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**U.S.-INDIA ATOMIC ENERGY
COOPERATION: STRATEGIC AND
NONPROLIFERATION IMPLICATIONS**

A COMPILATION OF
STATEMENTS BY WITNESSES
BEFORE THE
COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS
SECOND SESSION

APRIL 26, 2006



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CONTENTS

	Page
Letter of Introduction	v
Lugar, Hon. Richard G., U.S. Senator from Indiana, Chairman, Senate Committee on Foreign Relations	1
Biden, Hon. Joseph R., Jr., U.S. Senator from Delaware, Ranking Member, Senate Committee on Foreign Relations	3
Carter, Hon. Ashton B., Co-Director, Preventive Defense Project, John F. Kennedy School of Government, Harvard University	7
Perry, Hon. William J., Senior Fellow, Hoover Institution, Stanford University, Stanford, California	17
Gallucci, Hon. Robert L., Dean, Edmund A. Walsh School of Foreign Service, Georgetown University, Washington, DC	19
Tellis, Dr. Ashley J., Senior Associate, Carnegie Endowment for International Peace, Washington, DC	23
Lehman, Hon. Ronald F., II, Director, Center for Global Security Research, Lawrence Livermore National Laboratory, Livermore, CA	31
Einhorn, Hon. Robert J., Senior Adviser, International Security Program, Center for Strategic & International Studies, Washington, DC	35
Milhollin, Dr. Gary, Director, Wisconsin Project on Nuclear Arms Control, Washington, DC	45
Cohen, Dr. Stephen P., Senior Fellow, The Brookings Institution, Washington, DC	53
 Material Relating to the Committee's November 2, 2005 Hearing, "U.S.-Indian Nuclear Energy Cooperation: Security and Nonproliferation Implications"	
Responses to Senator Lugar's Questions to the Hon. R. Nicholas Burns, Under Secretary for Political Affairs, and the Hon. Robert G. Joseph, Under Secretary for Arms Control and International Security, Department of State, Washington, DC	
Responses of Under Secretaries Burns and Joseph	57
Responses of Under Secretary Burns	66
Responses of Under Secretary Joseph	68

LETTER OF INTRODUCTION

May 8, 2006.

Dear Colleagues:

DEAR COLLEAGUE: On April 26, the Committee on Foreign Relations held a hearing titled "U.S.-Indian Nuclear Energy Cooperation: Strategic and Nonproliferation Implications." Given the ongoing committee consideration of this U.S.-Indian Civilian Nuclear Agreement, we wish to make the testimony of all our witnesses available to the entire Senate. Additionally, the answers to initial questions for the record that were posed some months ago are included.

On our first panel, which focused on the strategic dynamics of the U.S.-India nuclear agreement, the witnesses included: former Secretary of Defense William J. Perry; former Assistant Secretary of Defense Ashton Carter; Robert Gallucci, Dean of the Edmund A. Walsh School of Foreign Service, Georgetown University; and Dr. Ashley Tellis from the Carnegie Endowment for International Peace. Members of the second panel, which considered the issue of the nonproliferation implications of nuclear cooperation between the United States and India, included: Dr. Ronald Lehman, Director of the Center for Global Security Research at Lawrence Livermore National Laboratory and formerly the head of the U.S. Arms Control and Disarmament Agency; Mr. Robert Einhorn, Senior Advisor at the Center for Strategic and International Studies and formerly Assistant Secretary of State for Nonproliferation; Dr. Gary Milhollin, Director of the Wisconsin Project on Nuclear Arms Control; and Dr. Stephen Cohen, Senior Fellow at the Brookings Institution.

We believe that their testimony can be helpful in preparing members for subsequent Senate consideration of the U.S.-Indian Civilian Nuclear Agreement.

Sincerely,

RICHARD G. LUGAR,
Chairman.

JOSEPH R. BIDEN, JR.,
Ranking Member.

OPENING STATEMENT OF
HON. RICHARD G. LUGAR
U.S. SENATOR FROM INDIANA,
CHAIRMAN, SENATE COMMITTEE ON FOREIGN RELATIONS
APRIL 26, 2006

The Foreign Relations Committee meets today to continue its examination of the U.S.-India Civilian Nuclear Agreement. On April 5, the committee met in open session with Secretary of State Condoleezza Rice. On March 29, we examined the agreement in closed session with Under Secretaries Nick Burns and Bob Joseph. Today, we will have the opportunity to hear the views of eight esteemed experts from outside the U.S. government.

Some months ago, I submitted 82 questions related to the agreement to the State Department as an initial step toward establishing a dialogue that would help Congress make an informed decision. The State Department provided answers to those 82 questions. After the hearing with Secretary Rice, I submitted about 90 additional questions for the record. The Ranking Member and several other members of the committee also submitted questions after the hearing. We appreciate the administration's attention to these questions as the committee carefully works through the intricacies of the nuclear agreement with India.

The committee is cognizant of how valuable a closer relationship with India could be for the United States. At our last hearing, many members commented on the importance of improving ties with India. Our nations share common democratic values, and the potential of our economic engagement is limitless.

Energy cooperation between the United States and India is particularly important. India's energy needs are expected to double by 2025. The United States has an interest in expanding energy cooperation with India to develop new technologies, cushion supply disruptions, cut green house gas emissions, and prepare for declining global fossil fuel reserves. The United States' own energy problems will be exacerbated if we do not forge energy partnerships with India, China, and other nations experiencing rapid economic growth. That is why I have introduced S. 2435, the Energy Diplomacy and Security Act, which would encourage international energy dialogues and advance a broad range of energy diplomacy goals.

But even as we pursue closer ties with India, we must examine the implications and risks of initiating a cooperative nuclear relationship. India has not signed the Nuclear Non-proliferation Trea-

ty; it has built and tested nuclear weapons; and it has declared its intention to continue its nuclear weapons programs and the production of fissile material. If Congress approves this agreement, we will be establishing a new course after decades of declining any cooperation with India's nuclear program. Consequently, our committee has spent much time probing the details of the U.S.-India Civilian Nuclear Agreement.

Among many questions, we are attempting to evaluate the potential benefits of drawing India into a deeper relationship with the International Atomic Energy Agency and placing more Indian reactors under safeguards. The committee has also expressed great interest in the timing and sequence of how the India Nuclear Agreement would be implemented. Since the committee last met with Secretary Rice, India has initiated discussions with the International Atomic Energy Agency on a safeguards agreement and an additional protocol. This is a welcome development, but I urge India and the IAEA to work hard to conclude an effective agreement in a timely fashion. All parties involved in the negotiations, including the Bush administration, should facilitate the maximum amount of transparency possible, so that Congress is better equipped to make informed judgments.

Today we will hear from two panels of highly knowledgeable experts. Our first panel will focus on the strategic dynamics of the agreement, and the second panel will take up the question of the non-proliferation implications of nuclear cooperation between the United States and India.

On our first panel, we welcome the distinguished former Secretary of Defense William Perry. Presently, he is Co-Director of the Preventive Defense Project. He is joined by Dr. Ashton Carter, also a Co-Director of the Preventive Defense Project and a former Assistant Secretary of Defense for International Security Policy. Joining them will be Dr. Robert Gallucci, Dean of the Edmund A. Walsh School of Foreign Service at Georgetown. Dr. Gallucci served as a chief U.S. negotiator during the 1994 crisis over North Korea's nuclear program. Finally, Dr. Ashley Tellis is with us from the Carnegie Endowment for International Peace. Dr. Tellis played a leading role in the formulation of the U.S.-India nuclear agreement, serving in key State Department positions.

On our second panel, we welcome Dr. Ronald Lehman, director of the Center for Global Security Research at Lawrence Livermore National Laboratory and formerly the head of the U.S. Arms Control and Disarmament Agency; Mr. Robert Einhorn, a Senior Adviser at the Center for Strategic and International Studies and formerly Assistant Secretary of State for Nonproliferation; Dr. Gary Milhollin, Director of the Wisconsin Project on Nuclear Arms Control; and Dr. Stephen Cohen, a Senior Fellow at the Brookings Institution.

We are pleased to have with us so many good friends of the committee. Most of our witnesses have provided invaluable service to the Foreign Relations Committee as we have struggled with non-proliferation and other geo-political issues. We thank each of them for their willingness to again lend us their extraordinary expertise.

OPENING STATEMENT OF
HON. JOSEPH R. BIDEN, JR.
U.S. SENATOR FROM DELAWARE,
RANKING MEMBER, SENATE COMMITTEE ON FOREIGN RELATIONS
APRIL 26, 2006

Thank you, Mr. Chairman. And thank you for chairing this series of hearings on the administration's nuclear deal with India.

The administration did not consult us as it negotiated the July 18 Joint Statement between President Bush and Prime Minister Singh.

It paid little attention to our concerns as it negotiated with India regarding India's plan for separating its civil nuclear facilities from its military ones.

And it submitted a legislative proposal to us and a decision proposal to the Nuclear Suppliers Group that were so poorly drafted as to cast doubt on the administration's seriousness of purpose.

Despite this, I indicated three weeks ago that I will probably support the agreement at the end of the day. I did so because I agree that the time has come to develop a new relationship between India and the parties to the Nuclear Non-Proliferation Treaty.

And I did so also because undoing this deal could do more damage—in terms of our relationship with India—than approving it, with carefully drafted conditions.

This deal brings risks, and I believe the administration and Congress must minimize those risks.

So far, Mr. Chairman, the administration has done a lot more to lobby us than to work with us.

- It has yet to answer our questions for the record.
- It has yet to share its negotiating record or explain just what it agreed to when it accepted the idea of “India-specific safeguards,” or “corrective measures that India may take . . . in the event of disruption of foreign fuel supplies,” or U.S. “assurances regarding fuel supply,” or “a strategic reserve of nuclear fuel” for India.
- The administration has yet to share with us the full list of India's civil nuclear facilities—even in classified form.
- And it has reneged on an earlier promise to share drafts of the peaceful nuclear cooperation agreement that it is negotiating with India.

Mr. Chairman, I still think that a new deal for India makes sense. But it isn't a "slam dunk," as they say, and that is why we are here today to take testimony from some of our country's best thinkers on nuclear policy.

Today's witnesses all have impressive backgrounds, and I have relied upon the wisdom of many of them over the years. I look forward to hearing their insights today.

I want to especially thank Bill Perry for coming in from California and for upsetting his schedule in Washington in order to help us today. Dr. Perry is a man who answers his country's call, just as he did regarding North Korea policy after he had retired as Secretary of Defense.

I would recommend that we also schedule a follow-up hearing with experts on the Atomic Energy Act, to discuss possible amendments to S. 2429, and experts on India who could tell us what the consequences of enacting those amendments might be.

Finally, Mr. Chairman, I hope that you will make clear to the administration that the Senate and this committee should not be taken for granted.

We expect the administration to answer our questions, to provide us the details on the related agreements that India is negotiating with the United States and with the IAEA, and to work with us to make S. 2429 a respectable bill.

Until the administration does that, we simply should not act on its proposed legislation.

Mr. Chairman, we recently received a letter from Ambassador John Ritch, a former staff member of this committee, in support of the India nuclear deal. I ask that his letter and an attached op-ed from the *International Herald Tribune* be included in today's hearing record.

Thank you.

[The material to which Senator Biden referred follows:]

23 April 2006.

Hon. RICHARD G. LUGAR, *Chairman*,
 Hon. JOSEPH R. BIDEN, JR., *Ranking Member*,
Committee on Foreign Relations,
U.S. Senate, Washington, DC.

SUBJECT: Submission on U.S.-India Nuclear Cooperation

DEAR SENATORS LUGAR AND BIDEN: For the committee's consideration and record in connection with the 26 April hearing on proposed U.S.-India nuclear cooperation, I offer the attached summary of my views, as published recently in the *International Herald Tribune*. My perspective derives from:

- 22 years of service on the staff of the Foreign Relations Committee;
- 7 years as U.S. representative to the IAEA and other UN agencies in Vienna; and

- 5 years interacting with the Indian nuclear establishment in my current capacity.

With respect and warm regards,

JOHN B. RITCH, DIRECTOR GENERAL,
World Nuclear Association.

IT MAKES SENSE TO END INDIA'S NUCLEAR ISOLATION

John B. Ritch, *International Herald Tribune*

THURSDAY, APRIL 6, 2006

LONDON—President George W. Bush has taken a momentous step in shelving a U.S. policy that for three decades cast India as a nuclear pariah- state and isolated the world's largest democracy from nuclear commerce, even for the peaceful purpose of generating electricity.

In Washington a fierce debate has erupted over the impact on the Nuclear Nonproliferation Treaty.

The U.S.-India deal conforms to the treaty by ensuring that nuclear commerce remains in the civil realm. But critics say it jeopardizes the treaty by legitimizing India's nuclear deterrent. Supporters counter that India's weapon is a long-standing fact, that India has used nuclear technology responsibly and that it is time to close ranks with a democracy.

Before the Bush initiative, two truths coexisted uneasily. First, the nonproliferation regime is one of history's great diplomatic achievements. Since its inception in 1970, the treaty has kept the number of nuclear-armed nations under 10.

Episodes of non-compliance have shown the treaty's value. After the first Gulf War revealed Iraq's covert nuclear efforts, the treaty regime gained strength as the International Atomic Energy Agency acquired new detection capabilities and broader authority for its inspectors. Treaty inspections "caught" both North Korea and Iran, and have spurred collective diplomacy against these violations.

A second, less convenient truth is that the treaty was, from the outset, unfair to India as a great nation. The treaty drew a line in time, recognizing only the UN Security Council's five permanent members as "nuclear-weapon states." Thus, when India became the world's sixth nuclear power in 1974, it faced Hobson's choice: Disarm or remain outside the treaty.

For reasons of principle and strategic interest India remained outside, declaring that it would eliminate its small deterrent as soon as the five favored "weapon states" fulfilled a treaty pledge to dismantle their own much larger nuclear arsenals.

Indians went on, for three decades, to become proud developers and careful custodians of their own sophisticated nuclear technologies. To supply power for economic growth, India now plans to build hundreds of reactors by mid-century, even without the new agreement.

The Bush initiative would accept India's reality. Critics complain that the accord leaves India's military program "unconstrained."

Advocates counter that India's civil power reactors will fall under inspection safeguards.

This debate is sterile. Inspections on India's civil facilities cannot affect its military program. But neither will civil nuclear trade with India spur an Asian arms race. India's leaders have no motive to abandon India's long-standing policy of maintaining minimal nuclear deterrence vis-a-vis Pakistan's smaller nuclear force and China's larger one.

Although legal under the nonproliferation treaty, the deal will require change in a U.S. law enacted in 1978 that made treaty membership a condition of nuclear trade. In 1992, the Nuclear Suppliers Group of nations embraced the same coercive approach. Now these countries are set to follow the U.S. lead, with only China expressing resistance.

The new policy would revert—in the unique case of India—to the basic treaty requirement of confining nuclear trade to the civil realm. It would also welcome India as a partner in world nuclear trade controls and collaborative projects to develop nuclear technology.

Some say that ending India's nuclear isolation sends a dangerous message to potential proliferators. This charge does not withstand analysis. How will the ambitions of Iran, North Korea, and Pakistan be inflamed by the principle now being affirmed?

The principle is this: In sensitive nuclear technology, we will trade legally—and with nations that have earned the world's trust. As a practical matter, no nation appears likely to “proliferate” because India is allowed civil nuclear commerce.

Thus has the new policy been endorsed by Hans Blix and Mohamed Elbaradei, the IAEA leaders entrusted over the last quarter century to oversee the nonproliferation regime.

Nuclear cooperation with India offers some economic opportunity—and potentially enormous environmental value. India has recognized the urgency of a worldwide clean-energy revolution if humankind is to avoid unleashing devastating climate change.

The U.S.-India deal promises a partnership between the two largest democracies to deliver this environmental benefit—within India and to a wider world—on a scale that can make a difference.

With a strong legal, strategic and environmental rationale, this is a Bush initiative that has gained a broad coalition of support abroad.

John B. Ritch, U.S. ambassador to the International Atomic Energy Agency in the Clinton administration, is the director general of the World Nuclear Association and president of the World Nuclear University.

PREPARED STATEMENT OF
THE HONORABLE ASHTON B. CARTER
CO-DIRECTOR, PREVENTIVE DEFENSE PROJECT, JOHN F. KENNEDY
SCHOOL OF GOVERNMENT, HARVARD UNIVERSITY
BEFORE THE
SENATE COMMITTEE ON FOREIGN RELATIONS
WEDNESDAY, APRIL 26, 2006

ASSESSING THE INDIA DEAL ¹

During a state visit to Washington in July of 2005, Indian Prime Minister Manmohan Singh and U.S. President George W. Bush announced a potentially far-reaching “strategic partnership” between what will probably be the 21st century’s most powerful democracies. To inaugurate what came to be known as the India Deal, Bush abruptly fulfilled a thirty-year quest by Delhi to be recognized as a sixth “legitimate” nuclear power, alongside the five victors of World War II. In March of 2006, in a reciprocal visit to India, Bush settled most of the remaining details of the nuclear part of the India Deal in Delhi’s favor.

Debate in both Washington and Delhi has swirled around the nuclear aspects of the India Deal. This is understandable, since preventing nuclear war and terrorism is the highest American national security priority in this era, as Bush himself has acknowledged. The decade has already witnessed a stunning defeat for the United States in North Korea’s runaway nuclear program. The same could be unfolding more slowly in Iran. Meanwhile, an unbowed Osama bin Laden has declared to his followers that obtaining weapons of mass destruction is a “religious duty.”

Indeed, if the nuclear aspects of the India Deal are assessed in isolation, one must conclude that the Deal was a bad one for the United States. Washington recognized Delhi’s nuclear status in return for little in the way of new steps by India to combat nuclear proliferation and terrorism that Delhi was not already committed or inclined to give, and for almost no technical restraints on India’s growing nuclear arsenal. Through the U.S. concession, the non-proliferation regime also paid a palpable, although probably manageable, price to its integrity and support.

But it would be a mistake to assess the India Deal in a nuclear-only frame. President Bush and his key advisors were clearly looking through a wider lens, and so should the public and the U.S.

¹An edited version of this statement appeared in the July/August issue of *Foreign Affairs*.

Congress, which must amend U.S. nonproliferation laws that forbid the policies Bush agreed to. Viewed through such a wider geopolitical lens, the Deal has the United States giving the Indians what they have craved for so long—nuclear recognition—in return for a strategic partnership between Washington and Delhi as the two democracies face similar potential challenges from China, Pakistan, Iran, and elsewhere in the coming decades. In short, Washington gave on the nuclear front to get something on the non-nuclear front. Powerful arguments can be made that strategic partnership with India will prove to be in the deep and long-term U.S. security interest. Indo-U.S. partnership seems not only logical but eminently achievable in India’s democracy: in an influential 2005 Pew Research Center poll of 15 leading nations, India reported the highest proportion of favorable views of the United States at 71%. A nuclear-recognition *quid* for a strategic-partnership *quo* is therefore a reasonable framework for an India Deal.

However, as a diplomatic transaction the India Deal as negotiated by President Bush is quite uneven. First of all, a U.S.-Indian strategic partnership would seem to be in Delhi’s interest as well as America’s. So why pay them for it? Second, the Deal is uneven in its specifics—what the U.S. gives is spelled out quite clearly, but what India gives in return is vaguer. Third, the Deal is uneven in timing—the United States gave its big *quid* of nuclear recognition up front, but what it stands to get in return from partnership with India lies further out in the uncertain future.

Rebalancing the Deal

Despite the Deal’s flaws, Congress should not attempt to renegotiate the Deal to win a more balanced version than the Bush administration obtained. The big U.S. card of nuclear recognition has already been played and cannot be taken back by Congress at this point without casting a lasting cloud over the whole idea of Indo-U.S. partnership. Haggling over some of the details of the implementation of the nuclear parts of the Deal is unlikely to restore much of whatever lost reputation for nonproliferation consistency that the U.S. has already suffered, and would probably be viewed as grudging and punitive in Delhi. The result would be to undermine the goodwill that was supposedly the whole purpose of giving nuclear recognition in the first place.

Rather than subtracting from the Indian side of the ledger in an effort to rebalance the India Deal, Congress should instead emphasize what the U.S. expects on its side of the ledger to give meaning to the new “strategic partnership.” The United States should expect India to join it in countering any destabilizing effects China’s future rise might have on Asian security; assisting in any emergency in Pakistan such as radicalization of its government or loss of control of its nuclear weapons; reversing traditional Indian opposition to controls on transfer of nuclear technology and especially using its diplomatic clout against potential proliferators like Iran; growing its military-to-military relationships, including arms cooperation, to match in time those the United States has with its closest allies; and giving preferential treatment to the U.S. defense and nuclear industries when the Indian government makes investments in these sectors.

To see how the ledger can be rebalanced over time, one needs first to consider what India already got from the Deal on the nuclear front, and its repercussions for the nonproliferation regime; second, to prescribe the broader benefits the United States should aim to get from strategic partnership from India in coming decades; and third, to assess the chances that U.S. expectations will actually be met.

What Delhi Got

India obtained defacto recognition of its nuclear weapons status: the United States will behave, and urge others to behave, as if India were a nuclear weapons state under the Nuclear Non-proliferation Treaty (NPT). The U.S. will not deny it most civil nuclear technology or commerce, nor require it to put all of its nuclear facilities under International Atomic Energy Agency (IAEA) safeguards—only those it declares to be civil. India can now import uranium, which has been a bottleneck in its nuclear program. It is worth noting that even if the Bush administration wished to make India a formal Nuclear Weapons State under the NPT (which it refused to do), it probably could not persuade all the other signatories of the NPT to agree to the change (such amendments require unanimity).

