Chapter 4

THE DISPUTE COMES TO A BOIL

THE RETURN OF MRS. GANDHI:

The first NNPA deadline on imposition of fullscope safeguards was to expire in September, 1979, and the second deadline on the renegotiation and rewriting of agreements of cooperation was to end in March, 1980. But as the deadlines approached, it became
increasingly clear that the Carter Administration had failed to budge India from its stand. At no time did the Administration succeed in making India even "discuss substantive renegotiation" of the 1963 agreement.\(^1\) Instead, Carter and his senior Administration officials received lectures from Desai on the United States' moral obligation to work towards nuclear disarmament. That lecturing probably did have some little effect, though not in concrete political terms. Carter confessed: "It's a little bit difficult for me to talk to Prime Minister Desai, who has publicly sworn that their government will never again turn to a nuclear explosive and never turn to nuclear weapons, when we ourselves have not yet restrained the spread of nuclear weapons."\(^2\)

The fall of the Desai government, coupled with the surfacing of evidence that Pakistan had clandestinely embarked on a weapons-related enrichment programme,\(^3\) resulted in a hardening of the Indian attitude on nuclear issues. Charan Singh, who became the prime minister in July, 1979, declared that India would

---


\(^3\) The Pakistani uranium enrichment activity was first revealed by U.S. government officials. (Paul F. Power, "The Indo-American Nuclear Controversy," Asian Survey, Vol. XIX, No. 6 [June, 1979], p. 594.)
reconsider its policy renouncing nuclear weapons "if Pakistan continues in its efforts to make the bomb."4 Charan Singh also launched a frontal attack on the nonproliferation regime. "Nonproliferation is a much-abused word. In the name of nonproliferation, efforts continue to be made to put obstacles in the way of developing countries who are trying to develop indigenous facilities for the peaceful utilization of atomic energy,"5 he said. "In the name of nonproliferation, smaller nations are forced to accept restraints and restrictions, none of which the nuclear-weapon powers are prepared to accept for themselves."6

Despite the approaching NNPA deadlines, the Carter Administration intentionally held up several applications for licensing fuel and spare parts to Tarapur7 in view of what it saw

---


6 Ibid.

7 The Administration had recommended to the NRC in March, 1979, the issuance of one fuel licence, but when the Commission sought some clarifications in August, 1979, the State Department held up the response until May, 1980. (U.S. Nuclear Regulatory Commission, Memorandum and Order of May 16, 1980, signed by Samuel J. Chilk, Secretary to the Commission, in the matter of Edlow International Company.)
as uncertainties in the political situation and policy in India. Instead, it concentrated its diplomatic efforts to persuade India to agree in advance to maintain safeguards over Tarapur and the spent fuel even if the United States were to terminate the fuel-supply arrangement in March, 1990. The American theme was that if India and the United States were unable to resolve the dispute, they should "agree to disagree, in good faith" and without "recrimination or lasting damage" to larger mutual interests.

The return to power of Indira Gandhi in early 1980 did little to change American or Indian positions on Tarapur, but it revived concerns in the Administration over the future course of the Indian nuclear programme and fuelled the India-"spanking" sentiment in Congress. Mrs. Gandhi's return, however, helped to underline the continuity and consensus in Indian policy. Three Indian governments in less than one year had taken the same stand: The sanctity of a binding international agreement would be meaningless if one party, on the basis of a new domestic law, were to demand rewriting of its terms on pain of abrogation. And that if the United States unilaterally repudiated its commitments, India would be freed from its reciprocal obligations.

---

8 The executive branch is required by law to determine if an export licence application meets the export criteria before the NRC can conduct an independent review of that determination.

on safeguards and spent fuel under the agreement. Mrs. Gandhi's government, undeterred by the reaction it might trigger in the United States, went one step further: It reversed the no-nuclear-explosion policy of the Desai government and announced that India "will not hesitate from carrying out nuclear explosions ... in the national interest." It also sent a clear warning to the United States that India would not tolerate continuing fuel shipment delays. According to a Senate summary of a secret cable received from New Delhi, "India stated that it would continue to abide by its obligations under the cooperation agreement so long as exports for Tarapur are received on a timely basis, but that India could not accept continued delay and uncertainty."

