

Testimony by  
The Honorable Ronald F. Lehman II  
on  
US-INDIAN NUCLEAR ENERGY COOPERATION:  
SECURITY AND NONPROLIFERATION  
before the  
United States Senate Committee on Foreign Relations  
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Mr. Chairman, Members of the Committee,

I am pleased to accept your invitation to join with this distinguished Committee – and with my good friends on this panel – to discuss the nonproliferation implications of the US-India civilian nuclear cooperation called for in the July 18, 2005, Joint Statement of President George W. Bush and Prime Minister Manmohan Singh. Over the years, I have appeared before this Committee in various capacities, and, Mr. Chairman, I am pleased to co-chair with Ash Carter your Policy Advisory Group on the future of the nonproliferation regime. Nevertheless, I would like to make clear that today I am speaking only for myself and the views I express here do not necessarily represent those of any Administration, organization, or group with which I am or have been associated.

The Committee is well aware of the content of the U.S. India Joint Statement: In the context of the broader global partnership on the economy, energy and the environment, democracy and development, and high-technology and space reflected in the Joint Statement, India will receive the benefits of civil nuclear cooperation in exchange for enhanced nonproliferation commitments. More specifically, India has agreed to separate civilian and military nuclear facilities, place those civilian facilities under IAEA safeguards, and implement an IAEA Additional Protocol. India will continue its moratorium on nuclear weapons testing and work toward a multilateral Fissile Material Cutoff Treaty. India will help prevent the spread of enrichment and reprocessing technologies to states that do not have them and adhere to the Nuclear Suppliers Group (NSG) and Missile Technology Control Regime (MTCR) while legislating strong export controls.

For its part, the United States Government will propose that Congress adjust US law and that relevant international bodies adjust their regimes to permit full civilian nuclear energy cooperation with India. The US will also consult with its partners on the inclusion of India in certain advanced nuclear energy research associated with both fission and fusion energy.

Before I address the three specific questions the Committee has asked about the Joint Statement, let me offer a short net assessment. The Joint Statement is an historic milestone for nonproliferation that creates both great opportunity and great risk. It creates

an opportunity to strengthen a nuclear nonproliferation regime that is suffering from its own internal weaknesses such as inadequate enforcement, the threat of breakout once an advanced nuclear capability has been achieved, and an inability to engage effectively the non-parties to the NPT. Because the terms of the Joint Statement, however, also spotlight those weaknesses, mishandling of the implementation of its terms can have adverse consequences even when the best of intentions are involved. The elements of the package are not new, but the suddenness with which the particular mix of elements was put together has caught many key players at home and abroad by surprise. They need to take the time to think through their positions carefully as the governments of India and the United States flesh out their phased approach. The Executive Branch needs also to consult closely with the Congress, and within the Executive Branch, regional and functional experts need close, regular, and detailed coordination. All of this will serve to improve our ability to work with India and other governments to enhance our efforts against all weapons of mass destruction.

Whether one could have negotiated a somewhat better deal is moot. The joint statement is in play, and we all have an obligation to ensure that our national security is enhanced as a result of the dynamic process now underway, especially our ability to prevent and counter the spread of weapons of mass destruction. If the basic approach contained in the Joint Statement collapses, we will not return to the *status quo ante*. US-Indian cooperation will be set back, but also the weaknesses in the existing regime will be exposed to even greater pressure. Bringing India into a more comprehensive regime of nonproliferation and restraint, however, could significantly enhance our ability to reduce the dangers associated with weapons of mass destruction. Congress can help insure that this is a sufficiently ambitious agenda. India could do much to help within its borders, in South Asia, in other troubled regions, and globally.

Yet India remains a symbol of a glaring challenge to the nonproliferation regime; namely reconciling universal principles with very different circumstances. Is the same verification system appropriate for both Sweden and Iran? Is a democratic India outside the NPT really to be considered more of a nuclear pariah than a despotic North Korea inside the Treaty? Measures to deal with specific concerns are often inappropriate to apply universally. Yet rules that can be applied universally are often too general to address specific concerns, sometimes creating an inability to enforce compliance or even encourage restraint. In many ways, progress in the NPT centered nonproliferation regime has been measured by the success or failure in tailoring measures to different circumstances. One sees this in the dealings North Korea, Iran, Iraq, Pakistan, Israel, and others over the last decade or more. It will remain true with India.

