

George Perkovich

*Global implications of the U.S.-India deal*

On July 18, 2005, President George W. Bush and Indian Prime Minister Manmohan Singh announced their desire to change a series of national laws and international rules that the United States had helped create over a 30-year period to strengthen the nonproliferation regime. These rules were meant to deny nuclear cooperation with India and other states that refused either to sign the Nuclear Non-Proliferation Treaty (NPT) or to put all of their nuclear facilities under international safeguards. Between 2005 and September 2008, Bush and Singh personally invested large amounts of political capital to win all the national and international approvals required to accommodate India's request for nuclear cooperation. What began as an obscure, albeit revolutionary, quest by a handful of driven individuals in Washington and New Delhi, ended up as an agreement by the 45 members of the Nuclear Suppliers Group (NSG) to exempt India from nonproliferation rules that are supposed to remain applicable to all other states.

The making and enforcing of international rules is frequently quixotic. Making rules is often tedious and compro-

missing, while their enforcement is often absent or feckless. The nuclear nonproliferation regime has suffered these afflictions. However, considering that the ambition is to regulate the most powerful technology and material known to humankind, the rules that have grown around the NPT since 1968 have been remarkably successful. The nonproliferation regime is a key structure of the nuclear order that most people in the world would rather not live without. Some wish that this nuclear order would more strongly incline toward the abolition of nuclear weapons, or would more actively promote distribution of nuclear energy. Others wish that it would concentrate more effectively on stopping proliferation. Few want the disorder that would follow a collapse of the bargains on which the current system of rules depends. Thus many observers and governments fear that the NSG-India nuclear deal is a bad portent: it may signal corrosion of the rules-based nuclear order.

The nuclear nonproliferation regime's success owes largely to the fact that the two leaders of the bipolar world cooperated in drafting and negotiating the NPT in the mid-1960s. Even as they competed everywhere and built arsenals capable of destroying life on earth many times over,

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the superpowers worked closely to frame rules to prevent additional actors from acquiring nuclear weapons. Washington and Moscow persuaded key states to sign the NPT, in part by pledging that no states beyond the United States, Russia, China, France, and the United Kingdom would acquire nuclear weapons. The superpowers also guaranteed others against nuclear threats; Germany, Italy, Japan, and Australia were among those persuaded to sign the NPT on this basis. As the bipolar order collapsed with the Soviet Union in the early 1990s, the United States and Russia continued to cooperate to induce Belarus, Kazakhstan, and Ukraine to transfer the nuclear weapons on their territory to Russia. Argentina, Brazil, and South Africa joined the NPT as part of national strategies to integrate with the global nuclear order. The impression grew that the Cold War system would be replaced by a globalized, rule-based order founded on market economics, democratization, and gradual nuclear disarmament.

To states not allied with Washington, the 1990s was a period when the United States, unbalanced in power by the fall of the Soviet Union, became nearly hegemonic. In hegemonic systems, rule-making and enforcing tend to depend on the leader. Theoretically, a benign hegemon can induce others to subscribe to rules by reassuring them that advantages will be mutual and disputes will be resolved fairly. Yet the virtue of a hegemon is in the eyes of the beholder: other states in the system may see self-dealing, if not malice, in the hegemon's preferences. Historically, there is a natural tendency from others to try and balance the hegemon. By the late-1990s, Russia and China spoke openly of preferring a multipolar system. India, Brazil, and South

Africa also developed intentions and capabilities to rise as major powers. Iran, Iraq, and North Korea increasingly sought to deter intervention by the United States now that there was no competing superpower with which they could align for protection. States most wary of the U.S.-led order – Iran, Iraq, North Korea, Libya, and Syria – sought to defeat the nonproliferation system and acquire nuclear weapons capabilities, sometimes through cooperation among themselves. Terrorist groups scrambled for capabilities to threaten the United States and other states that followed its lead, al Qaeda being the prime example.

