

TESTIMONY OF MICHAEL KREPON
CO-FOUNDER, THE HENRY L. STIMSON CENTER
BEFORE THE SENATE FOREIGN RELATIONS COMMITTEE
NOVEMBER 3, 2005

The debate now unfolding on the Bush administration's nuclear cooperation initiative is not about isolating and penalizing India. India is already the beneficiary of significant changes in US Government policy. The real issue at hand is how to greatly improve bilateral ties without greatly weakening rules against proliferation.

Many ardent admirers of India and staunch defenders of the Non-Proliferation Treaty are conscientiously struggling with this dilemma. The NPT faces a number of problems more severe than India's nuclear program. But these problems can be compounded by how we handle India. The rules we change on India's behalf can also weaken the rules we want other nations to abide by.

We can't sidestep this dilemma by distinguishing, as advocates within the administration do, between friendly states and problem states. Such distinctions are rarely permanent or clear cut. We all know that friendly states can also be problem states, that yesterday's friend can become tomorrow's adversary, and vice versa.

Another significant problem with making US non-proliferation policy dependent on country-specific distinctions between good and bad states is that this approach will seriously damage domestic laws and international treaties that set norms against proliferation. Domestic traffic laws don't allow some people to speed, but not others. Nor do international treaties distinguish between friends and foes, since one nation's friend can be another's foe. Instead, the rule of law applies to all. It allows us to distinguish between those who abide by the law and those who break it. Laws still get broken, but that doesn't diminish the importance of rules. Having rules, laws and international norms provides the basis for prosecution, coalition building, and enforcement.

I will describe below four fundamental principles that I hope will serve as guideposts for your deliberations:

- Strengthen non-proliferation norms more than you widen loopholes. Country-specific exemptions are bad for norms
- The net effect of any changes in public law should make proliferation harder, not easier

- Follow the guideline of proportionality: link conditions to changes in public law. The greater the exemption sought, the greater the need for compensatory steps against proliferation
- No exemption should assist the recipient to enhance or enlarge its nuclear arsenal

My first principle is that country-specific exemptions are corrosive to non-proliferation norms. If the United States were to champion a country-specific exemption, there is a strong likelihood that other nuclear suppliers would seek other exemptions, and that the United States would lose leverage to prevent such transactions.

Thus, if after thoughtful deliberation, you conclude that some relaxation of our laws is advisable, I strongly urge you not to do this on a country-specific basis. Instead, I urge you to establish conditions under which the relaxation of public law would apply to any state seeking an exemption that meets Congressional conditions. In this way, exemptions would be granted on the basis of performance, not on the basis of a particular country.

A second general principle that I would propose for your consideration is that the net effect of changing public law should be to make proliferation harder, not easier. Put another way, the strengthening effects of the conditions established by the Congress should outweigh the weakening effects of the exemptions granted.

Not all proposed relaxations of public law are equal. Since some kinds of US nuclear assistance would have minimal negative impact on global non-proliferation norms, the conditions set by the Congress to allow for such transactions might also be modest. Conversely, other types of US nuclear assistance could potentially have larger adverse impacts on non-proliferation norms and treaties. In such instances, the Congress might set very stringent conditions – or prohibit such transactions altogether.

To address the fact that there are widely disparate gradations of nuclear commerce, I would propose that the Congress consider a third principle when considering changes to public law -- the principle of proportionality. If the Congress deems it advisable to establish conditions associated with US nuclear assistance, different types of assistance might be conditioned on different strengthening measures against proliferation. Minor adjustments in existing law would therefore be possible when modest conditions are met; major adjustments would be possible when significant conditions are met.

The first two principles would mesh with the third: When applying the principle of proportionality, a relaxation of public law should be accompanied by conditions that, in all cases, result in a net strengthening of the global norm of non-proliferation. Moreover, these conditions should not be country specific. Instead, these considerations should apply to every applicant meeting Congressional standards.

The fourth fundamental principle that I would urge for your consideration is that the relaxation of US nuclear assistance must not assist the recipient to enhance or enlarge its arsenal of nuclear weapons. If US nuclear commerce were to result in more and more capable nuclear weapons on the part of any recipient, global non-proliferation norms would be dealt a severe blow. The reassertion by Congress of this fundamental objective and purpose of public law is essential because the July 18 Joint Statement by President Bush and Prime Minister Manmohan Singh could lead to this negative result, depending on how it is implemented.

How might these four general principles be applied in the proposed US-India agreement? Let's take a look at both ends of the spectrum reflected in this initiative, and at two cases in between.

The most troubling kinds of nuclear commerce – aside from the outright sale of bomb-making material and bombs – have to do with enrichment and reprocessing. This kind of nuclear commerce offers nations very costly ways to produce electricity, but essential means to produce nuclear weapons, regardless of cost. Given the negative proliferation consequences of commercial trafficking in enrichment and reprocessing technologies, President Bush spelled out his administration's opposition to this practice in a speech delivered at the National Defense University on February 11, 2004:

The world must create a safe, orderly system to field civilian nuclear plants without adding to the danger of weapons proliferation. The world's leading nuclear exporters should ensure that states have reliable access at reasonable cost to fuel for civilian reactors, so long as those states renounce enrichment and reprocessing. Enrichment and reprocessing are not necessary for nations seeking to harness nuclear energy for peaceful purposes.

