience, though, might suggest a different lesson: states that acquire nuclear weapons may ultimately obtain nuclear energy cooperation, but only after enduring a long period of punishment—in the Indian case, thirty-two years—following a largely responsible foreign policy, and demonstrating commitment to democratic government and the rule of law. These two interpretations should prompt more careful examination of what appropriate punishments for proliferation are, a question already entering discussions about the Iranian nuclear program. Such discussions would help ensure that Iran and North Korea do not mistake the U.S.-India deal as a sign that their programs will soon be accepted.

In hearings on the issue, Congress should explore the relative effectiveness of various punishments for states that proliferate. It should investigate the potential value of establishing standards for punishment—sentencing guidelines for nuclear crimes—debate whether such standards could make sense at an international level, and discuss whether those standards should reflect the characters and behaviors of the states in question or whether they should be more country-neutral. Congress should also promote strategic thinking about how, and under what conditions, states that have proliferated in the past should ultimately be reintegrated into the international system.

A Nuclear Nonproliferation Strategy

Having provoked debate on a host of critical nuclear issues inspired, but ultimately unresolved, by the U.S.-India deal, Congress should require that the administration present its own broader nonproliferation strategy. Congress should not make such a strategy a prerequisite for U.S.-India cooperation, which would risk forcing the administration to design that strategy as a marketing effort for the U.S.-India deal. Instead, it should require the administration to present the strategy one year after the

passage of any legislation enabling nuclear cooperation with India. The strategy should be mandated to address the future of rule-based nonproliferation, the intersection between the spread of nuclear energy and the prevention of nuclear proliferation, and the prospect of nuclear terrorism. By initiating such a high-level review, Congress would create a captive audience for its hearings on nonproliferation strategy and ensure that the current controversy over the U.S.-India deal would leave a positive legacy for American nuclear policy.

ABOUT THE AUTHORS

Michael A. Levi is a fellow for science and technology at the Council on Foreign Relations. Before joining the Council, Dr. Levi was a nonresident science fellow and a science and technology fellow in foreign policy studies at the Brookings Institution. He is coauthor of *The Future of Arms Control* (Brookings, 2005), which proposed new principles for controlling dangerous technologies in a world fraught by terrorism, and of *Untapped Potential: U.S. Science and Technology Cooperation with the Islamic World* (Brookings, 2005), which explored new opportunities for engaging Muslim publics. Dr. Levi holds a PhD from the University of London (King's College), where he was affiliated with the department of war studies and was the SSHRC William E. Taylor Fellow, and an MA in Physics from Princeton University.

Charles D. Ferguson is a fellow for science and technology at the Council on Foreign Relations. He is also an adjunct assistant professor in the School of Foreign Service at Georgetown University and an adjunct lecturer at the Johns Hopkins University. Before coming to the Council, Dr. Ferguson was scientist-in-residence at the Center for Nonproliferation Studies of the Monterey Institute of International Studies. At the Center, he codirected a project that systematically assessed how to prevent and respond to nuclear and radiological terrorism. This project's major findings were published in *The Four Faces of Nuclear Terrorism* (Routledge, 2005). He is also the lead author of the award-winning report *Commercial Radioactive Sources: Surveying the Security Risks*, which examined the threat of radiological dispersal devices, such as "dirty bombs." Dr. Ferguson has also worked on nuclear safety issues in the Nonproliferation Bureau at the U.S. Department of State. After graduating with distinction from the U.S. Naval Academy, he served as a nuclear engineering officer on a ballistic-missile submarine. He holds a PhD in physics from Boston University.

OTHER COUNCIL SPECIAL REPORTS
SPONSORED BY THE COUNCIL ON FOREIGN RELATIONS

Generating Momentum for a New Era in U.S.-Turkey Relations
Steven A. Cook and Elizabeth Sherwood-Randall; CSR No. 15, June 2006

Peace in Papua: Widening a Window of Opportunity
Blair A. King; CSR No. 14, March 2006

Neglected Defense: Mobilizing the Private Sector to Support Homeland Security
Stephen E. Flynn and Daniel B. Prieto; CSR No. 13, March 2006

Afghanistan's Uncertain Transition From Turmoil to Normalcy
Barnett R. Rubin; CSR No. 12, March 2006

Preventing Catastrophic Nuclear Terrorism
Charles D. Ferguson; CSR No. 11, March 2006

Getting Serious About the Twin Deficits
Menzie D. Chinn; CSR No. 10, September 2005

Both Sides of the Aisle: A Call for Bipartisan Foreign Policy
Nancy E. Roman; CSR No. 9, September 2005

Forgotten Intervention? What the United States Needs to Do in the Western Balkans
Amelia Branczik and William L. Nash; CSR No. 8, June 2005

A New Beginning: Strategies for a More Fruitful Dialogue with the Muslim World
Craig Charney and Nicole Yakatan; CSR No. 7, May 2005

Power-Sharing in Iraq
David L. Phillips; CSR No. 6, April 2005

Giving Meaning to "Never Again": Seeking an Effective Response to the Crisis in Darfur and Beyond
Cheryl O. Igiri and Princeton N. Lyman; CSR No. 5, September 2004

Freedom, Prosperity, and Security: The G8 Partnership with Africa: Sea Island 2004 and Beyond
J. Brian Atwood, Robert S. Browne, and Princeton N. Lyman; CSR No. 4, May 2004

Addressing the HIV/AIDS Pandemic: A U.S. Global AIDS Strategy for the Long Term
Daniel M. Fox and Princeton N. Lyman; CSR No. 3, May 2004
Cosponsored with the Milbank Memorial Fund

Challenges for a Post-Election Philippines
Catharin E. Dalpino; CSR No. 2, May 2004

Stability, Security, and Sovereignty in the Republic of Georgia
David L. Phillips; CSR No. 1, January 2004

To purchase a hard copy, call the Brookings Institution Press: 800-537-5487.

Note: Council Special Reports are available on the Council's website at www.cfr.org. For more information, contact publications@cfr.org.