

**STATEMENT OF
RICHARD A FALKENRATH
SENIOR FELLOW
THE BROOKINGS INSTITUTION
BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON INTERNATIONAL RELATIONS**

May 11, 2006

Introduction

Good morning, Mister Chairman, Congressman Lantos, and Members of the Committee. I am grateful for the opportunity to be here today to provide my views on the U.S.-India Global Partnership and, in particular, the U.S.-Indian Civilian Nuclear Cooperation Initiative announced by President George W. Bush and Prime Minister Manmohan Singh on March 2, 2006.

For the record, my name is Richard A. Falkenrath and I am presently the Stephen and Barbara Friedman Fellow in the foreign policy studies program at the Brookings Institution. I am also Managing Director of the Civitas Group LLC, a strategic advisory and investment services firm serving the homeland security market, and a security analyst for the Cable News Network (CNN). I served on the White House staff in several different capacities from January 2001 until May 2004. Prior to government service, I was an Assistant Professor of Public Policy at the John F. Kennedy School of Government, Harvard University.

Until May 2004, I served as Deputy Assistant to the President and Deputy Homeland Security Advisor on the White House staff; and, before that, as Special Assistant to the President and Senior Director for Policy and Plans within the Office of Homeland Security. My first position in the U.S. government, however, was as Director for Proliferation Strategy on the National Security Council staff, where my responsibilities included U.S. proliferation policy toward India, Pakistan, China, and North Korea. I vividly remember accompanying Deputy Secretary of State Richard Armitage on his visit to New Delhi and meeting with then-Indian Prime Minister Atal Bihari Vajpayee for the first of many high-level discussions that led ultimately to the U.S.-India Global Partnership.

Historic Context of the U.S.-Indian Civilian Nuclear Cooperation Initiative

A strong stand against nuclear proliferation has been and should remain a foundation of U.S. foreign policy. For the last forty years, however, the application of U.S. nonproliferation policy to India has been a failure in every respect. The Nuclear Nonproliferation Treaty (NPT) set January 1, 1967, as the cut-off date for a state to join the NPT as a nuclear-weapons state. India declined to join the NPT as a non-nuclear weapons state, and indeed tested a nuclear weapon in 1974. India has been outside of the nuclear nonproliferation regime ever since, and civilian nuclear trade with India has been prohibited by the Nuclear Suppliers Group (NSG) guidelines.¹

1. The 45 members of the NSG, including the United States, have incorporated these guidelines into their national nuclear export control laws.

Over time, it has become clear that the benefits of this policy toward India are slight and theoretical, while its disadvantages are considerable and real.

First of all, there is no prospect whatsoever that India will abandon its nuclear weapons capability. All responsible experts and government officials know perfectly well that there is no nuclear “roll-back” option with respect to India.

Second, there is no evidence that the treatment of India as a nuclear pariah under the NSG guidelines has been a factor in any other state’s decision to seek to acquire nuclear weapons (e.g., Iran, Iraq, North Korea) or any other state’s decision to renounce nuclear weapons (i.e., Ukraine, South Africa, Libya).

Perhaps this firm stand against nuclear trade with India has helped developed countries maintain reasonable and consistent nuclear export controls. Or perhaps, as some experts have argued, this treatment of India has helped shore up the commitment to the NPT of countries like Brazil, Argentina, Taiwan, or South Korea, whose governments may have or might still contemplate nuclear weapons acquisition.² Although there is little direct evidence of these effects, the conjecture is plausible and concerning and therefore points to an issue that deserves heightened attention in U.S. foreign policy in the future.

2. See Ashton B. Carter, “Assessing the India Deal,” Statement before the Committee on Foreign Relations, U.S. Senate, April 26, 2006, p. 5.

The nuclear issue has, however, deprived the United States of a natural ally. When India and the United States should have been working together on the great strategic challenges of our time, American diplomats and senior officials were sidetracked by tedious, pointless debates about the global nonproliferation regime. I do not entirely understand why the nuclear issue had become a source of such neuralgia for the India elite, but I am certain that settling the question of India's status in the global nonproliferation regime (and thus in U.S. export control law) is the *sine qua non* of transforming U.S.-Indian relations into a genuine strategic partnership.

