

CHAPTER 1

NEGOTIATING THE OBSTACLES TO U.S.-INDIAN STRATEGIC COOPERATION

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As this volume goes to press, the Henry J. Hyde U.S.-India Atomic Energy Cooperation Act of 2006 became the law of land. Passage of this legislation, which was 16 months in the making, was heralded by its backers as the most significant U.S. strategic development since the end of the Cold War. In at least three respects, though, the law has yet to be implemented and its strategic implications are still unclear.

First, U.S. nuclear cooperation—the lynch pin of U.S.-Indian strategic cooperation, according to the deal’s supporters—has to navigate several necessary steps. India has not yet negotiated a nuclear cooperative agreement with the United States. This will take several months. The key issues here include nuclear testing and the sharing of nuclear fuel technology. In the first instance, India objects to congressional demands that all nuclear cooperation be terminated if India tests; in the second, Congress opposes such sharing unless the transfers are part of a larger nonproliferation effort.

Also, because India has not signed the Nuclear Nonproliferation Treaty (NPT) and refuses to open all of its nuclear facilities to international inspections, it is not yet eligible to import controlled nuclear goods from the United States or any other of the 44 members of the Nuclear Suppliers Group (NSG). To change this, the NSG must agree by consensus to make an exception

for India. It is unclear how this might work. China (an NSG member) has offered nuclear cooperation to India, but has argued that any exception for India should be framed in such a way also to allow nuclear transfers to Pakistan as well. Several NSG members, including Sweden, also seem uncomfortable approving civilian nuclear cooperation unless India does more to restrain its nuclear weapons program.

In any case, before the NSG is likely to approve any exception for India, it must reach at least a tentative agreement with the International Atomic Energy Agency (IAEA) regarding the inspection of eight additional civilian Indian reactors. India is insisting that these plants only be inspected if and when they contain foreign fuel. IAEA officials, meanwhile, are resisting this proposal for fear that it will become a new lower standard for IAEA inspections for other countries. In addition, several NSG members are anxious to do nothing that might let India believe that it can test nuclear weapons and continue to receive civilian nuclear assistance. Finally, under the legislation President Bush recently signed, a U.S. nuclear cooperative agreement must be completely negotiated, an NSG waiver agreed to, and all of the legal steps necessary to conclude an IAEA safeguards agreement implemented *before* Congress can consider approving U.S. nuclear cooperation with India.

Assuming all of these conditions will be met, U.S.-Indian strategic cooperation will proceed. A new raft of questions, however, will then immediately arise. Will nuclear cooperation expand or—as some Indian and American critics have predicted—become effectively dead due to a lack of mutual nuclear interest? To what extent will Indian nuclear supporters who have pushed nuclear power as an energy independence effort be

interested in buying foreign reactors? Will Congress see the merit of guaranteeing Export-Import Bank loans for major U.S. nuclear sales? Will U.S. nuclear vendors demand that India establish a credible nuclear insurance pool or provide them with immunity from possible legal claims due to future accidents or acts of nuclear terrorism? Shortly after the July 11, 2006, Mumbai terror bombing, Indian officials announced they were doing all they could to assure Indian nuclear plants would be safe against terror attacks. Will the Indian government be able to do enough?

Then there are the additional challenges the United States and India face assuming nuclear cooperation does proceed. Will U.S. and other foreign sales of nuclear fuel and nuclear technology to India directly or indirectly assist India's nuclear weapons program and so implicate the United States and others in violating Article 1 of the NPT (which prohibits such assistance to any state that did not have nuclear weapons before 1967)? The legislation President Bush recently signed into law makes it clear that Congress is keen to avoid such violations. The Hyde Act states that it should be U.S. policy to strengthen the NPT, IAEA, and NSG, and encourage India to limit the expansion of its nuclear strategic forces. The act also makes clear Congress' desire for India to abide by the Missile Technology Control Regime (MTCR) and that satellite launch assistance, which the United States also offered to India, will only be used for peaceful purposes. Critics of the deal worry that India will secure special treatment by the IAEA and NSG that will lower existing control standards. Key proponents of strategic cooperation and the nuclear deal, meanwhile, insist that India should be allowed—even encouraged—to build up its strategic nuclear missile forces to serve as

a counterweight to China. Might New Delhi expand its nuclear forces but choose not to cooperate closely with the United States?

This immediately raises the question of Iran. The Hyde Act requires the President to report whether India, which struck a high-technology-diplomatic-intelligence-military-training strategic cooperation agreement with Iran in 2003, is working actively with the United States to isolate and sanction Iran for its nuclear misbehavior. The question is will India do so? India has close ties to Iran to help it outflank Pakistan. It also has clear cultural sympathies (India has 150 million Muslims, and Iran has recognized Kashmir as a legitimate part of India), and even clearer economic interests (India is a major refiner of Iranian oil and views Iran's oil and natural gas as an energy option to service its own economy). India has allowed sensitive nuclear and rocket technology transfers to be made to Tehran and was reported to have discussed space launch cooperation with Iran, which would have direct application to Iran's development of missiles capable of hitting Europe and the United States. Can the interests India might develop with the United States override its attraction to improving its ties to Tehran?

