

# Background

No. 1935  
May 18, 2006



Published by The Heritage Foundation

## Nuclear India and the Non-Proliferation Treaty

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The Bush Administration's initiative to sell civilian nuclear technology to India, a *de facto* nuclear-weapon state, is a landmark decision that will have a broad and lasting impact on the international nonproliferation regime. The challenge will be to develop cooperative nuclear energy relationships with friendly, democratic, *de facto* nuclear powers such as India while maintaining America's long-term nonproliferation goals.

Carving out exceptions for individual countries is an obvious but controversial solution to the dilemma. Regrettably, exceptions can become precedents for even more exceptions. For example, Russia or China could cite the U.S.–India deal as an excuse to carve out country-specific exceptions for client states, such as Iran and Pakistan.

To meet the new challenges presented by the growing impact of *de facto* nuclear-weapon states on U.S. security, American policymakers should pursue a two-track policy for nuclear nonproliferation and develop criteria-based policies for emerging nuclear technology relationships with *de facto* nuclear-weapon states.

- The first track is the broad regime<sup>1</sup> to prevent nuclear proliferation built around the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (NPT), which does not account for the presence of *de facto* nuclear-weapon states. Indeed, the central purpose of the NPT is to prevent the emergence of such states.
- The second track should focus on addressing the regional security imbalances that motivate non–

### Talking Points

- To meet the challenges of the growing number of *de facto* nuclear-weapon states, the U.S. should pursue a two-track policy for nuclear nonproliferation and develop criteria-based policies for emerging nuclear technology relationships with *de facto* weapon states.
- The first track is the broad regime to prevent nuclear proliferation, built around the 1968 Treaty on the Non-Proliferation of Nuclear Weapons.
- The second track should focus on the regional security imbalances that motivate states to seek nuclear weapons.
- For a *de facto* nuclear-weapon state to qualify for nuclear power technology transfers, it should have a stable democracy and rule of law, a record of nonproliferation, no record of sponsoring terrorism, a firm separation between civilian and military programs, non-aggressive security policies, and a willingness to consider limits on the number of its nuclear weapons.

This paper, in its entirety, can be found at:  
[www.heritage.org/research/abm/missiledefense/bg1935.cfm](http://www.heritage.org/research/abm/missiledefense/bg1935.cfm)

Produced by the Asian Studies Center

Published by The Heritage Foundation  
214 Massachusetts Avenue, NE  
Washington, DC 20002–4999  
(202) 546-4400 • [heritage.org](http://heritage.org)

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nuclear-weapon states to seek nuclear weapons. The purpose of the second track is not to abandon the first track, but to explore means for convincing *de facto* nuclear-weapon states to abandon their nuclear weapons and return to the first track.<sup>2</sup>

### The Indispensable Treaty

The NPT is the world's most important diplomatic tool for controlling the spread of nuclear weapons and technology. In 1968, the United Nations endorsed the treaty, and 62 nations signed it. Today, 187 countries are signatories with the notable exceptions of Cuba, India, Pakistan, Israel, and North Korea, which withdrew in 2003.

The goal of the NPT was to stop proliferation by limiting the number of states with nuclear weapons. It designated countries that had detonated a nuclear device prior to January 1967 (i.e., the United States, the United Kingdom, France, China, and the Soviet Union) as "nuclear-weapon states."<sup>3</sup> Countries that do not possess nuclear weapons and promise not to pursue them are designated as "non-nuclear-weapon states." In return, they are guaranteed access to peaceful nuclear technology as long as they continue to forswear nuclear weapons and do not pursue nuclear weapon programs.

Since its inception, the treaty has preempted the nuclear weapon programs of a number of states, including Germany, Italy, Japan, Sweden, and Switzerland. In pursuit of the NPT's goals, the United States and the international community have pressured countries that subsequently began nuclear weapon programs—including South

Africa, South Korea, Taiwan, Brazil, and Argentina—to give up those programs. At the end of the Cold War, the international community pursued NPT goals in the former Soviet republics and persuaded all of the republics except Russia to give up the weapons that they had inherited from the Soviet Union.

Today, a large and growing number of countries, including Canada and Australia, possess the technological capability to build the bomb but have not done so because they believe that the NPT effectively prevents the uncontrolled spread of nuclear weapons.