Besides the new access to technology, nuclear recognition grants an enormous political benefit to India. With one stroke India joins the United States, Russia, China, Great Britain, and France as “legitimate” wielders of the power and influence that nuclear weapons confer. The Deal allows India to transcend the nuclear box that has for so long defined and constrained its place in the international order, hopefully jettison at last its outdated Non-Aligned Movement stances and rhetoric, and occupy a more normal and modern place in the diplomatic world. Critics of the Deal contend that India’s past and likely future behavior do not warrant this free pass. Proponents predict that with the nuclear issue (which the Bush administration describes as the “basic irritant” in Indo-U.S. relations) out of its psychological way, India will pivot from detractor of much of the international order, including especially the nonproliferation regime, to responsible stakeholder. Both sides agree that nuclear recognition is huge.

The Deal has naturally been popular in India. Supporters of Congress Party Prime Minister Singh have emphasized Bush’s nuclear recognition and downplayed any sense that India has taken on important obligations in return. Criticism from the opposition Bharatiya Janata Party (BJP) has been narrow and technical and probably reflects chagrin that a Congress Party government and not the BJP secured the Deal. The other source of criticism has been leftists in the Left Front parties. They are wedded to the old politics of the Non-Aligned Movement which was overtaken by the end of the Cold War, but they are unlikely to be able to block the Deal.

Measuring the Impact of Nuclear Recognition for India

Previous U.S. administrations have adopted the stance that India’s nuclear arsenal, first tested in 1974, is illegitimate and should be eliminated, or at least sharply constrained. They have done so

for two reasons: First, India's nuclear arsenal is watched closely by arch-rival and nuclear-armed Pakistan and by China, with which India has fought no fewer than three wars since its independence from Great Britain. Recognizing the Indian arsenal, the argument went, might spur its open growth and thus an arms race in South Asia. Second, Washington wanted to stick strictly to the principles underlying the NPT: that signatories would get the benefits of international standing and peaceful nuclear commerce, but those like India that stood outside the regime would not. Compromising these principles would, it was feared, give heart to nuclear aspirants that they could "end run" the NPT if only they waited thirty years like India; it would also dishearten the many countries that were not about to go nuclear but which loyally supported the NPT against new proliferators.

But a stance is not a policy. As policy, elimination of India's arsenal became increasingly unrealistic as Pakistan went nuclear in the 1980s, and then more so when India tested five bombs underground and openly declared itself a nuclear power in 1998. As the Bush administration conducted its nuclear negotiations with India in the fall of 2005 and spring of 2006, it ultimately abandoned efforts by nonproliferation specialists to attach further conditions to the Deal that would constrain India from increasing its nuclear arsenal further. The U.S. insisted that the Deal is a broad strategic agreement, not an arms control treaty. For example, some have argued that India should be required to stop making fissile material for bombs now like the other acknowledged nuclear powers have done rather than wait for the negotiation of an international Fissile Material Cutoff Treaty. Others contend that India should have to place more of its nuclear facilities under IAEA safeguards, to prevent diversion of fissile materials from its nuclear power program to its nuclear weapons program. Yet others would have India sign the Comprehensive Test Ban Treaty rather than abide, as it has since 1998, by a unilateral moratorium on further underground testing of its nuclear arsenal.

The Indian government, with strong public support, has resisted all these efforts to constrain its future nuclear arsenal in technical ways. If the objective of U.S. proponents of these ways of rebalancing the India Deal is to prevent Indian arms racing with Pakistan and China, then that important goal would be better pursued in non-technical ways. India has stated its intention to pursue a "minimum deterrent" rather than an all-out arms race. The Bush administration has encouraged this path, and can now make it an expectation of India as a responsible member of the nuclear club. But if the objective of seeking additional constraints on India's nuclear program is to "take back" some of the gain India got from nuclear recognition, then such a grudging move is likely to backfire. Indians will understandably view such a move as inconsistent with Bush's whole intent to use nuclear forgiveness as a way to open the way for strategic partnership.

The second impact of nuclear recognition for India has to do with the integrity of the NPT regime and is more serious, though probably manageable. It is inconceivable that North Korea's Kim Jong Il pays much heed to the internal consistency of the NPT regime as he calculates how far he can get with his nuclear breakout.

North Korea's governing ideology is less communism than a fanatical embrace of autarky and "self-reliance," including open defiance of international norms like the nonproliferation regime. North Korea's tolerance for international ostracism is legendary. If Kim's nuclear program can be stopped at all at this point, it will be through a tough and focused diplomacy of sticks and carrots in which the NPT will play little part. Likewise, after 1995 Saddam Hussein simply ceased paying attention to the NPT.

Iran's cat-and-mouse game with the EU-3, the U.S., and the IAEA over its recently-revealed nuclear program bespeaks at least a smidgen of sensitivity to international opinion as embodied in the NPT. Nuclear recognition for India gives Teheran a new talking point: If India gets a free pass, why not Iran which is also an important nation with an ancient culture? But like North Korea, Iran's nuclear program has deeper roots in its sense of security threat and Persian pride. Against these the NPT will not weigh in very heavily. Besides, for now Teheran denies it is seeking a nuclear arsenal at all but only nuclear power, so it will be hard-pressed to use India as a precedent for its current diplomatic position.

The impact of the Bush-Singh deal on the "rogues" is therefore minimal. Its main impact will be felt among two other groups of countries. First, there are the "in-betweens"—states that are not rogues but that flirt with nuclear status. In the recent past the in-betweens have included South Africa, Argentina and Brazil, the post-Soviet states of Ukraine, Kazakhstan, and Belarus, South Korea, Taiwan, and (only recently joining this category) Libya. These in-betweens turned away from nuclear weapons for many reasons specific to their own individual circumstances, but in each of these cases the lasting international ostracism threatening them if they stood outside the NPT regime was an influential factor for both governments and their people. Nuclear recognition for India suggests that forgiveness will eventually come to proliferators who wait, and tomorrow's in-betweens—Brazil comes to mind—might be tempted by the Bush-Singh precedent.

The most nonproliferation damage, curiously, might be done among the stalwarts of the regime: governments that have no nuclear ambitions at all but that faithfully uphold the rules, and the nuclear powers that already enjoy a privileged place in it. These groups not only provide political support to discourage in-betweens and confront rogues, they provide vital and direct technical support by denying critical exports to those who infringe the NPT's rules. The Nuclear Suppliers Group (NSG), in particular, coordinates controls on exports by the nations with advanced nuclear power technology. The NSG was created through U.S. leadership, and it is the U.S. that has long stood against backsliding by member governments that come under pressure from their nuclear industries to sell technology abroad more liberally, including especially to India. Now all of a sudden the United States has decided to change policy, and others too might consider themselves free to pick and choose where they apply the nonproliferation rules—the Chinese with Pakistan, the Russians with Iran, and some European vendors everywhere.

Damage-limitation from the Bush-Singh deal must therefore center on the in-betweens and stalwarts. A plan for doing so was a logical part of the U.S. diplomatic initiative, but it is clear that the Bush administration did not have one until after the Deal was concluded, still less did it consult widely before Bush made his dramatic *volte-face* in July 2005. But most of the nations whose adherence to the NPT regime is critical will either support the Deal or acquiesce in it. First, most accept the U.S. argument that India's nuclear nonproliferation behavior has been good—there have apparently been no Indian A.Q. Khans—and that India's possession of nuclear weapons is an established fact and cannot be reversed. Second, all can see that India is hardly a rogue state, but a stable democracy likely to play a large and constructive role in the world of the 21st century. Third, many will regard India's thirty years in the "penalty box," which exacted a heavy price from Delhi in both prestige and technology, as sufficient to make the point that the regime's adherents are serious about enforcing its norms. These arguments have won over many in the international nonproliferation community, notably IAEA Director General and Nobel Laureate Dr. Mohamed ElBaradei. And so while there is some grumbling within the NPT regime over the Deal, a revolt or collapse is not likely, and the damage to the regime can be limited.

As critics have exaggerated the nonproliferation costs of the nuclear part of the India Deal, so also its proponents have exaggerated its benefits in terms of energy security and nuclear security. Bush administration spokesmen have defended the Deal's nuclear power provisions as critical to stopping India's rise from posing an oil and environmental crisis. But this claim does not survive close scrutiny. Energy security is terribly important to both India and the United States. All want India's huge population to satisfy its energy needs, which will grow faster than its GDP, increasing as much as fourfold within 25 years, without contributing further to dependence on Middle East oil, pollution, and global warming. But the arithmetic does not support the case that nuclear power will add up to make the critical difference for India, though it can and should play a role. For the foreseeable future, electricity generation in India will be dominated by coal burning whereas nuclear plants (which today produce only 3% of India's electricity) will remain a single-digit contributor even under the most extravagant projections of U.S.-assisted nuclear expansion in India. Indian coal is plentiful but of poor quality and highly polluting. Burning coal more cheaply and more cleanly will do more than any conceivable expansion of nuclear power to aid India's economy and the environment. India's share of world oil consumption will grow from 3% to 4% over the next twenty years. But nuclear power does nothing to address the principal Indian oil consuming sector—cars and trucks—since these don't run off the electrical grid and won't for a long time. Finally, the type of assistance the United States is best positioned to provide to India's nuclear generation capacity (light water reactors operating on low-enriched uranium fuel) is at odds with the Indian establishment's uneconomical vision of a civil nuclear power program built primarily around breeder reactors.

The administration also claims the Deal will require India to improve its laws and procedures for controlling exports or diversions

of sensitive nuclear technology—preventing an Indian A.Q. Khan. But at the same time, the administration acknowledges India’s apparently excellent record of controlling nuclear exports (though not always ballistic missile exports). India is already bound by the U.S.-sponsored U.N. Security Council Resolution 1540 which requires such good conduct, so on paper at least Delhi has sold the same horse a second time in the Deal. In any event, the United States is justifying the Deal’s nuclear recognition to other nations around the world on the grounds that India’s nuclear proliferation behavior is already exemplary. It will be difficult for the U.S. to argue this point both ways at the same time.

What Washington Should Get

What is it then that the United States might expect from the “strategic partnership” in return for the nuclear recognition it conferred upon India?

First and foremost, the United States should expect India to serve as a potential future Asian counterweight to China. Though no one wants to see China and the United States fall into strategic competition, neither can anyone rule this out. The evolution of U.S.-China relations will depend on the attitudes of China’s younger generation and new leaders, on Chinese and U.S. policies, and on unpredictable events like a crisis over Taiwan. It is reasonable for the United States to hedge against a downturn in relations with China by improving its relations with India, and for India to do the same. But for now both are intent on improving their relations and trade with China, not antagonizing China. Neither government will wish to talk publicly, let alone take actions now, pursuant to this shared—but hypothetical and future—common interest.

Second, the U.S. will want Indian assistance in a range of possible contingencies involving neighboring Pakistan—another common interest that is awkward for either party to the Deal to acknowledge. Pakistan, alongside Russia, belongs at the very center of urgent concern about nuclear terrorism. Terrorists cannot make nuclear bombs unless they obtain enriched uranium or plutonium from governments that have made these materials. The exposure of the A.Q. Khan network in Pakistan makes clear that Pakistan has to be regarded as a potential source of such materials—whether by theft, sale, diversion by internal radical elements with access to bombs or materials, change of government from Mushanaf to a radical regime, or some sort of internal chaos. Which version of the A.Q. Khan story is more alarming—that the government and military of Pakistan was unaware of what he was doing, or that they were aware and permitted it? Either way it illustrates a serious danger. Were there to be a threat or incident of nuclear terrorism originating in Pakistan, the United States would want to act in concert with as many regional players as possible, including India.

The Pakistan contingency is even more difficult than the China counterweight contingency for the newly-minted strategic partners in Washington and Delhi to acknowledge. India seems intent on improving its relations with Pakistan—despite last year’s bombings in Delhi and their impact on Indian public opinion—and a rapprochement between these long-time antagonists is in the U.S. interest. The United States, for its part, has important interests at

stake with the Musharraf government—among them supporting the search for Osama bin Laden and other terrorists on Pakistani territory, arresting the growth of radicalism in Pakistan’s population, and stabilizing Afghanistan—and can ill afford the perception of a “tilt towards India.” For now, therefore, the Pakistan contingency, like the China counterweight, remains a hypothetical and future benefit of the India Deal.

Third, and most urgently, India should be expected to weigh in against Iran’s nuclear ambitions and to compromise to a considerable extent its friendly relations with Iran in the interests of non-proliferation. Whether Delhi does this will be the clearest test of whether nuclear recognition “brings India into the nuclear mainstream,” as the Bush administration predicts, or whether India persists in its pre-Deal (actually, Cold war) positions of rhetorical support for the spread of nuclear fuel-cycle activities (uranium enrichment and plutonium reprocessing). India’s September 24, 2005 and February 4, 2006 votes with the United States and its European partners in the IAEA Board of Governors, finding Iran in noncompliance with its NPT obligations and referring the matter to the United Nations Security Council were a welcome suggestion that India will support the international campaign to curb Iran’s nuclear ambitions. But India’s willingness truly to join the nuclear club, reversing old non-aligned habits and putting its diplomatic shoulder to the wheel in the case of Iran and other urgent counter-proliferation efforts will be an early and major test of the value of strategic partnership and its new status.

Fourth, the United States should expect a continued intensification of Indo-U.S. military-to-military contacts, ultimately envisioning joint action in operations outside of a United Nations context. India has historically refused to join the United States military in operations that were not mandated and commanded by the United Nations. In the future, when the United States needs partners in disaster relief, humanitarian intervention, peacekeeping missions, or stability operations, the United States can reasonably expect India to cooperate. Judging from the evolution of U.S. security partnerships in Asia and Europe (especially NATO’s expanded membership and Partnership for Peace), anticipation of joint action can lead first to joint military planning, then progressively to joint exercises, intelligence sharing and forging of a common threat assessment, and finally to joint capabilities. This is the path foreseen for a deepening U.S.-India strategic partnership in the defense field. Additionally, there could be occasions when access for and, if needed, basing of U.S. military forces on Indian territory would be desirable. At first this might be limited to port access for U.S. naval vessels transiting the Indian Ocean and overflight rights for U.S. military aircraft, but in time it could lead to such steps as use of Indian training facilities for U.S. forces deploying to locations with similar climate (the way German training areas were used for forces deploying to the Balkans). Ultimately, India could provide U.S. forces with “over-the-horizon” basing for Middle East contingencies of the sort preferred by Saudi Arabia and other Gulf states.

Fifth, the United States will expect preferential treatment for U.S. industry in India’s civil nuclear expansion and modernization of its military. The authors of the India Deal might have antici-

pated preferential treatment for U.S. industry in construction of Indian nuclear reactors and other civil power infrastructure made possible by the Deal. But there are two barriers to realization of this U.S. benefit. First, the United States must secure preferential access for its nuclear industry at the expense of Russian and European suppliers who are also seeking access to the Indian market. Second, the United States will also need to persuade India to focus its nuclear power expansion on light water reactors, not the exotic and uneconomical technologies (e.g., fast breeders) that the Indian nuclear scientific community favors. This benefit should therefore not be exaggerated. India is expected to increase the scale and sophistication of its military, in part by purchasing weapons systems abroad. In view of its concessions in the India Deal, the United States can reasonably expect preferential treatment for U.S. vendors relative to Russian or European vendors. Early discussions have included the F-16 and F-18 tactical aircraft and the P-3C Orion maritime surveillance aircraft.

Will the United States Get the Benefits of the India Deal?

The list above is a very substantial—even breathtaking—set of potential benefits to the United States of a strategic partnership with India. How realistic is it?

Some of the items on this list reflect common national interests of India and the United States. The United States might therefore have had many of these benefits without having to pay the non-proliferation costs associated with nuclear recognition for India. Most of the items on the list are also hypothetical and lie in a future that neither side can predict—this is certainly the case with regard to the China counterweight and Pakistan contingency items. Other items on the list, like Iran’s nuclear program, will unfold sooner. The United States can certainly hope that India will behave as a true “strategic partner” in the future across all the items on this list. But there is a risk that when the United States comes to ask India to do something it is reluctant to do, that it comes to regret having played its big diplomatic card—nuclear recognition—so early in the process.

India, as befits a great nation on its way to global prominence, will have its own opinions about this list. Some American proponents of the India Deal have compared it to Nixon’s opening to China—a bold move based on a firm foundation of mutual interest, but more a leap of trust than a shrewd bargain. Mao and Nixon, however, had a clear and present common enemy—the Soviet Union—not a hypothetical set of possible future opponents. But the real difference between the Nixon/Kissinger deal and the India Deal is that India, unlike Mao’s China, is a democracy. No government in Delhi can turn decades of Indian policy on a dime or commit it to a broad set of actions in support of U.S. interests—only a profound and probably slow change in the views of India’s elites can do this. India’s bureaucracies and diplomats are fabled for their stubborn adherence to independent positions regarding the world order, economic development, and nuclear security. Proponents of the India Deal suggest that these positions will yield to the grand gesture of nuclear recognition by the United States. This expectation is naive. Americans view the change of long-standing and prin-

cipled nonproliferation policy to accommodate India as a concession. Indians view it as acknowledgement of something to which they have long been entitled. This is not a durable basis for a diplomatic transaction.

It is therefore premature to judge whether the expectations of this strategic partnership as apparently foreseen on the U.S. side are shared by India and will, in fact, materialize. The Deal itself was premature. The risk with a hastily prepared diplomatic initiative is that disenchantment will set in on both sides. At this point, the United States, including the Congress, can only do its best to ensure that its benefits are fully realized—by both parties.

TESTIMONY OF
THE HONORABLE WILLIAM J. PERRY
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BEFORE THE
SENATE COMMITTEE ON FOREIGN RELATIONS
WEDNESDAY, APRIL 26, 2006

My views on the recently concluded Civilian Nuclear Cooperation Agreement between India and the United States can be summarized in three points.

Firstly, I enthusiastically support the development of a strategic partnership between the United States and India, of which this agreement could be an important step. The benefits of a strategic partnership were convincingly outlined in the earlier testimony of Secretary of Rice to this committee. I associate myself with her views on the importance of a strategic partnership. In particular, I expect that this could include a robust military-to-military partnership, including, for example, joint exercises in humanitarian relief operations, in responding to emergencies at sea, and in peacekeeping operations. Those exercises could be modeled after the comparable exercises conducted in Europe by the Partnership for Peace.

Secondly, I understand the need of India to aggressively develop nuclear power for its growing industrial base, and I believe that the United States should support India in that development. The importance of nuclear power to India and to the global environment were convincingly outlined by Dr. David Victor in his op-ed piece in the *International Herald Tribune* on 17 March. And I commend this to the committee. I associate myself with Dr. Victor's views on this subject.

Thirdly, I am disappointed that the United States did not seize the opportunity presented in the formulation of this agreement to undertake a joint program with India directed at preventing the spread of nuclear weapons. Stopping nuclear proliferation is an important American objective. It is an important international objective. And it should be an important Indian objective. I believe that it is not too late to join forces with India to further this critical objective.

I'd like to highlight four actions that India could take that would make a significant difference in preventing the spread of nuclear weapons:

First, India could join other nuclear powers in implementing strong controls on the transfer of nuclear technology and materials.

Secondly, India could take a leadership position in promoting an international cutoff in the production of fissile material.

Third, India could cooperate with the United States and the EU-3 in pressuring Iran to stop the programs that are facilitating an Iranian nuclear bomb.

And, fourth, India could explicitly reaffirm its intention of limiting its nuclear arsenal to minimal deterrence levels.

Secretary Rice, in her testimony, has suggested that India is prepared to take many of these actions, but they are not an explicit part of the agreement. I do not recommend that the Senate try to modify the agreement to include them. Instead, I recommend that the Senate task the administration to vigorously pursue continuing diplomacy to facilitate these actions, and that should be as a follow-on to the agreement. Indeed, I believe that these actions are strongly in the interest of India, and I believe that the Indian Government understands that.

What is the motivation—what is the incentive that the administration would have to actually carry out this diplomacy? First of all, they are in India's interest. And, secondly, only if India moves aggressively to carry out these actions will they be providing the foundation on which the strategic partnership desired by both countries can, in fact, be achieved.

PREPARED STATEMENT OF
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BEFORE THE
U.S. SENATE COMMITTEE ON FOREIGN RELATIONS
26 APRIL 2006

In this brief statement, I wish to make only three points. The first is that those who advocate making this special arrangements to permit nuclear cooperation with India ought to be clear—and honest—about why they are doing so. The second is that the reasons for making the particular deal they propose, while important, do not justify the cost to the national security of doing so. And third, that there is an arrangement which would, in fact, strike the right balance between competing national security interests, an arrangement that may be negotiable at some future time, if not now.

The United States has good reasons for improving its relations with India, both political and economic. Part of the calculation must turn on our uncertainties about China, about whether Beijing will turn out to be more of a strategic competitor than partner in the decades ahead. If internal developments in China do not proceed as we hope, and if Chinese foreign policy turns out to be more hegemonic than we expect, a solid political relationship with India could be important to our security. Moreover, independent of such considerations, India's enormous and growing economic and political importance make the improvement of relations with New Delhi a prudent objective for the United States.

