

**THE U.S.-INDIA “GLOBAL PARTNERSHIP”:
LEGISLATIVE OPTIONS**

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BEFORE THE
COMMITTEE ON
INTERNATIONAL RELATIONS
HOUSE OF REPRESENTATIVES
ONE HUNDRED NINTH CONGRESS
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THE U.S.-INDIA “GLOBAL PARTNERSHIP”: LEGISLATIVE OPTIONS

THURSDAY, MAY 11, 2006

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, DC.

The Committee met, pursuant to notice, at 11:04 a.m. in room 2172, Rayburn House Office Building. Hon. Henry J. Hyde, (Chairman of the Committee) presiding.

Chairman HYDE. The Committee will come to order. Last March, at the request of Secretary Rice, Mr. Lantos and I introduced H.R. 4974, which would amend the Atomic Energy Act to allow for nuclear trade with India.

At that time, both Mr. Lantos and I said to Secretary Rice that we were not committing to support the legislation in its current form, although we might in fact do so at a later date.

Recently, Mr. Berman circulated a Dear Colleague letter regarding legislation that he plans to introduce on this subject. This letter was forwarded to our witnesses so they could familiarize themselves with it, and be prepared to comment upon it.

There may be others who plan to offer bills or amendments of their own. Incidentally, the reason that we do not have any Democrats here, and we are rather sparse for Republicans, is that there are procedural votes being offered on the Floor, motions to adjourn and the like.

And some of us attend those and participate, and some of us do not. But I thought we would go ahead with those things that we can go ahead with until we need the Members, and then we will take a recess.

This is the fifth in a series of hearings that the Committee has held on the United States-India Global Partnership. We have heard extensive testimony on the merits of the agreement as a whole from a wide array of Administration officials and experts.

As we move toward consideration of the relevant legislation, I believe that it is now appropriate to examine in greater detail the Administration's bill, as well as several of the proposals that have been put forward by Members of this Committee and others.

Let me stress that neither I nor the Committee as a whole necessarily endorse any of these proposals, nor even subscribe to the possibility that any are needed. But if we are to intelligently discuss this subject, we must fully understand the range of options before us, some of which are highly technical, and thus demand close attention.

We have gone to considerable lengths to ensure that we will hear a wide-ranging and, I believe, balanced set of perspectives. I hope that all Members approach this subject with the open mind that it deserves.

Now, Mr. Lantos would normally address, by way of opening statement, the Committee but he is over on the Floor and will return. Meanwhile, we can have opening statements of the Members that are here, at least of those who wish to make them. This is not mandatory. I would like a list of the Members that are here so that I can call on them. Mr. Leach, do you have an opening statement?

Mr. LEACH. No, Mr. Chairman.

Chairman HYDE. Ms. Ros-Lehtinen of Florida.

Ms. ROS-LEHTINEN. Thank you so much, Mr. Chairman. The historic meeting of Prime Minister Singh and President Bush last July, with the creation of a new global partnership, followed by President Bush's trip to India, designated the American view of India as an emerging global leader and a national partner of the United States.

We have had the opportunity to discuss various components of the global partnership with United States and Indian officials. However, the civilian nuclear cooperation component that we need to focus on due to our legislative requirements, and the far-reaching implications of this proposal.

Some of the outstanding questions which I am sure that this Committee will have relate to India's export control system, and how recently adopted changes will prevent smuggling or re-exports of nuclear-related technology to dangerous regimes.

For example, some Indian entities have been sanctioned as recently as December for violating the Iran Nonproliferation Act. Also, we must ask what mechanisms and safeguards should we require to ensure that this agreement does not inadvertently facilitate secondary proliferation.

Another concern relates to the separation plan. For example, the current proposal is more of an identification of facilities, and does not appear to subject uranium enrichment or reprocessing facilities for full-scope safeguards and inspections.

And lastly we are evaluating such issues about what to do with further nuclear testing by India. So we need specific recommendations on how to strike that balance between our strong ally, India, while preserving and strengthening our nonproliferation policies.

Ultimately, there will be a civilian nuclear cooperation agreement, but in the interest of both countries, we must ensure that we do it right. India has been and continues to be a strong and dependable ally and partner of the United States. It came to our aid immediately after 9/11 and our bonds continue stronger ever since.

As the oldest and largest democracies, the United States and India share a common bond of democracy, of freedom, and the rule of law, and this civilian nuclear cooperation agreement could be a step in the right direction if both countries handle it in the correct manner. Thank you, Mr. Chairman.

Chairman HYDE. Thank you, Ms. Ros-Lehtinen. A motion to adjourn has just been offered by the Democratic side on the Floor, and so Mr. Wilson, do you intend to go make the motion to adjourn, or would you rather do an opening statement?

Mr. WILSON. A brief opening statement. I would like to do both.
Chairman HYDE. You want to do both? Good. Mr. Wilson of South Carolina.

Mr. WILSON. Thank you, Mr. Chairman, and indeed, I want to echo the comments of Congresswoman Ileana Ros-Lehtinen. I am very pleased. I previously was the Co-Chair of the India Caucus. She is currently the Co-Chair.

The India Caucus is the largest caucus on Capitol Hill, nearly 200 members. It really reflects the appreciation of India, the world's largest democracy with the United States, the world's oldest democracy. It is further appreciation of the importance of the Indian-American population in the United States, 2.2 million people who have assimilated very strongly and become a very vital part of our country.

And indeed I believe it has been historic, the President being with Prime Minister Manmohan Singh to develop the agreement for civilian nuclear power. I believe it is more important than ever that we proceed, and I appreciate the efforts of the Chairman and the Ranking Member.

With the energy sources that we have, it is more important than ever that we proceed to help develop and build nuclear capability so that the economy of India can continue to grow at the rate it is as a great partner of the United States, and not rely on fossil fuels.

All of this can be accomplished, and I again appreciate so much the leadership of our Chairman. I look forward to working with him to the speediest and most positive conclusion to promoting better relations with our great ally, the Republic of India. Thank you, Mr. Chairman.

Chairman HYDE. The Committee will stand in recess pending developments on the Floor.

[Recess.]

Chairman HYDE. The Committee will come to order. Mr. Lantos is available, and he is the Ranking Democrat on the Committee, and he is recognized for purposes of an opening statement. Mr. Lantos.

Mr. LANTOS. Thank you, Mr. Chairman. I stayed on the Floor because we had a second vote, and as we speak, it is being cast. Mr. Chairman, let me first thank you for calling today's hearing on the proposed United States-India nuclear agreement, the fifth hearing our Committee has held on this vitally important matter.

Mr. Chairman, as you know, I strongly support this proposed agreement. After decades of coolness and aloofness between India and the United States, there now is a chance to advance an historic geostrategic realignment between the world's oldest democracy and its largest one.

Along with its considerable political and economic implications, this potential turning point in United States-Indian relations will also help advance the Indian Government's cooperation with us on nuclear nonproliferation.

For that reason, Mr. Chairman, I joined you in introducing the Administration's legislative proposal to implement this new arrangement, and I support its passage. But, Mr. Chairman, many of

our colleagues in the Congress support the Administration's proposal, while many others are opposed.

The first two witnesses, our distinguished colleagues Congressmen Markey and Kolbe, reflect these differences, but with so few days left this year in our very crowded legislative calendar, there is no time to develop the consensus necessary to move this legislation forward in the face of these polarized views.

Yet, there is urgency to move forward on this issue. We need to come up with a legislative compromise that will keep the momentum for this agreement moving and moving it forward. The Indian Government needs reassurance that the Congress is supportive. It needs the confidence that we will adopt the necessary legislation in order to negotiate this agreement with the United States.

One of the most serious obstacles is that many of us in Congress are reluctant to make a final judgment on the United States-India nuclear accord without seeing the details of the agreement that has been negotiated.

So, Mr. Chairman, I have drafted legislation which bridges this gap, and as you know, I have shared my proposals with you and your staff. My legislation puts the Congress on record explicitly welcoming the agreement and its positive impact on our relations with India.

But under my proposal, Congress would not immediately make all the major legislative changes to the Atomic Energy Act sought by the Administration, which are necessary to implement this agreement. Under my legislation, we would vote on the bilateral agreement for cooperation once the negotiation has been completed, and the India IAEA safeguards agreement is finalized.

This vote of the Congress would occur whenever the agreement is completed, whether it is a week from now, 6 months from now, or in a year from now. To ensure that the agreement could not be bottled up in Committee or otherwise delayed, my proposal would provide for specific expedited procedures to ensure an up or down vote in the House and in the Senate.

The Administration will also be required to consult monthly with Congress as the negotiations continue with the Indian Government. This provision will ensure that there are no misunderstandings between the Executive and Legislative Branches as to what Congress will be asked to accept.

Mr. Chairman, my proposal is very similar to the fast track procedures that we have used in the Congress for trade agreements. It gives the Executive Branch assurance that congressional amendments will not undo a complex agreement when it is considered here. And it assures that a straightforward vote will take place in both Houses. I intend to discuss my legislative proposal with Secretary of State Condoleezza Rice next week. Politics is the art of compromise, Mr. Chairman.

Neither the Administration nor the Indian Government will get all that they seek under my compromise, but this way the Administration will be able to reassure the Indian Government that Congress supports the nuclear agreement and is prepared to consider the final accord in an expeditious manner.

Let me emphasize again that this proposal would give us the assurance that the Congress will have all of the facts and all of the details before we are asked to vote on the agreement.

Mr. Chairman, I remain a strong supporter of nuclear cooperation with India. The proposed agreement is in the midst of lengthy and complicated negotiations. It is essential that Congress act quickly in a positive fashion to encourage these negotiations, or we risk slowing down the momentum behind it.

India is a rising political and economic power in the world's most populous and economically vibrant region. Civilian nuclear cooperation between our two countries will further cement our ever closer relationship while protecting key nonproliferation objectives.

With this proposed agreement, we stand at a threshold. The door could swing open toward a new era of cooperation and joint action, or if we fail to seize this opportunity, the door could slam shut and undo much of the good work of two American Administrations—one Democratic, one Republican—to strengthen the bonds between India and the United States.

Mr. Chairman, we cannot miss this opportunity to move forward on such an important initiative. I urge you, and I urge all of my colleagues on the Committee and in the Congress to give my legislative proposal careful consideration, and I thank you for your courtesy.

Chairman HYDE. Thank you, Mr. Lantos. The Chair would welcome 1-minute opening statements because I am anxious to get to our witnesses. On the other hand, we have been requested to advance 3 minutes for one Member, and we will agree to that.

But I would appreciate some brevity, if at all possible, and our first opening statement from this point on is Mr. Ackerman of New York.

Mr. ACKERMAN. Thank you, Mr. Chairman. As a supporter of the President's proposal, I would like to make three points about what I believe are a few of the underlying assumptions made by many opponents of the proposed agreement.

First is the idea they offer that somehow India must be held accountable for making the sovereign decision not to sign the NPT and for developing a nuclear program outside of NPT obligations and limitations.

This argument really turns logic on its head. If any nation should be held accountable by the United States or the international community for violations of nonproliferation norms, it should be those nations who agree to abide by the norms in the first place and then choose to violate them by pursuing nuclear weapons anyway, and selling the related technologies.

The Administration is clueless as to how to deal with them. Thirty years of ostracizing and sanctioning India has not put the nuclear genie back in the bottle, and has not gotten India to abandon its quest for nuclear power. Clearly, it is time for a different approach, and the President has proposed one that I believe deserves our support.

The second point involves the assertion that after India receives nuclear technology from the United States or others in the Nuclear Suppliers Group, somehow this technology would leak to other na-

tions, that India in effect would suddenly become a rogue proliferator.

This argument ignores decades worth of experience with Indian control over nuclear technology. By most clear-eyed accounts, India has an excellent record regarding proliferation of its technology to other nations, and now with new and tougher export control legislation adopted by the Indian Parliament, India's ability to control such exports is even better.

In addition, I cannot think of a reason why the Indians, on the brink of achieving acceptance as a responsible nuclear power, would risk throwing it all away by allowing such sophisticated technology to be sold to another nation.

And lastly there is a great deal of complaint that the agreement does not constrain India's nuclear weapons program. I would simply say that the purpose of the agreement wasn't to stop, or to roll back, or to convince India to abandon its nuclear program. They would not have engaged us on those terms.

As I said earlier, we sanctioned, we lectured, we pleaded, but India has made a strategic sovereign decision on this question, and I think it is incumbent on us to deal with that set of realities.

The situation with India is not the same as with Iran, or North Korea, or Pakistan. The message to those that are outside the non-proliferation mainstream is that responsible behavior is rewarded with international acceptance. That is the case for India. The others need not apply.

I have said before that the President has made the right strategic choice in this case regarding our relationship with India. Recognizing and welcoming India as a responsible nuclear power removes a serious impediment to the type of close and cooperative relationship that the United States should have with an emerging global power.

Chairman HYDE. Mr. Smith of New Jersey.

Mr. SMITH. Thank you, Mr. Chairman. I certainly would welcome the growing economic and political relationship between the world's oldest democracy and its largest one, but India's continuing discrimination and violence against India's religious minorities, its poor enforcement of laws against human trafficking and forced labor, and a continuing discrimination against hundreds of millions of Indians, the Dalits, and various other tribal peoples who are regarded and often treated as subhuman by the authorities, will make it difficult for the United States to develop the close relationship with India that all of us would like to see.

As we know, India is a tier 2 country. I believe it ought to be tier 3 because of its horrific problems with human trafficking. Last October, Mr. Chairman, as you know, I chaired a hearing of our Subcommittee, and we focused on the Dalits, 250 million people who are treated in a subhuman way.

There is also the problem of sex-selection abortions, Mr. Chairman. In India, as many as 60 million girls are missing, and that is according to a United Nations report, as a result of sex-selection abortions. That creates a magnet for human trafficking. It creates a situation that I believe is gendercide, where girls, simply because of their gender, are sought out and destroyed while still in utero,

and that has led to this enormous disproportion of girls to boys, more boys than girls.

Yes, we need to look at your legislation, and we need to look at this new partnership, but it should not be absent a serious conversation and dialogue on new issues of human rights. I yield back.

Chairman HYDE. Mr. Schiff of California.

Mr. SCHIFF. Thank you, Mr. Chairman. I also believe the United States-India relationship is an extremely important one, and I have worked for many opportunities to try to strengthen and improve that relationship. But I do have concerns over the proposed nuclear cooperation deal. These concerns are not so much over the impact on India, but the impact on our nonproliferation efforts elsewhere.

There are many proliferal benefits that have been cited to the proposed agreement, in terms of our budding relationship with India, in terms of other regional powers, and those are all, I think, quite accurate. But in a nonproliferation context, I think it does pose very real risks, and I would prefer an approach that was not country specific, and did not open up the United States to charges of having a different standard for friends than for foes in the area of nonproliferation, but rather develop a set of criteria where we could have cooperation with a nation like India that other nations could aspire to meet. And I think that approach may be preferable to an agreement that is explicitly linked to India and only to India.

So I look forward to this hearing and our future discussions, which is probably the single most important issue that this Committee will face over this entire session, and I appreciate the gentlemen coming in to testify today.

Chairman HYDE. Mr. Berman of California.

Mr. BERMAN. Thank you, Mr. Chairman. I have put out a Dear Colleague in greater length than the 1 minute that I have now. It speaks to some of my concerns, as well as what I think is the realism of the current situation, and so my understanding for the context of this agreement.

I would like to use this time to just focus on one issue, and that is the issue of fissile material. Most nonproliferation experts, liberal and conservative, believe this deal would enable India to increase its production of fissile material for nuclear weapons.

India now has a shortage of domestic uranium. As a result, many of its civilian nuclear power plants are running at less than full capacity. Under these circumstances, India is forced to make difficult choices: Does it use its scarce uranium deposits to generate electricity, or to build more bombs?

But if this deal goes through, India will no longer face this dilemma. It will be able to import nuclear power fuel to power their civilian reactors, and dedicate all of their domestic uranium to nuclear weapons production.

One of India's top nuclear experts said the following in a December 15, 2005, article in *The Times of India*:

“Given India's uranium-oil crunch, and the need to build up our minimum credible nuclear deterrent arsenal as fast as possible, it is to India's advantage to categorize as many power reactors as possible as civilian ones to be assured by imported uranium, and to conserve our native uranium fuel for weapon grade plutonium production.”

I did hear the suggestion of the Ranking Member regarding an approach that I think deals with one of the most procedurally questionable aspects of the Administration's proposal, and I want to look at it further, but I think that is a very heartening sign for the notion of Congress as an institution having to look at a final agreement before we change our laws, waive our export controls, and I think I should yield back the balance of my time.

Chairman HYDE. Ms. Watson of California.

Ms. WATSON. Thank you, Mr. Chairman, for holding these hearings on United States policy toward India. In recent years, India has emerged as one of the key nations that will help to shape the 21st century.

I am proud of the strong strategic relationship that we share with India. That relationship is strong precisely because it is based not upon mutual interests, but on mutual values.

As I have said before, both Indians and Americans have a vision of the world, where people are free to choose their governments, to choose how they live their lives, to choose how to raise their families, and to choose how to recognize and organize their communities, which is why I have so many concerns about the Administration's proposal to change the rules established to prevent the spread of nuclear weapons.

With all the issues that our countries have faced together, one of the most dangerous for both our societies is nuclear proliferation. For 50 years the international nonproliferation regime has kept the nuclear threat in check.

Both the United States and India benefit from this regime. Yet, today it is under threat. If we are going to prevent a nuclear Iran, we need India's help to shore up the nonproliferation regime.

I fear adopting this proposal will undermine our mutual efforts in that regard. Mr. Chairman, I am eager to explore new ways for the United States to engage India as a full strategic partner.

It is clearly in our best interests to do so. But I believe that we can, and must, find a way to partner with India that ensures that the international rules that hold nuclear weapons in check are protected for the benefit of America and India, and for the benefit of the entire world. Thank you, and I yield back my time, Mr. Chairman.

Chairman HYDE. We are fortunate to have with us today Congressman Ed Markey of Massachusetts and Congressman Jim Kolbe of Arizona. They are to be congratulated for tackling what everyone concedes as a difficult and contentious subject.

I am confident that our deliberations will benefit greatly from the seriousness of purpose and intellectual integrity for which both gentlemen are widely known among their colleagues. I will ask each of you to limit your remarks to 5 minutes, and there will be no questions from the Committee Members.

We then will turn to our panel of experts. Mr. Markey, would you proceed with your statement?

STATEMENT OF THE HONORABLE EDWARD J. MARKEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. MARKEY. Thank you, Mr. Chairman, and thank you for the invitation to testify today, Mr. Lantos, and Members of the Committee. I am opposed to the Administration's legislative proposal to grant India a special exemption from our Nation's nuclear nonproliferation laws because it undermines United States national security interests; it sets a dangerous precedent that will be exploited by our adversaries and rivals; and it seriously weakens Congress' role in overseeing and improving the terms of nuclear trade.

I strongly support a lasting partnership between the world's oldest and the world's largest democracies, but I believe it is a mistake to make nuclear electricity cooperation the centerpiece of the new United States-Indian relationship.

Mr. Chairman, in your invitation to the hearing, you suggest that the Atomic Energy Act would have to be amended in order for the deal with India negotiated by the Administration to go through. Let me suggest that there is a way for the Committee to consider this deal, its benefits, and its risks, in a deliberative fashion that does not require you to amend the Atomic Energy Act at this time.

Under section 1237 of the Atomic Energy Act, the President already has the ability to submit to Congress a formal agreement for nuclear cooperation between the United States and India, notwithstanding the fact that India does not meet the requirement of 123(a)(2) that it allow full-scope safeguards at all of its nuclear facilities.

The President can submit such an agreement to the Congress by making a determination that inclusion of the full-scope safeguards "would be seriously prejudicial to the achievement of United States nuclear nonproliferation interests, or would otherwise jeopardize the common defense and security."

So the full-scope safeguards requirement can be waived. Section 129 of the act also poses an obstacle, as it requires that one basis for a cessation of nuclear cooperation with another country is the conducting of a nuclear explosives test after March 10, 1978, which India has done.

The President already has the legal authority to waive section 129, again, if he determines that halting such exports "would be seriously prejudicial to the achievement of United States nuclear nonproliferation interests."

So my question is, why isn't the Administration, why isn't the White House willing to use its existing waiver authority under sections 123 and 129? If the India nuclear electricity cooperation deal is as important as its supporters claim, if the proposed separation plan of India's military and civilian nuclear reactors is really credible from a nonproliferation standpoint, then why is the Administration unwilling or unable to make such a determination?

Let me suggest a possible answer. The Administration wants to avoid the enhanced scrutiny that Congress envisioned for nuclear cooperation agreements, which fail to comply with the requirements established in the Nuclear Nonproliferation Act of 1978, a law enacted in response to the 1974 Indian nuclear bomb test, a

test conducted using nuclear materials produced in violation of “peaceful use” pledges made to the United States and Canada.

Not only does the Administration’s bill exempt India from the safeguards requirement in section 123 of the Atomic Energy Act, the bill also stipulates the Administration’s non-conforming India agreement would be considered under a procedure normally reserved for agreements that actually conform with all of the nine security and nuclear nonproliferation requirements of section 123.

This reminds me of the old cartoon of the bear in Yellowstone Park looking for handouts by the side of the road under a sign, which reads, “Do not feed the bears.” The bear has hung a sign around his neck which reads, “I am not a bear.”

Like the bear, the Administration wants us to treat this deal as if it complies with the law, even though it obviously does not. Under the law, a conforming agreement will go into effect unless both House and Senate pass a joint resolution within 90 days to disapprove the agreement.

Inaction or failure of either House to move legislation before the 90 daytime clock expires results in the agreement going into effect by default. Furthermore, such a joint resolution of disapproval would likely face a Presidential veto, essentially requiring a veto proof two-thirds majority vote in both Houses, a near impossible task.

The Bush Administration’s India legislation, therefore, sets up the distinct possibility that Congress will be asked to vote on these sweeping exemptions to the Atomic Energy Act before it has even seen the final text of the actual bilateral nuclear cooperation agreement; before we have actually seen the text of any IAEA safeguards agreement; and then never actually have an opportunity to vote on the actual United States-Indian nuclear cooperation agreement.

What if the Indians refuse to agree to a United States right of return of all United States origin nuclear materials and technology in the event of a violation of the agreement? What if they refuse to provide adequate security for all nuclear materials? What if the safeguards at the nuclear power plants aren’t really permanent?

If this Committee approves the proposed bill, you will have virtually no leverage to respond. In addition, the Administration’s legislation also removes subsequent annual congressional reviews of nuclear exports that would otherwise be required under section 128 of the Atomic Energy Act.

The Administration apparently has deemed this congressional exercise of its powers to regulate foreign commerce, foreign nuclear commerce, to be too cumbersome. The Administration is essentially asking this Committee, this Congress, to blindly approve a nuclear cooperation agreement that has not yet been worked out, not signed yet, and not submitted to the Committee.

And they would like you to surrender your prerogatives to review subsequent exports carried out pursuant to this nuclear agreement. There is no wish to make such drastic changes to United States law. It makes no sense for Congress to approve a nuclear cooperation agreement that has not yet been negotiated.

I urge this Committee to reject the Administration’s proposed bill and to ensure that any India nuclear cooperation deal is considered

under the procedures set forth under existing law. Before you legislate in this area, you should read the actual nuclear cooperation agreement. Read the actual IAEA safeguards agreement. Evaluate the provisions of these agreements, and determine whether or not conditions need to be attached to the signed agreement in order to protect United States national security and nuclear nonproliferation interests.

This deal sets a dangerous precedent that will be exploited by our adversaries and rivals. The rest of the world is watching. The Nuclear Suppliers Group is watching this Committee. Iran is watching. Pakistan is watching. Russia and China are watching this Committee.

By approving the Administration's legislation, you are effectively eliminating congressional oversight on nuclear cooperation permanently. Your decision will have an impact on the future of nuclear nonproliferation export controls for the entire world.

Please make the right decision and do not give away this Committee's and this Congress' power to help prevent the spread of nuclear weapons technologies and weapons material.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Markey follows:]

PREPARED STATEMENT OF THE HONORABLE EDWARD J. MARKEY, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Good morning Chairman Hyde, Ranking Member Lantos and Members of the International Relations Committee. Thank you for giving me the opportunity to testify today.

I am opposed to the Administration's legislative proposal to grant India a special exemption from our nation's nuclear nonproliferation laws. I believe that this legislative proposal is ill-conceived, that it undermines U.S. national security interests, and that it sets a dangerous precedent that will be exploited by our adversaries and rivals. But I also believe that this proposal seriously weakens Congress's role in overseeing and approving the terms of nuclear trade, and I want to focus my testimony on this point.

Protecting America's national security interests is more important than party loyalties or a few reactor deals for the nuclear industry. I would also suggest to my friends in the Indian-American community that it is a mistake to try to make a nuclear reactor deal the centerpiece of a stronger bilateral relationship. A lasting partnership between the world's oldest and the world's largest democracies is a great idea, and one that I strongly support. But it cannot be built on a faulty foundation. That is precisely what will happen if nuclear energy cooperation is made the centerpiece of the new U.S.-Indian relationship.

It would be short sighted to forget that today's hearing takes place amidst the backdrop of a critical struggle to address Iran's nuclear ambitions. As we debate the details of an exceptionalist policy for a rule-breaking nation outside of the Nuclear Non-proliferation we cannot forget that the world is watching. Other nations are taking close note of the nuclear precedent that this Congress is about to establish.

The focus of this hearing is the Administration's proposed legislation. Mr. Chairman, in your invitation to the hearing, you suggest that the Atomic Energy Act must be amended in order for the deal negotiated by the Administration to go through. Let me suggest that there is a way for the Committee to consider this deal, its benefits and its risks, in a deliberative fashion, and consider appropriate conditions on that deal, that do not require you to amend the Atomic Energy Act at this time.

Let me explain. Under Section 123 of the Atomic Energy Act, the President already has the ability to submit to Congress a formal Agreement for Nuclear Cooperation between the U.S. and India. The President has this power, notwithstanding the fact that India does not meet the requirement in Section 123 (a)(2) that it allow full-scope safeguards at all of its nuclear facilities.

All the President has to do to submit such an Agreement to the Congress is to make a determination that inclusion of the full-scope safeguards "would be seriously prejudicial to the achievement of U.S. nuclear nonproliferation interests or would

otherwise jeopardize the common defense and security.” If the India nuclear deal is as important as its supporters claim, if the proposed “separation” plan is really credible from a nonproliferation standpoint, if the common defense and security benefits of the proposed strategic relationship are so compelling, then why is the Administration unable or unwilling to make such a determination?

Some might argue that Section 129 of the Act also poses an obstacle, as it provides that one basis for a cessation of nuclear cooperation with another country is conducting a nuclear explosive test after March 10, 1978, which India has done. Now, I suppose you could pass a bill to change the date so that the test series that the Indians did in 1998 would be grandfathered. But strictly speaking, you really don’t need to do so. The President already has the legal authority to waive Section 129, if he determines that halting such exports “would be seriously prejudicial to the achievement of U.S. nuclear nonproliferation interests or would otherwise jeopardize the common defense and security.” So my question again is why isn’t the White House willing to use this waiver authority? Why aren’t they willing to make those determinations? It isn’t as if this were an Administration that was exactly shy about using its executive authority. In fact, they seem to find authority to do things they want to do even when Congress says they should not.

So why aren’t they using the authority they already have right now? Why don’t they go out, negotiate a nuclear cooperation agreement with the Indian Government, submit it to the Congress, and let this Committee review it and determine whether to approve it and if so, what conditions the Committee believes need to be added to the agreement.

Let me suggest a possible answer. The Administration wants to avoid the enhanced scrutiny that Congress envisioned for Nuclear Cooperation Agreements which fail to comply with requirements established in the Nuclear Nonproliferation Act (NNPA) of 1978, a law enacted in response to the 1974 Indian nuclear test—a test conducted using nuclear materials produced in violation of peaceful uses pledges made to the United States and Canada.

