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“THE NUCLEAR DEAL WITH INDIA”**

**CHAIR:  
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NONPROLIFERATION POLICY EDUCATION CENTER**

**PANELISTS:  
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SVERRE LODGAARD, NORWEGIAN INSTITUTE OF  
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*Transcript by:  
Federal News Service  
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HENRY SOKOLSKI: Would everyone please find your seats? My name is Henry Sokolski. I'm the executive director of the Non-proliferation Policy Education Center, and I was asked to put together today's panel on the U.S.-India nuclear deal. Now, there are many things that we could have done with the panel, and so we're not doing any of those. We're only doing one thing: We're going to focus. The deal has been struck, for better or worse. It is a fact. Therefore, what we're going to focus on today is what would be required or what would be desired to implement it.

Now, it turns out when you go to the joint statement, there are many things in it that are open to interpretation. For example, it says civil and military facilities in India will be distinguished and the civil will be safeguarded. To what extent facilities will be listed as civilian, when they will be listed as civilian, how they would be safeguarded, all open for discussion.

There also is a remarkable formulation in this joint statement, which causes full-time employment both here and in India, I'm sure, and that is – let's see if I can get – well, there are two statements. One is that India will acquire the same benefits and advantages as other leading countries with advanced nuclear technology such as the United States, so the question is, what is that? Then there is a formulation that it is a responsible state with advanced nuclear technology, and therefore it should acquire the same benefits and advantages as other such states. The great challenge for Americans, and also the members of the nuclear-supplier states, is to figure out what those phrases mean. It is not clear.

Now, to help out, in the United States we have the Atomic Energy Act. And so, they just want to make a few more changes to this, so we want to learn a little bit about what that might involve. And under the Nuclear Suppliers Group there are all sorts of rules as well that would have to be adjusted. Today we are going to look at what the various issues might be by listening to someone from the State Department of the United States, someone from Capitol Hill who works on the House International Relations Committee, someone on the outside who is a registered Republican – there are some of us here. I think you are registered, aren't you, Baker?

BAKER SPRING: Don't jump to conclusions. We are a strictly non-partisan entity.

(Laughter.)

MR. SOKOLSKI: Well, having worked there, I am disappointed and I am taking my money back. (Laughter.)

And then finally we have a representative from the Nuclear Suppliers Group country of Norway who is an expert – an expert on these matters, who will speak.

So we are going to keep ourselves to 10 minutes each, and then we are going to open it up. And if anybody gives a speech they will be cut off, okay? So think about your question. And if you don't have a question, don't speak. Good.

Let's start with the administration. And Andy Semmel, who is the – am I right – the principal deputy assistant secretary?

ANDY SEMMEL: (Off mike.)

MR. SOKOLSKI: All right, well, you had principals. Okay, well, you're the deputy assistant secretary in the nonproliferation – and what is the formulation? They haven't quite made the change.

MR. SEMMEL: It is now called the International Security – (off mike).

MR. SOKOLSKI: Well, there you have it; you heard it first. They have decided on the title of the bureau; they haven't quite figured out how to organize it yet.

MR. SEMMEL: (Off mike.)

MR. SOKOLSKI: All right. Ten minutes, unless someone here wants to cede minutes to Andy Semmel. Going once, going twice – 10 minutes.

MR. SEMMEL: Let me say first of all that it is a pleasure to be here. I think international fora such as this can help spark policy discussions, policy deliberations, raise good questions, and generally inform larger audiences. And hopefully that can contribute to improved policy in the process and impact the outcome. So this is an important forum.

The U.S.-Indian civil nuclear initiative has gotten considerable attention, as we all know – look at the size of the audience here – since the July 18<sup>th</sup> joint statement, and I'm glad to participate in this with many of you in nonproliferation. We all know in July President Bush and Prime Minister Singh agreed to a joint statement, which includes a commitment on the part of the United States to work to achieve full civil nuclear cooperation with India. This will require taking the initiative to the Nuclear Suppliers Group and to consult actively with Congress on how such cooperation with India can be achieved.

This decision was not reached easily or lightly. We continue to be mindful of the concerns of our international partners and Congress and many of you in this room. We would argue that this is not a zero-sum tradeoff whereby improvements in our bilateral strategic relationship necessarily results in some measurable nonproliferation losses. We believe India's implementation of its commitment will, on balance, enhance our global nonproliferation efforts. It's our intention and expectation that the international nuclear nonproliferation regime will emerge stronger as a result.