If the process set in place by the Joint Statement were to continue in a positive direction, it could create a more sound, broad-based nonproliferation community with the tools necessary to deal with the different circumstances of the real world. It could further integrate our nonproliferation goals into our national strategy and those of others, permitting us to more effectively deal with the increasing availability of destructive technology in the global economy and the persistence of dangerous actors, both state and non-state.

I would urge the Congress to focus on the dynamics of the process and the goals to be achieved as a result of the US-India Joint Statement rather than attempting to rearrange the pieces of the initial package. Much that one might have detailed in the original package may be more successfully achieved by driving subsequent interactions in the right direction. This can only be done, I believe, if nonproliferation is a centerpiece of strategic engagement rather than a trade-off. It is best achieved by retaining a viable Nuclear Non-Proliferation Treaty at the core of a broader nonproliferation regime that uses more targeted, embedded engagement to address the fundamental causes and conditions of proliferation. In short, widely shared goals should guide our actions, but implementation will fail if a “one size fits all” mentality is applied rigidly to different circumstances. Let me clarify what I mean by addressing the three questions you have asked

*(1) If there is need to draw closer to India for strategic reasons, what are those reasons, and why does civil nuclear cooperation weigh so heavily among them?*

The NPT was designed to enhance the benefits for membership, but for India, a non-signatory, restrictions on civilian nuclear cooperation are deeply resented in India because they are seen as punitive, discriminatory, and demeaning. The emotional quotient is high. Yes, India’s nuclear power infrastructure has suffered from lack of access to outside technology and uranium shortages could become a major factor in India’s nuclear power future, but that future still remains very uncertain. India’s nuclear elite is divided on what it wants and why. One can imagine a major scale-up of India’s nuclear power, but it is not clear private investment will be there. Even smaller public investment may be unwise if it continues the weaknesses of the current programs. Neuralgia over the nuclear issue is intense primarily because it triggers deeper-seated resentments.

Relations between the United States and India have long been far worse than the objective conditions warrant. The reasons are too numerous to list. Again, they are not primarily about nuclear cooperation. South Asia was a backwater of US diplomacy during the Cold War, and cooperation was made difficult by India’s socialist orientation, non-aligned tactics that often tilted toward the Soviet Union, and a related testiness toward the West as a result of its colonial experience. In the United States, there were many “Years of India,” none of which seemed to last even that long. Indian nonproliferation policy was draped in grandiose disarmament rhetoric that provided moral top cover for the nuclear weapons program that gave its population much satisfaction. Thus, India has often been unwilling to take “Yes” for an answer. Long a leading advocate of a Comprehensive Test Ban, it backed away when rapid negotiations threatened options to demonstrate its nuclear prowess. One of the godfathers of the Fissile Material Cut-off, India has been satisfied to see it buried in a moribund Conference on Disarmament. In short, India has serious security concerns, but its behavior is often driven by concerns about status.

What has changed? Much. The end of the “Permit Raj” and the opening up of the Indian economy has emboldened a huge, highly educated middle class. The new demographics

are also compelling. It is not just that India will have the world's largest population in 2030. It will be experiencing the so-called "demographic dividend," as the falling fertility rates and improved health increase the ratio of workers to dependents in ways that have historically driven economic growth. A global, high technology Indian diaspora is now networked and returning skills and investments to India. India is proud of its information technology and seeks to do the same in biotechnology. And if messy domestic politics is a signature of democracy, then India is clearly a democracy. This too can provide a basis for a new relationship with an India that may be more able to look more self-confidently to its real interests and leave the politics of resentment behind.

As an economic, cultural, and strategic partner, India could offer much in the years ahead, especially if adverse geo-strategic developments in the Islamic world or Eurasia create economic or security dangers, but a grand strategic partnership is not inevitable. It needs to be groomed. Indian domestic and regional politics are volatile because of economic, class, and ethnic divisions. For all of its tradition of business and trade, South Asia remains a region in which the win-win often seems alien. Spoilers abound domestically and around the region. As Indian power and influence grows, both its ability to help and its ability to do harm will grow. Positive steps will be accompanied by negative steps and vice versa. Most Indians are proud of having tested nuclear weapons, but having made this demonstration, many Indians are now more willing to reach out and to show restraint. We will not always have overlapping interests, but we can achieve a relationship that is at least as good as the common interests we develop, something we have often failed to achieve in the past.

Strong bipartisan support exists for engaging the emerging India, much of it overly optimistic about near-term possibilities and long-term probabilities. Still, I believe it is the right approach, but we should not let our euphoria cause us to undermine our most effective nonproliferation tools. We should not assume that great economic and strategic gains that would not otherwise be possible would result simply from civilian nuclear cooperation. Rather we should fold our flexibility on civil nuclear cooperation into our efforts to work with India to strengthen the overall nonproliferation regime including improvements in strategic relationships and the international security architecture.

