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The US-India Agreement and its Impact on the Nonproliferation Regime

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Introduction

After a hard and bitter internal debate in the Indian Parliament, India finally [agreed](#) on a deal that would allow the United States to trade nuclear material, including fuel and information.¹ The deal moved to the International Atomic Energy Agency (IAEA) where the Board of Governors approved of a safeguards agreement on India's nuclear facilities. Now the agreement moves to the Nuclear Suppliers Group (NSG), which is expected in early September to sign off on nuclear supplier states selling material to India before the deal can come into effect. However, in its current form, the agreement has serious implications for the nonproliferation regime, which includes the Nuclear Nonproliferation Treaty (NPT), IAEA safeguards, and the NSG. How would the agreement impact the regime? What questions need to be answered in order to eliminate the risks posed by the agreement?

IAEA Safeguards

The IAEA Board of Governors approved India-specific safeguards on August 1. Although the full text is known only to India and the IAEA, the [safeguards agreement](#) apparently sets forth an "umbrella agreement" which means that 14 out of India's 22 reactors, and any future reactors, would be regulated by the IAEA.² Addressing concerns about possible termination of the safeguards agreement by India, IAEA Director General Dr. Mohamed ElBaradei stated, "There are no conditions for the discontinuation of safeguards other than those provided by the safeguards agreement itself." In addition he [said](#), "The 'umbrella' nature of this agreement provides a more efficient mechanism for ensuring that safeguards requirements can be met. It satisfies India's needs while maintaining all the Agency's legal requirements."³

However, questions still remain regarding the safeguards agreement. The biggest question is: which facilities are safeguarded? That is unknown at the moment and will be determined by India and the IAEA. Another question is: will India be allowed to switch which sites are safeguarded and which are not, or switch the fuel from one facility to another? The IAEA has not made this information public. The agreement is particularly worrisome because it requires safeguards for just over half of India's facilities. At a recent event that focused on the agreement, Daryl Kimball (Arms Control Association) Sharon Squassoni, (Carnegie Endowment for International Peace) and Ambassador Robert J. Grey Jr. [said](#) that failure to arrange for safeguarding all of the sites is unprecedented.⁴

What would happen if India tested a nuclear device again? The agreement is vague on this issue. Would the IAEA call for the return of all delivered nuclear fuel and the cessation of fuel shipments? These questions appear to have been left to the NSG.

Also unclear is whether India would be allowed to nullify the safeguards agreement. The IAEA [asserted](#) that safeguards termination could come only from those parties listed in the agreement itself. ⁵India has asserted that it would have the right to abrogate the safeguards agreement if fuel shipments are stopped for any reason. This is another question left unanswered by both the agreement and the IAEA's proceedings.

Concerns also center on the likelihood of India receipt of nuclear fuel for energy reactors freeing-up domestically manufactured fissile material for weapons purposes. Then, when India so chooses, it could terminate the safeguards agreement, resume nuclear tests and expand its nuclear weapons program, simply at the risk of forfeiting future deliveries.

Nuclear Suppliers Group

With the approval of the IAEA, the agreement now moves on to the 45-member NSG, where India will seek unanimous approval to accept nuclear technology and fuel from other states. The NSG operates on the basis of consensus, and dictates whether nuclear supplier states can trade with non-nuclear states. Under the Deal India [would be](#) technically classified as a non-nuclear state, and suppliers would not be limited to the US. France and Russia in particular are awaiting a positive response for possible new supply agreements with India. ⁶

It appears unlikely that India will get everything it wants from the NSG, especially, the ability to test a nuclear device without any consequences. The [United States Hyde Act](#) ⁷ and [NSG Guidelines](#) ⁸ stipulate that if any state tests a nuclear weapons device, then that state should face consequences, and retracting fuel shipments will be a minimum response in this case. The NSG must continue to enforce its guidelines or else they will be seen to be discredited, so as bad, applied using double-standards, and the world may face potential proliferation problems down the road.

