

US-India Nuclear Negotiations: How Equal and Reciprocal?

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The 18 July 2005 Indo-US Joint Statement on civilian nuclear cooperation has generated spirited debate in both countries. This is not surprising given that its implications would be enormous not only for the bilateral context but also for the international community. What is surprising, however, is that most critics of this proposed cooperation on the US side have analyzed this within the narrow domains of nonproliferation, while critics on the Indian side have questioned the US "sincerity" or real motives in pursuing this agreement.

The problem of this "disconnect" or difference in concerns expressed in the two countries has, to an extent, been exacerbated by the paucity of information provided in the public domain by the officials on either side. As someone who has had the occasion to interact closely with officials in both countries involved in the July negotiations and broader engagement over the past several years, this article is aimed at elucidating some of the factors that, in my understanding, are driving Washington's efforts to secure a closer partnership with India. The article first addresses the issues pertinent to the July agreement, then identifies the specific factors that are driving each country to pursue the deal, and concludes by offering some recommendations on why the current process of engagement might be in the respective national interest of each side.

The 18 July 2005 Joint Statement

The operative portion of the Joint Statement reads as follows: "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. The President told the Prime Minister that he

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will work to achieve full civil nuclear energy cooperation with India as it realizes its goals of promoting nuclear power and achieving energy security.¹

The Joint Statement, thus, is not an agreement *per se* but "codifies" the bilateral *intent* to cooperate in pursuing a sequence of discrete steps to make civilian nuclear energy available to India, and will be pursued on an essentially reciprocal basis.

On the US side, the relevant steps are as follows:-

- (a) Work with India to ensure that the latter's plan to separate its civilian and weapons-dedicated nuclear facilities is credible and verifiable,
- (b) Present the relevant details of the "plan" to the US Congress and request it to amend its domestic legislation (Nuclear Non-Proliferation Act, 1978) in order to permit civilian nuclear assistance to India,
- (c) Remove all Indian "civilian-designated" facilities from the list of entities with which such assistance is currently prohibited,
- (d) Initiate civilian nuclear cooperation (including fuel supplies to the reactors at Tarapur) within the "civilian nuclear complex" of India, and
- (e) Initiate dialogue with states parties to the Nuclear Suppliers Group (NSG) to make a substantive "exception" to India such that members could engage in civilian nuclear cooperation within India's "civilian nuclear complex."

On the Indian side, the relevant steps include:-

- (a) Prepare a list of nuclear facilities (power plants, research reactors, and fuel fabrication and mining facilities) that it will place under its civilian nuclear complex,
- (b) Provide technical information on how these civilian facilities will not only be physically separate from the weapons-dedicated ones, but also what kinds of safety policies, procedures and practices, "fire walls", will be put into place to

ensure against diversion of any kind from the civilian to the weapons complex,

(c) Provide a timeline for the implementation of this separation and installation of the "fire walls,"

(d) In regular consultation with their US government counterparts, negotiate a full scope safeguards agreement with the International Atomic Energy Agency (IAEA) for the civilian nuclear complex and sign the Additional Protocol, and

(e) Strengthen its export controls further and align its nuclear and missile control lists with those of the NSG and Missile Technology Control Regime (MTCR).

Factors Explaining US Interest in the Nuclear Deal

The US executive branch has not provided adequate information in response to the spate of criticism from its domestic nonproliferation community, although it will provide detailed information, some within classified settings, to members of the US Congress before the vote on amending the Nuclear non-proliferation Act 1978 takes place. And at various points since July, under Secretaries Burns and Joseph, and Secretary of State Condoleezza Rice, have stressed both the nonproliferation and the wider strategic gains from pursuing this agreement with India.

The US executive branch, recognizing the likely points of domestic (and international) criticism, has nevertheless pursued this cooperation with India because it is very clear on certain points. First, the deal does not provide any assistance whatsoever to India's nuclear weapons complex.

Second, the supply of civilian grade fissile material, or building of new power reactors, does not "free up" fissile material or resources that Government of India can then allocate solely to accelerate its weapons program, as alleged by some influential voices in Washington. Separately, Government of India is understood to have communicated to the US Administration that while its pursuit of nuclear weapons capability is non-negotiable, it nevertheless is not pursuing an ambitious and open-ended program or one that seeks numerical parity with its neighbours. Rather, it is building a small, flexible arsenal to enhance deployment options and

survivability, with a second-strike posture, all geared toward creating a "credible minimum deterrent."

The third factor in Washington's calculation is that the July "deal," in effect, places over 80 per cent of India's hitherto unsafeguarded fissile material (and facilities) under international (IAEA) safeguards. Outside of the P-5, amongst the Nuclear Non-proliferation Treaty (NPT) non-signatories, India has the largest stockpile compared to Pakistan and Israel. And whether Iran and North Korea stay within the NPT or not, which are developments independent of the Indo-US agreement, this deal brings the majority of global unsafeguarded fissile material under IAEA safeguards. This is a significant net positive for global nonproliferation efforts, whose importance should not be underplayed, particularly given the growing threats of determined proliferators or terrorists seeking access to fissile material in many of the 44 countries with active nuclear programmes and capabilities.

