Chapter 7

CONCLUDING OBSERVATIONS

This thesis has tried to show how India's nuclear policy and actions have had a worldwide impact: they prompted the reshaping of the international nonproliferation system and the U.S. nuclear exports regime. Tarapur has just not been an isolated political dispute between the United States and India. The history of the Tarapur affair is also a history of the major changes in U.S. nonproliferation policy and the evolution of technology-denial policies among the nuclear exporting nations. Conversely, it is also a history of U.S. -- and international -- efforts to tame India's nuclear independence. The fact that India has not conducted another "peaceful nuclear explosion" (PNE) can at least partially be credited to the intense political pressure it has
had to endure. The American executive branch and Congress wielded Tarapur as a powerful weapon against India -- to pressure it not to conduct any more nuclear explosive tests and to accept tougher international nonproliferation controls. The issue of fuel and spare parts supply for Tarapur was repeatedly used as a stick to beat India with. The Tarapur affair, on the other hand, created an unusual national consensus in India: successive governments that were in power since the dispute flared in the mid-1970s adopted the same policy and approach in dealing with the fundamental issues involved in the case.

India's 1974 detonation of a nuclear device, coming as it did exactly one decade after China joined the nuclear club, shattered the belief of the major nuclear supplier states that the nonproliferation regime they had created through the NPT and IAEA safeguards system would deter the further spread of nuclear-explosives capability. India had declared that it had no nuclear military intentions and that its PNE was only an exercise to harness the atom for economic development. But the very thought of a non-weapons state acquiring explosives capability through a civilian nuclear power programme was very disquieting to the major suppliers. The world had no experience of a country pursuing PNE technology without a nuclear military industry; in fact all the five nuclear-weapons states acquired nuclear military capabilities prior to embarking on civilian nuclear power programmes. The concept of PNEs had been accepted and
practised in the United States and elsewhere -- but on the presumption that only the weapons states were privileged to carry out such activity.

India's action was a catalyst to three major developments. (1) Almost overnight, PNE became a dirty concept in the West. India was severely castigated for exploding, what Western writers derisively called, a "peaceful bomb". Within a year, the United States folded up its declining PNE programme, "Plowshare", which had carried out dozens of explosions since 1961 and even toyed with the idea -- as late as 1970 -- of building a new sea-level Panama Canal. (2) A psychological denuclearization campaign to rid the "peaceful atom" of its popular mystique was launched with tacit U.S. official backing. This was at a time when the appeal of harnessing the atom for commercial power generation was high in energy-poor countries of the Third World. A number of American studies were undertaken in the mid-1970s to reassess the attraction of commercial nuclear power; they raised questions about the economics of nuclear energy, radioactive waste disposal, public health and environmental effects, reactor safety, nuclear terrorism and proliferation risks. Plans to build several power reactors and other commercial nuclear facilities in the United States were cancelled in what was seen as a serious attempt to make the United States' domestic nuclear policy consistent with its nonproliferation goals; such a policy approach, however, lasted barely a few years. (3) Simultaneously,
a campaign was launched to severely restrict the sale of nuclear materials, equipment and technology. The United States under President Ford took the lead in clandestinely organizing a club of nuclear exporting countries with an aim to draw up and enforce a new set of stringent export guidelines. The meetings of this so-called London club began in 1975 but the export restrictions were made public only in 1978.

The issue of continuing supplies for Tarapur was caught up in all these far-reaching developments. This study has pointed out that the reason why Tarapur became such an important issue between the United States and India was simply because it was the only major source of leverage left in American hands when India exploded its device. The United States had suspended all bilateral aid to India in the wake of the 1971 Bangladesh war of liberation and the U.S. "tilt" towards Pakistan; American military sales to India had also dried up. India's total dependence on the United States for fuel supply for Tarapur was, however, an important source of vulnerability which American lawmakers and officials could not resist exploiting.

This dependence on outside supplies was rooted in an unusual Indian policy decision in the early 1960s to deviate from the country's three-phase nuclear development plan and order the import of an enriched uranium-fuelled reactor. The policymakers were obviously lured by a highly attractive American credit
package for the construction of India's first commercial nuclear power station: a 40-year loan, at 0.75-per cent interest, with no repayment of principal to be made during the first 10 years. The alluring terms of the package can be seen from the fact that India would still not have paid back about one-third of the $80-million loan when the presumed operating life of Tarapur expires in 1993, along with the life of the Indo-U.S. agreement for nuclear cooperation. That agreement, a product of the U.S. "Atoms-for-Peace" policy initiated by President Eisenhower, provided for India's dependence on American fuel supply in return for Indian acceptance of IAEA safeguards over Tarapur. India had until then resisted the imposition of outside inspections, and for the United States the Tarapur agreement was a crucial test case of a revised policy requiring the acceptance of IAEA safeguards by a country importing American reactors. India's 1956 agreement with the United States for purchase of heavy water predated the establishment of IAEA and provided only a peaceful-use assurance with no U.S. safeguards role. India accepted safeguards over Tarapur only after explicitly linking inspections with the unique fuel arrangement involving the exclusive use and continuing supply of U.S. enriched uranium; in other words, it declared it would tolerate safeguards on the Tarapur reactors only so long as they were operating on American-supplied fuel. Despite such a clear intent having been written into the agreement for cooperation, India was nevertheless vulnerable to outside pressure: it had no indigenous commercial enrichment
facility and no plans to build one, and therefore it was not insulated from foreign pulls and pressures. A U.S. fuel supply cutoff would have throttled Tarapur and eliminated about 10 per cent of the supply to the western electricity grid, serving India's largest industrial region. The dependence on foreign fuel supply entailed not only major political costs but also heavy economic costs -- a fact that the American construction credit package had helped to hide. As this study has shown, India was by 1980 paying about one-tenth of the total construction costs of Tarapur to buy just one year's supply of fuel for Tarapur.