The NSG must also ensure that measures are in place to prevent the transfer of cutting-edge dual-use enrichment or reprocessing technology, whether intentional or unintentional. [Article I](#) of the NPT stipulates that a nuclear weapons state cannot intentionally or unintentionally assist a non-nuclear weapons state develop a nuclear weapons program – the Deal must not undermine this clear prohibition. ⁹

The Nonproliferation Regime

Ambassador Robert Grey has [argued](#) that the U.S. India Nuclear Cooperation Agreement is counterproductive to the nonproliferation regime. ¹⁰ He believes that the United States essentially gave India a blank check and now India wants to cash the whole thing. India is looking for official recognition as a nuclear weapons state, even though they have not signed any international arms control or nonproliferation agreement, and would be barred from joining the NPT in such a capacity. The deal itself does not recommend that India sign any of the international arms control and nonproliferation treaties. The fear is that it could start a precedent leading other states leave the NPT and follow India's example.

For instance, what is stopping China or Russia from initiating a similar agreement with Pakistan, or Israel? Even non-nuclear NPT states like Argentina, Brazil, South Korea, Canada may seek special exemptions from the NSG on the back of the US-India deal, leading to an alarming proliferation of technology and fissile material.

Conclusion

The agreement is a **disaster** for the nonproliferation regime.¹¹ It rewards a non-member the rights and privileges of nuclear states without any pressure on India to sign the NPT or CTBT, reduce its current stockpile, or cease fissile materials production. This could encourage other states to follow the same path. Pakistan's leadership **has** already indicated that they expect similar treatment by the IAEA in the future.¹²

The NSG has to be clear what would happen if India tests a nuclear device, and to set firm guidelines regarding the security of information to ensure that India does not obtain the latest enrichment and reprocessing technologies. Any agreement that passes through the NSG will open Pandora's box for other states, a blow for the regime, and the goal of a nuclear weapon free world.

The views expressed in this paper do not necessarily reflect those of BASIC

¹ Jonathan Manthorpe. "Amid uproar, India gets its nuclear deal back on track" *The Vancouver Sun*. July 23, 2008. <http://www.canada.com/vancouversun/news/editorial/story.html?id=af0ce192-1003-4752-a796-4292530486b3>

² "IAEA Approves Deal For India's Nuclear Inspection" Associated Press. August 4, 2008. <http://www.cbsnews.com/stories/2008/08/04/ap/asia/main4318682.shtml>

³ IAEA Director General Dr. Mohamed ElBaradei. "Introductory Statement to the Board of Governors." August 1, 2008. <http://www.iaea.org/NewsCenter/Statements/2008/ebsp2008n006.html>

⁴ Transcript of Opening Presentations for "The Future of the Indian Nuclear Deal: Key Issues before the IAEA, NSG and US Congress" Arms Control Association. July 30, 2008. <http://armscontrol.org/node/3221>

⁵ See note 3

⁶ Transcript of Opening Presentations (see note 4)

⁷ "H.R. 5682. Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006,." 109th Congress. December 18th, 2006. http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:h5682enr.txt.pdf

⁸ "The Nuclear Suppliers Group (NSG) at a Glance." Arms Control Association. May, 2006. <http://www.armscontrol.org/factsheets/NSG>

⁹ "The Treaty on the Non-Proliferation of Nuclear Weapons (NPT)" Department for Disarmament Affairs, United Nations. 2000. <http://disarmament.un.org/wmd/npt/npttext.html>

¹⁰ See note 4

¹¹ Jayantha Dhanapala and Daryl G. Kimball. "A Nonproliferation Disaster." Carnegie Endowment for International Peace. July 18, 2008. <http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=20292&prog=zgp&proj=znpp,zsa>

¹² Siddharth Varadarajan. "IAEA approves Indian safeguards agreement." *The Hindu*. August 1, 2008. <http://www.hinduonnet.com/thehindu/holnus/000200808011552.htm>