If this is obvious, so also is the chronic irritant that our non-proliferation policy has been to U.S.-India relations over the last thirty years. We should acknowledge the importance that India attaches to American willingness to change that policy so that the United States can begin to sell it nuclear equipment, material and technology. We should also admit that the proposed deal would grant what New Delhi values most, namely our acceptance of India as a nuclear weapons state. And while we are at it, we should admit that although the deal would be critically important to our goal of improving relations with India, it will really do nothing to help us deal with the risks posed by the proliferation of nuclear weapons. Assertions to the contrary are less than honest.

There is no reason why we should attach any positive value to India's willingness to submit a few additional nuclear facilities of its choosing to international safeguards, so long as other fissile ma-

terial producing facilities are free from safeguards. This move has been called “symbolic” by critics, but it is not at all clear what useful purpose it symbolizes. The other elements of the deal that are supposed to contribute to its non-proliferation value were in place before the deal was struck. The first point then, is that the administration proposes this deal to address a genuine regional security objective and not because it helps in any way our global security concern over nuclear proliferation.

The second point is that the proposed arrangement will be too costly to the national security to be justified by the gain in relations with India.

Since the dawn of the nuclear age and the arrival of intercontinental ballistic missiles, our nation has been defenseless against devastating attack—leaving us to rely on deterrence, the promise of retaliation, to deal with nuclear armed enemies. From the beginning, we recognized that this left us vulnerable to anyone who could not be deterred, and so, in some basic way, our security depended on limiting the number of countries who ultimately acquired nuclear weapons. Most analysts believe that fifty years of non-proliferation policy has something to do with explaining why the spread of nuclear technology has not led to the proliferation of nuclear weapons, why we live in a world of eight or nine nuclear weapons states, rather than eighty or ninety. A key part of that policy has been our support for an international norm captured in the very nearly universally adhered to Nuclear Non-Proliferation Treaty (NPT). The norm is simple: in the interest of international security, no more states should acquire nuclear weapons. There are many provisions in the treaty and details to be understood to fully appreciate the norm, but that is its essence. Certainly the fact that we have eight or nine states with nuclear weapons rather than only the original five, means that the norm has not held perfectly well. But it has had substantial force in the face of widespread acquisition of critical nuclear technologies, and that has been of vital importance to America’s security. Simply put, the administration now proposes to destroy that norm.

Some claim the deal would only recognize the reality of India’s nuclear weapons program. But that is not accurate. Recognizing that India and a few additional countries have acquired nuclear weapons over the last three decades is not the issue. The damage will be done to the non-proliferation norm by legitimatizing India’s condition, by exempting it from a policy that has held for decades. And we would do this, we assert less than honestly, because of its exceptionally good behavior. In truth, we would reward India with nuclear cooperation because we now place such a high value on improved relations with New Delhi, not because of its uniquely good behavior.

Critics ask, if we do this deal, how will we explain, defend, and promote our policy of stopping Iran’s proposed uranium enrichment program? Iran is, after all, a party to the Nuclear Non-Proliferation Treaty, and as far as we know, has no fissile material outside of international safeguards and has never detonated a nuclear explosive device. A good question, but not the best one because India has arguably been a more responsible member of the international community than Iran. Rather, if we do this deal, ask how we will avoid

offering a similar one to Brazil or Argentina if they decide on nuclear weapons acquisition, or our treaty ally South Korea. Dozens of countries around the world have exhibited good behavior in nuclear matters, and have the capability to produce nuclear weapons but choose not to, at least in part, because of the international norm against nuclear weapons acquisition reinforced by a policy we would now propose to abandon. Will we legitimize only India because it never joined the NPT and thus did not have to withdraw from it to pursue nuclear weapons? No, if India was truly unique, there might not be much risk to that non-proliferation norm we so depend upon, but it is not unique: the deal would set a dangerous precedent. If we do this, we will put at risk a world of very few nuclear weapons states, and open the door to the true proliferation of nuclear weapons in the years ahead.

Finally, if there are two national security objectives in conflict here, one regional and the other global, is it possible to reconcile them? The answer is probably yes, but not now, not in the current context. Clearly and regrettably, if the administration's proposal does not succeed in much the same form in which it has been put forth, U.S.-India relations will deteriorate for a time. But acknowledging that does not mean that we should go ahead with a deal that would do irreparable damage to our long-term national security interests. Instead, we should put forth a proposal that more nearly balances regional and global security interests, recognizing that it will be some time, at best, before it will appeal to New Delhi.

In looking for that balance, we should understand that there is something of a continuum to be considered in terms of non-proliferation provisions. At one end, for purists, is nothing less than Indian adherence to the NPT. This is nearly impossible to foresee. Next, for non-proliferation realists, is an Indian commitment to end fissile material production for any purpose and forego those facilities, enrichment and reprocessing, that yield it. This would leave India with nuclear weapons, but no means to produce the material to make more. Significantly, it would also deny India the option of exploring breeder reactor technology, something the Indian nuclear energy establishment very much wants to do.

Finally, there is a more practical posture, which is to permit nuclear cooperation with India if it accepts a reasonably verifiable ban on the production of any more fissile material for nuclear weapons purposes. This approach would permit India reprocessing and enrichment facilities, but effectively require international safeguards on all its nuclear facilities and any nuclear material produced in the future. Its appeal in regional terms is that it would allow India to pursue nuclear energy without restrictions of any kind—more than we are willing to do for Iran at the moment. From the global security perspective, we will have succeeded in capping a nuclear weapons program, a substantive achievement which arguably offsets a breach of the long-standing policy against nuclear cooperation with a state such as India that does not accept full-scope safeguards. The deal would have to have other provisions, such as rigorous nuclear export control policies, a ban on export of enrichment or reprocessing technology, and a permanent prohibition on nuclear explosive testing, but this is its essence.

The deal described above would require India to choose between the opportunity to expand its nuclear energy program on the one hand, and the expansion of its nuclear weapons arsenal on the other. The administration proposes to allow India to do both, and that would be a mistake. Our security depends on maintaining the norm against nuclear weapons proliferation.

PREPARED STATEMENT OF
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BEFORE THE
U.S. SENATE COMMITTEE ON FOREIGN RELATIONS
APRIL 26, 2006

Good morning, Mr. Chairman, and Members of the committee. Thank you for inviting me to testify on the proposed cooperation between the United States and India in regards to atomic energy. This is obviously a complex subject with different facets stretching from the political to the technical. It is also a subject I have given some thought to and have written about in the past.¹ As requested in your letter, I will focus my oral and written remarks this morning mainly on the strategic logic underlying the President's initiative on civil nuclear cooperation and its importance for the transforming U. S.-Indian relationship. I will be happy, however, to cover those aspects that I have not touched on in my formal testimony during the discussion that follows. I respectfully request that my statement be entered into the record.

The United States and India today are confronted by an incredible opportunity to craft a new global partnership that promises to advance a range of common interests in a way that was simply impossible during the Cold War. These interests encompass a wide variety of issues ranging from the preservation of peace and stability in a resurgent Asia over the long term, through the current exigencies relating to the global war on terror, to promoting complex collective goods such as arresting the spread of weapons of mass destruction, managing climate change, and promoting liberal democracy and an open trading system.

Thanks to the tight bipolarity of the Cold War, U.S.-Indian relations during that entire epoch were characterized by alternation: in almost every decade, troughs of estrangement invariably followed peaks of strong cooperation. Despite the desires of leaders on both

¹My previous reflections on different aspects of the U.S.-Indian nuclear cooperation initiative can be found in Ashley J. Tellis, "South Asian Seesaw: A New U.S. Policy on the Subcontinent," *Policy Brief*, 38 (Washington, D.C.: Carnegie Endowment for International Peace, May 2005); Ashley J. Tellis, *India as a New Global Power: An Action Agenda for the United States* (Washington, D.C.: Carnegie Endowment for International Peace, June 2005); Ashley J. Tellis, Testimony to the House Committee on International Relations, Subcommittee on Asia and the Pacific, on "The United States and South Asia," June 14, 2005; Ashley J. Tellis, "Should the US Sell Nuclear Technology to India?—Part II," *YaleGlobal Online*, November 10, 2005; and, Ashley J. Tellis, Prepared Testimony to the House Committee on International Relations on "The U.S.-India Global Partnership: How Significant for American Interests?" November 16, 2005.

sides, the quest for a strong bilateral relationship was repeatedly frustrated, which from an American perspective appeared to be the case for at least three reasons unique to India: first, New Delhi's emphatic determination to pursue a non-aligned foreign policy at a time when liberal states were under threat from global communism; second, India's relative weakness during much of the Cold War caused by its pervasive economic underperformance that, in turn, sealed its strategic irrelevance to the global system; and, third, India's anomalous nuclear status since 1974 when, in becoming "a state with nuclear weapons, but not a nuclear weapon state," New Delhi found itself cast into a netherworld where it soon became the most important target of global anti-proliferation efforts.

By the time the Cold War ended, the first two impediments were on their way to being resolved. The demise of the Soviet Union destroyed the international system that made non-alignment structurally relevant and freed both the United States and India to seek better relations undistracted by the pressures of Cold War geopolitics. By 1991—and although it was difficult to see this clearly at the time because of New Delhi's financial crisis—the Indian economy was also on its way to becoming a star performer, having left behind the abysmal 3.5 percent "Hindu rate of growth" that had characterized its productive performance since independence.

To its credit, the Clinton administration, perceiving both these realities, made an initial effort to construct a new relationship with India. A wide-ranging diplomatic dialogue was instituted in the hope that the two democracies could find common ground, and India was designated a "big emerging market" worthy of special U.S. commercial attention. But, despite its good intentions, the Clinton administration could not redress the third impediment that had by now come to haunt U.S.-Indian relations, namely India's anomalous nuclear status which made it the single most important target of U.S. anti-proliferation activities worldwide. Confronted by this challenge, the administration attempted to implement two different policies towards India. It began with an effort to improve ties with New Delhi across the board, while simply quarantining the nuclear issue in the hope of preventing it from contaminating improvements that might be realized in other areas of the bilateral relationship. This approach, however, quickly reached the limits of its success because the U.S.-led anti-proliferation efforts since 1974 had effectively succeeded in institutionalizing a complex global technology denial regime that prevented India from getting access even to important non-strategic technologies because of fears that these might eventually leach into its nuclear programs. India's irregular nuclear status under the Non-Proliferation Treaty had in fact become such an impediment that the Clinton administration's strategy of quarantining the nuclear issue failed either to resolve the nuclear disagreement or to transform the bilateral relationship.

By the second term, the Clinton administration emphasized an alternative strategy, driven largely by its efforts to tighten the global nonproliferation regime. While continuing its previous effort to improve relations with India in a variety of areas such as diplomatic engagement and defense cooperation, the administration focused its energies simultaneously on capping, rolling back, and eventually eliminating India's nuclear weapons program. This shift

in emphasis, unfortunately, turned out to be unsuccessful: not only did it exacerbate the already high Indian frustration with the U.S.-led technology denial regime, but it finally provoked New Delhi into a spectacular act of defiance through the nuclear test series of 1998 when India in a deliberate challenge to the international order declared itself to be a “nuclear weapon state.”

Although much of this story may sound like ancient history, it is worth remembering for two important reasons that are critical to understanding the strategic wisdom underlying President Bush’s decision to initiate civilian nuclear cooperation with India.

First, the transformation of U.S.-Indian relations, as desired by the President and which enjoys bipartisan support in Congress, cannot be consummated without resolving the problems caused by India’s anomalous status in the nuclear non-proliferation order. The Clinton administration spent eight long years trying to improve U.S. relations with India, while at the same time avoiding any effort to alter India’s status as an outlier in the global non-proliferation system. The historical record shows conclusively that well intentioned though it was—and perhaps even necessary—this strategy ultimately failed. An old maxim of military strategy calls on leaders to “reinforce success, abandon failure.” President Bush’s initiative on civil nuclear cooperation with India is an effort to do just that, given that all other U.S. policies since at least 1974 have by now proven to be less than successful.

Second, the transformation of U.S.-Indian relations, as desired by the President and which enjoys bipartisan support in Congress, cannot be inherently schizophrenic if it is to be successful enough to advance common American and Indian interests in this new century. As our ties with friends and allies in Europe and Asia demonstrate, the United States has a variety of bilateral relationships defined by different degrees of intensity and intimacy. What all these relationships have in common, however, is that in no case is any U.S. partner made the deliberate target of a punitive policy concerted by Washington. Through his proposal for full civil nuclear cooperation with India, President Bush has in effect conveyed his belief that if India is to become a full strategic partner of the United States in this new century, a comparable courtesy must be extended to New Delhi as well. Stated in a different way, the President has recognized that it is impossible to pursue a policy that simultaneously seeks to transform New Delhi into a strategic partner of the United States on the one hand, even as India remains permanently anchored as Washington’s nonproliferation target on the other.

These two reasons combine to underscore the point that Secretary Rice made in her recent testimony to this committee. Far from being an appendage to growing U.S.-Indian ties, bilateral civilian nuclear cooperation promises to become “the key that will unlock the progress of our expanding relationship.” Congressional action to implement this initiative is therefore critical not simply because it will help address India’s vast and growing energy needs—though it will certainly do that—or because it will mitigate the burdens of environmental pollution and climate change in South Asia—though those must be counted among its benefits as well—but because it symbolizes, first and foremost, a renewed

American commitment to assisting India meet its enormous developmental goals and thereby take its place in the community of nations as a true great power.

Renewed civilian nuclear cooperation thus becomes the vehicle by which the Indian people are reassured that the United States is a true friend and ally responsive to their deepest aspirations. By altering the existing web of legal constraints on civilian nuclear cooperation with India, Congress would also expand simultaneously India's access to a wide range of controlled technologies that are useful for numerous peaceful economic endeavors going beyond merely the production of electricity. The successful implementation of the civilian nuclear cooperation agreement would therefore epitomize as Prime Minister Manmohan Singh told Under Secretary of State Nicholas Burns in New Delhi in February 2006—"a historic reconciliation between the United States and India and a new concord after many decades of anxiety, distrust, and suspicion in our bilateral relations."

The increasing value of this transforming bilateral relationship with India for the United States will be manifested most clearly in three areas that will be vitally important to American security in this century.

To begin with, a strong American partnership with a democratic India will be essential if we are to be able to construct a stable geopolitical order in Asia that is conducive to peace and prosperity. There is little doubt today that the Asian continent is poised to become the new center of gravity in international politics. Most analyses suggest that although national growth rates in several key Asian states—in particular Japan, South Korea, and possibly China—are likely to decline in comparison to the latter half of the Cold War period, the spurt in Indian growth rates, coupled with the relatively high though still marginally declining growth rates in China, will propel Asia's share of the global economy to some 43 percent by 2025, thus making the continent the largest single locus of economic power worldwide. An Asia that hosts economic power of such magnitude, along with its strong and growing connectivity to the American economy, will become an arena vital to the United States—in much the same way that Europe was the grand prize during the Cold War. In such circumstances, the administration's policy of developing a new global partnership with India represents a considered effort at "shaping" the emerging Asian environment to suit American interests in the twenty-first century.

This should not be interpreted as some kind of thinly veiled code signifying the polite containment of China, which many argue is in fact the administration's secret intention. Such claims are, in my judgment, erroneous. A policy of containing China is neither feasible nor necessary for the United States at this point in time. Further, it is not at all obvious that India, currently, has any interest in becoming part of any coalition aimed at containing China. Rather, the objective of strengthening ties with India is part of a larger—and sensible—administration strategy of developing good relations with all the major Asian states. As part of this general effort, it is eminently reasonable for the United States not only to invest additional resources in strengthening the continent's democratic powers but also to deepen the bilateral relationship enjoyed with

each of these countries—on the assumption that the proliferation of strong democratic states in Asia represents the best insurance against intra-continental instability as well as threats that may emerge against the United States and its regional presence. Strengthening New Delhi and transforming U.S.-Indian ties, therefore, has everything to do with American confidence in Indian democracy and the conviction that its growing strength, tempered by its liberal values, brings only benefits for Asian stability and American security. As Under Secretary of State Nicholas Burns succinctly stated in his testimony before the House International Relations Committee, “By cooperating with India now, we accelerate the arrival of the benefits that India’s rise brings to the region and the world.”

Further, a strong American partnership with a democratic India will be essential if we are to succeed in preserving an effective non-proliferation system that stems the diffusion of nuclear materials and technologies required for the creation of nuclear weapons. The central component of civilian nuclear cooperation is critical in this regard because it formalizes a bargain that gives India access to nuclear fuel, technology, and knowledge on the condition that New Delhi institutionalizes stringent export controls, separates its civilian from its strategic facilities and places the former under safeguards, and assists the United States in preventing further proliferation. Bringing India into the global non-proliferation regime in this way produces vital benefits both for the United States and for all non-nuclear weapons states insofar as it transforms India’s hitherto commendable nonproliferation record, which is owed entirely to voluntary sovereign decisions made by successive Indian governments, into a formal and binding adherence through a set of international agreements. Thanks to the President’s initiative, India has now agreed to obligations that in fact go beyond those ordinarily required of NPT signatories, such as refraining from transfers of enrichment and reprocessing technologies to states that do not already possess them and supporting efforts to limit their spread; working with the United States to conclude a multilateral Fissile Material Cutoff Treaty; continuing its unilateral moratorium on nuclear testing; and adhering to the Missile Technology Control Regime (MTCR) and the Nuclear Suppliers Group (NSG) guidelines.

Bringing India into the global nonproliferation regime through a lasting international agreement that defines clearly enforceable benefits and obligations not only strengthens American efforts to stem further proliferation but also enhances U.S. national security. The President’s accord with India advances these objectives in a fair and direct way. It recognizes that it is unreasonable to ask India to continue to bear the burdens of contributing towards ensuring the viability of the global nonproliferation regime in perpetuity, while it suffers stiff and encompassing sanctions from that same regime. And so the President has asked the Congress to support his proposal to give India access to nuclear fuel, technology, and knowledge in exchange for New Delhi formally becoming part of the global coalition to defeat the proliferation of weapons of mass destruction. In other words, he offers India the benefits of peaceful nuclear cooperation in exchange for transforming what is currently

a unilateral Indian commitment to nonproliferation into a formally verifiable and permanent international responsibility.

The fruits of this initiative are already in evidence, for example, in connection with India's strong support for the U.S.-led efforts to persuade Iran to live up to its freely accepted non-proliferation obligations. This Indian decision has not been easy because of New Delhi's otherwise good relations with Tehran. India and Iran share historical links that go back thousands of years; India and Iran played a pivotal role in ensuring the viability of the Northern Alliance in Afghanistan during the darkest days of Taliban rule; India remains one of Iran's most important customers for oil and natural gas, and it continues discussions with Islamabad and Tehran about the construction of a gas pipeline that would link the three countries and help meet India's large and growing energy needs. Many voices in the American debate on the civilian nuclear initiative have demanded that India curtail its economic and diplomatic links to Iran as the price of securing U.S. cooperation in regards to civilian nuclear energy. Such demands are unreasonable. The negotiations over the Iranian-Pakistani-Indian gas pipeline are unlikely to succeed simply because of economic considerations, but New Delhi is unlikely to concede to any demands that rupture its diplomatic and economic relationship with Tehran if these are seen to have no relationship with the issue of nuclear proliferation. On this score, India is likely to behave in a fashion identical to that of our close allies such as Japan and Italy. It will demand—as it has done thus far—that Tehran live up to its international non-proliferation commitments and obligations, and it will abide by any decisions made by the international community to enforce these responsibilities, but it is unlikely to unilaterally sacrifice its bilateral relationship with Iran in areas that are not perceived to have any connection with non-proliferation and which do not pose a threat to common security.

Finally, a strong American partnership with a democratic India will be essential if we are to successfully preserve a global order that protects liberal societies and advances freedom in myriad ways. This objective encompasses a congeries of diverse goals, including promoting democracy, defeating terrorism and religious extremism, collaborating to protect the energy routes and lines of communication supporting free trade and commerce, expanding the liberal international economic order, and managing climate change—each of which is critical to the well being of the United States. It does not take a great deal of imagination to recognize that for the first time in recent memory Indian and American interests on each of these issues are strongly convergent and that India's contribution ranges from important to indispensable as far as achieving U.S. objectives is concerned.

The President's intention in proposing civilian nuclear cooperation with India is fundamentally driven by his conviction that every impediment to a closer relationship ought to be eliminated, so that both our countries can enjoy the fullest fruits of an ever-tighter partnership in regards to each of the issues above. It is also driven by his desire to assist New Delhi's growth in power on the assumption that a strong democratic India would ultimately advance America's own global interests far better than a weak and

failing India would. The key word, which the administration understands very well in this context, is “partnership.” A strengthened bilateral relationship does not imply that India will become a treaty-bound ally of the United States at some point in the future. It also does not imply that India will become a meek, compliant and uncritical collaborator of the United States in all its global endeavors. Rather, India’s large size, its proud history, and its great ambitions, ensure that it will always pursue its own interests—just like any other great power.

During his recent visit to the United States in March this year, India’s Foreign Secretary Shyam Saran, appealed to his American interlocutors to recognize that “when an open society like India pursues its own interests, this is more likely than not to be of benefit to the United States.” If the President’s views on India going back to the campaign in 2000 are any indication, George W. Bush had already reached this conclusion at least five years ago. In fact, every initiative involving India, beginning with the Next Steps in Strategic Partnership in the first term and ending up with the proposal on civilian nuclear cooperation in the second, suggest that the President has concluded—correctly—that a strong and independent India represents a strategic asset, even when it remains only a partner and not a formal ally. This judgment is rooted in the belief that there are no intrinsic conflicts of interest between India and the United States. And, consequently, transformed ties that enhance the prospect for consistent “strategic coordination” between Washington and New Delhi on all the issues of global order identified above serve U.S. interests just as well as any recognized alliance.