This brings us to the last concern: How well will India and the United States be able to balance their differing strategic goals? In the near term, the United States wants help from India in isolating and sanctioning Iran. It is doubtful, however, if India will go very far to achieve this aim. The United States would also like India to help in the reconstruction of Iraq. But this too is unlikely. Some Indian officials, meanwhile, are anxious to block what they see as its increasing encirclement by China. India not only has reached out to cooperate and support Vietnam, Indonesia, and Singapore, but

Burma—a regime the United States opposes. Beyond this, many Indian officials seem just as concerned about being encircled by the United States in Central Asia, the Persian Gulf, and the Indian Ocean as they are about undue Chinese influence in these regions. For these reasons, India recently announced that it and China would engage in joint military, energy, economic, and nuclear cooperation. The question is, will this cooperation assure that the two nations achieve what Indian Prime Minister Singh described as “reshaping the world”? If so, how might key U.S. interests fair? The Indians currently are demanding that the United States provide them with some of the most advanced, classified U.S. defense technologies. Will this and other demands be the set “price” the United States must pay to secure India’s strategic cooperation or will India merely play the United States off against China and visa versa indefinitely? China and India recently agreed to increase their mutual trade to record levels over the next decade. The United States and India, meanwhile, have agreed to reduce barriers to increasing U.S.-Indian trade. Will U.S. trade with India prosper in the next decade and prove more important to India than trade with China, or will India’s trade with China prove to be more significant?

All of these questions are addressed in this book. There is a detailed study of India’s electrical future from two analysts working at one of America’s most prominent economic developmental advisory groups; a history of the Indian civilian nuclear program by a leading Indian nuclear analyst and commentator; and an analysis of the relationship between civilian and military nuclear programs by an international panel of nuclear scientists that includes leading Pakistani, Indian, and American experts. Also, there is a detailed

nuclear terrorism risk assessment of India's civilian nuclear program by one of the leading American nuclear terrorism experts; an arms control analysis from the most authoritative historian of India's nuclear weapons program; and a missile technology analysis of India's missile programs by an original architect of the MTCR. Finally, there is an assessment of what we can expect of our strategic partnership with India from the Bush administration's key advisor on U.S.-Indian affairs; a detailed analysis of India's strategic partnership with Iran by one of America's leading Indo-Iranian observers; and a review of what the United States might do to assure a stronger strategic friendship with India than was secured with China by the former China desk officer in the Rumsfeld Pentagon.

What are the bottom line recommendations of these analysts and of experts who reviewed their work? If the United States and India are serious about having a positive and fruitful strategic relationship, a number of minimal, specific, additional steps beyond merely striking a nuclear cooperative agreement with the U.S. government, will be necessary. Specifically:

1. The United States should begin negotiations now to reach a free trade agreement in due course with India. A potential problem with the United States developing sounder relations with India is the relatively lower level of trade that may be conducted between India and the United States as compared to trade between China and the United States. Indian regulations, bureaucratic fiat, and protectionism have played a heavy hand in reducing U.S. investment in and trade with India. The United States should take the lead to change this by beginning negotiations to establish a free trade zone with India and promising to conclude these talks when India removes its obstacles

to increased U.S. bilateral trade. Working toward this end will do more to cement sound strategic economic and political relations with India than any military or nuclear cooperative venture could ever do alone. Congress can support this course of action simply by passing a sense of Congress resolution urging the Executive Branch to begin such negotiations. The Executive, meanwhile, can choose to begin talks on its own without waiting upon Congress to pass such a resolution.

2. The United States should do more to make it easier for Indian citizens to visit and work in the United States. At the end of the last Congress, House Republicans attempted to increase the number of business visas Indians might be able to secure to come to the United States. This initiative failed. It is worthy of resurrecting. The more Indians that can visit and work in the United States, the better both economically and politically for the United States and for India. Again, the strategic value of freeing the movement of peoples between India and the United States far exceeds anything that might be secured through any government-to-government space or nuclear cooperative project. As already noted, the House nearly passed a law expanding such visas. The Executive Branch and the new Congress should work together to make such an expansion occur.

