

## Part I

### Rescued from the abyss

#### Arun Shourie

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**In the first of a three-part analysis of the Indo-US nuclear deal, Arun Shourie argues that credibility has passed from the political class to professionals and entrepreneurs. And that the prime minister was wise to engage with the scientists' misgivings**

The prime minister's statement in the Rajya Sabha on 17 August was a triumph for him – after months and months of seeming to be dragged along, he stood up. He spoke for the country. He drew a line.

And it was equally a triumph for all who have led the campaign to alert the country to the abyss into which we were being pulled. Leading defence analysts like Bharat Karnad and Brahma Chellaney; Yashwant Sinha from the BJP; Digvijay Singh from the JD(U); Prakash Karat and Sitaram Yechurry from the CPI(M); and several others deserve the country's gratitude for their unremitting labours in this regard. It is after a very long time that a public campaign has had a salutary outcome.

The most influential voice, of course, has been that of the scientists. And in that lies an important lesson which transcends the nuclear deal. They are the ones who have over the decades built our nuclear capability. They are the ones who know. That is why what they had to say on the nuclear deal just could not be ignored.

But their voice also carried greater weight because they are professionals. And in that lies a lesson. When Siachin is at stake, were the retired Army Chiefs to speak up, their message would count for more than anything anyone else could say. When reforms get blocked, if entrepreneurs who have built empires out of nothing, who have brought prosperity to

millions, were to speak up; when institutions of excellence like the IITs and IIMs are sought to be shackled and stuffed with mediocres, were educationists to get together and speak up, were the alumni of these institutions — alumni who, after all, have changed the world's perception of India, and India's perception of itself — to detail the consequences, the wrecker's hand would be stemmed.

Credibility has passed - from the political class to professionals and entrepreneurs. This is what the immense impact that the scientists have had this time round brings out dramatically. In a word, professionals should exercise the authority that has fallen to them, and speak up on issues that are their specialty. When they neglect to do so, they fail the country.

The nuclear issue has been exceptional in another respect also, and in that it holds a lesson for the media, at least for some in the media. This is one of the very, very few issues on which, and after a long time, well-reasoned, well-documented arguments have been carried by the print media - arguments both pro and con.

But some at least in the media must have been embarrassed by what the prime minister has now said. For on every particular, his statement was an acknowledgment that the apprehensions which have been expressed were valid about the direction in which Americans were taking our Government. Were

some of our papers and reporters to look back on how much trust they placed on “backgrounders” and “briefings”, they would squirm. They were used to insinuate constructions which the prime minister has himself decisively put down.

Look at the benign interpretations they read into the House and Senate Bills and what the prime minister has now acknowledged about the real import of their provisions. Look at the way they greeted the “overwhelming vote” by which the Bill passed the US House of Representatives, and how the margin was projected as a victory — not just of the Bush Administration, but also of Indian diplomacy — when the overwhelming margin simply reflected the fact that, so many new conditions having been added to the Bill, the overwhelming proportion of legislators felt it would now overwhelmingly advance US’ objectives, and sink our autonomy.

“Amendments defeated”, some of our papers proclaimed and led readers to believe that, as this had happened, the Section binding India to assist US efforts in regard to Iran, the Section envisaging an India with a foreign policy “congruent to” that of the US were out. Readers were not told that, in fact, these Sections were very much a part of the main Bill, and, therefore, remained — amendments or no amendments.

The lesson thus is: the more contentious the issue, the more it has become a matter of prestige for a Government, the more wary

we should be of “backgrounders” and briefings.

### **Lessons for governments**

There are lessons for Government also. The prime minister has spoken, he has spoken unambiguously. But he has spoken at last. It is to his credit that among the propositions he has

now stated unambiguously are ones that can break the deal. But that he delayed articulating in public an unambiguous position in regard to them for so long now means that his interlocutors will conclude that the Government has gone back on what it was leading them to believe, that it has done so as it has had to succumb to pressures at home.

After all, several of the pronouncements had been ambiguous in the extreme. Thus, while answering a question in the Lok Sabha on 26 July, 2006, the PM said, “We will never compromise in a manner which is not consistent with the July 18 joint statement.” On the one side, it meant that, so as not to be surprised into surrender, every concerned person here must decipher which manner of compromise, and which particular compromises, would, in the view of Government, be consistent with the July 18 joint statement! To the US negotiators such statements would have signaled that our Government was going to be more flexible than they have now found it can be.

There were ambiguities even on the most consequential operational aspects. We do not wish to place any encumbrances on our Fast Breeder programme, the prime minister told Parliament on 7 March, 2006. In the next sentence, he said, however, that we have decided to place all future civilian thermal power reactors and breeder reactors under safeguards. Then that the fast Breeder Test Reactor and the Prototype Fast Breeder Reactor would remain outside safeguards. Yet, immediately after that again that future civilian thermal power reactors and civilian Fast Breeder Reactors would be placed under safeguards. There always are ways to pare such statements and show them to be harmonious. But, just as easily, others can spot gaps through which to drive bargains.