The question that is sometimes asked in this connection is whether a close U.S.-Indian partnership would be impossible in the absence of civilian nuclear cooperation. The considered answer to this question is “Yes.” This is not to say that U.S.-Indian collaboration will evaporate if civilian nuclear cooperation between the two countries cannot be consummated, but merely that such collaboration would be hesitant, troubled, episodic, and unable to realize its full potential without final resolution of the one issue that symbolically, substantively, and materially kept the two sides apart for over thirty years. At a time when U.S.-Indian cooperation promises to become more important than ever, given the threats and uncertainties looming in the international system, the risk of unsatisfactory collaboration is one that both countries ought not to take.

Through the civilian nuclear cooperation initiative, President Bush has embarked on a bold and decisive step to eliminate those long-standing impediments between Washington and New Delhi and to place the evolving U.S.-Indian relationship on a firm footing guided by a clear understanding of the geo-strategic challenges likely to confront the United States in the twenty-first century. Recognizing that a new global partnership would require engaging New Delhi not only on issues important to the United States, the administration has moved rapidly to expand bilateral collaboration on a wide range of subjects, including those of greatest importance to India. The proposal pertaining to extending civilian atomic energy cooperation to India is, thus, part of a larger set of Presidential initiatives involving agriculture, cybersecurity, education,

energy, health, science and technology, space, dual-use high technology, advanced military equipment, and trade.

Irrespective of the issues involved in each of these realms, the President has approached them through an entirely new prism, viewing India, in contrast to the past, as part of the solution rather than as part of the problem. He has judged the growth of Indian power to be beneficial to America and its geopolitical interests in Asia and, hence, worthy of strong support. And, he is convinced that the success of Indian democracy, the common interests shared with the United States, and the human ties that bind our two societies together, offer a sufficiently lasting assurance of New Delhi's responsible behavior so as to justify the burdens of requesting Congress to amend the relevant U.S. laws (and the international community, the relevant regimes) pertaining to peaceful nuclear trade. On all these matters, I believe—without any qualification—that the President has made the right judgment with respect to India and its importance to the United States. I hope that Congress will agree.

Thank you, Mr. Chairman, for your attention and consideration.

PREPARED STATEMENT OF
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U.S. SENATE COMMITTEE ON FOREIGN RELATIONS
APRIL 26, 2006

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE: In November of last year, the committee asked me to join in its consideration of the July 18, 2005 Joint Statement of President George W. Bush and Prime Minister Manmohan Singh on civil nuclear cooperation. You have that testimony before you. Today's hearing considers the strategic and nonproliferation implications of the Joint Statement in the context of S. 2429, legislation to advance that agreement.

In the last six months, intense negotiations have taken place. Uncertainty still exists and warrants caution, but both sides have taken steps and made clarifications. Nothing has become known, however, that would cause me to change my basic conclusions and concerns, which again are my personal views. Let me briefly recall that analysis:

The Joint Statement is an historic milestone for non-proliferation that creates both great opportunity and great risk. It creates an opportunity to strengthen a nuclear non-proliferation regime that is suffering from its own internal weaknesses such as inadequate enforcement, the threat of breakout once an advanced nuclear capability has been achieved, and an inability to engage effectively the non-parties to the NPT. Because the terms of the Joint Statement, however, also spotlight those weaknesses, mishandling of the implementation of its terms can have adverse consequences even when the best of intentions are involved.

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If the basic approach contained in the Joint Statement collapses, we will not return to the *status quo ante*. U.S.-Indian cooperation will be set back, but also the weaknesses in the existing regime will be exposed to even greater pressure. Bringing India into a more comprehensive regime of nonproliferation and restraint, however, could sig-

nificantly enhance our ability to reduce the dangers associated with weapons of mass destruction. Congress can help insure that this is a sufficiently ambitious agenda. India could do much to help within its borders, in South Asia, in other troubled regions, and globally.

* * * * *

I would urge the Congress to focus on the dynamics of the process and the goals to be achieved as a result of the U.S.-India Joint Statement rather than attempting to rearrange the pieces of the initial package. Much that one might have detailed in the original package may be more successfully achieved by driving subsequent interactions in the right direction. This can only be done, I believe, if nonproliferation is a centerpiece of strategic engagement rather than a trade-off. It is best achieved by retaining a viable Nuclear Non-Proliferation Treaty at the core of a broader nonproliferation regime that uses more targeted, embedded engagement to address the fundamental causes and conditions of proliferation. In short, widely shared goals should guide our actions, but implementation will fail if a "one size fits all" mentality is applied rigidly to different circumstances.

The legislation before you is intended to support these goals by memorializing the principles for a bi-partisan consensus between both executive and legislative branches that can provide a stable basis over time for both India and the United States to work together. Such cohesion and clarity of purpose, as the United States engages India, would be very valuable, particularly in support of our nonproliferation efforts.

That is not the same as saying that partnership with India will be easy. My own view is that the road ahead with India will be rocky, certainly when measured against the current euphoria about India even among those who have concerns about civil nuclear cooperation. The overselling of the new relationship today by many will become more obvious in the near term, but in the long term, common interests and steady foreign policy could result in achieving or exceeding expectations. This is not a certain outcome, however.

At the same time, many of the concerns about the strategic partnership's impact on nonproliferation are also overstated or manageable. Too often the friends of the NPT act as if they are rearranging the deck chairs of what their rhetoric describes as a sinking nonproliferation "Titanic." The nuclear nonproliferation regime is under stress, but the Indo-U.S. Civil Nuclear Cooperation Agreement did not put it there. Indeed, the agreement offers an opportunity to strengthen the regime through partnership with India, especially if India calls a truce in its more than thirty years guerrilla war against the NPT. Real nonproliferation needs real, embedded engagement. Again, the successful execution of the partnership over time must be the measure of merit, not the initial ceremonies or even enabling legislation.

It is right to take the time now to codify clear nonproliferation commitments that will guide the strategic partnership, but, in the future, we must also insure that the parties live up to those commitments and adjust to new challenges. We must not let time erode the emphasis on nonproliferation that should be integral to the Indo-U.S. relationship. This legislation can be consistent with that approach, but changing circumstances could also undermine our clarity of purpose over time, particularly in nonproliferation. In the early 1990s erosion of purpose perhaps fatally damaged our nonproliferation prospects and achievements with respect to North Korea, and one sees similar developments emerging on Iran among allies, friends, and non-governmental organizations. In this age of rapidly advancing technology, time is not always on the side of nonproliferation.

S. 2429 gives emphasis to the nonproliferation objectives of the new Indo-U.S. partnership. It conditions civil nuclear cooperation on the President's determination that India:

- has provided the US and the IAEA a credible plan to separate its civil and military facilities,
- has an IAEA safeguards agreement in force,
- is making progress with the IAEA "toward implementing" an Additional Protocol,
- "is working with the United States for the conclusion of a multilateral Fissile Material Cut-off Treaty,"
- "is supporting international efforts to prevent the spread of enrichment and reprocessing technology,"
- is securing nuclear materials and technology through export controls and adherence to the Missile Technology Control Regime and the Nuclear Suppliers Group guidelines, and
- the Section 123 Agreement between the U.S. and India is consistent with U.S. "participation in the Nuclear Suppliers Group."

An eighth condition is dealt with separately, differently, and more emphatically; namely that India not "have detonated a nuclear explosive device after the date of enactment."

All of these are important conditions, not only when we begin going down this path of partnership, but also in the years ahead. The Executive Branch seems legitimately concerned that an annual process of determinations and legislative enactment would be corrosive and counterproductive over time in the real world of political give and take at home and abroad. That view is not wrong.

PREPARED STATEMENT OF
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SENATE COMMITTEE FOREIGN RELATIONS
APRIL 26, 2006

Mr. Chairman, thank you for the opportunity to testify before the committee on the nonproliferation implications of the U.S.-India agreement on civil nuclear cooperation.

The argument for overcoming the nuclear impasse with India—for altering the nuclear status quo that cut India off from international civil nuclear cooperation for over 30 years—has become increasingly persuasive. It has been clear for many years that maintaining existing U.S. laws and Nuclear Suppliers Group (NSG) guidelines prohibiting such cooperation would not succeed in inducing New Delhi to join the NPT or give up nuclear weapons. And as the Bush administration has argued, modifying those laws and guidelines for India could give a boost to U.S. relations with a rising democratic world power and assist in addressing India's growing energy needs.

The dilemma we now face is how to achieve the benefits of changing the rules without undermining the vital U.S. interest of preventing the proliferation of nuclear weapons. How, for example, can the United States seek exceptions to the rules for India without opening the door to exceptions in less worthy cases—indeed, without weakening the overall fabric of rules the U.S. worked so hard to create? How would U.S. allies and friends who had to choose between nuclear weapons and civil nuclear cooperation (and who made what the U.S. regarded as the right choice) view giving India the opportunity to have its cake and eat it too? How can we avoid conveying the impression to countries contemplating the nuclear option in the future that, if they opted for nuclear weapons, the world would eventually accept them into the nuclear club?

Given the inevitable nonproliferation risks involved in reversing three decades of U.S. law and multilateral policy to permit nuclear cooperation with India, it is essential that such a major shift be accompanied by Indian steps that, on balance, strengthen the nonproliferation regime. Moreover, a policy departure of such magnitude should be preceded by thorough discussions with the Congress and key international partners to ensure they are com-

fortable with the initiative and share the view that it does not undercut nonproliferation interests.

But the U.S.-India civil nuclear cooperation deal negotiated by the Bush administration doesn't meet those requirements. In the administration's eagerness for a foreign policy success, the deal was concluded in great haste, driven by the calendar of Bush-Singh meetings rather than by the seriousness and complexity of the task at hand. Key stakeholders in the U.S. Congress and the 45-nation Nuclear Suppliers Group (NSG) were not consulted in advance. While speed and exclusivity are often necessary to overcome bureaucratic and international resistance to major initiatives, this must be balanced against the need for buy-in, especially when the success of the initiative depends on approval by both the Congress and NSG. In its desire to show boldness and demonstrate a clean break with the past, the administration gave too little weight to the nonproliferation downsides and too much weight to proving to the Indians its dedication to building a qualitatively new relationship. In the process, it failed to use the leverage available to it to achieve U.S. objectives.

As a result, the deal outlined in the Joint Statement concluded when Prime Minister Singh visited Washington last July, and further elaborated on March 2nd when President Bush was in Delhi, gave the Indians virtually all that they wanted—the ability to acquire nuclear equipment and technology and desperately needed uranium on the world market, acceptance as a nuclear weapon state in all consequential respects, and complete freedom to continue and expand production of fissile material for nuclear weapons. What the U.S. got from the deal was, for the most part, speculative—the hope that a stronger partnership with India will pay strategic dividends down the road.

BENEFITS FOR NONPROLIFERATION ARE MODEST

Recognizing that much of the criticism of the civil nuclear deal would be based on its implications for nonproliferation, the administration has made a special effort to show that the deal strengthens the global nonproliferation regime. But the arguments are not very convincing.

Several of the steps promised by India are simply reaffirmations of existing commitments, including its pledges to continue its unilateral moratorium on nuclear weapons testing, strengthen its national system of export controls, and work toward the conclusion of a multilateral fissile material cutoff treaty. Some other steps—including adherence to the guidelines of the NSG and the Missile Technology Control Regime—were actions India was already planning to take before the July 18 th Joint Statement as part of a U.S.-Indian dialogue on technology transfer and export control. Still others—such as the promise to refrain from transferring enrichment and reprocessing technologies to countries that do not yet possess them—were codifications of existing Indian policies and practices.

The potentially significant new development was India's commitment in July to separate civilian and military nuclear facilities and put the civilian facilities under International Atomic Energy Agency (IAEA) safeguards, thereby placing them off-limits for the pro-

duction of plutonium for India's nuclear weapons program. But the separation plan insisted upon by India's nuclear establishment, backed by Prime Minister Singh, and accepted by President Bush in March would put only 14 of 22 existing or planned nuclear power reactors under safeguards (including the six imported reactors India has no choice but to put under safeguards) and would allow New Delhi to decide entirely on its own which future reactors it wished to designate as civilian and submit to safeguards.

The administration has trumpeted as a major nonproliferation gain that India will have 65 percent of its thermal reactors under safeguards. As a gesture of support for the IAEA's safeguards system, India's putting eight more reactors under safeguards than it would otherwise be obliged to do is welcome. But strategically, the percentage of reactors under safeguards is meaningless.

The purpose of IAEA safeguards is to prevent non-nuclear weapon states from diverting nuclear materials from civilian facilities to a nuclear weapons program. For nuclear powers like India, which can use unsafeguarded facilities to produce fissile material for their weapons programs, safeguards covering only a portion of their facilities serve primarily a symbolic function—to reduce the perceived discrimination between countries that are obliged to accept safeguards on all their facilities (i.e., NPT non-nuclear states) and those that are not. Much more meaningful than the percentage of reactors covered by safeguards is the amount of fissile material that could be produced at facilities not covered by safeguards. Under the separation plan approved on March 2nd, India has kept open plenty of options for producing fissile material for its weapons program (including at fast breeder reactors well-suited to producing bomb-grade plutonium).

The administration claims that the nuclear deal is a major breakthrough because “for the first time” it brings India into the international nonproliferation “mainstream.” In her April 5th testimony, Secretary Rice argued that: “We better secure our future by bringing India into the international nonproliferation system, not by allowing India to remain isolated for the next thirty years the way it has been for the last thirty. We are clearly better off having India most of the way in rather than all the way out.”

This statement creates the impression that India today is totally outside the rules and, because of that, perhaps even a potential source of proliferation difficulties. But India, to its credit, has been moving into the nonproliferation “mainstream” for quite some time—in such areas as export controls, physical protection of nuclear materials, and interdictions of WMD-related shipments. It still has a distance to go before its export controls meet the highest international standards (and indeed the U.S. has sanctioned Indian entities for sensitive assistance to Iraq, Libya, and Iran). But it is working hard to strengthen its controls—and it will continue to do so because it is a responsible country that recognizes that non-proliferation controls are in its own self interest. The civil nuclear deal would reinforce these positive trends, but they will continue with or without the deal.

THE RISKS ARE SUBSTANTIAL

While the nonproliferation gains that can be attributed directly to the civil nuclear deal are modest, the potential downsides are substantial.

By seeking an exception to the rules for a country with which the United States wishes to build a special friendship, the nuclear deal will reinforce the impression internationally that the U.S. approach to nonproliferation has become selective and self-serving, not consistent and principled. Rules the U.S. previously championed will be perceived as less binding and more optional. In general, the deal will send the signal that the U.S.—the country the world has always looked to as the leader in the global fight against proliferation—is now de-emphasizing nonproliferation and giving it a back seat to other foreign policy and commercial goals.

If the U.S. is seen as changing or bending the rules when they no longer suit us, others can be expected to follow suit. Indeed, that already seems to be happening. Russia, which a year ago said it couldn't provide nuclear fuel to India's Tarapur reactors because of its Nuclear Suppliers Group obligations, recently sent a large fuel shipment to those reactors, arguing (over the objections of most NSG members) that it was entitled to do so under the NSG's "safety exception." It is highly unlikely that Russia would have played so fast and loose with the NSG's rules in the absence of the U.S.-India nuclear deal. It is also not by coincidence that, not long after the U.S.-India deal, China and Pakistan began discussing additional reactor sales. It is not clear whether they will await NSG approval for such sales or simply proceed outside the guidelines of the NSG.

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

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

In the near term, U.S. plans to engage in nuclear cooperation with India will make it more difficult to address proliferation challenges such as Iran. Of course, Iran's interest in nuclear weapons long pre-dated the India deal and its motives for seeking nuclear weapons have nothing to do with the deal. But the U.S.-India agreement has strengthened the case Iran can make—and is already making—internationally and at home. Why, Iranian officials

ask publicly, should Iran give up its right as an NPT party to an enrichment capability when India, a non-party to the NPT, can keep even its nuclear weapons and still benefit from nuclear cooperation? It is an argument, however flawed and disingenuous, that resonates well with the Iranian public and with developing countries around the world and weakens the pressures that can be brought to bear on Tehran.

The most serious defect of the U. S.-India nuclear deal is its failure to constrain the further production of bomb-making fissile material—plutonium and highly enriched uranium—for nuclear weapons. Indeed, as it now stands, the deal could actually help India dramatically increase its fissile material stocks.

India's indigenous uranium supplies are limited. Domestic uranium ore is of low quality and expensive to mine and process into yellowcake. Annual production is low and has difficulty keeping up with demand for both the civil energy and nuclear weapons programs. Under current nonproliferation restrictions, which prevent India from buying uranium on the world market, India will soon face serious shortages and painful trade-offs. Under the Bush administration plan to change U.S. law and NSG guidelines, India could satisfy the needs of an expanding civil nuclear energy program through imports, while freeing up its domestic uranium reserves for military purposes. It would be a windfall gain for the nuclear weapons program.

In negotiations leading up to the July 18th Joint Statement, the Bush administration proposed that India stop producing fissile material for nuclear weapons, which would have prevented India from taking advantage of freed-up uranium supplies for weapons purposes. India rejected the proposal. The administration then made a further attempt to limit fissile material production by proposing that most Indian nuclear facilities, including its fast breeder reactors, be placed under IAEA safeguards and therefore made ineligible for weapons plutonium production.

But India's nuclear establishment dug in its heels, calling publicly for minimizing safeguards coverage and avoiding constraints on India's bomb-making capacity. Prime Minister Manmohan Singh, already under attack on the nuclear deal from his left-wing coalition partners, backed up the nuclear establishment's demands. Anxious to conclude the nuclear deal lest the Delhi summit be seen as a failure and calculating that Singh had less political room for maneuver than President Bush, the administration threw in the towel on placing meaningful limits on India's fissile material production capacity.

As a result, a third of India's reactors that currently exist or are under construction will be outside safeguards and available for plutonium production. Any future reactor, thermal or breeder, can be designated by India as outside safeguards. Of course, the Indians will not devote all their unsafeguarded nuclear reactors to weapons plutonium production. Indeed, given India's ambitious nuclear energy goals, we would expect most of those reactors to be used for civilian purposes. But even if only two or three large reactors were used as bomb factories, India could produce enough plutonium for well over 50 nuclear weapons each year.

Why should the U.S. care about Indian production of fissile material? After all, India is a friend and a responsible nuclear power. One reason we should care is that, especially after 9/11, we have a vital interest in limiting the availability of bomb-making materials around the world and preventing such materials from falling into the hands of terrorist groups who, we know, are actively seeking to acquire them. If India steps up production, Pakistan can be expected to follow suit, China could decide to resume production, and others may be encouraged to seek their own production capabilities. The more materials produced, the more difficult and costly it will be to secure them, and the greater the risks of nuclear terrorism.

Another reason we should care about stepped up Indian production of fissile materials is that it could lead to increased tensions and destabilizing arms competition in southern Asia, involving India, Pakistan, and China. Pakistani authorities have publicly taken special note of the failure of the U.S.-India nuclear deal to limit Indian fissile material production. Reportedly, the Pakistani National Command Authority recently met to assess the impact of the deal and consider adjustments Pakistan may need to make to its own strategic plans. President Musharraf said, "We cannot remain oblivious to the changes evolving in the region. All the steps will be taken for the defense, security, and safety of Pakistan." Moreover, China has warned that the deal threatens to "undermine global disarmament moves," suggesting that Beijing may also decide that it needs to respond programmatically.

Of course, continued or even stepped up nuclear weapons production in the region would not necessarily translate into increased tensions. Relations between Indian and Pakistan and between Indian and China have both been improving in recent years. But India's insistence on keeping substantial fissile material production capacity outside of safeguards—thereby keeping options open for a substantial strategic build-up—could raise suspicions about its intentions in the minds of its neighbors and have an adverse effect on the processes of reconciliation underway in the region.

CAN THE DEAL BE STRENGTHENED?

As it currently stands, the U.S.-India civil nuclear cooperation deal is a net loss for nonproliferation. Can it be transformed into a net nonproliferation gain? The answer, at this stage, lies mainly with the U.S. Congress.

The Bush administration and the Indian Government would naturally like to see the Congress approve the deal as is, on the basis of the draft legislation the administration has already submitted, and to do so as quickly as possible. But especially given the unprecedented character of the deal and its far-reaching implications, Congress has a responsibility to scrutinize it carefully before passing judgment and to adopt any modifications or conditions it deems necessary to protect U.S. interests, including in preventing the proliferation of nuclear weapons or fissile materials.

Implementation of the civil nuclear deal will require Congressional approval of amendments to the Atomic Energy Act as well as a bilateral U.S.-India agreement for peaceful nuclear cooperation. In addition, India and the IAEA will have to conclude an

agreement that applies IAEA safeguards to Indian nuclear facilities as well as an Additional Protocol to that agreement. And finally, the NSG will have to agree by consensus to modify its guideline that currently precludes nuclear cooperation with states outside the NPT. All of these arrangements are interrelated. For example, the Bush administration's willingness to seek changes in U.S. law and NSG policies depended on India's willingness to accept IAEA safeguards on certain Indian nuclear facilities in perpetuity.