Evaluating the U.S.-Indian Civilian Nuclear Cooperation Initiative

One's assessment of the U.S.-India Civilian Nuclear Cooperation Initiative depends in part on one's frame of reference. Do you view the deal narrowly, as a technical nonproliferation (or arms control) agreement, in isolation from all other issues; or do you view it broadly, as an element of the United States' effort to cope with the many different strategic challenges we face today and are certain to face in the future?

If one views the Bush-Singh nuclear deal strictly as a technical nonproliferation agreement, then the net benefits of the agreement would seem contestable. Put differently, reasonable people could disagree about its merits. India has agreed to segregate its civilian nuclear facilities from its military nuclear facilities and to place the former under IAEA safeguards. But India has not agreed to reduce or even to cap its overall military nuclear stockpile, or to allow any form of international inspection of its

military nuclear complex. One should also not exaggerate the real importance of such technical restrictions given that India, and its two largest neighbors, will retain a robust nuclear weapons productions capabilities and significant deployed nuclear forces in all circumstances, but it is hard to disagree with the point that additional technical restrictions on the Indian military nuclear program, such as a fissile material production cut-off, would be desirable. (I have no doubt that this thought also occurred to the U.S. negotiators of the arrangement, and that they would have readily included such undertakings in the agreement if the Indians had been willing to accept them.) Some experts, when they evaluate the Bush-Singh nuclear deal narrowly as a technical nonproliferation or arms control agreement, may therefore conclude that the deal gives up too much in return for too little.³

Personally, I disagree with this conclusion even when I apply the narrowest frame of reference. India is not at this time prepared to accept unilateral technical restrictions on its military nuclear program; given India's history on this matter and the character of its relations with neighboring Pakistan and China, I understand this reluctance. The nonproliferation value of the Bush-Singh nuclear deal lies in the untangling of India's civilian and military nuclear programs; the inclusion of India in the IAEA safeguards system; and India's political commitment to work constructively with the United States in the negotiation of a global fissile-material cutoff convention. These steps are not trivial in their own right and may over time become the foundation on which technical restrictions on India's military nuclear program will be built. Taken together, the Indian

3. See, for instance, Robert J. Einhorn, Statement before the Committee on Foreign Relations, U.S. Senate, April 26, 2006.

undertakings in the Bush-Singh nuclear deal, combined with the improved prospect of additional measures in the future, modestly outweigh the notional nonproliferation drawbacks of the accord.

But the Bush-Singh nuclear deal should not be assessed narrowly as a technical nonproliferation agreement. The correct frame of reference for assessing the Bush-Singh nuclear deal is U.S. national strategy – that is, the extent to which it contributes to, or undermines, the U.S. ability to manage the great strategic challenges of our time. By this standard, the case in favor of the U.S.-India Global Partnership, which is founded on the Bush-Singh nuclear deal, is far more compelling.

The great strategic challenges of our time include the rise of China; the stability of Pakistan; the ideological challenge of Islamist militancy; the promotion of democracy and other forms of good governance; various state and non-state efforts to acquire weapons of mass destruction, including Iran's determination to acquire nuclear weapons; the threat of pandemic influenza and other emerging infectious disease; the equitable liberalization of international trade and investment rules; the sustainable and secure production, transportation, consumption of energy resources; global climate change; and the reform of the United Nations and other important multilateral organizations. These are the first-order issues of American foreign policy. In every case, the United States stands to benefit from more constructive cooperation with India -- or, to put it differently, from having India as an ally rather than a bystander or an adversary. Why? Because of India's size, population, and economic growth, which

give it power; because of India's location, at the fulcrum of Asia and the Middle East and on the southern border of China; because of the internal character of the Indian state, a stable, multi-ethnic liberal democracy; and because of the prestige and influence that inheres in India's standing as one of the world's greatest, and oldest, civilizations.