There are fears that by cooperating with India's civilian nuclear program, the United States could create the appearance of disregarding NPT strictures and thereby undermine its integrity. To maintain the authority and credibility of the NPT, the U.S. government should therefore develop a criteria-based policy, rather than an India-based policy, for addressing America's relationship with the *de facto* nuclear powers. A criteria-based policy will also reassure the other NPT member countries that the U.S.–India agreement will not undermine the international nonproliferation regime.

### The Problem of *De Facto* Nuclear-Weapon States

During the Cold War, the five NPT-approved nuclear-weapon states were divided between East and West. On one side stood the NATO countries of the U.S., France, and the U.K., and on the other side was the Soviet Union. Although Communist China was a nuclear-weapon state under the NPT,

1. Nonproliferation terminology can be confusing because "regime" has two separate definitions. The first definition refers to the plethora of policies, institutions, and laws designed to combat proliferation. These include treaty and non-treaty international agreements, international institutions, domestic laws and regulations, and domestic institutions. The second definition refers to a more specific nonproliferation policy, institution, or law that contains the word "regime," such as the Missile Technology Control Regime. This paper uses the broader definition. Given the subject matter, however, special emphasis is placed on those portions of the nonproliferation regime that focus on nuclear weapons.
2. For a theoretical description of the two-track policy for combating nuclear proliferation within the context of the challenges presented by India, see Baker Spring, "India and a Two-Track Policy to Combat Nuclear Proliferation: Guidelines for Congress to Balance Regional Security with Nonproliferation," Heritage Foundation *WebMemo* No. 810, July 29, 2005, at [www.heritage.org/Research/NationalSecurity/wm810.cfm](http://www.heritage.org/Research/NationalSecurity/wm810.cfm).
3. Russia succeeded the Soviet Union as a *de jure* nuclear-weapon state following the collapse of the Soviet Union.

Beijing played almost no role in the arms control debates of the period because of its limited capability. The Cold War antagonists possessed sufficient nuclear weapons to destroy one another, but from the perspective of a nonproliferation regime, negotiations were eased because there were so few parties with which to negotiate.

Today, there are at least four additional nuclear-weapon states—India, Pakistan, Israel, and North Korea—and Iran could soon join their ranks. The *de facto* nuclear-weapon states are developing nuclear capability for a variety of reasons other than the familiar motivations of the Cold War. For example, while Israel is presumed to have the weapons for traditional threat-based deterrence, North Korea appears to possess nuclear weapons for use as a bargaining tool as well as a deterrent.

In India's case, New Delhi considers the balance of power with China to be lopsided in China's favor, not only because of India's previous lack of a nuclear deterrent, but also because of China's place as a permanent member of the U.N. Security Council. Hence, New Delhi is not ashamed to admit that one of the reasons for testing its weapons was to gain the trappings of a great power that it believes are denied India by the United Nations and the international nonproliferation regime.

In addition, not all of the *de facto* nuclear-weapon states behave in the same way. Israel does not regularly threaten its neighbors with total destruction as North Korea has threatened South Korea. Neither does India proliferate nuclear tech-

nology as Pakistan has done to Iran, Libya, and North Korea.

### India and the International Nonproliferation Regime

India's nuclear technology is not homegrown; it was imported from the U.S. and its allies. Under the Eisenhower Administration's Atoms for Peace program, the United States assisted non-nuclear states in the development of peaceful nuclear capability. Beginning in 1955, the United States trained foreign nuclear scientists and engineers and declassified thousands of reports on plutonium processing and other nuclear-related information.

Administration Argument	Merit
India represents an exceptional case regarding U.S. nonproliferation policy.	<b>Little Merit.</b> India should be treated as one of several <i>de facto</i> nuclear-weapon states.
This agreement with India is a net plus for the nuclear nonproliferation regime.	<b>Little Merit.</b> This agreement runs counter to the spirit of the nonproliferation regime.
India has demonstrated restraint regarding nuclear proliferation.	<b>Some Merit.</b> India has restricted foreign access to its nuclear technology but has been less than honest with suppliers regarding its own program.
The agreement will ease pressure on world energy markets.	<b>Some Merit.</b> It is not clear that nuclear power is an economically competitive energy option for India.
The agreement does not accept India as a <i>de jure</i> nuclear-weapon state.	<b>Considerable Merit.</b> Accepting India as a <i>de jure</i> nuclear-weapon state would have undermined the U.S.'s decades-old policy of stemming nuclear proliferation.
The agreement is part of a broader strategic partnership with India that carries opportunities to enhance peace and stability.	<b>Considerable Merit.</b> The broader strategic partnership with India is what makes the important contributions to U.S. interests.
The agreement accounts for the fact of India's possession of nuclear weapons but does not require the U.S. to abandon its vision for nonproliferation.	<b>Great Merit.</b> A two-track policy would allow the U.S. to account for this fact while addressing the underlying security problems that led India to seek nuclear weapons in the first place.

