

# The Wages of the Nuclear Deal

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The quiet signing of the reprocessing agreement on 30 July has completed the last remaining bilateral element of the nuclear deal with the US. The multilateral elements are not only complete, but also being implemented. For example, India already has brought 16 of its nuclear facilities under permanent international inspection—a number scheduled to progressively go up to cover two-thirds of all Indian nuclear installations within four years. In addition, India is set to shut down, by this year-end, its main military-production workhorse, the CIRUS reactor—the biggest cumulative contributor of weapons-grade plutonium to the country's stockpile.

Yet, despite the deal being in force, India continues to battle major technology controls. China has greater access than India does to US high technology, and this is unlikely to change after the ongoing Obama administration review of US export controls. Because the review is being driven by the barely disguised business goal to increase US share of the Chinese market so as to reduce the yawning trade deficit, the China-India access gap can only widen in Beijing's favour.

What tangible benefits, strategic or otherwise, has the deal yielded for India? Let's face it: The Americans were more honest than the Indians about the deal. The final deal has turned out to be in line with what the US Congress mandated, not what the Indian Parliament had repeatedly been assured by Prime Minister Manmohan Singh. In fact, the deal conforms fully to the provisions of the 2006 US Hyde Act. The Congressional ratification legislation—the 2008 Nuclear Cooperation Approval and Non-Proliferation Enhancement Act (NCANEA)—actually tightened some of the Hyde Act provisions. The Indian side had publicly

claimed that the Hyde Act would not determine the final deal, with some in authority even seeking to creatively differentiate between “operative” and “non-binding” parts of that Act. It had further been claimed that the 123 Agreement, once ratified, would become the “last expression of the sovereign will” and override all other laws including national laws. These too-clever-by-half arguments have fallen flat on their face. Nothing can be more embarrassing to the Indian side than the fact that the bilateral accords it negotiated and signed—the 123 Agreement and the reprocessing pact—match up to US congressional stipulations.

Worse still, the accords have been made subservient to US law. Take the 123 Agreement, which neither contains the international-law principle (found in the US-China accord) that neither party will invoke its internal law as justification for a failure to honour the accord, nor provides (found in the US-Japan or US-South Korea accord) for an arbitral tribunal to settle any dispute. As the NCANEA makes explicit, “Nothing in the (123) Agreement shall be construed to supersede the legal requirements of the Henry J. Hyde Act”. As a result, the final deal ends up giving the US specific rights—enforceable through the pain of unilateral suspension or termination of cooperation—while saddling India with obligations. The NCANEA actually records that the promise of uninterrupted fuel supply is a “political”, not legal, commitment. It cannot be anything else because the 123 Agreement itself confers an open-ended right on the US to suspend fuel supplies straight away while issuing a one-year termination notice. In fact, as a corollary to that right, the US has retained the prerogative in the reprocessing accord to unilaterally suspend its reprocessing consent to India.

What stands out about the final deal are the four “Nos” for India: No binding fuel-supply guarantee to avert a Tarapur-style fuel cut-off; no irrevocable reprocessing consent; no right to withdraw from its obligations; and no right to conduct a nuclear test ever again. The no-test obligation constitutes the first instance in the nuclear age where one nuclear-weapons power has used a civilian cooperation deal to impose such a prohibition on another nuclear-weapons state. The CIRUS’ impending dismantlement is another weapons-related obligation thrust on India.

No country in history has struggled longer to build a minimal deterrent or paid heavier international costs for its nuclear programme than India. Despite Asia’s oldest nuclear programme, India now has the world’s smallest nuclear arsenal—smaller than even Pakistan’s. More significant is that India still does not have a single Beijing-reachable nuclear missile in its inventory or production line. It is against that background that the nuclear deal marks a turning point.

The lasting legacy of this deal, in which the Indian government invested considerable time and diplomatic resources, will be to ensure that India stays enmeshed in its struggle to build regionally confined nuclear-weapons capability while becoming more reliant than ever on conventional arms imports to meet its basic defence needs. If ever there was hope of India becoming a full-fledged nuclear-weapons state such as China, that prospect has passed.

A closer relationship with the US is in India's own interest. But it could have been built without a deal that carries serious, long-term costs. Indeed, such are the wages of the deal that India has refrained from speaking up on regional-security issues that directly impinge on its interests, including the continuing transfer of offensive US weapon systems to Pakistan, now the largest recipient of the US economic and military aid in the world. Islamabad, in fact, has managed to cut its own deal to buy two China-origin reactors without the burden of conditions cast on India.

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