Constructive cooperation on the great strategic issues of the day has not, unfortunately, been the norm in U.S.-Indian relations in the past. Achieving such cooperation in the future will require a sea-change in the way in which India views the United States and, eventually, defines its own national interests. I believe that such a sea-change is now precariously underway in India, in large part due to President Bush's determination to break the long-standing diplomatic logjam on the nuclear issue. Anyone with even a glancing familiarity with the Indian elite should recognize that there is no real prospect of India becoming a genuine strategic partner – an ally, in effect – of the United States except in the aftermath of a resolution of the nuclear issue. There is, of course, no guarantee that after the nuclear issue has been resolved, India will always support U.S. preferences in all matters of importance to the United States. The possibility of meaningful U.S.-Indian strategic cooperation will grow far more favorable as our bilateral ties deepen, as our leaders learn to trust one another, and as India's standing as a responsible great power is more clearly recognized by the United States and other leading members of the international community.

The President's Indian Civilian Nuclear Bill

I have reviewed the President's proposed civilian nuclear bill. The President's bill would grant him the discretion to waive the three key provisions (sects. 123(a)(2), 128, and 129) of the Atomic Energy Act, as amended, that currently stand in the way of implementing the U.S.-India Nuclear Cooperation Initiative. The President has asked the 109th Congress to pass this bill swiftly so that India may complete its undertakings in the Bush-Singh agreement in confidence that the United States will follow through on its commitments; and so that the United States may complete the negotiation of the required Agreement on Cooperation with India and with the necessary updating of the NSG guidelines.

The President's proposed bill is simple and effective. If passed, it would confer on the President exactly the authority he needs to implement his agreement with Prime Minister Singh, and no more. It imposes no conditions on the United States or India beyond those which the President and Prime Minister Singh have already accepted. The 109th Congress could today pass the President's bill exactly as he proposed it in confidence that it has done no more than enable the U.S. government to follow through on the commitments that have already been made by the U.S. head of state.

Congress of course has the power to modify the President's proposed bill in any manner it sees fit. Naturally, any legislation that the Congress ultimately passes on this matter will deviate in some respect from the President's proposal. Each proposed modification will need to be evaluated on a case-by-case basis, but a few general guidelines suggest themselves. Statutory reporting requirements and "sense of the

Congress” statements, for instance, are almost always acceptable to the Executive Branch. Similarly, instructions to the President as to what outcomes he should seek in future negotiations with the Indians or others rarely present serious problems.⁴

Specific statutory conditions related to the fulfillment of the U.S. undertakings in the agreement are much more problematic; in particular, any such conditions that would require the United States to reopen negotiations with India would be tantamount to outright rejection of the Bush-Singh nuclear deal.

Importantly, the President’s proposed bill would subject the completed U.S.-India Agreement on Cooperation to the standard congressional review procedure for such agreements – namely, a sixty-day Congressional review period after which the agreement would enter into force unless the Congress passes a resolution of disapproval. I believe that this review procedure is entirely appropriate and proper. I further believe that the commonly discussed alternative review procedure – namely, the requirement that the completed Agreement on Cooperation be affirmatively approved by the Congress – is unwarranted and would be unwise. My reasons are both principled and pragmatic.

As a matter of principle, the 109th Congress, as the highest legislative body of the land, should be able to reach a definitive view as to the wisdom and propriety of the proposed U.S.-Indian Civilian Nuclear Cooperation Initiative, and should then have the courage of its convictions. When completed, the U.S.-Indian Agreement on Cooperation will be

4. On the question of what the United States should expect from India going forward, I associate myself with the recommendations of Ashton B. Carter, *ibid.*, pp. 6-8.

merely the technical expression of the Bush-Singh nuclear deal; there will be no surprises. The 109th Congress therefore has sufficient information to make a definitive determination on the Bush-Singh nuclear deal. If the 109th Congress approves of this Bush-Singh nuclear deal, then it should unequivocally say so now. If, on the other hand, the 109th Congress disapproves of the Bush-Singh nuclear deal, then it should make this clear to the world now by rejecting unambiguously the President's proposal.

A congressional review procedure for the completed U.S.-India Agreement on Cooperation that deviates from established precedent by requiring a second affirmative vote by some subsequent Congress would suggest equivocation and lack of self-confidence in the part of the 109th Congress. Such an implication would be unbecoming of the most important and powerful branch of the United States government; and would be injurious to the President's ability to conduct diplomacy on behalf the American people. If the Congress is going to scuttle the Bush-Singh nuclear deal, the time to do so is now, before India's expectations are raised any higher and before other countries begin civilian nuclear exports to India. Such a step by the Congress would of course be a grievous blow to U.S. foreign policy, but it is preferable to incur this blow now rather than two or five years from now.