We do not anticipate a linear path to achieving the desired goals set forth in the joint statement, but we're committed to achieving them and are confident that India is as well. As with any bold initiative, one should expect questions, dialogue, and controversy. We expect these questions – we appreciate these questions in many ways and look forward to a healthy dialogue today and in the weeks and months ahead.

So what is the rationale for the initiative? India is a rising 21<sup>st</sup> century democratic power that shares interest in promoting stability, security, and peace, and in confronting many of the same kinds of global concerns that we have: threats of terrorism, WMD and missile proliferation, pandemics and the like. Until now we have consigned the world's second-most populous country to a place outside the system, in spite of its very good record in preventing the proliferation of its nuclear technology. This is not strategically wise. We have decided that it was in our best interest – in our interest to help bring India into compliance with the standards and practice of the international nonproliferation regime, and that the best way to reach that goal was to end India's isolation and to engage with them. In so doing, the July initiative would deepen the U.S. partnership with the world's largest democracy, open India's lucrative and growing nuclear energy market to U.S. and to foreign companies to help modernize its economy without – (inaudible) – our common – (inaudible) – and bring it closer to the nonproliferation mainstream.

What does the U.S. gain from developing full civil nuclear cooperation with India? First, all states have a vested stake in strengthening international nonproliferation norms and practices. The U.S. gains in this respect, as do our international partners. As a result of our involvement in India's civil nuclear energy, U.S. companies would be able to enter India's lucrative and growing nuclear energy market, potentially providing thousands of jobs for Americans.

Moreover, this initiative helps deepen a nonproliferation partnership with India, as demonstrated by its critical vote at the IAEA board of governors meeting in September. They found Iran in noncompliance with its nuclear nonproliferation obligations. As Under Secretary Joseph explained to the Senate Foreign Relations Committee last week, the joint statement is not, as some have argued, a triumph of power politics over nonproliferation principles. As the broadly constituted joint statement is implemented, it will prove a win for our strategic relations, a win for energy security, and a win for nonproliferation.

What are Indian commitments and nonproliferation gains? To the joint statement, India has publicly committed to a number of important nonproliferation steps. It will now do the following: First, it will identify and separate its civilian and military nuclear facilities and programs and file a declaration with the International Atomic Energy Agency regarding its civilian facilities. It will voluntarily place its civilian nuclear facilities under IAEA safeguards. It will sign and adhere to an additional protocol with respect to civilian nuclear facilities. It will continue its unilateral moratorium on nuclear testing. It will work with the U.S. to the conclusion of a multilateral FMC treaty to halt production of fissile material for nuclear weapons. It will refrain from the transfer of

enrichment and reprocessing technology to states that do not have them and support efforts to limit their spread. Finally, this agreement will secure nuclear and missile materials and technologies through comprehensive export control legislation and to adherence to the missile technology control regime and the Nuclear Suppliers Group.

India's commitment to separate the civilian and military facilities and place its civilian facilities and activities under IAEA safeguards are key elements. They demonstrate India's willingness to assume full responsibility for preventing proliferation from its civilian nuclear program. It will also help protect against the emerging of nuclear materials technologies in India's weapons program.

I'm going to skip part of my presentation since Henry – (inaudible).

Let me turn briefly to some criticism and responses to them. The U.S.-India Civil Nuclear Initiative reflects the need to be creative and adjust the nonproliferation approaches to conditions as they exist rather than as we wish them to be. Several concerns have been raised by many here, and I'd like to mention – comment on just a few of those.

Some contend that the initiative has informally changed the rules of the nonproliferation regime and set a bad precedent because other NPT outliers might now believe they too can remain outside the treaty and eventually receive full nuclear cooperation with suppliers. But the U.S. believes India is an exceptional case, and there are no plans to extend similar cooperation to any other state. We see civil nuclear cooperation as a means to further deepen India's commitment to international nonproliferation. India never became a party to the NPT. With its decision to take the steps announced in the joint statement, India will now take on new nonproliferation responsibilities that will strengthen global efforts and serve the fundamental purpose of the NPT, though not joining formally.

Some also worry that the NPT members might now think they can withdraw from or violate the NPT and eventually cut a deal like India. We continue to support universal NPT adherence, but recognize that in the case of India, this is unlikely in the foreseeable future. To be sure, there are factors that would threaten the nonproliferation regime. Some treaty members have been, and will continue to be, motivated to violate the NPT or otherwise undercut it. But we don't believe this initiative will exacerbate these efforts. The political barrier to NPT withdrawal and noncompliance will remain high, even after such an agreement with India is put in place. The NPT regime has been fundamentally weakened, as we all know, and put under stress not through the initiative with India, but through such issues as North Korea and Iranian noncompliance.