Before deciding to amend the Atomic Energy Act, the Congress should therefore insist on seeing as much of the overall package as possible, including the IAEA-India safeguards agreements (concluded but not necessarily already approved by the IAEA Board) and a concluded U.S.-India agreement for peaceful nuclear cooperation. The need to assess these arrangements as a package is particularly justified because some of them will be unprecedented. India has put the IAEA on notice that its safeguards agreement will not follow standard models but will be "India-specific." The meaning of India-specific is not yet clear. Moreover, because India is a nuclear power that must still be treated as a non-nuclear state for the purposes of U.S. law, the U.S.-India peaceful nuclear cooperation agreement will be different from any previous U.S. agreement for cooperation. Negotiations on the IAEA-India safeguards agreements and the U.S.-India agreement for peaceful nuclear cooperation have already gotten underway; and so assuming those negotiations go smoothly, Congressional insistence on looking at the package as a whole need not cause significant delays.

Congress should not permit normal approval processes to be short-circuited. The Atomic Energy Act provides that agreements for peaceful nuclear cooperation that meet all the requirements of U.S. law will be approved automatically if the Congress does not pass a joint resolution of disapproval within 90 days; whereas agreements that do not meet all the statutory requirements (i.e., in cases where those requirements are waived) must be approved by both houses of Congress. Although the U.S.-India agreement for cooperation will not meet all the requirements of law (it is the first of about 40 such U.S. agreements not to do so) and will therefore require a waiver (because India will not have safeguards on all of its nuclear facilities), the administration is nonetheless proposing that the agreement be fast-tracked with the much less demanding approval procedure. Clearly, the India case deserves more scrutiny, not less. Congress should insist that both houses of Congress get the opportunity to review and vote on the U.S.-India agreement.

In terms of the substantive elements of the U.S.-India civil nuclear deal, there are several the Congress will want to probe and understand more clearly. Among them will be whether an Indian nuclear test explosion—or some other Indian actions—would trigger the termination of U.S. nuclear cooperation. A related question is whether the U.S. would be committed to assist India in obtaining reactor fuel from third parties if U.S. fuel supplies had to be cut off as a result of an Indian nuclear test or some other action.

Based on its review of the nuclear deal, Congress may wish to adopt legislation that strengthens the deal and minimizes the risks it poses to the global nonproliferation regime.

One means of minimizing those risks would be to restrict the scope of nuclear cooperation with India that would be permitted by the new legislation. A long-standing element of the nonproliferation regime has been the “NPT preference policy,” which has meant giving NPT parties benefits in the civil nuclear energy area not available to those outside the NPT. A way of maintaining some preferential treatment for NPT parties would be to modify U.S. law (and NSG guidelines) to permit nuclear-related exports to India except equipment, materials, or technologies related to sensitive fuel-cycle facilities, including enrichment, reprocessing, and heavy water production. Such a distinction would permit India to acquire uranium, enriched fuel, nuclear reactors and components, and a wide range of other nuclear items, but would retain the ban on transfers of those items that are most closely related to a nuclear weapons program. The British and French, both of whom are strong supporters of nuclear cooperation with India, reportedly believe that nuclear cooperation with India should not include fuel-cycle equipment and technologies.

Another way of reducing nonproliferation risks would be to implement the nuclear deal in a country-neutral manner—not as a special exception to the rules for India alone, which is what the administration has proposed. A problem with the country-specific approach is that it accentuates concerns that the U.S. is acting selectively on the basis of foreign policy considerations rather than on the basis of objective factors related to nonproliferation performance.

To avoid the pitfalls of making a country-specific exception without opening the door to nuclear cooperation in cases where it is clearly not yet merited, the Congress might consider permitting nuclear cooperation with any state not party to the NPT that meets certain criteria of responsible nuclear behavior (e.g., moratorium on nuclear testing, effective export controls, strong nuclear security measures, cooperation in stopping illicit nuclear trafficking). While such an approach would be country-neutral, it would still enable the U.S. Government (and other NSG members) to distinguish among non-parties to the NPT in terms of whether—and how soon—they would be eligible for nuclear cooperation.

By far the most important way to reduce nonproliferation risks—and to turn the civil nuclear deal into a net nonproliferation gain—would be for Congress to take action that would make the deal a catalyst for curbing or even capping the worldwide buildup of fissile material. In particular, Congress should adopt legislation that permits nuclear cooperation to proceed when India stops producing fissile material for nuclear weapons, either by ceasing production unilaterally, by joining other nuclear powers (including China and Pakistan) in a multilateral moratorium, or by adhering to a multilateral, verifiable treaty banning the production of fissile material for nuclear weapons (i.e., a fissile material cutoff treaty, or FMCT).

In the run-up to the July 18th Joint Statement, India rejected a Bush administration proposal that it stop producing fissile material for nuclear weapons. But it is possible New Delhi might take a different view toward ending production not unilaterally but as part of a multilateral moratorium or treaty. After all, India has long de-

clared its support for a multilateral FMCT. Indeed, in their July 18th Joint Statement, India and the United States agreed to work together to achieve an FMCT. If that is a serious undertaking and not a throwaway line, it would not be unrealistic for the key nuclear powers to reach agreement on a cutoff in a reasonably short period of time. The U.S., UK, France, and Russia have all ceased producing fissile material for nuclear weapons as a matter of policy. China is also believed to have stopped production. With intensive diplomatic effort, it should be possible for India and the U.S. to persuade Pakistan to join them and these other nuclear powers in a multilateral moratorium pending completion of a formal multilateral treaty. By linking nuclear cooperation to the termination of fissile material production, Congress could provide additional incentive for Washington and New Delhi to reach agreement at an early date.

CONCLUSION

In seeking to make India an exception to longstanding nonproliferation rules, the Bush administration has given India virtually all that it wanted and has run major risks with the future of the nonproliferation regime. It is therefore reasonable to ask India to take steps to minimize the risks and demonstrate its own strong commitment to fighting proliferation. But the administration has settled for far less than what is required to make the civil nuclear deal a net gain for nonproliferation.

India has long wanted to be regarded as a legitimate member of the nuclear club, not a pariah or outsider. The administration is right that it is time that India be brought into the nonproliferation mainstream. But with membership comes responsibilities—not just in ensuring against leakage of nuclear equipment or technology to other countries but also in practicing strategic restraint that can increase international security generally. India has stated that it is prepared to assume the same responsibilities and practices as other nuclear powers. It so happens that the five original nuclear weapons states have all stopped producing fissile material for nuclear weapons. Should India not be asked to join them?

Indian leaders might be expected to say that, since the original five nuclear powers have produced more bomb-grade material than India, India should be entitled to catch up. But since its May 1998 nuclear tests, India has often stated that its strategic requirements are not open-ended and that it doesn't seek nuclear parity with China or any other country. Instead, it has consistently maintained that it requires only a "credible, minimum deterrent capability." If that remains the case, perhaps it can soon decide that it has accumulated sufficient fissile material for its minimum deterrent needs and can afford to forgo further production.

A multilateral cap on the accumulation of fissile material would make a major contribution to fighting nuclear proliferation and preventing nuclear terrorism. Making a U.S.-India civil nuclear deal a catalyst for achieving such an outcome would transform the deal from a substantial loss to a substantial gain. It would enable the U.S. to advance its strategic interest in a qualitatively improved relationship with India as well as serve its nonproliferation interests—not promote one at the expense of the other. Congress can play a key role in achieving such an outcome.

PREPARED STATEMENT OF
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U.S. SENATE COMMITTEE ON FOREIGN RELATIONS
APRIL 26, 2006

Mr. Chairman, and members of the committee, I would like to thank you for inviting me to testify today on the administration's plan for nuclear cooperation with India, and particularly on the plan's strategic impact.

The committee is right to emphasize the strategic nature of the plan. The legislation to implement it goes to the heart of our national security. The bill now before Congress would change our export control laws—laws that have been in effect for almost thirty years, and that were adopted in response to India's nuclear test in 1974. It is worth remembering that India achieved that test by diverting plutonium made with a peaceful U.S. nuclear export, which is why India had to call the test a "peaceful nuclear explosion."

The broad question before us is this: Why, after 9/11, when we should be doing all we can to fight terrorism, and when we talk almost every day about states or terrorists getting their hands on an atomic bomb, should we weaken the controls on the export of nuclear material? Is this the right time to do that? And if we do it, will it make us safer?

These are the questions that Congress should ask. So far, the debate has emphasized diplomacy and trade. The most important questions, however, are strategic. The answers, I'm afraid, are that the legislation will not make us safer. Instead, it will put us more at risk.

Why? Because it is impossible to weaken export controls for India without weakening them for everyone else. The "everyone else" includes Iran, Pakistan, and even terrorist groups—working through a national government or not—who might want to buy the means to make mass destruction weapons. And if we do weaken export controls for everyone, which is bound to happen if we weaken them for India, we may hasten the day when a nuclear explosion destroys an American city.

The great flaw in the administration's proposal is that it considers India an isolated case. This is simply impossible. To do so contradicts the fundamental principle upon which export controls are based. The controls today are administered through inter-

national regimes. The regimes include the Nuclear Suppliers Group and the Missile Technology Control Regime. The first tries to stop the spread of nuclear arms, the second the missiles to deliver them.

A cardinal principle of both regimes is that they are “country neutral.” That is, they do not make exceptions for specific countries. The MTCR uses objective criteria to target “projects of concern” for missile proliferation. The NSG requires all non-nuclear weapon states that import items designed or prepared for nuclear use to accept comprehensive inspections. Under such inspections, all critical nuclear material must be accounted for, regardless of the country. In this way, the regimes have avoided making politically motivated decisions.

There is good reason for this practice. If the United States decides to drop controls to help one of its friends—in this case India—other supplier countries will do the same for their friends. China will drop controls on its friend Pakistan, and Russia will drop controls on its friend Iran. There will be no way to convince either China or Russia not to do that. They will say that what is good for your friend is good for mine. If you want to develop your market in India, I want just as much to develop my market in Pakistan or Iran. No country will give up a market unless other countries do the same. That is the way international regimes work.

The regimes also rely on coordination, and on consensus. The United States acted unilaterally when it made its deal with India. There was no reported notification or coordination with the NSG or MTCR before the deal was concluded. By violating the consensus norm of these regimes, the United States has invited other members to act the same way. If they do, they may make unilateral deals with Iran or Pakistan without informing the United States. This risk has been created by our own action, and certainly does not make us safer.

The regimes also require enforcement. The member countries are required to investigate and shut down unauthorized exports by their own companies. Since the attacks on 9/11, we have been asking the other countries to do more of this. But can we really ask them to crack down on companies that are exporting the same kind of goods to Pakistan or Iran that we are exporting to India? The same kind of technology will be going to the same kind of projects. What sense will there be in trying to interdict the one and not the other? Even if we can convince the other supplier countries to give lip service to an exception for India, it is unrealistic to expect them to follow through with enforcement against their own companies.

Once we start tinkering with the regimes, they could unravel quickly. As one expert in the Pentagon told me, they are like a spring-loaded box. If you raise the lid, you may never get it closed again. What he meant was that the United States has always set the standard for export controls, and other countries have often taken a long time to follow the U.S. lead in strengthening them. But if the United States decides to loosen controls, it will take only an instant for other countries to follow. The lid will fly off, and we may never be able to get it back on.

I would also like to add a personal note to this point. I have just returned from trips to Jordan and the United Arab Emirates, where I helped provide training and information to assist these

countries in improving their export controls. I hope to go to Turkey next. These are all Muslim countries in which the U.S. government is trying to improve export control performance. The export control officials in these countries are now the front-line troops in the fight against terrorism. They must do their jobs well in order to keep terrorists from getting their hands on dangerous technology.

In Jordan, one of the first questions I was asked was: "What about India? Why has the United States decided to export to India?" There is no way I, or any other American, can answer that question in a credible way in a Muslim country. India, Pakistan and Iran all decided to develop nuclear weapons under the guise of peaceful nuclear cooperation. From this standpoint, they are indistinguishable. Why punish Pakistan and Iran but not India? They are all guilty. There is no persuasive reason for treating them differently. India is no different today than it was in 1998, when it tested a nuclear weapon. So, the second question, hiding behind the first, is "what is the ground for the discrimination?" None of us wants to think of the word religion, but it is a word that is in the mind of Muslim countries. If the United States is only against proliferation by countries it does not like, which now appears to be the case after the deal with India, why does it like some countries but not others?

Congress should look deeply into these questions before approving the legislation. So far, it does not appear that anyone has done so, including the administration. The administration's plan was arrived at hastily, with no consultation with other regime members, and virtually none with Congress. If the press is to be believed, there was even little consultation with arms control experts within the administration itself. The proponents of the deal have presented it as if it were simply a matter of trade and diplomacy. Congress should insist upon a full review of the strategic impact.

If one looks at the strategic side, it is hard to see why we should be helping India. Only three countries have refused to sign the Nuclear Nonproliferation Treaty: India, Israel and Pakistan. Of the three, India is the least important strategically.

Under any calculation of America's strategic relations, Pakistan ranks higher than India. Pakistan is essential to our ongoing military and political efforts in Afghanistan. Pakistan is also essential to our campaign against Al Qaeda. Without the aid of General Musharraf, we would have a much harder time accomplishing our goals in either of these endeavors. Pakistan is also a leading power in the Muslim world, a world with which the United States needs better relations. Yet, our deal with India is a blow to General Musharraf's prestige at best, and at worst a public humiliation. We should not give General Musharraf more trouble than he already has.

Israel, of course, has always been a close U.S. ally, and will continue to be. Israel would like to have U.S. nuclear cooperation. In addition, Israel is located in a part of the world that is of the highest importance to U.S. foreign policy interests.

In any competition for strategic favor from the United States, India finishes a distant third.

Is India nevertheless important because it will become a counterweight to China? Proponents of the deal so argue. But the notion

that India might assist the United States diplomatically or militarily in some future conflict is pure speculation. India's long history as the leader of the "non-aligned" movement points in the opposite direction. India will follow its own interests as it always has. An example is India's decision to train Iranian sailors and import Iranian gas. In addition, India shares a border with China, is keen to have good relations with China, and does have good relations with China. It will not sour such relations simply from a vague desire to please the United States.

This India-as-counterweight-to-China theory reminds one of the argument made by the first Bush administration in the 1980s, when it contended that the United States should export sensitive dual-use equipment to Saddam Hussein in order to build up Iraq as a counterweight to Iran. U.S. pilots were later killed in Iraq trying to bomb things that U.S. companies had provided. History shows that such predictions can be dangerous.

Then why choose India for preferential treatment? If it is not because of our need to fight terrorism, and not because of our desire to reward a faithful ally, what is it? There seems to be only one answer: India is the biggest market. Secretary of State Rice readily admits the commercial interest. On April 5 she testified to this committee that the agreement with India was "crafted with the private sector firmly in mind." She cited a 13 billion dollar deal by Boeing; she cited the hope of reactor sales by our nuclear industry; she cited the opportunity for "U.S. companies to enter the lucrative and growing Indian market."

She might also have mentioned India's defense market. That market seems to be the one that is really motivating the deal. India is shopping for billions of dollars worth of military aircraft, and the administration is hoping it will buy both the F-16 and the F-18. According to the American press, officials in the defense industry and the Pentagon are saying that the main effect of the nuclear deal will be to remove India from the ranks of violators of international norms. And once this change in India's status occurs, there will be no impediment to arms exports. The Russian press is even more explicit. It complains that in addition to "recognition of India's nuclear status by the United States," the nuclear deal "opened the door to the Indian market for American arms merchants," with the result that Russia may be squeezed out.

Boiled down to the essentials, the message is clear: Export controls are less important to the United States than money. They are a messy hindrance, ready to be swept aside for trade. But, a decision to put money above export controls is precisely what we don't want China and Russia to do when they sell to Iran. We don't want China and Russia to tell us that money in their pockets is more important than stopping Iran's march toward the bomb. But China and Russia are now hearing the new commercial message coming from America, and they are not stupid. If they see that we are willing to put money above security, and willing to take the risk that dangerous exports won't come back to bite us, they will do the same. Everyone's security will diminish as a result.

Thus, this legislation has clear costs to our security. Are these outweighed by the benefits? What are the benefits?

The principal benefit cited by the administration is that India will place 14 of its 22 power reactors under inspection. But, as others have pointed out, this leaves a great number of reactors off-limits. In fact, the reactors that are off-limits will be sufficient to produce enough plutonium for dozens of nuclear weapons per year. This is more than India will ever need. India is not restricting its nuclear weapon production in any way. Therefore, there is no "non-proliferation benefit" from such a step.

In effect, India's offer is like that of a counterfeiter with a 22 room house, who offers to let the police look into 14 rooms as long as they stay out of all the others. Why would any policeman in his right mind accept such an offer, or want to inspect one of the 14 rooms? It would be the only place where he was sure not to find anything. It would waste his time, just as it will waste the time of international inspectors to look at India's 14 declared reactors. Everyone knows that it will be the eight undeclared ones that make the bombs. India, in fact, appears to have calculated the number of reactors to put off-limits according to how much plutonium they will make. India has assured itself that the resulting amount of plutonium will be enough to allow it to continue making bombs at an unfettered pace.

This point about wasting inspection time may seem minor, but it isn't. The International Atomic Energy Agency has a limited number of inspectors. They are already having trouble meeting their responsibilities. To send them to India on a fool's errand will mean that they won't be going to places like Iran, where something may really be amiss. Unless the Agency's budget is increased to meet the new burden in India, the inspection of India's declared reactors will produce a net loss for the world's non-proliferation effort.

The other major benefit that the administration cites is that India may buy American reactors. Such a possibility exists, but is remote. The precedent is our experience with China. Some members of the committee may remember the intense debate in Congress over the U.S. nuclear cooperation agreement with China in the 1980's. At the time, our industry was citing the large number of reactors that China was planning to buy, and predicting that many of the orders would come to us. How many American reactors did China actually buy? The answer is: none. Exactly zero. The main effect of China's agreement with us was to increase the number of vendors who were in competition. The result was to drive the price down for the Chinese reactor buyers. That was good for China, but did nothing for us. The Chinese import orders went to France, Russia and Canada.

We are not likely to fare any better this time. New Delhi is already building a string of reactors on its own that are less expensive to put up than ours. And if India wants to import reactors, it can turn to the Russians, who will charge less money and attach fewer conditions, and who are already ahead of us in the Indian market. It can also turn to the French or even perhaps the Canadians. All of these countries will compete with us if we sell to India. The chance that we will defeat this competition is slim.

The administration also argues that India has a great need for nuclear power to meet its electricity demand. This too is far-

fetches. India has been generating electricity with nuclear reactors for more than 40 years. Yet, reactors supply only about 2 percent to 3 percent of its electricity today. If reactors are so vital to India's energy needs, why hasn't India built more? The answer is that reactors have not turned out to be as safe, or as clean, or—most important—as economical as originally thought. Nuclear power has been virtually insignificant in India's energy mix in the past, and will be no more important in the future. It is worth noting that the United States hasn't ordered a new reactor for about thirty years. Why do we expect India to buy American reactors when even we aren't buying them?

I would also like to comment on the effect that the administration's new policy will have on missile proliferation. President Bush and Indian Prime Minister Manmohan Singh agreed to cooperate in "space exploration," including "satellite navigation and launch." This language is broad enough to allow missile-useable components and technology to be exported. The United States seem entirely ready to permit such sales. The U.S. Commerce Department recently dropped restraints on American exports of missile-related equipment to three subsidiaries of the Indian Space Research Organization, despite the fact that all three are active in Indian missile development. This appears to be only a first step in a general loosening of U.S. missile export controls for India.

It is difficult to predict where this will lead. One cannot help a country like India build better space launchers without helping it build better missiles. Our experience with China is again the precedent. In the 1990's China got crucial American help in rocket design, guidance, launch operation, and payload integration, all of which were directly useable in making intercontinental ballistic missiles. The help came from American companies that were supposed to be engaged only in a peaceful space effort.

India will be no different. India, in fact, is the first country to develop a long-range nuclear missile from a civilian space-launch program. India's Agni missile, tested in 1989, was built by using the design of the American "Scout" space rocket. India imported the blueprints from NASA under the cover of peaceful space cooperation.

India has every intention of building nuclear missiles that will reach the United States. For some years, India has been working to develop a nuclear submarine, which will be able to threaten every coastal city in the world with a nuclear payload. India has also been working on an intercontinental ballistic missile, known as the Surya, which will fly much farther than any target in China. Two questions come to mind. Why should India want to reach such targets? And does the United States really want to make it easier for India to succeed?

The final point I would like to make has to do with the power of Congress. That power will be greatly reduced if the administration's legislation passes.

The important question to ask about the power of Congress is this: Why is this bill necessary? What is wrong with present U.S. law?

Under the present Atomic Energy Act, the president could make an agreement tomorrow for nuclear cooperation with India. All the

president has to do is submit to Congress what is known as an “exempt” agreement—that is, an agreement that does not satisfy the Act’s present criteria for nuclear cooperation.

India does not satisfy the criteria because it has refused to put all of its nuclear material under international inspection and is, in fact, running a secret nuclear weapon program. That is why the president must “exempt” the agreement before submitting it to Congress. After such a submission, Congress must adopt a joint resolution saying that it favors the agreement. If Congress disagrees, or does not act, the agreement does not go into effect.

