



Reaching Critical Will

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US-India Deal

Introduction

On 18 July 2005, US President Bush and Indian Prime Minister Manmohan Singh reached agreement on a plan for civilian nuclear energy and outer space cooperation. The deal, if approved by the US Congress, Indian Parliament, and the Nuclear Suppliers Group, would lift the US moratorium on nuclear trade with India, provide US assistance to India's civilian nuclear energy program, and facilitate opportunities for bilateral space activities.

Nuclear cooperation

Under the proposed deal, India would separate its military and civilian nuclear reactors, and place many—but not all—of its civilian nuclear reactors under International Atomic Energy Agency (IAEA) safeguards. Military facilities, and stockpiles of nuclear fuel that India has produced up to now, will not be subject to inspections or safeguards. Meanwhile, the US will be allowed to build nuclear reactors in India, and provide India with nuclear fuel for its civilian reactors.

In December 2006, US Congress approved legislation changing US law to allow US exports of civilian nuclear fuel and technology to India for the first time in 30 years. The approval was granted, however, with the conditions that the US and India conclude a formal nuclear cooperation agreement, that India and the IAEA conclude a nuclear safeguards agreement, and that the deal is approved by the Nuclear Suppliers Group. In July 2007, an operating agreement adopted by Bush and Singh, known as the 123 agreement, sought allowances for India to reprocess spent nuclear fuel under IAEA safeguards. Under this agreement, the US would also support the creation of an “Indian strategic fuel reserve” and allow India access to the international fuel market. These measures still have to be approved by Congress.

Space cooperation

The deal would create closer ties between the US and India in space exploration, satellite navigation and launch, and in the commercial space arena through mechanisms such as the US-India Working Group on Civil Space Cooperation. For example, in May 2006, the US and India signed an agreement to fly two US instruments on India's unmanned mission to orbit the moon, scheduled for 2008.

Problem #1: The deal increases India's ability to produce nuclear weapons

The supply of US nuclear fuel to India, under the deal as it is currently structured, **would allow India to divert more of its own uranium resources to significantly expand production of plutonium for nuclear weapons.** The agreement does not call for any additional measures that would constrain India's fissile material¹ or nuclear weapon production, and does not call upon India to sign or ratify the Comprehensive Test Ban Treaty, which would prohibit India from resuming nuclear weapon testing.

Under the current proposal, India has pledged only to accept safeguards over civilian nuclear facilities of its choosing. This could allow India to exclude nuclear facilities and fuel for nuclear weapons from international safeguards. In addition, the safeguards would only apply to facilities and material manufactured once the deal is accepted—they will not cover the fissile material produced by India

¹ While the deal does require India to support a Fissile Material Cut-off Treaty, negotiations at the Conference on Disarmament on such a treaty have been blocked for over a decade.

since its nuclear programme began in 1948. Furthermore, if India has access to the international fuel market (as it would through the 123 agreement), it would be protected against the US revoking its supply of nuclear fuel if India resumes nuclear weapon testing.

Problem #2: The deal could lead to missile proliferation

The space cooperation aspect of the deal could result in ***transfers of technology and expertise relevant to nuclear missile development***. For example, India will use its rocket Chandrayaan-1, which has previously been used to launch satellites into orbit, for its unmanned mission to the moon. Experts have long warned that the same rocket could also be armed with a nuclear warhead and turned into an intercontinental ballistic missile (ICBM). The methods for integrating payloads into space vehicles, which US engineers will assist Indian engineers in doing for the joint lunar mission, are also relevant to integrating multiple nuclear warheads into ICBMs. US assistance on Indian civilian space exploration ventures could help India develop the know-how for further developing its ballistic missile capabilities.

Problem #3: The deal could spark an arms race in South Asia

In response to the proposed US-India deal, Pakistan's National Command Authority stated that its "credible minimum deterrence requirements" will continue to be met, indicating the possibility of an expansion of fissile materials stockpiles in Pakistan. Both India and Pakistan's stocks, however, already far exceed the fissile material requirements for a "minimal" nuclear arsenal. China's response will likely be similar if the deal goes through.

The space cooperation element of the deal provides India with the opportunity to increase its missile technology expertise. This in turn could lead to an increase in quantity and quality of its delivery systems, to which its neighbours would surely respond.

Problem #4: The deal violates international and domestic law

Non-Proliferation Treaty

The deal violates Article I of the nuclear Non-Proliferation Treaty (NPT), which states that "Each nuclear-weapon State Party to the Treaty undertakes not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly; and 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."

The deal also violates other positions agreed upon by consensus by NPT members, including a 1995 agreement on principles and objectives for nuclear non-proliferation and disarmament, which states, "New supply arrangements for the transfer of source or special fissionable material or equipment or material especially designed or prepared for the processing, use or production of special fissionable material to non-nuclear-weapon States should require, *as a necessary precondition*, acceptance of the Agency's full-scope safeguards and internationally legally binding commitments not to acquire nuclear weapons or other nuclear explosive devices."

The deal flagrantly ignores the thirteen practical steps for nuclear disarmament from the 2000 NPT Review Conference, and the principle of universality agreed to by all NPT member states. The deal provides further examples to non-nuclear weapon states that the US does not intend to honour its 1995 and 2000 commitments, compromising future progress on both non-proliferation and disarmament objectives and threatening the integrity of the core bargain on which the treaty is based.

Security Council

It also contravenes United Nations Security Council Resolution 1172 of 1998, which calls for India and Pakistan to “immediately to stop their nuclear weapon development programs... and any further production of fissile material for nuclear weapons,” and encourages all States to prevent the export of equipment, materials or technology that could *in any way* assist programmes in India or Pakistan for nuclear weapons or for ballistic missiles capable of delivering such weapons, and welcomes national policies adopted and declared in this respect.”

Intergovernmental organizations

The deal further undermines the Missile Technology Control Regime (MTCR), of which the US is a signatory. The goal of the MTCR is to prevent the proliferation of unmanned delivery systems capable of carrying weapons of mass destruction. It is “not designed to impede national space programs or international cooperation in such programs as long as such programs could not contribute to delivery systems for weapons of mass destruction,” a principle which the US-India deal potentially violates.

The proposed arrangement could also trigger a significant erosion of the guidelines of the 45-member Nuclear Suppliers Group, which offer important barriers against the transfer of nuclear material, equipment, and technologies for weapons purposes.

US domestic law

The deal would require significant changes to US non-proliferation laws and long-standing non-proliferation policies, including the Atomic Energy Act of 1954, as amended by the Nonproliferation Act of 1978, which bars civilian nuclear cooperation with non-nuclear-weapon states as defined by the NPT that do not allow full-scope IAEA safeguards (which includes India).

Problem #5: The deal normalizes India's status as a nuclear weapon state

The deal effectively normalizes India's status as a *de facto* nuclear weapon state outside the NPT, elevating it to the level of a nuclear weapon state under the Treaty but not bound by any of its obligations. It enables India to participate in the international community's system of nuclear activities without conforming to the systems norms, standards, or laws, including those regarding disarmament and non-proliferation.

Conclusion

The deal thus represents a step *backwards* for non-proliferation and disarmament: it allows for an increase in nuclear weapons, fissile materials, and delivery systems, and the resumption of nuclear testing. It undermines the NPT at a time when the regime is facing other crises and needs support to retain its credibility and functionality. The deal indicates the intention of US and India to develop a stronger strategic relationship, which is detrimental to international security because it is being established in an environment of mistrust and geopolitical tensions, and is in clear violation of the spirit and letter of international law and intergovernmental organizations.