The NNPA added a new Section 123 to the Atomic Energy Act. Section 123 a. of the Act includes nine criteria for approval of a nuclear cooperation agreement that has not been worked out yet, and the Administration’s legislation would exempt India from the safeguards requirement. But it does far more than that.

The Administration bill also stipulates that any future agreement for nuclear cooperation between the U.S. and India “shall be subject to the same congressional review procedures” used for agreements that have “not been exempted from any requirement contained in section 123(a).” This means that the non-conforming India agreement would be considered under a procedure normally reserved for agreements that comply with all of the requirements of the Atomic Energy Act.

This reminds me of the old cartoon of the bear in Yellowstone Park looking for handouts by the side of the road under a sign which reads “Do Not Feed The Bears.” The bear has hung a sign around his neck which reads “I Am Not A Bear!”

Like the bear, the Administration wants us to treat this as a conforming agreement even if it is not.

What happens if—in addition to failing to agree to full-scope IAEA safeguards requirement—the future U.S.-India Nuclear Cooperation Agreement also fails to agree to any of the other eight nuclear nonproliferation and security criteria that U.S. law (Section 123) already mandates? These include guarantees that:

- 1) safeguards on nuclear material and equipment transferred continue in perpetuity;
- 2) nothing transferred is used for any nuclear explosive device or for any other military purpose;
- 3) the U.S. has the right of return if the cooperating state detonates a nuclear explosive device or terminates or abrogates an IAEA safeguards agreement;
- 4) there is no transfer of material or classified data without U.S. consent;
- 5) physical security is maintained;
- 6) there is no enrichment or reprocessing without prior approval;
- 7) storage is approved by the U.S. for plutonium and highly enriched uranium; and,
- 8) anything produced through cooperation is subject to all of the above safeguards.

A memorandum prepared by the Congressional Research Service, a copy of which is attached to my testimony, notes that:

“It is possible that the 30-day consultation with committees could resolve any issues related to the agreement’s meeting the other 8 criteria under Section 123

A., but the proposed legislation, does not include specific provisions for Congress to reject the President's determination that the agreement meets all of the requirements but Section 123 a. (2)."

The concern I raise about the failure is not merely academic in nature. In 1985, I joined with former Representative Solomon (R-NY) to oppose President Reagan's proposed Nuclear Cooperation Agreement with China, because that agreement failed to include the guarantees that the law requires with respect to transfers of nuclear material or technology to other countries. We knew at the time that China had been providing covert nuclear assistance to Pakistan, and the only "guarantee" that the U.S. received on transfers was a vague statement made in an after dinner toast in Beijing. But the Reagan Administration submitted the China Agreement as a conforming agreement. They ran the clock on us, and the best we could do was to try to put in place some nonproliferation certifications into an approval resolution. As it turned out even these de minimus conditions prevented the deal from going into effect for 13 years.

Under the law, a nuclear cooperation agreement which conforms with all of these requirements will go into effect unless both the House and the Senate pass a joint resolution within 90 days to disapprove of the agreement. Inaction by either House, or a failure of both Houses to move legislation before the 90-day time clock expires, therefore results in the agreement going into effect by default. Furthermore, such a joint resolution of disapproval would have to be signed by the President and therefore will likely face a veto, essentially requiring a veto-proof two-thirds majority vote in both Houses to prevent such an agreement from entering into force.

The Bush Administration's India legislation therefore sets up the possibility—and I would suggest the distinct probability—that Congress will be asked to vote on these sweeping exemptions before it has even seen the final text of the actual bilateral Nuclear Cooperation Agreement, before we have actually seen the text of any IAEA safeguards agreement, and then never actually have an opportunity to vote on the actual U.S.-Indian nuclear cooperation agreement. What if the Indians refuse to agree to a U.S. right of return? What if they refuse to provide adequate security? What if the safeguards aren't really permanent? What if India won't agree to prior U.S. consent for retransfers? If this Committee approves the proposed bill, you will have virtually no leverage to respond. By approving the existing legislation you are effectively eliminating Congressional oversight on nuclear cooperation—permanently. The Administration can go to its allies in the House and Senate, go to the Leadership, and simply ask them to run out the clock.

In addition, the Administration's legislation, by treating this unfinished, yet-to-be-seen, yet-to-be-signed Nuclear Cooperation Agreement as a Section 123 compliant Agreement, also removes subsequent annual Congressional reviews of nuclear exports that would otherwise be required under Section 128 of the Act.

That requirement is what allowed Jonathan Bingaman and I to offer a resolution to block the Tarapur fuel deal back during the Carter Administration—with the support at the time of both you, Mr. Chairman, and Vice President Cheney. The Tarapur fuel deal ultimately went through when the Senate failed to block it, but at least we followed regular order and had a debate and a vote.

The Administration apparently has deemed this Congressional exercise of its powers to regulate foreign commerce to be "too cumbersome." I would submit that such Congressional reviews serve as an important check on executive excesses. But under the Administration bill, just to be sure Congress cannot step in to examine such subsequent arrangements, the Administration's proposed bill grants the President broad, unfettered authority to waive all of Section 128 of the Act. He doesn't have to make any nonproliferation or security determinations—as would be required under existing law. He can waive at will.

The Administration could wait and submit the future nuclear cooperation agreement with India as a nonconforming agreement. In this case, it could not go into effect until both bodies had carefully reviewed the merits of the agreement and adopted resolutions by a simple Majority vote to approve it. This process allows the Congress to either block agreements that are not in our nation's national security or nonproliferation interests, or to attach conditions or limitations on such agreements to preserve important U.S. nonproliferation interests.

The Administration is essentially asking this Committee to approve a nuclear cooperation agreement that has not been worked out yet, and they would like you to surrender your prerogatives to review subsequent exports carried out pursuant to this Agreement—as provided for under existing law.

But there's more, the Administration bill also grants the President unfettered discretionary authority to waive the sanctions which are provided for under Section 129 of the Atomic Energy Act—so that even if India violates the Agreement, even

if India kicks out the IAEA, even if it diverts U.S.-origin nuclear material or technology to its weapons program, or even if it helps another country acquire nuclear weapons, the President is free to continue supplying India with nuclear materials and technology. Now why is that? Could it be related to the odd and unprecedented promise made in the March 2nd Separation Agreement that the U.S. would secure India with a fuel supply in perpetuity?

There is no rush to make such drastic changes to U.S. law. It makes no sense for Congress to approve a nuclear cooperation agreement that hasn't yet been negotiated. Congress should wait to see the final text of the Nuclear Cooperation Agreement that the Bush Administration signs. Congress should also wait to see the details of the IAEA safeguards agreement. Will nuclear fuel be safeguarded from cradle-to-grave? Will IAEA inspectors have unfettered access to facilities? These are critical details that Congress should consider before changing U.S. law. The precedents that are set with this agreement will not necessarily be limited to India. Why should any non-weapons state that has actually signed the NPT and agreed to abide with full-scope safeguards, agree to any of the requirements of Section 123 if the U.S. has previously waived them with respect to India?

And what are the international implications of proceeding down this path? How can the U.S. plausibly argue at the U.N. Security Council for a tough stance on Iran's violation of its IAEA safeguards agreement if it is simultaneously moving forward to engage in nuclear trade with a country that has refused to even sign the NPT or agree to full-scope safeguards?

How will U.S. be able to turn back a future Chinese effort to grant Pakistan the same special exemptions from international nuclear nonproliferation rules that the Administration wishes to create for India?

And if, as the Administration bill proposes, each Member of the Nuclear Suppliers Group is free to determine for itself whether India is in compliance with the broad nonproliferation "principles" that the Administration has suggested, what is to prevent Russian, French and other nuclear vendors to engage in a race to the bottom in search of reactors deals in South Asia?

The Administration would like Congress and the American people to believe that agreeing to this deal is an urgent matter. It is not. The Administration would like us to believe that expanding India's nuclear power capabilities will free-up oil for the U.S. This deal has nothing to do with oil. In 2005, only 1% of India's installed electrical capacity was fueled by oil and only 2.7% by nuclear power.

India has real energy needs, but it does not need nuclear power plants to meet these needs. Len Weiss, who is also testifying here today, has said that ". . . an aggressive program of improved energy efficiency could substitute for all the future power output from nuclear reactors currently being planned in India between now and 2020."

Coal currently constitutes 55% of India's electricity generation. India has the world's 4th largest coal reserves, but India's coal is dirty. It has a high ash content. Approximately 600,000 children die of acute respiratory infection in India every year. India has an estimated 20 million asthma patients, most of them children. Pilot studies by the USAID were able to reduce emissions from 50 year old coal plants by a factor of 50!

Throughout the next century, Coal will continue to be the major player in India's electricity sector. India plans to build an additional 213 coal plants by 2012. These plants will produce the bulk of India's electricity. A realistic, safe, and practical plan for partnership between the United States and India would be a Clean-coal cooperative, not a nuclear one.

I urge this Committee to reject the Administration's proposed bill, and to ensure that any India nuclear cooperation deal is considered under the procedures set forth under existing law. In this way, Congress can consider the issue of "conditions" on the India nuclear deal after it has actually reviewed the terms of the proposed deal itself.

Thank you.

Chairman HYDE. Thank you, Mr. Markey. Mr. Kolbe.

STATEMENT OF THE HONORABLE JIM KOLBE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. KOLBE. Thank you, Mr. Chairman, Ranking Member Lantos, and Members of the Committee. I thank you for this opportunity to testify. To my good friend, Mr. Hyde, who is retiring, as I am,

this year, your departure will leave a huge void in this body. Your reputation for fairness and integrity is well deserved.

I am pleased to be here today to talk about the future of our relationship with India and the United States-India nuclear civil nuclear cooperation initiative. I believe the United States, through its foreign assistance program, has played an important role in recent years to create a strong and sustainable India.

The result? India now boasts the second fastest rate of economic growth in the world. Despite these important successes, the work of building a strong and lasting relationship with India as a strategic partner is just beginning.

We must help India become fully independent of all foreign assistance to achieve self-sufficiency, and to join us as a donor nation. The good news is that there is an important opportunity to help achieve this, and that has arrived in the form of the United States-India civil nuclear cooperation initiative.

The initiative has the potential to put India on the path to becoming a strong, clean, energy-producing nation. Nuclear energy is clean and safe. Greenpeace founder, Patrick Moore, said in the *Washington Post* recently that nuclear energy can "save our planet from catastrophic climate change." Moore also wrote that every responsible environmentalist should support a move toward nuclear power.

We have also learned from the mistakes that we have made in building reactors in the past so that radiation cannot escape into the environment. At Three Mile Island, for example, the reactor itself was crippled, but there was no injury or death among nuclear workers or nearby residents.

Chernobyl, by contrast, utilized an old, outmoded, and unsafe construction design. Traditionally, every percent of increased energy production for a nation correlates directly with increased GNP, meaning a larger economy and greater resources for internal development.

We can only provide India about \$60 million a year in foreign assistance through my Subcommittee, mostly in health programs. But poverty reduction and a healthy population cannot be achieved solely with more foreign assistance.

Trade is a fundamental instrument, and spurring economic growth, and lifting populations out of poverty. Our objectives should be to help India find the tools that they need to achieve this growth.

As this Committee knows, current United States law prevents the United States from implementing the proposed United States-India joint agreement because India is not a signatory to the Nuclear Non-Proliferation Treaty (NPT). This legislation would amend the 1954 Atomic Energy Act, allowing American firms to provide nuclear goods and services to India's civil nuclear program, something that is currently prohibited.

To sign on to the NPT, India would have to give up existing weapons that it deems necessary for its own security. H.R. 4974 allows the United States to work with India outside of the constraints of the NPT.

To those that argue that providing nuclear assistance to India weakens our case in demanding that Iran stop its own nuclear pro-

gram, I would say that there is no comparison between the two cases.

Other countries have signed the Nuclear Non-Proliferation Treaty but then violated or circumvented it, but not India. They didn't sign the treaty, but they have stayed true to the letter and the intent of this international agreement.

Iran signed the Nuclear Non-Proliferation Treaty and then used loopholes to pursue development of nuclear weapons. North Korea, having signed and broken their pledge completely, withdrew from the NPT. Iran and North Korea stand convicted in the court of public opinion.

Those arguing that this will weaken the fight against non-proliferation should instead be asking the questions of the signators, not of the non-signators to the NPT. In the case of India, they developed their nuclear program outside of the NPT and have been an honest broker and an ally to the United States by adhering to the principles of the agreement.

They have not shared or distributed nuclear material or technology to other nations or rogue groups, and this is an important distinction. If Congress enacts this legislation, India will have a tougher nuclear scrutiny than is given to China, to Russia, to other major nuclear powers.

None of these country's reactors are under inspection regime. India would place at least two-thirds of its program under the direct eye of the International Atomic Energy Agency. If India cannot produce or pursue plutonium production, China would become the clear dominant nuclear power in Asia.

This agreement is not just about helping India. It helps reduce the world demand for oil. India must be given the opportunity to safely create alternatives to oil dependency. Iran and India, along with Pakistan, have agreed to build a \$7 billion pipeline to move Iranian natural gas to India via Pakistan.

This only bolsters Iranian power in the region, and India's dependency on a regime hostile to the United States and to its allies. The United States-India civil nuclear cooperation will help reduce global emissions of pollutants, while simultaneously stimulating India's economy.

Simply put, the United States-India civil nuclear cooperation initiative is about giving India a helping hand toward a self-sustaining energy future. The United States' role as a foreign assistance donor to India is coming to a close.

We have one important task left. Pass the United States-India civil nuclear cooperation agreement, an agreement that will create jobs in America and give India the tools and resources it needs to stand on her own, and to be a self-sufficient, key ally, making a difference in the global economy.

In closing, I want to remind my colleagues of India's vast potential, with a population of close to 1.1 billion people, India faces great opportunities, but also significant challenges. Currently, 25 percent of the population, roughly the size of the United States, still lives in poverty, and on less than a dollar a day. There are health concerns and lack of access to many basic needs. We can reduce this suffering by giving the thriving middle-class, as large as the entire population of our own country, the resources that they

need to be strong and prosperous so that those in poverty can be elevated.

Imagine hundreds of millions of people with an appetite for energy consumption, and in many cases imported American goods, brands, technologies, and ingenuity. We have an obligation to India, as well as to our country, to maintain a strong alliance with such a robust nation.

Given these facts, I ask my colleagues to set aside old fears and myths, and scare tactics of nuclear proliferation, and the mushroom cloud, and acknowledge the truth that nuclear technology is a cleaner and a safer way of providing energy in this growing region. I thank the Chairman.

[The prepared statement of Mr. Kolbe follows:]

PREPARED STATEMENT OF THE HONORABLE JIM KOLBE, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF ARIZONA

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today. To my good friend Chairman Hyde, who is also retiring, I have been told for the past few months that I will be missed when I am gone. I have a hard time believing them. However, I can honestly say that you Mr. Chairman will leave a huge void in the Congress. Your reputation for fairness and integrity is well deserved.

I am please to be here with you today to talk about the future of our relationship with India and the U.S.-India Civil Nuclear Cooperation Initiative.

I believe the United States, through its foreign assistance program, has played an important role in recent years to create a strong, sustainable India.

In India, US foreign assistance has achieved some success by helping develop a sound economy, strengthening democratic institutions, while developing a new ally and trading partner for the US.

The result? India now boasts the second fastest rate of economic growth in the world.

Despite these important successes, the work of building a strong and lasting relationship with India as a strategic partner is just beginning. We must help India become fully independent of all foreign assistance, achieve self sufficiency and join us as a donor nation.

The good news is that an important opportunity to achieve this has arrived in the form of the U.S.-India Civil Nuclear Cooperation Initiative.

The initiative has the potential to put India on the path to becoming a strong, clean energy producing nation. Nuclear energy is clean and safe. Greenpeace founder Patrick Moore said in the Washington Post recently that nuclear energy can "save our planet from . . . catastrophic climate change." By reducing CO2 emissions in a cheap, safe and efficient manner, the Indians, like the French and Japanese before them, can replace their coal-fired plants with significant emissions and help improve our planet's environmental health. Moore writes that "every responsible environmentalist should support a move" towards nuclear power.

We have also learned from the mistakes we have made in building reactors in the past so that radiation cannot escape into the environment. At Three Mile Island, for example, the reactor itself was crippled, but there was no injury or death among nuclear workers or nearby residents. Chernobyl, by contrast, utilized an old, out-moded and unsafe construction design.

Traditionally, every percent of increased energy production for a nation correlates directly with increased GNP, meaning a larger economy and greater resources for internal development.

We currently provide India more than \$60 million a year in foreign assistance, mostly in health programs. But, poverty reduction and a healthy population cannot be achieved solely with more foreign assistance.

Trade is a fundamental instrument in spurring economic growth and lifting populations out of poverty. Our objective should be to help India find the tools they need to achieve this growth.

As this Committee knows, current U.S. law prevents the U.S. from implementing the proposed U.S.-India Joint agreement because India is not a signatory to the Nuclear Non-Proliferation Treaty. This legislation amends the 1954 Atomic Energy Act, allowing American firms to provide nuclear goods and services to India's civil nuclear program, something currently prohibited.

To sign onto the NPT, India would have to give up existing weapons that it deems necessary for security. H.R. 4974 allows the U.S. to work with India outside of the constraints of the NPT.

To those who argue that providing nuclear assistance to India weakens our case in demanding Iran stop its own nuclear program, I would say there is no comparison between the two cases. Other countries have signed the NPT, but then circumvented it. But, not India. They did not sign the treaty, but they have stayed true to the letter and intent of this international agreement.

Iran signed the Nuclear Non-Proliferation Treaty and then used loopholes to pursue development of nuclear weapons. North Korea, having signed and broken their pledge completely, withdrew from the NPT. Iran and North Korea stand convicted in the court of opinion. Those arguing that this will weaken the fight against non-proliferation should instead be asking questions of the signatories—not the non-signatories of the NPT.

In the case of India, they developed their nuclear program outside of the NPT and have been an honest broker and ally to the U.S. by adhering to the principles of the NPT. They have not shared or distributed nuclear material or technology to other nations or rogue groups. This is an important distinction.

If Congress enacts this legislation, India will have tougher nuclear scrutiny than is given to China, Russia and the major nuclear powers. None of these countries' reactors are under any inspection regime. India would place at least two thirds of its program under the direct eye of the International Atomic Energy Agency.

China is a rising political power in Asia, as well as Africa and Latin America. I would remind my colleagues of our long standing national strategy to oppose the rise of a single hegemonic power in either Europe or Asia.

But, if India cannot pursue plutonium production, China would become the clear, dominant nuclear power in Asia.

This agreement is not just about helping India. Trade is a two-way street and civil nuclear cooperation will open U.S.-India trade and investment in nuclear energy for the first time in three decades, increasing opportunities for U.S. firms. And in turn creating jobs here at home.

It also reduces world demand for oil.

India must be given the opportunity to safely create alternatives to oil dependency. Iran and India, along with Pakistan, have agreed to build a \$7 billion pipeline to move Iranian natural gas to India via Pakistan. This only bolsters Iranian power in the region and India's dependency on a regime hostile to the U.S. and our allies.

The U.S.-India Civil Nuclear Cooperation Initiative will help reduce global emissions of pollutants while simultaneously stimulating India's economy.

Last July, the United States joined with Australia, China, India, Japan, and South Korea to create a new Asia-Pacific partnership on clean development, energy security, and climate change. The purpose of the partnership is to allow participating nations to develop and accelerate deployment of cleaner, more efficient energy technologies that can help us meet goals for national pollution reduction, energy security, and climate change. If we believe in a cleaner environment and a healthier future, we must develop new energy sources, using science and technology, rather than relying on deeper oil wells in ever more remote corners of the world.

Simply put, the U.S.-India Civil Nuclear Cooperation Initiative is about giving India a helping hand towards toward a self-sustaining energy future.

The United States' role as a foreign assistance donor to India is coming to a close. We have one important task left: pass the US-India Civil Nuclear Cooperation agreement—an agreement that will create jobs in America and give India the tools and resources it needs to stand on her own and be a self-sufficient, key ally, making a difference in the global economy.

In closing, I would like to remind my colleagues of India's vast potential. With a population of close to 1.1 billion people, India faces great opportunity and some challenges. Currently, 25% of the population, roughly the size of the U.S., still lives in poverty on less than a dollar a day. There are real health concerns and lack of access to many basic needs. We can reduce this suffering by giving the thriving middle class—as large as the entire population of our own country—the resources they need to be strong and prosperous, so those in poverty can be elevated.

Imagine hundreds of millions of people with an appetite for energy consumption and in many cases imported American goods, brands, technology and ingenuity. We have an obligation to India as well as to our country to maintain a strong alliance with such a robust nation.

Given these facts, I urge my colleagues to set aside old fears and myths and the scare tactics of nuclear proliferation and the mushroom cloud, and acknowledge the truth that nuclear technology is a cleaner and safer, way of providing energy in a growing region.

Thank you.

Chairman HYDE. Thank you, Mr. Kolbe, and I want to thank you, Mr. Markey, and Mr. Kolbe, for your great contribution to these hearings. As you know, it is customary not to question Members of Congress, and we will abide by that custom. So you are released, again with our deep thanks.

We are fortunate also to have with us today a panel of admirably qualified experts to assist us in our discussion of legislative options regarding initiating peaceful nuclear cooperation between the United States and India.

Dr. Ashley Tellis is a Senior Associate at the Carnegie Endowment for International Peace. He has served in the United States Department of State as Senior Advisor to our Ambassador to India, and on the National Security Council staff as Special Assistant to the President. Dr. Tellis has previously testified before this Committee on the United States-India global partnership.

Dr. Leonard Weiss is currently an independent consultant. He will reenter the academic community in September when he becomes a Senior Science Fellow at Stanford University. Dr. Weiss served as an aide to Senator John Glenn of Ohio for 23 years, and in that capacity was the chief architect of the Nuclear Non-proliferation Act of 1978. We welcome you back to the Hill, Dr. Weiss.

Although currently at the international consulting of Bengelsdorf, McGoldrick and Associates, Dr. Fred McGoldrick served in the State Department for 16 years, where he played a prominent role in negotiating the nuclear cooperation agreement with China, the European Atomic Energy Agency, Japan, and South Africa, Switzerland, Argentina, and Brazil. He later served at the United States Mission to the International Atomic Energy Agency in Vienna. We welcome you, Dr. McGoldrick.

Dr. Richard Falkenrath is a Senior Fellow at the Brookings Institution, where proliferation ranks among his many areas of expertise. Prior to joining Brookings, Dr. Falkenrath served the current Administration in many high-level positions, especially in the crucial area of homeland security. We thank you for joining us, Dr. Falkenrath.

Daryl Kimball is a well-known expert on nuclear proliferation and is characterized by his commitment to this most important subject. Dr. Tellis, if you would proceed with a 5-minute summary, as best you can, of your prepared statement.

All witnesses' prepared statements will be made a part of the record. Dr. Tellis?

**STATEMENT OF ASHLEY J. TELLIS, PH.D., SENIOR ASSOCIATE,
CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE**

Ms. TELLIS. Thank you, Mr. Chairman, Mr. Ranking Member, and Members of the Committee. Thank you for inviting me to testify today on the subject of legislative options available to the Congress in connection with its consideration of the civil nuclear agreement.

It seems to me that there are three schools of thought about the civil nuclear agreement today in the United States. The first school is one that believes that the President's proposal, both in substance

and in process, is a good one, and ought to be supported. I must candidly confess that I am a card-carrying member of this school.

There is a second school of thought which believes that the civil nuclear agreement with India is a bad idea, and ought not to be supported until India joins the Non-Proliferation Treaty as a non-nuclear weapons state. I have great respect for people who believe in the arguments adduced by the school, but on balance I disagree with them because I believe that this is pursuing an objective that is beyond our reach.

There is a third school which is intriguing, which believes that there is good promise in the civil nuclear agreement with India, but that it ought to be improved, preferably through some form of legislative action. I am intrigued by the proposals offered by members of this school, but I am also concerned by them. I am concerned because I am not convinced that many of the ideas that have been discussed in this connection would actually avoid gutting the agreement as we have it today after many months of negotiations with the Indians.

Having said that, however, I do not want to leave this Committee simply with the notion that I am completely closed to the idea of legislative action in connection with this agreement, and so what I wanted to do was to propose three principles that you might want to consider as you think through future actions on the President's proposal.

The first principle that I would urge for your consideration is that the civil nuclear agreement, as it stands, encodes a very delicate balance between benefits and obligations on the part of both of our countries.

And Congress ought not to entertain any amendments that essentially disrupt this balance and, in the process, destroy the deal. The second principle that I would urge for your consideration is that the civil nuclear agreement really is about enhancing India's energy security and strengthening the global nonproliferation regime by making New Delhi formally a part of the international coalition to defeat the further proliferation of weapons of mass destruction.

I would urge Congress to eschew the temptation of transforming this accord into something and not limiting the Indian nuclear weapons program. No matter how desirable some may consider this objective to be, it is another one of those considerations that will push the agreement essentially beyond reach, and it will compromise it irrevocably and destroy the President's initiative.

The third consideration that I would urge Members of Congress to consider is that the civil nuclear agreement is fundamental about transforming the relationship between the United States and India, and between India's relationship with key members of the international community, especially the nuclear supplier's group and the IAEA.

I would urge Congress, accordingly, to reject any amendments that target or impose burdens on either Indian or United States relations with third-countries insofar as these pertain to the implementation of the civil nuclear agreement.

In my prepared testimony, I have provided many positive ideas that the Congress might want to look at in terms of how it can

move forward. Let me end my oral remarks, though, by addressing two issues that I know are of concern to the Committee, and in which Congressman Berman circulated in his open letter to the Committee.

The first is whether the idea of creating a criteria-based approach, as opposed to an India-based approach, is preferable in dealing with this agreement. My own view is that there are no real advantages at this point to moving to a criteria-based approach, because India's circumstances are unique, and the President's proposal in a sense respects that uniqueness while protecting all of Congress' equities as they exist with respect to the agreement.

The second question has to do with whether Congress should treat the agreement between the United States and India as a conforming agreement or as a non-conforming agreement. Many have made the argument that the Administration's strategy in this regard is designed to whittle down Congress' positive oversight.

With due respect, I disagree with this view. I think what the President's proposal does is that it tries to juggle a very complex balance between our obligations to India, our interests in moving the international community to support the President's initiative with India, and our obligations to the Congress.

And precisely because these three considerations have to be juggled in a very complex and sensitive way, I believe that the Administration has proposed the course of action that it has. I urge the Congress to endorse the legislative proposal as it stands, and I will be happy to answer any questions.

[The prepared statement of Mr. Tellis follows:]

PREPARED STATEMENT OF ASHLEY J. TELLIS, PH.D., SENIOR ASSOCIATE, CARNEGIE
ENDOWMENT FOR INTERNATIONAL PEACE

Good morning, Mr. Chairman, and Members of the Committee. Thank you for your invitation to testify on the legislative options associated with the President's proposal for civil nuclear cooperation with India. I am strongly of the belief that the President's legislative proposal on this subject—both on process and on substance—is a good one. I recognize that there are many who hold an opposing view, contending that civilian nuclear cooperation with India should not occur under any circumstances short of New Delhi signing the Non-Proliferation Treaty (NPT) as a non-nuclear weapon state. I have great respect for this opinion because the arguments advanced by its protagonists are weighty and serious, but on balance I disagree with it—for the geopolitical, energy, and nonproliferation reasons I have elaborated elsewhere.¹ And, finally, there is a third perspective: those who believe that the U.S.-Indian agreement on civilian nuclear cooperation ought to be supported, but after improvement through legislative amendments. I appreciate the sentiments underlying this position, but have yet to be convinced that such a course of action can be successfully pursued without grave risk to the accord itself.