Even when “unambiguous statements” were made, they were in fact empty vessels into which anything could be poured. To every apprehension, the answer used to be the bland

assertion, "Nothing will be done that violates the 18 July joint statement." But that sudden scripture was a general statement of intent, an empty vessel into which anything could be, and was being poured. Who, upon reading that general statement, could have detected that, through it, India had undertaken to close down, within four years, the recently renovated CIRUS reactor? This is one of the two research reactors that have been producing weapons grade plutonium (the other one is Dhruva). In fact, it has hitherto been supplying one-third of the fissile materials that we use for our weapons programme. Did anyone going through the 18 July statement deduce that such a critical reactor will be closed down as a consequence? And there is the related question: in view what that reactor has been yielding for our weapons programme, how candid was the prime minister when he told the Lok Sabha on 10 March 2006, "Both CIRUS and Apsara(whose core Government has agreed to shift out of the Bhabha complex) are NOT related to our strategic programme...?"

Moreover, as has been pointed out, the Government has pledged to close down this reactor in spite of our not having a reactor to replace what it has been supplying for our weapons-programme. And it has agreed to do so, in spite of the fact that, as Bharat Karnad has pointed out in *The Asian Age* (14 June, 2006), the Americans themselves have not been able to establish, even to their satisfaction, that we had violated any treaty obligation in regard to the use of materials from this reactor. US Undersecretary of State, Robert Joseph told the Senate Foreign Relations Committee on 2 November, 2005, that whether India had "illegally" used the CIRUS reactor for military purposes was still "inconclusive owing to the uncertainty as to whether US-supplied heavy water contributed to the production of plutonium used for the 1974 device."

### **Specious arguments**

And the case for postponing definiteness was being advanced by specious arguments. "The House and Senate Bill are just interim steps in the US legislative process," we were told. "Let us wait for the final outcome." "The US and Indian legislative processes are different," we were told. "India is not bound by laws passed by the US Congress," we were told, with much posturing of "standing firm", of defiance. But the American President is bound by what the American Congress passes! How could he be expected to enter into an agreement with India which went contrary to the law that the US Congress had passed?

It is precisely because the legislative process, etc. are different in the US than they are in India that there was the utmost reason to speak up in time. In India, the power to enter into international agreements and treaties rests solely with the Executive. Parliament may discuss them, but it can do nothing about them - short of throwing out the Government, and the next Government repudiating them. But even that would be done by the Government on its own authority, not by Parliament. But in the US, the Senate has the ultimate power to ratify or reject international treaties and agreements that the US President may enter into or canvass. The League of Nations was in some ways the brainchild of President Wilson. The Senate threw out the agreement he had worked so hard to secure. The same thing happened recently in regard to the CTBT. As Dr P C Alexander reminded the Rajya Sabha during the debate, for three years President Clinton twisted the arm of many a Government to sign up on the CTBT. His own Senate threw out the very treaty that he had compelled others to sign. In a word, there has been every reason to speak up early, to speak unambiguously, to speak unambiguously in public so that no one in the US could be in doubt about what India will accept and what it will not. To wait till "the final outcome becomes available" would be to close all options.

The second lesson for governments engaged in such a far-reaching venture is: a leader must not let such a deal become a matter of personal prestige. He may well choose to sacrifice his post and government on an issue. But that because he regards the issue as vital for the country, or because he wants to make clear to those pushing him around where they get off. Never because he has allowed his personal prestige to get mixed up with the issue. The moment an issue becomes a matter of personal prestige for a ruler, others can wring one concession after another knowing that the ruler, so committed to seeing the matter through, will himself arrange that favourable constructions are put on those concessions.

Third, there is a lesson from the Dabhol agreement. At that time also, that agreement with Enron was being projected as being vital for Indo-American relations. It was being projected as being vital to sustain investor interest in India. As in the ensuing months its consequences became apparent, as the Maharashtra Electricity Board was pushed towards bankruptcy, that very agreement became a cause for the souring of relations and perceptions. Indians came to see Americans as ones who were out to exploit the country. Americans came to see in the fate of Dabhol yet another example of Indians not living up to an agreement.

The nuclear deal is being translated into concrete specifics in the Senate and House Bills. These, as we shall see, are iniquitous in the extreme. In these circumstances, to make the

deal the test and symbol of improved Indo-US relations is to inject the vinegar that will sour relations again.

Nor is it ever a good defence, "But you were prepared to do the same thing. Does Talbot not say that Jaswant Singh was prepared to sign on the CTBT?"