A fourth factor in Washington's calculations is that the US negotiation with India over the past decade and more was so narrowly configured, with an exclusive nonproliferation focus - seeking membership of the NPT, or capping of its weapons programme, or based on a punitive (embargo-based) approach - that it had led to a sterile outcome. As such, the ambit of the engagement was widened to include recognition of India's strong record on horizontal nonproliferation, strict voluntary controls on sensitive dual-use exports, and rapidly expanding energy needs. And in return for lifting domestic and international restrictions to help meet India's energy needs, it is pursuing an agreement that promotes US (and international) nonproliferation goals without formally recognizing India's nuclear weapons status or augmenting such capability.

A final factor is that apart from China, India is the only other country with a sizeable nuclear energy market that the US and international energy providers can operate in for the next twenty years or more. Since a power reactor providing 1000 mWe electricity roughly translates to a cost of US \$1 billion, India and China represent energy markets of at least US \$25 billion and US \$35 billion respectively. And so for the US administration, pursuing the July deal represents a net-positive situation: meeting India's energy

requirements, making a profit from it, not assisting India's weapons capability, placing India's civilian complex under IAEA safeguards, and possibly helping New Delhi use greater prudence in seeking alternate oil and natural gas sources from regimes that might undermine regional or global security. It thus promotes US nonproliferation goals, and improves the bases for seeking a broader, technology-embedded commercial and defense relationship with India, an emerging power in Asian and global affairs.

Factors Explaining Indian Interest in the Nuclear Deal

For India as well, the deal represents a net-positive situation for four reasons. First, it does not curtail its domain of sovereign decision-making regarding its weapons programme. Second, the deal aims to create the only viable international framework that can accommodate India's unique status and secure its access to civilian nuclear energy. Critics often state India's non-membership of the NPT as a reason why such assistance cannot be provided. This is flawed on two grounds. One, the NPT text does not prohibit civilian assistance to non-members. And two, no one realistically expects India to join the NPT as a non-nuclear weapon state (NNWS) nor can India realistically expect an amendment of the NPT to induct it as a NWS. So this issue is a red herring. But the more intractable problem is the NSG which prohibits members from providing civilian nuclear assistance to countries that do not permit fullscope IAEA safeguards on all their nuclear facilities. India clearly cannot do so because that would mean submitting its weapons complex as well to IAEA safeguards. This implies that the US, and other NSG members interested in entering into civilian nuclear cooperation with India, namely Russia, France, Britain and Canada, are also currently unable to do so. Thus, the deal represents the only viable *modus vivendi* to meet India's needs without violating international nonproliferation rules and guidelines.'

A third factor in New Delhi's calculations stems from the constraints and uncertainties in the current status of India's nuclear energy programme. The first stage of India's nuclear power programme comprises 12 Pressurised Heavy Water Reactors (PHWRs), which generate about 2,500 mWe, i.e. a meager 2.5 per cent of current national requirement, which itself is growing rapidly. The scope for scaling up operations with PHWRs remains very limited, even if more reactors, and of larger capacity (500mWe or

higher), could be built. The constraints are not only financial. India's domestic reserves of uranium are limited, sufficient for generating only up to 10,000 mWe from PHWRs, along with the uncertainties attendant with relying on uranium imports from abroad. In the second stage, the Department of Atomic Energy (DAE) plans to use fast breeder reactors (FBR), which can process the spent (uranium) fuel from the PHWRs to create plutonium and residual uranium. If successful, this could generate up to 5,00,000 mWe and vastly improve the energy situation for the intermediate (25 years) term. But DAE has not yet reached the point where it can operationalize this model and generate power at commercially viable rates. And only after the FBRs begin functioning smoothly would DAE be able to proceed to the third stage, of building Advanced Heavy Water Reactors (AHWRs), which can use a mixture of thorium-uranium fuel to run a sustainable power generation programme over the longer term. For the record, DAE is building a 500m W AHWR which it expects will become operational by 2010, but the commercial viability of the AHWR programme still remains to be seen. In this context, the July deal can provide critical additional sources to complement India's domestic nuclear energy options.

The fourth and related Indian interest stems from the fact that international participation in the civilian nuclear sector will bring in newer technologies, proven designs for safer and larger reactors, and result in market-clearing prices and efficiency in power production. Indeed, the July deal has committed Washington to securing India's membership and participation in the International Thermonuclear Energy Research (ITER) and the Generation Four programme that seeks to augment the current nuclear fuel cycle options and make them commercially viable. India's domestic nuclear sector has performed well during the long decades of embargoes and created a pool of technologies that can be adapted to wide uses. With the infusion of commercially viable international technology, reactors and other resources, it is likely that the performance and productivity of the domestic sector will also experience efficiency gains visible in many other sectors since the economic reforms began in 1991.