In Niccolò Machiavelli's great book, *The Prince*, Machiavelli makes the important distinction between imagined republics, "that have never been seen or known to exist in truth," and real republics which, despite being base, messy, and invariably

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 Relations, 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; 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 and Ashley J. Tellis, Prepared Testimony to the Senate Foreign Relations Committee on "U.S.-India Atomic Energy Cooperation: Strategic and Nonproliferation Implications," April 26, 2006.

compromised, remain the only world we actually have. Confronted by these alternatives, Machiavelli taught that all political practice that seeks to be successful ought to take its bearings from how things effectively are, rather than from some idealized impressions of what they ought to be. I would urge Congress to apply Machiavelli's teaching when thinking about how to improve the current U.S.-Indian civil nuclear agreement: it is no doubt easy to envision a series of imaginary U.S.-Indian accords on civil nuclear cooperation, all of which are undoubtedly superior to the one and only agreement that currently exists between the two countries. All these imaginary agreements would improve upon the current understanding in an infinite variety of ways—with thoughtful Americans and thoughtful Indians each proposing different amendments to the compact that now presently exists. There is no dearth of commentary both in the United States and in India on how the existing Bush-Singh agreement might be further improved to the benefit of one or the other side. There is only one problem, however, with all these imagined agreements: they do not exist—and any effort to beget them, through a radical modification of that which exists already, would have exactly the effect of killing the only agreement possible between the two countries.

The agreement on civil nuclear cooperation that presently exists between the United States and India was the only accord possible because it remains the only framework that protects the core national security interests of both sides. To be sure, both the Administration and the Singh government would have each preferred a different kind of understanding—one that advanced its own interests a little more at the expense of the other's. Such an agreement, however, lay outside the capacity of both parties to consummate—and for good reason: any agreement that undermines the vital national interests held by the other will always remain a species of Machiavelli's "imagined" politics, one that is pleasant to contemplate, good to yearn for, but forever beyond reach. The agreement on civil nuclear cooperation concluded by President George W. Bush and Prime Minister Manmohan Singh is probably the "worst" possible agreement that could be secured in comparison to all the other imaginary compacts that could be imagined, but it is the only one that materialized precisely because its various compromises enabled both the United States and India to protect their principal national interests in a conciliatory way: It advances the American strategic objectives of cementing a new and transformed relationship with a large rising power in the international system, India, while concurrently strengthening the global non-proliferation regime by requiring India to institutionalize stringent export controls, bring its civilian nuclear reactors under international safeguards, and assist the United States in preventing further proliferation; simultaneously, it advances the fundamental Indian objective of securing access to nuclear fuel, technology, and knowledge required to expand its nuclear power program, even as it preserves New Delhi's right to produce those nuclear weapons judged to be essential for Indian security in the face of threats emanating from a rising China and a revanchist Pakistan. Since no other agreement, including the many imaginary versions now being contemplated, could protect these vital interests of the two countries in exactly this way, it is not surprising that the understanding finally reached between the two sides was exactly the one that now lies before the Congress for legislative endorsement.

None of what I have said thus far is meant to impugn in any way Congress' prerogative to amend the President's legislative proposal as it sees fit. It is intended, however, to suggest the following propositions for Congressional consideration:

To begin with, and despite what may be appearances to the contrary, the current Administration proposal on civilian nuclear cooperation with India is the best agreement that could be realized in the real world—given the competing pressures both in the United States and in India—as opposed to some imagined alternative.

Further, if the Administration's strategic goals in reaching this agreement are accepted as worthwhile by the Congress—irrevocably removing all past structural obstacles to the transformation of the U.S.-Indian relationship; assisting India's energy needs in an environmentally sensitive way as part of a larger vision of increasing Indian power in support of U.S. geopolitical goals in Asia and beyond; and, strengthening the global non-proliferation regime by improving Indian export controls and encouraging India to take on regime obligation that go beyond those ordinarily accepted by NPT signatories—then, there is very little that the current agreement would need by way of Congressional improvement.

And, finally, any legislative "improvements" to the current proposal that have the effect of killing the civilian nuclear agreement with India would do grave, perhaps lasting, damage to the ongoing transformation in U.S.-Indian relations, U.S. regional policy in South Asia, and U.S. efforts to successfully manage a re-

surgent Asia. As such, they ought to be carefully considered for their immediate and remote consequences.

Consistent with these considerations, let me suggest three principles that might be of help to the Congress as it considers its options in regards to the President's legislative request.

First, the U.S.-India civil nuclear agreement, as it currently stands, encodes a very delicate balance between benefits and obligations on both sides—Congress ought not to entertain any amendments that disrupt this balance and in the process destroy the deal.

- As a practical matter, this implies that Congress should not support any amendments that have the effect of increasing any U.S. or Indian burdens in a manner inconsistent with the original deal. Specifically, Congress ought to eschew the temptation of introducing demands that would require the Administration to re-negotiate the agreement with India. Any amendments that have this consequence—whether intended or not by their protagonists—would have the effect of killing the civil nuclear agreement and, by implication, destroying the growing transformation of U.S.-Indian relations, which remains in the view of many observers the President's greatest foreign policy achievement thus far and one that enjoys bipartisan support in the Congress. In this connection, Congress should particularly resist the temptation to trying to shape India's foreign policy choices through legislative conditionality. There are some areas where India's foreign policy priorities are not entirely congruent with those of the United States. This is not a situation unique to India; rather, it describes circumstances common in international politics. India's ties to Iran are a good example in this regard, where New Delhi's relationship with Tehran is closer to Rome's or to Tokyo's than to Washington's. I understand the sentiment in Congress to attach amendments to the President's legislation, which would push Indo-Iranian relations in a different direction: I hope Congress will desist from pursuing such a course, not because I necessarily disagree with this goal but because I think legislative conditionality is a blunt instrument that could end up subverting its intended objectives. There are some goals that are best pursued through quiet diplomacy, perhaps supplemented by a "sense of Congress" resolution, rather than through formal and exacting legislative mandates: shaping India's relations with Iran is one such goal.

Second, the U.S.-India civil nuclear agreement is about enhancing India's energy security and strengthening the global non-proliferation regime by giving India access to nuclear fuel, technology, and knowledge in exchange for New Delhi formally becoming part of the international coalition to defeat the further proliferation of weapons of mass destruction—Congress should eschew the temptation to transform this accord into a device that is aimed at limiting India's nuclear weapons program.

- As a practical matter, this implies that Congress should not support any amendments that are intended to limit, or have as their effect a limitation on, India's capacity to produce fissile materials for its nuclear weapons program. Irrespective of how desirable such a condition may be to some in the United States, the Government of India has formally taken the position that so long as China continues to produce nuclear weapons and delivery systems (including many aimed at India); Beijing continues to support Islamabad's nuclear and missile programs; and Pakistan continues to produce fissile materials and nuclear weapons, India cannot adhere to any unilateral nuclear materials production moratorium without seriously undermining its own national security. Accordingly, any effort to stipulate that an Indian fissile materials production moratorium would be a precondition for implementing the deal in effect functions as a "poison pill" that would sunder the accord. In a similar vein, Congress should avoid the temptation of introducing any conditions that require India to eschew a resumption of nuclear testing under any circumstances in perpetuity. The Government of India is fully aware of what a resumption of nuclear testing would precipitate under current U.S. law; the Government of India has also reaffirmed its current unilateral moratorium on nuclear testing in the July 18, 2005, Joint Statement. Both these facts provide a delicate, but adequate, assurance of continued Indian restraint so long as *force majeure* circumstances do not intervene. Since this is a highly volatile and contentious matter in Indian domestic politics, not to mention one that implicates Indian sovereignty and perhaps even its security over time, Congress should make no effort to extract stronger Indian commitments on the

issue of nuclear testing than those already provided by New Delhi. Any attempts to the contrary would certainly kill the current agreement.

Third, the U.S.-India civil nuclear agreement is fundamentally about transforming the relationship between the two countries and deepening India's integration with key international institutions, such as the Nuclear Suppliers Group (NSG) and the International Atomic Energy Agency (IAEA), which are central to strengthening a peaceful international order—Congress, accordingly, should reject any amendments that target or impose burdens on either Indian or U.S. relations with third countries insofar as these pertain to the implementation of the understanding on civilian nuclear cooperation.

- As a practical matter, this implies that Congress should move expeditiously to amend Section 123 of the Atomic Energy Act as requested by the President. Such an action would provide the Nuclear Suppliers Group with every incentive to make an early formal decision about treating India as an exception to its current Guidelines, an action that would have the effect of creating a level playing field for U.S. industry seeking to enter the Indian nuclear energy market. It would also induce the Government of India to conclude as quickly as possible a safeguards agreement with the IAEA and a nuclear cooperation agreement with the United States—the fruits of these agreements obviously cannot be enjoyed until the former is ratified by the Board of Governors of the IAEA and the latter by the Congress—both of which are moving slowly in part because of Indian fears about Congress' reluctance to complete the appropriate legislative action. Finally, it would provide other nuclear suppliers, most of which are friends or allies of the United States, with a template that they might use to configure their own nuclear cooperation agreements with India in support of the common goal of integrating New Delhi into the global non-proliferation system, while simultaneously permitting them to incorporate whatever clauses their own specific national interests might require. Since the goal of integrating India into the global nonproliferation system must be undertaken in an orderly way for the sake of the system as a whole, we should be mindful of the fact that nuclear cooperation agreements between India and other third parties may differ from one another in various ways. In this context, Congress should refrain from the temptation of trying to regulate these third party agreements because any amendments directed towards this end would end up not only being difficult to implement but also erode trust between the United States and its international partners.

If these three principles are adhered to scrupulously, as I believe they must be if we are to avoid gutting U.S.-Indian civilian nuclear cooperation, it will become obvious that there is not much Congress can do to substantively “improve” the content of this important initiative. This fact should not be a reason for legislative angst; rather, it should be viewed as a reflection of the complexity surrounding the civil nuclear understanding with India, and the difficult pressures that both the President and Prime Minister Singh have had to juggle with as they worked out the details of this path-breaking effort. If Congress, in my opinion therefore, ought not to attempt improving the substantive content of this understanding directly, there are important contributions that it can still make to ensuring that the U.S.-Indian civil nuclear agreement advances American interests both with respect to India and in regards to the larger international order. Let me identify five areas where Congressional initiatives, not necessarily though through legislative conditions, may be particularly helpful.

- (1) Congress should enjoin the Administration to encourage India to broaden its participation in regards to strengthening the global non-proliferation order, primarily through Indian membership in the Proliferation Security Initiative, the Australia Group, and the Wassenaar Arrangement. As Secretary Rice testified before this committee, the Administration has already pressed India strongly on these issues. It is possible, perhaps likely, that by the time Congress acts on the President's legislative proposal, these matters will be happily resolved with India announcing its commitment or membership as appropriate. If this does not occur, however, a Congressional prod in this direction—by legislative conditionality, if necessary—would be entirely appropriate.
- (2) The successful implementation of the U.S.-India civil nuclear agreement would assure India's integration into global nuclear order. Yet, the future of this order is itself uncertain as new technologies relating to weapons of mass destruction spread throughout the globe, both to new non-state actors and to existing states. Given this fact, Congress could enjoin the Adminis-

tration to engage in a regular dialogue with India on the future of the global nuclear order in the hope that both sides could reconcile their objectives and strategies as they jointly work towards achieving the goals set out by the NPT for all states in different ways.

- (3) Congress should urge the Administration to engage India in a focused dialogue on reforming the management of its nuclear estate, primarily with the aim of opening its nuclear power production infrastructure to foreign and domestic private investment. Implementing this objective entails a wide variety of actions ranging from amending the Indian Atomic Energy Act to allow private investment, to creating new regulations that oversee all the activities of the new private entrants. While the Government of India has indicated its interest in exploring how its nuclear power sector might be opened to private participation, a fillip to this effort through a dialogue involving government officials, the nuclear industry, and other private stakeholders could benefit the interests of both countries as India moves towards a large-scale expansion of nuclear energy.
- (4) Associated with the third idea but distinct from it, is the need for India to develop a legal, regulatory, and financial regime for managing catastrophic risks, a contingency that must be anticipated in the context of expanding nuclear power production in India and the growth of India as an industrial power more generally. While U.S. industry has floated many ideas on how India could address nuclear liability issues, what is important is that India develops a comprehensive nuclear liability regime if for no other reason than to afford protection for U.S. nuclear suppliers who might otherwise be placed at a competitive disadvantage relative to others. Congress should urge the Administration to begin discussions with India on this issue.
- (5) Finally, Congress should encourage the Administration to conduct an ongoing discussion with India, either through the IAEA or bilaterally, on enhancing both the security and the safety of its nuclear installations. In this regard, I must emphasize that the Government of India accords highest priority to protecting its strategic, including nuclear power generation, facilities against both external and insider threats through a combination of technical and procedural means. Successive IAEA and NRC delegations visiting India have also had occasion to comment favorably on the Indian efforts in regards to ensuring safe operation of its nuclear facilities. A Congressionally mandated dialogue that focuses on non-intrusive technical exchanges about best practices and other measures relating to security and safe operation of nuclear facilities would be most useful.

Let me end these remarks by addressing two critical issues of process that I know are of great interest to the Committee. The first concerns the Administration's proposal to treat the formal U.S.-Indian nuclear cooperation agreement as a conforming agreement that would come into effect so long as Congress did not pass a resolution of disapproval. Many critics of the U.S.-Indian nuclear cooperation agreement view this approach as an effort by the Administration to whittle down Congress' legitimate oversight authority under the Atomic Energy Act. I view this issue somewhat differently. I judge the Administration's proposal to treat the (yet to be concluded) U.S.-India nuclear cooperation agreement as a conforming agreement as primarily a delicate balancing act aimed at satisfying difficult competing obligations towards three different, yet important, constituencies simultaneously:

Vis-à-vis India, the Administration seeks to give substantive meaning to the concept of "full nuclear cooperation" by communicating to New Delhi that its objective is to permanently shift India into the category of accepted countries with which the United States routinely conducts civil nuclear commerce—in effect, treating India in exactly the same way as it treats nuclear transactions with all its other preferred trading partners. In communicating this intention, the Administration seeks to convey that it is serious about eliminating all standing impediments to the transformation of U.S.-Indian relations, clearly the most important reason why the President and Prime Minister Singh contemplated resuming civil nuclear cooperation in the first place.

Vis-a-vis the international community (and in particular other nuclear suppliers), the Administration is seeking simultaneously to provide incentives to the NSG to act expeditiously in adopting a resolution that treats India as an exception to the current guidelines, while at the same time attempting to avoid a situation where U.S. nuclear industry might be commercially disadvantaged if the NSG were to permit the resumption of international nuclear trade with India before Congress mustered the time to affirmatively approve a U.S.-India

nuclear cooperation agreement. In managing this delicate balance between orchestrating international support for the U.S.-Indian nuclear cooperating initiative and protecting American commercial interests, the Administration is seeking to minimize the uncertainty caused by the prospect of having two, possibly distant, votes on exactly the same subject, namely whether Congress effectively endorses the President's policy of initiating full nuclear cooperation with India.

Vis-à-vis Congress itself, the Administration appears to be groping for a way to avoid disturbing Congressional prerogatives with respect to ratifying the President's initiative with India, while still seeking the strongest possible expression of Congressional support which, it believes, is best manifested through advance legislative endorsement that supports the goal of full nuclear cooperation with India. In effect, the President's current legislative proposal invites Congress to make *a clear and transparent strategic decision* on whether nuclear cooperation with India is in the long-term interests of the United States through appropriate amendments of the Atomic Energy Act. If by amending the Act as requested, Congress endorses the view that peaceful nuclear cooperation with India is in America's national interests, then, the formal nuclear cooperation agreement (the so-called Section 123 agreement) becomes little other than a technical implementing instrument, which—by giving voice to the prior Congressional endorsement—can come into effect without any further action on the part of the Legislature. This approach, in my judgment, protects Congress' privileges entirely since, should the leadership support it, Congress will continue to retain the prerogative of calling for a second, affirmative vote on any nuclear cooperation agreement that must eventually be concluded with India.

On balance, therefore, I think the Administration's current legislative proposal is appropriate to the unique circumstances represented by the challenge of resuming full nuclear cooperation with India. It protects Congressional equities in their entirety, yet affords the country a fighting chance of securing its other goals vis-a-vis both India and the international community, without in the process compromising American commercial interests.

The second issue pertaining to process that I would like to briefly comment on is whether the Administration's approach of seeking an India-specific amendment to Atomic Energy Act is inferior, as some have argued, to a criteria-based approach that in principle would permit cooperation with any country that meets certain specified desiderata. I am not convinced that a criteria-based approach is the optimal at this point in time for the following reasons:

First, there are only three countries—India, Pakistan, and Israel—that being outliers to the NPT would be susceptible to integration into the global non-proliferation order through a criteria-based approach. If there were a large universe of outliers, the benefits of a criteria-based approach would be more persuasive since it would enable the United States and the international community to make its judgments about the desirability of integration in a non-discriminatory way. The presence of just three outliers, however, each unique in different ways, with different needs and different histories, obviates the necessity for a criteria-based approach.

Second, of the three outliers identified above, only India currently merits the exceptional treatment proposed by the President. I arrive at this conclusion through the application of a "nested" test involving three sequential questions:

- (I) Which countries have not signed the nuclear Non-Proliferation Treaty and hence are candidates for integration into the global non-proliferation regime through exceptional means since their acquisition of nuclear weapons did not involve any violation of prior treaty commitments? *Only three countries meet this test: India, Pakistan, and Israel.*
- (II) Which countries, despite being non-signatories to the nuclear Non-Proliferation Treaty, have displayed a solid non-proliferation record in conformity with the Treaty's objectives? *Only two countries meet this test: India and Israel.*
- (III) Which countries, with exceptional nuclear non-proliferation records, have a dire need for nuclear energy to advance their economic and environmental goals? *Only one country meets this test: India.*

Since India is the only country that satisfies all these three tests, a principled case can be made for treating it currently as the only exception justifying the extraordinary treatment proposed by the President—a conclusion that does not require a generic criteria-based amendment for its implementation.

Third, adopting a criteria-based approach today unnecessarily broadens the universe of countries deserving of exceptional treatment when a country-based approach of the kind proposed by the Administration achieves the same goal at lower cost to the international regime. Put a different way, adopting a country-specific approach presently does not prevent future Administrations from adopting a criteria-based approach in the future, if there is indeed a need to extend civil nuclear cooperation to others beyond India based on the exigencies of the day. Adopting a criteria-based approach now, however, signals a willingness in principle to broaden civil nuclear cooperation to other outliers so long as they meet certain conditions—despite the fact that it might be either inappropriate or unnecessary in any given case. This drawback of the criteria-based approach, however, can be avoided if the conditionality encoded in the legislation is drawn up carefully enough so as to apply only to India. If the conditionality is so specific however as to be transparently discriminatory, the entire effort risks degenerating into casuistry, in which case the benefits of a criteria-based approach, relative to a country-specific exception, are even more open to question.

On balance, therefore, I think the Administration's current proposal of seeking an India-specific exception to the Atomic Energy Act remains the best possible approach for advancing the goal of resuming full nuclear cooperation with New Delhi. It protects the option available to future Administrations to extend this privilege to other outliers such as Israel and Pakistan (should this become necessary), without binding future Presidents to such a course of action even if these countries were to meet the standards laid down in any criteria-based legislation in the future.

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

Chairman HYDE. Thank you, Dr. Tellis. Dr. Weiss.

STATEMENT OF LEONARD WEISS, PH.D., INDEPENDENT CONSULTANT

Mr. WEISS. Thank you very much, Mr. Chairman. I am pleased to be here and thank you for holding this hearing. In my view, the United States-India proposed nuclear deal and the accompanying legislation risk major damage to the NPT and the world's non-proliferation regime, and also United States national security unless substantial changes are made to them.

These changes involve subtracting some things and adding others. Two additions that ought to be made are a requirement that India cease the production of fissile material for weapons and make permanent its current voluntary moratorium on nuclear testing.

Without these additions, Mr. Chairman, India will have received de facto recognition as a nuclear weapons state without being required to do what every nuclear weapons state under the NPT has already done.

The Administration's bill obfuscates a fundamental fact. Without the employment of Presidential waivers, only two relatively simple changes to the Atomic Energy Act need to be made in order to legally accommodate a nuclear agreement with India.

They are the removal of section 129-1(d), and a change in the date of effectiveness of section 129-1(a). Both have to do with prohibitive activities that India has already engaged in. Everything else that is done in the bill is unnecessary from a legal—as opposed to a policy—perspective, and in some cases is positively harmful to nonproliferation.

But instead of using the scalpel to change section 129, the Administration decided to use an axe. They have removed the entire section, which means that there would be no cutoff of nuclear assistance to India even if India violated agreements with the United States or the IAEA, tested another nuclear bomb, or assisted another country to acquire nuclear weapons.

This is shockingly indulgent, and perhaps explains why the Administration decided to try to alter the congressional review process contained in current law to make it harder for Congress to reject the formal agreement for cooperation. The Atomic Energy Act has two procedures for dealing with nuclear agreements.

One is for agreements that are not controversial and meet all the requirements in section 123, including full scope safeguards. Such agreements go through unless Congress passes a joint resolution of disapproval. But such a resolution would be vetoed by the President, thereby requiring a two-thirds vote in both Houses to block the agreement.

Agreements that are controversial—because like the Indian agreement, they do not or cannot contain all the provisions of section 123—are treated differently. For such agreements to be approved requires a positive majority vote by both Houses.

The Administration's bill stands this procedure on its head. It requires Congress to treat the Indian agreement as if it did contain all the requirements of section 123 so that only a two-thirds vote of both Houses could defeat it.

Mr. Chairman, if the Administration really thought that they had negotiated a good agreement, they would not be trying to rig the rules for voting on it. My recommendation is that the procedures for congressional review of the agreement for cooperation in current law be preserved, and that goes as well for periodic congressional review of some nuclear export license applications provided for in section 128, which the Administration bill also removes.

Restoring congressional prerogatives and reestablishing the possibility of sanctions for bad behavior are only two of the issues that Congress must consider in contemplating a markup of the Administration's legislation.

By asking the Congress for an early markup of the legislation, the Administration is saying, in effect, that the Presidential determinations in the bill are an adequate substitute for both the section 123 agreement and the India IAEA safeguards agreement, and judging whether all the appropriate legislative conditions for a nuclear agreement with India have been met.

But without examining those agreements, it is hard to know whether that is correct. For example, there is nothing in the Presidential determinations as to whether the U.S. will retain consent rights over reprocessing and replication of transfer technology, which would be required by section 123 under normal circumstances.

There are also safeguards issues that need to be explored, and this was covered by Mr. Markey, among others, in his testimony. It is evident that marking up the Administration's legislation without having the section 123 agreement, and the safeguards agreement in-hand, is buying the proverbial "pig in a poke."

But Congress should wait until these agreements are available for examination before proceeding further. Mr. Chairman, I know that there are many Members in this body that want to vote for a nuclear energy agreement with India, but at the same time want to show their support for nonproliferation.

The Indians have stated in various forums that they will not agree to a nuclear deal that requires them to cap their nuclear weapons program. In light of what other weapons states are doing, this is not a position that ought to be tolerated if it is absolute.

But it is possible that what the Indians mean by this is that they need more time to reach their goal of a credible minimum deterrent. One way of giving them the benefit of the doubt is to approve a nuclear agreement with India that contains all the appropriate elements of sections 123, 128, and 129, along with additions outlined in my testimony and that of others.

But to condition the issuance of export licenses under the agreement on three things: India's cessation of production of fissile material for weapons; permanent cessation of nuclear testing; and a commitment to engage in good faith negotiations toward nuclear disarmament with other states having nuclear weapons.

That would send a signal that the United States will begin approving license applications for nuclear cooperation with India with no delay as soon as India has made the same commitments as the five officially-recognized weapons states.

Under these conditions, Mr. Chairman, a nuclear agreement with India would be a positive contribution to nonproliferation. Thank you very much, and I am ready to answer any questions that the Committee may have.

[The prepared statement of Mr. Weiss follows:]

PREPARED STATEMENT OF LEONARD WEISS, PH.D., INDEPENDENT CONSULTANT

Mr. Chairman:

My name is Leonard Weiss. I am a researcher and writer on energy and nuclear nonproliferation matters, and a consultant to the Center for Global Security Research at the Lawrence Livermore National Laboratory. My testimony is on behalf only of myself and no client, organization, or institution.

A BIT OF LEGISLATIVE HISTORY

For over twenty years I was Senator John H. Glenn's Governmental Affairs Committee Staff Director, first on the Subcommittee on Energy and Nuclear Proliferation, and then on the full Committee itself. I wrote nonproliferation legislation for Senator Glenn (D-Ohio) that was incorporated into a Glenn-Percy bill during the 95th Congress. That bill, after substantial rewriting, additions, and modifications resulting from negotiations I led with the Carter Administration in the summer of 1977, subsequent markups by three Senate committees and a number of Floor amendments, became the Nuclear Nonproliferation Act of 1978. The House, which had earlier passed its own nonproliferation bill sponsored by Representative Bingham (D-NY), accepted the Senate version, and President Carter signed the bill into law on March 10, 1978. This law, part of which amends the Atomic Energy Act, was a poster child for bipartisan support and cooperation in both houses. It is the part of the Atomic Energy Act amended by this law which the Bush Administration seeks to change in connection with the proposed U.S.-India nuclear deal.

INDIA NEEDS ENERGY ASSISTANCE

Mr. Chairman, I am a strong proponent of improving U.S.-India bilateral relations. India is a democratic country with one sixth of the world's population, and its increasing stature and influence in world affairs should not only be recognized, but welcomed. It is also a rapidly developing country with an increasing appetite for energy resources, including electrical power, to feed its growing economy. And India can use U.S. help in this respect. Whether nuclear energy should be the first choice in helping India meet its energy needs is questionable, and I have presented an alternative in an article in the current issue of the Bulletin of Atomic Scientists that I request be included in the record as part of my testimony. But if one is going to have a nuclear agreement, it ought not to be one that carries considerable risks and is virtually devoid of significant nonproliferation benefits.

THE PROPOSED DEAL WEAKENS THE NONPROLIFERATION REGIME

Mr. Chairman, in the wake of 9/11, nonproliferation has to be seen as a critical element of counter-terrorism. Maintaining an international regime that has kept the spread of nuclear weapons to manageable proportions thus far and has promoted the physical security of weapon-useable materials around the world is a key aspect of U.S. national security. A nuclear deal with India that would be seen by the state-parties to the Nuclear Nonproliferation Treaty (NPT) as strengthening the regime would be a positive contribution to world stability and U.S. national security. Such a nuclear deal would have required India, at least, to cap its production of weapon materials. The proposed nuclear deal does not.

By requiring no concessions by India in the production of nuclear weapons, the proposed nuclear deal devalues the commitments made by the 183 non-weapon state-parties to the NPT, some of whom are sure to question whether it was necessary for them to forego the acquisition of nuclear weapons in order to receive nuclear technology assistance. It may make it more difficult to dissuade some countries from producing their own special nuclear materials that terrorists would like to buy or steal. It will surely make it more difficult to get other countries to sign and/or ratify the Additional Protocol that gives the IAEA the ability to apply more intrusive nuclear safeguards measures. It makes cooperation more difficult in barring nuclear trade with or imposing sanctions on countries that have suspicious programs or a record of bad nuclear behavior. And it arguably could put the United States in the position of violating its Article I commitments under the NPT if future nuclear fuel sales contribute to an enhanced rate of weapon production by India through the transfer of indigenous uranium from India's civilian program to its military program.

INDIA SHOULD STOP FISSILE MATERIAL PRODUCTION

Mr. Chairman, there is no question that the proposed deal is a boost to India's prestige and gives India de facto recognition as a nuclear weapon state but without status as an NPT party. In return for this, the international community and the United States ought to receive more from India than a continuation of policies adopted prior to the Joint Statement of 2005 along with a separation agreement that is a fig leaf covering an expanded Indian nuclear weapons production capacity. India would not even agree to put its fast breeder program under safeguards, a program that will ultimately enable the production of dozens of nuclear weapons each year. It is not only in Russia that we need to be concerned about theft or sale of nuclear weapon materials. Additional production of nuclear weapon materials in South Asia adds to the risk of nuclear terrorism. India and Pakistan came close to nuclear war at the end of 2001 as a result of a jihadist attack on the Indian parliament. Some knowledgeable observers have suggested that there may be groups of jihadists in Kashmir and elsewhere in South Asia who may see nuclear war between India and Pakistan as being beneficial to the jihadist cause. Is that the kind of situation where we should be encouraging more production of nuclear weapon materials?