*(2) The July 18 Joint Statement addresses many long-standing Indian concerns about the NPT, the Nuclear Suppliers Group (NSG) and U.S. law, but what U.S. concerns about India's past and current non-proliferation policies and laws are addressed by the Joint Statement? Please enumerate these concerns and indicate specifically how they are addressed in the Joint Statement.*

Many US and Indian concerns are addressed in the Joint Statement, but it is premature to suggest that they will be addressed successfully. What is underway is a phased process. Neither side will be certain of how much will be achieved for some time. Over the years, various Indian interlocutors have floated the idea of separating civilian from nuclear facilities and applying safeguards to them. We have never known the scale of the separation or the quality of the safeguards. If India is serious about nuclear power, then its infrastructure should be declared predominantly civilian with permanent IAEA

safeguards. To clarify the separation may take some time, and full implementation of IAEA safeguards could take years. A major shift to safeguard civilian activity would be a positive step worthy of considerable movement on the part of the US and the international community. A token step would be counterproductive.

India has long had a formal position in favor of a Fissile Material Cut-Off. The Joint Statement reiterates that support and goes further in trying to align India's responsibilities and benefits with those of other "responsible state[s] with advanced nuclear technology." The definition of responsible states with advanced nuclear technology is not clear, but examples might be those that are associated with the ITER fusion program and the GEN IV advanced nuclear reactor programs, countries such as the US, UK, Switzerland, South Korea, South Africa, Japan, France, Canada, Brazil, Argentina, China, and Russia. Nearly all already have *de facto* or *de jure* fissile material cut-offs, and the rest are committed to such a cut-off. Because the prospects for a FMCT seem so poor in the Conference on Disarmament, perhaps an interim multilateral approach could be put forth with such states with advanced nuclear technology and other relevant states, in part to enhance nuclear security and in part as a "fly before buy" experiment that might lead ultimately to progress on an FMCT in the CD. If India were to join the rest of the advanced nuclear community in this regard, it would be a major contribution.

Perhaps the greatest contribution that India could make to nonproliferation outside its own borders would be to end its guerrilla war against the NPT and support the international community in its efforts to encourage and, as necessary, enforce compliance with obligations. India's stated long-term goals are compatible with those of the NPT, but India's insistence that the NPT is a discriminatory treaty that singles them out has resulted in a regular campaign to undermine support for the NPT. Certainly, it is not too much to expect of India that, in the context of renewed civil nuclear cooperation, the rhetoric against the treaty could be dispensed with. A polite agreement that we have some disagreements should be sufficient. For its part, the United States need not walk away from its view that ultimately we would like to see universal adherence to the NPT, but we have long ago stopped pressing India to join as if the conditions might be near at hand. Getting India to support adherence to treaties, including treaties they do not belong to, should also not be an issue of membership. The greater problem is that India has strategic and economic objectives in addition to whatever nonproliferation goals they may share with the US. Whether it is NAM politics or its strategic engagement of Iran, these can create serious problems. India cannot be expected to alter its most fundamental interests, but in these areas, we may find a measure of New Delhi's actual commitment to nonproliferation and global partnership.

Within its own borders, the growing concern over non-state and quasi-state actors places a premium on modern physical security, export controls, counter terrorism, implementation of UNSC Resolution 1540, and support for measures such as the Proliferation Security Initiative (PSI). These are areas in which the United States and India can work together and gauge each other's commitment by our synergy. In recent years, official Indian policy has been increasingly positive in these areas, but the longer

history has clouds. Confidence in effective implementation would be enhanced by more direct, bilateral engagement.

*(3) The policy adopted in the Joint Statement, if fully implemented, will require changes to international non-proliferation rules, rules that apply to nations other than India—in particular it is not clear how those changes would affect U.S. policy with respect to Iran and North Korea, as well as the nuclear export policies of Russia and China. How can the Administration and Congress work to ensure that if rules are changed for India, those changes will not result in other proliferation challenges—and if such consequences are not avoidable, should these rules be changed?*