Recommendations

First and foremost, the Government of India, and especially the domestic critics, must realise the true significance of the July

deal. When implemented, it will amend the US non-proliferation law and grant a substantive exception for India from the NSG. It will, in other words, end the nuclear stalemate between India and the global nonproliferation order that has existed for over three decades. Second, it will permit nuclear commerce with India, providing it commercially viable technologies of nuclear power and plant safety, without which India's long-term economic growth will at least decelerate, if not be inhibited further. Third, from a global standpoint, it will bring India into the nuclear fold, instead of being the most significant "outlier" whose conduct and capabilities merit a position of importance in the shaping of the regimes' activities in the future. Fourth, the deal is designed to achieve all this without impinging negatively on India's sovereign decision-making relating to its nuclear weapons capability and future progress.

In light of the above, the debate in India relating to the implementation of its end of the deal should focus on the following issues. First, is a better, or even a similar deal possible for India in the future? The answer, quite candidly, is in the negative. Second, many US critics of the deal argue that India's voluntary compliance with nuclear non-proliferation is unlikely to change, and so the "rewards" imbedded in the July deal are unnecessary, even if the US desires a broader and closer relationship with India. This brings up the harsh question: would New Delhi be willing to pursue selective proliferation and then blackmail its way into a superior deal with the United States or other prominent members of the global non-proliferation regimes? If not, then why not implement the current deal that provides it the best possible options given its outlier status?

Third, India should realize that such a momentous agreement and attendant benefits cannot come without paying a substantial price for it. But what exactly is the price that the deal extracts from India? The first price is that after having designated and separated the weapons complex from the civilian one, India cannot move a civilian facility back to the weapons side. This relates to the "in perpetuity" phrase later used by an US official that generated sharp debate in the public discourse. But as a Government of India official stated, a credible separation plan cannot permit moving a facility later from the civilian to the weapons complex, because it could create a situation where a facility that received external assistance

on the civilian side is moved to the weapons side, thus aiding India's weapons program, which would be a violation of the July deal.

The second portion of the price relates to including FBRs in the civilian complex. Government of India has every right to negotiate hard on this subject and it should. But its political leadership also has the obligation to ensure that it is not DAE's parochial interests masquerading as India's "national interest" in this negotiation. The DAE is understandably unhappy that it will have to share its authority and oversight over the civilian-designated complex with the IAEA. Further, once the veil of national security is lifted from these facilities, and their performance assessed on international benchmarks, DAE is likely to come across as having performed rather poorly. This negative assessment has actually been made several times by the Atomic Energy Regulatory Board (AERB) and the Comptroller and Auditor General (CAG). But now, questions will be raised more openly about why a country whose first research reactor (Apsara) became operational in 1956, has not done more to reduce prices and increase power production in the past five decades? And now, the metric by which their performance will be judged will likely be the power plants built in India by Russia, Canada, France and the US.

Finally, the critics of the July deal should recall that in 2001-02, Government of India had informally approached the US with an "islanding" proposal and explored a nuclear "grand bargain" whose lineaments were strikingly similar to the July deal. The US and India have since then worked to not only enhance the standards of technology security in India to permit greater US-India trade in advanced dual-use items, but also interacted closely to codify some of India's informal practices in the area of export controls. The former set of efforts was initiated within the High Technology Cooperation Group (HTCG) and later the Next Steps in Strategic Partnership (NSSP). Both have paved the way for the July 2005 deal, which thus should not be seen as a hasty initiative or one that has been undertaken without proper spadework and careful consideration on both sides.

In sum, the critics of the July deal in both countries should recognize the unique and propitious set of circumstances that have

brought the Bush administration and the Manmohan Singh government to negotiate a historic agreement. The fruits of the deal will be nuclear energy for India without curtailing its weapons program. And it will help the US bring India into the mainstream of global nuclear non-proliferation institutions and efforts through the only mechanism acceptable to itself, India, and the NSG. And while India took over four decades to decide on whether it should overtly weaponize its nuclear capabilities, it should remember that it has only a few months to begin implementing the deal before the Bush administration's energies are re-directed towards the Congressional elections at the end of 2006. And if the July deal fails to be implemented, on which both the US and India have staked much of their global reputations, it will be a long time indeed before such an imaginative and far-reaching initiative is considered actionable and prudent by either country.

End Note

1. "Joint Statement Between President George W. Bush and Prime Minister Manmohan Singh," Press Release, The White House, July 18, 2005; <http://www.whitehouse.gov/news/releases/2005/07/20050718-6.html>

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