Such arguments are silly on their face. Even if India had signed the CTBT, that would have had no consequence at all - the CTBT cannot come into effect unless 40 countries sign it, including US, China, Pakistan, etc. The US Senate has already thrown the treaty out. Even if we had signed the treaty, and even if it had come into force, our options would not be shut in perpetuity, for the CTBT has a clause by which a country can withdraw from it on grounds of "supreme national interest". In the US Bills we are cabined "in perpetuity". There is no circumstance at all, as we shall soon see, in which we can, for instance, resume tests.

Specifics apart, there is a fundamental flaw in the "But you were going to do the same thing" alibi. Assume for a moment, that some previous government would have inflicted some grave harm on the country. How does that entitle a successor government to take or extend that ruinous step?

In a word, what is done by a government has to be assessed and defended on merits. And it is this – what was being done in the wake of the general statement of 18 July — which had come to cause the gravest apprehensions.

## Part II

### This is about energy, did you say? Arun Shourie

Wednesday, August 23, 2006

**The fine print of the laws Congress is passing shows how every aspect of India's nuclear programme will exist solely at the pleasure of the US, says Arun Shourie in the second part of his analysis of the nuclear deal**

While we are being treated to lullabies — that the agreement with the US is all about nuclear energy — the laws that the US Congress is passing are absolutely clear in the objectives for which the agreement is being entered into.

- Section 2(5) of the Bill that the House of Representatives has passed states that the objective is to bring within the ambit of NPT discipline countries that haven't signed.

In view of the dust that is thrown in our eyes, it is important to bear in mind two different aspects of non-proliferation. One implication of the expression is that India will join others in ensuring that more States and groups do not acquire nuclear weapons. That is a desirable objective, an objective as vital for India as for others, and everyone subscribes to cooperation for this purpose. But, as we shall soon see, the US has a second meaning in mind too: and that is to *halt*, roll back, and eventually eliminate the nuclear weapons capability of a country like India. The US Bills make no bones about this at all.

Section 2(6)(C) of the Bill notes that the agreement that President Bush and Prime Minister have signed, and which our Government has been saying does not at all put a cap on our nuclear strategic programme, "induces the country" to "refrain from actions that would further the development of its nuclear weapons program."

Section 3(b)(5) clearly states that the US policy is to "Seek to halt the increase of nuclear weapon arsenals in South Asia, and to promote their *reduction and eventual elimination*."

Was it that the Americans hadn't understood what our Government was telling them? Was it that our Government wasn't seeing what the Americans were doing in open daylight? Or was it that we, the ordinary folk, were being fed sleeping-pills?

Section 3(b)(7) has an even more far-reaching implication. It specifies that the US is to aim, "*pending implementation of a multilateral moratorium*," to "encourage India not to increase its production of fissile material at unsafeguarded nuclear facilities."

In a word, *even before the general Fissile Material Cut-off Treaty is finalised*, the US will exert to get India to desist from increasing the production of fissile material.

Section 3(a)(1) specifies that the US objective in the agreement is to "*Oppose the development of a capability to produce nuclear weapons by any non-nuclear weapon state, within or outside of the Treaty on the Non-Proliferation of Nuclear Weapons*."

India is outside the NPT, and, as we shall see, US officials were declaring at every opportunity that it most emphatically is *not* a Nuclear Weapons State, and is not going to be accepted as one.

**Foreclosing options**

Indeed, the House Bill goes further. It binds the US not just to work for these objectives on its own. It binds it to *close the options of India*, should the latter, in the reckoning of the US, violate the provisions in this regard. Section 3(a)(3) specifies that the US Executive will work to "*Strengthen the Nuclear Suppliers Group guidelines concerning consultation* by members regarding violations of supplier and recipient understandings by *instituting the practice of a timely and coordinated response* by NSG members to all such violations, including termination of nuclear transfers to an involved recipient, that discourages individual NSG members from continuing cooperation with such recipient until such time as a consensus regarding a coordinated response has been achieved."

Note, among other things, the requirement of consensus. China is a member of the Nuclear Suppliers Group. Hence, assume that at some stage we are compelled by circumstances to resume testing. Assume further that some country pleads in the NSG that, in fact, we had good reason to resume testing, that there are extenuating circumstances. That pleading would not get anywhere until China also agrees!

Furthermore, Section 4(2)(d)(4) prescribes, "If nuclear transfers to India are restricted pursuant to this Act, the Atomic Energy Act of 1954, or the Arms Export Control Act, *the President should seek to prevent the transfer to India of nuclear equipment, materials, or technology from other participating governments in the NSG or from any other source.*"

To ensure that the US Executive acquires the basis for such coordination — in the sense that it has at all times the fullest information about each item that it will urge others to stop exporting to India - Section 108(3) of the Senate Bill directs the US President to report

to the Congress, among other subjects, on "any significant nuclear commerce between India and other countries."