Moreover, the prerogatives of the Congress would in no way be impaired by applying the standard congressional review procedure for Agreements on Cooperation to the U.S.-India agreement when it is completed. If some subsequent Congress came to the view that the implementation of the Bush-Singh nuclear deal was against the U.S.

national interest, it could block such implementation in any number of different ways – not least though the mechanism proposed in the President’s bill (namely, a resolution that rejects the completed Agreement on Cooperation). The Congressional freedom of action would in no way be limited by applying the standard congressional review procedure for Agreements on Cooperation to the Indian agreement.

Applying the standard congressional review procedure for Agreements on Cooperation to the U.S.-India agree would, however, have important practical diplomatic benefits. In order to implement the Bush-Singh nuclear deal, the United States must negotiate a bilateral Agreement on Cooperation with India as well as conforming modifications in the NSG guidelines. There are 44 members of the NSG in addition to the United States; each of the NSG members must accept the U.S.-proposed modifications before the changes to the NSG guidelines go into effect. This multilateral diplomacy with the other NSG members will be complex and time-consuming. Ideally, the bilateral U.S.-Indian negotiations on the Agreement on Cooperation would occur simultaneously with the multilateral negotiations on the Nuclear Suppliers Group (NSG) guidelines.

However, such simultaneity is prudent only if the United States has a high degree of confidence that its statutorily required Agreement on Cooperation will come into effect at the same time as other members of the NSG translate the new guidelines into their national nuclear export control laws. This confidence will exist only if the 109th Congress adopts the standard congressional review procedure for Agreements on Cooperation, since it is widely recognized that, except in very unusual circumstances,

an affirmative vote by both chambers of the Congress on an identical piece of legislation takes a long time to achieve and presents many opportunities for material modification.

The diplomatic risk for the United States under an affirmative-vote review procedure is twofold: first, if the other NSG members move more quickly than the United States to update their national nuclear export control laws with respect to India, then the U.S. government would have succeeded in opening the Indian civilian nuclear market to sales by foreign but not U.S. exporters; and second, if the Congress modifies the completed U.S.-India Agreement on Cooperation or delays substantially its entry into force, then the United States may have to undertake a subsequent round of multilateral negotiations among the NSG members – and these from a far weaker negotiating position – in order to realign the NSG guidelines to the U.S.-India Agreement on Cooperation in its final form. Thus, the practical, diplomatic effects of an affirmative-vote congressional review procedure is likely to be deliberate sluggishness in our multilateral negotiations with the other NSG members; as well as lingering suspicion in India on whether the United States can be trusted to follow through on President Bush's commitments to Prime Minister Singh. This suspicion in India will undoubtedly manifest in delayed or half-hearted Indian implementation on Prime Minister Singh's commitments to President Bush.

Conclusion

Regardless of one's assessment of the merits of the Bush-Singh nuclear deal, there is one point on which all observers should agree. Congressional rejection of President Bush's nuclear agreement with Prime Minister Singh, whether outright or in the form of statutory conditions that require the reopening of negotiations, will have disastrous consequences on Indian attitudes toward the United States and U.S.-Indian relations generally.

In the United States, the Bush-Singh nuclear deal is a single, relatively minor, and relatively technical foreign policy item. It receives little attention from the American public or the media, which are understandably preoccupied with front-burner issues like the conflict in Iraq, terrorism, Iran, and developments in Israel and the Palestinian Authority.

In India, by contrast, the public and political importance of the Bush-Singh nuclear deal can hardly be overstated. It is a topic of continuous, vigorous debate and extensive media attention. If the 109th Congress rejects the Bush-Singh nuclear deal, it would be seen around the world as a testament to the capriciousness of U.S. foreign policy. In India, it would be remembered as a betrayal of the first order by a generation of Indians – particularly by Prime Minister Singh's and Sonia Gandhi's Congress party, which would suffer politically from such a set-back.

It is hard to predict exactly how such Indian attitudes toward the United States would manifest in India's foreign policy, but we should expect at a minimum some significant

withholding of Indian support on matters of considerable concern to the United States. This speaks to the seriousness of the matter before 109th Congress, and of the need for a deliberate and carefully considered Congressional action on the President's legislative proposal.