

The U.S.-India Joint Declaration: Trade, Non-proliferation and Security

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Abstract

Although the July 2005 US-Indian Declaration on a global strategic partnership appears to contain some positive contributions to non-proliferation, in fact it is fraught with problems. The Declaration reverses and undermines decades of US policy and faces India with the immense costs of separating its civil and military nuclear infrastructure. The Declaration also threatens to unravel the NPT itself. In this article Ambassador Graham argues instead for the creation of an agreement or protocol to the NPT which would bring the three NPT holdout states – India, Israel and Pakistan – into an associative relationship with the NPT – countersigned by the NPT three depository states – the USA, Russian Federation and UK. He argues that this would strengthen rather than undermine the NPT, provide these three states with access to world nuclear energy markets, and bring the three states into frameworks of constraint.

| Introduction

In July 2005, the United States and India issued a joint Declaration in Washington announcing a global strategic partnership. It appeared to reflect the interests of both states and was viewed as being in part designed to offset the perceived rise of the power of China. President Bush stated in conjunction with the Declaration that this step is justified because “as a responsible state with advanced nuclear technology,” India should have the same benefits as other such states. The Declaration addressed a number of potential security

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benefits, but important among them the United States agreed to reverse a long-standing non-proliferation policy of engaging in civil nuclear energy cooperation only with states that apply safeguards to all their nuclear facilities, known as full scope safeguards. The only exceptions to this policy are the other Nuclear Non-proliferation Treaty (NPT) recognized nuclear weapon states: Britain, France, Russia and China. This has been United States law since 1978 and there are serious legal obstacles facing the United States which it must overcome before it can implement this part of the Declaration.

The United States is obligated as a member of the Nuclear Suppliers Group – the multilateral organization of nuclear technology exporting states – to require full scope safeguards on nuclear technology exports to non-nuclear weapon states as defined by the NPT, which includes India. Since the NSG operates on the basis of consensus the United States will have to persuade all 44 members of the NSG to amend the NSG Guidelines to permit nuclear cooperation with India without requiring full scope safeguards.

In the United States the Atomic Energy Act requires that nuclear technology exports take place only pursuant to an Agreement for Cooperation with the recipient state. This Agreement must, under the Act, contain a commitment to full scope safeguards. If the President negotiates such an Agreement without the full scope safeguards commitment, the Agreement must be approved by a majority vote of both Houses of Congress. As part of its vote of approval Congress could impose conditions such as a rapid, strict and verifiable separation of civilian and military facilities which would be prohibitively expensive and the verification of which India might not want to accept on national security grounds. Another condition which Congress might impose is United States approval rights with respect to the reprocessing of spent nuclear fuel subject to the Agreement. This is also required by the Atomic Energy Act but likely would be resisted by India and will probably not be in the negotiated Agreement for Cooperation.

And even if Congress approves the Agreement without conditions the United States Nuclear Regulatory Commission will have to license specific exports and is required by the Atomic Energy Act to insist on full scope safeguards with respect to each export. The President could authorize each such export by Executive Order, but if he does so without requiring full-scope safeguards then the Congress has 60 days to review the proposed export during which time Congress could decide to block the export or impose conditions.

The President could of course call for the amendment of the relevant sections of the Atomic Energy Act, which as stated above has been United States law since 1978. However, this would be highly controversial, would take a long time, and might not succeed.

In exchange for the concessions by the United States India made several non-proliferation commitments. India agreed to designate and separate its civilian and military nuclear facilities and programmes and file with the International Atomic Energy Agency (IAEA) a declaration covering its civilian nuclear facilities. India also reaffirmed its moratorium on further nuclear weapon tests previously agreed with Pakistan, to work for a fissile material cut off treaty

and to develop comprehensive nuclear export legislation. These latter three additional commitments simply reflect and reaffirm existing Indian policy.

| Nuclear Non-Proliferation

There has been much criticism in the United States and in other countries about the nuclear part of the Declaration. A number of commentators have questioned whether the United States gained any significant non-proliferation benefits in reversing its policy with respect to India of several decades. And as indicated there remains a very real question as to whether the United States Congress will cooperate and pass the necessary legislation required to properly implement the new nuclear policy set forth in the Declaration.

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But beyond this there is a serious question as to whether this part of the Declaration is really in the best interests of India, even considering the important benefits that India will receive in the context of expanded peaceful nuclear technology trade with the United States. Separating its civilian and military nuclear facilities and programmes will be very expensive for India. Already former Prime Minister Vajpayee as well as officials of the Indian Department of Atomic Energy have criticized this commitment as very difficult if not impossible to implement and enormously costly. And indeed, arguably, this U.S.-Indian arrangement could actually increase, rather than decrease, the threat of nuclear weapon proliferation which cannot be in the interest of India. Pakistan has already formally inquired about equal treatment for itself and the effect of the Declaration on Iran is unlikely to be positive.