Each of these tendencies was exacerbated by the election of George W. Bush in 2000 and the 9/11 attacks on the United States. The new U.S. administration explicitly sought to buttress and assert U.S. hegemony, “dissuade” the emergence of a “peer competitor,” and remove or neuter undemocratic regimes hostile to the U.S.-led international order.<sup>1</sup> The administration wanted to strengthen the terms and enforcement of rules that constrained others while leaving U.S. power unchecked. States that wanted to reduce the relative power of the United States and gain influence for themselves were inclined to resist.

The multiple effects of these competing interests and trends cannot be elaborated here. In short, the nonproliferation regime was being stressed; the United States, the actor most needed to rally others to strengthen the regime, instead spoke and acted in ways that undermined cooperation rather than encouraged it. It is in this context that the implications of the nuclear deal with India are explored here.

The U.S.-India nuclear deal and its transformation into the NSG-India nu-

clear deal involved making and unmaking international rules. By exempting India from rules, the deal amounted to selective non-enforcement. At the same time, the United States, appropriately, was emphasizing the need for more robust enforcement of international rules. Less powerful states, also appropriately, were insisting that the bargains underlying the nonproliferation regime should be enforced fairly. To many, fairness means universal enforcement. From this perspective, the importance of the nuclear deal with India has less to do with India than with the capitals of the states that make and enforce the rules, particularly the United States. India sought what its leaders wanted. It was up to others to protect the global public good that derives from the rule-based nuclear order.

It is beyond the scope of this essay to narrate the day-to-day story of how the United States and India navigated their own political processes and those of the International Atomic Energy Agency (IAEA) and the NSG to bring the deal to fruition. The final terms exempted suppliers from previous restrictions on nuclear cooperation with India, enabling them to sell reactors and related components, fuel, software, and other dual-use equipment. In return, India agreed to declare publicly which of its current and future nuclear facilities are civilian and which are military, and to put the former under the most advanced international safeguards, called the Additional Protocol. Further, India agreed to institute effective export control systems consistent with the NSG and to refrain from transferring enrichment and reprocessing technologies to states that do not now have them. New Delhi also pledged to continue its “unilateral moratorium” on nuclear testing.

The following beliefs or assumptions drove the nuclear deal:

- Balance-of-power competition supersedes rule-based international regimes in practice and, in some cases, moral-political principle;
- The rule-based nonproliferation regime, with its underlying premise that all states should be treated equally and that disparity in treatment should be the result of balanced bargains, fails to eliminate the threats posed by the most dangerous actors but constrains the power of benign actors such as the United States and India;
- China is the only rising power that could have the capability and intention to rival U.S. hegemony. Therefore a top priority should be to dissuade China from attempting to rival the United States militarily, including by ensuring that China’s neighbors share U.S. interests in balancing Chinese power; and
- India, a rapidly growing, established democracy with an increasingly important diaspora, should be elevated in international rank and drawn into closer partnership with the United States.

Not *all* of the key figures in the Bush administration shared *all* of these strategic assumptions. But these basic premises were held by enough high-level officials to create an environment in which the U.S.-India nuclear deal could gestate. As Ashley Tellis recalls, “The administration’s own antipathy to nuclear arms control agreements such as the Comprehensive Test Ban Treaty and the Fissile Material Cut-off Treaty ... coupled with its strong expectation of an eventual renewal of great-power competition, allowed both realist and neoconservative

factions within the administration to take a more relaxed view of New Delhi's emerging nuclear capabilities."<sup>2</sup>

Realists and neoconservatives believed that the rule-based nonproliferation regime often fails to deter or reverse the illicit nuclear activities of dangerous actors. Rules tend to constrain the military power and economic activities of unthreatening law-abiding actors, including the United States, while being exploited by the ones that most need to be checked. Therefore it makes little sense to expend time, leadership, and potential military advantage in negotiating better rules and pursuing enforcement through unwieldy international bodies.