The president must meet a high standard to justify the exemption. He must find that holding India to the present criteria “would be seriously prejudicial to the achievement of United States non-proliferation objectives” or that it would “otherwise jeopardize the common defense and security.” He must also persuade Congress that he is right, because Congress must take action for the agreement to operate.

Why hasn’t the president taken this course of action? Apparently, because he cannot meet the standard. He cannot find that it “would be seriously prejudicial to the achievement of United States non-proliferation objectives” to make India meet the existing criteria. To the contrary, it would advance U.S. non-proliferation objectives if India met the criteria, because India would be giving up its bomb program and putting its fissile material under international inspection. That would be a clear gain for non-proliferation instead of a loss.

Because the administration cannot meet the present standard, the administration has asked Congress to lower it. India would only have to meet a list of weaker criteria that the administration is already confident India can comply with.

But the administration has not been content to stop there. It also wants to shift the burden of proof. Under the new legislation, the burden of proof would shift to Congress. Instead of having to convince Congress to act after submitting an “exempt” agreement, the agreement would take effect automatically after 90 days unless Congress voted affirmatively to block it. Any such vote could be vetoed, so Congress would have to muster a 2/3 majority in both houses in order to have its view prevail. That is in direct contradiction to present law, under which an exempted agreement would have to be affirmatively agreed to by a joint resolution.

Thus, the effect of the bill is twofold: it makes it easier for the president to exempt an agreement, and it makes it harder for Congress to prevent an exempted agreement from taking effect. If Congress wishes to preserve its existing power, it could require that an exempted agreement still be reviewed under the present process. The administration has not advanced any persuasive reason why the process of Congressional review should be changed.

Preserving the existing process would have several advantages. Congress would have more than 90 days to study the agreement; Congress would not have to muster a veto-proof majority to block the agreement, or attach conditions to it; and Congress would be able to see the actual agreement before taking a vote.

Under the new legislation, Congress is being asked to lower the standards for nuclear cooperation and to shift the burden of proof

before any agreement with India has been reached. Congress is being asked to vote without knowing what kind of inspections India will eventually agree to, without knowing whether India will really improve its own export controls, and without knowing whether India's plan for separating its civilian from its military nuclear facilities is "credible," as the new criteria require. Congress would be buying a pig in a poke. It would be giving the administration carte blanche authority to make an agreement that, because of Congress' reduced power of review, there would be little opportunity to change.

PREPARED STATEMENT OF
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BEFORE THE
SENATE COMMITTEE ON FOREIGN RELATIONS
WEDNESDAY, APRIL 26, 2006

Mr. Chairman and members of the committee, thank you for the opportunity to share my knowledge of South Asian security, non-proliferation and arms control issues as you grapple with this important initiative. On balance, the initiative should be welcomed. I have argued in print for a non-proliferation half-way house since 1990—an admittedly imperfect response to an imperfect situation, but far better than the status quo. By minor modifications in the proposed legislation and changes in American policy the nuclear cooperation agreement could be still further improved.

I am a signatory of a March 10 letter backing the initiative. That letter argues that the agreement enhances American strategic interests, and if properly implemented, it will advance, not retard, American non-proliferation objectives. We also argue that the initiative will help India move to an energy strategy that makes it less dependant on imported oil and that it will positively address our global environmental concerns.

I was resident in India during many of the major Indian debates over its nuclear weapons policy. In 1964–65 it debated its response to the Chinese nuclear test at Lop Nor; in 1967-68 it debated whether or not to sign the NPT, and in 1974, after its phony “peaceful nuclear explosion,” India debated whether to weaponize. In the late 1980s there was a major debate over the proper response to evidence of a Chinese-assisted Pakistani nuclear weapons program. The Rajiv Gandhi “Action Plan” of 1988 was in part a last-minute attempt to forestall a response-in-kind to Pakistan’s program; in the early 1990s Indians grappled with the highly publicized American effort to cap, roll back, and eliminate its nuclear weapons program and that of Pakistan. More recently, I spent a month in New Delhi observing the Indian debate over the Bush-Manmohan Singh initiative.

There are two major conclusions to draw from this forty-year history:

First, in most of these cases India was responding to nuclear developments elsewhere. It’s strategic elite was sharply divide as to the utility and morality of nuclear

weapons, and until the 1998 tests India's policy was one of maintaining an "option" or a "recessed" (i.e. unannounced) deterrent. As opponents of this agreement have noted, India simply lied about its small weapons program and it certainly violated the spirit and the letter of agreements reached with foreign governments concerning the peaceful use of nuclear assistance. For that India has been subjected to thirty years' of sanctions.

Second, in all of these debates the military, and purely military calculations, have been notably absent. The Indian nuclear program was nurtured by a small enclave of scientists and bureaucrats who were largely responsive, not pro-active in their thinking. As George Tanham wrote, Indian strategic thought is notable by its lack of interest in military things. There was and remains a curious blend of extravagant idealism (epitomized in the many plans for global nuclear disarmament generated in India over the years) and Kautilyan-Machiavellian realism (epitomized by the secrecy that shrouded the covert weapons program).

It is my judgment that this initiative need not trigger an arms race with Pakistan, and it is certainly not a green light to India to build a thousand or more nuclear weapons. It does provide the United States with an opportunity to work with India to help prevent a broader nuclear arms race, something that is certainly not in the interest of India, Pakistan, China, or America.

Therefore, I would propose the following steps:

First, The agreement with India should eventually be folded into legislation that would develop criteria that would allow other states to enter such a nuclear half-way house. This half-way house would provide civilian nuclear assistance in exchange for impeccable horizontal non-proliferation record. Right now India seems to meet most reasonable tests, as does Israel, but Pakistan and North Korea would not.

Second, the administration should undertake an initiative that would constrain vertical proliferation via a nuclear restraint regime in Asia, this initiative would include India, Pakistan and China. Such a regime need not involve formal, negotiated limits, which would be very difficult to achieve, but certainly could be based upon a fissile material cutoff, continued restraint on testing, and limited deployment of weapons. The first two feature in the US-India nuclear initiative, but they need to be made multilateral, especially to ward off an arms race between Pakistan and India. Of course, China's decision on renewing testing will be shaped by its response to the United States, and I believe that we can continue our own ban on tests indefinitely without damaging nuclear preparedness.

Third, with this agreement in place New Delhi should feel less paranoid about discussing its own nuclear capabilities and their interaction with those of other states. As long as India felt that the U.S. was trying to strip it of its weapons program Indian officials talked on endlessly

about global nuclear disarmament, but they refused to discuss concrete steps that would enhance India's security through cooperative agreements with others. Indeed, the Indians are still reluctant to allow their country to be the venue for such discussions by non-government organizations, unless they are strictly scripted. Under the auspices of the new Indo-U.S. Agreement on Science and Technology the U.S. should assist India in setting up a center to study "best practices" gleaned from the American and Russian/Soviet nuclear and missile experience. We should also expect that India will eventually join the process of nuclear arms reduction that began with U.S. and Russian nuclear cuts; I am disappointed that such a long-term goal was not even mentioned in the various U.S.-Indian communiqués, we do not want to continue down the process of arms reduction only to see some of the new nuclear weapons states such as India and Pakistan pass us on their way up.

To summarize, while supporting the agreement I believe that it should be the initial step in a process of crafting a diplomacy that addresses wider complex arms control and security concerns, not just meeting India's energy needs. America has such concerns in an area that stretches from Israel to China; this includes at least five states that have nuclear weapons and two that may be trying to acquire them. This agreement does much to repair the torn US-Indian strategic tie, it is important in reshaping and revitalizing India's massive energy shortfall, and it has already been helpful in our attempt to constrain an Iranian program, but this administration and its successor—with Congress' assistance—should regard it as a beginning, not an end as far as our nonproliferation and strategic interests are concerned.

**Material Relating to the Committee's November 2, 2005
Hearing, "U.S.-Indian Nuclear Energy Cooperation: Security
and Nonproliferation Implications**

RESPONSES TO SENATOR LUGAR'S QUESTIONS TO THE HON. R. NICHOLAS BURNS, UNDER SECRETARY FOR POLITICAL AFFAIRS, AND THE HON. ROBERT G. JOSEPH, UNDER SECRETARY FOR ARMS CONTROL AND INTERNATIONAL SECURITY, DEPARTMENT OF STATE, WASHINGTON, DC

The Administration's Legislative Proposal and the July 18 Joint Statement

Question. When will the administration present this committee with legislation regarding nuclear energy cooperation with India?

Answer. We do not intend to ask Congress to take legislative action to facilitate this agreement until the Indian Government takes certain important steps. We have made it clear to the Indians that they need to begin to follow through on their commitments, including to present—and begin to implement—a credible and transparent plan for separation of their civilian and military nuclear facilities that is defensible from a nonproliferation standpoint before we would further seek to adjust our legal frameworks.

We have agreed to work closely with the Indians over the next several weeks to months on this plan and on other Indian steps which will allow us to seek changes to our laws. We hope to be in a position to seek formal legislative relief in the first quarter of 2006.

Question. When do you anticipate that India will have completed all of the steps it has committed to undertaking in the July 18, 2005, Joint Statement?

Answer. Some of the actions to which India has committed are ongoing, such as its pledge to continue its moratorium on nuclear testing and its commitment to refrain from the transfer of enrichment and reprocessing technologies to states that do not already have them. Others can be completed with additional effort, such as India's adherence to the Nuclear Suppliers Group and the Missile Technology Control Regime. Some of the actions that India must take are complex, and will take time to complete. There is not yet an established timetable for the separation of India's civil and military nuclear infrastructure, for instance. Implementation of the plan will, as the Joint Statement suggests, take place in a phased manner. We intend to move expeditiously and will assess progress on all aspects of the Joint Statement prior to President Bush's expected trip to India in early 2006. We hope that India will have developed and begun to implement a plan for civil-military separation

and also be engaged in substantive discussions with the IAEA by that time.

Question. In your view, when should Congress act to change U.S. law? Before or after completion by India of all its undertakings in the July 18 Joint Statement or after the completion of certain parts of the Joint Statement?

Answer. Because the Joint Statement will take considerable time to implement fully, we do not intend to wait until all Indian commitments are fully realized to submit proposed legislation to the Congress. Rather, once India develops a transparent and credible civil-military separation plan for its nuclear facilities and programs and begins to implement it, we will then seek appropriate legislative solutions. Ideally, U.S. law would be properly adjusted before the Nuclear Supplies Group Guidelines are adjusted.

Question. What are the interim forms of legislation being considered by the Department in this area? Will there be a new nuclear cooperative agreement with India, one for which statutory amendments would be required, or does the administration prefer to create a broad, new authority outside of the current Atomic Energy Act of 1954 (42 U.S.C. 2011, et seq.) for India?

Answer. In consultation with Congress, our objective is to conclude a new agreement for peaceful nuclear cooperation with India that satisfies all requirements of section 123(a) of the Atomic Energy Act, except for the requirement that full-scope IAEA safeguards be applied in India. India has agreed to separate its military and civilian nuclear facilities and programs, and to place its civilian components under IAEA safeguards. The result will not be "full-scope" IAEA safeguards, so the agreement for peaceful nuclear cooperation will not provide for that; but the agreement will allow for appropriate controls to help ensure that material or goods provided for civilian purposes remain within the civilian sector. The administration prefers stand-alone, India-specific legislation, but could envision alternatives as well. We look forward to continuing consultations with both the Senate and the House in the coming weeks.

Question. Could you please provide me with your understanding of current U.S. law, i.e., which U.S. laws or regulations prohibit exports to India of nuclear and dual-use nuclear items and which U.S. laws or regulations provide a presumption (of approval or denial) of such exports to India, and which such laws and regulations would need to be modified to implement the Joint Statement?

Answer. Under Section 123 of the Atomic Energy Act (AEA) of 1954, as amended, an agreement for cooperation between the United States and India will be required in order for the United States to engage in major nuclear cooperation (e.g., nuclear material, nuclear facilities, and major nuclear components) with India as contemplated by the Joint Statement. One of the requirements is that an agreement for cooperation (outside of the NPT-recognized five nuclear weapon states) must include full-scope safeguards unless exempted by the President as provided in section 123. An agreement that has been exempted by the President from one or more requirements in section 123(a) cannot become effective until

Congress adopts, and there is enacted, a joint resolution stating that Congress favors the agreement. We believe stand-alone legislation offers a preferable long-term solution.

Section 128 of the AEA requires, as one of the export license criteria for significant nuclear exports, that a recipient nonnuclear weapon state have full-scope safeguards. The AEA's full-scope safeguards requirement is incorporated in the regulations of the Nuclear Regulatory Commission at 10 CFR § 110.42(a)(6), as one of the export licensing criteria for exports of nuclear facilities and material. Section 129 of the AEA prohibits significant nuclear cooperation with a nonnuclear weapon state that is found by the President to have undertaken certain activities, including detonating a nuclear explosive device, or to have engaged "in activities involving source or special nuclear material and having direct significance for the manufacture or acquisition of nuclear explosive devices, and has failed to take steps which, in the President's judgment, represent sufficient progress toward terminating such activities." The Nuclear Regulatory Commission's regulations at 10 CFR § 110.46 incorporate section 129 of the AEA. Both section 128 and section 129 provide Presidential waiver authority.

With respect to dual use nuclear items under the Export Administration Regulations (EAR), there would be no need to make a regulatory change. Dual-use items are reviewed on a case-by-case basis. As a matter of policy, Commerce does not approve exports to unsafeguarded facilities. Moreover, the United States remains committed to not "in any way" assist weapons programs in nonnuclear weapon states as defined by the NPT.

Question. The Joint Statement commits the United States to "full civil nuclear energy cooperation with India." As the United States has different forms of nuclear energy cooperation with many nations, differing even among NPT Parties, what is the meaning of this phrase in relation to U.S. law and regulation regarding nuclear commerce with India?

Answer. For the United States, "full civil nuclear cooperation" with India means trade in most civil nuclear technologies, including fuel and reactors. But we do not intend to provide enrichment or reprocessing technology to India. As the President said in February 2004, "enrichment and reprocessing are not necessary for nations seeking to harness nuclear energy for peaceful purposes." We do not currently provide enrichment or reprocessing equipment to any country.

We will also need to ensure that any cooperation is fully consistent with U.S. obligations under the NPT not to "in any way" assist India's nuclear weapons program, and with provisions of U.S. law.

Question. What regulatory changes (beyond those already made under the Next Steps in Strategic Partnership or NSSP) would need to be made to implement full civil nuclear energy cooperation with India?

Answer. Many of the specifics of required regulatory changes to implement full civil nuclear energy cooperation with India have yet to be determined by the administration. U.S. regulations that incorporate or reflect statutory language will need to be modified or

waived in order to permit civil nuclear cooperation consistent with the Joint Statement, and will need to be addressed along with modification or waiver of the related statute. No Department of Commerce regulatory changes will be required in order to implement full civil nuclear cooperation, except as facilities are put under IAEA safeguards, they could in principle be removed from the Entity List.

Question. Presuming Congressional approval of statutory amendments and Nuclear Suppliers Group approval of an exception to its Guidelines for India, when would the United States Government begin to approve the export of nuclear items or technical data to India, and what are those items or technical data likely to be?

Answer. Should the NSG and the Congress approve, in principle, supply would be feasible when the United States and other potential suppliers assess they can confidently supply to Indian facilities and remain in compliance with our obligations under the NPT and NSG. This will occur once IAEA safeguards are put in place and applied in perpetuity. Further, the separation plan must ensure—and the safeguards must confirm—that cooperation does not “in any way assist” in the development or production of nuclear weapons. In this context, nuclear materials in the civil sector must remain within the civil sector. A clear and transparent separation between India’s civil and military facilities is essential. We will be unable to supply facilities that are not under appropriate safeguards.

We cannot say precisely which nuclear technologies the United States (or other suppliers) would export to India, except that we would exclude reprocessing and enrichment technologies from our list. In our view, once India makes demonstrable progress in implementing key Joint Statement commitments—with the presentation of a credible, transparent, and defensible separation plan foremost on the list—we will be ready to engage with our NSG partners in developing a formal proposal to allow the shipment of Trigger List items and related technology to properly safeguarded facilities in India.

Nuclear Suppliers Group Issues

Question. What are the positions of each of the 44 members of the Nuclear Suppliers Group on the comments and proposals made by A/S Rocca and A/S Rademaker during their consultations with NSG members in Vienna, Austria, last October?

Answer. Not every member of the Nuclear Suppliers Group expressed an opinion on the comments made by A/S Rocca and A/S Rademaker during their consultations with NSG Participants at the Consultative Group meeting in October. The meeting provided many NSG partners the first opportunity to consider our proposed approach to realizing full civil nuclear cooperation without amending the NSG Guidelines, per se.

Of those delegations expressing an opinion, some governments, including the Czech Republic, France, Russia, and the U.K., expressed support for the proposal; several governments, including Argentina, China, Greece, Japan, and South Korea, said that their governments would require further information on implementation,

including details of India's plans for the separation of civilian and military nuclear facilities, before they could make a decision on the proposals; and some governments, such as Sweden and Switzerland, expressed initial reservations and indicated a need for further study.

Question. Could you please furnish the remarks made by Assistant Secretary Rocca and Assistant Secretary Rademaker in Vienna to the NSG members to the committee?

Answer. Yes. To satisfy standard NSG confidentiality practices, Assistant Secretary Rocca's and Assistant Secretary Rademaker's statements are reproduced below. These are not intended for open publication.

Question. Did the remarks made by the U.S. delegation present specific proposals regarding changes to specific parts of the NSG Guidelines for Nuclear Exports for India?

Answer. We have not yet tabled any formal proposals. We expressed a preference at the October meeting of the NSG Consultative Group to treat India as an exceptional case in light of its substantial and growing energy needs, its nuclear nonproliferation record, and the enhanced nonproliferation commitments it has now undertaken. We also expressed our firm intention that the NSG maintain its effectiveness, and emphasized that we will not undercut this important nonproliferation policy tool. The U.S. proposal neither seeks to alter the decisionmaking procedures of the NSG nor amend the current full-scope safeguards requirement in the NSG Guidelines.

Question. Has the United States shown proposed changes to NSG Guidelines to Indian Government officials?

Answer. No. Our discussions with India to date have centered on implementation of Indian and U.S. commitments rather than on what the NSG should do.

Question. Will India join the NSG?

Answer. In the 18 July Joint Statement, PM Singh committed India not to join but to adhere to Nuclear Suppliers Group (NSG) and Missile Technology Control Regime (MTCR) Guidelines. The practice of unilateral adherence to the MTCR or NSG is not unique to India. Unilateral adherents voluntarily abide by the Guidelines of the regime—as do regime members—but are not formal members, per se. We expect to hold unilateral adherents, such as India, to the same standards specified in the Guidelines.

Question. Do you anticipate that the NSG will be able to make a consensus decision on the U.S. proposal(s) regarding India at its next plenary meeting?

Answer. While we will certainly consider advancing a formal proposal for NSG consideration at the next plenary, the pace and scope of India's implementation will help determine the specific timing. Should its actions, and our ongoing consultations with NSG partners support it, we may be in a position to seek agreement on a formal proposal at the 2006 plenary session, expected in the May/June timeframe.

INPA Sanctions

Question. On September 23, 2004, the administration sanctioned two Indian scientists for their activities in Iran under the authority of the Iran Nonproliferation Act of 2000 (P.L. 106–178, or INPA).

- Has the administration considered other sanctions against Indian entities or persons under INPA or any other relevant U.S. law or executive order since last September?

Answer. While we believe India has a solid record overall of ensuring that its nuclear-related expertise and technologies do not pose a proliferation risk, we continue to review information and take action to implement U.S. law as appropriate. In an unclassified response, it would not be appropriate to comment on the consideration of any other sanctions cases due to intelligence sensitivities that would surround any such case. However, if additional details are required, we could provide a classified response separately.

- What was the reaction of the Indian Government to the INPA sanctions last year?

Answer. In the context of our ongoing dialog with India, we informed the Indian Government when sanctions were imposed. At that time, they expressed serious concerns, and we discussed the sanctions cases as part of the dialog. The Indian Government has made clear to us its commitment to close any loopholes and ensure that its entities are not a proliferation source of sensitive technologies in the future. Among recent steps, India has improved its export control legislation and has harmonized its national control list with the Nuclear Suppliers Group Guidelines.

- What steps has India taken to prevent Indian interactions with Iranian entities or persons closely involved with Iran's atomic energy activities?

Answer. We cannot comment in unclassified channels on specific Indian actions, but would be able to discuss this further in a classified setting.

We believe India has a solid record overall of ensuring that its nuclear-related expertise and technologies do not pose a proliferation risk, and we have an ongoing dialog with India on proliferation issues. India has clearly demonstrated over the past several years its desire to work with the United States and the international community to fight the spread of sensitive nuclear technologies.

As part of an effort launched with India during the administration's first term—the Next Steps in Strategic Partnership—India took a number of significant steps to strengthen export controls and to ensure that Indian companies would not be a source of future proliferation. Not only did India pledge to bring its export control laws, regulations, and enforcement practices in line with modern export control standards, but also passed an extensive export control law and issued an upgraded national control list that will help it achieve this goal.

Other measures were also instituted as a part of the NSSP process, which included India permitting U.S. Government end-use verifications and agreement to increase bilateral and multilateral cooperation on nonproliferation.

In addition, India has become a party to the Convention on the Physical Protection of Nuclear Material and has taken significant steps toward meeting its obligations under UNSCR 1540.

The additional nonproliferation commitments India made as part of the Joint Statement go even further and, once implemented, will bring it into closer conformity with international nuclear non-proliferation standards and practices.