In 1955, members of the U.S. Joint Committee on Atomic Energy visited India to promote the peaceful uses of atomic energy,<sup>4</sup> and Indian Prime Minister Jawaharlal Nehru succeeded in persuading the international community to make Homi Bhabha (father of India's nuclear establishment) president of the first U.N. Conference on the Peaceful Uses of Atomic Energy, held in Geneva in July and August. This conference facilitated the flow of U.S., Canadian, and British assistance to the Indian nuclear programs in the mid-1950s.<sup>5</sup>

Also in 1955, Canada agreed to supply India with a powerful research reactor—the 40 megawatt Canada–India Reactor (CIR). Then, in February 1956, Washington supplied 21 tons of heavy water for this reactor, now dubbed the Canada–India Reactor, U.S. or CIRUS.<sup>6</sup>

Acquisition of CIRUS was a turning point for India's nuclear weapons ambitions. The reactor's design was ideal for producing weapons-grade plutonium. CIRUS produced the plutonium used in India's first nuclear test in 1974, provided the design prototype for India's more powerful Dhruva plutonium production “research” reactor, and is directly responsible for producing nearly half of the weapons-grade plutonium currently believed to be in India's stockpile. Although U.S. cooperation on the CIRUS project was granted on the understanding that the reactor would be used only for peaceful purposes, there were no international safeguards available to regulate and verify the use of transferred technology.

After India's 1974 nuclear weapon test—which India described as a “peaceful” explosion—the United States and other countries that produced nuclear technology formed the Nuclear Supplier's Group (NSG). The goal of the NSG was to prevent exports of commercial and civilian nuclear and dual-use technologies from being diverted to the weapons programs of other countries. For 30 years, U.S.–India nuclear technology transfers stopped.

Nevertheless, New Delhi did not stop its nuclear weapons programs. At the end of the Cold War, India's patron, the Soviet Union, was gone, the Indian economy was a crumbling socialist relic, and China was the new emerging power. To reassert itself on the world stage, India embarked on an effort to reform its economy in 1991, began courting a closer relationship with the United States, and tested its nuclear weapons again in 1998 as a demonstration of strength. Although the test brought another storm of international condemnation, both the Bush and Clinton Administrations soon began to seek out ways to cooperate with India as a friendly, *de facto* nuclear power that shared American values and interests.

The United States and India agreed to the Next Step for a Strategic Partnership (NSSP) in July 2005 and to a follow-up agreement in March 2006 in which the United States and India agreed to civilian nuclear and space cooperation. These agreements, if implemented, run counter to the spirit of the NPT. The NPT encourages cooperation in the civilian nuclear power field only with non-nuclear-weapon states in exchange for their clear commitments not to seek nuclear weapons.

In the past, the U.S. has withheld nuclear cooperation from and has severely limited defense cooperation with countries openly seeking nuclear weapons, including India. The new willingness of the U.S. to engage in cooperative activities in the civilian nuclear power field with a state outside of the NPT raises questions about the future of U.S. nuclear nonproliferation policy.

Despite its snub of international proliferation controls, New Delhi has many policies that serve broader U.S. interests and demonstrate a respect for nonproliferation goals, including the following:

- Although not a signatory of the NPT, India has no record of proliferating nuclear technology to other countries, while China, a *de jure* nuclear-weapon state, is suspected of sharing

4. George Perkovich, *India's Nuclear Bomb* (Berkeley: University of California Press, 1999), p. 30.

5. *Ibid.*

6. Nuclear Weapon Archive, “India's Nuclear Weapons Program: The Beginning: 1944–1960,” updated March 30, 2001, at [nuclearweaponarchive.org/India/IndiaOrigin.html](http://nuclearweaponarchive.org/India/IndiaOrigin.html) (May 3, 2006).



nuclear weapons technology with both Pakistan and North Korea. Pakistan has admitted to sharing nuclear technology with North Korea, Libya, and Iran. Russia is also bargaining to sell nuclear technology to Iran, a country that is known to be violating its NPT safeguards agreement.