If India wants to be treated as a nuclear weapon state, it should be willing to do what all the other recognized weapon states have agreed to do—stop the production of new fissile material for weapons and sign a comprehensive test ban. References to India's willingness to work toward a Fissile Material Cutoff Treaty within the UN Conference on Disarmament (CD) are disingenuous. The CD works by consensus and has been tied up for years without making any progress on the issue. India should be willing to make a commitment outside the CD. It is likely that such a commitment could be accomplished jointly with Pakistan and China with the U.S. and other countries assisting. That, along with a real test ban commitment would give a boost to nonproliferation efforts and would justify a U.S.-India nuclear agreement. The Administration claims that, even without these conditions, the deal will enhance nonproliferation efforts and strengthen the international nonproliferation regime. They have offered no evidence in support of this claim. Indeed, the legislation they have proposed in connection with the nuclear deal would, if enacted, do grave harm to the regime.

PROPOSED CHANGES TO CURRENT LAW THAT PREVENT SANCTIONS FOR VIOLATIONS SHOULD BE REJECTED

Under the Administration's bill, the President's issuance of a set of determinations regarding actions by India triggers changes or waivers of certain provisions of the Atomic Energy Act that would normally apply to an agreement with India. Only two changes to current law are needed in order for nuclear trade with India

to occur. All the other waivers or changes are not required and should be removed from the bill.

The needed changes are simple. Change the date of effectiveness of Section 129(1)(A) of the Atomic Energy Act for India, and eliminate Section 129(1)(D) for India. Section 129(1)(A) prohibits nuclear trade with any country that, after the date of March 10, 1978, has detonated a nuclear explosive device. This date should be changed to the date of the last Indian nuclear test in 1998. Section 129(1)(D) prohibits nuclear trade with any country that has engaged in activities involving source or special nuclear material having direct significance for the manufacture or acquisition of nuclear explosive devices and has, in the President's judgment, failed to take sufficient steps to terminate such activities. India's nuclear weapon program requires the elimination of this provision for India if nuclear trade with India is to proceed.

Instead of using a scalpel to accomplish these changes, the Administration has chosen to completely eliminate Section 129 for India. This is not only unnecessary, it is absolutely harmful. Section 129 provides for sanctions for bad nuclear behavior. Its removal for India would mean, in particular, that nuclear trade could continue even if India abandons its current voluntary testing moratorium and sets off a nuclear explosion; terminates or violates a nuclear safeguards agreement with the IAEA; violates an agreement with the United States; transfers reprocessing technology to another country; or assists another country in the manufacture or acquisition of nuclear weapons. This provision of the Administration bill is not only a direct gift to India; it is an indirect gift to Iran, to Pakistan, and to all other real or potential proliferators who will point to this provision as justification for their own transgressions. The authorization given by the Administration's bill to the President to waive the sanction provisions of Section 129 if he makes certain determinations should be eliminated by Congress if and when a markup of this legislation occurs.

CURRENT CONGRESSIONAL REVIEW PROCEDURES SHOULD BE PRESERVED

Another unneeded and pernicious change triggered by the Presidential determinations is that involving Congressional review of the Section 123 agreement and future oversight of the agreement if approved.

Under current law, if an agreement for cooperation is sent up to Congress and satisfies all the requirements of Section 123, including full scope safeguards, U.S. consent rights over the disposition and reprocessing of U.S.-origin spent fuel and the replication of transferred technology, etc., then the agreement sits before Congress for a maximum of 90 days, and if there is no vote disapproving the agreement, it goes into effect. It was felt at the time this was written that a cooperating partner meeting all the requirements of Section 123 and given a clean bill of nonproliferation health by the administration should have an expectation of approval of its nuclear agreement with the United States; so Congress made it hard to reject such an agreement by requiring the rejection to pass as a joint resolution of disapproval. Of course, the President would veto the resolution, thereby requiring a 2/3 vote of both houses to reject the agreement.

The law does provide for the President to send up a nuclear agreement that is missing one or more provisions of Section 123. If such an agreement is sent up by the President with a waiver of one or more requirements under Section 123, e.g., no full scope safeguards, the law provides that such an agreement cannot go into effect unless there is a favorable majority vote by Congress on a joint resolution of approval. Thus, a majority of either house can reject such an agreement. This was done because it was felt that an agreement missing provisions of Section 123 should be rare, and therefore requires special consideration by Congress.

Under the Administration bill, the U.S.-Indian agreement for cooperation, whenever it comes up for Congressional review, will be treated as if it met all the requirements of Section 123. Accordingly, the agreement could go into effect without a vote if no resolution of disapproval was filed, or if such a resolution was introduced and passed, it would ultimately require a 2/3 vote to reject it. That is, the Administration wants this controversial nuclear agreement, the first in history with a non-signer of the NPT that possesses nuclear weapons, to be treated as if there is no controversy about it; and to allow 1/3+1 of the members present and voting in either house to prevent the agreement from being rejected. It is a prime example of Executive Branch distrust of Congressional judgment and Congressional prerogatives under current law. The Committee should amend the Administration's bill to restore the original method of Congressional review.

But that is not the only place where the Administration seeks to reduce Congressional prerogatives under current law. The legislation also authorizes the removal of Section 128 for India. Because India does not meet the full scope safeguards cri-

terion, Section 128 requires that the first nuclear export license applied for under the approved agreement for cooperation be subject to Congressional review for a period of sixty days of continuous session and that the first license each year thereafter be subject to similar Congressional review. This was put into the law as a mechanism to ensure ongoing Congressional oversight of an unusual agreement. By removing Section 128, the Administration removes this trigger for such oversight.

CONGRESS SHOULD REVIEW THE SECTION 123 AGREEMENT AND SAFEGUARDS
AGREEMENT PRIOR TO ACTING ON THE LEGISLATION

Restoring Congressional prerogatives and reestablishing the possibility of sanctions for bad behavior are only two of the issues that Congress must consider in contemplating a markup of the Administration's legislation. By asking the Congress for an early markup of its legislation, the Administration is saying, in effect, that the Presidential determinations are an adequate substitute for the Section 123 agreement and the India-IAEA safeguards agreement in judging whether there are sufficient nonproliferation benefits and protections from this deal in order to move forward with it. It is no secret that the Administration will tout a positive Congressional vote as a preemptive endorsement of the forthcoming agreement for cooperation and will sell it as such to the Nuclear Suppliers Group (NSG), a 45 nation group originally set up by the United States to establish international guidelines for nuclear trade. This group, which operates by consensus, will have to change its rule on full scope safeguards in order to allow nuclear trade with India. It is ironic that the U.S. spent years persuading the Nuclear Suppliers Group to adopt full scope safeguards as an export criterion, and is now trying to persuade it to drop that criterion for India. One can be sure that if that happens, China will seek to provide nuclear help to Pakistan under the same conditions.

Accordingly, the passage of this legislation alone could have profound implications for the nonproliferation regime unless there are mitigating provisions in the Section 123 agreement for cooperation that would make clear that the agreement is positive for nonproliferation. The current Presidential determinations are insufficient to reach the latter conclusion.

What needs to be added to this legislation? That depends on what is going to be contained in the Section 123 Agreement for Cooperation, which is under negotiation. For example, the agreement should give the U.S. consent rights over the reprocessing of U.S.-origin spent fuel, nuclear enrichment of U.S. fuel, and replication of transferred technology. The U.S. should be able to demand the return of transferred equipment and materials in the event of an Indian violation of the agreement. We don't know at this point whether these provisions are in the agreement.

There are also safeguards issues that need to be explored. India has averred that it will only accept safeguards in perpetuity (a standard IAEA requirement in safeguards agreements with countries having both safeguarded and unsafeguarded facilities) if it receives nuclear fuel guarantees in perpetuity. How such guarantees could be given is unclear. Would such a guarantee be applicable if India violated its commitments under the U.S.-India agreement? Only by examining the India-IAEA safeguards agreement, which is also under negotiation, can these questions be cleared up. Other safeguards questions involve the separation agreement. Any reactor producing electricity for India's national grid should carry safeguards; otherwise there is no real separation between civilian and military reactors. But the Indians insist that only they will determine which facilities are to be considered civilian and which military. This insistence raises another issue.

The CIRUS reactor, a research reactor provided to India by Canada in 1956 under a contract requiring "peaceful use", was used by India to produce plutonium for its 1974 nuclear explosion and undoubtedly its 1998 tests as well. U.S. heavy water was sold to India in 1956 for insertion into the CIRUS reactor, and also carried a "peaceful use" contractual requirement. When India exploded its device in 1974, it claimed that the explosion was "peaceful" and therefore met the requirements of the contracts with the U.S. and Canada. But four years earlier, in 1970, the U.S. had sent the Indian Atomic Energy Commission an aide-memoir that was declassified at Senator Glenn's request in 1980, stating that using the U.S.-provided heavy water for nuclear explosive purposes would be a violation of the terms of sale. India ignored the message. In an October 10, 1997 appearance before the Press Trust of India, Raj Ramanna, the former director of India's nuclear program, said: "The Pokhran test was a bomb, I can tell you now. An explosion is an explosion, a gun is a gun, whether you shoot at someone or shoot at the ground. I just want to make it clear that the test was not all that peaceful."

My own calculations show that, taking natural losses into account, some U.S. heavy water was probably still in the CIRUS reactor as late as 1998. CIRUS has

provided as much as 30% of the plutonium for India's nuclear weapon program, and is listed as a military facility under the separation plan. It is a slap in the face to both the U.S. and Canada, neither of which has registered a complaint except for Canada's stated desire that CIRUS should be moved to the civilian side.

To prevent this kind of semantic flim-flam from happening again, the U.S.-India agreement for cooperation should be explicit in requiring that no transferred materials, equipment or technology be used for any nuclear explosive purpose.

It is evident that marking up the Administration's legislation without having the Section 123 agreement and the safeguards agreement in hand is buying the proverbial "pig-in-a-poke". The Congress should wait until these agreements are in hand and examined before proceeding further.

A MODEST PROPOSAL FOR CONGRESSIONAL ACTION THAT GUARANTEES NUCLEAR
ASSISTANCE TO INDIA AND BENEFITS TO THE NONPROLIFERATION REGIME

Mr. Chairman, I know that there are many members in this body and in the other body that want to vote for a nuclear energy agreement with India, but at the same time are troubled by this agreement and want to show their support for non-proliferation. The Indians have stated in various forums that they will not agree to a nuclear deal that requires them to cap their nuclear weapons program. In light of what other weapon states are doing, this is not a position that ought to be tolerated if it is absolute. But it is possible that what the Indians mean by this is that they need more time to reach their goal of a "credible minimum deterrent". One way of giving them the benefit of the doubt is to approve a nuclear agreement with India that contains all the appropriate elements of Sections 123 and 129, along with additions outlined in my testimony and that of others, but condition the issuance of export licenses under the agreement on India's cessation of production of fissile material for weapons, continued cessation of nuclear testing, and a commitment to engage in good faith negotiations toward nuclear disarmament with other states having such weapons. (The latter commitment is a requirement of weapon states under Article VI of the NPT). That would send a signal that the United States will begin approving license applications for nuclear cooperation with India with no delay as soon as India has made the same commitments as the five officially recognized weapon states under the NPT. Under these conditions, Mr. Chairman, a nuclear agreement with India would be a contribution to nonproliferation.

Anything less would be a step backward by the United States from its half century of leadership in trying to prevent the spread of nuclear weapons.

Thank you, Mr. Chairman. I am ready to answer any questions the committee may have.

Chairman HYDE. Thank you, Dr. Weiss. Mr. Kimball.

**STATEMENT OF MR. DARYL KIMBALL, EXECUTIVE DIRECTOR,
ARMS CONTROL ASSOCIATION**

Mr. KIMBALL. Good morning, Chairman, and Members of the Committee. Thank you very much for the opportunity to testify this morning on options regarding the proposal to resume full civil nuclear cooperation with India.

In my judgment, any proposal to make sweeping exceptions to longstanding nonproliferation rules for any country for any reason must, on balance, deliver exceptional nonproliferation and international security benefits, and guard against unintended negative consequences.

Unfortunately, the proposal for civil nuclear cooperation negotiated with India, and the legislation proposed by the Administration to allow it, simply do not meet this test. The nonproliferation benefits of the arrangement, I believe, have been vastly oversold by its proponents.

Simply put, it does not bring India into the nuclear nonproliferation mainstream. A country that formally rejects a ban on nuclear testing, a country that continues to produce fissile material for weapons and is increasing its weapons stockpile, is not in the mainstream of nonproliferation. And I would also just note that

today is the eighth anniversary of the day that India conducted its 1998 nuclear test explosions.

Not only does this arrangement fail to constrain India's nuclear weapons program, but it may indirectly assist the growth of India's nuclear arsenal, and it risks serious damage to other vital United States nonproliferation goals and endeavors, including the Nuclear Suppliers Group, and the NPT. Given the utmost importance of this matter, I hope Congress will allow itself the time to thoroughly and carefully evaluate all of its options. And Congressman Lantos, whose proposal I haven't seen, I look forward to seeing it.

I congratulate you and recognize the importance of taking a close look at the section 123 agreement before acting on this entire package. My main recommendations are in my written testimony, but they can be summarized in five main points.

First, Congress should establish additional and more meaningful conditions for responsible nonproliferation behavior by India in order for it to receive full civil nuclear cooperation. Chief among these would be for Congress to require the President to certify that India is no longer producing fissile material for nuclear weapons purposes, or has entered into a multilateral arrangement to stop fissile material production for weapons, or has joined a global fissile material production cutoff treaty.

I would note that given the challenges facing the negotiation of fissile material cutoff treaty, India's reiteration of its commitment to support these negotiations is of no additional practical value.

The absence of a commitment from New Delhi to halt or otherwise constrain its fissile material production is problematic for many reasons that I do not have time to go into here, but I will mention one of them.

Congress should consider that the supply of foreign nuclear fuel to India could free up India's limited domestic uranium supplies, as Congressman Berman mentioned in his opening remarks.

Unrestricted or accelerated Indian fissile material production, or weapons production, would make it more difficult for the United States to persuade Pakistan and China to slow or stop the growth of their fissile material in nuclear weapons stockpiles.

I think the United States, India, Pakistan, and China should be on the same side in trying to restrict further arms competition in Asia rather than facilitating it. One option that could address this problem would be to establish as a condition in law that the United States would allow certain forms of civil trade with India, but withhold others pending an end to its fissile material production for weapons purposes.

I think Congress should also consider requiring the President certify annually that no form of civil nuclear assistance from the United States to India is being used directly or in any other way to assist India's nuclear weapons program. If such assistance were to occur, it would constitute a violation of one of our own key Nuclear Non-Proliferation Treaty obligations.

I would also urge Congress to approve additional conditions that would help ensure that the basic safeguards agreement and the additional protocol agreement between India and the IAEA are fully consistent with IAEA practices, and that both are signed and en-

tered into force prior to the implementation of the United States-India civil cooperation agreement.

As previous witnesses have said, I would agree that Congress should follow normal procedure and preserve its authority to review the proposed section 123 agreement with India as an exempt agreement, and it should not exempt India from section 123(a)(2) until it has seen the full agreement.

There is reason to be concerned that the final agreement for nuclear cooperation may not conform with key requirements in other sections of the Atomic Energy Act. For example, India is reportedly pressuring the United States to eliminate any reference in the agreement to the United States' right as required in section 123(a)(4) to suspend peaceful nuclear cooperation if India conducts a test explosion.

Fourth, as is the practice with other bilateral agreements for nuclear cooperation, I believe that Congress should establish in law a more thorough list of negative nonproliferation actions that would, if undertaken by India, trigger the termination of the United States-Indian civil nuclear cooperation. These should track as closely as possible with existing requirements in section 129.

In conclusion, I support the goal of building upon the already strong United States-Indian partnership and assisting India in its effort to deliver cleaner forms of energy. But I remain convinced that if Congress takes the appropriate steps that these goals can and must be achieved without undermining core U.S. nonproliferation values, and maintain the United States leadership in this area.

Thanks for your time. I look forward to your questions on this subject.

[The prepared statement of Mr. Kimball follows.]

PREPARED STATEMENT OF MR. DARYL KIMBALL, EXECUTIVE DIRECTOR, ARMS CONTROL ASSOCIATION

LEGISLATIVE OPTIONS FOR CONGRESS REGARDING THE PROPOSAL FOR FULL U.S.-INDIAN NUCLEAR COOPERATION

Mr. Chairman, thank you for the opportunity to testify before the Committee on International Relations on options regarding the Bush administration's proposal to resume full civil nuclear cooperation with India.

In the ten months since this element of the U.S.-India Partnership was first outlined, discussion and debate has appropriately focused on whether it enhances or undermines U.S. and global efforts on what is arguably the single most important national security challenge: preventing the spread and growth of nuclear weapons worldwide.

As Congress considers options regarding the administration's legislative proposal and other proposals that put forward by House members, it is important to put the issue in proper context.

For the better part of four decades, India has chosen to remain outside the nuclear nonproliferation mainstream. While advocating the general goal of nuclear disarmament, Indian leaders have shunned the nuclear Nonproliferation Treaty (NPT) since its inception in 1968. Six years after this treaty's negotiation, India deliberately and inappropriately used U.S. and Canadian nuclear imports designated for peaceful purposes to explode a nuclear device. Since that test, India surreptitiously built up a nuclear weapons stockpile, refused to subject all but a handful of its nuclear facilities to outside inspection, and defiantly conducted a series of nuclear tests in May 1998 just two years after the international community concluded the Comprehensive Test Ban Treaty (CTBT).

Over the years, Republican and Democratic administrations have pursued policies and standards designed to deny India and other states outside the NPT access to nuclear weapons-related technology, and to encourage them to restrain the growth

and development of their nuclear arsenals. These policies have helped limit India's nuclear weapons capabilities.

While the United States and other NPT states have formally called upon India to join the NPT as a non-nuclear-weapon state, it is evident that U.S. laws and Nuclear Suppliers Group (NSG) trade barriers will not likely bring India into the NPT or induce it to give up its nuclear weapons any time soon. In response, United States and other countries have, with some success, sought to bring India—and the two other NPT outliers Israel and Pakistan—into line with the nuclear nonproliferation and arms control practices of NPT member states. Only eight years ago, in June 1998, the UN Security Council adopted Resolution 1172, which calls upon India and Pakistan to immediately stop their weapon development programs, halt fissile material production for weapons purposes, and to sign the CTBT, among other nonproliferation measures.

Supporters of the proposal for civil nuclear cooperation with India claim that it is time to make an exception to the nonproliferation rules for a state with which the United States has strong ties. Many of them assert that the nuclear cooperation arrangement will help India significantly expand energy production, foreign nuclear fuel imports would not indirectly improve India's capacity to produce fissile material for nuclear weapons, and India's acceptance of International Atomic Energy Agency (IAEA) safeguards on an additional eight nuclear reactors by 2014 is a major nonproliferation gain that helps bring India into the nuclear nonproliferation mainstream. Some even suggest that approval of this nuclear cooperation arrangement is a litmus test of Indo-U.S. relations.

However, I along with most other experts in the nonproliferation field and even some supporters of the nuclear cooperation proposal, agree that the arrangement does not bring India into the nonproliferation mainstream, but instead weakens and ignores nonproliferation standards that have been championed by the United States for decades. I also believe that it is a mistake to frame the debate about the nuclear cooperation proposal as a test of Congressional support for better relations with India. The U.S.-Indian relationship is already strong and will, in the long run, grow stronger whether or not the proposed nuclear cooperation arrangement is approved, delayed, or modified.

The value of the nonproliferation commitments outlined in the July 18 Joint Statement has been oversold by proponents. The arrangement fails to constrain and may indirectly assist the growth of India's nuclear arsenal and it risks serious damage to other vital U.S. nuclear nonproliferation goals and multilateral endeavors, including the NSG and the NPT itself.

It would also be a mistake to believe that Congress must act quickly in order to provide civil nuclear assistance to India, especially given that the U.S. nuclear industry is reticent to pursue trade deals with India until it joins key international civil nuclear liability agreements, which establish terms for operator liability for damages caused by accidents.

This is an important matter that requires careful consideration, a thorough evaluation of all the options, and a solution that balances key nonproliferation, trade, energy, and security priorities.

As this Committee considers options regarding the administration's legislative proposal, H. R. 4974 that would amend the 1954 Atomic Energy Act (AEA), as well as the required AEA Section 123 agreement for nuclear cooperation that is now being negotiated with India, it has an important opportunity to help correct the nonproliferation shortcomings of the proposal.

I respectfully urge you to pursue the several practical and common sense legislative options that could mitigate adverse impacts on the nonproliferation regime and improve India's nonproliferation and disarmament behavior in ways that would help strengthen long-term U.S. and international security.

My main recommendations can be summarized in five main points.

First, Congress should establish additional and more meaningful conditions for responsible nonproliferation behavior by India in order for it to receive full civil nuclear cooperation with the United States. Chief among these would be for Congress to require the President to certify that India is no longer producing fissile material for nuclear weapons purposes, or has entered into a multilateral arrangement to stop fissile material production for weapons purposes, or has joined a global verifiable fissile material production cutoff treaty. Congress should also require the President to certify annually that no form of civil nuclear assistance from the United States to India is being used directly or in any other way to assist India's nuclear weapons program.

Second, Congress should approve additional conditions that would help ensure that IAEA safeguards, including the Additional Protocol, on civil nuclear facilities

in India are consistent with IAEA practices and are signed and enter into force prior to the implementation of the civil nuclear cooperation agreement.

Third, Congress should preserve its existing authority and decide to review and consider the proposed Section 123 agreement for nuclear cooperation with India as an “exempt” agreement. Furthermore, Congress should not act on proposed amendments to the Atomic Energy Act until it has reviewed the details of the proposed bilateral agreement for nuclear cooperation with India and the Indian-IAEA safeguards agreements.

Fourth, as is the practice with other bilateral agreements for nuclear cooperation and as required in Section 129 of the AEA, Congress should identify which negative nonproliferation actions, if undertaken by India, could trigger the termination of U.S. civil nuclear cooperation. These should track with existing law as closely as possible and seek to ensure that India meets the commitments it has made in the July 18, 2005 Joint Statement and elsewhere.

Fifth, Congress should ensure that proposed changes to NSG guidelines do not undercut U.S. law or policy objectives, and the U.S.-Indian nuclear cooperation agreement should not be implemented until the NSG approves by consensus the changes to its guidelines necessary to allow full civil nuclear cooperation with India.

A more detailed explanation of these and other recommendations follows below.

1. Improve and Clarify the Conditions for Responsible Nonproliferation Behavior Required for Full Civil Nuclear Cooperation with India

In my judgment, any proposal to make sweeping exceptions to longstanding nonproliferation rules for any country, for any reason, must, on balance, deliver exceptional and demonstrable nonproliferation and international security benefits and guard against unintended negative security consequences. The presidential determinations proposed by the administration in H.R.4974 and the commitments outlined in the July 18 Joint Statement do not meet this test.

The proposed U.S.-Indian nuclear cooperation arrangement is premised on the idea that India is prepared to “assume the same responsibilities and practices” as other nuclear-weapon states. Unfortunately, the existing terms of the proposal would not oblige New Delhi to undertake the same practices as the five original nuclear-weapon states, including a halt of production of fissile material for weapons and signature of the CTBT. Nor would it commit India to support an “early cessation of the nuclear arms race” and disarmament, as Article VI of the NPT requires of its members.

Restraints on Fissile Material Production for Weapons Purposes

The most significant shortcoming of the proposal is its failure to win any meaningful commitment from India to curtail production of fissile material (i.e. plutonium and highly enriched uranium) for weapons purposes, which has been a longstanding U.S. policy goal. Such a step would help cap the growth of India’s arsenal and curb nuclear arms competition in Asia.

Four of the five original nuclear-weapon states—France, Russia, the United Kingdom, and the United States—have all publicly and unilaterally declared a halt to fissile material production for weapons. China is also believed to have stopped fissile material production for weapons in order to focus on the production of nuclear fuel for energy purposes.

The July 18 Joint Statement affirms India’s support for the negotiation of a global fissile material cutoff treaty (FMCT). This is a positive statement but it is not a new pledge.

India has for several years stated its support for the negotiation of a global, verifiable FMCT, but negotiations toward such a treaty have been deadlocked since the late 1990s due to differences over negotiating priorities. The current impasse is primarily the result of U.S. opposition to the negotiation of a *verifiable* treaty and to discussions on other arms control topics at the 65-nation Conference on Disarmament. Ironically, India has stated that it would only support a verifiable FMCT.

Until such time as the U.S. government adjusts its position and negotiators resolve differences over verification and other issues, the realization of the FMCT will remain a distant goal and India’s FMCT pledge will remain an empty gesture. Likewise, H.R. 4974’s requirement that the President determine that “India is working with the United States for the conclusion of a multilateral Fissile Material Cutoff Treaty,” has little or no practical value.

The absence of an Indian commitment to halt or otherwise constrain its fissile material production is troublesome for another reason: even if India’s civilian-military separation plan is deemed “credible” and all facilities declared civilian are placed under permanent IAEA safeguards, the supply of foreign nuclear fuel to India could still free-up India’s existing and somewhat limited capacity to produce

plutonium and highly enriched uranium for weapons. This could allow for the rapid expansion of India's nuclear arsenal from the current rate of some 6–10 bombs annually to several dozen annually.

Indeed, Indian nuclear hawks such as K. Subrahmanyam have openly argued that, in order to expand India's arsenal, New Delhi should "categorize as many reactors as possible as civilian" to facilitate foreign refueling and conserve India's scarce "native uranium fuel for weapon-grade plutonium production."¹

In its January 17, 2006 responses to questions from Rep. Markey about the possibility of imported nuclear fuel freeing up India's fissile material production capacity, the State Department does not deny the possibility and simply asserts that "the growth of India's nuclear program is evidently not constrained by access to natural uranium."²

The administration's approach does not take into account several scenarios that could allow India to use existing and relatively limited domestic uranium supply to support fissile material production for weapons purposes.

For instance, if India builds a new plutonium-production reactor (as it is reportedly planning to do³) or decides to use one or more of its eight existing heavy water reactors that were excluded from IAEA safeguards to augment its two existing military plutonium production reactors (CIRUS and Dhruva), the additional increased consumption of domestic uranium supplies for plutonium production would be compensated for by access to imported uranium for safeguarded power reactors.

And, if India no longer needs to rely on domestic uranium to fuel its power reactors, it could also expand its small-scale centrifuge enrichment program to make highly enriched uranium to support nuclear weapons production.⁴

Indian officials have refused to define what its policy of a "minimal credible deterrent" means and have suggested that India's future strategic requirements may change. Nevertheless, the administration is apparently gambling that India's future fissile material production goals will not significantly increase and that a future Indian government will not choose to define India's nuclear deterrent requirements in a way that calls for more rapid fissile production.

While it is certainly not the intention of the administration to aid India's bomb program, the issue is not one of just intent. It is also a legal matter. Article I of the NPT obligates the recognized nuclear-weapon powers, including the United States, to "not in any way to assist, encourage, or induce any non-nuclear weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices."

In addition, UN Security Council Resolution 1172 also commits all UN member states "to prevent the export of equipment, materials or technology that could in any way assist programmes in India or Pakistan for nuclear weapons or for ballistic missiles capable of delivering such weapons. . . ."

Still, some may question why the United States should care if India produces more fissile material for nuclear weapons and increases its nuclear capabilities. Indeed, some advocates of the proposed nuclear cooperation deal are blunt in saying that such a buildup should be of no concern to the United States and would actually be desirable. Ashley Tellis, for instance, wrote last summer, "Even if the United States cannot actively aid India in developing its strategic capabilities, it ought to pursue policies having exactly that effect."⁵

I could not disagree more.