Some NPT countries have asked if providing civil nuclear technology to India is consistent with their obligations under the NPT, not to contribute to India's nuclear weapons program. Others have asked why a cap on India's production of fissile material for weapons is not part of the deal. Good question. The United States does not and will not support India's nuclear weapons program in any way. As it is for other states, this is

a red line for us. We are obliged under the NPT not to assist India's nuclear weapons program. Our initiative with India does not recognize India as a nuclear weapons state, and we will not seek to renegotiate the NPT. We remain cognizant of and will fully uphold all the obligations under the Nuclear Nonproliferation Treaty. We remain committed to principles of universal NPT adherence.

We also recognize that India is in a unique situation and has been responsible in not proliferating its nuclear technologies and materials. With its decision to take the steps announced in the joint statement, India will now take on new nonproliferation responsibilities that will strengthen the global nonproliferation efforts.

India has informed us that it has no intention of relinquishing its nuclear weapons or becoming a party to the NPT as a non-nuclear weapons state. In the commitments undertaken in the joint statement align New Delhi more closely with the nuclear nonproliferation regime than at any time previously. India has said it wants to be a partner and is willing to make important steps to this end. We should and are encouraging such steps.

It's important to note that the NPT did not ban civil nuclear cooperation for safeguarded facilities in India; nor does it require full-scope safeguards on – (inaudible) – supply. The NPT does preclude cooperation that would in any way assist India's nuclear weapons program. For that reason we have made clear that under our proposal, nuclear supplier states will only be able to engage in cooperation to safeguard their facilities. Moreover, the more civil facilities being placed under safeguards, the more confident we are, and can be, that any cooperative arrangement will not further any military purposes.

We expect, and have indicated to the government of India, that India's separation of civil and military nuclear infrastructure must be conducted in a credible and transparent manner. It must be defensible from a nonproliferation standpoint. Many of our international partners have indicated they view this as a necessary precondition. They will not be able to support civil nuclear cooperation with India otherwise. We believe that the Indian government understands this.

With respect to the cessation of fissile material production, we continue to encourage India, as well as Pakistan, and others, to move in this direction as part of our strategic dialogues with these governments. As desirable as this may be, we think it would be unwise, however, to hold up the nonproliferation gains that can be obtained from a civil nuclear cooperation initiative for an Indian fissile material path. As we've indicated previously, the United States also stands willing to explore other intermediate options that might serve the subject.

I know time is running out.

With respect to U.S. commitments – I think you are familiar with the U.S. commitment, but on a reciprocal basis with India's commitments, the U.S. has committed to work to achieve full civil nuclear cooperation with India. In this context, President

Bush told Prime Minister Singh he would, one, seek agreement with Congress to adjust U.S. laws and policies; two, work with friends and allies to adjust the international regime to enable full civil nuclear cooperation and trade with India, and consult with partners on India's participation in the ITER and the Generation IV International Forum. We expect, and have told the Indian government, that India's follow through on its commitment is essential to success. We believe that the government of India understands that and we can expect them to begin taking concrete steps in the weeks ahead.

Now, on the separation of facilities and the sequencing – and I'll finish up with this – we talked a minute about the exact sequencing of these steps. The separation between the United States and the NSG and the IAEA and India will be complex. India understands that the NSG and the U.S. Congress are waiting for it to present a credible, defensible, and transparent plan for separating its civilian and military facilities. We expect that India will do this. We have also indicated that a so-called voluntary offer arrangement will not be accepted. Foreign Secretary Saran has made clear that he understands the international community will only cooperate with facilities that are under safeguards. We intend to engage with India over the coming weeks and months to develop a plan acceptable to the international community, the United States, and to India itself.

India and the IAEA will also begin negotiations in the near future. Any plans for the civilian and military split must be weighed against a particular time period. The safeguards that are applied, for example, must be done in perpetuity. A clear separation between India's civil and military facilities is essential. The plan must provide strong assurances to supplier states and the IAEA that material and technology provided or created through civil cooperation will not be diverted to the military sphere. The number of facilities and activities that India places under IAEA safeguards, and the speed with which it does so, will directly affect the speed with which we will be able to build support for the effort, both domestically and internationally. It will directly impact the timing of implementation.