Similarly, Section 3(b)(1,2) of the Senate Bill specifies that, with respect of South Asia, the US shall aim to "(1) Achieve a moratorium on the production of fissile material for nuclear explosive purposes by India, Pakistan, and the People's Republic of China (a curious insertion as China is no part of South Asia!) at the earliest possible date. (2) Achieve, at the earliest possible date, the conclusion and implementation of a treaty banning the production of fissile material for nuclear weapons to which both the US and India become parties."

### **The screws tightened**

While we were being fed opium — "Amendments to the Bill have been defeated" — in fact a far-reaching amendment moved in the House of Representatives was *accepted*. It stands as part of the House Bill. This provision deploys an ingenious device to ensure that the US Government makes certain that we do not increase our weapons production. Section 4(o)(2)(B) of the House Bill lays down that in regard to India the US President shall present to the Congress every year "*an analysis as to whether imported uranium has affected such rate of production of nuclear explosive devices.*" Recall also that Section 107(a) of the Senate Bill binds the President to "ensure US compliance with Article I of the Nuclear Non-Proliferation Treaty."

To gauge the effect of these two Sections, let's put two things together — the spin our government has been putting on the agreement here and what the US is bound to do by virtue of Article 1 of the NPT.

We are being told in asides, "The agreement will not limit our weapons production at all. The

uranium we are able to import for our civilian reactors because of this agreement will, in fact, free the uranium we obtain from our own mines for use in weapons production." The House and Senate Bills close this imagined latitude decisively. Recall that reference to Article I of the NPT. This Article mandates every signatory State "not in any way to assist, encourage, or induce any non-nuclear weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices."

Thus, assume that we get uranium from the US or other sources. Assume, in accordance with the spin, that we are therefore able to use more of our domestically mined ore for weapons production. The point will be immediately taken to the US Congress and the conclusion urged that to continue nuclear cooperation with India will violate this Article. Malignant consequences will follow straightaway.

We should also bear in mind that the Article imposes this restriction in regard to non-Nuclear Weapons States. It does not place any similar restriction on nuclear assistance or exports, say of uranium or any other material, by a Nuclear Weapons State, say the US, to another Nuclear Weapons State, say China.

### **Provisions of consequence**

That these are not idle, vacuous statements, that they are not just expressions of sentiment, so to say, is evident from Section 4(o) of the House Bill. This Section lays down that, among the items on which the US President must report every year to the US Congress, are "(A) the extent to which each policy objective in section 3(b) has been achieved; (B) the steps taken by the US and India in the preceding calendar year to accomplish those objectives; (C) the extent of cooperation by other countries

in achieving those objectives; and (D) the steps the US will take in the current calendar year to accomplish those objectives."

Further, Section 4(b)(4) provides that the agreement will come into force only after the US President files a determination that "India is working actively with the US for the early conclusion of a multilateral Fissile Material Cutoff Treaty."

Not just that. The provision that follows adds another twist. Section 4(c)(2)(D) provides that, among the items on which the US President must report to and about which he must satisfy the Congress every year shall be "A description of the steps that India is taking to work with the US for the conclusion of a multilateral treaty banning the production of fissile material for nuclear weapons, including a description of the steps that the US has taken and will take to encourage India to *identify and declare a date by which India would be willing to stop production of fissile material for nuclear weapons unilaterally* or pursuant to a multilateral moratorium or treaty."

Thus, (i) "*India to identify and declare a date by which India would be willing to stop production of fissile material for nuclear weapons*", and (ii) it is to be "encouraged" to do so "unilaterally".

### **The provisions tightened**

The Senate Bill is equally unambiguous and explicit. In fact, it makes the conditions tighter. Section 102(5) provides that "any commerce in civil nuclear energy with India by the US and other countries must be achieved in a manner that minimises the risk of nuclear proliferation or regional arms races and maximises India's adherence to international non-proliferation regimes, including, in particular, the Guidelines of the Nuclear Suppliers Group (NSG)." Section 103(1) provides, "It shall be the policy of the United States with respect to any

peaceful atomic energy cooperation between the US and India - (1) *to achieve as quickly as possible a cessation of the production by India and Pakistan of fissile materials for nuclear weapons and other nuclear explosive devices.*"

Section 103(9) lays down "that exports of nuclear fuel to India *should not contribute to, or in any way encourage, increases in the production by India of fissile material for non-civilian purposes.*"

Section 108 makes it the duty of the US President to keep Congress informed "fully and currently" of "the facts and implications" regarding, *inter alia*, "(2) the construction of a nuclear facility in India after the date of the enactment of this Act; (3) significant changes in the production by India of nuclear weapons or in the types or amounts of fissile material produced; (4) changes in the purpose or operational status of any unsafeguarded nuclear fuel cycle activities in India."