In our view, it is clear that India agrees that Iran's pursuit of a full nuclear fuel cycle makes no sense from an economic or energy-security standpoint. India has called on Iran to return to negotiations with the EU-3 aimed at ending Iran's pursuit of a nuclear weapons capability in exchange for expanded cooperation from Europe and others in the field of peaceful nuclear energy, as well as economic, commercial, political, and security incentives. India has also called on Iran to cooperate fully with the IAEA's ongoing investigations, and to resume a suspension of all enrichment-related and reprocessing activities as a way of building confidence. We welcomed India's decision to join 21 other IAEA Board members in voting to adopt the September 24 resolution that found Iran in noncompliance with its safeguards obligations. That outcome demonstrated to Iran that it is not just the United States and other Western countries that have concerns about Iran's nuclear activities, but the entire international community. India has offered full support to the EU-3's efforts to seek an end to Iran's nuclear weapons ambitions.

India and Iran

Question. India's vote in favor of IAEA Board of Governors (BOG) Resolution GOV/2005/77 was seen by some as a departure from its traditional siding with developing countries in multilateral fora.

Prior to the vote, it had been my understanding that the goal of the United States and the EU-3 at that BOG meeting was to report Iran's noncompliance to the U.N. Security Council.

Indian officials have taken credit for preventing such a report by supporting language that found Iran's noncompliance "within the competence of the Security Council." An earlier Indian Ministry of External Affairs press release regarding a telephone conversation between Indian Prime Minister Singh and Iranian President Ahmadinejad stated that "India supports the resolution of all issues through discussion and consensus in the IAEA."

- What were the reasons India did not support reporting Iranian noncompliance to the Security Council at the last meeting of the BOG?

Answer. India voted for a resolution that requires a report to the United Nations Security Council (UNSC) and finds Iran in non-compliance with its NPT safeguards obligations under Article XII.C of the IAEA Statute. However, the timing and content of this report to the UNSC are still to be determined.

- Under what circumstances would India support reporting Iranian noncompliance to the Security Council?

Answer. In its support for IAEA BOG Resolution GOV/2005/77, India endorsed sending a report to the Security Council. The contents of the report and the timing of transmitting the report are

unclear at this point. In our view, it would not be useful to speculate further on this hypothetical question.

- Is it the Administration's position that Iran's noncompliance should be reported to the Security Council?

Answer. The United States has long expressed the view that Iran should be reported to the United Nations Security Council. At the International Atomic Energy Agency's (IAEA) Board of Governors meeting on September 24, India voted—along with the United States and our EU-3 partners—in favor of a resolution that requires a report to the United Nations Security Council and finds Iran in noncompliance with its NPT safeguards obligations under Article XII.C of the IAEA Statute. In addition, for the first time, the IAEA Board concluded with this resolution that Iran's pattern of deception and denial, continued lack of cooperation with the IAEA, and continued pursuit of nuclear fuel cycle capabilities in defiance of the international community, is a matter that falls within the competence of the United Nations Security Council, under Article III.B.4 of the IAEA Statute.

- Does the administration consider Iran's July–August 2005 resumption of uranium conversion activities at UCF-Isfahan to be a breach of its suspension of fuel-cycle activities agreed to with the EU-3?

Answer. Yes. Under the November 2004 Paris Agreement, Iran agreed “on a voluntary basis, to continue and extend its suspension to include all enrichment related and reprocessing activities, and specifically: The manufacture and import of gas centrifuges and their components; the assembly, installation, testing or operation of gas centrifuges; work to undertake any plutonium separation, or to construct or operate any plutonium separation installation; and all tests or production at any uranium conversion installation.” Iran's uranium conversion activities represent a breach of its commitments under the Paris Agreement with the EU-3 and defy the September 24 IAEA Board resolution, which called on Iran to suspend all enrichment-related activity including uranium conversion.

- Does the Indian Government consider Iran's July–August 2005 resumption of uranium conversion activities at UCF-Isfahan to be a breach of its suspension of fuel-cycle activities agreed to with the EU-3?

Answer. We do not know whether India considers Iran in breach of the Paris agreement, an agreement between Iran and the EU-3. Certainly, the EU-3 considers Iran in breach.

Question. I understand that India has a formal defense cooperation agreement with Iran. Has the Department been provided with a copy of that Agreement, and if so, could you please furnish it to this committee?

Answer. We do not know of a formal defense cooperation agreement between Iran and India. A Memorandum of Understanding between the Government of the Republic of India and the Government of the Islamic Republic of Iran on Road Map to Strategic Cooperation, was signed on January 23, 2003, in New Delhi by the previous administrations in both countries. According to the Indian Ministry of External Affairs, this MOU set out, among other

things, “to agree to explore opportunities for cooperation in defense in agreed areas, including training and exchange of visits.”

Question. Public reports in late 2004 suggested that India was considering the sale to Iran of an advanced radar system known as “Super Fledermaus,” a system capable of detecting low-flying objects such as the unmanned aerial vehicles (UAVs) the United States frequently uses to conduct surveillance operations. The radar system is produced by Bharat Electronics Limited (BEL) under license from Ericsson Radar Electronics, a U.S. firm.

(a) Has India decided not to proceed with this sale?

(b) Do you know of other significant defense equipment sales to Iran being considered by India?

Answer.

(a) We understand that the sale of the Super Fledermaus system has not occurred.

(b) We do not know of other significant defense equipment sales to Iran being considered by India.

Interaction with Other Nonproliferation Policies and Countries

Question. Could you please explain how the policy the administration adopted in the Joint Statement is consistent with other administration policies and statements regarding the ongoing crises of noncompliance in North Korea and Iran?

Answer. The Joint Statement represents a carefully tailored approach that helps solve a real-world nonproliferation issue: How to integrate the world’s largest democracy and rising 21st power into the nonproliferation mainstream.

We need to adjust our approaches to take into account the conditions that exist, so that we can achieve our nonproliferation objectives. This has been a premise of administration policy since the outset of President Bush’s first term, in which he established non- and counterproliferation as top national security priorities. Recognizing that traditional nonproliferation measures were essential but no longer sufficient, the President has established new concepts and new capabilities for countering WMD proliferation by hostile states and terrorists.

There is no comparison between India’s nonproliferation history and energy needs, and the compliance violations incurred by Iran and North Korea.

Our position on Iran’s nuclear program is well known and is unrelated to our increasing cooperation with India. We do not want to see any additional states developing nuclear weapons, whether Iran, North Korea, or others. Iran’s compliance violations are a national security concern to the United States and many of its international partners—not just the EU-3. Indeed, India’s September vote in the IAEA Board of Governors which found Iran in non-compliance with its nuclear nonproliferation obligations, demonstrated India’s coming of age as a partner in global nonproliferation efforts.

Further, our understanding with India should not affect the Six-Party Talks in any way. India has taken a number of steps to deepen its commitment to nonproliferation and did not violate the NPT in order to pursue its nuclear weapons ambitions since it was not

a party to the treaty. There can be no comparison of North Korea's record with that of India. North Korea has violated its NPT and IAEA safeguards commitments; it must abandon its nuclear weapons program.

RESPONSES OF UNDER SECRETARY NICHOLAS BURNS TO QUESTIONS
SUBMITTED BY SENATOR LUGAR

The Administration's Legislative Proposal and the July 18 Joint Statement

Question. During your testimony before the committee, you seemed to indicate that the administration would prefer India-specific legislative language rather than country-neutral criteria. What are the strengths, in your view, of an India-specific exception to current U.S. law as opposed to a country-neutral exception?

Answer. An India-specific exception would build on the precedent set by the Brownback II amendment, which created a South Asia-specific waiver authority for four different statutory sanctions without amending those statutes. An India-specific exception is appropriate to this country-specific initiative and well reflects the need for tailored, actor-specific strategies to combat WMD. It would confirm that the confluence of India's solid nuclear nonproliferation record, enhanced nonproliferation commitments, growing energy needs and strategic position in the world requires a unique approach. Finally, singling out India through legislation would also provide assurances to the Indian Government that the United States intends to develop key aspects of this partnership for the long-term.

Question. Is it your view that if Congress did not approve provisions for India related to nuclear energy that the U.S.-India relationship would be harmed?

Answer. The initiative to reach civil nuclear cooperation with India recasts one of the most divisive issues in our relationship, and is viewed by many in India as a litmus test for our strategic partnership. If Congress does not approve provisions for India related to nuclear energy, it is likely that the nuclear issue will continue to constrain our diplomatic relationship, as well as our strategic, commercial, defense, and scientific ties, thereby having a negative impact on many of the bilateral activities mentioned in the July 18 Joint Statement.

Question. Have Indian officials stated to you that if Congress does not approve a legislative exception for India from current law for nuclear commerce that India would either look differently on its new relationship with the United States or respond negatively to the lack of congressional action?

Answer. Indian officials have not stated that they will treat the United States differently if Congress does not take action. They have, however, expressed concern about achieving extensive advances in the future of U.S.-India relations if either side does not complete its Joint Statement commitments.

Question. What does India's current plan for its nuclear power sector call for in terms of the types of reactors (heavy- or light-water reactors) it will seek from foreign providers?

Answer. Because of the current international restrictions on nuclear commerce with India, India's plan for its nuclear power sector seeks to provide for a 20-fold increase in nuclear-generated electricity by 2020 without reactors from foreign suppliers. In support of this objective, India's Department of Atomic Energy (DAE) has committed extensive resources to develop a three-stage nuclear fuel cycle, based on its plentiful domestic thorium reserves, that involves fast-breeder reactors, which could pose proliferation risks. Moreover, some specialists assess that such an approach would not prove cost-effective, and there are clear technical challenges to overcome.

Opening the Indian market to foreign suppliers provides India with a vast array of new civil nuclear energy options. Access to new technologies, such as pebble-bed reactors and low-enriched uranium reactors, and participation in the Generation-IV Forum (GIF) on advanced nuclear energy systems would encourage more viable and proliferation-resistant alternatives.

Place in the New Relationship

Question. In testimony before the committee, several experts suggested that creating an exception from long-standing U.S. law and policy, and asking the Nuclear Suppliers Group (NSG) to do the same with respect to NSG Guidelines, damages U.S. nonproliferation leadership, and that the strategic rationale for the Joint Statement does not provide a basis for such changes.

Why does nuclear energy figure so prominently among the many ways the United States can forge a new, strategic partnership with India?

Answer. The initiative to reach civil nuclear cooperation with India recasts a divisive issue that has for decades constrained our diplomatic relationship, as well as our strategic, commercial, defense, and scientific ties. In addition to firmly aligning the United States with a country that shares our democratic values and commitment to freedom, it holds substantial, concrete benefits for the United States, India, and the global community.

When implemented, all the steps that India pledged on July 18 will strengthen the international nonproliferation regime, and bolster our efforts to prevent the spread of weapons of mass destruction. Commercially, the opening of India's lucrative and growing civil nuclear energy market to U.S. firms could provide jobs for thousands of Americans, and provide India with a vast array of clean and viable options to meet its skyrocketing energy needs. India's participation in the International Thermonuclear Experimental Reactor (ITER) program will add significant resources and critical talent to global efforts to develop fusion as a cheap energy source program. If India joins the Generation-IV International Forum (GIF), it could contribute to GIF's mission to make the next generation of reactors safer, more efficient and more proliferation resistant. Finally, these efforts will also help India pursue its ambi-

tious plans for power development and electrification in a more environmentally friendly manner.

RESPONSES OF UNDER SECRETARY ROBERT JOSEPH TO QUESTIONS
SUBMITTED BY SENATOR LUGAR

The Administration's Legislative Proposal and the July 18 Joint Statement

Question. In your statement you note that Congress should not “make the perfect the enemy of the good” and that adding any conditions to the eventual changes to law that Congress might make for India would be a “deal breaker.”

- Do you mean that the entire set of things contained in the Joint Statement, beyond civil nuclear cooperation, would also be sacrificed if Congress conditioned nuclear commerce with India on things not detailed in the Joint Statement?

Answer. I testified that, based on our interactions with the Indian Government, we believe that additional conditions such as implementing a moratorium on fissile material production, ratifying the Comprehensive Test Ban Treaty, and/or joining the NPT as a nonnuclear weapon state “would likely be deal breakers.”

The initiative to reach civil nuclear cooperation with India will remove one of the most divisive issues in our bilateral relationship. If the civil nuclear aspects of the Joint Statement are not realized, we believe that our diplomatic relationship and our strategic, commercial, and scientific ties will remain constrained; many of the bilateral activities delineated in the statement will be adversely affected.

The critical point is that we must resist the temptation to pile on conditions that will prejudice our ability to realize the important and long-standing nonproliferation objectives embodied in the Joint Statement. We assess that additional conditions such as those specified above remain deal breakers for India. We are better off with India undertaking the nonproliferation commitments to which it has now agreed than in allowing status quo stalemates to prevail.

Question. Does the administration oppose any additional nonproliferation measures for India beyond those stipulated in the Joint Statement?

Answer. I testified that, based on our interactions with the Indian Government, we believe that additional conditions such as implementing a moratorium on fissile material production, ratifying the Comprehensive Test Ban Treaty, and/or joining the NPT as a nonnuclear weapon state “would likely be deal breakers.”

In our ongoing dialogs, we strongly encourage India to take additional steps to strengthen nonproliferation, such as joining PSI and harmonizing its national control lists with those of the Australia Group and Wassenaar Arrangement. We have indicated that we also plan to continue to discuss such issues as a fissile material cutoff. But we strongly recommend against adding additional conditions to Joint Statement implementation. The Joint Statement reached by President Bush and Prime Minister Singh is good both for India and for the United States, and when implemented, offers

a net gain for global nonproliferation efforts. Rather than add additional conditions or seek to renegotiate the Joint Statement, we believe it would be better to lock in this deal and then seek to achieve further results as our strategic partnership advances. We believe that this is a sound arrangement that should be supported because the commitments India has made, will, when implemented, bring it into closer alignment with international nuclear nonproliferation standards and practices and, as such, strengthen the global nonproliferation regime.

Question. Could you please provide me with your views with regard to each of the following items, items which have been proposed as those I might consider including in legislation:

- A requirement that India stop producing fissile materials for nuclear weapons.

Answer. I testified that, based on our interactions with the Indian Government, we believe that additional conditions such as implementing a moratorium on fissile material production, ratifying the Comprehensive Test Ban Treaty, and/or joining the NPT as a nonnuclear weapon state “would likely be deal breakers.”

We have sought India’s curtailment of fissile material production but have not reached agreement on this issue. In our assessment, insisting on such a cutoff as a precondition for implementing the Joint Statement would likely be a deal breaker for the Indian Government. We believe that we achieved an important objective, however, by obtaining India’s commitment to designate, separate, and safeguard its civilian nuclear program. Moreover, the commitment to work toward the completion of a Fissile Material Cutoff Treaty (FMCT) is a significant step.

We continue to encourage India, as well as Pakistan, to move in the direction of a fissile material cap or moratorium as part of our discussions with both governments. We also are willing to explore other intermediate options that might serve such an objective.

The Joint Statement does not alter our policy on FMCT. We continue to support immediate commencement of negotiations in the Conference on Disarmament of a treaty banning production of fissile material for use in nuclear weapons or other nuclear explosive devices. We welcome India’s support for the FMCT, which should help to build a consensus to begin those negotiations.

- A requirement that India declare it will not conduct any more tests of its nuclear weapons.

Answer. I testified that, based on our interactions with the Indian Government, we believe that additional conditions such as implementing a moratorium on fissile material production, ratifying the Comprehensive Test Ban Treaty, and/or joining the NPT as a nonnuclear weapon state “would likely be deal breakers.”

In principle, making new U.S. law or waivers contingent on India fulfilling its commitments in the Joint Statement is a sound idea. As reflected in its pledge in the Joint Statement, India has already declared that it will maintain its nuclear testing moratorium. Since to date Pakistan has test-exploded nuclear weapons only in response to Indian nuclear tests, this commitment should help diminish the prospects for future nuclear testing in South Asia.

- A distinction between India and NPT parties that would provide different treatment in terms of the nuclear exports for non-NPT parties, i.e., India would be eligible for most U.S. exports except equipment, materials, or technology related to enrichment, reprocessing, and heavy water production.

Answer. I testified that, based on our interactions with the Indian Government, we believe that additional conditions such as implementing a moratorium on fissile material production, ratifying the Comprehensive Test Ban Treaty, and/or joining the NPT as a nonnuclear weapon state “would likely be deal breakers.”

We do not export enrichment or reprocessing technology to any state. Therefore, “full civil nuclear cooperation” with India will not include enrichment or reprocessing technology. We have not yet determined whether such a prohibition would extend to heavy water production.

- Permitting U.S. nuclear exports only to those Indian facilities, sites, and locations that are under IAEA safeguards in perpetuity—not to facilities, sites, or locations under voluntary safeguards arrangements.

Answer. I testified that, based on our interactions with the Indian government, we believe that additional conditions such as implementing a moratorium on fissile material production, ratifying the Comprehensive Test Ban Treaty, and/or joining the NPT as a nonnuclear weapon state “would likely be deal breakers.”

To ensure that the United States and other potential suppliers can confidently supply to India and meet our obligations under the NPT, IAEA safeguards on civil facilities must be applied in perpetuity. We, and other potential suppliers, will be unable to supply facilities that are not under permanent safeguards.

India’s Violations of U.S. Law

Question. In testimony before the House on October 26, 2005, Leonard S. Spector, Deputy Director of the Center for Nonproliferation Studies at the Monterey Institute of International Studies, stated that

India’s misuse of plutonium produced in the Canadian-supplied CIRUS research reactor is not a matter of ancient history; it is an ongoing offense. The original transgression took place in the 1970s, when India misused the reactor, along with U.S.-supplied heavy water that was essential for the reactor’s operation, in order to produce the plutonium for India’s 1974 nuclear detonation.

- What is the status of India’s violation of its peaceful use undertakings in the 1956 U.S. heavy-water contract, are they “ongoing” or are they, as a result of the termination of U.S.-Indian nuclear cooperation, no longer operative?

Answer. India used heavy water that the United States provided under a 1956 Nuclear Regulatory Commission (NRC) contract—along with Indian and third-country heavy water—as a moderator for the Canadian-provided CIRUS research reactor, the reactor India reportedly used to generate plutonium for its weapons program.

After India detonated a nuclear device in 1974, the U.S. Government examined whether India's actions were inconsistent with a clause under the 1956 contract stating that the heavy water would be used for "research into and the use of atomic energy for peaceful purposes." The outcome was that a conclusive answer was not possible due to both the factual uncertainty as to whether U.S.-supplied heavy water contributed to the production of the plutonium used for the device and the lack of a mutual understanding of scope of the 1956 contract language.

- Has any of the plutonium from CIRUS that was produced using U.S.-origin heavy water been incorporated into Indian nuclear explosive devices or used in any Indian tests of nuclear explosive devices?

Answer. As noted above, a conclusive answer has not been possible as to whether U.S.-supplied heavy water contributed to the production of the plutonium used for Indian nuclear explosive devices.

- Will the administration, as a part of the process under the Joint Statement, obtain from India a full, accurate, and complete account of the disposition of any U.S.-origin heavy water in India?

Answer. The administration believes the most productive approach is to focus on India's new commitments under the Joint Statement. These commitments include, among other things, acceptance of IAEA safeguards (including monitoring and inspections of its civil nuclear facilities and programs), and agreement to sign and implement the Additional Protocol, which provides for broadened access to locations and information regarding nuclear and nuclear-related activities.

- Does the Government of India acknowledge that its unauthorized end use of U.S.-origin heavy water supplied for the CIRUS reactor was a violation of U.S. law?

Answer. Following India's 1974 detonation of a nuclear device, the Government of India plainly stated its disagreement with the United States over the meaning and scope of the clause in the 1956 contract that stipulated that the heavy water would be used for "research into and the use of atomic energy for peaceful purposes."

At the time, the debate on whether India had violated the contract was inconclusive owing to the uncertainty as to whether U.S.-supplied heavy water contributed to the production of the plutonium used for the 1974 device and the lack of a mutual understanding of scope of the 1956 contract language on "peaceful purposes."

We have since made it clear that we exclude so-called "peaceful nuclear explosions"—and any nuclear explosive activity—from the scope of peaceful nuclear cooperation.

India has not acknowledged to the United States that it considered that its use of U.S.-supplied heavy water was a violation of the 1956 contract.

- Does the Government of India acknowledge that its 1974 nuclear weapon test was not a "peaceful nuclear explosion"?

Answer. It is our understanding that it remains the view of the Indian Government that its test of a nuclear explosive device in 1974 was a “peaceful nuclear explosion.”

- If India declares that CIRUS is a peaceful reactor, would any plutonium produced there need to be removed from those plutonium stocks that India has set aside for weapons and placed under permanent IAEA safeguards?

Answer. We do not yet have from the Government of India a plan outlining which of its nuclear facilities will be declared civilian; our discussions continue.

The details of the safeguards agreement which India has undertaken to negotiate with the IAEA will presumably follow. However, as most such agreements are not retroactive, we would not expect the agreement to specify that previously produced material must be returned to the plant in order to be placed under safeguards. Were the plant to be placed under safeguards, those safeguards would be applicable in perpetuity to any material produced by, used by, or stored in the plant after the effective date of the agreement.

Safeguards Verification and Compliance

Question. Has the Government of India entered into discussions with International Atomic Energy Agency (IAEA) officials regarding a new declaration of civil nuclear sites, facilities, or locations?