The terms of the agreement of cooperation had never been in dispute for more than one-third of the pact's life. But after the Indian PNE, the issues relating to the agreement burst on the U.S. political scene with a vengeful fury. Tarapur became a fetish symbol of U.S. nonproliferation policy. It was seen as symbolizing the policy's past "mistakes", the "dangers" lurking ahead for it, and the need for immediate policy change. Tarapur triggered ferocious battles inside and outside Congress. Occasionally, they were also showdowns between the executive branch and Congress. Environmental groups and other public-interest organizations became involved, taking recourse to even legal action. A whole new community of American nonproliferation scholars emerged in response to the issues raised by the PNE test and the Tarapur controversy. A number of these scholars made
their careers peddling wares on the Tarapur dispute. A number of senators and congressmen gained national recognition for their legislative fights to block fuel supplies for Tarapur. American newspaper editorial writers ran riot over Tarapur, with each new major twist and turn in the case providing grist for their mill, churning out headlines such as, "More Bombs for India," "India's Nuclear Blackmail," "Rewarding India for Non-Cooperation" and "Fuel for the Nukes of India". Newspapers published in small obscure towns carried editorials opposing fuel shipments for Tarapur, although such papers rarely covered news developments in much of the outside world.

The loud reaction to Indian nuclear developments, particularly the PNE, led to the enactment of the 1978 Nuclear Non-Proliferation Act. The legislation provided a statutory authority to the nuclear export restrictions that had already been implemented on the guidelines of the Nuclear Suppliers Group. But in some important respects, the Act went even further: it made fullscope safeguards a condition for most nuclear exports and sought to unilaterally and retroactively re-write the United States' contractual international obligations. The legislation effectively voided the U.S.-Indian agreement for cooperation. The legislative history of the Act is replete with unsubstantiated allegations about India's abuse of U.S. and Canadian nuclear assistance. This study has shown that analysts who continue to hurl such charges have conveniently overlooked
some facts: (i) there is no evidence that India violated its agreements with the United States and Canada; (ii) the agreements contained no explicit or implicit prohibition of peaceful nuclear explosions; and (iii) the State Department’s conclusions do not support claims that U.S.-sold heavy water was used in producing the plutonium for the PNE. India had a surplus stock of heavy water before the PNE, having leased nine metric tonnes to Belgium, and since the material degrades at a rate of 10 per cent per annum, no American heavy water would have been left in CIRUS by 1974. But such information has rarely been cited in U.S. nonproliferation literature or congressional debates.

The passage of the NNPA raised interesting questions in international law, especially since the Vienna Convention of Treaties says that a “party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.” The U.S. government’s inability to continue fuel supply despite a contractual commitment to sell fuel "as needed" and provide for the "continuous and efficient operation" of Tarapur could have been construed as a unilateral repudiation of the pact. Fuel supply is a pivotal feature of the agreement, and since the U.S. refusal to sell further fuel radically altered the character of the pact, it raised the possibility of India terminating all its obligations under the accord. It is a cardinal principle of international law that a bilateral agreement ceases to be binding when the essential conditions on
which it was built have been changed. India could, therefore, have invoked the doctrine of rebus sic stantibus, contending that the U.S. failure to supply fuel had changed the basic nature of the agreement. The Vienna Convention states that a "material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating" the agreement. However, the weighty international law issues were never put to a real test because three successive Indian government decided to pursue the diplomatic path of settlement, rather than withdraw from contractual obligations and file a lawsuit in the International Court of Justice at The Hague and seek possible reparations.