Engaging in nuclear trade with India while it maintains and exercises its options to expand its nuclear arsenal directly contradicts U.S. and global efforts to reduce nuclear weapons dangers. Today, one of the highest U.S. security priorities should be to reduce the number of nuclear weapons and amount of bomb-ready material susceptible to theft or misuse worldwide. Obviously, India's continued production of both would thwart this critical objective. Unrestricted Indian fissile material and weapons production will make it more difficult for the United States to persuade Pakistan and India to slow or stop the growth of their nuclear weapons and fissile material stockpiles.

Tacit U.S. acceptance of a continued Indian nuclear arms buildup also would further complicate efforts to convince Iran and North Korea that nuclear weapons are

¹"India and the Nuclear Deal," by K. Subrahmanyam, *Times of India*, December 12, 2005.

²Letter from the U.S. Department of State to Congressman Edward Markey, January 17, 2006. Available at <http://www.armscontrol.org/pdf/20060117_India_Responses_Markey.pdf>.

³See "Replication of Dhruva reactor proposed for next Indian economic plan," by Mark Hibbs, *Nuclear Fuel*, May 8, 2006.

⁴For further analysis, see: "Wrong Ends, Means, and Needs: Behind the U.S. Nuclear Deal with India," by Zia Mian and M. V. Ramana, *Arms Control Today*, Jan./Feb. 2006.

⁵Ashley J. Tellis., *India as a New Global Power*, Carnegie Endowment for International Peace, 2005, p. 36.

unnecessary and not in their security interests. This is not to suggest that Iran and North Korea are pursuing nuclear weapons because India has nuclear weapons. Rather, it reflects an understanding that fewer countries around the world are going to firmly support steps to deal with cases of noncompliance with nonproliferation standards of concern to the United States if it is perceived that the United States will ignore those standards in order to advance other U.S. national interests.

Although tensions on the subcontinent have eased in recent years, India and Pakistan remain locked in a nuclear arms race and their fingers remain on the nuclear trigger. The two nearly came to nuclear blows in 2002 and the risk of nuclear war lingers. Permitting India to pursue additional nuclear weapons only stirs this simmering, potentially explosive brew further.

The strongest guarantee that expanded civil nuclear trade with India would not contribute to its nuclear weapons program or stimulate further arms competition in Asia would be for Congress to require, as a condition for exempting India from the AEA section 123(a)(2) full-scope safeguards requirement, the President to certify that:

- India, as a matter of public policy, is no longer producing fissile material for nuclear weapons purposes, or has entered into a multilateral arrangement to stop fissile material production for weapons purposes, or has joined a global verifiable fissile material production cutoff treaty.

Indian officials, who are concerned about China's slow-moving nuclear modernization plan, have resisted suggestions that they unilaterally halt fissile material production for weapons purposes. Given that negotiations on an FMCT could take some time, Indian officials also resist tying civil nuclear trade to the completion of an FMCT.

However, given that the State Department continues to "call upon both [Pakistan and China] to also agree, as India has, to work toward a Fissile Material Cutoff Treaty" and says that "we stand ready to explore interim objectives,"⁶ it is realistic and practicable for the United States to encourage these three nuclear-armed states to achieve, as an the interim objective and as a condition for the delivery of civil assistance to India, a regional fissile production cutoff arrangement pending completion of an FMCT.

Such an arrangement would help win necessary support from the Nuclear Suppliers Group to adjust its current guidelines and allow for civil nuclear cooperation with India. It would also help extract a major nonproliferation success out of an otherwise major nonproliferation loss.

Other alternative legislative conditions that might also be considered might allow for the the delivery of some forms of civil nuclear assistance, but withhold others pending a halt to Indian fissile material production for weapons purposes. For instance Congress could:

- Amend the AEA to permit the export of *nuclear equipment, components and technology* (with the exception of enrichment, reprocessing, and heavy water production facilities and technologies) to India provided the President certifies that India has voluntarily halted the production of fissile material for nuclear weapons purposes, or is actively promoting the negotiation of a multilateral, internationally verifiable Fissile Material Cutoff Treaty (FMCT) or a regional arrangement for stopping the production of fissile materials for nuclear weapons purposes.

When the President certifies to Congress that India has stopped the production of fissile material for nuclear weapons purposes, exports to India of nuclear material (i.e. fuel for reactors) may be authorized in accordance with the applicable regulations and provisions of U.S. law.

One theoretical alternative would be for Congress to amend the AEA to allow civil nuclear cooperation only if India and the United States seek to conclude negotiation of a global FMCT and/or conclude a regional arrangement for stopping the production of fissile materials for nuclear weapons purposes within a relatively short period of time (i.e. five years.). However, as the history of U.S. and international efforts to persuade India and other states to join in a multilateral fissile material production cutoff demonstrate, encouragement alone is not enough. Any such hortatory amendment would likely have little, if any, effect on producing the desired outcome.

⁶Letter from the U.S. Department of State to Congressman Edward Markey, January 17, 2006.

Ensuring Civil Nuclear Cooperation Does Not Assist India's Weapons Program

Another complimentary approach to help ensure that U.S. nuclear assistance is not running afoul of Article I of the NPT by directly or indirectly assisting India's military nuclear program would be for Congress to require, as a condition for exempting India from the AEA section 123(a)(2) full-scope safeguards requirement, the President to certify on an annual basis that:

- No form of civil nuclear assistance from the United States to India is being used directly or in any other way to assist India's nuclear weapons program. Such assistance may include, but would not be limited to, the potential use of any U.S.-origin equipment, technology, or nuclear material by India in an unsafeguarded facility or nuclear-weapons related complex; or the replication and subsequent use of any U.S.-origin technology in an unsafeguarded nuclear facility or nuclear-related complex, or for nuclear weapons-related purposes.

As part of such a condition, Congress should also request an *annual report* by the executive branch to Congress regarding India's domestic production of uranium ore, nuclear reactor fuel, separated plutonium, and highly enriched uranium. It should also assess the net effect that foreign supplies of nuclear fuel for safeguarded civil purposes have on India's capacity to produce reactor fuel and fissile material in its unsafeguarded, military nuclear sector.

Such a requirement is consistent with U.S. commitments through the NSG and should not be controversial. In their responses to questions submitted on November 2 by Senator Lugar, Undersecretaries Burns and Joseph said: "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."

Nuclear Testing Limitations

The July 18 Joint Statement also reiterates India's commitment to maintain its moratorium on nuclear test explosions—a political pledge that it has made before in other contexts. All of the other original nuclear-weapon states are not only observing unilateral moratoria, but they have also signed the CTBT, which according to customary reading of Article XVIII of the Vienna Convention on Treaties, establishes a legally-binding commitment not to take any action "contrary to the purpose or intent" of the treaty prior to ratification, which in the case of the CTBT is to ban nuclear test explosions of any kind.

While India has resisted joining the CTBT to date, it has stated that it will not be the last state to hold up its entry into force. It is also conceivable that India might join with Pakistan in a treaty pledging that neither will be the first to conduct a nuclear test explosion. To encourage India to actually assume the same responsibilities and practices expected of other nuclear-weapon states, Congress should require, as a condition for exempting India from the AEA section 123(a)(2) full-scope safeguards requirement, the President to certify that:

- India is making satisfactory progress toward a legally-binding commitment not to conduct nuclear weapon test explosions or nuclear explosions of any kind, and has not conducted a nuclear test explosion after May 1998.

None of the proposed presidential determinations in H.R.4974 address India's nuclear test ban policy.

Safeguards on Civilian Nuclear Facilities

According to the July 18 Joint Statement and the civil-military separation plan announced by Prime Minister Singh, India has agreed to allow permanent IAEA safeguards on nuclear reactors and facilities that it designates as "civilian." By the time the separation plan is to be implemented in 2014, as many as eight additional nuclear reactors would be safeguarded. Currently four reactors are already under facility-specific safeguards and India already agreed that two Russian-supplied light-water energy production reactors now under construction will also be safeguarded. Regarding future facilities, India has declared that it alone reserves the right to decide which facilities will be declared civilian and subjected to safeguards.

However, India's civil-military separation plan excluded from IAEA oversight eight of its existing reactors, its breeder reactor program, its reprocessing and enrichment facilities, and all of its existing spent fuel. It should be recognized that partial IAEA safeguards in a state with a secret nuclear weapons program are far more symbol than substance.

In describing India's civil-military separation plan in a statement to the Indian Parliament on March 6, Prime Minister Singh also declared that India would pur-

sue a safeguards agreement with the IAEA that is “India-specific.” He also declared, “We have received commitments from the United States for the reliable supply of fuel to India for reactors that will be offered for safeguards. The United States has also reaffirmed its assurance to create the necessary conditions for India to have assured and full access to fuel for such reactors.”

To date, a definition of “India-specific” IAEA safeguards has not been provided. In addition, the nature of the U.S. fuel-supply assurances is not clear. While U.S. officials including Secretary of State Rice has testified that safeguards over nuclear facilities declared by India as civilian will apply in perpetuity, it is not evident that India agrees that the safeguards will apply permanently if foreign nuclear fuel supplies for its civil reactors are interrupted.

Therefore, it would be reasonable and prudent for Congress to require, as a condition for exempting India from the AEA section 123(a)(2) full-scope safeguards requirement, the President to certify that:

- An agreement between India and the IAEA has entered into force requiring the application of a safeguards agreement consistent with IAEA safeguards, principles, and practices in perpetuity for all “civil” nuclear facilities and associated nuclear material.

U.S. officials also claim that the nuclear cooperation proposal is valuable because it will, over time, bring a larger percentage of India’s nuclear facilities under safeguards. On March 6, Prime Minister Singh stated that India has decided to place under safeguards all future civilian thermal power reactors and civilian breeder reactors. Singh also said the Government of India retains the sole right to determine which of its future reactors are designated as civilian.

To help ensure that this pledge is carried out faithfully, it would be reasonable and prudent for Congress to require, as a condition for exempting India from the AEA section 123(a)(2) full-scope safeguards requirement, the President to certify that:

- India has provided credible assurances that all future electricity-producing nuclear reactors (including breeders) will be declared “civilian” and placed under safeguards.

Additional Protocol

As part of the July 18 Joint Statement, India committed to signing and implementing the Additional Protocol, which is designed to allow more extensive inspections by the IAEA of declared and undeclared nuclear facilities. As a state that is not legally recognized under the NPT as a nuclear-weapon state, the nature of the Additional Protocol that would be negotiated by India with the IAEA is not clear. While Additional Protocol agreements for non-nuclear-weapon states give the IAEA additional authority to visit and gather information on all declared and undeclared nuclear sites, such agreements for the recognized nuclear-weapon states are far more limited in scope.

Though the George W. Bush administration has proposed that only states that have signed the Additional Protocol be allowed to import equipment for their civilian nuclear programs,⁷ H.R. 4974 only requires the president to be able to determine that “India and the IAEA are making satisfactory progress toward implementing an Additional Protocol that would apply to India’s civil nuclear program.”

Therefore, it would be reasonable and prudent for Congress to require, as a condition for exempting India from the AEA section 123(a)(2) full-scope safeguards requirement, the President to certify that:

- India has signed and implemented an Additional Protocol to its IAEA safeguards for its civil nuclear facilities that allows the IAEA access to all declared civil nuclear facilities.

Nuclear Export and Procurement Practices

The July 18 Joint Statement recognizes that India has passed a new export control law and intends to harmonize its export control practices with those of the Nuclear Suppliers Group and the Missile Technology Control Regime (MTCR). Unfortunately H.R. 4974 only requires that the president should be able to determine that “India is ensuring that the necessary steps” are being taken to achieve and implement these objectives.

This rather vague standard should and can be strengthened and clarified in ways that are consistent with existing U.S. law and international practices. Though In-

⁷ Remarks by the President on Weapons of Mass Destruction Proliferation, Washington, D.C., February 11, 2004.

dia's adoption of a new export control law covering weapons of mass destruction and delivery systems is a positive development, a record of implementation of the law has not been established. And according to the State Department's own admission, it does not contain "catch all" controls to prevent the re-transfer of dual-use foreign technology and equipment.

Specifically, Congress should require, as a condition for exempting India from the AEA section 123(a)(2) full-scope safeguards requirement, the President to certify that:

- India has established and is successfully implementing a national nuclear export control system and is following nuclear procurement practices that meet the highest international standards and are fully consistent with NSG guidelines, including stringent rules and procedures banning unauthorized contacts and cooperation by personnel with nuclear expertise.
- India has provided credible assurances that it will not transfer enrichment or reprocessing technologies to other states.

Independent reports have documented that Indian nuclear organizations use a system that hires domestic or foreign non-nuclear companies to acquire items for these Indian nuclear organizations. Such procurement practices are also being employed for the Indian Department of Atomic Energy's secret gas centrifuge uranium enrichment plant near Mysore.⁸ These practices could contribute to onward proliferation and should be stopped.

India-specific or Country-neutral criteria?

Conditions such as those outlined above could be formulated in an "India-specific" manner (as the administration has proposed), or Congress could amend the AEA to establish new "country neutral" criteria for civil nuclear trade with states that never joined the NPT and do not accept full-scope IAEA safeguards, which would also include Israel and Pakistan. There are pros and cons to each of these approaches.

One can reasonably argue that a country-neutral approach would establish universal standards that apply to all states and provide a way for the three states that have never signed the NPT to more fully join the nonproliferation system and gain access to nuclear technology and fuel for peaceful purposes. This would help protect the United States against charges that it is seeking a double standard for its friends, while treating its foes differently. This might be more attractive to some of our international partners in the NSG.

But there is also a possibility that the reaction by some states would be quite hostile to such a development because some Middle Eastern states might perceive it as a backhanded way of extending legitimacy and nuclear benefits to Israel. Notwithstanding possible international reactions, a country-neutral approach would go against established U.S. law that countries seeking nuclear trade with the United States that don't meet the criteria set forth in the AEA should be judged on a case-by-case basis. To address this problem, the criteria set forth in a country-neutral approach could be made more stringent than those already codified in the AEA. The minimum requirement for an acceptable country-neutral approach would be that only countries that have never signed the NPT are eligible to pursue nuclear cooperation on these grounds. Such a provision would be necessary to ensure that there is not an exodus from the NPT.

2. Maintain Common Sense Criteria for Possible Termination of Civil Nuclear Cooperation

Section 129 of the Atomic Energy Act provides a clear and objective list of seven types of actions that could trigger the possible termination of nuclear cooperation between the United States and another state.

Oddly, H.R. 4974 proposes to give the president the authority to waive all of Section 129. In its place H.R. 4974 maintains only one, albeit important, condition for continued U.S. nuclear cooperation: that India does not conduct another nuclear test explosion.

This approach is a mistake, in part, because it could set a terrible precedent for future agreements of nuclear cooperation and it would eliminate certain conditions for continued nuclear cooperation that are fundamentally in the United States' national security interest and that are vital to our credibility as a responsible nuclear trading partner.

⁸Testimony of David Albright, President of the Institute for Science and International Security, House International Relations Committee, October 26, 2005.

As is the practice with other bilateral agreements for nuclear cooperation, Congress should also stipulate what actions, if undertaken by India, could trigger the termination of civil nuclear cooperation.

Triggers for possible termination of nuclear cooperation with India should track as closely as possible with Section 129 and should include:

1. Termination or abrogation of IAEA safeguards by India;
2. Material violation of IAEA safeguards by India;
3. Any material violation of an agreement for nuclear cooperation with the United States (including a finding of reprocessing or enrichment of nuclear material subject to the agreement by India without U.S. consent);
4. Continued production of fissile material for weapons purposes by India;
5. A nuclear test explosion by India after May 1998;
6. Finding that India has knowingly assisted or encouraged a non-nuclear-weapon state in activities involving source and special nuclear material having a direct significance for the manufacture of nuclear weapons, and has failed to take steps, which, in the President's judgment, represent sufficient progress toward terminating such assistance;
7. Export of any nuclear technology, equipment, or materials by India or Indian entities that does not conform to NSG guidelines;
8. Finding by the United States of unauthorized duplication or transfer of transfer of MTCR-controlled missile items by India; or
9. Finding that India is not applying stringent physical protection, control, and accountancy measures to all nuclear weapons, nuclear facilities, source material, and special nuclear material in its territory.

Section 129 of the AEA requires termination of nuclear cooperation in the event of items "a," "b," "c," and "f" (above). Item "e" would be an India-specific update of an existing Section 129 provision. Items "g" and "h" would be new India-specific requirements based on the commitments made in the July 18 Joint Statement. Item "i" is based on a requirement set forth in Section 123.

Furthermore, because the proposed nuclear cooperation is premised on more responsible Indian nonproliferation behavior, Congress should also require *annual reports* from the executive branch on India's performance in each of the areas listed above. If India is reported to have taken any of these actions, all nuclear trade should be terminated.

3. Follow Normal Process for Consideration of Nuclear Cooperation Agreements

The AEA provides for the conclusion of agreements for nuclear cooperation with states that meet the requirements outlined in Section 123 (a) and for those, like India, that do not.

The AEA provides the president with the authority to waive any of the requirements for civil nuclear cooperation set forth in Section 123 (a) if: ". . . he determines that inclusion of any such requirement would be seriously prejudicial to the achievement of U.S. non-proliferation objectives or otherwise jeopardize the common defense and security."

Such an "exempted" agreement for nuclear cooperation would require that both chambers of Congress approve the agreement for nuclear cooperation if it does not contain all of the Section 123 (a) requirements.

However, the administration has proposed through H.R.4974 that Congress treat the still-to-be-negotiated Section 123 agreement for nuclear cooperation as if India met all of the requirements, including allowing full-scope nuclear safeguards. If Congress agrees to this approach, the agreement would pass automatically within 90 days unless Congress passes a joint resolution of disapproval and Congress would lose its authority to review export licenses pursuant to the agreement.

Clearly, India is an exceptional nuclear case that does not currently meet U.S. nuclear trade standards. Any new agreement for nuclear cooperation with India should be treated accordingly. Therefore, I would strongly recommend that:

- Congress should preserve its existing authority and decide to review and consider the proposed Section 123 agreement for nuclear cooperation as an "exempt" agreement.

If such an agreement is, as advocates suggest, in the United States best interests, there should be no reason why it should not require approval from both chambers of Congress.

4. Consider Proposed AEA Amendments, Agreement for Nuclear Cooperation, and the Indian-IAEA Safeguards Agreements as a Package

The administration is proposing that Congress make the exemption for India before the agreement for nuclear cooperation and IAEA safeguards agreement are completed. Rather, Congress should defer action on any changes to the Atomic Energy Act until such time as the administration has submitted the proposed U.S.-India section 123 agreement for nuclear cooperation.

Doing so will allow Congress to understand whether the Indian-IAEA safeguards agreement is consistent with IAEA safeguards standards, principles and practices and that it provides for the perpetuity of safeguards and that such perpetuity is not contingent on any assurances of supply.

There is reason to be concerned that the Section 123 agreement for nuclear cooperation with India may not conform with all relevant requirements of the AEA (except for the Section 123(a) (2) full-scope safeguards standard). According to published reports, India is pressuring the United States to drop key provisions in the agreement that are required by the AEA, such as the right of the United States to suspend peaceful nuclear cooperation if the recipient state conducts a nuclear test explosion (Section 123 (a) (4)). It is also possible that India may object to giving the United States prior consent rights with respect to the reprocessing, alteration in form or content, or enrichment of nuclear material that is subject to the U.S.-Indian peaceful nuclear cooperation agreement (Section 123(a)(5)).

5. Ensure That Proposed Changes to NSG Guidelines Do Not Undercut U.S. Laws

In the July 18 Joint Statement, President Bush pledged to seek India-specific exceptions to NSG guidelines adopted at the United States' urging in 1992 that restrict trade with non-nuclear-weapon states (including India) that do not accept full-scope IAEA safeguards.

Although U.S. officials insist that they continue to support the NSG, India-specific exemptions from NSG guidelines would erode the credibility of the NSG's effort to restrict legitimate peaceful nuclear trade only to those states that meet global nuclear nonproliferation and disarmament standards. The U.S. proposal could invite other nuclear supplier states to seek exemptions for their preferred nuclear trading partners that don't yet meet the NSG's standards and/or prompt nuclear supplier states to simply ignore the NSG's voluntary guidelines, as Russia did when it resupplied India's two light-water reactors at Tarapur earlier this year. (Russia had announced in December 2004 that it would not re-supply the Tarapur reactors but changed its position sometime after Bush and Singh announced their proposal for civil nuclear cooperation.)

In the days before a March 22–23 consultative group meeting of the Nuclear Suppliers Group in Vienna, the United States circulated a draft text that would create an India-specific exemption to NSG guidelines.

One of the most notable and troublesome features of the March 2006 U.S. proposal to the NSG is the weak and very ambiguous language outlining what steps India must implement in order to qualify for transfers of NSG trigger list items. In addition, section 4 of the U.S. proposal would allow individual NSG members to decide whether India is meeting these weak standards before they sell nuclear technology and materials (possibly including technologies the United States would not be willing to sell) to India.

Section 4 of the draft U.S. proposal to the NSG says in part:

“Participating Governments may transfer trigger list items and/or related technology to the safeguarded civil nuclear facilities in India (a State not party, and never having been a party, to the NPT) as long as the participating Government intending to make the transfer is satisfied that India continues to fully meet all of the aforementioned nonproliferation and safeguards commitments, and all other requirements of the NSG Guidelines.”

Therefore, it would be prudent for Congress to get written and/or public assurances from the administration that:

- any changes to NSG guidelines to accommodate greater civil nuclear cooperation with India shall, at a minimum, meet the standards that shall be established in U.S. law, not otherwise undercut U.S. policy objectives, or put U.S. companies at a competitive disadvantage.

In addition, Congress should require that:

- proposed amendments to the AEA will become effective only if and when the Nuclear Suppliers Group (NSG) reaches a consensus decision to make nec-

essary adjustments to its guidelines to accommodate greater civil nuclear cooperation with India.

These measures should not be controversial, especially given that Secretary of State Rice and other U.S. officials have publicly pledged that implementation of the U.S.-Indian nuclear cooperation proposal depends on NSG approval.

Conclusion

While I strongly support the goal of building upon the already strong U.S.-Indian partnership and assisting India's efforts to deliver cleaner forms of energy for its growing population, I remain convinced that if Congress takes the appropriate steps, these goals can all be achieved without undermining core U.S. nuclear nonproliferation values and U.S. leadership efforts to prevent the proliferation of the world's most dangerous weapons.

Chairman HYDE. Thank you, Mr. Kimball. Dr. McGoldrick.

**STATEMENT OF MR. FRED MCGOLDRICK, BENGELSDORF,
MCGOLDRICK AND ASSOCIATES, LLC**

Mr. GOLDRICK. Mr. Chairman and Members of the Committee, thank you for the opportunity to come in on the proposed United States-Indian civil nuclear deal. Whatever the potential merits of a new strategic relationship with India may be, the proposed nuclear deal will risk serious damage to our efforts to prevent the spread of nuclear weapons.

If Congress feels obliged to support the proposed deal for the sake of United States-Indian relations, I would like to recommend several steps that the Congress could take to minimize the damage to U.S. nonproliferation interests.

I will also identify a number of issues that the Congress should keep an eye on once the Executive Branch submits the proposed United States-Indian peaceful nuclear cooperation for congressional review.

My first recommendation deals with congressional handling of this so-called United States-Indian peaceful nuclear cooperation agreement. Both Secretary of State Rice and Under Secretary of State Burns has characterized this agreement as a mere technical agreement.

As someone who has been involved in negotiating most of our peaceful nuclear cooperations, I must stress that nothing could be further from the truth. These are not mere technical agreements.

All the Republican and Democratic Administrations that I worked for have regarded such agreements as critically important to U.S. national security interests because they contain the fundamental nonproliferation assurances and controls needed to assure that U.S. nuclear exports are not diverted to nuclear explosive military purposes.

Congress, itself, has treated peaceful nuclear cooperation agreements as serious nonproliferation accords. Congress has enacted legislation, and among other things, sets forth in considerable detail the numerous nonproliferation assurances and conditions for such a grievance, and defines the specific congressional procedures for review and approving such agreements, and delineates the criteria that agencies must use in approving nuclear export licenses and other applications.

I am not aware of any other kind of international agreement that Congress has treated with such interest, care, attention, and specificity as peaceful nuclear cooperation agreements.

My first recommendation, therefore, is that the Congress decline to support the Administration's proposal that would strip Congress' ability to approve the 123 agreement that does not meet all the requirements of the Atomic Energy Act.

My second recommendation is that Congress not approve the United States civil nuclear deal on a piecemeal basis, and that it insist on having an opportunity to review the text of the 123 agreement, and obtain assurances from the President that the Indian IAEA safeguards agreement meets appropriate international standards, and that the Nuclear Suppliers Group is prepared to go along with exempting India from the requirement for full scope safeguards as a condition of nuclear supply.

My third recommendation is very much like that of Mr. Weiss, and that is that Congress reject the Administration's proposal to waive all the sanctions of section 129 with respect to India. Congress' waiver of all of these section 129 sanctions would mean that United States nuclear exports could continue to India even if India materially violated an IAEA safeguards agreement, violated its agreement for cooperation with the United States, or assisted, encouraged, or induced a non-nuclear weapons state to acquire or manufacture a nuclear explosive device.

Now I am certainly not suggesting that India would do any of these things. However, exempting India from these congressionally-mandated sanctions would send the wrong signal and would seriously damage the international nonproliferation regime.

My fourth recommendation is that Congress indeed insist that India make a legal commitment to the United States that it will not assist other states in acquiring or manufacturing nuclear explosive devices.

Let me now turn to the 123 agreement itself. My written testimony identifies many of the issues that will bear close attention, and I will mention only a few of them here. First, the agreement should ban the use of items subject to the agreement for nuclear explosive purposes. We have had serious differences with New Delhi over this issue in the past.

Second, the Indians should commit to an IAEA safeguards agreement or agreements that do not deviate from IAEA standards, and provide for the perpetuity of safeguards that is not dependent on any assurances of nuclear supply. Indeed all nonproliferation assurances and conditions contained in the agreement should continue in perpetuity, notwithstanding the expiration or termination of the agreement. We have had significant differences with the Indians over this matter when our old agreement expired in 1993.

Third, we should be careful not to provide any legal commitments to assure nuclear supply to India because the United States Government is simply not in the position to make such guarantees, and they would in any case be discriminatory since we do not provide such guarantees to cooperating partners that are parties to the NPT.

Fourth, the nonproliferation assurances and conditions in the new agreement should also apply to the nuclear materials and equipment for the reactors that the U.S. supplied under the old United States-Indian agreement. If these items are not made subject to the new United States-Indian agreement for cooperation, the

Indians might very well argue that these materials and equipment are free from any nonproliferation controls.

Fifth, the agreement should require that the United States have explicit rights to terminate nuclear cooperation and to require the return of any supplied nuclear materials and equipment in the event India detonates a nuclear explosive device. This could be an issue because the Indian Government has publicly objected to the requirement.

Finally, the Congress should ensure that the terms under which the United States engages in peaceful nuclear cooperation with India do not afford India any benefits that we do not provide to our cooperating partners who are NPT parties. The sole exception, of course, would be the full-scope safeguards requirement.

Now the conditions that I have referred to in my written testimony and here today concerning the 123 agreement with India are, by and large, contained in all of our agreements that the United States has negotiated with other countries. I am not suggesting any conditions that would single out India for discriminatory treatment.

Finally, let me note that I have just read a press report that India is scheduled to make a decision early next year to construct a new large 100-megawatt plutonium production reactor that could produce 20 to 25 kilograms of weapons grade plutonium per year.

If India decides to build this reactor, it would certainly be taking a step in the wrong direction. Now I know that both the United States Government and the Indian Government have said that any kind of production cutoff would be a deal breaker. But surely the United States and the Indian Governments can come up with some imaginative solution on a realistic Indian commitment that would lead to an early Indian halt to its production of plutonium and highly-enriched uranium for nuclear weapons purposes.