The stage for a fierce confrontation between Congress and the executive branch was set in mid-1980 when the Carter Administration, overruling a decision of the NRC, ordered the approval of seven Tarapur licences, two for fuel exports and five for replacement parts. The NRC had voted unanimously in May, 1980, to reject the licence applications on the ground that they


did not meet the NNPA export conditions. The NRC's action did not come as a surprise against the background of the Commission's earlier rulings. The executive branch's go-ahead to the NRC on licence issuance came only after the NNPA deadlines had expired. Although the Administration cited "bureaucratic delays", there were obvious political reasons as to why the licence applications had been held up for so long. The Administration had tried hard for several months to make Mrs. Gandhi renounce the testing of nuclear devices, using the pending licence applications as a bargaining chip, but had failed. Although frustrated, the Administration decided nevertheless to recommend licence issuance mainly because of foreign policy considerations. The Administration concluded that it could not afford a "political breakdown" in relations with India at a time of rising tensions in the Persian Gulf and the Soviet military intervention in Afghanistan.

The Administration's recommendation to the NRC hinged on the

---

13 U.S. Nuclear Regulatory Commission, Memorandum and Order of May 16, 1980, signed by Samuel J. Chilk, Secretary to the Commission, in the matter of Edlow International Company (Agent for the Government of India on Application to Export Special Nuclear Materials and Components), in Appendix N.

14 One fuel export licence application had been filed in September, 1978, and the other in August, 1979.


16 Ibid. The same rationale had also been used in offering military aid to Pakistan despite evidence of a weapons programme there.
contention that the licence applications were exempt from the provisions of the NNPA because they were filed within the 18-month grace period and, as per the refuelling schedule of Tarapur, both the proposed fuel shipments had been planned to occur before the NNPA's renegotiation deadline of March 10, 1980. The Administration also argued that there was no reason to believe that the applications had been filed early in order to circumvent the NNPA's provisions. The Commission, however, ruled that the Administration's view was "inconsistent with congressional intent" and the cutoff date for fullscope safeguards was a hard and fast guillotine-type deadline. Commissioner Gilinsky, referring to the State Department's memorandum that if the NRC did not act favourably the White House would authorize the export by executive order, warned that if the fuel shipments were approved the law would be "gravely impaired" and other countries would be quick to seek similar exemptions. Reiterating his arguments from previous rulings, he noted: "India has made it clear that if there is any halt, or perhaps even lapse, in the supply of fuel for the Tarapur reactors, it will consider itself free of the contractual obligations of the Agreement for Cooperation and at liberty to reprocess as it sees fit the 200 tonnes of [spent] fuel it already holds hostage."  

17 U.S. Senate, Tarapur Nuclear Fuel Export, pp. 16-33.  
18 Nuclear Regulatory Commission, Memorandum and Order of May 16, 1980.  
[Emphasis added.] Gilinsky also cited a State Department estimate that India could possibly extract more than one tonne of plutonium from the irradiated fuel.\(^{20}\) NRC Chairman Ahearne, in his separate opinion, cited Mrs. Gandhi's return to power and her assertion that India will continue "peaceful nuclear experiments."\(^{21}\)

Carter issued an executive order a month later approving the licenses.\(^{22}\) In an accompanying message to Congress,\(^{23}\) he said his action was based on three broad grounds:

1. **Foreign policy.** Citing the Soviet intervention in Afghanistan and the crisis in Iran and the need to contain "Soviet expansionism", the President said: "Approval of these exports will help strengthen ties with a key South Asian democracy at a time when it is particularly important for us to do so."\(^{24}\)
2. **Legal.** The licence applications fell within the

\(^{20}\) Letter of May 7, 1980, from Deputy Assistant Secretary of State Louis V. Nosenzo to James R. Shea, Director of International Programs, U.S. Nuclear Regulatory Commission. Copy of the letter obtained by the author.

