Decision Time on the Indian Nuclear Deal: Help Avert a Nonproliferation Disaster

August 15, 2008

Federal Minister Frank-Walter Steinmeier Federal Foreign Office Auswartiges Amt 11013 Berlin Germany

Dear Minister Dr. Frank-Walter Steinmeier:

Your government and other members of the Nuclear Suppliers Group (NSG) are being asked to consider the Bush administration's proposal to exempt India from longstanding NSG guidelines that require comprehensive IAEA safeguards as a condition of supply.

As many of us wrote in a January 2008 letter ("Fix the Proposal for Nuclear Cooperation with India" <u>http://legacy.armscontrol.org/pressroom/2008/NSGappeal.asp</u>, India's commitments under the current terms of the proposed arrangement do not justify making far-reaching exceptions to international nonproliferation rules and norms.

Contrary to the claims of its advocates, the deal fails to bring India further into conformity with the nonproliferation behavior expected of the member states of the nuclear Non-Proliferation Treaty (NPT). Unlike 178 other countries, India has not signed the Comprehensive Test Ban Treaty (CTBT). It continues to produce fissile material and expand its nuclear arsenal. As one of only three states never to have signed the NPT, it has not made a legally-binding commitment to achieve nuclear disarmament, and it refuses to allow comprehensive, full-scope International Atomic Energy Agency (IAEA) safeguards.

Yet the arrangement would give India rights and privileges of civil nuclear trade that have been reserved only for members in good standing under the NPT. It creates a dangerous distinction between "good" proliferators and "bad" proliferators and sends out misleading signals to the international community with regard to NPT norms.

We urge you to support measures that would avert further damage to the already beleaguered global nonproliferation and disarmament regime.

Given that the NSG only takes decisions by consensus, your government has a responsibility to consider the following adverse implications of the U.S. proposal to exempt India from key NSG guidelines:

1. Undermining the Nuclear Safeguards Regime

The proposed exemption of India from the comprehensive nuclear safeguards standard of supply threatens to undermine the nuclear safeguards system. Given that India maintains a nuclear weapons program outside of safeguards, facility-specific safeguards on a few additional "civilian" reactors provide no serious nonproliferation benefits.

As part of the carefully crafted final document of the 1995 NPT Review and Extension Conference, all NPT states-parties endorsed the principle of full-scope safeguards as a condition of supply. A decision by the NSG to exempt India from this requirement would also contradict this important element of the NPT bargain. Furthermore, it is inappropriate for the member states of the NSG to take it upon themselves to make a decision on this matter for the 140-plus other members of the NPT.

Making matters worse, Indian officials have suggested that it might cease IAEA scrutiny if fuel supplies are cut off, even if that is because it renews nuclear testing. NSG members should reject such an interpretation. Your government has a solemn responsibility to reject any India-specific exemption from NSG guidelines that is premised on a safeguards agreement that is in any way inconsistent with the principle of permanent safeguards over all nuclear materials and facilities.

India also pledged on July 18, 2005 to conclude an additional protocol to its safeguards agreement. States should insist that India conclude a meaningful Additional Protocol safeguards regime before considering whether and how to make any India-specific alteration to the NSG guidelines.

2. Possible Transfer of Sensitive Enrichment and Reprocessing Items

Unless rejected by the NSG, India's insistence on obtaining "full" nuclear cooperation would undermine efforts to prevent the proliferation of technologies that may be used to produce nuclear bomb material, including reprocessing and enrichment technologies and items. Allowing transfers of these sensitive nuclear technologies is extremely unwise given that IAEA safeguards cannot prevent such items from being replicated and used to advance India's weapons program. U.S. officials have stated that they do not intend to sell such technology, but other states may. Virtually all NSG states support proposals that would bar transfers of these sensitive nuclear technologies to non-NPT members. India must be no exception.

Recall that India detonated a nuclear device in 1974 that used plutonium harvested from a reactor supplied by Canada using heavy water from the United States in violation of earlier bilateral peaceful nuclear use agreements.

3. Indirect Assistance to India's Nuclear Weapons Program

In the absence of a suspension of fissile material production for weapons by India, foreign nuclear fuel supplies would free up India's relatively limited domestic supplies to be used exclusively in its military nuclear sector, thereby indirectly contributing to the potential expansion of India's nuclear arsenal. This would contradict the spirit if not the letter of Article I of the NPT (which prohibits direct or indirect assistance to another state's nuclear weapons program), and it would spur further arms racing in South Asia.

India's political commitment to support negotiations of a global verifiable fissile material cut off treaty is a hollow gesture given the fact that states have failed to initiate negotiations on such a treaty for over a decade.

