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India and the Nuclear Deal

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Introduction

The Indo-US civilian nuclear agreement (hereafter referred to the deal) has been heavily criticized by non-proliferation advocates in the United States and around the world as creating a gaping hole in the Non-Proliferation Treaty (NPT), and complicating punishment against potential NPT violators such as Iran. It has also had to contend with considerable domestic opposition in India. Supporters have claimed it to be a historic agreement which transforms the Indo-US relationship and brings India into the broader non-proliferation regime. The first step towards the final approval of the deal was made earlier in August when the International Atomic Energy Agency (IAEA) Board agreed India-specific safeguards.

The deal envisions the extensive sale of nuclear fuel and technical cooperation under safeguards involving several selected Indian nuclear reactors. It transforms India from a nuclear pariah state to a unique member within the mainstream nuclear community. India is often described as a 'de-facto' nuclear state and has come under criticism for remaining outside the NPT (it was never allowed to join as a nuclear weapon state), and considerable pressure from the international community to sign the Comprehensive Test Ban Treaty (CTBT). Indeed, the Nuclear Suppliers Group was formed in response to India's nuclear test in 1974 to deny it, and other states access to dual-use nuclear technologies, that could assist them in their military programs. India has abstained from signing both NPT and CTBT, but under the deal would have the NSG restriction relaxed and derive fuel and technical know-how which hitherto had been reserved for the signatories of the NPT.

The deal is exclusive to India, and so was originally opposed by its nuclear arch-rival Pakistan. But the principal blockage up to this point has been domestic opposition in India, where the government has been accused of selling its nuclear sovereignty to American interests. Opposition to the deal had so polarized the Indian parliament, that important leftist allies withdrew support to the government threatening its viability and forcing it to seek new

allies to save the deal and itself. In an acrimonious trust vote to decide its fate, the government managed to win by a narrow majority and authorized its interlocutors to proceed to the IAEA.

Following the IAEA agreement, the next hurdle is for the Nuclear Suppliers Group (NSG) to agree to exceptions to their multilateral controls on nuclear fuel and technology for India. The NSG consists of major nuclear powers and primary exporters of nuclear fuel and technology and operates by consensus.

The final hurdle is the US Senate. Senators opposed to the deal appear to be in a minority, but the timetable is tight in advance of the dissolution of Congress before the US Presidential and Congressional elections in November.

IAEA negotiations

IAEA Director General Mohamed El Baradei strongly supported the deal. He **concluded** his intervention at the Board by saying:

“As Director General and as a lawyer, I consider that that the agreement is solid, in full conformity with our rules and standards; it makes no exception from the basic rules in terms of duration, in terms of conditions. And, as a person concerned with nuclear disarmament and non-proliferation — I believe this is a step in the right direction.”

One delegate was **reported** to have said that the DG’s intervention swung the opinion of the Board in India’s favor even though many countries had reservations.

While the primary state antagonists have been Iran, China and Pakistan, China rarely opposes a consensus, and appears to be holding fire in advance of the NSG meeting. Iran was vociferously against the exemption granted to India, and accused the United States of indulging in ‘double standards’, but is obviously not a member of the NSG.

Pakistan adopted a U-turn at the IAEA and expressed support, recognizing the potential for its own rehabilitation into the international community as a *de facto* nuclear state. Mr. Shahbaz, its ambassador to Vienna, hailed it as a precedent, “which constitutes an acknowledgement of ‘new realities’”. This view **could** have gained some comfort from El Baradei’s statement that the deal could be considered a precedent. However, calls from Pakistan’s Nuclear Command Authority for a ‘criteria based’ exemption rather than an exclusively Indian deal were **never** seen as realistic at this point. Pakistan’s demands for a similar deal were explicitly **rejected** by President Bush citing the different histories of India and Pakistan.

One Indian supporter responded to accusations of double-standards by stating that the “Safeguards agreement is to ensure that India shall not divert nuclear fuel to any other use. India is a highly responsible country and not a rogue State. India has never diverted any imported material to any other use and has never exported fuel or

technology to a third country.” Indian proponents [like](#) to contrast this record with that of its neighbor, Pakistan, which has been embroiled in a proliferation scandal involving its leading nuclear scientist Dr. A.Q Khan.

Assistance to India’s military program?