Some conservatives, including John Bolton and Robert Joseph, privately dissented from the idea that the remedy for inadequate rules was to stop enforcing them against India. But these nonproliferation specialists did not sufficiently appreciate the administration's grand strategy: to place a state's friendliness toward the United States and, where applicable, that state's democratic character, above specific behaviors such as nuclear policy. The friendliness of India toward the United States was more important than its nuclear policy, period, especially insofar as it could help constrain China's future power. The deal's champions – Ambassador Robert Blackwill, State Department counselor Phillip Zelikow, advisor Ashley Tellis, Secretary of State Condoleezza Rice, and National Security Advisor Stephen Hadley – persuaded the president to issue internal guidance to negotiators that terms of the deal should not constrain India's strategic capabilities. As discussed below, this practically precluded insistence that India accept nonproliferation limitations on its production of fissile materials for military purposes or that it sign

the Comprehensive Test Ban Treaty (CTBT), among other things.

Champions of the nuclear initiative toward India also argued that sizable U.S. concessions would reap nonproliferation gains, not losses. India would now strengthen its nuclear export controls and resist future temptation to sell sensitive nuclear technology or know-how to states or individuals with dubious intentions and records. India was, in fact, already obligated by UN Security Council Resolution 1540 to maintain the tightest possible export controls, and India's own self-proclaimed reputation as a responsible steward of nuclear technology committed it to exemplary nuclear practices. Thus, it could seem strange and unnecessary to bribe India with drastic changes in U.S. and international nonproliferation rules to do what responsible nuclear actors should do in any case. To this claim, administration grand strategists countered, "Virtue is not its own reward."<sup>3</sup>

France and Russia were entirely supportive of loosening restrictions on nuclear commerce with India, but the initiative was Washington's, developed without consulting Paris and Moscow even though both were known to be sympathetic. Administration leaders judged that proceeding through discussions and negotiations with the broader international community would drastically slow the process and dilute the results. Similar concerns motivated these individuals to limit Washington's interagency process of shaping the proposed deal.

The "virtuous" states in the nuclear nonproliferation regime, and most of the regime's devotees around the world, feared that rewarding a state that was outside of the NPT and possessed nuclear weapons would weaken the nuclear

order. By granting India full international nuclear cooperation heretofore reserved only for states that allow international safeguarding of all their nuclear facilities and materials, the deal gave India benefits that the non-nuclear-armed states felt devalued their virtue.

Concern over devaluing the nuclear abstinence of others could have been mitigated if the United States had extracted commitments from India to sign the CTBT and to end production of fissile materials for nuclear weapons. These two arms control measures had long been atop the international community's benchmarks for ending the nuclear arms race and facilitating nuclear disarmament. If the offer of nuclear cooperation could have induced India to take these steps (which it otherwise was unwilling to do), then a deal could have been seen as a worthwhile advance toward the ultimate goal of nuclear disarmament, albeit imperfect. This would be especially important to non-nuclear-weapons states, the ones that felt most devalued by the move to exempt India from the rules that they lived by.

Many factors will determine India's future actions, of course, but it is possible that the nuclear deal will make India less, rather than more likely to join the CTBT and end fissile material production for weapons. The nuclear deal has encouraged India to develop new plutonium separation capabilities for military purposes, especially as, under the deal, India has declared that its Fast Breeder Reactor will be part of its weapons program. India already had perceived a need for additional separation capabilities. However, the explicit separation of civilian from military facilities provides the Indian government domestic political cover to invest in new plants. New Delhi can say that this spending

is a necessary consequence of receiving the civilian benefits of the deal. The question then arises whether India will in the foreseeable future agree to a moratorium or a treaty that would curtail the operations of newly built and paid-for military plutonium separation capabilities.