Section 108(5) specifies the items further. It requires the President to provide "a detailed description of - (A) US efforts to promote national or regional progress by India and Pakistan in *disclosing, securing, capping, and reducing their fissile material stockpiles*" — pause for a moment, and read the words again, "disclosing, securing, capping, and reducing their fissile material stockpiles": and yet the Government has been declaring that there is nothing in what has been done since the 18 July statement which threatens to cap our weapons programme!

The words that follow reach even farther: India is to disclose, secure, cap, and reduce its fissile material stockpiles *"pending creation of a world-wide fissile material cut-off regime, including the institution of a Fissile Material Cut-off Treaty."* In a word, the US is to work to get India to disclose, secure, cap, and reduce its fissile material stockpiles even before any

such treaty is finalised.

The Section proceeds to require the President to report "(B) the reactions of India and Pakistan to such efforts; and (C) assistance that the United States is providing, or would be able to provide, to India and Pakistan to promote the objectives in subparagraph (A), consistent with its obligations under international law and existing agreements."

Notice the expression, "*unilaterally*" in the House Bill. That is, we are to be encouraged to "unilaterally" agree to "stop production of fissile material for nuclear weapons" just as we have been persuaded to "voluntarily" close CIRUS! "Curse it," that astute Roman, Cicero, asked the assembled Senators as they succumbed to Mark Antony's usurpations, "do you have to be voluntary slaves?"

Notice, next, in the Senate Bill, the expression, "pending creation of a world-wide fissile material cut-off regime." That is, we are to disclose, secure, cap, and reduce its fissile material stockpiles even before the FMCT comes into effect, in fact even if one doesn't come into effect.

Finally, recall the reference to US's "obligations under international law and existing agreements" - and the point that will be made about what the US must do under Article I of the NPT.

### **A voluntary moratorium converted into a binding restriction for ever**

I well remember the caustic shrieks by which Congress spokesmen, having first denounced Mr Vajpayee for conducting the 1998 tests, then denounced him for declaring a voluntary moratorium on further tests. They cited the opinion of a leading scientist that India needed further tests. They invoked American barbs to the effect that, in fact, the tests had not just been inconclusive, one of them had actually

failed.

There were two features about what Mr Vajpayee declared. First, what was declared was a “moratorium” — that is, a temporary suspension. Second, that suspension was a voluntary one: should the situation require that we conduct further tests, the decision to do so was kept completely within our hands. The later pledge to convert this into a *de jure* moratorium also envisaged that exit clauses — like CTBT’s “supreme national interest” — would form part of whatever instrument would be signed.

Through this agreement the US seeks to convert that voluntary, temporary suspension into a legally binding prohibition in perpetuity. This is evident from the US Bills. To their credit, officials of the US have been absolutely explicit, absolutely unambiguous about this. In her testimony, the Secretary of State, Condoleezza Rice, for instance, told the Congressional Committee, “We have been very clear with the Indians that the permanence of the safeguards is permanence of the safeguards, *without condition*. In fact, we reserve the right, should

### **Part III**

#### **‘Parity’, did you say?**

*Thursday, August 24, 2006 at 0000 hrs IST*

In the wake of the 18 July joint statement, five impressions were sought to be insinuated into the public mind. First and foremost, there will be parity: the benefits that would accrue to us, the responsibilities that we would undertake would be comparable to the benefits and responsibilities that accrue to the US. The joint statement recorded that the Prime Minister undertook that “India would reciprocally agree that it would be ready to assume the same responsibilities and

India test, as it has agreed not to do, or should India in any way violate the IAEA safeguard agreement to which it would be adhering, that the deal from our point of view would at that point be off.”

And this imperative now forms part of the Senate Bill. The Senate Bill’s Section 110 : “any waiver under Section 104 (the waiver that is required to allow nuclear commerce with India) shall cease to be effective if the President determines that India has detonated a nuclear explosive device after the date of the enactment of this Act.”

Thus, we are in effect to sign up on the CTBT, a treaty which the Senate itself has thrown out. We are to sign up on more than the CTBT as the prohibition on us shall be in perpetuity, without condition, while the CTBT explicitly allows a country to withdraw the very next day after it has signed up if its “supreme national interest”, as assessed by the country itself, requires.

Talk of parity!

**Arun Shourie**

practices, acquire the same benefits and advantages as other leading countries with advanced nuclear technology, such as the US.” On 29 July, 2005, the Prime Minister told Parliament, “We shall undertake the same responsibilities and obligations as...the US.” “India will never accept discrimination.”

Second, we were told that the reference in the statement to India being, like the US, “a responsible state with advanced nuclear

technology," was an implicit recognition of India as a Nuclear Weapons State. The "backgrounder" about the July 18 statement that the PMO circulated on July 29, 2005, stated five times that India would be securing the same rights as Nuclear Weapons States, and that it would be undertaking only responsibilities to which other Nuclear Weapons States were subject. Our purpose in the negotiations, our principal negotiator said, is to be treated at par with Nuclear Weapons States.