The chairman of the House of Representatives Foreign Affairs Committee Howard Berman, a Democrat, in a letter to Secretary of State Condoleeza Rice, has [attacked](#) the deal, saying, “Such an exemption would be inconsistent with US law, place American firms at a severe competitive disadvantage, and undermine critical US non-proliferation objectives”.

U.S. Congressman Edward Markey, a senior member of the House of Representatives Energy and Commerce Committee, and co-chair of the House Bipartisan Task Force on Non-proliferation, has [described](#) the agreement as "worse than useless" and "a sham". According to him "This pathetic safeguards agreement not only seriously undermines the Non-Proliferation Treaty, but it also sends the exact wrong message to Iran: that international nuclear safeguards are only for show. With this agreement, the IAEA has thrown its principles out the window and has abandoned its most important responsibilities."

Significant criticism of the deal relates to the fear that the agreement would free up Indian domestic uranium reserves to cater to the military sector of India’s nuclear program. [According](#) to Sukla Sen of the Coalition for Nuclear Disarmament and Peace, “The agreement is fatally flawed because it is part of a larger deal that allows India to keep its nuclear arsenal and make more fuel for nuclear weapons. It detracts from the objectives of nuclear non-proliferation and disarmament, and will have a negative global impact.”

Joseph Cirincione of Ploughshares and the Center for American Progress [asserted](#) that “the deal endorses and assists India’s nuclear-weapons program. U.S.-supplied uranium fuel would free up India’s limited uranium reserves for fuel that otherwise would be burned in these reactors to make nuclear weapons.” It is therefore feared that the production capacity of the Indian nuclear arsenal would be considerably increased.

Responding to fears that the deal would further advance the India’s military nuclear program assistant Secretary of State for South and Central Asian Affairs Richard Boucher [said](#) “you see that in the draft law (introduced in the US Congress) and elsewhere, the Indian decision to have a moratorium on nuclear testing is one of the basis on which we can undertake this civilian nuclear cooperation”. Recently, under secretary of state Nicholas Burns buttressed this statement [claiming](#) that the 123 agreement was "absolutely consistent" with the Hyde Act, and that US can terminate the pact if India conducted atomic tests.

Herein lies a significant problem, for as [articulated](#) by Henry Sokolski, executive director of the Non-proliferation Policy Education Center, “The Bush administration has tried to convince Congress that the enabling US legislation

for the nuclear deal, the Hyde Act, has mechanisms to check India's nuclear weapons ambitions. However, the Indian Government is indicating the opposite.”

Dr. Ashley J. Tellis of the Carnegie Endowment for International Peace [points out](#) that India’s uranium reserves are more than sufficient for its military and civilian programs. “The present shortage of uranium fuel arises from bottlenecks in mining and milling capacity... as a result of decisions made under pressures of fiscal necessity by the government of India in the early 1990s.” New facilities, not dependent in any way upon the deal and already in the pipeline, mean that current shortages will be transitory. Nuclear material or equipment exported by the United States (or others) under the deal with India would [not](#) be directly involved in the manufacture of nuclear weapons. Tellis argues that imports of any energy source could relieve India of the uranium limits on its military program just as effectively as assistance to their civil nuclear program.

Limits to the deal

Under the current terms of the deal if India were to experience unwarranted disruptions in the supply of fuel to its safeguarded civil nuclear energy establishments, the IAEA would assist and take legal recourse and India would have the right to suspend its safeguards. The preamble to the agreement talks of India’s right under the deal to *“reliable, uninterrupted and continuous access to fuel supplies from companies in several nations, as well as support for an Indian effort to develop a strategic reserve of nuclear fuel to guard against any disruption of supply over the lifetime of India's reactors.”* Articles 52(c), 29, 30 (f), and 4) provide additional clarification. India is also [reserving](#) the right to amend or adjust the list of safeguarded facilities, or to delay the application of safeguards, depending on India's access to the international fuel market, as outlined in the preamble.

Any guarantee of assured fuel supplies would nevertheless be a bilateral matter between India and the supplier. Australia has stated it would support India at the NSG, but is unlikely to supply India with uranium because of its *de facto* nuclear status and its failure to sign the NPT.