I believe that the various conditions that I have suggested should not be deal breakers, provided that the Administration and the Indian Government show a reasonable degree of flexibility, and we hope that the Congress will give these recommendations serious consideration.

Thank you very much, Mr. Chairman, and I will be happy to answer any questions the Committee might have.

[The prepared statement of Mr. McGoldrick follows:]

PREPARED STATEMENT OF MR. FRED MCGOLDRICK, BENGELSDORF, MCGOLDRICK AND ASSOCIATES, LLC

Let me begin by noting that nonproliferation experts in the United States appear to share a remarkable degree of consensus on the proposed US-Indian civil nuclear deal. They seem to agree that strengthening our relationship with India may well advance US political, economic, scientific and military interests. Some, including myself, believe that nuclear power could play an important role in helping India meet its rapidly growing electricity needs. However, the vast majority, if not all, of US nonproliferation experts agree that the US-Indian civil nuclear deal, as presently proposed by the Administration, will risk serious damage to our efforts to prevent the spread of nuclear weapons. This consensus is extraordinary and unprecedented because these nonproliferation experts span the political and ideological spectrum and have often fought like cats and dogs with each other over the years on a variety of nonproliferation issues. However, they are in fundamental agreement about the nonproliferation risks of the proposed US-India civil nuclear deal.

If Congress feels obliged to go along with proposed deal for the sake of US-Indian relations, it has the opportunity to take steps that could help to minimize the poten-

tial damage to US national security and preserve our credibility as a leader in the nonproliferation field. The Administration's proposal to implement this deal involves creating an exception for India from several provisions of the Atomic Energy Act and Congressional review of a US-Indian peaceful nuclear cooperation agreement.

While I believe that making civil nuclear cooperation the centerpiece of a new strategic relationship with India is a mistake, I would like to recommend several steps that the Congress could take in approving this arrangement that would both help safeguard US nonproliferation interests and allow the US-India deal to go forward. I will also identify a number of issues that Congress should keep an eye on, once the Executive Branch submits the text of a US-Indian peaceful nuclear cooperation agreement for Congressional review. Some of these matters may appear to be arcane, but they are important because, as we all know, the devil is always in the details.

Treat the Peaceful Nuclear Cooperation Agreement as an Exempted Agreement

Implementation of the US-Indian deal and the ability of the US to export nuclear materials and equipment to India will require the conclusion of a peaceful nuclear cooperation agreement between the US and India, sometimes called a "123 agreement". (This refers to the Section of the Atomic Energy Act that defines the nonproliferation conditions that such agreements must contain and the procedures for Congressional review and approval.)

Both Secretary of State Condoleezza Rice and Under Secretary of State for Political Affairs R. Nicholas Burns have characterized this peaceful nuclear cooperation agreement as "merely a technical agreement." Under Secretary Burns has said that

"The bilateral agreement is a largely technical agreement that will not entail a tremendous amount of give and take between the two governments because we've resolved the issues. . . . And I think that that agreement should proceed expeditiously. It would surprise me if it took much time at all."

I do not know who wrote the talking points for Ms. Rice and Mr. Burns, but, as someone who has been involved in negotiating most of our peaceful nuclear cooperation agreements since enactment of the Nuclear Non-Proliferation Act (NNPA) of 1978, I have to say that nothing could be further from the truth. These are not mere technical agreements. All the Republican and Democratic Administrations that I worked for have regarded such agreements as critically important to the national security interests of the United States since they contain fundamental nonproliferation assurances, guarantees and controls to ensure that exports of US nuclear materials, equipment and technology to other countries are not diverted to nuclear explosive uses or military purposes. Our cooperating partners have accorded the same importance to such agreements since they impose significant obligations and burdens on their civil nuclear programs.

Moreover, Congress itself has never regarded peaceful nuclear cooperation agreements as mere "technical" arrangements but as serious nonproliferation accords. The crucial importance that Congress has accorded such agreements is evidenced by the fact that Congress has enacted legislation (the Atomic Energy Act as amended by the NNPA) that sets forth in considerable detail the various nonproliferation assurances, guarantees, conditions and controls that each such agreement must contain, identifies the agencies of the Executive Branch that are to negotiate 123 agreements as well as the agencies that are to review them. Congress has also specified the documentation the Executive Branch must submit to Congress and outlined the specific Congressional procedures for reviewing and/or approving such agreements. In addition, Congress has specified which agencies are to implement the agreement, e.g., in issuing export licenses, approving technology transfers and approving retransfers of US nuclear material, equipment and components from one country to another and has delineated the criteria the Nuclear Regulatory Commission or the Executive Branch must adhere to in approving nuclear exports licenses and retransfer requests. I am not aware of any other kind of international agreement that Congress has treated with such interest, attention and specificity as peaceful nuclear cooperation agreements.

All this is important because the Administration is asking the Congress to surrender its prerogative to approve the US-Indian agreement as an agreement that does not contain all the guarantees and controls specified in the Atomic Energy Act. The Act provides that an agreement that contains all of the nonproliferation conditions of Section 123 may enter into effect after the President has been submitted it to Congress for ninety legislative days and provided Congress does not enact legislation to disapprove it. However, both Houses of Congress must vote to approve any agreement that does not contain all the nonproliferation requirements of Section 123. The US-Indian peaceful nuclear cooperation agreement that the Administration

will submit to Congress will lack at least one of the key requirements of Section 123, namely an Indian commitment to place all its nuclear activities under International Atomic Energy Agency (IAEA) safeguards—the so-called “full-scope safeguards” requirement.

My first recommendation, therefore, is that Congress decline to enact the provision in the Administration’s proposed legislation that would strip the ability of Congress to approve a peaceful nuclear cooperation agreement that does not meet all the requirements of the Atomic Energy Act. No President has ever approved or submitted to Congress an agreement for cooperation that lacked any of the statutorily required conditions for such agreements. I am concerned that the Administration’s proposal will serve to circumvent Congressional oversight and approval procedures for an agreement that will not contain all the nonproliferation assurances and conditions set out in Section 123 of the Atomic Energy Act.

Avoid Piece-meal Approval of the US-Indian Nuclear Deal

My second recommendation is that Congress refrain from approving the US-India civil nuclear deal on a piecemeal basis. This proposed deal consists of several elements: 1) the Administration’s proposed legislation, 2) the text of a US-Indian peaceful nuclear cooperation agreement (which is yet to be negotiated), 3) the Indian-IAEA safeguards agreement which the Indians say will be India-specific and therefore unlike standard IAEA safeguards agreements, and 4) an agreement among the members of the Nuclear Suppliers Group (NSG) to exempt India from their long-standing requirement that non-nuclear-weapon states place all their nuclear activities under IAEA safeguards as a condition for receiving nuclear supplies. Before it approves the legislative package that the Administration has proposed, the Congress should insist on having an opportunity to review the text of the agreement for cooperation that the Administration will negotiate with the Indians. Congress should also insist on being assured that the Indian-IAEA safeguards agreement meets appropriate international standards and that the NSG is prepared to go along with exempting India from the full-scope safeguards condition. The 45 members of the NSG make decisions on the basis of consensus, and their consent to the US proposal is, by no means, a slam dunk. Various members of the NSG have expressed concern about the US proposal on India. In particular, some non-nuclear-weapon states (NNWS) party to the Non-Proliferation Treaty (NPT) regard the US-Indian deal as a betrayal of the bargain that the US made with them when they joined the Treaty. It is also not clear whether China will support the US proposal, or whether it will insist that the NSG accord Pakistan the same treatment as India.

Do Not Waive All the Requirements of Section 129 of the Atomic Energy Act.

My third recommendation concerns the Administration’s proposed legislation that requests Congressional consent to “waive the application of any sanction under section 129 of the Atomic Energy Act with respect to India.” Section 129 defines certain actions by a cooperating partner that would trigger the termination of US nuclear cooperation with that country. It is understandable that the Administration would seek the waiver of two of these sanctions, namely that the US terminate nuclear cooperation with any non-nuclear weapon state that

- 1) has detonated a nuclear explosive device in the past (paragraph (1) (A) of Section 129) after 1978, and
- 2) engaged in activities involving nuclear weapons development (paragraph 1 (D) of Section 129).

The waiver of these sanctions will be necessary to initiate nuclear cooperation with India. However, remarkably the Administration is also asking Congress to agree that US nuclear exports could continue even if India

Terminated or abrogated IAEA safeguards—Paragraph 1 (B)

Materially violated an IAEA safeguards agreement—Paragraph 1 (C).

Materially violated an agreement for cooperation with the United States or violated the terms under which the US supplied material and equipment outside an agreement or enriched US-supplied nuclear material without the prior approval of the United States—Paragraph 2 (2) (A).

Assisted, encouraged or induced any non-nuclear weapon to acquire or manufacture of nuclear explosive devices—Paragraph (2) (B).

Entered into an agreement for the transfer of reprocessing equipment, materials or technology to the sovereign control of a non-nuclear weapon state unless it were part of an international arrangement to which the United States participated in or subscribed to—Paragraph (2) (C).

In my view, there is no reason that India should be exempted from these sanctions. Our agreements with all other states contain provisions that give the United States the right to terminate nuclear cooperation if the other party terminates, abrogates or materially violates safeguards or materially violates the agreement for cooperation. What the Administration is saying is that the US will cut off nuclear trade with NPT parties if they do these things but not if India, which is not a party to the NPT, does. This makes no sense. I am certainly not suggesting that India or any other cooperating partner would do these things. That is not my point. These Section 129 provisions contain vitally important sanctions that Congress has decided should apply to any cooperating partner that would engage in such activities. Exempting India from these sanctions would send the wrong signal and seriously damage the international nonproliferation regime.

Insist that India Pledge Not to Assist Other Countries in the Manufacture or Acquisition of a Nuclear Explosive Device

Frankly I find it particularly mind-boggling that the Administration is proposing to exempt India from sanctions if it assists another non-nuclear weapon state to manufacture or acquire a nuclear explosive. The Administration's proposal is particularly disturbing in light of the July 18, 2005, US-Indian statement in which

“President Bush conveyed his appreciation to the Prime Minister over India's strong commitment to preventing WMD proliferation and stated that as a responsible state with advanced nuclear technology, India should acquire the same benefits and advantages as other such states.”

Rather than exempting India from these sanctions, the Congress should insist that India make the same pledge to the United States that is contained in Article I of the NPT, namely, that India will not “transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly; and not in any way to assist, encourage, or induce any non-nuclear weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices.”

India has assumed no such legal obligation. The Indians have been historically hostile to the NPT, and they may therefore find it difficult to accept this particular language from the NPT. However, I am confident that the Indians have no intention of assisting another state in acquiring a nuclear weapon. They should be able to find a formulation that suits them and that reflects this intention in legally binding language. The Indians could make such a pledge in the US-Indian peaceful cooperation agreement itself or in a separate understanding with the United States.

Pay Close Attention to the Details of the Peaceful Nuclear Cooperation Agreement

Given the importance to US national security and nonproliferation interests of peaceful nuclear cooperation agreements, Congress should pay close attention to a number of issues that are likely to arise in connection with the text of proposed US-Indian peaceful nuclear cooperation agreement that the Executive Branch will eventually submit to Congress. Some of the major issues that bear close attention are the following.

Prohibition of Nuclear Explosive Devices. The Atomic Energy Act requires that a cooperating partner refrain from using nuclear materials and equipment subject to a peaceful nuclear cooperation agreement for any nuclear explosive device, for research on or development of any nuclear explosive device or for any military purpose. However, after it had detonated a nuclear explosive device in 1974 using plutonium from a research reactor supplied by Canada and heavy water from the United States under peaceful use assurances, the Indian Government took the position that there is a difference between a nuclear weapon and a so-called peaceful nuclear explosive. India also denied that the 1963 US-Indian peaceful nuclear cooperation agreement prohibited the use of items subject to that agreement for so-called peaceful nuclear explosives. The US took the position that the prohibition on the use of items subject to that agreement for atomic weapons also included a ban on peaceful nuclear explosive devices. In addition, the Atomic Energy Act requires that cooperating parties agree not to use US materials and equipment subject to US peaceful nuclear cooperation agreements for nuclear weapons or any nuclear explosive devices, and non-nuclear-weapon states party to the NPT forswear the acquisition and manufacture of both nuclear weapons and nuclear explosive devices. The text of the US-Indian agreement for cooperation should explicitly preclude the use of items subject to the agreement for nuclear explosives or for any military purpose.

The Indian Safeguards Agreement and Perpetuity of Safeguards. The agreement for cooperation should provide, as required by the Atomic Energy Act, that IAEA

safeguards will be maintained so long as the material remains under the jurisdiction or control of India, "irrespective of the duration of other provisions in the agreement or whether the agreement is terminated or suspended for any reason."

Normally, safeguards agreements between a state and the IAEA are based on, and are in accordance with, model IAEA safeguards agreements. However, according to the Indians, the safeguards agreement or agreements that they will negotiate with the IAEA for their civil nuclear facilities will be "India-specific" and they will effectively recognize India as a nuclear weapons state in "a category of its own." The March 7, 2006, Indian plan for separating its civilian and military nuclear facilities seems to be making perpetuity of safeguards dependent on the assurance of supply or to be seeking a guarantee of supply regardless of Indian behavior. That plan states:

"To further guard against any disruption of fuel supplies, the United States is prepared to take the following additional steps:

(i) The United States is willing to incorporate assurances regarding fuel supply in the bilateral U.S.-India agreement on peaceful uses of nuclear energy under Section 123 of the U.S. Atomic Energy Act, which would be submitted to the U.S. Congress.

(ii) The United States will join India in seeking to negotiate with the IAEA an India-specific fuel supply agreement.

(iii) The United States will support an Indian effort to develop a strategic reserve of nuclear fuel to guard against any disruption of supply over the lifetime of India's reactors.

(iv) If despite these arrangements, a disruption of fuel supplies to India occurs, the United States and India would jointly convene a group of friendly supplier countries to include countries such as Russia, France and the United Kingdom to pursue such measures as would restore fuel supply to India.

In light of the above understandings with the United States, an India-specific safeguards agreement will be negotiated between India and the IAEA providing for safeguards to guard against withdrawal of safeguarded nuclear material from civilian use at any time as well as providing for corrective measures that India may take to ensure uninterrupted operation of its civilian nuclear reactors in the event of disruption of foreign fuel supplies. Taking this into account, India will place its civilian nuclear facilities under India-specific safeguards in perpetuity and negotiate an appropriate safeguards agreement to this end with the IAEA."

What is meant by all this is not at all clear, except that it appears that India intends to negotiate some kind of special safeguards agreement or agreements with the IAEA that differ in some way from the model safeguards agreements that are standard for non-NPT non-nuclear-weapon states and that now apply to the Indian reactors at Tarapur and Rajasthan and that last in perpetuity. In addition, the safeguards the Indians intend to negotiate with the IAEA appear to be dependent in some way on assurances of supply. This would represent an unprecedented erosion of the principle of perpetuity of safeguards which is enshrined in IAEA safeguards agreements.

The new Indian-IAEA safeguards agreement will be submitted to the IAEA Board of Governors for approval. I recommend that Congressional approval of the deal be contingent on a Presidential certification to the Congress that the safeguards agreement or agreements that India concludes with the IAEA: 1) are in accordance with IAEA standards, principles and practices, 2) provide for the perpetuity of safeguards and 3) do not make perpetuity of safeguards contingent on any assurances of nuclear supply.

Moreover, neither the Indian-IAEA safeguards agreement nor the 123 agreement should permit India to remove any civil facilities or materials from safeguards if the US does not or cannot assure supply of nuclear fuel to Indian reactors.

The US-Indian peaceful nuclear cooperation agreement should also contain a binding Indian commitment to allow the application of IAEA safeguards not only to nuclear materials and equipment subject to the US-Indian agreement but also to the facilities that the Indian Government has identified as civilian in connection with the March US-Indian agreement on separation of Indian civil and military facilities.

Additional Protocol to IAEA Safeguards Agreement. The Congress should require that cooperation under the agreement be contingent on the conclusion of an Additional Protocol between India and the IAEA.

Fall-back Safeguards. The agreement should contain fall-back safeguards. All our agreements for cooperation concluded since enactment of the Nuclear Non-Proliferation Act of 1978 contain a provision that, if either party becomes aware that for any reason the IAEA is not applying or will not apply the safeguards as required by the agreement, then the US would have the right immediately to enter into arrangements to inspect nuclear materials and facilities subject to the peaceful nuclear cooperation agreement.

Assurances of Supply. As noted above, the March 7, 2006, Indian separation plan said,

“The United States is willing to incorporate assurances regarding fuel supply in the bilateral U.S.-India agreement on peaceful uses of nuclear energy under Section 123 of the U.S. Atomic Energy Act, which would be submitted to the U.S. Congress.”

It is unclear how this US pledge to provide India with assurances of supply will be reflected in the peaceful nuclear cooperation agreement. Although it is vitally important that the US make every effort to be a reliable supplier of nuclear fuel, the US Government is not in a position, under current practices, to guarantee nuclear fuel supply to India. First, the US Government is no longer in the business of selling enriched uranium. The production and sale of enriched uranium by the United States is in the hands of private industry. Second, US peaceful nuclear cooperation agreements are not commitments to supply but rather provide the legal framework under which US nuclear exports may take place. Third, exports of nuclear material from the United States to another country require an export license from the Nuclear Regulatory Commission, an agency of the US Government that is independent of the Executive Branch. Finally, in all our current agreements for cooperation, the US has not committed to supply, but it has agreed to facilitate nuclear trade. In light of these circumstances, the Congress should pay close attention to any legal obligations the Administration proposes to assume in the text of the US-Indian agreement for cooperation to guarantee India nuclear fuel supplies. The US should not be giving assurances to India that we have not given to our other cooperating partners, who are parties to the NPT. NPT parties would have valid grounds for complaining that we were giving non-NPT parties more favorable treatment than states that have agreed to refrain from acquiring or manufacturing nuclear explosive devices and to accept IAEA safeguards on all their nuclear activities.

Inclusion of Nuclear Materials and Equipment Covered by the Expired US-Indian Agreement in the New US-Indian Agreement. The non-proliferation assurances and conditions in the new agreement should apply to the nuclear materials and equipment for the Tarapur reactors that the United States supplied under the 1963 US-Indian agreement that expired in 1993. The US and India have had a number of significant differences about that expired agreement. These included: 1) whether the 1963 agreement prohibited the use of nuclear material and equipment subject to the agreement for nuclear explosive purposes, 2) whether the US had actually given consent to reprocessing of US-supplied fuel from the Tarapur reactors, and 3) whether the nonproliferation assurances and controls contained in the 1963 agreement continued after the expiration of the agreement in 1993. It is important to our nonproliferation interests that the Tarapur reactors and the spent fuel irradiated in those reactors be explicitly subject to the new US-Indian agreement for cooperation and thus to various nonproliferation assurances and controls required by the Atomic Energy Act. Otherwise, the Indians might very well regard these materials and equipment as free from any nonproliferation controls. All of the peaceful nuclear cooperation agreements concluded since enactment of the NNPA contain nonproliferation conditions that apply to the equipment and materials supplied under the agreements that they replaced.

Perpetuity of All Nonproliferation Assurances and Controls. The agreement should provide for the continuation in perpetuity of all the nonproliferation assurances and conditions, not just IAEA safeguards, that are contained in the agreement, notwithstanding the expiration or termination of the agreement. All our peaceful nuclear cooperation agreements since enactment of the NNPA contain a provision providing for the perpetuity of all nonproliferation assurances, guarantees and conditions.

Consent Rights. The agreement for cooperation should contain all of the so-called consent rights required by Section 123 of the Atomic Energy Act. These include the right of the United States to consent to the enrichment of uranium supplied by the United States, reprocessing or alteration in form and content of spent fuel produced from US-supplied nuclear material, the storage of weapons-usable material subject to the agreement, and the retransfer to third countries of nuclear materials and equipment subject to the agreement. Indian nuclear energy plans include the reprocessing of spent fuel from its power reactors and the use of the recovered plutonium

as mixed-oxide fuel in their nuclear power program. The Indians may not wish to accept any US right to approve reprocessing and the use of the recovered plutonium or may insist that the US give advance, long-term consent to such activities. The US has always been extremely cautious about giving consent to such sensitive activities as reprocessing since it produces a directly-weapons usable material—plutonium. We have given advance, long-term consent to such reprocessing only to our closest allies in EURATOM and Japan. (These states are parties to the NPT, have security alliances with the US, and have excellent nonproliferation credentials.) The Congress should insist that the US have such consent rights over sensitive nuclear activities in the agreement with India, and that the US will not grant advance, long-term consent to reprocessing and the use of plutonium in India.

Restricted Data and Sensitive Nuclear Technology. The agreement should ban the export of restricted data (RD) as well sensitive nuclear technology (SNT) i.e., enrichment, reprocessing and heavy water production technology, to India. Our agreements for cooperation traditionally have prohibited the transfer of both RD and SNT. The Congress should insist that Administration give assurances that it will not transfer SNT outside of the agreement and that it will not transfer to India any enrichment, reprocessing or heavy water technology that is not in the public domain even if the Department of Energy deems that such technology is not SNT.

Grounds for Terminating Nuclear Cooperation under the Agreement. As I have noted above, the Congress should reject the Administration's request to exempt India from all the sanctions contained in Section 129 of the Atomic Energy Act. In addition, the US-Indian peaceful nuclear cooperation should contain explicit US rights to terminate nuclear cooperation in the event

India detonates a nuclear explosive device. (Section 129 of the Atomic Energy Act requires the termination of US nuclear exports to any non-nuclear-weapon state that the President has found to have detonated a nuclear explosive device after 1978. While India should be exempted for its nuclear weapons tests in 1998, the US should retain the right to terminate nuclear cooperation in the event India conducts any nuclear tests in the future.)

India terminates or abrogates or materially violates an IAEA safeguards agreement or materially violates the US-Indian peaceful nuclear cooperation agreement. (As noted above, Section 129 of the Atomic Energy Act requires the termination of nuclear exports under such conditions.)

In addition, the US-Indian agreement should contain a US right, as required in Section 123 of the Atomic Energy Act, to require the return of any nuclear materials and equipment subject to the agreement if India detonates a nuclear explosive device or terminates or abrogates an IAEA safeguards agreement.

Although the Indians have not tested a nuclear weapon since 1998, this could be a contentious issue for them. According to a report in the *Times of India* of April 18, 2006, a spokesperson for the Indian Government stated,

“The United States had shared with India some weeks ago a preliminary draft agreement on India-U.S. civil nuclear cooperation under Article 123 of the U.S. Atomic Energy Act. Among the elements suggested by the US side is a reference to cooperation being discontinued were India to detonate a nuclear device. In preliminary discussions on these elements, India has already conveyed to the United States that such a provision has no place in the proposed bilateral agreement.”

Notwithstanding these Indian objections, this is a requirement of the Atomic Energy Act, and Congress should insist that it remain a fundamental condition for nuclear cooperation with India. Since enactment of the NNPA in 1978, US agreements with non-nuclear-weapon states contain explicit rights to terminate nuclear cooperation and to require the return of items subject to the those agreements in the event the cooperating party engages in any of the actions described above.

No Favorable Treatment for India

Congress should ensure that the terms under which the US engages in peaceful nuclear cooperation with India do not afford India any benefits that we have not provided our close allies and states that have accepted the obligations of the NPT. Congress should enact a resolution of approval requiring that, with the sole exception of exempting India from the full-scope safeguards requirement, the US-Indian peaceful nuclear cooperation agreement will not afford India more favorable treatment than the US has accorded NPT parties.

Fissile Material Production for Nuclear Weapons

Finally, let me say a few words about the question of continued Indian production of plutonium and highly enriched uranium. Many critics of the proposed US-India nuclear deal have argued that its greatest deficiency is its failure to oblige India to cease the production of fissile material for nuclear weapons purposes. I agree wholeheartedly. The Administration, on the other hand, points to India's pledge to work with the United States for the conclusion of a multilateral fissile material cutoff treaty (FMCT). However, this pledge may not be very meaningful, and it will place no real limits on Indian fissile material production for its nuclear weapons program for many years to come. First, the Administration itself has caused considerable uncertainty about the future of this treaty by asserting that an FMCT cannot be adequately verified. Other states have always envisioned that an FMCT would have effective verification provisions. Second, although the US proposed an FMCT in 1993 and the UN General Assembly adopted a resolution later in the same year calling for the negotiation of such a treaty, almost 13 years later the Conference on Disarmament has still not been able even to begin negotiations. If and when those negotiations begin, an FMCT will require many years to conclude. In the meantime, India will remain free to produce increased quantities of fissile materials for its nuclear weapons program, even though the five NPT-recognized nuclear-weapon states have all ceased the production of plutonium and highly enriched uranium (HEU) for nuclear weapons purposes. Again remarkably, the US-Indian deal does not even commit India to work towards a regional fissile material cutoff arrangement.

The Indian Government and the Administration have both said that any requirement for India to cease production of fissile material for nuclear weapons would be a deal killer. Perhaps this is true. However, this is an important defect of the proposed deal, and Congress should consider a number of steps that could ameliorate this situation. Possibilities include the following:

Condition US nuclear cooperation on Indian agreement to terminate the production of plutonium and highly enriched uranium for nuclear explosive purposes within a certain defined period of time.

Require India to pledge now to declare all future electricity producing reactors as civilian and to place them under permanent IAEA safeguards. (The Administration asserts that the Indians have agreed to place all future civilian reactors in India under IAEA safeguards. However, what they neglect to point out is that India has made no commitment to declare any future reactors civilian. The Indians, on the other hand, have made it clear that this decision is theirs alone to make.)

Require India to make the same arms control pledge contained in Article VI of the NPT, namely to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a Treaty on general and complete disarmament under strict and effective international control. (Again, India might object to employing language from the NPT but it could come up with language of its own that would be the equivalent of that in the NPT.)

Mark Hibbs has reported in the most recent edition of the trade publication, Nuclear Fuel, that India is scheduled to make a decision early next year to construct a new, large (100 Megawatt) and unsafeguarded plutonium production reactor, the same size as the existing Dhruva reactor, which would be capable of producing some 20 to 25 kilograms of weapons-grade plutonium per year. If India decides to build this reactor, it would certainly be taking a step in the wrong direction.

Surely the US and Indian Governments can devise some realistic Indian commitment that would move India in the right direction on fissile material production and would lead to an Indian halt in its production of plutonium and highly enriched uranium for nuclear explosive purposes, and sooner rather than later.

Conclusion

Let me conclude by urging Congress to examine this proposed US-Indian deal very carefully and in its totality. I believe it would be a mistake to accept the Administration's proposal that asks Congress to surrender its prerogatives to approve the agreement. Congress should also insist on seeing the entire package rather than approve it on a piece-meal basis.

The conditions of approval that I have suggested may seem numerous and burdensome. However, we require virtually all of them of all our other cooperating partners. I am not suggesting conditions that would single out India for discriminatory treatment. Moreover, I believe that the various conditions that I have proposed should not be deal-killers, provided the Administration and the Government of India show a reasonable degree of flexibility. I hope that the Congress will give these rec-

ommendations serious consideration and that, if Congress decides to approve the US-Indian civil nuclear arrangement, it will adopt the conditions of approval needed to ameliorate the damage that this deal could do to the international nonproliferation regime.

Chairman HYDE. Thank you, Dr. McGoldrick. Dr. Falkenrath.

**STATEMENT OF RICHARD A. FALKENRATH, PH.D., SENIOR
FELLOW, THE BROOKINGS INSTITUTION**

Mr. FALKENRATH. Thank you very much, Mr. Chairman, and Mr. Lantos. I am honored to appear before you today to talk about this subject. I would like to start with a very broad point before I turn to some of the specific issues that have been raised by the other members of the panel.

The broad point is this: I would urge the Committee, when they evaluate this nuclear deal in the President's proposed bill, to think about it in very broad terms. Not as a narrow, rather technical, nonproliferation or arms control agreement.