\(^{21}\) Nuclear Regulatory Commission, Memorandum and Order of May 16, 1980.

\(^{22}\) The order came despite a last-minute letter signed by 62 members of the House of Representatives urging Carter not to "capitulate" to Indian demands.


\(^{24}\) Ibid.
statutory grace period before the provision requiring fullscope safeguards as a condition of export came into effect. They had been submitted in accordance with a fuel supply schedule drawn up by the United States and India and had been held up merely because of bureaucratic delays. "Thus, my authorization of these exports does not constitute a precedent for an exception to the fullscope safeguards criterion." 25

(3) Nonproliferation. The exports will avoid the risk of an Indian claim that the United States had broken an agreement and thereby relieve itself of the contractual obligation not to recycle the spent fuel at Tarapur without a joint determination. The exports will ensure that safeguards remain in force on the Tarapur reactors and the burned fuel. 26

SHOWDOWN IN CONGRESS:

Carter’s approval of the exports sparked a national furore. Resolutions to disapprove the sales were almost immediately introduced in the Senate and the Houses. 27 The fight in the

25 Ibid., p. 66.

26 Ibid.

27 In anticipation of the executive order, strong opposition to the exports had been building up in Congress since the NRC ruling. (Steve Wynkoop, "State Department Less Confident of Carter
House was led by Edward Markey and Jonathan Bingham. Markey argued that "contractual legalisms" have to be balanced against the consequences for U.S. nonproliferation policy of supplying fuel to India, a country which has refused to accept "minimum international safeguards." In the Senate, the campaign was spearheaded by Senate John Glenn, an architect of the NNPA, who said he was reluctant to oppose the President, "especially in an election year, but I'm not going to be part of a charade." Glenn declared: "In a stunning display of deception, the Administration refuses to acknowledge the adverse impact the uranium sale would have on our nonproliferation objectives. Instead, it chooses to focus on India's claim that halting the shipments would place the United States in breach of" the 1963 agreement. Alan Cranston, the Senate's assistant Democratic leader, also joined in the attack on the Administration's policy towards India. "We cannot in good conscience support the nuclear programme of a country that has diverted -- and will not rule out -- the approval of Tarapur Exports," Nucleonics Week, June 5, 1980, pp. 1-2.

28 NuclearFuel, September 1, 1980.


30 See the "Dear Colleague" letter sent by Glenn and five other senators to members of the Senate, in Appendix M.


the possibility of further diverting -- peaceful nuclear materials into a nuclear bomb programme," Cranston declared.

The reaction in the American press was equally strong. The issue of exports generated 136 editorials, many in small-town newspapers which usually never bothered about foreign policy issues and rarely published any news on India (or much of the world). Some of the editorial headlines reflected the passions that had been aroused: "Bombs for Indira," "No Uranium to India," "India Can't Be Trusted With Uranium," "When Will We Ever Learn?", "A Dangerous Deal," "Cozying Up to India," "Nuclear Clubmanship," "Another Turn-Around in Wrong Direction," "Giving in to India," "How Many Indian Bombs?"

---

45 Los Angeles Times, June 22, 1980.
47 Oklahoman (Oklahoma City), June 23, 1980.
48 Milwaukee Sentinel (Wisconsin), June 27, 1980.
49 Desert News (Salt Lake City, Utah), June 23, 1980.
50 Youngstown Vindicator (Ohio), June 25, 1980.
52 Wichita Falls Times (Texas), June 27, 1980.
53 Miami Herald, August 12, 1980.
57 St. Louis Post-Dispatch (Missouri), September 12, 1980.
58 Los Angeles Times, September 12, 1980.
60 Milwaukee Journal (Wisconsin), July 5, 1980.
61 Dayton News (Ohio), September 12, 1980.
Nearsightedness,"\(^62\) and "Fuel for the Nukes of India."\(^63\)

The editorials were a barometer of American public opinion and reflected the unpopularity of Carter's move to ship fuel to India despite the NNPA. The editorial outbursts in such a large number of newspapers contrasted sharply with the subdued way the American press reacted to the first decision of the President in April, 1978, to overrule the NRC and ship fuel to Tarapur. Then, only 16 newspapers carried editorials on the subject,\(^64\) with the editorial writers almost evenly divided along three differing sets of opinions.