Third, India would be negotiating a special safeguards arrangement with the International Atomic Energy Agency. This would be "India specific" — the impression sought to be created was that this would be akin to the agreements the IAEA has with Nuclear Weapons States; that, if it was modeled on some standard protocol applicable to non-Nuclear Weapons States, it would be that minus some features and rigours.

Fourth, India alone would decide what sort of protocol to negotiate with the IAEA.

Finally, the fullest precautions had been taken to keep confidential the secrets vital to our weapons programme — about the materials, processes, facilities, future plans, the R&D work we are doing or will be doing in regard to this programme.

Even as we were being fed these doses, senior officials of the US Administration were stating clearly what objective the US is pursuing through the agreement, and the sort of status India would have vis a vis the IAEA safeguards. In her Opening Remarks before the Senate Foreign Relations Committee, on April 5, 2006, Condoleezza Rice stated categorically, "India is not and is not going to become a member of the NPT as a nuclear weapons state. We are simply seeking to address an untenable situation. India has never been party to the

NPT...but this agreement does bring India into the nonproliferation framework and thus strengthen the regime."

She was just as explicit in her speech at the inaugural meeting of the American Association of Physicians of Indian Origin on July 10, 2006: "Let me be clear: We do not support India joining the NPT as a nuclear weapons state. Rather, the goal of our initiative is to include India, for the first time ever, in the global non-proliferation regime. By requiring India to place two-thirds of the existing and planned nuclear reactors under the watchful eye of IAEA, the initiative would be a net gain for the cause of nonproliferation..."

And the non-proliferation which the Congressmen she was addressing had in mind, which she was talking about is not of India surreptitiously passing on some nuclear secrets to other states, etc. She was clearly talking about the proliferation of nuclear weapons that comes about as India builds such weapons.

### **Benchmarks**

Two texts and some facts provide good benchmarks for assessing impressions insinuated into the public discourse by briefings.

The IAEA protocol that's applicable to a Nuclear Weapons State is modeled after IAEA's Information Circular 153 (INFCIRC/153). The one that is applicable to the rest is known as Information Circular 540.

While we are being fed soporifics about the protocol with IAEA being "India specific", the Senate Bill prescribes, in Section 113(1), that the Additional Protocol we'd have to sign with IAEA would be based on the Model Additional Protocol "as set forth in IAEA Information Circular (INFCIRC) 540."

And that Circular states just as clearly, "Such protocols shall contain all of the measures in this Model Protocol." Given this binding declaration, either we would sign the standard, model protocol plus additional provisions, or sign more or less the standard protocol and have it labeled, "India specific"!

But to revert to the obligations of Nuclear Weapons and Non-Nuclear Weapons States. The contrast between the two Model Protocols is a textbook illustration of Gandhiji's saying, "Law is the convenience of the powerful." At first, the NPT did not require the five Nuclear Weapons States to subject themselves to the safeguards of IAEA. When objections were raised, the Nuclear Weapons States agreed to conclude "Voluntary Offer Agreements". Under these, Nuclear Weapons States submit lists of "eligible facilities". The IAEA selects a small sample of them that it will inspect. The US, for instance, in 1993, placed materials that are, in its view, in "excess of defense needs" under IAEA safeguards. Information Circular 540 itself states in the foreword, "The Board of Governors has also requested the Director General to negotiate additional protocols or other legally binding agreements with Nuclear Weapons States incorporating those measures provided for in the Model Protocol that each Nuclear-Weapons State has identified as capable of contributing to the non-proliferation and efficiency aims of the Protocol, when implemented in regard to that State, and as consistent with that State's obligations under Article I of the NPT." That is, the choice of which measures to include is left to the judgment of the Nuclear Weapons States.

The entire tenor of INFCIRC/153 is solicitous. Clause 8, dealing with "Provision of information to the Agency," states, "The Agency shall require only the minimum amount of information and data consistent with carrying out its responsibilities under the Agreement. Information pertaining to facilities shall be the

minimum necessary for safeguarding nuclear material subject to safeguards under the Agreement. In examining design information, the Agency shall, at the request of the State, be prepared to examine on premises of the State design information which the State regards as being of particular sensitivity. Such information would not have to be physically transmitted to the Agency provided that it remained available for ready further examination by the Agency on the premises of the State."

Similarly, Clause 9 binds the Agency to secure the consent of the State for the inspectors designated to inspect facilities: "The visits and activities of Agency inspectors shall be so arranged as to reduce to a minimum the inconvenience and disturbance to the State and to the peaceful nuclear activities inspected as well as to ensure protection of industrial secrets or other confidential information coming to the inspectors' knowledge."