In closing, Henry, let me reiterate that we believe this initiative will enhance traditional nonproliferation measures and bring India into the global nonproliferation efforts of the department. The United States does not wish to, or intend to, weaken the nonproliferation regime and the NPT, and we will work to ensure that it is not. Quite the contrary. We believe that international security and stability will benefit as a result, as will nonproliferation.

Thank you.

(Applause.)

MR. SOKOLSKI: Thank you.

David?

DAVID FITE: Thank you. Before I begin I have to issue a disclaimer that my remarks represent just my opinion and do not necessarily reflect the positions of the House International Relations Committee, any member thereof, and may not be reproduced without the express written consent of Major League Baseball. (Laughter.)

As a preface I'd just like to bring you up to date on what hasn't happened in the Congress within the agreement. When I was trying to figure out what I was going to talk about, I realized there really is not much to say, but since I'm from the Congress, that's never been a problem. But I'll try to keep it under 10 minutes.

The most salient point is that the July 18<sup>th</sup> agreement was declared, without any congressional consultation at all – they didn't ask us what we thought. It was presented and we still don't know entirely what the administration had to do with this. The administration's explanation to us, both in public testimony and privately with members, is, we didn't know we were going to get a deal until the last minute, so we just didn't have the time to consult with you, all the phones apparently being out in the State Department.

This has, understandably, upset many members of Congress – perhaps the greatest change to U.S. nonproliferation policy in nearly three decades and the Congress wasn't consulted beforehand. Consultation hasn't actually formally begun and communication is beginning to improve slightly. The administration has said repeatedly that it intends to change U.S. statutes, specifically those in the Atomic Energy Act, and has several options under review but it's not settled on which one it prefers. Congress has not been informed as to the substance of these options despite the fact that we have asked them repeatedly. We told them, publicly, privately and in writing, that it would be a good idea for the administration to seek our input before it commits to a particular option.

The administration unfortunately has had a tendency on major issues to decide what it wants to do, sent it up to Congress and basically invite us to meet on the floor, and on a couple of issues, specifically the Export Administration Act and certain ITER exemptions in the last two Congresses, that strategy did not work very well. So we're hoping for a change of tactic. It's unclear to me, as a matter of law, the administration actually needs to change the Atomic Energy Act to be able to do what it wants to implement the India agreement. And I'll get to that in a moment, and whether it's a matter of law or whether it's a matter of political or practical expediency.

The under secretary of state has recently assured Congress, and especially my committee, the International Relations Committee, and the Senate Foreign Relations, that the administration will begin more intensive consultations soon. Previously there was a confident statement that the agreement would be approved in time for the president to go to New Delhi in late February. We were stunned to see that and are pleased that at the hearings before the Senate Foreign Relations Committee, that the administration has now said they will begin to consult with us and send us a proposal early in 2006. But this agreement is not going to be done until – well, frankly, I think if we get it done at the end of this Congress it will be proceeding at warp speed.

So far we've had two hearings in the International Relations Committee. You may remember the first one on September the 8<sup>th</sup> in which members of both parties spoke out very loudly about India as a new strategic partner under this agreement with its continual relationship with Iran, particularly stimulated by recent reported comments by the Indian foreign minister. This was actually, I think, to the benefit of the administration. Two days after that hearing, the administration came out and specifically asked India by name to vote with the United States and the Europeans in the IAEA to refer Iran to the Security Council. And in fact, when the resolution then came up to at least find non-compliance, India did vote that way.

What's interesting about that is since then their domestic explanations have been that we didn't really vote that way – we don't really believe that Iran is in non-compliance. We did it to buy more time. And with the temporarily former foreign minister's statements yesterday that any new resolution that comes up is tougher than the last one, India may reverse its vote, I think still raises questions, and will raise questions in the Congress, about the value of a strategic partnership. What was clear from that hearing was that if India is not supportive of the United States and Europeans on Iran nonproliferation policy, the agreement is going to have a very difficult time in the Congress. Social Security may be the third rail for domestic politics, but Iran is the third rail of international security on the Hill.

Now, the relevant statutes, of course, in the Atomic Energy Act are Section 123, which requires an agreement for cooperation unless the country involved does not have full-scope safeguards in these statutory requirements. Then they can exempt that agreement but it has to be positively approved by Congress in a joint resolution of approval. This is fail-safe. If Congress doesn't act, the agreement will not be implemented.