In negotiating the deal, the U.S. and Indian governments pointed to India's support of a Fissile Material Cutoff Treaty (FMCT) as evidence of the nonproliferation benefits that would come from cooperating with New Delhi. This was cynical even by standards of diplomacy. Both states knew that a FMCT would take years to negotiate, and that their own differences over the prospective treaty's terms would slow, if not block, agreement. (For example, the Bush administration proposed a treaty without verification, while India insisted that verification be included.)

Focusing on a FMCT obscures an immediate step that each nuclear-armed state can take to strengthen the global nuclear order. The United States, Russia, France, the United Kingdom, and (less certainly) China have all unilaterally ceased producing fissile materials for weapons. Were India, Pakistan, and Israel to join these moratoria, the world, for the first time since 1942, would be free of nuclear-weapons fuel production. These states could add verification provisions through subsequent treaty negotiations. In the meantime, they could rely on national means of monitoring each other's compliance with the moratorium. By ignoring the moratorium route, and giving lip service to prospects of negotiating a treaty, the United States and India further undermined the cause of nonproliferation and disarmament, as did all other states that later became complicit in the deal.



Of course, a decision by India to stop military fissile material production will depend on Sino-Indian relations and Beijing's willingness to limit the size and net capability of the nuclear arsenal it could deploy against India. Yet neither the Bush administration nor India sought to engage Beijing in exploring whether and how to limit nuclear competition.

The deal also has "granted" India the "right" to reprocess, for military purposes, the spent fuel from the eight reactors that are not designated as civilian. These reactors previously had been assumed to be power-generation plants, not sources of plutonium for weapons. To the extent that the nuclear deal gives India access to foreign-supplied fuel for civilian reactors, India could use its heretofore scarce domestic supplies of reactor fuel to increase production of plutonium in military reactors – a potential already noted by Pakistan. Concerns over such a scenario are aroused by memories that India extracted the plutonium for its 1974 nuclear explosion from the CIRUS research reactor that the United States and Canada supplied to it for exclusively peaceful purposes. (The CIRUS reactor is shown on the inside front cover of this issue.) Islamabad sees the deal as adding to the threats it faces from India, and in turn sees a need to increase its own capacity to produce weapons-usable fissile materials. Pakistan, with Chinese assistance, is building a third plutonium production reactor at Khushab.<sup>4</sup> (The reactor was planned before the U.S.-India nuclear deal.) Like India, Pakistan could be more reluctant to abandon the "benefits" of new investments in military fissile material production capabilities by negotiating a ban on such production. Pakistan's pique over the nuclear deal and the potential boost it could give to India's fissile material production facil-

ities could make it more inclined to "punish" the United States by holding out against a ban, even though by agreeing to end production of more bomb material, and putting pressure on India to follow suit, Pakistan would negate India's increased potential to catch up with it in this area.

The nuclear deal's effects on the CTBT could be more complicated. India, Pakistan, and China are among the 44 states that must ratify the treaty for it to enter into force. All three states have adopted moratoria on nuclear testing. China has signed the treaty but, like the United States, has not ratified it; India and Pakistan have not signed. Since the nuclear tests of 1998, some Indian strategic experts and former military leaders have opined that India cannot have confidence in its thermonuclear-weapon capability without more tests.

The nuclear deal lessens the probability and potential potency of sanctions against India if it were to resume testing. It could be perceived that each step leading to the NSG's exemption for India weakened signals for India not to test. The Hyde Act, which is supposed to guide U.S. policy, declares that the United States must halt all U.S. nuclear exports if India resumes testing. The U.S.-India Nuclear Cooperation Agreement, negotiated after the Hyde Act, allows termination for any reason, after one year's notice, but it does not specify or require sanctions for testing. The NSG declared that participating governments will maintain contact to consider matters related to implementation of the agreement, suggesting that if India tested, members would meet to consider possible penalties.