In the July 18, 2005 Joint Statement, President Bush endorsed a very different formulation. He promised to “work to achieve full civil nuclear energy cooperation with India” and to “seek agreement from Congress ... [and to] work with friends and allies to adjust international regimes to enable full civil nuclear energy cooperation and trade with India.”

President Bush's February 2004 statement is consistent with a principled position to strengthen non-proliferation norms, much like the one I am asking you to consider. His July 2005 promise appears to carve out an exception to this principled position. A rules- and norms-based system would seek to set the highest barriers against transfers that could do the most proliferation damage – without exception.

On the other end of the spectrum, the July 18 Joint Statement discusses bringing India into international research efforts related to advanced development concepts for civil nuclear power generation. While the particulars of such engagement matter – since some research and development initiatives could have more utility for nuclear weapon programs than others – in general this type of engagement would be consistent with the general principles advocated here.

Two cases in between these poles are not so easy. One is providing fuel for safeguarded facilities at Tarapur. The other is selling new nuclear power plants to India. Providing commercial assistance to Tarapur, which the Government of India seeks in the near term, would be of far narrower scope than signing contracts for new nuclear power plants, but both steps would be contrary to the “full scope safeguards” standard that the United States has long insisted that other nuclear suppliers live up to.

In these intermediate cases, the fundamental principles enumerated above ought to apply: Norms should be strengthened, rather than exceptions; the net effect of any changes in public law linked to conditions should strengthen, not weaken, these norms; the principle of proportionality should apply; and no assistance should be given with respect to the military nuclear capabilities of the recipient state. The last of these fundamental principles would mandate that any relaxation of nuclear commerce for particular facilities be linked to the requirement that such facilities be safeguarded in perpetuity. But this still begs the question of what to do about the full scope safeguards requirement that US administrations have finally succeeded in establishing as an international norm.

A key formulation embedded in the July 2004 Joint Statement suggests one way to proceed. Prime Minister Manmohan Singh has stated that his government is “ready to assume the same responsibilities and practices and acquire the same benefits and advantages as other leading countries with advanced nuclear technologies.” This passage suggests that India would be treated in the same way – and would behave in the same way -- as the nuclear weapon states recognized under the Non-Proliferation Treaty.

The “equal benefits for equal responsibilities” formulation has some merit. But what would it mean in actual practice? In actual practice, the five nuclear weapon states recognized under the NPT have stopped producing fissile material for nuclear weapons. India has not. In actual practice, the five nuclear weapon states recognized under the NPT have signed the Comprehensive Test Ban Treaty. Three of the five have ratified the Treaty. The Senate of the United States has not consented to ratification. But under international law, all five are equally obligated not to undermine the objectives and purposes of this Treaty, pending its entry into force. India has not signed the CTBT. Government officials have affirmed, using the present tense, the absence of current plans to test. These statements do not carry equal weight, nor do they impose equal responsibility, to the obligations accepted by the 176 states that have signed the CTBT.

If India were serious about the “equal benefits for equal responsibilities” formulation, then New Delhi would be well advised to favorably consider a moratorium on the production of fissile material for nuclear weapons, and to sign the CTBT. Such steps would clarify that India seeks commercial nuclear transfers to fuel its economic growth and not to increase or enhance its nuclear arsenal. These steps would also clarify that the net effect of the changes Congress is being asked to consider would strengthen, not weaken, global non-proliferation norms. Under the principle of proportionality proposed above, such steps by the Government of India would open up a much wider range of cooperative nuclear endeavors.

While I endorse this structure for handling the dilemmas posed by the Bush administration’s nuclear cooperation initiative with India, I most emphatically do not recommend that the Congress direct the Government of India to take such steps. Any such directive would be counter-productive and deeply offensive to most Indian citizens. India is a proud, sovereign state facing vexing security problems. It will not take dictation from a nation with many thousands of nuclear weapons and large stocks of fissile material that has tested nuclear weapons over 1,000 times.

Decisions regarding a moratorium on fissile material production and nuclear testing are India’s to make. India will make these decisions in light of its perceived security requirements, and not as a result of foreign pressure. We must respect New Delhi’s decisions, which could facilitate or impede nuclear cooperation. Either way, these are New Delhi’s decisions to make. My preferred approach respects New Delhi’s powers of decision, while reinforcing a principled stance by the United States against proliferation.

By laying out a set of fundamental principles associated with changes in public law, and by establishing conditions for different levels of relaxation, the Congress could provide consistency and clarity that are lacking in the July 2005 Joint Statement, while strengthening global norms against proliferation. Improved bilateral ties with India will continue to proceed on many fronts, including trade, investment, non-nuclear energy, agriculture, defense cooperation, and public health issues. There is no compelling reason why improved relations should come at a great cost to the non-proliferation norms that have buttressed national and international security. Working out the particulars associated with a statement of principles and conditions will not be easy. But, in my judgment, this approach could substantially strengthen bilateral relations and non-proliferation norms, rather than pitting one against the other.