At the Eighteen Nation Disarmament Committee (now called the Conference on Disarmament) where the NPT was negotiated in the 1960s, India was one of the seventeen nations (France did not participate) that actually negotiated the NPT. In 1964 believing that China would soon test a nuclear weapon – which it did – India approached the United States to ask whether the U.S. would assist India in acquiring nuclear weapons. The United States declined to do so and when India conducted its first test of a nuclear device in 1974, the United States was one of the countries strongly condemning this action by India.

President Kennedy truly believed that nuclear weapons might sweep all over the world. During his Administration there were predictions that by the end of the 1970s there would be 25-30 nuclear weapon states in the world with nuclear weapons integrated into their arsenals. If this had happened there would be more than 40 such states today, it would have created a world in which every conflict carried with it the risk of going nuclear and it would have been impossible to keep nuclear weapons out of the hands of international terrorist organizations they would be so widespread.

The principal reason that this did not happen and that we do not today live in a world dominated by the constant threat of nuclear weapons and a civilization whose existence remains in question every day was the entry into force of the NPT in 1970 after its signing in 1968. Giving up weapons is not a normal action for sovereign states. Switzerland twice voted by national referendum to build nuclear weapons. Sweden, one of the long-time champions of nuclear disarmament once had an active nuclear weapon programme. For many years the acquisition of nuclear weapons was considered an act of national achievement of which all citizens should be proud. The NPT changed all that. The NPT was first proposed by the Irish Delegation at the United Nations in the early 1960s, against rising concerns such as the ones that motivated President Kennedy, the basic concepts were negotiated between the United States and the Soviet Union, with the Eighteen Nation Disarmament Committee then negotiating the Treaty itself in the late 1960s.

The NPT truly changed the world and enhanced the security of all nations. It converted what had been an accomplishment to be praised into an act considered contrary to the general practices of the civilized world. President Kennedy's nightmare was not realized. Since 1970 there has been very little nuclear weapon proliferation. Eight perhaps nine states today have nuclear weapons, a far cry from the 40 plus nations that by now could have built nuclear weapons.

But the NPT did not come easy; it is a finally balanced agreement built on many interlocking obligations within the Treaty text and many understandings among nations outside the Treaty. It has been a robust treaty regime over the years but being so delicate and finely balanced, once severely damaged, it could rapidly come apart. And once shattered it could never be reassembled; there were too many compromises made in the late 1960s that could not be made today.

| India and the NPT

India although a negotiator of the NPT chose not to sign the Treaty and has remained outside of the Treaty and the NPT regime ever since. But even though not a NPT party India has been a third-party beneficiary of the Treaty since its entry into force. It is greatly in India's national security interest that nuclear weapons not spread all over world; it is greatly in India's interest that Al Qaeda and similar organizations do not get access to nuclear weapons. Pakistan has nuclear weapons and that is a problem but widespread proliferation of nuclear weapons would be catastrophic for India's national security. The principal bulwark against this happening is the NPT, accordingly India should want a strong, effective NPT even if it is not a party.

It's not enough for India simply to be responsible itself, in its own national interest it should want a strong NPT and be willing to take steps to support this. It is important to have a strategic relationship with the United States which strengthens the NPT regime or at least does not damage it. India itself, should at least question the nuclear arrangements in the July Declaration and examine carefully whether they are in its interest.

It is true that India will obtain many benefits under the Declaration. India is implicitly recognized as a nuclear weapon state thereby attaining international legitimacy for its nuclear weapons programme which it has not yet achieved. In addition and most importantly, India achieves access to the international nuclear energy market and the economic effect of this likely will be positive and far reaching. These benefits are without a doubt substantial but they come at significant potential cost to India.

Much more important in the end is the possibility that this arrangement could lead in the direction of a serious unravelling of the NPT

First, as indicated above, the required separation of civilian and military nuclear facilities will be very expensive and take a long time. Also this part of the Declaration could be viewed with scepticism by elements within the U.S. Congress and thus Congress may impose additional conditions on this arrangement which will prove to be even more expensive. That certainly would be consistent with the US-India historical experience with these issues.