In the meantime, the nuclear deal enables India immediately to import fuel and sign reactor construction contracts with foreign suppliers. Facing a severe

shortage of uranium fuel, India negotiated an agreement with Russia in February 2009 to import 2,000 metric tons of uranium for its current reactors, and to buy six additional reactors from Russia. India reportedly is negotiating with France for supply of 300 metric tons of uranium per year.<sup>5</sup> India also has made a civil nuclear cooperation agreement with uranium-rich Kazakhstan that includes provisions to deliver natural uranium to India.<sup>6</sup>

Thanks to these fuel imports, India in a few years would be in a much stronger position to withstand consequences of testing than it would have been without a deal. Without the deal, India would face a worse fuel shortage, one that has already sharply reduced electricity supply from its civilian reactors. With the deal, India can both stockpile imported fuel for its civilian reactors and dedicate its domestically produced fuel to military purposes. If India were to test a nuclear device after several years of receiving fuel imports, it would be able to withstand interruption of foreign fuel supplies, especially if in the intervening period India increases its own uranium mining operations. Moreover, if the nuclear deal results in contracts with France, Russia, and the United States to build new civilian reactors in India, those suppliers would find significant self-interest in rejecting national or UN Security Council sanctions against India for resuming nuclear tests.

Of course, were the United States and China to ratify the CTBT, they could create an international political dynamic that could motivate India to sign and ratify the treaty without resuming testing. India is not committed to do so, and the nuclear deal strengthens its capacity to hold out. But if other states, particularly non-nuclear-weapons states in Asia, Africa, and South America were to urge

India to demonstrate responsibility for strengthening the global nuclear order by joining all other nuclear-armed states in a test ban, India's interest in being recognized as a global leader could lead it to cooperate. If such diplomacy could be framed more broadly as a movement toward nuclear disarmament, which India has long championed, the Congress Party could be motivated to seek Indian cooperation. Indian politics will always resist heavy-handed pressure, but the gains India has made through the nuclear deal, plus new global movement toward nuclear disarmament, could make India amenable to respectful suasion.

Other states lack the power, expertise, and drive to substitute for U.S. leadership. The nonproliferation regime cannot be strengthened without the cooperation of the United States, Russia, China, and the European Union. By proceeding more or less unilaterally and downgrading nonproliferation objectives, the United States disempowered other states, particularly those that did not share many or all of its strategic objectives and assumptions. If others could not participate early with the United States in developing the terms under which nonproliferation constraints would be lifted, they would naturally feel less ownership and responsibility for the nonproliferation regime, whose rules were being changed. The sense that the world's strongest power was prepared to make exceptions based on its own prerogative undermines the perceived legitimacy of both the leader and the regime.

Officials and opinion shapers in more than a dozen countries have complained that the United States was changing the rules to fit its definitions of "friends" and "foes." How could others have con-

fidence in a rules-based system and U.S. leadership if the rules were to be changed at Washington's whim, without genuine consultation with other stakeholders before decisions were made? Many sensed that U.S. commercial interests were motivating the changes, making the deal a matter of self-aggrandizement from which two other nuclear-weapons states, France and Russia, were only too happy to benefit as well.

To be sure, each NSG member state could have blocked the deal, given that the NSG operates by consensus. Yet once Washington and New Delhi established the basic terms, other states – including many that did not like the terms – went along because they valued good and profitable relationships with the United States and India more than they valued nonproliferation objectives. Had Washington approached these states at the beginning of the initiative to seek a collective approach to India, the others probably would have pushed for stronger nonproliferation terms. By reversing the order – presenting an initiative with great momentum already behind it before seeking consultations – the United States exposed that other states generally lack the determination and ability to privilege public goods over narrower interests.

The reality that the United States, France, and Russia put mercantile nuclear interests above the integrity of the nonproliferation regime also has negative consequences. The major nuclear exporters sought to favor India with exemption from the rules because India offers a potentially large market for their goods and services (whereas Pakistan and Israel, for example, do not). The United States, France, and Russia are not only leading nuclear-weapons states, they are also permanent members of the UN Security Council, bear-

ing ultimate responsibility to enforce the NPT. To the degree that their integrity as principal authors and enforcers of nonproliferation rules can be questioned due to their special and narrow interests as nuclear exporters, the legitimacy of the overall nuclear order is weakened.