There are two other sections – Sections 128 and 129 – which prohibit such cooperation with countries that have detonated a nuclear device and do not have full-scale safeguards in place, both of which apply to India. Now, these can be waived, and this is the point why I'm not entirely sure it actually is a matter of law and we have to seek to change the law. The president makes certifications that if preventing such exports from going to India would be seriously prejudicial to the achievement of U.S. nonproliferation objectives, he can waive those requirements. So he has, I think, the authority to do this, but as a matter of practical necessity and political expediency, I think the administration has decided to seek those changes. Otherwise, we'll have nothing but certification for each and every export that goes forward.

We've also been told that the administration is not sure it could actually meet the legal standard required – stopping exports or not – (inaudible) – exports would be seriously prejudicial, which is interesting, and I'd like to see an explanation because it seems to be contradictory to the nonproliferation benefits the administration cites in the first place for going forward. So there are political benefits, but they don't meet the legal standard, and we are waiting with somewhat bated breath for an explaining of that.

What issues might the Congress take a look at? As Henry indicated, the India agreement is U.S. foreign policy. Congress is in a box here, and I believe so long as the Indians make a credible effort to separate the civil and military facilities and place them under non-voluntary safeguards and live up to all of the other obligations that they have put in, that I think the agreement will pass Congress. The question is, in what form? And the second question is, how long will it last? If the agreement is loaded up with several conditions or standards of implementation, of which there is a precedent in the U.S.-China agreement, I could see the agreement coming apart on the Indian side specifically, if the conditions on implementation attached by Congress or by the NSG are deemed to be too onerous, or if it's determined by the Indian government that the U.S. has essentially violated its agreement by trying to move the goalposts by adding additional conditions.

Now, I want to just add one asterisk to my prediction of us in Congress – again, if India is perceived by members of Congress as going wobbly on Iran or backtracking in – (inaudible) – partnership, I think all bets are off on how quickly at least the agreement may pass. It may still pass but with a condition, such as a point that a certification or other requirement that India is actually fully supporting administration policy.

The issues before Congress, I see six actually. First, should Congress go first or wait for the administration's proposal to come up, whenever that's going to come up? Related to this, should Congress go first or wait for the NSG to take some action? Some very interesting things going on here. There are multiple chess games being played out all over the place. There is the administration and Congress, that chessboard. There is the administration and the NSG. Then there is the NSG and the Congress. Who goes first and under what circumstances?

One of the interesting things about this is if the Congress goes forward and, say, for example, establishes some conditions, it would not be in the U.S. interest for the Nuclear Suppliers Group then to not adopt at least the same conditions. If their conditions are less stringent than ours, and for some reason the U.S.-India agreement falls apart, U.S. industry may not be able to participate but French and German and Russian and all other members of the Nuclear Suppliers Group may. So we could find ourselves in a very interesting situation – and this pertains to who goes first – of the administration perhaps finally coming to agreement or being forced to agree to a set of criteria or standards of implementation, conditions, whatever you want to call them, and then having to go to the Nuclear Suppliers Group and just trying to get a change, but then blocking consensus in order to get the same conditions that the United States now has. Well, this is fascinating. I have no idea how it's going to turn out.

Second, how far is the Indian government actually willing to go in this agreement? Will the list of its civil facilities – the identification of its civil facilities be credible, and will they be placed under INFCIRC 66 agreements or voluntary arrangements? The administration has made clear to the Congress, they've made clear to the NSG that voluntary safeguards will not be enough; it will have to be binding.

And second, if – third, actually – assuming a credible separation of these facilities, will that be enough for Congress? There is a much larger agreement here. There is also great stakes for the nonproliferation regime.

Fourth, the question of past violations. At our last hearing, one member raised and charged the Indians have violated past assurances or agreements with the United States regarding nuclear exports. This is something that has to be clarified, and I think we have to have actually a legal determination made by the U.S. administration because it is an issue before our Congress.

Five, an evaluation of the Indian export control regime. It may not have anything to do with the nuclear exports, but it's part of the agreement and I do think that many in Congress are not going to refrain from linking other issues in. And an evaluation of the export control regime and its implementation I think will be a factor.

And sixth, and finally, do you go for an India-specific change to U.S. law for the agreement, or do you go more general and set up general criteria that any state can meet, specifically Pakistan and Israel?