A single example will show up the contrast. Regarding mining and processing activities, Clause 33 provides, "The Agreement should provide that safeguards shall not apply thereunder to material in mining or ore processing activities." Contrast this with what Section 4(o)(2)(B) of the House Bill requires the US President to ascertain from India, and report to the US Congress:

"(i) an estimate for the previous year of the amount of uranium mined in India; (ii) the amount of such uranium that has likely been used or allocated for the production of nuclear explosive devices; (iii) the rate of production of: (I) fissile material for nuclear explosive devices; and (II) nuclear explosive devices; and (iv) an analysis as to whether imported uranium has affected such rate of production of nuclear explosive devices."

But "parity" it is!

And those are just the formal provisions of the Model Protocol applicable to Nuclear Weapons States. In practice, things are even more in their favour - they are, after all, the karts of the IAEA.

Nuclear Weapons States accept only voluntary, revocable inspections — they can withdraw any civilian nuclear installation under safeguards at any time. Also there are no firewalls separating their civilian and military facilities: materials from the former make their way into the latter. Further, the number of facilities they have agreed to place under inspections is minimal. The total number of nuclear power reactors in P-5 is 217. Of these 217, just 11 are open to inspections. Of the US' 104 nuclear power reactors, only five are under IAEA safeguards. In contrast to this figure — one-twentieth of facilities being volunteered for safeguards — our Government has agreed to put two-thirds of our reactors under safeguards. That's just the beginning as of now. The Bush Administration has been quoted as saying, all new reactors we construct will be under safeguards, ninety per cent of India's reactors will come to be under IAEA safeguards in the future.

Moreover, the inspections under INFCIRC/540 are of an entirely different order than the ones carried out in the case of Nuclear Weapons States. In their case, the inspections are perfunctory. In countries covered by INFCIRC/540 they are thorough, comprehensive and intrusive. Article II of the model Additional Protocol specifies that the IAEA shall collect data through inspections as intrusive and as comprehensive as it deems fit on every aspect of a country's nuclear programme. These inspections include: regular, short notice inspections and inspector access to all aspects of the nuclear cycles of the country — including R&D about future projects as well as all sites connected with the manufacturing,

import and exports of materials; information about and providing access to all buildings on a nuclear site; wide area environmental sampling in and beyond declared locations as and when IAEA deems these necessary; the location, operational status and the estimated annual production capacity of uranium mines...(and) concentration plants for uranium and thorium... The country must also provide plans "for the succeeding 10-year period relevant to the development of the nuclear fuel cycle (including planned nuclear fuel cycle related R&D activities)..."

### **In perpetuity**

But there is more. It is not just that the US Bills specify the type of protocol India shall sign with the IAEA, they impose another condition. Section 4(b)(2,3) of the House Bill specifies, that the agreement between India and the US will become effective only upon the US President filing a determination with the US Congress that, inter alia, "(2) India and the IAEA have concluded an agreement requiring the application of IAEA safeguards in perpetuity in accordance with IAEA standards, principles, and practices (including IAEA Board of Governors Document GOV/1621 (1973)) to India's civil nuclear facilities, materials, and programmes; including materials used in or produced through the use of India's civil nuclear facilities. (3) India and the IAEA are making substantial progress toward concluding an Additional Protocol consistent with IAEA principles, practices, and policies that would apply to India's civil nuclear program."

Section 4(c)(2)(B) is equally explicit and specific in requiring "the application of safeguards in accordance with IAEA practices." The Senate Bill adds to "principles, practices, and policies," "standards."

Further, the definitions that have been incorporated in the Bills — of "nuclear

material", "explosive device", and "military facility" - ensure that the inspections shall be complete, comprehensive, intrusive, and wide-ranging. Notice in the foregoing Section, the words "in perpetuity". In the testimony referred to earlier, Condoleezza Rice stated categorically, "We have been very clear with the Indians that the permanence of the safeguards is permanence of the safeguards, without condition. In fact, we reserve the right, should India test, as it has agreed not to do, or should India in any way violate the IAEA safeguard agreement to which it would be adhering, that the deal from our point of view would at that point be off."

### **Not just IAEA inspections**

How thorough and intrusive these inspections will be becomes evident by a mere glance at the seven heads on which Section 4(o)(2)(B) of the House requires the US President to report to Congress in regard to the sites that are placed under IAEA safeguards. But the next part deals with sites that are kept out of the IAEA's purview, namely our military facilities. Section 4(o)(2)(C) that the report of the President "shall also include (in a classified form if necessary) a description of whether US civil nuclear assistance to India is directly, or in any other way, assisting India's nuclear weapons program, including the use of any US equipment, technology, or nuclear material by India in an unsafeguarded nuclear facility or nuclear-weapons related complex; (ii) the replication and subsequent use of any US technology in an unsafeguarded nuclear facility or unsafeguarded nuclear weapons-related complex, or for any activity related to the research, development, testing, or manufacture of nuclear explosive devices; and (iii) the provision of nuclear fuel in such a manner as to facilitate the increased production of highly-enriched uranium or plutonium in unsafeguarded nuclear facilities."