- India is a democracy. While the governments of other *de jure* and *de facto* nuclear-weapon states (e.g., China, Pakistan, and North Korea) are less than democratic, there is a high correlation between the quality of democracy and a country's proliferation record.
- India and the United States have a sophisticated and mutually beneficial defense relationship. India generally shares American and Western concerns about regional security issues.
- India has agreed to separate its civilian and military nuclear facilities and to place its civilian reactors under International Atomic Energy Agency (IAEA) safeguards—a move warmly approved by IAEA Director General Mohammed ElBaradei, who called India “an important partner in the nonproliferation regime.”<sup>7</sup> North Korea and Iran have withdrawn from or have violated their IAEA safeguard agreements.
- While India has not signed the Comprehensive Test Ban Treaty (CTBT), it has declared a unilateral moratorium on testing nuclear weapons.

## India and Pakistan

Despite India's appearance as a model of moderation and stability, there are perceptions of India's nuclear weapons programs that, if not properly addressed, could ignite a regional arms race. Most important is the perception of India in Pakistan.

The primary purpose of Pakistan's nuclear deterrent is India. Islamabad has largely accepted that New Delhi needs a minimum nuclear arsenal, but Islamabad asserts that India should not substantially exceed Pakistan's deterrent in size or capability.<sup>8</sup> There are also three U.S. policies

toward India that unfavorably affect Islamabad's security perceptions.

*First*, India and the United States are cooperating on regional missile defense, which could someday counter Pakistan's missile delivery capability.

*Second*, the proposed U.S.–India nuclear deal excludes eight of India's nuclear reactors, including its fast breeder reactor. Fast breeder reactors are known to be very efficient at creating weapons-grade fuel. Islamabad is afraid that without international controls, India will continue to produce nuclear weapons until it has an overwhelming advantage.

*Finally*, the United States is not including Pakistan in a civilian nuclear deal. Islamabad feels that it needs a conventional military deterrent against India to avoid escalation in the event of war or border confrontation. Pakistan is already insecure about India's much greater size, and Islamabad worries about an American alliance with its greatest enemy.

That said, there is little motivation in Washington to change policies. Specifically:

- Pakistan has an extensive nuclear proliferation network, and its belated efforts to stop proliferating nuclear weapons technology are incomplete and will not recall technology that is already spread to North Korea and Iran.
- Pakistan is not a democracy. President Pervez Musharraf's claim that only continued army control can keep Pakistan together is a self-serving sham.
- The United States and Pakistan have a long and mutually beneficial defense relationship, but Pakistan's past support of terrorist groups and current ineffectual attacks on the same groups are the reasons the United States does not want to extend civil nuclear cooperation to Pakistan.

Nevertheless, it is in America's interests to reassure Pakistan and the international community that a criteria-based second-track policy does not present open-ended exceptions to qualifying non-nuclear-weapon states. Indeed, reassuring Pakistan

7. Press release, “IAEA Director General Welcomes U.S. and India Nuclear Deal,” International Atomic Energy Agency, March 2, 2006, at [www.iaea.org/NewsCenter/PressReleases/2006/prn200605.html](http://www.iaea.org/NewsCenter/PressReleases/2006/prn200605.html) (May 8, 2006).

8. Estimates vary wildly and are impossible to confirm, but many sources put the number at around 50 warheads each.

## Chinese Contributions to the Nuclear Proliferation Problem

While China is a *de jure* nuclear-weapon state under the NPT, U.S. policy cannot ignore the fact that China's behavior has served to spur India to obtain nuclear weapons. For example:

- On December 23, 2005, the U.S. government imposed sanctions on six Chinese companies for violating the Iran Nonproliferation Act of 2000. Three of these companies had been sanctioned previously.
- The nuclear weapons technology discovered in North Korea's nuclear program, including large numbers of centrifuge machines to produce weapons-grade uranium, originated with Chinese assistance to Pakistan's nuclear programs. It seems most unlikely that Islamabad would have passed on Chinese-origin nuclear technology in such quantities to North Korea without Beijing's knowledge and consent.<sup>1</sup>
- A December 2003 CIA report to Congress notes that in November 2000, China committed to refusing to assist any country in developing ballistic missiles that could be used to deliver nuclear weapons. In August 2002, as part of that commitment, China promulgated a comprehensive missile-related export control system, similar in scope to the Missile Technology Control Regime Annex. However, the CIA report also notes that Chinese firms continue to provide North Korea with dual-use missile-related items, raw materials, and other assistance.<sup>2</sup>
- China provided nuclear technology assistance to Pakistan through 1992, when Beijing joined the NPT. In 1995, China exported 5,000 specially designed ring magnets to an unsafeguarded nuclear laboratory in Pakistan that allegedly was involved in nuclear weapons work.
- In 2004, nuclear weapons design documents, written in Chinese and originally addressed to Pakistan, were discovered in Libya. The documents suggest that China continued to provide training to Pakistani scientists over the course of several years after transferring technology.

1. Thomas Woodrow, "China Opens Pandora's Nuclear Box," *China Brief*, Vol. 2, Issue 24 (December 10, 2002), at [www.jamestown.org/publications\\_details.php?volume\\_id=18&issue\\_id=664](http://www.jamestown.org/publications_details.php?volume_id=18&issue_id=664) (April 5, 2006).

2. Central Intelligence Agency, "Unclassified Report to Congress on the Acquisition of Technology Relating to Weapons of Mass Destruction and Advanced Conventional Munitions: 1 January–June 2003," December 2003, at [www.cia.gov/cia/reports/721\\_reports/jan\\_jun2003.htm](http://www.cia.gov/cia/reports/721_reports/jan_jun2003.htm) (April 5, 2006).

is a central goal of the second track of the two-track policy proposed in this paper.

While properly crafted legislation and international agreements should establish criteria that permit only qualifying *de facto* nuclear-weapon states to benefit from civil nuclear cooperation, second-track negotiations should reassure Islamabad that Washington will not permit New Delhi to use its nuclear deal with the U.S. to dominate Pakistan or accelerate the arms race in Asia. In fact, the U.S. should press for the resolution of regional disputes in the second track with the ultimate goal of con-

vincing both India and Pakistan that neither country needs nuclear weapons. Success in the second track, therefore, will serve the purpose of the NPT, which is to limit nuclear weapons to the five *de jure* nuclear-weapon states identified by the treaty.

### What the U.S. Should Do

The United States should develop a criteria-based policy rather than an exception-based policy for engaging *de facto* nuclear states in civil nuclear cooperation and other forms of cooperation. Engagement with *de facto* nuclear states that meet American criteria could include military-to-mili-

tary contacts, conventional arms sales, space cooperation, missile defense cooperation, and joint military exercises. In deference to the nuclear non-proliferation goals and treaty obligations of the United States, however, under no circumstances should cooperation extend to nuclear weapons and delivery systems designed for nuclear weapons.

The criteria for nuclear power technology transfers should include:

- **A stable democracy and rule of law.** Democracy is not a shallow political ideology; it is a necessity for any effective nonproliferation regime. Of the current 10 *de jure* and *de facto* nuclear-weapon states, the ones with the best nonproliferation records are the democracies. The United States and its allies did assist India in developing its nuclear industry, indirectly assisting its weapons program; but when India tested a nuclear weapon in 1974, cooperation halted, and the democracies moved to block further technology transfers. Furthermore, India has no record of passing nuclear technology to other countries. On the other hand, all the non-democratic nuclear-weapon states are aggressive and indiscriminate proliferators.
- **A record of not proliferating nuclear technology “to other states” and a demonstrated respect for the international nuclear nonproliferation regime’s obligations for nuclear-weapon states.** India has no record of transferring nuclear technology to any other country—consistent with the NPT. India has also declared a unilateral moratorium on testing nuclear weapons—consistent with the Comprehensive Test Ban Treaty (CTBT)—and has demonstrated an interest in participating in the Proliferation Security Initiative (PSI). It is American reluctance to accept a country that is not an NPT member that has delayed India’s participation in PSI activities.
- **Not being a state sponsor of terrorism.** The nexus of state-sponsored terrorism and nuclear weapons is America’s greatest nightmare.
- **Firm separation between civilian and military nuclear programs.** Commercial power reactors are an area in which the United States can accomplish multiple goals with *de facto*

nuclear powers. For example, an energy trade deal with India should include provisions that prevent India from subsidizing civilian reactors and prevent the United States and other nuclear suppliers from providing nuclear technologies or facilities at prices below the cost of production. Without government assistance, a nuclear power plant would not be economically viable if it was diverting resources to expensive military projects, such as building bombs. At the same time, a trade agreement that eliminated government subsidies and allowed India’s power plants to operate for profit would force substantial reform in India’s energy sector and contribute to the country’s economic development.