Now, just finishing up here – I was just going to give the possible legislative outcome. This is the good part. All right. Possible legislative outcomes: First, change all of the laws, add no additional conditions or standards of implementation – the agreement as is. I think this to be highly unlikely. Congress has been urged not to make the perfect the enemy of the good, and please don't renegotiate the deal. Well, we weren't there to negotiate it in the first place so I'm not sure how much credibility that is going to have with members of Congress.

We could alter Sections 128 and 129 to exempt past Indian activities, but not 123, which is the agreement of cooperation, and attach conditions for implementation.

Third, we could alter the basic deal and require additional things – which many nonproliferation experts and witnesses have recommended, such as the fissile material production moratorium – require certification of Indian support for U.S. nonproliferation goals, especially with regard to Iran, require membership in the PSI – perhaps a buy-America provision: If you want to have trade with the United States, perhaps there might be some percentage of how much in India nuclear industry will go to actual U.S. contractors. And we can see expanding this to perhaps other U.S. military hardware, say, F-16 or F-18 sales, which are in the offing. There could be other additional things that could be added. Some suggested that they be required to sign the CTBT. I can tell you there is absolutely no chance of that. That will never happen in a congressional resolution.

And finally, I think it's important to think about the day after. One of the problems with Glenn and the '98 test was that it was all deterrence but no thought after that. When it happened, there was no roadmap of what to do after that. The Indians and

the Pakistanis were not going to un-test or disarm, and we were left trying to figure out what to do. I think it may be a good idea for Congress to sit down and think, assume there is a problem in the agreement; assume at some point the Indians test again or somehow do not live up to some other obligation, what will Congress and the United States require at that point to reestablish what could by that time be a very lucrative trade with India that would imperiled? And this is also, I think, true for the NSG.

So with that, I'm cut off.

MR. SOKOLSKI: All right. Now, you can see from this presentation – oh, go ahead.

(Applause.)

MR. FITE: That's pity applause. That's really pity applause.

MR. SOKOLSKI: You can see from this presentation that the executive branch is more concerned about limits and – (inaudible) – before Congress than Congress is.

MR. FITE: We prefer not to recognize anything that –

MR. SOKOLSKI: Well, apparently. Now, the nonprofit world understands that it can't engage in such libertine activities – (laughter) – because it's funded by others. So, Mr. Spring, we are counting on you.

MR. SPRING: Thank you, Henry.

Obviously it's a privilege for me to participate in this. I would simply like to focus on the way ahead, particularly for Congress. I do have a domestic perspective on this, primarily as a practical matter, because I don't think if we get the policy choices right domestically with regard to the Congress that we are going to be persuasive at all at the NSG and other international fora. So with that practical limitation as one of my guides, I would like to focus on what I think Congress should be considering with regards to addressing this matter in the aftermath of July's agreements. In my judgment, what we have here is a classic formula for a two-track policy. The track one of that policy is well known, and it is the NPT track; that is universal adherence to the terms of the nuclear Non-Proliferation Treaty and the ambition long stated by the United States government to obtain that universal adherence.

The second track is of course our regional security concerns that exist in South Asia and Asia generally as they relate to India. The problem is how do we manage these two tracks? Ultimately, in my judgment, the second track can exist, and indeed must exist, to some extent outside track one, but the trick is to make sure that track two doesn't obliterate any chance as far as getting back on track one. Obviously as we look at models in the past where countries have pulled back, whether it be Ukraine, for example, in the aftermath of the collapse of the Soviet Union, and South Africa, or Argentina and Brazil,

clearly there are opportunities for doing that. And so that what I hope that the administration and Congress can come to agreement on is looking for a way of balancing the requirements of this two-track policy, as it's called.

In this context, I think there are a number of guidelines that will be useful as both the administration and Congress move forward. Unfortunately the first of those guidelines I think may be the one area where we have some fundamental disagreement, and that is, is India indeed a special case? Does it deserve special consideration? Does it deserve what I would describe as a carve-out under the international – under the Atomic Energy Act?

My general judgment is no, that what we have here is a class of nuclear powers that I think the United States would be well advised to identify within the act, perhaps in the new section, that establishes a policy for managing the two-track policy in the context specifically of this class of de facto nuclear powers, nuclear powers that are beyond the five designated – (inaudible). That, I have to admit, is a little bit different than the way the administration has described it – (inaudible).

I think it can be compromised however in the policy because as you look at this there are certain unique characteristics of India that specifically in the second track we can look at: where they stand as a democratic country, where they stood at least in being responsible in terms of international proliferation. I have some questions about India's domestic behavior in terms of nonproliferation policy in the past, very specifically between the U.S. and India, so that I think that those can be emphasized in the broader context.