Apart from the implications that such monitoring shall have for our security, reflect: by what means will the US President collect information about each of these features of the military facilities which we have not opened to IAEA inspections? Moles? Spies? Open inspections independent of those by IAEA?

Nor is that the end. Section 4(o)(4) requires that, in addition, the US President must report annually on new nuclear reactors or facilities India has constructed - whether civilian or military - and how it has disposed of the spent fuel from its civilian nuclear program.

Section 108(a) of the Senate Bill provides also that "The President shall keep the appropriate Congressional Committees fully and currently informed of the facts and implications of any significant nuclear activities of India, including (1) any material noncompliance on the part of the Government of India with..." — agreements with the US, the IAEA Protocol, as well as the Additional Protocol...

And if India is found wanting on any of these grounds by any of the inspections, Section 102(6) of the Senate Bill and Section 4(d)3 of the House Bill call for exemplary punishment: the discontinuation of exports to India by the US and "by any other party" or "source".

### **Pursuing a clear objective**

Other aspects in the US Bills have caused grave apprehension: the assessment that India has, and the expectation that it shall continue to have, a foreign policy "congruent to" that of the US. The fact that, while in the July 18 statement President Bush categorically pledged that "he will work to achieve full civil nuclear cooperation with India..."; and, again, that US will work with other NSG countries "to adjust international regimes to enable full civil nuclear

energy cooperation and trade with India," both the House and Senate Bills forbid US from sharing with or selling to India any information, or constituent of technologies relating to enrichment of uranium, the reprocessing of spent fuel, or the production of heavy water. The Senate Bill goes farther. Section 103(7) of this Bill declares US policy to be, "Given the special sensitivity of equipment and technologies related to the enrichment of uranium, the reprocessing of spent nuclear fuel, and the production of heavy water, to work with members of the NSG, individually and collectively, to further restrict the transfers of such equipment and technologies, including to India."

Features such as these have occasioned grave apprehensions, which have been compounded by the evasive statements that our Government has kept making on each of these matters, and by the plants it has managed to place in the media. Therefore, it is entirely in the fitness of things that the Prime Minister has now gone beyond the generality, "Nothing will be done that violates the July 18 statement," and stated clearly what the country's stand is on every specific issue.

We must always remember that, while we fantasise about "parity", the US - and, from its point of view, quite naturally - aims to acquire, in the form of an "ally", an instrument. An instrument that will do its bidding because it is dependent on the US. Seeking "energy security" by making ourselves dependent on imported reactors and imported uranium is to only further that design.

But energy is just a minor instrument. The much more consequential instrument is to have India become dependent for its security - vis a vis China, for instance - on the US nuclear umbrella. An India with a deterrent of its own thwarts this aim.

Hence, the US has been pursuing a clear, fourfold strategy:

- \* As India has not signed the NPT, make it accept the provisions of the NPT: and we have the testimony of one of the principal architects of this nuclear deal that, through it, the US has got India to accept conditions that go beyond the NPT.

- \* Get India to submit itself to IAEA inspections as a Non-Nuclear Weapons State.

- \* Get India to adhere to the CTBT even though it hasn't been signed, and without an exit clause.

- \* Get India to halt, roll-back and then eliminate all fissile production.

Once India is ensnared into these four pits, faced with an overbearing China, it will have no alternative but to seek shelter under the American nuclear umbrella. Every Section of the Bills explicitly aims to realise this goal - of an India drained of its strategic nuclear programme, and thus a dependent India. Step by step, our Government was getting drawn into furthering the US design. Public pressure has at last led the Prime Minister to draw the line.

That he has done so, and in unambiguous language and in terms of specifics, is great credit to him.

But that things went so far holds two warnings. First, till the final dot is placed on the deal, all of us, in particular our scientists, must watch every step - else the paralysing concessions will creep back in. One Bill has already passed the House. The other is to be voted upon by the Senate within a month. Once the agreed version becomes law, the US President will be bound by it. And this President has been drained of much of even limited the influence that an American President might normally have to alter the provisions in our favour.

Second, an agreement with some other country, however friendly it may be at the

moment, is not the way either to self-sufficiency in energy or to self-reliance in security. For these we must develop our own sources—hydroelectric power, power from inexhaustible non-conventional sources. We must redouble mining our own deposits of uranium. We must, as the President has reminded us in his Independence Day Address, accelerate work on thorium-based reactors.

And we must never enter into an agreement that closes our options.