**TABLE I**

<table>
<thead>
<tr>
<th></th>
<th>SUPPORTING FUEL EXPORT</th>
<th>OPPOSING FUEL EXPORT</th>
<th>TAKING NO POSITION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1978</td>
<td>5</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>1980</td>
<td>5</td>
<td>128</td>
<td>3</td>
</tr>
</tbody>
</table>

It was clear from the beginning that the House of


\(^63\) *Kansas City Times*, September 15, 1980.

\(^64\) This figure is based on the author's own research.
Representatives was overwhelmingly opposed to the shipments; 25 of the 33 House Foreign Relations Committee members had sponsored resolutions of disapproval. Carter and other administration leaders, therefore, directed all their efforts towards the Senate, where despite the vehement opposition of several influential senators there was some hope that the exports might not be barred. In an attempt to ease opposition and win the support of a number of wavering senators, Carter and his secretary of state, Edmund Muskie, offered a compromise:

(i) The second of the two fuel shipments of 19 tonnes each would be held up for about a year until the Administration determined it was urgently needed by the Hyderabad fuel fabrication facility to make fuel assemblies for Tarapur -- in order words, the second shipment was to be kept back to be used as a bargaining chip;

(ii) The Administration would consult with Congress, well before shipping the second fuel export, on the progress made in persuading India to accept broader nonproliferation controls and

---


68 Some influential senators, however, thought that the "Tarapur fuel is a bargaining chip of dubious value." (U.S. Senate, Tarapur Nuclear Fuel Export, p. 14.)
on the advisability of continuing the nuclear relationship with New Delhi;

(iii) If new evidence surfaced at any time that India was preparing to test another nuclear device, the Administration would block whatever exports were in the pipeline; and

(iv) The Administration would not use congressional approval of the proposed exports as a precedent for considering future nuclear export applications, and future licences for Tarapur would clearly have to meet the fullscope safeguards requirement of the law.

As had been expected, the exports were easily disapproved by the House Foreign Affairs Committee. But, in a somewhat surprise move the same day, the Senate Foreign Relations Committee gave President Carter a painful foreign policy slap by voting 8-7 to bar the sales despite the compromise package and last-minute appeals by Muskie. Glenn, calling India the "world's first and most flagrant nuclear violator," said: "It's time we stopped being Uncle Softie and faced up to some of our responsibilities ... in foreign policy around the world."69 The Administration's defeat followed a last-minute switch in the stand of senators Claiborne Pell and S.I. Hayakawa and indications that Mrs. Gandhi had alienated many members of Congress by granting diplomatic recognition to the Vietnamese-backed regime in Kampuchea and the

Palestine Liberation Organization.\textsuperscript{70}

The committee's action set the stage for a showdown on the floor of the Senate, triggering an unusually intensive lobbying campaign by the Administration. Carter and Muskie personally lobbied senators, and Glenn said that every senator had received a telephone call from the President from aboard Air Force One as Carter campaigned for re-election in the West. "They're pulling out all the stops on this one," Glenn complained.\textsuperscript{71} Secretary of Defence Harold Brown was among the other Cabinet members who lobbied for the sales to go ahead,\textsuperscript{72} "working virtually full-time on the issue during Senate deliberations."\textsuperscript{73} "Less exalted forms of persuasion were also employed."\textsuperscript{74} The full vote in the Senate had been scheduled after the House, by a massive three-to-one margin, rejected the exports. The Tarapur dispute had become a thorn in Carter's flesh, although not directly hurting his re-election bid, and his aides were keen to put a tight lid on the public controversy by pulling off a win in the Senate. So


\textsuperscript{72} Tolchin, "Atom Fuel for India."


when the Senate narrowly backed Carter's decision in a 48 to 46 vote\textsuperscript{75} after the unprecedented presidential lobbying, it came as a great relief to the President's camp.\textsuperscript{76}