An important reason for seeking diplomatic rather than legal solutions was the desire to maintain good relations with the United States. But there were other reasons including one that remained hidden from the public view. This study has revealed how the Reagan Administration during 1981-82 employed the threat of sanctions to deter Mrs. Gandhi's government from implementing its declared intent to abrogate Indian obligations under the agreement for cooperation and thereby end safeguards over Tarapur, including the spent fuel. The possible sanctions that were mentioned were the denial of access to U.S. Export-Import Bank and multilateral financial institution credit and the lowering of contributions to the Aid India Consortium through multilateral action. The sanctions approach to proliferation had
evolved since the mid-1970s and became an important element in
the Reagan years when it was viewed as providing teeth to NSG
guidelines. But many of the reasons that compelled India to seek
a political compromise over Tarapur were also the reasons
propelling the Reagan Administration in the same direction. Mrs.
Gandhi’s policy of economic liberalization after she returned to
power had opened new opportunities for American investment in
India and for Indian high-technology purchases in the United
States. Bilateral trade between the two countries had also been
expanding rapidly. For Washington, its military and economic
assistance to Pakistan by waiving congressionally-mandated
nonproliferation conditions for aid had reinforced a policy
imperative to respect India’s role in South Asia and promote
closer political cooperation by resolving the Tarapur dispute.

Efforts to arrange an amicable nuclear divorce, however,
floundered despite three rounds of high-level negotiations in
1981. The Americans first insisted that India retain safeguards
at Tarapur after the mutual disengagement, but when this was
unacceptable to Mrs. Gandhi’s government, they proposed the
retention of the agreement by bringing in a substitute fuel
supplier -- an idea that did not find much favour with New Delhi
initially. Time, however, was on the American side, and India
was concerned that the United States might be deliberately
engaged in delaying tactics to put additional pressure on New
Delhi. Reagan refused to ship the second of the two fuel
shipments narrowly approved by Congress in autumn 1980 during the Carter Administration, and Tarapur's power production level had therefore been cut to conserve fuel. India's acceptance of the idea of a substitute fuel supplier, however, opened the way to a compromise settlement. A deal over Tarapur was clinched in July, 1982, and was formally announced during Mrs. Gandhi's first official visit to Washington in a decade. It provided for bringing in France as the fuel supplier in place of the United States "within the framework" of the existing agreement. It was an unusual "divorce": the withdrawing party selected its substitute replacement, it insisted that "nothing had changed" in terms of the 1963 agreement, and declared that it would continue to exercise its rights even after surrendering its obligations to its surrogate.

The truce over Tarapur was shortlived, however. It soon turned out -- to the embarrassment of the Indian government -- that France had a different idea on inspections: it wanted to emulate the Soviet Union in imposing new stringent safeguards on India. The Soviets, who played a major role with the United States in framing the NPT and establishing the London suppliers' club, used India's crippling shortage of heavy water in 1977 to impose an agreement that provided for "pursuit" and "perpetuity" safeguards over the Rajasthan Atomic Power Station. France insisted that India accept arrangements parallel to those with the Soviets. But for once India stood firm: either France
provides fuel within the existing safeguards regime at Tarapur or India terminates all its obligations under the agreement for cooperation. Political expediency, however, again helped resolve matters. Eager to finalize the Mirage 2000 deal and win other lucrative arms and industrial contracts with India, France backed down.

The Tarapur deal was criticized by a number of analysts in both India and the United States as a policy climbdown or a surrender to the dictates of the other side. It can, however, be argued that despite its obvious inadequacies and structural deficiencies, the compromise settlement has served the two countries well. India managed to receive fuel supplies for Tarapur without accepting any new conditions. The deal also eliminated the daunting challenge of adopting the indigenous mixed-oxide fuel technology from the laboratory to the reactor. For the United States, the compromise provided a way out of its statutory inability to continue fuel supply to Tarapur without seeing the agreement abrogated by India and the Tarapur safeguards lifted.

The Tarapur dispute, however, is far from over. As this study has shown, it is likely to rear its head once again in 1993. Several issues were left unresolved in the deal over Tarapur. One such issue, the supply of replacement parts for Tarapur, has had an adverse impact on the functioning of the
station. The issue of approving long-pending applications for export of some essential components for Tarapur triggered a political storm in Congress in 1983 -- months after the Tarapur deal had been formalized. The storm forced India to request West Germany to provide some of the parts by cannibalizing one of its shutdown reactors. And as late as 1990, the United States denied Tarapur an important safety device, a rod worth minimizer (RWM) used to guide and monitor the proper sequences for the withdrawal and insertion of control rods in the reactor. This denial occurred despite a U.S. policy decision in the aftermath of the 1986 Chernobyl accident to extend reactor safety-related assistance and despite a warning by the Department of Energy that the United States "could be vulnerable to serious international criticism were an accident to occur" at Tarapur. It is obvious that India has had to pay a high price for its dependence on outside nuclear supplies.

The official U.S. position is that the Tarapur safeguards will not end with the expiry of the agreement for cooperation in October, 1993. And that India will not acquire an automatic right to reprocess the spent fuel, accumulating for more than two decades at the station. In examining the legal, technical and political issues of the deal, this study has explained that the American position is untenable. The infirmity of the U.S. legal position on the matter has been implicitly acknowledged by Washington by providing no support to back up its claims. India
is on firm ground, and with the dependence on outside supplies scheduled to end in a couple of years, it is placed in a relatively snug position after having been subjected to unprecedented international pulls and pressures. But there could still be dangers lurking around for India. The United States, despite its weak legal position on the case, can still play its favourite "sanctions" card.

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