



ORF POLICY BRIEF

NOVEMBER 2005

POLICY BRIEF # 3

Indo-US Civil Nuclear Cooperation Agreement: Implementation Hurdles

By **Gurmeet Kanwal**

Director, Security Studies, and Senior Fellow, Observer Research Foundation.

LANDMARK AGREEMENT

INDIA SIGNED A LANDMARK STRATEGIC AGREEMENT having far reaching consequences with the United States during Prime Minister Manmohan Singh's summit meeting with President George W. Bush on July 18, 2005. Of the two major facets of the agreement, the first was the belated acceptance of India as a "responsible state with advanced nuclear technology". This was a tacit US recognition of India's status as a de facto nuclear weapons state outside the NPT. The second was the unexpectedly super quick US offer to cooperate with India on civil nuclear energy issues. This agreement was the culmination of several rounds of intense bilateral negotiations on the Next Steps to Strategic Partnership (NSSP).

As per the text of the agreement, President Bush told Prime Minister Manmohan Singh that the US would:

- Work to achieve full civil nuclear energy cooperation with India as it realises its goals of promoting nuclear power and achieving energy security.
- Seek agreement from Congress to adjust US laws and policies.
- Work with friends and allies to adjust international regimes to enable full civil nuclear energy cooperation and trade with India, including but not limited to expeditious consideration of fuel supplies for safeguarded nuclear reactors at Tarapur.
- Encourage its partners to also consider this request expeditiously. India has expressed its interest in ITER (international experimental fusion reactor) and a willingness to contribute.

Prime Minister Manmohan Singh conveyed to President Bush that India would reciprocally agree that it would be ready to assume "the same responsibilities and practices and acquire the same benefits and advantages as other leading countries with advanced nuclear technology, such as the United States." These responsibilities and practices consist of:

- Identifying and separating civilian and military nuclear facilities and programmes in a phased manner and filing a declaration regarding its civilian facilities with the International Atomic Energy Agency (IAEA).
- Taking a decision to place voluntarily its civilian nuclear facilities under IAEA safeguards.

Observer Research Foundation is a public policy think-tank that aims to influence formulation of policies for building a strong and prosperous India. ORF pursues these goals by providing informed and productive inputs, in-depth research and stimulating discussions. The Foundation is supported in its mission by a cross-section of India's leading public figures, academics and business leaders.

- Signing and adhering to an Additional Protocol with respect to civilian nuclear facilities.
- Continuing India's unilateral moratorium on nuclear testing.
- Working with the United States for the conclusion of a multilateral Fissile Material Cut off Treaty (FMCT).
- Refraining from transfer of enrichment and reprocessing technologies to states that do not have them and supporting international efforts to limit their spread.
- Ensuring that the necessary steps have been taken to secure nuclear materials and technology through comprehensive export control legislation as well as through harmonisation and adherence to the Missile Technology Control Regime (MTCR) and the Nuclear Suppliers Group (NSG) guidelines.

PRIME MINISTER'S ASSURANCES

Since the agreement was signed, various luminaries in the US have begun to interpret it in a manner that is likely to be detrimental to India's national security interests. The Indian government's stand so far has been unambiguous and unexceptionable. The Prime Minister's explanatory statements on the July 18 agreement during the Monsoon Session of Parliament clearly spell out the Indian government's interpretation of the Joint Statement and thus merit verbatim reproduction:

- "Reciprocity is key to the implementation of all the steps enumerated in the Joint Statement... Should we not be satisfied that our interests are fully secured, we shall not feel pressed to move ahead in a pre-determined manner."
- "The only commitment that I have taken additionally is to agree to the separation of the military from the civilian programme... It is only after (the Chairman, AEC) was satisfied that this agreement protects all the interests that are dear to all of us, I signified that we can go ahead with this arrangement."
- "Before voluntarily placing our civilian facilities under IAEA safeguards, we will ensure that all restrictions on India have been lifted. Our autonomy of decision-making will not be circumscribed in any manner whatsoever."
- "It will be an autonomous Indian decision as to what is 'civilian' and what is 'military'."
- "There is nothing in the Joint Statement that amounts to limiting or inhibiting our strategic nuclear weapons programme over which we will retain unrestricted, complete

and autonomous control."