Some privileges afforded to the nuclear weapon states [will not](#) be granted. Inter-changeability of nuclear establishments kept under civilian or military designation, available to recognized NPT nuclear weapon states, is not given to India – they will not be able to switch reactors. The governing additional protocol, as and when it is negotiated, may include safeguards provisions applicable to non-weapon states. The United States has certain unique rights in the name of its 'national security interest' in the agreement with the IAEA, while China has the right to decline an additional protocol. By agreeing to place India’s nuclear facilities under the safeguards, it would be an irreversible process.

Domestic Critics

Domestic critics [point](#) to the failure of the government to achieve recognition of India's nuclear status. According to Dr A N Prasad, a former director of the Bhabha Atomic Research Centre and member of the Atomic Energy Commission, "It would have been better if India had insisted right at the beginning and managed to get a safeguards arrangement similar to the one applicable to the weapons states." This would have expressed formal intent of treating India on parity with the United States.

He thinks the 'corrective measures' as mentioned in the agreement fails to address the fear of a repeat of the disruption of nuclear fuel supplies from the United States, as experienced after the 1974 test. In that instance, nuclear fuel to the power plant at Tarapur was withheld when a new nuclear non-proliferation Act (NNPA) was passed by US Congress.

Previous supply

A number of countries—Canada, China, France, Russia, and the United States—[have](#) provided fuel to India's safeguarded facilities under facility-specific (INFCIRC/66) safeguards agreements both before and after the NPT entered into force and before and after India first detonated a nuclear explosive device in 1974. The current Indo-Russian civilian nuclear cooperation program, involving the construction of two light water reactors at Koodankulam in the south Indian state of Tamil Nadu, is also operating under the same understanding. Nuclear cooperation taking place under facility-specific safeguards agreements—a standard form of collaboration under the auspices of the International Atomic Energy Agency—was [understood](#) to fully satisfy all the obligations incurred by the state parties under the NPT.

Who benefits?

So who benefits the most? [According](#) to Dr. George Perkovich, at the Carnegie Endowment for International Peace, the nuclear deal was India's idea, and can best be understood as a scientific-commercial understanding, and a mutual desire to establish a stronger geo-political relationship. India would not only be supplementing its energy sources, but would also gain help in modernizing its nuclear facilities.

[According](#) to Indian Prime Minister Manmohan Singh, in a meeting with the US President he commented that "the people of India, particularly the thinking part of our population, our scientists, our technologists, have rightly or wrongly nursed this grievance against the United States. That the United States has joined with other countries to erect a system of controls which denies our country access to dual-use technologies to prevent us from leapfrogging in the race for social and economic development... I appeal to you I think to look at India-US nuclear cooperation in that grand setting. I look upon it as an act of historic reconciliation".

India has the largest reserves of Thorium in the world, and Thorium provides a high radiation barrier to discourage theft and proliferation of spent fuel. This source of nuclear fuel has been supported by the [American Nuclear Society](#) as also in the recommendations of an [IAEA paper](#). Assistance under the deal could prove critical in exploiting this fuel, with implications beyond India.

For the United States, the investment opportunities for American companies such as GE Energy, USEC and Westinghouse Electric in future Indian nuclear reactors could amount to more than \$100 billion in new reactor construction contracts in just the next ten years. According to US-India Business Council's Ron Summers "India's energy needs are vast -- as its economy booms, the country plans to quintuple its nuclear energy production to as much as 40,000 megawatts by 2020. At an estimated \$2.5 billion per 1,000 megawatts, the nearly 30 new reactors India will commission could signal the beginning of a "nuclear renaissance" that American nuclear companies have been waiting for."

But there is stiff competition. Russia and France are making the same calculations. Areva NP SAS, Atomenergoproekt, and ZAO Atomstroyexport are already working in India. [According](#) to Padmanabha Chari of the Institute for Peace and Conflict Studies, a Delhi-based think tank "I can easily see the Indians going for French or Russian reactors because they are seen as more advanced". France has already [signed](#) a nuclear deal with India during the 2006 state visit of President Jacques Chirac to India.

Conclusion

There is no chance of India signing the NPT as a non-nuclear weapon state. Some argue that the deal strengthens the non-proliferation regime by bringing a *de facto* nuclear state into the wider non-proliferation regime. Others point to the weakening of the bargain, and an indefinite acceptance of the status of India as a nuclear power, that will encourage others within the NPT to take the option. The decisive decision is likely to be in the Nuclear Suppliers Group over the coming weeks.

The views expressed in this paper do not necessarily reflect those of BASIC