The second is really an issue for the second track but nonetheless has some implications that can go for the NPT track, and that is how we do manage, from the viewpoint of stability outcomes in particular, nuclear multipolarity? Is the administration going through the exercise that is necessary to determine, for example, in this case, how India will operate potentially as a de facto nuclear ally in a confrontation, and what is the coalition dynamic?

We at the Heritage Foundation are looking at a gaming tool that assumes seven nuclear powers of unequal strength to look and see how they address these issues with regard to the security concerns that would go to this second track, which is not limited just to nuclear weapons in the broader context, although the design that we looked at primarily was focused on the nuclear in terms of polarity. It's a sobering reality. We test the hypothesis that a two-player setting is always more stable than a seven-player setting – (inaudible). So I think the inference from the outcomes that we looked at – (inaudible).

The third guideline is clearly we ought to bar any direct nuclear weapons cooperation to states that are outside the NPT, and that would seem to be the case with regard to India, and that is spelled out in the agreement. So it is really a question of whether India will step up to the bar in terms of the commitments that they've made in the agreement.

The fourth guideline is to encourage nuclear disarmament by de facto nuclear powers over the long term. That is, in the second track, what are we going to do to address the underlying security concerns that may be driving nuclear proliferation in the first place? And this is, again, where the two come – the two tracks come into tangential – (inaudible). Again, the key here is not to let the second track policy considerations essentially obliterate the access to the first track if we have the opportunity, hopefully by a concerted policy, to return to the first track.

The fifth guideline is that clearly India cannot be engaged in what I call second-tier proliferation; that is they have got to step up to international standards to make sure that there is not a spreading of nuclear weapons capabilities to other states. That is essentially, again, something that is spelled out in the agreement in general terms but needs to be described in the agreement in much more detail by everybody in the administration, and participation by Congress, who are being called upon to legislate in this area.

The sixth guideline is that we make sure that as we look at implementing this agreement with India, is that we do not edge any closer to what I describe as the attitude of entitlement regarding nuclear energy technology. I am afraid that under the NPT that many states believe that there is no discretion on the part of nuclear supplier states about what they would provide to others in specific circumstances, short of the direct active and hostile pursuit of nuclear weapons. That is, is I think that we have to maintain some level of discretion with regard to suppliers as they look at member states and that the attitude of entitlement not become the dominant standard.

Finally, it's a really practical guideline; that is, I think what drove, to a large degree, the agreements with India on nuclear energy cooperation is really economic matters. That is, what are we going to do to meet global energy demands, particularly when you look at India and China? And that is fine and that is good as far as it goes, but it does mean, in my judgment, that we have to have what I would describe as an economic smell test as we look at deciding where we will go with India in this case with nuclear power cooperation. That is that my hope is that we get away – as sort of a strong believer in free-market economics, that we get away from subsidizing this particular area of energy production at the expense of others. There is a nonproliferation aspect to that that I think is important.

As I look at on the world and I say, is another country really pursuing a clandestine weapons program, one of the ways that I will look at that is whether the nuclear programs that they say they have in place – (inaudible) – really can be economically justified. If they can't, then I think that we have to have some suspicion that they are doing something that they are not owning up to. So the economic test is not just purely economic, although clearly it seems to me that it would be foolish for India to pursue an approach to meeting its energy needs that actually is not in – not of economic value, but also as a standard for determining the motivations of the countries. Are they

just offsetting the costs of the military? So that I think we need to look at sort of a new kind of standard.

What we have here is that clearly India's de facto nuclear weapons status is not a preference of the United States, but it is a fact. The question is how do we deal with that fact while not giving up on our ambitions and our preference for global adherence to international community standards that I think serves incredibly important security interests of the United States, even in the regional settings where you would presume that the track – (inaudible).

So I hope that that gives some indication of where we might be with regard to this agreement, particularly as Congress considers legislation.

(Applause.)

MR. SOKOLSKI: I'm sure that we have real perspectives. Now we're going to leave the United States and go to the Nuclear Suppliers Group, in a sense, with our next speaker, who has made a study and will share with us what he has learned.

SVERRE LODGAARD: Thank you, Mr. Chairman.