Many other NSG states perceived this mercantile motivation; some had commercial interests of their own. Germany, for example, is not a major nuclear exporter (though Siemens and other German firms do export components), but it supported the NSG-India deal in large part to prevent India from disfavoring German firms in Indian state procurement. Other states that wish to sell conventional weapons to India, such as Sweden, went along as well. Similar economic interests trickled down to smaller NSG states that otherwise judged the nuclear deal to be highly damaging of the nonproliferation regime. Discussions with many diplomats and parliamentarians from smaller NSG states revealed that their complicity in the end was determined by reluctance from their leaders and national businesses to suffer political-economic penalties from the United States, France, Russia, and India. These individuals expressed that if an influential state such as Germany would have blocked or sought tougher terms in the deal, their governments would readily have stood with Germany.

The vital point here is that the profit motive can seriously degrade the NSG, which has been the world's only cartel designed to foil profit-taking that could undermine global nuclear security. This cartel was formed in recognition that the dangers of nuclear proliferation should outweigh the marginal gains that nuclear commerce with three states outside the NPT might bring.

The integrity of the IAEA did not escape damage from the India deal either.



Director General Mohamed ElBaradei welcomed the prospective deal the day it was announced, *before* any of its terms had been negotiated: for example, how much of the Indian nuclear program would be put under safeguards, what sort of safeguards would be accepted by India, what parallel nonproliferation and disarmament obligations India would undertake. ElBaradei's early and apparently unconditional imprimatur effectively preempted international efforts to strengthen the deal's nonproliferation terms. Then, in 2008, when India negotiated safeguards with the IAEA, ElBaradei seemed to signal that the Agency should agree to terms less strong than some professionals in the safeguards division thought appropriate.<sup>7</sup>

Unconstructive actors can easily try to exploit the selectivity of rule-making and enforcement. A diplomat from the Democratic People's Republic of Korea (DPRK) declared in July 2008 that North Korea would insist that before it completes disarmament, the nuclear plant promised to it under the 1994 Agreed Framework must begin to operate.<sup>8</sup> The diplomat was asked whether any U.S. official had told the DPRK that this would be the order of things, inasmuch as pursuing such cooperation before the DPRK disarmed would contradict core principles of the nonproliferation regime. He replied, "You did it for India." The American said that North Korea was not India; there are many distinctions between the two. The North Korean said, "The point is not about North Korea. It is that when the U.S. decides that it wants to treat another state differently, it can do so. You decided India was your friend, so you did what it wanted. That's the issue."

Some Iranians make a similar point in private. They note not only how the

United States accommodated India, but also how other countries went along with it because India is a major country and a big economic market. They believe, or hope, that the international community will accept Iran's ongoing enrichment program and drop sanctions because Iran is important in the way that India is.

Less recalcitrant states may also have drawn unhelpful lessons from the NSG-India deal. The IAEA Director General and others have long urged all states to implement the Additional Protocol, which gives inspectors enhanced ability to detect violations of safeguards and other nonproliferation obligations. A number of states with ambitions to develop advanced nuclear programs have not yet done so. At least one such state put off adoption of the Additional Protocol in reaction to the U.S.-India deal's announcement, due to its leadership's dismay that a state (India) that had refused to join the NPT and had resisted numerous nonproliferation and disarmament measures was now being rewarded on the whim of the same country (the United States) that purported to be the steward of nonproliferation rules.<sup>9</sup>

Of course, the perception of diminished integrity and determination can be reversed. If and when the next case of a state breaching its safeguards obligations and defying demands for corrective measures arises, the leading nuclear powers and the NSG could hold firm and put nonproliferation interests above economic interests and political favoritism. Iran may be such a case, and it shows how the India deal exacerbates what is already an extremely difficult enforcement challenge. Some enforcers, perhaps including China, rationalize putting national economic interests above nonproliferation by recalling how

the United States (and others) have done so with India. It becomes tempting, then, to think that things will be different in the *next* next case: *after* Iran, “we” will really stand firm. But when the next case arises, and if it involves a state of economic and/or political importance to Security Council members and major NSG states, the temptation to say, “Well, we did it for India and for Iran, why not for X?” will arise once again.