- **Non-aggressive security policies.** This criterion addresses the fundamental security pretexts for developing nuclear weapons in ways that will encourage *de facto* nuclear states to abandon or reduce their nuclear weapons programs. For example, the threat posed by Pakistan is one of many reasons for India to possess nuclear weapons, but India is Pakistan’s only reason for possessing nuclear weapons. This criterion would require India to engage in substantive negotiations to resolve disputes.

India, however, does meet this criterion. The ongoing armistice at the Line of Control and the Kashmir border talks between Pakistan and India are making remarkable progress. Although neither country is close to making a fundamental compromise on Kashmir, they have reached a range of agreements on other matters, particularly on controls for their nuclear weapons.

- **A willingness to consider limits on the number of nuclear weapons.** Arms control advocates assert that this agreement, when implemented, would free India’s domestic capacity to produce the fissile material (highly enriched uranium and plutonium) needed to build nuclear weapons and would set a bad precedent for other *de facto* nuclear-weapon states.<sup>9</sup> The Bush Administration’s proposed legislation to implement the agreement with India addresses this issue by conditioning U.S. support for India’s civil nuclear program on India’s assistance to the U.S. in concluding a multilat-

eral Fissile Material Cut-off Treaty.<sup>10</sup>

Ultimately, the size of a state's nuclear arsenal depends on more than just the volume of fissile material that it can produce.<sup>11</sup> Perceived threats and military doctrine regarding the use of nuclear weapons are at least as important. This issue is best addressed in the second track of the two-track nonproliferation policy, which focuses on regional security issues. The broader purpose of the second track is to address the underlying security concerns that prompted India to obtain nuclear weapons in such a way that India concludes that it no longer needs nuclear weapons. Clearly, the second-track agenda should address the threat and doctrinal issues in ways that, among other issues, lessen the threats that the state faces.

## Conclusion

The end of the Cold War brought into existence arms control treaties that have dramatically

decreased the overall number of nuclear weapons in the world. Regrettably, at the same time, the number of states that possess nuclear weapons or that have the ability to develop the bomb is increasing.

Adopting a criteria-based formula for engaging *de facto* nuclear states would reward responsible countries without giving them a free ride on future behavior. More important, it would permit both the United States and the international community to maintain their long-term proliferation goals.

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9. For a detailed explanation of this argument, see press briefing, "The U.S.–India Nuclear Cooperation Deal: A Critical Assessment," Arms Control Association, February 15, 2006, at [www.armscontrol.org/events/20060215\\_India\\_Transcript.asp](http://www.armscontrol.org/events/20060215_India_Transcript.asp) (April 10, 2006).
10. A Fissile Material Cut-off Treaty (FMCT) would cap the production of fissile material for weapons purposes worldwide. The U.N. Conference on Disarmament, based on a 1993 General Assembly resolution, has a mandate to negotiate an FMCT. The U.S. supports such a treaty in principle but doubts whether it can be verifiable. The question of verification and a number of issues tangential to the direct subject of such negotiations have effectively blocked progress on the negotiations at the Conference on Disarmament.
11. Secretary of State Condoleezza Rice stated during an April 5, 2006, hearing before the Senate Foreign Relations Committee that it is the U.S. assessment that India possesses 50,000 tons of uranium in its reserves. See Condoleezza Rice, statement in hearing, *U.S.–India Atomic Energy Cooperation: The Indian Separation Plan and the Administration's Legislative Proposal*, Committee on Foreign Relations, U.S. Senate, 109th Cong., 2nd Sess., video recording, April 5, 2006, at [rtsp://video.c-span.org/project/ter/ter040506\\_nuclear.rm](http://rtsp://video.c-span.org/project/ter/ter040506_nuclear.rm) and [www.c-span.org/Search/advanced.asp?AdvancedQueryText=Civil+Military+Separation+Plan](http://www.c-span.org/Search/advanced.asp?AdvancedQueryText=Civil+Military+Separation+Plan) (May 3, 2006).