4. Facilitating Indian Nuclear Testing

If, as Prime Minister Manmohan Singh said on July 18, 2005, India would "assume the same responsibilities and practices" as other countries with advanced nuclear capabilities, it is reasonable to expect that India should agree to a legally-binding moratorium on nuclear test explosions. It would be highly irresponsible for CTBT signatories not to establish CTBT signature as a basic condition for NSG nuclear trade with India or any state that has not yet signed that treaty.

While Singh has reiterated his commitment to maintaining India's voluntary nuclear test moratorium, India has refused to make any commitment to a legally-binding commitment to a test ban and has sought to avoid the possibility of any penalty in the event that it does resume testing. As Singh asserted most recently in his July 22 statement to the Lok Sabha, "I confirm that there is nothing in these agreements which prevents us from further nuclear tests if warranted by our national security concerns."

To reduce the impact of a fuel supply cut off if India were to resume nuclear testing, Indian officials have gone further and are demanding a so-called "clean" and "unconditional" exemption from NSG guidelines and are seeking bilateral nuclear cooperation agreements that help provide India with strategic fuel reserves and/or lifetime fuel guarantees.

This flatly contradicts a provision in the 2006 U.S. Henry Hyde Act, which was championed by Sen. Barack Obama and approved by the U.S. Congress that stipulates that fuel supplies be limited to reasonable reactor operating requirements.¹ It would also contradict the policy mandated by the U.S. implementing legislation that a nuclear test would lead to the immediate cessation of all U.S. nuclear cooperation with India.

If nuclear testing is to be deterred, meaningful penalties must be available. If NSG states do agree to supply fuel for India's "civilian" nuclear sector, they must avoid arrangements that would enable or encourage future nuclear testing by India. Otherwise, you and your government may become complicit in the facilitation of a new round of destabilizing nuclear tests.

In light of the above-mentioned flaws in the ill-conceived proposal to exempt India from certain NSG guidelines, we recommend that:

• If NSG supplier states agree to supply fuel to India, they should establish a policy that if India resumes nuclear testing, or if India violates its safeguards agreement with the IAEA or withdraws "civilian" facilities or materials from international safeguards, all nuclear cooperation with India involving NSG members shall be terminated and unused fuel supplies from NSG states shall be returned.

¹ See September 16, 2006 exchange on the floor of the U.S. Senate between Sen. Barack Obama and Sen. Richard Lugar, then Chairman of the Senate Foreign Relations Committee, available from http://bulk.resource.org/gpo.gov/record/2006/2006_S11021.pdf and http://bulk.resource.org/gpo.gov/record/2006/2006_S11021.pdf and http://bulk.resource.org/gpo.gov/record/2006/2006_S11022.pdf Also see Sec. 103 (b) para 10 of the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act.

- If NSG supplier states agree to supply fuel to India, they should do so in a manner that is commensurate with ordinary reactor operating requirements and not provide individually or collectively strategic or lifetime nuclear fuel reserves.
- NSG states should expressly prohibit any transfer of sensitive plutonium reprocessing, uranium enrichment, or heavy water production items to India, whether inside or outside bilateral nuclear cooperation agreements.
- NSG states should actively oppose any arrangement that would give India any special safeguards exemptions or would in any way be inconsistent with the principle of permanent and unconditional safeguards over *all nuclear materials and facilities subject to its safeguards agreement with the IAEA*.
- Before India is granted a waiver from the NSG's full-scope safeguards standard, it should join the other original nuclear weapon states by declaring it has stopped fissile material production for weapons purposes and transform its nuclear test moratorium into a meaningful, legally-binding commitment.²
- NSG states should agree not to grant India consent to reprocess nuclear fuel supplied by an NSG member state in a facility that is not under permanent and unconditional IAEA safeguards, and also agree that any material produced in other facilities may not be transferred to any unsafeguarded facility.
- NSG states should agree that all bilateral nuclear cooperation agreements between an NSG member state and India explicitly prohibit the replication or use of such technology in any unsafeguarded Indian facilities.

The Indian nuclear deal would be a nonproliferation disaster and a serious setback to the prospects of global nuclear disarmament, especially now. For those world leaders who are serious about ending the arms race, holding all states to their international commitments, and strengthening the nuclear Nonproliferation Treaty, it is time to stand up and be counted.

Sincerely,

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*Full list of endorsements continues on following pages.

² All UN member states are also obligated to support UN Security Council Resolution 1172, which calls on India and Pakistan to sign the Comprehensive Test Ban Treaty (CTBT) stop producing fissile material for weapons, and undertake other nuclear risk reduction measures. All NSG states have a responsibility to uphold their obligations under UNSC 1172 by reiterating and actively encouraging India and Pakistan to implement these and other nuclear restraint measures.

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