The nonproliferation regime will be challenged in yet another way as a result of the India deal. Many NPT parties and observers believe that the 2010 Review Conference will be exceptionally important in restoring the regime’s credibility and strengthening its terms and states’ commitments to enforce compliance with them. One hundred forty-six states-parties to the NPT are not members of the NSG. They did not have a vote in approving the India deal. Some have no strong opinion about it or objection to it. Others, however, disagree with the way the deal was pursued and/or the terms under which it was concluded. As one diplomat put it recently:

Some NSG countries felt very strong pressure to support the India deal, even though it was not in accordance with the NPT. Some are concerned that this agreement could be proliferated to Pakistan. There is the possibility and the temptation to use the NPT Review Conference to address this question. Not to undo or revisit the India agreement, but to express displeasure that it was done and over the way it was done.<sup>10</sup>

When the NSG assented to exempt India from restrictions on nuclear cooperation, the deal was done. The challenge now is to understand the implications and to maximize the positive and minimize the negative while renovat-

ing the global nuclear order. None of the world’s major players is innocent. Even as the United States – along with France, Russia, and India – is most responsible for the situation that now exists, all members of the NSG should feel an obligation to cooperate in the refurbishment project.

With Pakistan particularly in mind, the NSG should consider establishing criteria under which nuclear cooperation could be made available to the remaining two states that never signed the NPT. The right criteria could help motivate Pakistan to take steps that are in the world’s security interests. To attenuate perceptions of unfairness among Pakistanis and perhaps others (and not exacerbate them), criteria should be those that India would have met had they been applied before the nuclear deal was made. Establishing criteria could also strengthen the case against nuclear cooperation with Pakistan that others might undertake more to even the score with India (and the United States) than to ensure that Pakistan’s development needs are met and its nonproliferation bona fides strengthened.

NSG members and the IAEA Board of Governors should clarify why the India deal is not a precedent for treatment of states that violate their safeguards or other NPT-related obligations. At a minimum, NSG members could resolve not to continue or extend nuclear cooperation with states that are not compliant with their safeguards obligations to the IAEA, that remove facilities or materials from IAEA safeguards, that make nuclear threats against non-nuclear-weapons states that are compliant with NPT obligations, that do not recognize the existence of other states, and that are complicit with terrorist organizations. India meets these criteria whereas Iran and

the DPRK are the most obvious states that do not; they and other states with interests in developing latent nuclear weapons options need to hear this clarification. The point is that strong, preventive diplomacy should affirm that enforcement of nonproliferation norms and rules will not be slackened regarding states that might consider nuclear technology acquisition as a hedge for military applications in the future.

To further dissuade states from calculating that nuclear suppliers would eventually accommodate them if they withdrew from the NPT, the UN Security Council should take preventive action. As proposed by Pierre Goldschmidt, former Deputy Director General of the IAEA for Safeguards, the UN Security Council should:

Adopt a generic and legally binding resolution stating that if a state withdraws from the NPT (an undisputed right under Article X) after being found by the IAEA to be in non-compliance with its safeguards undertakings, then such withdrawal constitutes a threat to international peace and security (as defined under Article 39 of the UN Charter). This generic resolution should also provide that, under these circumstances, all materials and equipment made available to such a state or resulting from the assistance provided to it under a Comprehensive Safeguards Agreement would have to be forthwith removed from that state under IAEA supervision and remain under Agency's Safeguards. This resolution should require that all military cooperation with the withdrawing state be automatically suspended.<sup>11</sup>