An important consideration in the Senate vote was the issue of American fuel supply both under the 1963 agreement as well as the NNPA. After a spirited debate on the applicability of the fullscope safeguards deadline, the main point established was that the language of the "Act and the intent of Congress was ambiguous and perhaps internally inconsistent."\textsuperscript{77} Some senators also were influenced by arguments that failure to ship the fuel might constitute a material breach of the 1963 agreement,\textsuperscript{78} lead to an Indian removal of all safeguards over Tarapur, and act as a self-inflicted wound for the cause of nonproliferation. As Senator Daniel P. Moynihan cautioned: "Nations do not grant to others the right to unilaterally redefine the terms of international agreements."\textsuperscript{79} Frank Church, chairman of the Senate Foreign Relations Committee, warned a fuel cutoff would considerably increase the clout in India of "the jingoists, the


\textsuperscript{76} The shipments would have been blocked only if both the House and the Senate had passed resolutions of disapproval.

\textsuperscript{77} Donnelly and Cronin, "Congress and Nonproliferation Policy," p. 100.

\textsuperscript{78} Ibid., p. 101.

\textsuperscript{79} \textit{Congressional Record}, Senate (September 23, 1980), p. S13224.
pro-Soviets [and] the hawks who want the bomb.\textsuperscript{80} But as previous congressional debates had shown, considerations other than those related to nonproliferation tended to dominate the Senate deliberations. "In the end, the foreign policy issue seemed to be the most telling one."\textsuperscript{81} Among the issues that the senators raised were\textsuperscript{82}: India's agreement with the Soviet Union to buy $1.6-billion worth of arms "on terms extremely favourable to India;" signing of a major trade accord with Iran and "undercutting the U.S. embargo on exports to Iran;" recognition of the Heng Samrin regime in Kampuchea; placement in orbit of a civilian satellite "using a rocket whose guidance system can be adapted to an IRBM or ICBM;" and "unbalanced policy of accommodation with the Soviet Union" without giving adequate weightage to the volume of U.S. economic assistance.\textsuperscript{83}

The debate was an occasion for attacks on India and few senators "expressed any admiration for Indian foreign policy and even those who showed the most sympathy for its strategic position roundly condemned its 1974 decision to explode a nuclear

\textsuperscript{80} Congressional Record, Senate (September 24, 1980), p. S13257.

\textsuperscript{81} Donnelly and Cronin, "Congress and Nonproliferation Policy," p. 103.

\textsuperscript{82} U.S. Senate, Tarapur Nuclear Fuel Exports, pp. 14 and 27.

\textsuperscript{83} Ibid.
device." In fact, some senators displayed "strong hostility towards India's foreign policy" and made that the "main basis" for their opposition to the shipments. This only helped to reinforce the argument of the President's backers that "anti-India sentiments" in Congress had fuelled the opposition to the exports. However, the Iran-Iraq war and the "Senate's reluctance during a time of crisis" to hand the President a major foreign policy defeat helped Carter to prevail in the end. As one senator explained that with the Soviet intervention in Afghanistan, "the tattered political fabric of Iran," the Iran-Iraq war, and "some instability in the Pakistani government, we need to insure that the largest democracy in the world, India, is not alienated to such an extent" that the Soviet Union could gain added leverage. Another senator put it more bluntly: "Do we want to dim the lights of Bombay and let the Soviets turn them back on?"

---

84 Donnelly and Cronin, "Congress and Nonproliferation Policy," p. 103.
85 Ibid., p. 102.
88 Congressional Record, Senate (September 24, 1980), p. S13259.
Carter's razor-thin win in Congress had in effect prevented a public affront being hurled at India. It also helped to avoid an acrimonious and public disengagement of nuclear cooperation with New Delhi. But the "episode did little to improve either the U.S. image as a reliable supplier or its overall nonproliferation posture."\textsuperscript{90} It only helped to reinforce arguments that the U.S. nonproliferation policy towards South Asia was "arrogant and offensive, applying double standards, seeking to take but not give, and threatening illegal action," such as a fuel supply cutoff.\textsuperscript{91} The congressional debates gave "undue prominence to Tarapur's role in India's expanding nuclear programme" and "exaggerated the amount of leverage available to the U.S. as a supplier of enriched uranium."\textsuperscript{92}

