

# Decision time for India's nuclear exemption

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So the on-again, off-again U.S.-India civilian nuclear co-operation deal is back on, although just barely. Tuesday, after a raucous two-day debate complete with cash-for-votes charges, the Indian Parliament voted confidence in Prime Minister Manmohan Singh's government and the nuclear deal on which he staked his administration.

The deal is intended to lift the prohibitions on civilian nuclear trade with India that were imposed after the country's warhead tests in 1974 and 1998. Arms control critics of the deal hoped it would ultimately fade away in the face of strong opposition within India itself — opposition based not on proliferation concerns but on the fear that it would tie New Delhi's foreign policy too closely to Washington's. But now, with parliamentary endorsement, the deal moves on to face two multilateral tests.

In early August, the board of the International Atomic Energy Agency will consider, and now likely approve, a new safeguards agreement with India that will cover civilian nuclear facilities to be newly designated as such under the deal.

The key test may come in September at the Nuclear Suppliers Group, where Canada and 44 other members will be asked to exempt India from a foundational non-proliferation rule that precludes civilian nuclear co-operation with any state that does not adhere to full-scope safeguards. India fails the full-scope safeguards test because some of its nuclear facilities are not and will not be safeguarded — namely, those reserved for its weapons program.

The full-scope safeguards rule is more than a discretionary preference developed by the suppliers of nuclear materials and technology. The rule was confirmed, expanded and effectively converted into a global norm in 1995, when all signatories to the Nuclear Non-Proliferation Treaty (NPT) agreed that a precondition for the supply of nuclear materials and technology must be the recipient state's "acceptance of the [IAEA's] full-scope safeguards and internationally legally binding commitments not to acquire nuclear weapons or other nuclear explosive devices" (emphasis added).

It is not at all certain that the 45 members of the Nuclear Suppliers Group are, on their own, entitled to grant an exemption to a rule confirmed by all 189 states of the NPT. But if the group assumes that prerogative and exempts New Delhi from the full-scope safeguards rule, the core demand of the U.S.-India deal, it would legitimize India's nuclear arsenal and effectively allow the country to be treated as if it were a nuclear-weapon state under the NPT. And it would do that without even requiring India to accept the limited commitments made by current NPT nuclear weapon states — notably, a

moratorium on warhead testing and the production of fissile material for weapons purposes.

The Nuclear Suppliers Group operates by consensus, which means that each state, including Canada, has a de facto veto — significant influence over any outcome. So even if members are overwhelmingly persuaded that special circumstances warrant exempting India, there should be ample opportunity to insist on genuine non-proliferation gains. At a minimum, India should be required to make three basic commitments in order to qualify for civilian nuclear co-operation: a freeze on testing until the Comprehensive Test Ban Treaty includes a permanent ban; a verifiable freeze on the production of fissile material for weapons purposes until a Fissile Materials Treaty includes a permanent ban; and formal acceptance of the disarmament obligations in Article VI of the NPT.

But before acceding to an exemption for India, even with these conditions attached, Canada and other supplier states should heed two additional binding legal obligations: namely, Article I of the NPT and Resolution 1172 of the United Nations Security Council.

Article I requires that states not in any way "assist, encourage or induce any non-nuclear-weapon state to manufacture or otherwise acquire nuclear weapons." If Canada were to take advantage of the exemption and start selling uranium to India, that would allow India to use more domestic uranium in its military program and accelerate warhead production — meaning that Canada would have assisted the manufacture of warheads in India and arguably be in violation of the treaty.

Resolution 1172, passed after India's 1998 nuclear tests, still calls for India and Pakistan "immediately to stop their nuclear weapon development, to refrain from the deployment of nuclear weapons, to cease development of ballistic missiles capable of delivering nuclear weapons and any further production of fissile material for nuclear weapons." Nuclear Supplier Group states should at least be compelled to explain why they are so untroubled by ongoing violations of this resolution.

Once the IAEA and Nuclear Supplier Group have acted, U.S. law requires one more congressional vote on the deal, a straightforward Yes or No. The outcome will be far from certain, largely because of the truncated legislative timetable in this election year. It would surely be a potent irony if, after the suppliers open wide the doors to nuclear trade with India, the U.S. Congress failed to pass it — thus preventing the U.S. industry from enjoying the fruits of a deal that originated in Washington.

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