3. Congress must enforce current law to assure that U.S.-Indian nuclear cooperation does not bring down the very nonproliferation institutions—the NPT, IAEA, an NSG—that the deal’s backers claim it should fortify. India may not have signed the NPT, but the United States and the world’s other key nuclear suppliers have. Technically, NPT weapons states cannot help any nation that did not have nuclear weapons

before 1967 (including India) directly or indirectly to acquire nuclear weapons. That means that the United States cannot help New Delhi meet its nuclear reactor fuel requirements unless U.S. officials can be sure that doing so will not indirectly help India increase its nuclear weapons production. This will require a careful annual monitoring of the Indian civilian and military nuclear programs. It would help if a pledge could be secured from India that it will not increase its nuclear weapons production beyond current levels. Here, it would also be useful if the U.S.-Indian nuclear deal is implemented in a manner that will not undermine the NSG. The NSG was created to restrict trade to countries like India that refused to open all of their civilian nuclear facilities to international inspections and proceeded to make nuclear weapons and test them. Lest the NSG establish a new lower standard for nuclear trade that would encourage countries to think they could proceed to divert nuclear materials and test them, several NSG members have privately suggested that any Indian resumption of nuclear testing should cause all of the NSG membership to suspend nuclear cooperation until the NSG has had a chance to confer and agree on some other course of action. Finally, the IAEA should take care not to let its own safeguard standards be reduced any further. India wants safeguards only to apply if foreign fuel is present in its civilian reactors. The IAEA, so far, has been resisting accepting this looser standard. Several members of the NSG are refusing to consider opening nuclear trade with India until this matter is resolved. Under current U.S. law, both the NSG and the IAEA must complete their work in dealing with India before the U.S. Congress acts. This part of the law must be upheld to avoid any misunderstanding of what U.S.-Indian nuclear cooperation might entail

and to increase the prospects that the most worrisome issues associated with civilian nuclear commerce with India are resolved properly.

4. Insist that India establish a credible nuclear accident insurance pool and cooperate to reduce nuclear terrorism risks before providing it with significant civilian nuclear exports. Most U.S. and foreign nuclear equipment vendors have to be concerned that India's current lack of a nuclear accident insurance pool would put them at risk of being held liable in the case of any nuclear accident involving their hardware. Currently, the Indian government does not allow any of its civilian nuclear facilities to be owned or managed by private entities. It therefore sees no need to provide for private insurance against nuclear accidents. If the United States is serious about wanting India to expand its use of nuclear power and to import the best technology it can from abroad, it has a direct stake in seeing India loosen the management and ownership reins over nuclear power plants. For this purpose, going beyond the minimal protections that eventually will be afforded by the Vienna Convention on Civil Nuclear Liability Damage (which has not yet entered into force) will be essential. At a minimum, the United States should encourage India to develop an insurance pool equivalent to that afforded by the Price Anderson Act, which has been criticized in the United States for being far less than what would be required to cover a major nuclear accident. As for nuclear terrorism, India has voiced concerns that its own civilian nuclear facilities might be targeted by Muslim extremists and has offered to work more closely with Pakistan to reduce these risks. Many Indian nuclear officials, however, have voiced concerns about cooperating with the United States to reduce these threats for fear such

cooperation might reveal secrets about India's nuclear weapons program. These misplaced apprehensions need to be overcome. Pushing India to provide for adequate nuclear insurance should help.

5. Restrict satellite launch cooperation with India to activities that avoid transferring even "safeguarded" MTCR-controlled know-how until New Delhi clearly ends its military and high-technology cooperation with Iran. Iran and India previously have discussed cooperation in space launch vehicle (SLV) technology. SLV technology, however, is interchangeable with intercontinental ballistic missile (ICBM) technology. If there should be any revelations that India has helped Iran develop long-range missiles that could threaten North Atlantic Treaty Organization (NATO) allies and the United States, this news would seriously undermine European and American public support for high-technology and defense cooperation with India generally. Meanwhile, the prospects that India will cut off its military-to-military cooperation with Iran in the near term is not very high. But, then, neither is India's need to develop its own satellite launch vehicle or ICBM. The former is cost ineffective as compared to launching satellites off other nations' existing space launch vehicles, and the latter is provocative militarily and self-defeating regarding sound relations with Pakistan and China. As long as the United States is eager to uphold and strengthen the MTCR, it would be wise do nothing to undermine its strictures against member states sharing satellite integration and satellite launch technology as it did in the commercial space satellite launch cooperation with China in the 1990s. The latter was supposedly "safeguarded." However, the effectiveness of such safeguards is limited and such protections are virtually useless if the recipient

has a strong incentive to cheat. Here, careful, routine congressional oversight of the U.S. export licensing process regarding space-related transfers to India is the first order of business. Under no circumstances should the United States undermine existing MTCR restrictions for India or tolerate others doing so as the United States did in the case of China. On the other hand, the United States and other satellite launching nations can and should provide their launch services to India without discrimination and cooperate in space science ventures whenever possible. Until India demonstrates tight missile technology controls over its private and public entities (something it has so far failed to do in the case of Iran) and clearly severs its military and strategic cooperative ties with the Revolutionary Iranian government, the United States should oppose the sharing even of “safeguarded” space launch vehicle technology with New Delhi.