For India, the policy implications of the executive branch-congressional showdown were clear: no more fuel shipments for Tarapur could be licensed.\textsuperscript{93} Not only had the Carter Administration promised not to use the 1980 approvals as a


\textsuperscript{92} Christopher Van Hollen, "Nuclear Relations with India: Time For a New Beginning?", \textit{Christian Science Monitor}, March 31, 1981.

\textsuperscript{93} Nonetheless, India filed another application for a 19-tonne fuel shipment the day after the Senate vote. (Marsha M. McGraw, "The Tarapur Sale," \textit{Arms Control Today}, November 1980, p. 9.)
precedent for sanctioning future exports, Ronald Reagan's Republican Party platform had called for a fuel cutoff to India. Policymakers in India, therefore, embarked on the two options that the country had been left with:

(i) **Develop an indigenous substitute fuel.** The Department of Atomic Energy was asked to redouble its efforts to develop a substitute oxide fuel consisting of reprocessed plutonium and natural uranium. And Raja Ramanna, who had been shunted to the defence ministry by the Desai government, was sent back to BARC as Director with a brief to devise a crash programme to manufacture the mixed-oxide fuel. An important step in that direction was a new subsidiary arrangement that India had entered into with the IAEA that in effect opened up the 100-tonne per year Tarapur reprocessing plant; the facility had been lying idle since 1976 because of U.S. refusal to participate in a joint

94 This point was reiterated by the White House after the Senate vote, saying there would be no more fuel sales unless India accepted new safeguards. (International Herald-Tribune, "U.S. Cautions India on Atom Safeguards," September 26, 1980.)


determination on its safeguardability. Although the issue of Indian reprocessing of the burned fuel from Tarapur reactors had not been settled, India was free to obtain plutonium for its indigenous mixed-oxide fuel by reprocessing irradiated fuel from another safeguarded nuclear power plant -- Rajasthan Atomic Power Station. Such reprocessing of RAPS fuel did indeed begin.

(ii) Seek another foreign fuel supplier. Talks were held with the Soviet Union, which had sold heavy water for the second unit of RAPS after Canada broke off nuclear relations with India. During his visit to India in later 1980, Soviet President Leonid Brezhnev

---

98 Under the arrangement, the United States transferred its safeguarding role under the 1971 trilateral safeguards agreement on Tarapur to a bilateral safeguards accord between the IAEA and India. This was part of a U.S. policy decision to place American safeguarding roles under international control. As part of the new arrangement, the IAEA examined the design and other technical details of the Tarapur reprocessing facility and concluded that the plant could be effectively safeguarded. In other words, India was given the go-ahead to begin operating the plant.

99 While India claimed the new safeguards arrangement with the IAEA meant that the United States had relinquished its right to "joint determination" in favour of the Agency, Washington maintained that it retained such a right under the 1963 agreement. (Nucleonics Week, December 18, 1980.)

promised to take over America's supply arrangements if Washington imposed a fuel cutoff.

***

101 The Soviets had first offered to sell uranium fuel for Tarapur during the March, 1979, visit to India of the late Soviet premier, Kosygin, but "in view of the existing agreement with the United States, the matter was not pursued" by India. (Statement of Minister of State for Science and Technology C.P.N. Singh in the Lok Sabha, August 19, 1981 [New Delhi: Press Information Bureau].)

102 Marshall and Cannon, "India Claims Unilateral Right," p. 2. Such an alternative fuel supply arrangement would have had to be under safeguards, too, especially since the Soviet Union has always pursued a stricter nonproliferation policy than even the United States, insisting on the return of spent fuel from recipient countries. (See, for example, Richard Burt, "Russia Shares Dilemma Over Nuclear Spread," New York Times, July 20, 1980.) But unlike the United States, the Soviet Union had no requirement for fullscope safeguards.