I would urge the Committee to think about it in terms of its bearing on how the United States will be able to deal with the great strategic challenges that it will face in the 21st century; the rise of China; the instability of Pakistan; Islamist militancy; the promotion of democracy around the world; global climate change; energy; disease; the liberalization of trade rules.

These are the first order issues of American foreign policy now and for the foreseeable future. And in every case, I believe, the United States has far more to gain from having India as a constructive partner than as a bystander or adversary, which it has been in the past for reasons which I regret.

So this is the general framework that I would urge the Committee to take. Now, that is not to say careful attention need not be paid to these technical issues, but that is the framework that I think it should be evaluated.

When you look at this deal narrowly, just as a nonproliferation agreement, and consider the cost and benefits only in nonproliferation terms, I think it is an issue upon which reasonable people can disagree about whether it is in the net interests of the country, or if it is not in the interests of the country.

And I have respect for many former officials who I served with in government and national security positions who have come to the conclusion that on balance, when viewed narrowly, it is not in the interests of the United States, and I respect that point of view.

I think that when you take this wider frame of reference, the argument is far more compelling, and for reasons which some of the Members addressed in their opening statements. Now, to turn to the specific issues about the bill. I will be brief. I have more to say in my prepared statement.

On the question of the review procedure that Congress applies to the agreement on cooperation, which the United States will negotiate with India, I believe it is appropriate to apply essentially the same procedure that the Congress has applied to other agreements on cooperation negotiated with other countries, namely a 60-day review period, after which it can disapprove, but otherwise goes into effect.

And my reasons for this are both pragmatic and principled. The principled one is this: This 109th Congress is the highest legislative body in the land, and I believe it has sufficient information to evaluate now whether it approves or disapproves of the President's basic deal with India.

We know what is coming, and we know what the President has proposed. He wishes to begin civilian nuclear trade with a country, India, which has never joined the Non-Proliferation Treaty. That is a major change, and the details, the technical expression of that arrangement which will emerge in some number of years from now, seem to me very unlikely to contain a surprise.

I mean, you know what we are in for here basically, and I believe that Congress has sufficient information now, the 109th Congress, to basically reach a definitive judgment about whether it thinks this is a good idea or not. And if it does not think it is a good idea, reject the deal now. Let us just take that blow to our foreign policy now, today, so that Indian expectations do not continue to grow and the rest of the world does not begin its own civilian nuclear trade with India.

I believe that should not be the outcome here. I believe that Congress should approve this deal, but let us do it on basically the same terms that we have applied to other such agreements, the 60-day review period.

It does not seem to me that the 109th Congress should defer the decision about the wisdom of this accord to another Congress, the 110th, the 111th, or the 112th. The 109th is the one that sits right now and it is essentially sovereign. It should reach that agreement.

That is a principled view. I understand that many people could differ with that. I do not believe that legislative prerogatives are in any respect impinged upon by that. There are ample procedures available to the Congress if it wishes to block the implementation of the agreement. You could do a restriction of funds amendment on export licenses.

So I think that is the right approach to handle the review procedure, and I would be happy to address, if we wish, the question of whether there should be a generic or generalized criteria base, rather than an India-specific arrangement, but I also think that would be unwarranted.

India is different than every other country in the international system today, and I think diplomacy is essentially about differences, and that is the right way to deal with this particular challenge.

Thank you for the opportunity to be here.

[The prepared statement of Mr. Falkenrath follows:]

PREPARED STATEMENT OF RICHARD A. FALKENRATH, PH.D., SENIOR FELLOW, THE
BROOKINGS INSTITUTION

INTRODUCTION

Good morning, Mister Chairman, Congressman Lantos, and Members of the Committee. I am grateful for the opportunity to be here today to provide my views on the U.S.-India Global Partnership and, in particular, the U.S.-Indian Civilian Nuclear Cooperation Initiative announced by President George W. Bush and Prime Minister Manmohan Singh on March 2, 2006.

For the record, my name is Richard A. Falkenrath and I am presently the Stephen and Barbara Friedman Fellow in the foreign policy studies program at the

Brookings Institution. I am also Managing Director of the Civitas Group LLC, a strategic advisory and investment services firm serving the homeland security market, and a security analyst for the Cable News Network (CNN). I served on the White House staff in several different capacities from January 2001 until May 2004. Prior to government service, I was an Assistant Professor of Public Policy at the John F. Kennedy School of Government, Harvard University.

Until May 2004, I served as Deputy Assistant to the President and Deputy Homeland Security Advisor on the White House staff; and, before that, as Special Assistant to the President and Senior Director for Policy and Plans within the Office of Homeland Security. My first position in the U.S. government, however, was as Director for Proliferation Strategy on the National Security Council staff, where my responsibilities included U.S. proliferation policy toward India, Pakistan, China, and North Korea. I vividly remember accompanying Deputy Secretary of State Richard Armitage on his visit to New Delhi and meeting with then-Indian Prime Minister Atal Bihari Vajpayee for the first of many high-level discussions that led ultimately to the U.S.-India Global Partnership.

HISTORIC CONTEXT OF THE U.S.-INDIAN CIVILIAN NUCLEAR COOPERATION INITIATIVE

A strong stand against nuclear proliferation has been and should remain a foundation of U.S. foreign policy. For the last forty years, however, the application of U.S. nonproliferation policy to India has been a failure in every respect. The Nuclear Nonproliferation Treaty (NPT) set January 1, 1967, as the cut-off date for a state to join the NPT as a nuclear-weapons state. India declined to join the NPT as a non-nuclear weapons state, and indeed tested a nuclear weapon in 1974. India has been outside of the nuclear nonproliferation regime ever since, and civilian nuclear trade with India has been prohibited by the Nuclear Suppliers Group (NSG) guidelines.¹

Over time, it has become clear that the benefits of this policy toward India are slight and theoretical, while its disadvantages are considerable and real.

First of all, there is no prospect whatsoever that India will abandon its nuclear weapons capability. All responsible experts and government officials know perfectly well that there is no nuclear “roll-back” option with respect to India.

Second, there is no evidence that the treatment of India as a nuclear pariah under the NSG guidelines has been a factor in any other state’s decision to seek to acquire nuclear weapons (e.g., Iran, Iraq, North Korea) or any other state’s decision to renounce nuclear weapons (i.e., Ukraine, South Africa, Libya).

Perhaps this firm stand against nuclear trade with India has helped developed countries maintain reasonable and consistent nuclear export controls. Or perhaps, as some experts have argued, this treatment of India has helped shore up the commitment to the NPT of countries like Brazil, Argentina, Taiwan, or South Korea, whose governments may have or might still contemplate nuclear weapons acquisition.² Although there is little direct evidence of these effects, the conjecture is plausible and concerning and therefore points to an issue that deserves heightened attention in U.S. foreign policy in the future.

The nuclear issue has, however, deprived the United States of a natural ally. When India and the United States should have been working together on the great strategic challenges of our time, American diplomats and senior officials were sidetracked by tedious, pointless debates about the global nonproliferation regime. I do not entirely understand why the nuclear issue had become a source of such neuralgia for the India elite, but I am certain that settling the question of India’s status in the global nonproliferation regime (and thus in U.S. export control law) is the *sine qua non* of transforming U.S.-Indian relations into a genuine strategic partnership.

EVALUATING THE U.S.-INDIAN CIVILIAN NUCLEAR COOPERATION INITIATIVE

One’s assessment of the U.S.-India Civilian Nuclear Cooperation Initiative depends in part on one’s frame of reference. Do you view the deal narrowly, as a technical nonproliferation (or arms control) agreement, in isolation from all other issues; or do you view it broadly, as an element of the United States’ effort to cope with the many different strategic challenges we face today and are certain to face in the future?

¹ The 45 members of the NSG, including the United States, have incorporated these guidelines into their national nuclear export control laws.

² See Ashton B. Carter, “Assessing the India Deal,” Statement before the Committee on Foreign Relations, U.S. Senate, April 26, 2006, p. 5.

If one views the Bush-Singh nuclear deal strictly as a technical nonproliferation agreement, then the net benefits of the agreement would seem contestable. Put differently, reasonable people could disagree about its merits. India has agreed to segregate its civilian nuclear facilities from its military nuclear facilities and to place the former under IAEA safeguards. But India has not agreed to reduce or even to cap its overall military nuclear stockpile, or to allow any form of international inspection of its military nuclear complex. One should also not exaggerate the real importance of such technical restrictions given that India, and its two largest neighbors, will retain a robust nuclear weapons production capabilities and significant deployed nuclear forces in all circumstances, but it is hard to disagree with the point that additional technical restrictions on the Indian military nuclear program, such as a fissile material production cut-off, would be desirable. (I have no doubt that this thought also occurred to the U.S. negotiators of the arrangement, and that they would have readily included such undertakings in the agreement if the Indians had been willing to accept them.) Some experts, when they evaluate the Bush-Singh nuclear deal narrowly as a technical nonproliferation or arms control agreement, may therefore conclude that the deal gives up too much in return for too little.³

Personally, I disagree with this conclusion even when I apply the narrowest frame of reference. India is not at this time prepared to accept unilateral technical restrictions on its military nuclear program; given India's history on this matter and the character of its relations with neighboring Pakistan and China, I understand this reluctance. The nonproliferation value of the Bush-Singh nuclear deal lies in the untangling of India's civilian and military nuclear programs; the inclusion of India in the IAEA safeguards system; and India's political commitment to work constructively with the United States in the negotiation of a global fissile-material cutoff convention. These steps are not trivial in their own right and may over time become the foundation on which technical restrictions on India's military nuclear program will be built. Taken together, the Indian undertakings in the Bush-Singh nuclear deal, combined with the improved prospect of additional measures in the future, modestly outweigh the notional nonproliferation drawbacks of the accord.

But the Bush-Singh nuclear deal should not be assessed narrowly as a technical nonproliferation agreement. The correct frame of reference for assessing the Bush-Singh nuclear deal is U.S. national strategy—that is, the extent to which it contributes to, or undermines, the U.S. ability to manage the great strategic challenges of our time. By this standard, the case in favor of the U.S.-India Global Partnership, which is founded on the Bush-Singh nuclear deal, is far more compelling.

The great strategic challenges of our time include the rise of China; the stability of Pakistan; the ideological challenge of Islamist militancy; the promotion of democracy and other forms of good governance; various state and non-state efforts to acquire weapons of mass destruction, including Iran's determination to acquire nuclear weapons; the threat of pandemic influenza and other emerging infectious disease; the equitable liberalization of international trade and investment rules; the sustainable and secure production, transportation, consumption of energy resources; global climate change; and the reform of the United Nations and other important multilateral organizations. These are the first-order issues of American foreign policy. In every case, the United States stands to benefit from more constructive cooperation with India—or, to put it differently, from having India as an ally rather than a bystander or an adversary. Why? Because of India's size, population, and economic growth, which give it power; because of India's location, at the fulcrum of Asia and the Middle East and on the southern border of China; because of the internal character of the Indian state, a stable, multi-ethnic liberal democracy; and because of the prestige and influence that inheres in India's standing as one of the world's greatest, and oldest, civilizations.

Constructive cooperation on the great strategic issues of the day has not, unfortunately, been the norm in U.S.-Indian relations in the past. Achieving such cooperation in the future will require a sea-change in the way in which India views the United States and, eventually, defines its own national interests. I believe that such a sea-change is now precariously underway in India, in large part due to President Bush's determination to break the long-standing diplomatic logjam on the nuclear issue. Anyone with even a glancing familiarity with the Indian elite should recognize that there is no real prospect of India becoming a genuine strategic partner—an ally, in effect—of the United States except in the aftermath of a resolution of the nuclear issue. There is, of course, no guarantee that after the nuclear issue has been resolved, India will always support U.S. preferences in all matters of importance to the United States. The possibility of meaningful U.S.-Indian strategic co-

³ See, for instance, Robert J. Einhorn, Statement before the Committee on Foreign Relations, U.S. Senate, April 26, 2006.

operation will grow far more favorable as our bilateral ties deepen, as our leaders learn to trust one another, and as India's standing as a responsible great power is more clearly recognized by the United States and other leading members of the international community.

THE PRESIDENT'S INDIAN CIVILIAN NUCLEAR BILL

I have reviewed the President's proposed civilian nuclear bill. The President's bill would grant him the discretion to waive the three key provisions (sects. 123(a)(2), 128, and 129) of the Atomic Energy Act, as amended, that currently stand in the way of implementing the U.S.-India Nuclear Cooperation Initiative. The President has asked the 109th Congress to pass this bill swiftly so that India may complete its undertakings in the Bush-Singh agreement in confidence that the United States will follow through on its commitments; and so that the United States may complete the negotiation of the required Agreement on Cooperation with India and with the necessary updating of the NSG guidelines.

The President's proposed bill is simple and effective. If passed, it would confer on the President exactly the authority he needs to implement his agreement with Prime Minister Singh, and no more. It imposes no conditions on the United States or India beyond those which the President and Prime Minister Singh have already accepted. The 109th Congress could today pass the President's bill exactly as he proposed it in confidence that it has done no more than enable the U.S. government to follow through on the commitments that have already been made by the U.S. head of state.

Congress of course has the power to modify the President's proposed bill in any manner it sees fit. Naturally, any legislation that the Congress ultimately passes on this matter will deviate in some respect from the President's proposal. Each proposed modification will need to be evaluated on a case-by-case basis, but a few general guidelines suggest themselves. Statutory reporting requirements and "sense of the Congress" statements, for instance, are almost always acceptable to the Executive Branch. Similarly, instructions to the President as to what outcomes he should seek in future negotiations with the Indians or others rarely present serious problems.⁴ Specific statutory conditions related to the fulfillment of the U.S. undertakings in the agreement are much more problematic; in particular, any such conditions that would require the United States to reopen negotiations with India would be tantamount to outright rejection of the Bush-Singh nuclear deal.

Importantly, the President's proposed bill would subject the completed U.S.-India Agreement on Cooperation to the standard congressional review procedure for such agreements—namely, a sixty-day Congressional review period after which the agreement would enter into force unless the Congress passes a resolution of disapproval. I believe that this review procedure is entirely appropriate and proper. I further believe that the commonly discussed alternative review procedure—namely, the requirement that the completed Agreement on Cooperation be affirmatively approved by the Congress—is unwarranted and would be unwise. My reasons are both principled and pragmatic.

As a matter of principle, the 109th Congress, as the highest legislative body of the land, should be able to reach a definitive view as to the wisdom and propriety of the proposed U.S.-Indian Civilian Nuclear Cooperation Initiative, and should then have the courage of its convictions. When completed, the U.S.-Indian Agreement on Cooperation will be merely the technical expression of the Bush-Singh nuclear deal; there will be no surprises. The 109th Congress therefore has sufficient information to make a definitive determination on the Bush-Singh nuclear deal. If the 109th Congress approves of this Bush-Singh nuclear deal, then it should unequivocally say so now. If, on the other hand, the 109th Congress disapproves of the Bush-Singh nuclear deal, then it should make this clear to the world now by rejecting unambiguously the President's proposal.

A congressional review procedure for the completed U.S.-India Agreement on Cooperation that deviates from established precedent by requiring a second affirmative vote by some subsequent Congress would suggest equivocation and lack of self-confidence in the part of the 109th Congress. Such an implication would be unbecoming of the most important and powerful branch of the United States government; and would be injurious to the President's ability to conduct diplomacy on behalf of the American people. If the Congress is going to scuttle the Bush-Singh nuclear deal, the time to do so is now, before India's expectations are raised any higher and before other countries begin civilian nuclear exports to India. Such a step by the Con-

⁴On the question of what the United States should expect from India going forward, I associate myself with the recommendations of Ashton B. Carter, *ibid.*, pp. 6-8.

gress would of course be a grievous blow to U.S. foreign policy, but it is preferable to incur this blow now rather than two or five years from now.

Moreover, the prerogatives of the Congress would in no way be impaired by applying the standard congressional review procedure for Agreements on Cooperation to the U.S.-India agreement when it is completed. If some subsequent Congress came to the view that the implementation of the Bush-Singh nuclear deal was against the U.S. national interest, it could block such implementation in any number of different ways—not least though the mechanism proposed in the President's bill (namely, a resolution that rejects the completed Agreement on Cooperation). The Congressional freedom of action would in no way be limited by applying the standard congressional review procedure for Agreements on Cooperation to the Indian agreement.

Applying the standard congressional review procedure for Agreements on Cooperation to the U.S.-India agree would, however, have important practical diplomatic benefits. In order to implement the Bush-Singh nuclear deal, the United States must negotiate a bilateral Agreement on Cooperation with India as well as conforming modifications in the NSG guidelines. There are 44 members of the NSG in addition to the United States; each of the NSG members must accept the U.S.-proposed modifications before the changes to the NSG guidelines go into effect. This multilateral diplomacy with the other NSG members will be complex and time-consuming. Ideally, the bilateral U.S.-Indian negotiations on the Agreement on Cooperation would occur simultaneously with the multilateral negotiations on the Nuclear Suppliers Group (NSG) guidelines. However, such simultaneity is prudent only if the United States has a high degree of confidence that its statutorily required Agreement on Cooperation will come into effect at the same time as other members of the NSG translate the new guidelines into their national nuclear export control laws. This confidence will exist only if the 109th Congress adopts the standard congressional review procedure for Agreements on Cooperation, since it is widely recognized that, except in very unusual circumstances, an affirmative vote by both chambers of the Congress on an identical piece of legislation takes a long time to achieve and presents many opportunities for material modification.

The diplomatic risk for the United States under an affirmative-vote review procedure is twofold: first, if the other NSG members move more quickly than the United States to update their national nuclear export control laws with respect to India, then the U.S. government would have succeeded in opening the Indian civilian nuclear market to sales by foreign but not U.S. exporters; and second, if the Congress modifies the completed U.S.-India Agreement on Cooperation or delays substantially its entry into force, then the United States may have to undertake a subsequent round of multilateral negotiations among the NSG members—and these from a far weaker negotiating position—in order to realign the NSG guidelines to the U.S.-India Agreement on Cooperation in its final form. Thus, the practical, diplomatic effects of an affirmative-vote congressional review procedure is likely to be deliberate sluggishness in our multilateral negotiations with the other NSG members; as well as lingering suspicion in India on whether the United States can be trusted to follow through on President Bush's commitments to Prime Minister Singh. This suspicion in India will undoubtedly manifest in delayed or half-hearted Indian implementation on Prime Minister Singh's commitments to President Bush.

CONCLUSION

Regardless of one's assessment of the merits of the Bush-Singh nuclear deal, there is one point on which all observers should agree. Congressional rejection of President Bush's nuclear agreement with Prime Minister Singh, whether outright or in the form of statutory conditions that require the reopening of negotiations, will have disastrous consequences on Indian attitudes toward the United States and U.S.-Indian relations generally.

In the United States, the Bush-Singh nuclear deal is a single, relatively minor, and relatively technical foreign policy item. It receives little attention from the American public or the media, which are understandably preoccupied with front-burner issues like the conflict in Iraq, terrorism, Iran, and developments in Israel and the Palestinian authority.

In India, by contrast, the public and political importance of the Bush-Singh nuclear deal can hardly be overstated. It is a topic of continuous, vigorous debate and extensive media attention. If the 109th Congress rejects the Bush-Singh nuclear deal, it would be seen around the world as a testament to the capriciousness of U.S. foreign policy. In India, it would be remembered as a betrayal of the first order by a generation of Indians—particularly by Prime Minister Singh's and Sonia Gandhi's Congress party, which would suffer politically from such a set-back.

It is hard to predict exactly how such Indian attitudes toward the United States would manifest in India's foreign policy, but we should expect at a minimum some significant withholding of Indian support on matters of considerable concern to the United States. This speaks to the seriousness of the matter before 109th Congress, and of the need for a deliberate and carefully considered Congressional action on the President's legislative proposal.

Chairman HYDE. Thank you, Dr. Falkenrath. We now will take questions and the order in which Members attended the hearing gives them priority. So, Mr. Leach of Iowa.

Mr. LEACH. Thank you, Mr. Chairman. It seems to me that in terms of theoretical reasoning about this agreement that the landscape of decision making has shifted a bit, and it shifted in two senses.

Once the Administration unilaterally made a decision to go forth without consultation with Congress, it puts Congress on the spot because not only are you dealing with an issue in abstraction, but if you reverse an Administration decision, you are spiting a two-country relationship in a way that would not have been spited before the Administration decision, and that is awkward *vis à vis* our own internal decision making.

Secondly, once the Administration has acted, other people in the world are responding, and it is amazing how quickly. And so, basically, Russia is acting as if they had gone through the whole process that we have gone through just instantaneously. So, Russia is starting to supply or agreed to supply uranium to India outside the Nuclear Suppliers Group framework, and so whether or not the Congress likes it or not, whether or not the Administration likes it or not, the rest of the world is acting as if a decision has been made.

So we suddenly have what I would perceive as a doctrine of exceptionalism of decision making, as well as a doctrine of exceptionalism in terms of changes in the NPT arrangements, and that is a very unique phenomenon in world affairs that we just simply have to deal with.

Beyond that, as we all know, Dr. Falkenrath is right. India is a unique country—all countries in the world are unique—but no other country thinks that they are unrelated to the decisions made in one kind of spectrum.

And so as we look at the India deal, we have to be concerned for Iran, for Pakistan, for North Korea. And, very interestingly, the Pakistanis have indicated that if India is going to go forth in this way, they have to build more nuclear weapons, too.

And so there is a fallout that is not single-country oriented. It is multi-country oriented, whether or not we would like to think of it in a single-country framework. And so what is occurring here, whether it is a good idea or a bad idea, is definitively the unraveling of a pristine allegiance to international law.

In this case, what we have considered for many, many decades to be the linchpin of the nonproliferation regime, which is the NPT treaty. And so we have a circumstance of absolutely stunning dimensions.

And then we have a circumstance that there are aspects of the nonproliferation regime that people are asking for *quid pro quos*. Dr. Weiss indicated that maybe we would like to seek India to

make a firm commitment not to explode another nuclear device. The test ban issue.

But we in the United States have turned down a comprehensive test ban. So I am wondering, Dr. Weiss, is this from your perspective a good time or a bad time to resurrect the comprehensive test ban issue?

Mr. WEISS. Well, I think it is always a good time to do so, Mr. Leach. I am very sorry that the U.S. Congress did not see fit, the U.S. Senate did not see fit, to ratify the test ban treaty. But we should remember that the United States did sign the treaty and that the United States has stuck to its moratorium on testing since then.

And although there may be some people in the Administration who would like to resume testing, there does not seem to be any move to actually do so at this point. It would not be unreasonable to ask the Indians to make their moratorium permanent, or at least as permanent as we have made ours at this point.

That is, sign a treaty, and then if you want to hold back on ratification, go ahead and do so, but do not do any testing. The Indians, however, have taken the position that they do not want to have anything done that, in their view, would restrict their ability to test nuclear devices.

This is contrary to what all the other nuclear weapons states under the NPT have done at this point, and puts them in a unique position not only outside the treaty, but outside the norm that has been developed.

Mr. LEACH. Well, fair enough. Let me just ask Dr. Tellis as an advocate—

Chairman HYDE. Mr. Leach, there are two votes pending. There will be—

Mr. LEACH. Yes, sir.

Chairman HYDE [continuing]. There is one now and then a second one. One is to move the previous question and the other one is on the rule, defense rule. That being so, it is going to take quite a bit of time on the Floor.

Members have to be there to vote, unfortunately, and so I am loathe to keep our witnesses any longer. That would be another hour before we could get back to the questions probably.

So with your permission, we would like to submit questions in writing to you, and expect and hope to get answers in a reasonable time. So, with that—

Mr. LEACH. Mr. Chairman?

Chairman HYDE. Mr. Leach.

Mr. LEACH. Well, I understand totally. If I could have 10 seconds simply to say that all I am suggesting to this whole panel is that United States leverage with the Russian decision strikes me as weak as anything could be today based upon events that have gone elsewhere, and that is the dilemma that we are struck with.

Chairman HYDE. Mr. Berman.

Mr. BERMAN. Mr. Chairman, two votes, maybe 20 or 25 minutes. Dr. Tellis and Dr. Falkenrath have sort of given us some broad principles that we should apply. There is some value in trying to push them a little bit to understand exactly what they mean.

There have been specifics you raised by the opponents regarding the—there is no way to come back after the votes, or is that—I mean, I hate to—

Chairman HYDE. You can ask the witnesses.

Mr. BERMAN. If I am the only one who wants to—

Mr. KIMBALL. Well, I am certainly available all day if necessary.

Mr. WEISS. So am I.

Mr. GOLDRICK. Actually, I have a flight scheduled at 3:30 out of Baltimore.

Chairman HYDE. Then I suggest that you gentlemen go vote, and then hurry back. All right. We will resume the hearing at 2 o'clock. Oh, another hearing is scheduled for this room at 2 o'clock. So we have to be finished by 2 o'clock.

[Recess.]

Mr. ROHRBACHER [presiding]. The International Relations Committee hearing is called to order, and I appreciate the witnesses holding off for us, and this is one of those very busy days, but this is a phenomenally important issue that we are talking about, and with that, I gladly yield to Mr. Lantos.

Mr. LANTOS. Thank you very much, Mr. Chairman. Before I ask a couple of questions, let me commend all five of our distinguished witnesses for exceptionally thoughtful and serious testimony, which is appropriate given the nature of the subject.

I also want to commend our two colleagues, Jim Kolbe and Ed Markey. I was listening to all five of you gentlemen very, very carefully, and as I did, it seems to me that I am going to ask you a very basic, but very important, question. As Dr. Tellis indicated, there are three attitudes, three positions, which are plausible in connection with this agreement.

One is to buy it as is, and one is to reject any agreement under any circumstances, and one is to see whether we have some mechanism of keeping the proposal alive while preserving the full oversight responsibility of the Congress, and signaling to our Indian friends that there is a lot of support for the concept of the agreement, because as Dr. Falkenrath suggested, we have to look at it in a very broad context.

This is not purely a little technical agreement. This agreement can set the stage for generations of United States-India relationships. My legislative proposal, which will be introduced in the very near future, does this.

It commends our two Administrations, the Clinton and Bush Administrations, for basically changing the tenor of United States-India relations, and gives Congress the opportunity of reviewing all agreements once they are concluded, and provides for expedited proceedings, and keeps the process moving ahead.

What I would like to ask each of you gentlemen is whether our support, or reservations, or opposition to the agreement in its current form could be accommodated with a legislation such as the one I have sketched. I realize that you have to see it and read it, but basically what the legislation does is just that.

It commends the general concept of a civilian nuclear cooperation agreement between India and the United States. It emphasizes the absolute critical importance of preserving all nonproliferation aspects currently in effect, and hopes that such an agreement can be

submitted to both Houses of Congress for a relatively speedy up or down vote. Dr. Tellis, what would be your reaction?

Mr. TELLIS. I haven't seen the text, of course, of the—

Mr. LANTOS. That is our problem with the current agreement.

Mr. TELLIS. But I would like to give the established procedures that we are currently going through a chance, and the reason I say that is because I think the procedures that we currently have, which is going to the Committee and then going to the Floor, in a sense in my judgment protect Congress' equities.

It protects Congress' decision to review the 123 agreement should it choose to, in fact, through a second vote if the leadership wants it, and at the same time provides an opportunity for Congress to signal to the Administration and to the Government of India that it has made a strategic decision to support the President's initiative.

And so my own inclination at this point is to accelerate as it were the current process that we are undergoing without in any way ruling out the alternative that you suggest.

Mr. LANTOS. Well, this is a very reasonable answer. Let me say to you that it is my considered judgment that accelerating the present process will only lead to an earlier defeat of this proposal.

So if you accelerate it, you will get a negative response from the Congress, I believe, in both Houses. But I appreciate what you are saying. Dr. Weiss.

Mr. WEISS. I have not read over the details of your legislation, but on the basis of what you have said, I can certainly see a possibility that this might be well supported. I think it is really a question of whether, under your legislation, Congress has the ability to have a full opportunity to offer and debate amendments to the legislation.