- "We remain committed to the three-stage nuclear power programme, consisting of Pressurised Heavy Water reactors (PHWRs) in the first stage, fast breeder reactors in the second stage and thorium reactors in the third stage. These would need sequential implementation in an integrated manner."

IMPLEMENTATION HURDLES

While the agreement has received bouquets as well as brickbats in both the countries, the non-proliferation ayatollahs in the US have been particularly harsh in their reaction. India's recognition as a responsible owner of advanced nuclear technology is undoubtedly a major achievement. It ends India's hi-tech isolation and affirms unequivocally that the clubbing of India with Pakistan on nuclear and hi-tech trade is finally

over. It is an indication from the White House to the rest of the Administration to de-hyphenate US relations with India and Pakistan. It is also a signal to the Nuclear Suppliers Group (NSG) that India deserves to be treated as a special case for having unilaterally adhered to all the guidelines of NPT, NSG and MTCR for several decades. India must now aggressively follow up with the NSG to open the doors to facilitate the regulated flow of civil nuclear trade with India.

The early implementation of this agreement has the potential to propel

Indo-US relations to a much higher trajectory than would have been conceived to be possible even a few years ago. However, the noblest of intentions on international cooperation often meet with intractable resistance in the thrust and parry of domestic politics in a democracy. India should be under no illusion that the July 18 agreement will be subjected to a long and winding uphill drive in its passage through the US Congress. In fact, the Indian government too will face stubborn resistance from the agreement's detractors on the right as well as the left during the winter session of Parliament. International reactions have been mostly positive. Among the N-5, only China has opposed this bilateral agreement on the grounds that this would be a "hard blow" on the global proliferation system. The Chinese reaction was anticipated in India but coming as it does from one of the world's leading proliferators, it is incongruous.

In the short period of time that has elapsed since the agreement was signed, different actors have already put their own spin on various phrases used in it and have begun to

While India's stand has been unambiguous and unexceptionable, various US luminaries have interpreted the deal in a manner that may be detrimental to India's security interests.

interpret its text to suit their own convenience. Major differences have apparently emerged in the sequencing of steps that are necessary to implement the agreement. Under Secretary Nicholas Burns has said that the agreement would have to be first implemented by India and only then the US would ask Congress to waive the sanctions. Under Secretary Robert G. Joseph has stated that for the US Administration to seek support from the US Congress and the NSG, the speed with which India places its facilities under IAEA safeguards and the number of facilities that India declares would be a “necessary pre-condition” for nuclear cooperation.

As already promised by the Prime Minister, there should be no compromise with India’s national security interests in the nuclear weapons field while deciding which particular nuclear reactors are to be placed under international safeguards. Also, India’s other strategic interests need not be unnecessarily subjected to pummelling under the pressure

tactics of the US non-proliferation lobbyists. For example, it may have sufficed for India to have abstained from voting on the issue of referring Iranian moves to develop nuclear weapons capability to the UN Security Council during the September 2005 meeting of the IAEA rather than wilt under the pressure tactics of US or Chinese political leaders. The concerted campaign to link the lifting of sanctions with India’s support on contentious issues must be resisted.

In the short-term, even the full implementation of this agreement will not substantially change India’s dependence on oil as the major source of its energy requirements. It will take several decades for the newly acquired nuclear power plants to have a major impact on the contribution of nuclear power to India’s energy basket. As such, implementation of the agreement must not result in the imposition of substantive constraints on the present and mid-term sourcing of India’s energy requirements.

POLICY RECOMMENDATIONS AND CONCLUDING OBSERVATIONS

The following key policy issues need to be widely debated and adhered to by the Government of India in order to safeguard India’s national security and energy interests while taking further steps to implement the July 18 agreement with the US:

- While the nuclear agreement is extremely important for India in the long run, it does not immediately impinge on India’s vital national interests and, therefore, it is even more important to maintain India’s strategic autonomy.
- Having already obtained tacit recognition as a de facto nuclear weapons state or SNW (state with nuclear weapons), India should play its cards with deliberation in order to secure US Congressional approval for the agreement reached with President Bush. However, it needs to be understood that India is likely to get a better deal on this issue from the present US Administration than if a Democratic President is elected in 2007.
- Early implementation of the agreement will enable India to give concrete shape to its plans for a major boost to nuclear energy to overcome the present energy deficit. However, the only time critical requirement is to ensure the immediate resumption of fuel supplies for the Tarapur nuclear power plant.
- It is well recognised internationally that due to the manner in which India’s nuclear programme has evolved since its inception, it is extremely difficult to make a clear distinction between nuclear reactors that are being used specifically for military purposes and those that are earmarked for civilian nuclear energy production. The total requirement of fissile material for nuclear warheads to meet India’s present and future needs for credible minimum deterrence must be the sole criterion for determining which reactors India can afford to safely declare “civilian” and place under IAEA safeguards.
- Given the principle of “reciprocity” with the N-5 powers that is built clearly into the agreement, there should be no question of placing “all” present and future civilian nuclear facilities under international safeguards. Such a proviso has never been applicable to other nuclear powers. This is a sovereign decision that India must make on a case-by-case basis.
- India’s impeccable non-proliferation credentials are now well recognised and the Government must not allow the July 18 agreement to be used as a non-proliferation tool to be coerced into the NPT framework.
- The Government must enhance its investment in the early completion of the thorium route to nuclear energy, including greater budgetary support, so that India’s vast thorium reserves can be optimally exploited for energy security.
- Any qualifications or caveats that have the effect of restricting India’s quest for energy independence through the thorium route, no matter how long this route takes before it is successfully completed, must not be accepted.
- The terms of the Additional Protocol to be filed with the

IAEA should be the same as are applicable to the N-5. No additional restrictions must be accepted.

- While continuing to pursue the waiving of sanctions imposed by the US with the US Administration and the US Congress, the Government should simultaneously invest diplomatic capital in hastening the process of international civilian nuclear cooperation, particularly with France and Russia, to gain access to nuclear reactor technology and safeguarded fuel.
- Due to the immense importance of the civil-military separation issue and its bearing on national security interests, the government must be as transparent as possible, in keeping with the need for confidentiality on the number of warheads to be stockpiled for minimum credible deterrence.
- Finally, the Government needs to think in terms of enacting overarching legislation covering all treaties to protect India's national security interests irrespective of attenuating external parameters, no matter how pressing these might be. The Government should initiate action to create a safety valve through comprehensive national laws that ensure that vital national interests cannot be compromised through executive action.

India has lived with three decades of the harshest technology denial regime ever imposed on any country despite not having violated any treaty obligations. India's quest for strategic autonomy has only recently brought in its wake be-

lated recognition as a state with nuclear weapons. For India to grow at an average annual rate of approximately eight per cent per annum, it needs huge energy resources. The shortage of fossil fuels, the high cost of unconventional sources of energy such as solar and wind energy and the need to safeguard the environment by not adding any further to global warming and depletion of the ozone layer, make it imperative to bank on nuclear energy supplies. The availability of nuclear energy can be increased only if India is given access to civilian nuclear reactor technology and safeguarded nuclear fuel by international suppliers. It is in India's interest to separate its military and civilian nuclear facilities and accept IAEA safeguards on its civilian facilities in order to gain access to nuclear technology and fuel. However, hasty measures that may compromise India's national security interests must be eschewed.

US attempts to secure Indian implementation of the agreement to separate military and civilian nuclear facilities before President Bush's projected Indian visit in February 2006 must be resisted, unless sanctions imposed on India under US laws are waived before the visit. The principle of 'reciprocity of mutual steps' must be adhered to in letter as well as in spirit and must not be allowed to become a one-way street. Both the governments would do well to chart out a mutually acceptable roadmap to implement this substantive agreement so as to avoid conflicting statements being made by various functionaries.

ABOUT THE AUTHOR



Brigadier Gurmeet Kanwal commanded an infantry brigade on the Line of Control with Pakistan. He has served as Deputy Assistant Chief of Integrated Defence Staff Director MO-5 in the Directorate General of Military Operations at Army Headquarters and United Nations Military Observer in UNTAG, Namibia. A former Senior Fellow at the Institute for Defence Studies and Analyses, New Delhi, he has authored several books including *Nuclear Defence: Shaping the Arsenal*; *Pakistan's Proxy War*; *Heroes of Kargil*; *Kargil '99: Blood, Guts and Firepower* and *Artillery: Honour and Glory*. He has contributed extensively to military journals and leading national newspapers. At present he is Director, Security Studies, and Senior Fellow, ORF, New Delhi.



20, Rouse Avenue, New Delhi-110 002

Phone: +91-11-30220020

Fax: +91-11-30220003

www.orfonline.org

email: info@orfonline.org