Answer. To our knowledge, the Government of India has not yet entered into discussions with the IAEA. Such a step might be viewed as premature, considering that India has not yet developed a separation plan upon which such a declaration would be based. We have indicated that such a plan must be credible, transparent, and defensible from a nonproliferation standpoint.

Question. When will India submit a new declaration to the IAEA of its civil sites, facilities, or locations that would be subject to safeguards?

Answer. There is no set date. The first step is for India to develop a credible and transparent plan for separating its civil and military facilities and programs. We hope that such a separation plan and subsequent declaration to the IAEA of what is to be civilian—as well as initial implementation toward safeguarding its facilities—can be accomplished by early 2006.

Question. What kinds of safeguards will be applied to India’s declared civil sites, facilities, or locations (please specify IAEA Information Circular (INFCIRC) number)?

Answer. Safeguards agreements are modeled after INFCIRC/153 (the NPT safeguards agreement) or INFCIRC/66 (the Agency’s safeguards system predating the NPT). India will not likely sign a safeguards agreement based strictly on INFCIRC/153, as this would require safeguards on India’s nuclear weapons program. NPT-acknowledged nuclear weapon states have so-called “voluntary” safeguards agreements that draw on INFCIRC/153 language, but do not obligate the IAEA to actually apply safeguards and do allow for the removal of facilities or material from safeguards. We heard from other states at the recent NSG meeting that they would not support a “voluntary offer” arrangement as, in their view, it would

be tantamount to granting de facto nuclear weapon state status to India. We have similarly indicated to India that we would not view such an arrangement as defensible from a nonproliferation standpoint. We, therefore, believe that the logical approach to formulating a safeguards agreement for India is to use INFCIRC/66, which is currently used at India's four safeguarded reactors. For the most part, INFCIRC/66 and INFCIRC/153 agreements result in very similar technical measures actually applied at nuclear facilities.

Question. Will India allow the safeguards applied to its declared civil sites, facilities, or locations to be permanent, i.e., that no declared site, facility, or location may be removed from India's declaration to the IAEA and that the safeguards in place on those declared sites, facilities, or locations are to be in place in perpetuity?

Answer. We do not view a safeguards agreement that would allow India to withdraw facilities or material from safeguards as acceptable, and we have informed India of this view. Among other considerations, we must be assured that safeguards will be applied in perpetuity, that "civil" material remains in the civil sector, and that any assistance provided in no way contributes to India's nuclear weapons program. The safeguards must effectively cover India's civil nuclear fuel cycle and provide strong assurances to supplier states and the IAEA that material and technology provided or created through civil cooperation will not be diverted to the military sphere.

Question. Has the administration briefed the IAEA on its discussions of a civil-military split in Indian sites, facilities, or locations, and if so, when?

Answer. No, we have not briefed the IAEA Secretariat on our discussions of a civil-military split in Indian sites, facilities, or locations. The IAEA Secretariat will play an essential role in this process, but that role is still in the future, once India has taken certain key steps and there is a clearer understanding and acceptance of India's separation plan.

Question. What are the general "phases" (not dates) that will unfold under the Joint Statement's terms with respect to India's separation of its civil and military nuclear facilities, sites, or locations?

Answer. The first step in the process will be for India to produce a general plan for the separation of its civil and military facilities and programs. We expect that India will propose a civil-military separation plan that is credible, transparent, and defensible from a nonproliferation standpoint. Such a plan would form the basis for a declaration by India to the IAEA of its civil facilities. It would also form the basis for the negotiation of a safeguards agreement between the IAEA and India. Negotiation of an Additional Protocol would probably proceed in parallel with the negotiation of the basic safeguards agreement, but this remains to be determined. Upon completion and entry into force of the safeguards agreement, the IAEA would begin inspections of Indian nuclear facilities. Based on the language of the Joint Statement, we expect that it will take some time to complete full implementation of safeguards at India's civil facilities, and thus implementation would occur in a "phased"

manner, based on a sequence identified in the separation plan and as agreed to with the IAEA and as specified in the safeguards agreement.

Question. The IAEA, because of budgetary pressures, discontinued inspections in the United States in 1993, largely because the value of such inspections is of limited utility in states with declared and lawful nuclear weapons programs. At the request of the U.S. Government, the IAEA resumed inspections in 1994 by applying safeguards to several tons of weapons-usable nuclear material, which had been declared excess to U.S. national security stockpiles. The IAEA undertook this effort on the condition that the United States reimburse the IAEA.

The Joint Statement notes that India will “assume the same responsibilities and practices and acquire the same benefits and advantages as other leading countries with advanced nuclear technology, such as the United States.”

- Will India declare a portion of its weapons-useable materials excess to its defense needs and place them under permanent IAEA safeguards?

Answer. India has not informed us of whether it views any existing weapons-usable material as “excess.”

- Will India reimburse the IAEA for any inspections conducted in India on safeguarded facilities, sites, locations, and materials?

Answer. To our knowledge, the IAEA and India have not yet discussed whether India will reimburse the IAEA for any inspections conducted in India on safeguarded facilities, sites, locations, and materials.

Question. Do you assess that the IAEA currently has the staff, funding, and necessary information to support safeguards monitoring for India without taking away from inspection and verification efforts in other countries?

Answer. We recognize that implementing safeguards in India will entail significant costs that are not currently included in the IAEA’s budget. We look forward to working with the IAEA and the Government of India to estimate those costs and to identify how best to meet them without undercutting inspections/verification efforts in other countries.

Question. Would India permit the IAEA, as a confidence-building measure, to conduct inspections of its declared facilities, sites, or locations, and if so, how many such inspections and how many facilities, locations, or sites would be inspected?

Answer. The safeguards agreement that India negotiates with the IAEA after developing a separation plan will require sustained IAEA inspections on all Indian civil facilities containing nuclear material, with frequency to be determined by the IAEA. The Additional Protocol will allow inspections of additional nuclear-related locations.

Question. Will the Additional Protocol (AP) that India signs be identical to the Model Additional Protocol (INFCIRC/540)?

Answer. No. The Model Additional Protocol is structured to accompany a country's full-scope safeguards agreement. Because India's safeguards agreement will differ from a full-scope safeguards agreement, India's Additional Protocol will differ from the Model as well.

Question. In the Joint Statement the Indian Prime Minister states that India commits to "signing and adhering to an Additional Protocol with respect to civilian nuclear facilities." Does this mean that India would not ratify and implement its Additional Protocol?

Answer. No. We expect that India will ratify and implement both its safeguards agreement and its Additional Protocol.

Question. Is it permissible for any Non-Nuclear Weapon State (NNWS) under the NPT to sign and adhere to, but not to ratify and implement, the Additional Protocol?

Answer. While India is not a party to the NPT, nonnuclear weapon states party to the NPT are obliged under the NPT to bring into force a full-scope safeguards agreement, effectively covering all nuclear material in the state. The NPT does not, however, require such a party to either sign or bring into force an Additional Protocol, whose provisions strengthen the safeguards agreement beyond what is required by the NPT. The Additional Protocol's provisions include, for example, requirements to declare information regarding, and to allow access to, locations that do not involve nuclear material. The NPT also does not, unlike the NSG, condition full scope safeguards as a condition of nuclear supply. Rather the NPT requires that cooperation does not "in any way assist" any weapon program in nonnuclear weapon states.

Question. Is it permissible for any Nuclear Weapon State (NWS) under the NPT to sign and adhere to, but not to ratify and implement, the Additional Protocol?

Answer. Nuclear weapon states parties to the NPT are not required by the NPT to sign any type of safeguards or inspection agreement, including an Additional Protocol. All such undertakings by the nuclear weapon states are voluntary.

Question. Will the Additional Protocol that India signs permit it to exclude the application of safeguards to any facilities, sites, or locations in India?

Answer. India has not yet negotiated an Additional Protocol with the IAEA. The Joint Statement indicates that India's Additional Protocol will apply to Indian civil nuclear facilities, and we expect that there will be some language in the Indian Additional Protocol making its scope consistent with that concept. We believe it is unlikely that India will permit access to its nuclear military facilities under its Additional Protocol.

Question. When will India sign an AP?

Answer. There is not yet an established timetable for this step. The actions India committed to, in the Joint Statement, involve complex issues, and they will take time to implement fully. We hope to move expeditiously on all aspects of the civil nuclear initia-

tive and will assess progress prior to President Bush's expected trip to India in early 2006.

Question. What would be the relationship between India's list of declared civil sites subject to safeguards and its AP? Are the provisions of its AP binding on its declared civil sites?

Answer. Two types of inspections would presumably occur at civil facilities in India: Safeguards inspections that would take place at nuclear facilities containing nuclear material of a defined purity, and complementary access inspections that would take place at other facilities, which, with minor exceptions, do not contain such material. The first type of facilities is declared and inspected as specified by the safeguards agreement, and the second type is declared and inspected as described by the Additional Protocol. The two types of facilities are distinct, but we anticipate that both would be part of an Indian declaration. The requirements on the state to provide information and access are equally binding in the two cases.

Question. With regard to the plan that GOI will bring here this month, and in connection with the principle of "Transparency": If we are talking about an INFCIRC/66 Rev.2 [safeguards agreement] (SGA), it would clearly spell out which facilities were covered by the terms of that SGA. But if India does a voluntary safeguards agreement, or has some sites covered under a voluntary SGA, or sites, facilities, and locations colocated with sites that are not covered by the terms of an INFCIRC/66 Rev.2 SGA, then some of the list of eligible, declared civilian facilities would be considered "safeguards-confidential" not under an INFCIRC/66 Rev.2 SGA nor made all that transparent. In other words, there would be an INFCIRC agreement, but no one would have access to the actual list of sites, facilities, and locations (like our Voluntary Offer SGA).

- Are we prepared to accept a mixed situation in India? Some sites under VOA-type SGAs and some under INFCIRC/66 Rev.2 SGAs? Does the IAEA hold such a situation with any other countries?

Answer. Because the IAEA publishes a list of all facilities to which safeguards are applied, all exporters will be aware of which facilities in India they can export to. So-called "voluntary offer" agreements are used only by the five NPT-recognized nuclear weapon states. In general, voluntary arrangements allow the covered state to withdraw facilities and material from safeguards at will. In our view, a voluntary offer arrangement for India would be inconsistent with the Joint Statement and would not be defensible from a nonproliferation standpoint.

- Is the administration looking to accept a cooperation agreement that would already be covered by an existing 66 agreements (i.e., Tarapur), and then let India put additional civilian facilities on an eligible list?

Answer. Both an Agreement for Peaceful Nuclear Cooperation between the United States and India and a new safeguards agreement between India, the IAEA, and possibly other parties, would have to be negotiated.

There is no “eligible list” associated with current Indian safeguards arrangements, which conform to INFCIRC/66. We expect India “to place all its civil nuclear facilities under full IAEA safeguards and that includes monitoring and inspections,” as Under Secretary Burns said July 20, 2005. Since a voluntary offer arrangement would not require the IAEA to apply safeguards to facilities on a list of those eligible for safeguards, it would not meet that standard. Furthermore, in order to provide reasonable assurances to potential suppliers that they are not assisting the Indian nuclear weapons program, among other things safeguards must be applied in perpetuity and “civil” nuclear material must remain civil.

India’s Export Control Laws, Regulations, and Policies

Question. Has the administration undertaken an expert-level legal analysis of India’s export control laws and regulations?

Answer. Department of State and Commerce lawyers and export control experts have reviewed India’s Weapons of Mass Destruction and Their Delivery Systems (Prohibition of Unlawful Activities) Act, adopted in 2005, consistent with India’s NSSP and Joint Statement commitments. We continue to discuss export control related issues with the Government of India.

Question. If so, could you please furnish that analysis to this committee?

Answer. There is today no consolidated analytical document representing an interagency assessment of India’s export control law and regulations. As always, we stand ready to brief the committee on the results of our review.

Question. I understand that the State Department sent a number of questions concerning India’s export control law(s) (what is termed its “WMD law”) to New Delhi some time ago. Has the Government of India answered all of those questions, and could you please furnish (a) those questions and (b) answers to this committee?

Answer. Given the sensitivities of the diplomatic communications involved, we cannot provide the information for the record. However, we would be happy to provide the committee with a briefing on our exchanges with India on this issue. We intend to have follow-on discussions regarding the implementation of the WMD law within the High Technology Cooperation Group meetings in early December 2005.

Question. Does Indian law specify anything with regard to the re-export or resale of foreign-origin dual-use equipment?

Answer. As we understand the Indian legislation, export from India of foreign-origin dual-use equipment exported to India, if of types covered by India’s own control list and catch-all controls, would be subject to the same requirements that apply to export of Indian-origin goods.

Question. What does Indian law specify about the access of either foreign nationals or dual-nationals to sensitive items exported from other nations to India?

Answer. India's new WMD law deals specifically with the possession, export, reexport, transfer, and other conveyance or trafficking of WMD and their delivery systems, their components, and related technology by Indian and foreign nationals. The law, however, does not address access by foreign nationals or dual nationals to such items or technology in the course of those individuals' legitimate employment in India.

Clause 13(4) of the WMD law seems to address in-country transfers of items to foreigners, but the operation of this provision is not entirely clear.

Question. Do any foreign nationals or dual-nationals work at or have access to sites currently subject to IAEA safeguards in India (Rajasthan 1 & 2 and Tarapur 1 & 2)?

Answer. We do not have sufficient information as to which specific foreign nationals may work or have access to these facilities. In general, however, IAEA inspectors, who are foreign nationals, have access to Rajasthan 1 & 2 and Tarapur 1 & 2, since these sites are subject to IAEA safeguards. The Indians have also granted Nuclear Regulatory Commission (NRC) delegations limited access to those facilities, most recently in February 2005. Additionally, the World Association of Nuclear Operators (WANO) is able to conduct peer reviews at these sites.

Question. Do any foreign nationals or dual-nationals work at or have access to the Indian nuclear facilities Kundankulam 1 and 2?

Answer. We do not have sufficient information as to which specific foreign nationals may work or have access to these facilities. In general, however, Kundankulam 1 & 2 are being constructed under a contract between India and the Russian Federation, so we presume that Russian nationals have access to these sites. IAEA inspectors, who are foreign nationals, will eventually have access to Kundankulam 1 & 2, once they are placed under IAEA safeguards.

Question. Do any foreign nationals or dual-nationals work at or have access to the Indian Space Research Organization (ISRO) Headquarters in Bangalore, India; ISRO Telemetry, Tracking and Command Network (ISTRAC); ISRO Inertial Systems Unit (IISU), Thiruvananthapuram; Liquid Propulsion Systems Center; Solid Propellant Space Booster Plant (SPROB); Space Applications Center (SAC), Ahmadabad; Sriharikota Space Center (SHAR); Vikram Sarabhai Space Center (VSSC), Thiruvananthapuram?

Answer. We do not have sufficient information as to which, if any, foreign nationals may work or have access to these facilities. We stand ready to discuss this and other considerations relating to these organizations further with the committee in a separate classified forum.

Question. Do any foreign nationals or dual-nationals work at or have access to the following Indian Department of Atomic Energy entities: Bhabha Atomic Research Center (BARC); Indira Gandhi Atomic Research Center (IGCAR); Indian Rare Earths; Nuclear reactors (including power plants) not under International Atomic Energy Agency (IAEA) safeguards, fuel reprocessing and enrichment

facilities, heavy water production facilities and their collocated ammonia plants?

Answer. We do not have sufficient information as to which, if any, foreign nationals may work or have access to these facilities. We stand ready to discuss this and other considerations relating to these organizations further with the committee in a separate classified forum.

Question. Does Indian law contain “catch-all” controls on items not otherwise stipulated in national controls?

Answer. Clause 11 of the 2005 WMD law prohibits export of any material, equipment, or technology if the exporter knows that the exported items are intended for use in the design or manufacture of a biological weapon, chemical weapon, nuclear weapon, or other nuclear explosive device, or in their missile delivery systems, but does not specifically refer to transfers, retransfers, items brought in transit or transshipment. We read Clause 11 of the 2005 WMD law as a catch-all provision similar to the “knows” portion of the U.S. catch-all control provisions. Clause 5 of the 2005 WMD law may provide the equivalent of the “is informed” portion of the U.S. catch-all controls over exports, reexports, transshipments, and transits.

Question. Have there been successful prosecutions of entities or persons brought by the Government of India for violations of its export control laws?

Answer. The Government of India has been actively prosecuting the Indian entity NEC Engineers Private Ltd.’s cooperation with Iraq. According to Indian press reports, NEC sent 10 shipments containing titanium vessels, filters, titanium centrifugal pumps, atomized and spherical aluminum powder, and titanium anodes to Iraq. The NEC prosecution is ongoing.

We do not have information on other examples of Indian prosecutions regarding violations of its export control laws. One reason for this is that, before India passed its WMD law this year, its governmental authority over such export activities was relatively limited. India’s new WMD law has greatly increased its ability to hold its entities and individuals accountable for activities that impinge on nonproliferation practices.

Question. Did India pursue any action (civil or criminal) against Dr. Y.S.R. Prasad and Dr. C. Surendar after the United States sanctioned them under the authority of the Iran Nonproliferation Act of 2000 (P.L. 106–178)?

Answer. We understand that India investigated the activities of the retired scientists Dr. Y.S.R. Prasad and Dr. C. Surendar after the United States imposed sanctions on them in September 2004. As far as we are aware, India did not pursue any civil or criminal action against Drs. Prasad or Surendar.

Question. Does the United States have any information that Indian entities or persons in the United States have engaged in attempts to falsify necessary bona fides in transactions with U.S. entities or persons?

Answer. Any such activities would be regarded as a law enforcement matter in this country. Any such matters would need to be addressed to the Department of Justice, Department of Commerce, and/or the Department of Homeland Security.

Question. In oral remarks made at the Department of Commerce's annual Bureau of Industry Security (BIS) "Update" Conference recently held in Washington, DC, Steven Goldman, director of the BIS Office of Nonproliferation and Treaty Compliance, stated that "India has modified its approach, has made major commitments, in many respects commitments that exceed those of our closest allies."¹

Do you concur with this assessment, and if so, how does India exceed the nonproliferation commitments made by our closest allies, in particular, those who are nuclear weapon states (such as the United Kingdom) under Article I of the NPT?

Answer. The Department of State agrees that India has made major commitments which, when implemented, will bring it closer into conformity with nonproliferation standards and practices. India has committed to a number of important nonproliferation steps. Some of these steps exceed NPT requirements, such as India's export-restraint of enrichment and reprocessing technologies and its willingness to sign and adhere to an Additional Protocol.

RMP Facility

Question. Do you concur with the assessment of alleged Indian attempts to illicitly acquire certain dual-use nuclear technology provided by David Albright during testimony before the House on October 26, 2005? Which states in relevant part:

Indian nuclear organizations use a system that hires domestic or foreign nonnuclear companies to acquire items for these nuclear organizations. Such procurement appears to continue for its secret gas centrifuge enrichment plant near Mysore. In an attempt to hide its true purpose from suppliers and others when it started this project in the 1980s, India called the facility the Rare Materials Plant (RMP) and placed it under Indian Rare Earths (IRE) Ltd, an Indian Department of Atomic Energy company focused on mining and refining of minerals. Since the mid-1980s, IRE has served as a management company for RMP and appears to be the declared end-user of its procurements of centrifuge-related equipment and materials.²

Answer. We cannot comment in any detail in unclassified channels on assessments of activities of Indian entities or facilities. We could discuss further in classified session.

Question. What is the purpose of the RMP facility?

Answer. We cannot comment in any detail in unclassified channels on assessments of activities of Indian entities or facilities. We could discuss further in classified session.

¹ As found at http://www.exportcontrolblog.com/blog/2005/10/update_day_one_4.html.

² Available at http://wwwc.house.gov/international_relations/109/alb102605.pdf.

Question. The Commerce Department issued revised U.S. regulations for balance of plant exports to certain Indian entities last September.³ The Indian Department of Atomic Energy entity called “Indian Rare Earths” is named in those FR notices, but could you please explain for the record the current regulatory treatment provided to the entity Indian Rare Earths under current law and regulation?

Answer. The September 22, 2004, regulatory change did not change the regulatory treatment for Indian Rare Earths. India Rare Earths is still a listed entity under Commerce regulations, as it has been since the sanctions were imposed in 1998. Therefore, under the Export Administration Regulations, exporters need to apply for licenses to export even uncontrolled commodities to this end-user.

Proliferation Security Initiative

Question. Why has India not joined the Proliferation Security Initiative (PSI)?

Answer. The United States has encouraged India to join PSI, given its geographic location along several key routes for proliferation trafficking and its significant operational capabilities in the region. Officials of the Government of India have told us that they are continuing their internal review of PSI, including an examination of the international and national legal underpinnings for their possible participation in PSI. We are hopeful that India will soon endorse PSI, and join the more than 70 countries around the world—and United Nations Secretary General Kofi Annan—that have expressed their support for PSI.

Question. What are the views of the Government of India on the Statement of Interdiction Principles?

Answer. Officials of the Government of India have told us that they are continuing their internal review of PSI, including an examination of the international and national legal underpinnings for their possible participation in PSI. We are hopeful that India will soon endorse the PSI Statement of Interdiction Principles, and join the more than 70 countries around the world—and United Nations Secretary General Kofi Annan—that have expressed their support for PSI.

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³ 69 FR 56,693 (2004), revised in 69 FR 58,049 (2004).