Finally, one of the most important correctives necessary after the NSG-India deal is to attenuate perceptions of discrimination and arbitrariness in the making and enforcing of nonproliferation rules. If states and attentive

populations feel that this deal began because the United States devalued treaties and rules and wanted to build favor with its new friend India – in part to balance the power of its competitor, China, and in part to enrich U.S. companies – and other states went along with it because India is a big market, then the core principles of fairness necessary to sustain a rule-based system are undermined. Differences in political-economic power will always influence international politics. The point of rule-based systems is to regulate and minimize differences in ways that improve the good of all. Leaders of the system, including the United States, must restore this commitment.

One way to alleviate differences is to reduce the perceived advantage of the nuclear-armed states in terms of prestige and power. A genuine commitment to nuclear disarmament, and steps toward it, is important in this regard. President Obama's April pledge to seek progress toward the elimination of all nuclear weapons can be a basis for inviting Indian leaders, who have made similar commitments, to reciprocate when the United States and other nuclear-armed states take disarmament steps such as ratifying the CTBT, ending production of bomb material, and reducing nuclear arsenals. Ultimately, the only way to end the double standards that threaten to weaken the nuclear order is to eliminate all national nuclear arsenals.

ENDNOTES

- <sup>1</sup> The 2001 Nuclear Posture Review introduced “dissuasion” as a purpose of the U.S. nuclear arsenal, meaning that U.S. strategic superiority should remain great enough that no other actor would think it feasible to build forces to compete.
- <sup>2</sup> Ashley Tellis, *India as a New Global Power: An Action Agenda for the United States*, Carnegie Endowment Report, July 2005, 13.
- <sup>3</sup> The argument that it was wise for the United States to pay India to ensure its responsible behavior appears, among other places, in Ashley Tellis, “Should the U.S. Sell Nuclear Technology to India?”, <http://yaleglobal.yale.edu/display.article?id=6487>. Tellis argues: “India’s commendable nonproliferation history, however, is owed entirely to sovereign decisions made by its government, not to its adherence to international agreements. As a result, any unilateral change in the Indian government’s policy of strict nonproliferation could pose serious problems for American security. This concern has acquired particular urgency in the post-9/11 era because of the incredibly sophisticated capabilities present in India today and because India remains at the cutting edge of research and development activities in new fuel cycle technologies. Bringing New Delhi into the global nonproliferation regime through a lasting bilateral agreement that defines clearly enforceable benefits and obligations, therefore, not only strengthens American efforts to stem further proliferation but also enhances U.S. national security.”
- <sup>4</sup> <http://www.isis-online.org/publications/southasia/ThirdKhushabReactor.pdf>.
- <sup>5</sup> Sunil Saraf and Mark Hibbs, “Russia to supply more reactors to India, bringing total to 12,” *Nucleonics Week*, December 18, 2008.
- <sup>6</sup> <http://www.world-nuclear-news.org/newsarticle.aspx?id=24507>.
- <sup>7</sup> The preamble of the IAEA agreement with India contains provisions that suggest safeguards in India would not be in perpetuity.
- <sup>8</sup> Discussion with North Korean diplomat, July 23, 2008.
- <sup>9</sup> Discussion with knowledgeable official, May 2, 2009.
- <sup>10</sup> Discussion with Norwegian diplomat, December 16, 2008.
- <sup>11</sup> Pierre Goldschmidt, “Strengthening the Non-proliferation Regime,” paper for the 7th ROK-UN Joint Conference on Disarmament, November 24 – 26, 2008, [http://www.carnegieendowment.org/files/goldschmidt\\_rok\\_20081124.pdf](http://www.carnegieendowment.org/files/goldschmidt_rok_20081124.pdf).