Second, and much more important in the end is the possibility that this arrangement could lead in the direction of a serious unravelling of the NPT. Pakistan has already formally asked the United States whether it could receive similar treatment. Whatever is the decision by the United States on this, Pakistan inevitably will be able to arrange comparable access to the world nuclear energy market if the United States-India Declaration is implemented. The United States may be able to successfully amend its own laws and modify international practice sufficiently to include Pakistan, as well as India, in this opening of nuclear cooperation, motivated by the fact that Pakistan is in the forefront of the war on terror. The United States may choose to do that or it may not. If it so chooses it may or may not succeed with the Congress and the international community. If Pakistan is not able to negotiate a comparable arrangement with the United States it will turn to China who if history is any guide will be happy to make such arrangements with Pakistan. Thus, Pakistan will gain access to the world nuclear energy market on the strength of the July precedent. Under such an arrangement power reactors could be built and operated in Pakistan, permitting Pakistan without any additional regulation to produce considerably more fissile material by reprocessing spent fuel. Thereby Pakistan could acquire nuclear weapons fuelled by plutonium in addition to those they currently have which are fuelled by highly enriched uranium (HEU).

| **The Effect on Iran**

And what will be the effect of the July Declaration on officials in Tehran? The United States has been engaged in a world-wide effort to dissuade Iran from building nuclear weapons. India on the basis of its recent vote at the Board of Governors of the International Atomic Energy Agency appears to support this effort. Iran denies that it has any intention to build nuclear weapons. But whatever has been the intent of the Iranian nuclear programme, officials in Teheran could view the July Declaration as establishing that India outside the NPT with a nuclear weapon arsenal is to gain full access to the world nuclear energy market, while no matter what Iran does inside the NPT and without a nuclear arsenal it would never be able to gain comparable access to the world nuclear energy market. Iranian officials in reflecting on the matter, may conclude that since no matter what decisions Iran makes, it can never receive such good treatment from inside the NPT, therefore why should Iran stay as a NPT party? Acquiring the nuclear fuel cycle has been asserted by officials to be important to Iran's long-range energy goals, thus officials may conclude that perhaps the best course of action for Iran would be to leave the NPT and pursue nuclear technology from the outside as India has done. It is worthy of note that a newspaper associated with Ayatollah Khameni, Iran's Supreme Leader, some weeks ago in its leading editorial asserted that if Iran is brought before the United Nations Security Council on the nuclear issue it should withdraw from the NPT.

If Iran should withdraw from the NPT that would mark the second withdrawal from the NPT in recent years. North Korea withdrew from the NPT in 2003 and while it has agreed in principle to return, in the interim it has perhaps manufactured up to eight or nine nuclear weapons and certainly is not taking any concrete steps at this time to return. With Iran and North Korea outside the NPT it could well be the case that other states will contemplate such action. After all if satisfactory nuclear cooperation arrangements are available outside the treaty, why stay in if others are not? This is not a situation that India should want to encourage. As more states withdraw from the NPT and nuclear weapons become more widespread, the risk that such devices will be acquired by international terrorist organizations grows exponentially. India is just as vulnerable as is the United States to this most serious threat.

| **Conclusion: a Protocol to the NPT**

India is, as President Bush said, "a responsible state with advanced nuclear technology" but there is a better way than the July Declaration. The world appears to be coming to a historically decisive moment in its effort to promote nuclear non-proliferation. The basic technology needed to create nuclear weapons is increasingly available worldwide. Technical capabilities once

only in the hands of a few governments can now be purchased in marketplaces open to all. To hold the NPT together long-term it will be necessary to insist on strict compliance but also it will be important to take some account of the nuclear weapon programmes that have existed in India, Pakistan, and Israel for many years. Some way has to be found to bring all three states into association with the NPT regime. Once that is accomplished integration into the world nuclear energy market can be discussed and negotiated.

A protocol could permit India, Pakistan and Israel to retain their nuclear weapons programmes but inhibit further development on a legally binding basis

To amend the NPT and admit the three states as nuclear weapon states is a political impossibility. And none of these three states can be expected to give up its nuclear weapons and join the treaty as a non-nuclear weapon state party. A solution to this question could be a separate free-standing agreement or protocol which is associated with the NPT.

Such a protocol could permit India, Pakistan and Israel to retain their nuclear weapons programmes but inhibit further development on a legally binding basis. The protocol could include provisions requiring cooperation with international export controls, provide for voluntary IAEA inspections along the lines of what the recognized nuclear weapons states have agreed, prohibit any further explosive testing of nuclear weapons and call for the phased elimination of fissile material production and support for the negotiation of a fissile material cut off treaty. By becoming party to such a protocol the three states could acknowledge their nuclear status in association with the NPT regime. The protocol could also be signed by the three NPT Depository States, the United States, the United Kingdom and the Russian Federation, since the 1960s the accepted general managers of the NPT regime, to provide the link to the NPT regime. The protocol could also provide for negotiations for each of the three states to gain access to the world nuclear energy market. By this means India would gain all of the nuclear cooperation benefits of the July Declaration but it would do so in association with the NPT regime, not in opposition to it.

The NPT would be strengthened, not weakened, by such an arrangement. India would at one and the same time gain access to the world nuclear energy market, enhance significantly its national security and become a cooperating partner in the world community of states dedicated to the pursuit of non-proliferation and a safer and more secure world. India should at least consider the evolution of the July Declaration into such a supportive document for the NPT regime.