If that is the case, then having some expedited procedure for the purpose of having a vote, I do not think, would be terribly objectionable. But the question is whether expedited procedures would somehow cut off the ability to have a full and regular debate on that, with the offering of amendments.

Mr. LANTOS. Mr. Kimball

Mr. KIMBALL. I would agree with what Dr. Weiss just said. As I understand your proposal, it would provide Congress more time necessary to understand the full details of this. It would allow Congress the opportunity to take a look at the detailed and complex section 123 rumor that is being negotiated.

I think that is essential before Congress makes any changes to U.S. policy that have been in place for decades. That is the prudent approach. I do not see why there is a rush to move forward. I do not see why the Administration would not want Congress to vote in the affirmative for this agreement. I am not sure what they are afraid of.

I think that if they believe that it is such a good idea that they should be supportive of that. Now, one other thing that I would mention is that I think it would be very important for Congress to be able to see the Indian IAEA safeguards agreements, the basic safeguards agreement, as well as the additional protocol agreement.

So the details of those are also important. Congress should see this as a package. But again, the details of this, the substance of the overall package I will reserve judgment on, because as I understand it, your proposal is a procedural one that simply provides more time.

Mr. LANTOS. But it does more than provide simply more time. It also makes the Administration—it obliges the Administration to keep Congress apprised of negotiations on a monthly basis, so we are not presented with a *fait accompli* at the end of whatever process for a yes or no vote, but be, in fact, involved with that process. Dr. McGoldrick.

Mr. GOLDRICK. Unlike the other witnesses, I was trained in the State Department, and so I have more hesitation to comment on something that I haven't seen. But in all seriousness, I think you made a constructive proposal.

My only concern here is that the agreement be treated as an exempted agreement, and that it require the affirmative vote of both Houses of Congress. And secondly that the Congress, under your proposal, would have an opportunity to impose conditions on the implementation of the agreement if it felt that those were appropriate.

Mr. LANTOS. Thank you. Dr. Falkenrath.

Mr. FALKENRATH. Thank you. I think this is the sort of proposal that the Administration would want to look at very carefully. The Administration understands that the President proposes his preferences in their purest form, and Congress rarely passes them as such, and modifies them, and this strikes me as a very constructive area for dialogue between the Branches.

I would have three questions about it. The first is, does it make it easier for the Congress to change the standards by which it evaluates the agreement? Does it make it easier to shift the goal posts, as it were?

One thing which I think would not be good is for the 109th Congress to reach a determination that it could live with the basic contours of the Bush-Singh deal if, for instance, there were no Indian commitment to a fissile material cutoff. That is the essence of the deal.

Congress need not agree with that, and may reject it. One thing that I worry about is, suppose the 110th Congress has a different view, and changes its mind?—which it will have the right to do, of course.

But does this make it easier for them to do that, to change their mind in a way that is essentially injurious to the conduct of U.S. foreign policy to constantly have these changes? I would prefer, as I said, a definitive statement by the 109th as the highest legislative body in the land as to the wisdom of this agreement, and then proceed from there.

The second question is, does it make it more likely that foreign nuclear suppliers will be able to begin penetrating the Indian market before American nuclear supplies? As I think Mr. Leach pointed out, other countries are looking at the Indian market now, too, and will change their own laws to permit exports into the Indian market.

And I think it would be a great shame if we open the flood gates for such sales into India, but then the United States exporters were denied that opportunity because of procedural issues in the United States Congress, even when the 109th Congress had agreed to the essence of the arrangement in the first place.

The third question I have is, would your procedure unnecessarily complicate the multilateral diplomacy that the U.S. will need to conduct with its industry partners, the 44 members of the NSG, or we are going to have to agree to substantial amendments?

I think the Administration would like to do those amendments in parallel, simultaneously with the bilateral negotiations on the agreement on cooperation. But it may be that if the Administration lacks confidence that the agreement on cooperation, when it finally negotiates with India, will in fact be the one that enters into force.

It may be that it becomes imprudent to try to, in parallel, negotiate with the NSG partners, and would want to do that sequentially, do them after, thus delaying that process. So those are my questions, and having not reviewed your document, I do not have an answer.

I will say that I have no quarrel whatsoever with the reporting requirement that you mentioned, the need to keep Congress informed of the negotiations. That strikes me as entirely appropriate.

Mr. LANTOS. Thank you very much. Thank you, Mr. Chairman.

Mr. ROHRABACHER. Well, first of all, I feel like I am sitting between two giants here, with Henry Hyde on one side, and Mr. Lantos on the other, and it is an awesome feeling, I will tell you that. But right now I am going to recognize Mr. Royce for his time.

Mr. ROYCE. Thank you. I just wanted to explore one thing with the panel. One of the complaints if you go to New Delhi that you will hear is that democratic India has been shut out of this cooperation years ago when Communist China got this deal. I mean, that is the perception.

So would one of the witnesses walk us through the history of the United States-China nuclear cooperation and its impact, and what are the differences between the China agreement and the proposed agreement with India?

Mr. GOLDRICK. Mr. Royce, perhaps I could provide you with some history of this since I was involved in the negotiations with China.

Mr. ROYCE. Thank you, Mr. McGoldrick.

Mr. GOLDRICK. In the late 1970s and early 1990s, we discovered that China was assisting Pakistan's nuclear weapons program, and we went to the Chinese and said, "We will be prepared to negotiate a peaceful nuclear cooperation agreement if you terminate such assistance."

Mr. ROYCE. Now what year would that be?

Mr. GOLDRICK. I beg your pardon?

Mr. ROYCE. What year would that have been?

Mr. GOLDRICK. This was in the early 1980s, 1982 or 1983 perhaps. It was early in the Reagan Administration.

Mr. ROYCE. And China was transferring water magnets as late as the 1990s weren't they, or the capability to Pakistan?

Mr. GOLDRICK. That is correct. We secured pledges from the Chinese in the mid-1980s to terminate this assistance. In 1992, China actually joined the NPT and assumed the obligations of that treaty.

In approximately 1996, we determined that the Chinese were transferring enrichment technology to the Pakistanis.

I should take a step back, because we never implemented the agreement with China in the late 1980s because we determined that the Chinese—at least there was some ambiguous evidence that they were continuing to assist the Pakistanis. So the agreement was never implemented.

It went through the Congress, and once we had the intelligence determining that they were still possibly assisting the Pakistanis, we did not implement the agreement. We never sold the Chinese anything.

Mr. ROYCE. It was more de facto rather than de jure?

Mr. GOLDRICK. I am having a very difficult time hearing you.

Mr. ROYCE. It involved more de facto than de jure? I mean, it became just sort of an accepted understanding, although I remember in the 1990s raising the issue here, and having some difficulty getting information out of the State Department about that transfer, because this is a tangent for a minute, but it was my contention that China should have been sanctioned at that point, rather than India, later, because it became pretty clear that part of the arms race was China proliferating to Pakistan in violation of the accords or the agreements.

Mr. GOLDRICK. Right.

Mr. ROYCE. And that my assertion was that we should move on that, and have sanctions against China, and I didn't agree later when India was sanctioned because it seemed to me that we had ignored the source of the contribution to the arms race, which was giving Pakistan the capability.

Mr. GOLDRICK. Well, we were not at that time, as I said, providing China with any nuclear technology, and once we discovered the continued Chinese assistance, we confronted them with that, and we spent some time, considerable time, negotiating with them, and securing further assurances.

They passed a new export control law, and I have been out of the government for some time, but to the best of my knowledge, they have ceased that cooperation. The President made the necessary determinations in 1998, I believe it was, that would permit nuclear cooperation with China to begin.

So that is the history of the United States-China relationship. In the case—did you also ask me about the Indian case, and—

Mr. ROYCE. The difference between that arrangement and the India agreement basically; the difference between the Chinese agreement and the India agreement.

Mr. GOLDRICK. Well, in the case of India, we had an agreement with them, which we negotiated in 1963, and under which we provided them with reactors at Tarapore and with the enriched uranium to run those reactors.

Prior to that, we had supplied them with heavy water under a peaceful use assurance. In 1974, India, as you know, detonated a nuclear explosive device, which they termed a peaceful nuclear explosive device. And we had some major difficulties with them at that time.

First of all, the Indians probably used United States-supplied heavy water in the Sirius reactor that produced the plutonium, and

we had a peaceful use assurance. So we had a major disagreement with them about this. We felt that they had violated our agreement.

We also had a disagreement with them about whether or not our agreement on Tarapore precluded so-called peaceful nuclear explosive devices. We insisted that it did and they didn't. As a result of all of these developments, Congress passed the Nuclear Proliferation Act of 1978, which imposed a lot of new controls and conditions on our exports, and these are reflected in section 123 of the Atomic Energy Act, and all new agreements must have those.

One of those requirements was that non-nuclear weapons states must place all of their nuclear activities under safeguards as a condition of supply. India refused to do that because India was a non-nuclear weapons state under the Non-Proliferation Treaty and under United States law. So, in 1980, our cooperation with India terminated.

Mr. ROYCE. Thank you. I think that I have used my time. Thank you.

Mr. WEISS. May I add something to the statement that Dr. McGoldrick just made?

Mr. ROHRABACHER. We certainly will extend it for at least 60 seconds, but you have 60 seconds.

Mr. WEISS. Two things. First, on the United States-China agreement. There is, and I think you will see if you look at the record, considerable opposition to this agreement by a number of people, one of whom was the person that I was working for at the time, Senator John Glenn.

One of the problems that we had with the agreement was that it did not have the kind of conditions that should have been attached to it in the negotiations that produced that agreement, and it still doesn't.

But in any case, when the Chinese finally decided to join the NPT, of course they then were under obligation to do what all NPT weapons state parties have to do. On the India history, I will only add a footnote to what Dr. McGoldrick said.

The contract that India signed with the United States for the purchase of heavy water that went into the Sirius research reactor that was used to produce the plutonium for the nuclear device that they exploded in 1974, that heavy water came under a contract that required peaceful use assurance.

That phrase is in the contract. The Indians violated that contract. Now, they claim that there was a difference of interpretation of the contract, but in fact we sent the Indian Atomic Energy Commission an aide-memoire in 1970, 4 years before they exploded the device, which said explicitly that if they used plutonium to explode a nuclear device, and from a reactor that had United States heavy water in it, it would be a violation of the terms of sale of the heavy water.

They ignored the aide-memoire, and they went ahead and exploded the device, and the reactor, which by the way was also under a peaceful use contract with Canada, has been used by India continuously since it went into operation in 1960 to produce plutonium for India's nuclear weapons program.

The plutonium from that reactor was used in the 1998 Indian tests, as well as the 1974 test. So, India has been in continuous violation of those contracts since the 1974 test, and they still refuse, under the separation agreement, to put that reactor on the civilian side. That reactor is on the military side of the Indian nuclear program, and the Canadians have objected to that.

Mr. ROHRABACHER. Dr. Weiss, that is a very—I think you have just made a very significant point, and rather than go on to the next question, I will give Dr. Tellis 1 minute to add to that discussion, and then we will go on to the next question.

Mr. TELLIS. Thank you, Mr. Chairman. What you just heard from Mr. Weiss is Mr. Weiss' opinion. It is not the position that any U.S. Administration has taken on the question of—

Mr. ROHRABACHER. Excuse me, but it is his position, whether he is accurate or not, and whether that contract did or did not, was signed under the auspices of a contract saying that this would only be used for peaceful purposes.

Mr. TELLIS. Yes, there was an agreement that required Indian reactors and heavy water to be used for peaceful purposes.

Mr. ROHRABACHER. All right.

Mr. TELLIS. But what exactly peaceful purposes entailed was never defined in the agreement.

Mr. ROHRABACHER. Well, certainly you are not contending right now that producing a nuclear weapon is encompassed under peaceful purposes.

Mr. TELLIS. Let me make a point, sir.

Mr. ROHRABACHER. Okay.

Mr. TELLIS. The IAEA held a series of technical conferences from 1966 onwards until 1978, which explored in great detail the notion of peaceful nuclear explosions. I am not defending the Government of India on this issue. I am simply saying that the notion of what constituted peaceful uses was not articulated in the original agreement between the United States and India.

There was a fundamental ambiguity that clouded the relationship on this question, and it is something that you need to be cognizant of.

Mr. ROHRABACHER. Doctor, with all due respect, peaceful purposes and the explosion of a nuclear bomb is not ambiguous at all under anybody's definition. The explosion of a potential and development of a nuclear weapon is not a peaceful purpose, and whether or not that means today—let me put it this way: If you are defending that by saying it is ambiguous, if we end up with another agreement with India, and it results in more explosions of more bombs because they are playing word games of what is ambiguous about peaceful purposes or not, we have failed in what we are trying to do.

And with that, Mr. Berman, if you would like to proceed.

Mr. BERMAN. Thank you, Mr. Chairman. I have two questions, and I am going to ask the second, first, for any of the three folks in the middle, because it is just one question, and you can answer. Then I would like to ask Dr. Tellis.

My first question may take a little back and forth. The second question is, put some flesh on the assertion that many non-proliferation experts have made to me that this agreement as pro-

posed, and the passage of this legislative proposal that the Administration wants us to pass, undermines in the future our efforts to constrain proliferation.

That is my second question. Not that it is unprecedented, that we never had this approach before, that it violates the way that we have done things. But why—I mean, we know that there are people around who want stuff, and it has nothing to do with our nuclear cooperation with India.

We know that people who are parties to the NPT have done things, like North Korea, Iran, and at one point, Iraq, that violate the terms of that agreement. So why is this any—why will this make a bit of a difference on what happens in the future?

The first question though is, Dr. Tellis, you talked about applying three tests, and I am going to read all of your testimony, as I did not have a chance to read it before the hearing, but I will take it with me this weekend because it is very interesting, and it is sort of complicated.

But you talked about the balancing test, do not do something that throws this out of balance. But in whose eyes? Let me give you a hypothetical. We say this nuclear cooperation agreement will be suspended if you transfer technologies and materials to another country. The proposal, from what I have heard from a number of people, wipes that out, that provision of—what section of it is it?

Mr. TELLIS. 129.

Mr. BERMAN. 129 is wiped out by this bill. India says that your effort to include that in the agreement throws this out of balance. Because India says we throw it out of balance, does that mean that it is out of balance? That is for Dr. Tellis.

Mr. TELLIS. When I was talking of the issues of balance, I was not talking about the specifics, which you point to and which are entirely legitimate, and which I expect will actually be reflected in the 123 agreement. I expected the 123 agreement if it follows the template of previous 123 agreements.

Mr. BERMAN. But then you make the case for us getting to see the agreement.

Mr. TELLIS. But you do get to see the agreement under the Administration's proposal.

Mr. BERMAN. Seeing an agreement that we have to disapprove of by a resolution that under the legislative decision of the Supreme Court requires us that the Presidential veto has to be overturned by a two-thirds vote is the same as not seeing the agreement, I have to say. It is pretty close. In other words, it is that old thing of, we will consult with you, but we won't listen to you.

Mr. TELLIS. You know, I do not disagree necessarily with the sentiment that you are expressing, but the way that I think about the Administration's proposal is that it is asking the Congress to essentially make a strategic decision up front, and that strategic decision is whether India is a worthy partner worth extending nuclear cooperation to.

Mr. BERMAN. I think it is.

Mr. TELLIS. In which case the proposal suggests that we go ahead and vote the amendment into law, with Congress still retaining its right to have a second affirmative vote, if it wants, under the 123 agreement when that is concluded.

Mr. BERMAN. Is it worthy enough a partner to abandon every other consideration in pursuit of that partnership and to let somebody else, that we have no control over, do it. That is where I come into resistance.

I mean, you talk about things like credible deterrent. Now I do not know quite what that means. I thought having a nuclear weapon, and some missiles, you have got a little bit of a deterrent already right from the get-go.

North Korea thinks they already have a little bit of a deterrent. In other words, I guess I want to play or have some role in the evaluation of these considerations, and that is what I meant by the balance. I would like to be involved in making the balance that you think we should apply, not simply—well, we are late. So you have heard my other question.

Mr. GOLDRICK. Would you mind if I went first?

Mr. BERMAN. It is up to the Chairman how many can answer.

Mr. ROHRABACHER. You have about 30 seconds to answer.

Mr. BERMAN. You have about 30 seconds to answer the question.

Mr. GOLDRICK. Let me give you three concrete examples in answer to your second question. As a leader in the nonproliferation regime, we have spent almost 30 years trying to get all the nuclear suppliers to adopt full-scope safeguards as a condition of supply.

We have got the Nuclear Suppliers Group, finally, in 1992 to agree. When China joined the Nuclear Suppliers Group in 2002, we had everybody. Two years later, we are turning around and saying, whoops, we really did not mean it because we want to give an exception to India.

The second example. When we negotiated the treaty on the non-proliferation of nuclear weapons, we entered into a bargain with the non-nuclear weapons states. They agreed to forego nuclear weapons, and—

Mr. BERMAN. But we are giving it our exceptions for a country that already has nuclear weapons.

Mr. GOLDRICK. Yes.

Mr. BERMAN. So that in and of itself is not a proliferation.

Mr. GOLDRICK. No, but it affects the credibility, was my first point, of the United States. The second point is the bargain that we entered into with the NPT. The non-nuclear weapons states agreed to forego nuclear weapons and accept international inspections on all their nuclear activities. In return, they expected two things. One was that the nuclear weapons states would work through its arms control, and that they would get the full benefits of the peaceful uses of nuclear energy.

Now we are saying that an armed NPT party, who doesn't assume any of the obligations or burdens of the NPT is going to get the same benefits, full benefits, on the peaceful uses of nuclear energy. Again, this affects our credibility.

And my final point, to state it very quickly, is that I find it absolutely mindboggling that the Administration is proposing that we waive all the sanctions in section 129 when there is absolutely no reason to do so.

Waiving all those sanctions is not necessary to initiate nuclear cooperation, and it sends a terrible signal to the international community that we are waiving these for India, but we are not waiving

them for the NPT parties. That is also quite discriminatory and mindboggling. So those are three concrete examples to answer your question.

Mr. ROHRABACHER. Mr. Kimball, I am going to give you 30 seconds and then we will move on.

Mr. KIMBALL. Thank you. On the fissile material production issue, there are some who may question why the United States should care if India continues to produce fissile material and build more nuclear weapons.

There are some who are blunt in their statements. Mr. Tellis said last summer that “even if the United States cannot actively aid India in developing strategic capabilities, it ought to pursue policies having exactly that effect.”

I could not disagree more. Engaging in trade with India, civil nuclear trade with India, while it continues to exercise its options to expand its arsenal, directly contradict longstanding United States policy, and United States interests in the nonproliferation area.

Why? It should be our goal today to reduce the amount of separated plutonium and highly-enriched uranium around the world. If India continues to do this in future years, I think we have got to look more than just 2 or 3 years down the road. Other countries in the region are likely to do so, Pakistan and China.

We should be trying to curb an arms race in Asia, rather than aiding and abetting it. So I think it is very important that we look at this issue and try to work with India in some way to move forward in a meaningful way that leads to restraints on its fissile material production and those of the other countries in the region.

Mr. ROHRABACHER. Thank you very much. The Chair will now yield to myself for the time that I have, which is just about 5 minutes left before we have to clear out. Let me note that, so far, no one has disagreed with the significance of the proposal made by the Administration, or the historic importance of the decisions that will be made in reference to India and the United States, and our efforts to work with India to develop energy alternatives.

After all, what we are talking about is permitting India with its hundreds of millions of people to develop higher standards of living without, number one, producing more waste and pollution, and at the same time being able to have the energy needed to increase the standard of living of its people.

So no one doubts that, but if I can be presumptuous and note that what is of concern seems to be that what we do in trying to achieve this goal will do nothing that will increase India’s capacity to produce nuclear weapons.

Now, Mr. Kimball actually seems to want to go a step further in using this as a vehicle to actually put the genie back in the bottle where we can. I think that is unrealistic. However, certainly making sure and structuring an agreement so that whatever happens, the capacity of India isn’t increased is certainly a worthy goal.

And I will have to say that the testimony by Mr. Weiss about India’s clear violation of what was the—if not the letter, the spirit, or the understanding the last time that such an agreement was made that was trying to aim just at that, so that we would not have more nuclear weapons, and then India turns around and uses that very system to produce nuclear weapons means that we are

going to have to be even more cautious right now in reaching that understanding.

For myself, I see that a worthy goal, a very worthy goal, for us to work and be as diligent as we can to see if we can achieve this. Let me ask of the witnesses, have any of you—and I mentioned this to Mr. Kimball during the break, but have any of you heard about the high temperature gas reactor that has been developed by General Atomics?

Apparently this is a nuclear reactor that is currently working in Germany, and Japan, and produces a minimum amount of plutonium, and it actually has no chance of a meltdown as compared to the other reactors, past reactors, and would actually have a reduction in the amount of nuclear waste as is produced by other reactors.

Number one, isn't that the way that—shouldn't we do something—if what I just described is an accurate description of a new reactor technology, should we not be focusing on that new technology, or at least placing restrictions into any agreement that the technology that will be used will at least accomplish those ends? And I will throw that open to the panel. Dr. Weiss?

Mr. WEISS. First, let me say that the high temperature gas-cooled reactor concept is something that I have looked at for many years. It is a research project, and a development project that General Atomics has been involved in for a long time now.

And there is no question that what you say is correct about its attractiveness as an idea, and in terms of the way that it has performed in experiments. The problem is whether this idea can be translated into a machine that is economic to run.

And I think we are still some years away from being able to demonstrate that this is a reactor idea that utilities would be willing to purchase if and when we get to that point.

Mr. ROHRABACHER. Do you know if the reactors that have been working for, I think, 20 years in Germany and Japan have met that criteria?

Mr. WEISS. I think that those reactors, as I understand it, are relatively small scale, and the question is whether in fact if you are talking about a commercial scale HTGR, whether that in fact is competitive with other nuclear reactor concepts. And I am not sure that we have gotten to that point yet.

Mr. ROHRABACHER. I am on the Science Committee, as well as the International Relations Committee, and I will be holding a hearing in my Subcommittee on Oversight and Investigations of this Committee on this reactor, and I believe the Science Committee will also be holding a hearing.

So I would invite all of you to watch those hearings, and read what the scientists say, and feel free to contact me on what your reaction is to both the pros and cons. Mr. Kimball?

Mr. KIMBALL. Yes, Mr. Chairman, if I could just respond to one of our points. My argument about the importance of a fissile material cutoff is not that we should be putting the genie back into the bottle so to speak.

My argument and the argument of many others in the non-proliferation field, including some who support this arrangement, is that India, like other states, needs to exercise restraint if it is

going to be following the same practices and policies as the other advanced weapons states. A fissile production cutoff is part of that set of responsibilities.

So I am not talking about back in the bottle. I am talking about restraint. And one of the ways in which Congress might address your concern that you just stated about possible assistance to the military program through a civil nuclear trade would be, among other things, to require an annual report from Congress that is from the Executive Branch about India's domestic production of uranium, or reactor fuel, plutonium production, highly-enriched uranium production, and the net effect of foreign supplies of fuel for the energy sector on its military sector.

Mr. ROHRABACHER. As I said, there is a difference between moving forward with this program if it does nothing to increase that, versus suggesting that we move forward with the program only if there is a decrease in the activity.

And I would see one to be a pretty reasonable standard and goal, and the other to be, as Dr. Tellis said, reaching too far, and expecting a penalty in order for India—a defense penalty for India to achieve the energy goals that we have set out. Do we have any other comment? Then we have to close the hearing.

Mr. FALKENRATH. Mr. Chairman, I would just say that all reactors produce plutonium when they are done. Isotope plutonium can be used to make weapons. So what we really need to look for from India is an assurance that none of the plutonium that comes out of this civilian nuclear power complex is ever used for weapons purposes.

Mr. ROHRABACHER. And from what I understand, and I have been through several briefings on this high temperature gas reactor, is the amount of plutonium that is produced is dramatically reduced, and thus there is less plutonium being produced.

And at some point, they actually—and this is a computerized conclusion on this part, but they expect to be able to heat plutonium as well, but that they have not yet done, but they do, with the current system, produce dramatically less plutonium.

But you are right. Whatever is left over, that has to be dealt with. One last question, and it deals directly with what this issue is. I understand that plutonium—just being concerned with plutonium may be old think; that in fact nuclear weapons now can be made without plutonium, and that maybe we should not just be focused on the plutonium output of the system.

I am not an expert on this, and so I am really asking a question for information purposes.

Mr. WEISS. Yes, you are right. Nuclear weapons can be made without plutonium. In fact, the first nuclear weapon the United States made did not contain any plutonium. You can make it with highly-enriched uranium alone, which is one of the reasons why we are so concerned about the Iranian nuclear program, because that may be the direction in which they are headed.

So I would say that in an agreement with India, or with any other country for that matter, there should be very definitely United States consent rights over the ability of the cooperating country to enrich any U.S. nuclear fuel that is sold under the agreement.

This is not a question of necessarily barring it, although that ought to be considered. But certainly the United States ought to have the ability to say we do not want our nuclear fuel that is sold to you to be enriched, or to be enriched beyond a certain amount.

Nuclear enriched uranium may be okay, or in other words, anywhere from 3–5 percent, but once you start getting up above, say, 20 percent, you are now talking about enrichment that is going to lead to nuclear weapons material, and that certainly should not be allowed.

Mr. ROHRABACHER. Dr. Tellis, do you have one last note?

Mr. TELLIS. I just wanted to endorse the idea that we ought to be—and this goes beyond India, but we ought to be looking at a variety of advanced nuclear technologies.

The bottom line though, because we have a structural problem with India being outside the regime, is that giving India access to any kind of nuclear technology, whether it be a gas reactor or some other, would require us to change to amend our laws and to create some kind of a nuclear cooperation agreement with India.

So I agree with you, why we should look at technology alternatives, and somehow make it harder for the Indians to use the materials provided for their weapons program.

I would argue that the solution comes in two ways; there is technology and there are procedural solutions which are safeguards. And the 123 agreement that we are negotiating with them will provide, I believe, adequate guarantees that whatever is produced in the reactors that are sold to the Indians will not be available to their weapons program, and that, of course, Congress has an obligation to oversee.

Mr. ROHRABACHER. Well, thank you very much, and I want to note that whatever agreement is on a piece of paper, unless there is goodwill and understanding on both sides of the agreement, who cares if it is worth the paper that it is printed on, because it won't achieve the goals that we are trying to achieve.

Let us hope that India as a great democracy, as compared to China, a great dictatorship, that India will see that it is in its interests to be friends with the United States and the West, and to work with us, and that is where her security lies, instead of trying to build its own nuclear arsenal, and become an independent nuclear player, et cetera.

So with that said, I want to thank the witnesses for their very important and very useful testimony. Members may submit additional questions in writing, and with that, this Committee is adjourned.

[Whereupon, at 3:38 p.m., the Committee was adjourned.]

A P P E N D I X

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PREPARED STATEMENT OF THE HONORABLE RUSS CARNAHAN, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF MISSOURI

Chairman Hyde and Ranking Member Lantos, thank you for holding this, the second, hearing regarding the US-India relationship. Since the end of the Cold War and India's economic reform, great strides have been made between our two countries. Diplomatic progress should be continued and I commend the efforts made over the last decade.

I am a strong supporter of US-India cooperation and am encouraged by the commitment of both countries to develop a strong economic bond. Both the United States and India, as the largest democracy in the world, will benefit from this economic cooperation. Two of the largest companies in the St. Louis area, Monsanto and Boeing, are shining examples of this cooperation.

The huge steps that India has made in its development have also been accompanied by great strains on its energy supply. As a result, India is faced with energy problems similar to the United States. I fully support programs to spur investment in India that can help alleviate their energy problems.

The proposed civil nuclear deal that the Bush administration struck with India was done so with the intent to help India deal with its energy crisis, and I believe that energy cooperation is an integral part of the US-India strategic partnership. However, the deal in its present form, should be carefully considered. The implications for exempting any country from the NPT are far reaching.

I thank each of the witnesses for being here today. I am especially interested in hearing how each witness believes that this deal will benefit nonproliferation efforts.

Thank you each for being here today.

