

U.S. Senate Committee on Foreign Relations
Senator Richard G. Lugar
Opening Statement for Hearing on
U.S.-India Peaceful Atomic Energy
September 18, 2008

I welcome our witnesses and join in thanking our good friend Under Secretary Bill Burns for coming back to the Committee today. We appreciate his willingness to share his expertise with us on two successive days.

In December 2006, Congress overwhelmingly approved legislation setting out the criteria under which we would consider a so-called “123 agreement” between the United States and India. In advance of consideration of that important legislation, the Committee on Foreign Relations undertook an extensive review of the agreement. We held three public hearings with testimony from 17 witnesses, including Secretary of State Condoleezza Rice. We received a classified briefing from then Under Secretaries of State Nick Burns and Bob Joseph. Numerous briefings were held for staff with experts from the Congressional Research Service, the State Department, the intelligence community, and the National Security Council. I submitted 174 written questions for the record to the Department of State on details of the agreement and posted the answers on the Committee website.

The Committee constructed a bill that allowed the United States to seize an important strategic opportunity, while reinforcing U.S. non-proliferation efforts, and maintaining our obligations under the NPT. The Committee approved this legislation with a bipartisan vote of 16 – 2 on June 29, 2006. Our efforts, and those of the House, resulted in final passage of the Hyde Act on December 9, 2006. It was signed into law by President Bush on December 18, 2006.

We expected India to move quickly to negotiate a new safeguards agreement with the IAEA and then to seek consensus from the Nuclear Suppliers Group (NSG) in accordance with the Hyde Act. Unfortunately, domestic political divisions in India led to a delay that lasted nearly two years. Final action on these tasks was not completed until the last several weeks. India engaged and obtained the approval of a new safeguards agreement with the IAEA on August 1. NSG consensus was achieved on September 6. The Administration submitted the agreement to Congress on September 11. This leaves Congress with the difficult task of approving this agreement in the short time before we adjourn.

Under existing law, the Committee would normally be in a 30-day period of consultation on the proposed agreement, after which it would have 60 days to consider a resolution approving the agreement. Such a resolution would be privileged and unamendable. However, if we hope to pass the resolution this year, we cannot wait until all 30 days of the consultation period have transpired.

Given the need to waive most of the 30-day consultation period, a simple, privileged resolution is unavailable to us. Amendments will be in order, and there is no guarantee of a vote on final passage.

The agreement before us is complex and will require the concentrated attention of members. The legislation Congress passed in 2006 laid out seven determination requirements that the President must make in order to waive provisions of the Atomic Energy Act and submit the agreement to Congress. The seven determinations are as follows:

- India has provided the U.S. and the IAEA with a separation plan for its civilian and military facilities and filed a declaration regarding civilian facilities with the IAEA;

- India has concluded all legal steps prior to signature for a safeguards agreement in perpetuity with the IAEA;
- India and the IAEA are making substantial progress in completing an Additional Protocol;
- India is working actively with the United States to conclude a fissile material cutoff treaty;
- India is working with and supporting the United States to prevent the spread of enrichment and reprocessing technology;
- India is taking the necessary steps to secure nuclear materials and technology; and
- The NSG has decided by consensus to permit supply to India of nuclear items under an exception to their guidelines.

Last week the President determined that each of these requirements has been met. Today's hearing will review these determinations in preparation for Congressional acceptance. In addition, there are four main policy and legal questions that must be resolved.

First, Indian leaders claim that the United States has agreed that India can test its nuclear weapons and obtain stocks of nuclear fuel to guard against sanctions. They also claim that the United States has conferred the legal status of a Nuclear Weapon State under the NPT on India. The President's Message to the Congress transmitting the proposed agreement states that any provisions in the agreement are political commitments and not legally binding. Which explanation is factual, and how do these conflicting statements effect the operation and implementation of the agreement?

Second, is the agreement fully consistent with U.S. laws that would require termination of the proposed agreement and cessation of nuclear exports to India if it detonates a nuclear explosive device or proliferates nuclear technology?

Third, are the terms of the proposed agreement regarding fuel supply from the United States to India, or supply of fuel from third countries to India, or the creation of a strategic reserve of such fuel in India consistent with the intent of the Hyde Act? How would the agreement work in cases in which the United States decides to terminate fuel supply to India or demands the return of nuclear material and equipment to the United States in response to an Indian violation of the 123 agreement or its new safeguards agreement with the IAEA?

Fourth, to what extent has the United States created a new kind of 123 agreement and model for international nuclear cooperation that may benefit additional countries that have not accepted the NPT and that do not have a comprehensive safeguards agreement with the IAEA?

These issues must be addressed during our hearing today. We need to establish the definitive U.S. interpretation of this agreement. We want to avoid any ambiguity about the effect of this agreement on U.S. law and policy.

I thank Senator Dodd and Chairman Biden for holding this hearing. I am hopeful that Congress will complete our important work on this agreement this year. I am confident that if we have total cooperation from the Administration and strong bipartisan teamwork here in Congress, we can succeed.

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