Civilized relations drawing India into the nonproliferation regime, committing it to behave as if it was a member of the NPT, is undoubtedly a move for the better. The critical question is does the game come at the cost of the diminished commitments on the part of existing NPT members? To paraphrase Jessica Mathews from this morning, is there an uncooperative tiger in the background? Much of the answer to that question, I think, centers on the question of recognition. The deal recognizes the fact that India is a nuclear weapons state and so legitimizes, in a sense, India's nuclear weapons, but without formally recognizing India – (inaudible). However, this international law lives a life entirely separate from the realities of the world. I would suppose that formal recognition would follow in this case.

In my background paper for this session, I discussed the pros and cons of recognition. I will not go into that here, just mention that in my view, the weight of the argument is in favor of the deal and the recognition that it implies. India probably has to make the first move in beginning to draw the line between civil and military applications, not that the joint statement says that it is up to India alone, but there seem to be no agreed criteria for where to draw the line. (Audio break, tape change.) So I think that basically this question of where to draw the line, it rests with India.

Safeguards, the appropriate, I think, nuclear weapons states precedents are those of France and the U.K., which have drawn a line between civil and military applications and submitted all their civilian activities to – (inaudible) – safeguards, which in turn are overviewed by the IAEA. Some of the other provisions, in my view, make little difference, or may even be redundant. That goes for the reconfirmation of the moratorium on testing, that goes for the Indian – (inaudible) – and I fail to see that things

can't be done in the field of export controls in the joint statement which could not just as well be done in reference to Security Council Resolution 1540.

The NSG heard the first brief about this deal about three weeks ago. Some of the big powers seem to be positive – France, the U.K., Russia. There are conflicting impressions of China. I think China would like to emulate the deal with India in relation to Pakistan. Others, wedded to the nonproliferation agreements that have been established over the years, have probably received the news both with surprise and with dismay, and they're asking difficult questions these days. Still, within the NSG it seems to me that the opposition has been modest, and probably also in part subdued.

So the U.S. may wish to try to win early acceptance from the NSG, something I think will not succeed because skepticism will probably translate into procedure and timetable and an argument to go last, not first. Many members of the NSG would probably say that before we make up our minds we would like to see the implementation so that we know more precisely what to endorse or reject. I think the opposition is likely to be stronger outside the NSG. I would certainly expect countries which have relinquished their nuclear weapons and acceded to the NPT to resent this deal. I'm speaking about South Africa as well as Ukraine. I think the same would go for countries which have explored their nuclear weapons option but come to the conclusion that membership in the NPT is better – Argentina, Brazil. I think the same goes for the countries which have acceded to the NPT on the express condition that the international community be recognized formally by – (inaudible) – states, Nigeria, Japan, South Korea among them.

What could be included in the implementation process?

The line of separation. First, I think India has to be careful not to allocate too much to the military side of the line because that would stimulate opposition in the NSG and outside it, and that might have consequences that would jeopardize the entire deal.

Safeguards. Like David Fite, I would hope that the safeguards would apply in perpetuity and, as you mentioned, INFCIRC 66 safeguards. Facility-specific safeguards do that; they do apply for the foreseeable future in perpetuity.

The test ban, as I told you, was declared by India in 1998 to limit tests with Pakistan. They've undertaken not to be the first to resume testing, and now comes a commitment – a similar commitment to the United States not to test and to uphold the moratorium. That, I would say, is less than an achievement. It would have been an achievement to have India sign the CTBT, but it stands to reason that since the U.S. government has tried to erase its own signature from the agreement, it is not in the best of positions to ask India to sign on.

The FMCT. Some critics say that this is cynicism. India is making it really hard to work for an agreement that is not supposed to come about, but here I think I would excuse the parties because if India had been asked to agree to a cutoff today, I don't think

there would have been a deal. So what else could then be written into this joint statement than what you find?

Disarmament last. This is an empty category. There is nothing about disarmament in the joint statement. And again, it stands to reason that since the United States, in my view – (inaudible) – its commitments under Article 6 of the NPT, it has not been eager to lean on India – (inaudible). I think this would have had to work from the other way around – India leaning on the United States. But it would have made sense to commit India also on this article of the NPT. All the members of the NPT are obliged to work for nuclear disarmament. Those who are outside, the holdout states, have undertaken no such course.

So what I'm saying is also that the weaknesses of the joint statement, in my view, are very much the weaknesses of the U.S. nonproliferation policy. Let me just point out by saying if an agreement along the lines of the joint statement comes about, then, on the same logic, I would assume that a similar deal to include Pakistan would follow suit, and I think I would welcome that.

Thank you.

(Applause.)

(End of one hour.)