The nonproliferation rules have constantly been changing, becoming both more restrictive and less restrictive based upon changed circumstances. Perhaps I can illustrate this. In January 1992, at an historic summit of the United Nations Security Council, further proliferation was declared to be a threat to international security, strong words implying strong actions. These world leaders were encouraged in their strong statement by many historic developments. The Cold War was over and US-Russian cooperation was accelerating. Longstanding holdouts who had disparaged the NPT, such as France, China, Brazil, Argentina and others, were now members. Historic arms control agreements were in place. The first Gulf War had imposed on Saddam Hussein's regime an unprecedented, tailored UNSCOM inspection regime that ultimately revealed how badly we had underestimated the WMD capability in Iraq, both nuclear and biological. Just in time, we had learned how difficult it is to assess what really goes on in the global world of dual use technology. Enhanced nonproliferation initiatives were being expanded. On the Korean Peninsula, a North-South denuclearization agreement had been completed, and North Korea had finally concluded an IAEA safeguards agreement. The two Koreas were also negotiating a North-South bilateral inspection regime that would create a stronger NPT plus regime in that troubled region. Going beyond the Joint Verification Experiments and the laboratory-to-laboratory exchanges, the Nunn-Lugar programs were expanding the frontiers of engagement and transparency. Both the international norms and the means to engage concretely and in detail on their behalf were being enhanced with more hands-on flexibility.

No sooner had the Security Council Summit spoken, than the remaining challenges became clear. Talks between the two Koreas on bilateral inspections stalled. Then implementation of the North-South denuclearization agreement under which both Koreas agreed to give up both reprocessing and enrichment finally collapsed when North Korea was revealed to have a covert reprocessing plant. When Pyongyang refused to permit an IAEA special inspection and announced it would withdraw from the NPT, the international community could not agree that this was a matter for the Security Council. Instead, the world turned to the US to solve the problem, with great pressure applied on the US to use carrots rather than sticks. However vital, nonproliferation began to lose its urgency. To buy time, an Agreed Framework was negotiated with North Korea under which new nuclear reactors would be provided Pyongyang as part of a process for

resolving outstanding issues. Russians complained that the Agreed Framework subsidized a non-compliant North Korea even though the US had opposed Russian sales of similar reactors when Pyongyang was thought to be compliant. Russia cited the Agreed Framework in rejecting US opposition to reactor sales to Iran, which was then accepting IAEA inspections. And of course many Indians noted that reactors that were denied India, a democracy that was not party to the NPT, were being supplied to a North Korea in open violation of the NPT and still threatening to complete its withdrawal from the Treaty. Whatever the merit of such protestations, they remind us that the difficult cases and changed circumstances have resulted in modifications to our basic approaches in the past, not always with good results. Sometimes, we bowed to the inevitable. We once had very tight limits on computer exports, but long ago we decontrolled far more capable machines because of foreign availability. Sometimes, we have been able to expand restraint. Because of the close association of enrichment and reprocessing with nuclear weapons potential, the United States and others have pressed for a further narrowing of the access of additional states to those technologies. Under the terms of the Joint Statement, India has agreed to join in this selective approach as it undertakes not to transfer enrichment and reprocessing technologies to those who don't have them and to support international efforts to limit their spread.

Once again, we are faced with the challenges of achieving our basic goals under different circumstances. Common rules and criteria can be useful, but they can also be self limiting and counterproductive if they prevent us from developing different rules for different circumstances to promote the same goal. Of course, we need to keep in mind the real measures of merit. Too often we measure nonproliferation only by the number of benign and compliant states that have adhered to the Treaty rather than by assessing the real state of proliferation capability and intent in a world in which much more potential is now latent.

Mr. Chairman. In summary, the Joint Statement creates opportunities to strengthen nonproliferation by engaging India and reducing some of the stresses on the NPT that result from India's pariah status on civilian nuclear cooperation. A failure by India to step up to its side of the bargain fully and to continue to move in the direction of cooperation and restraint, however, could create dangers for an NPT-centric regime that is having difficulty because of noncompliance, weak enforcement, the spread of WMD capability into troubled regions, and the rise of dangerous non-state or quasi-state actors. Ultimately, states will remain committed to nonproliferation, and members of the NPT will remain within the regime, only if it serves their interest. Many support the NPT because they get civilian nuclear cooperation, but most support the NPT because it enhances their security. So long as the NPT serves their interests, the emergence of asymmetric arrangements to deal with different circumstances is manageable and necessary. Unfortunately, such arrangements can serve as a pretext for withdrawal or non-support when the Treaty itself no longer serves the interests of specific parties. To strengthen the NPT, we need to enforce compliance and concentrate on enhancing its value to its members rather than focusing on punishment of those who have not yet adhered, all of which are nations with which we have friendly, if sometimes difficult, relations.





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