

Defend India's Interests: (5)

A Brief Overview of "123" Agreement

The Nuclear Deal started with the Bush-Manmohan Singh joint statement of July 18, 2005. For the US, the nuclear deal was the bait with which to get India into the US strategic net. For the Manmohan Singh Government, the nuclear deal was the cover under which India could enter a strategic partnership with the US. The 123 Agreement is the one, which makes the deal operational, the "123" name coming from the section 123 of the 1954 Atomic Energy Act, which governs all civilian cooperation agreements with the US.

The premise of the Deal was that India would be allowed to break out of its nuclear isolation following the 1974 Pokhran I and 1998 Pokhran II tests. In order to allow the US to enter into nuclear trade with India as per the Deal, the US Congress had to adopt enabling legislation amending the sanctions earlier imposed. Putting together drafts of the two Houses, the US Congress finally passed the Hyde Act in December, 2006.

Question: What were some of these key assurances that the Prime Minister gave in the statement to the Parliament?

The PM made two statements to the Indian Parliament, one soon after the Bush- Manmohan Singh joint statement and the other, in response to mounting criticism in India to US pressures and opacity in the negotiations, after the finalisation of the separation plan of civilian and military nuclear facilities prior to the above legislative process in the US Congress. The PM had assured Parliament that:

1. India would have access to full civilian nuclear technology and lifting of all technology sanctions
2. No annual certification of good conduct by the US President would be required as was being proposed in the draft Bills before the US Congress
3. Any linkage with India's independent foreign policy would be unacceptable
4. Life-time supply of nuclear fuel would be assured

Question: How does the Hyde Act go against these assurances and guarantees given in the Prime Minister's statement?

Once the Hyde Act was passed, it became clear that a number of these assurances were not going to be met or would be met only partially. The Hyde Act made nuclear trade with India conditional upon the US President ensuring, and annually certifying, that India's foreign policy was in line with US interests, that it would work closely with the US to isolate or even sanction

Iran, that it would formally declare support to the controversial Proliferation Security Initiative including interdiction in international waters. It denied India access to technology for enrichment, reprocessing and for heavy water. It also made clear that if the Deal were terminated, not only would US fuel supplies stop, the US would also work with other suppliers to ensure full stoppage of supplies to India. India had bitter experience of such policies when the US had stopped fuel supplies to the Tarapur reactor after Pokhran-I and had not allowed India to either reprocess or send back the spent fuel. The Hyde Act provision therefore meant that India's nuclear power program would be hostage to the US continued goodwill.

Those supporting the deal have argued that these sections in the Act are non-binding and therefore India need not care about them. However, what is being deliberately overlooked is the annual certification clause, by which the US President will give a "good conduct certificate" to the US Congress India in living up to the Hyde Act. In case such a certificate is not forthcoming or if the Congress is not satisfied with the US President's certificate, the US can terminate the 123 Agreement. The deeper we are in a nuclear co-operation agreement with large investments made on imported nuclear reactors and fuel, more the potential for blackmail.

Question: Will the '123 agreement' help the Government to maintain the assurances given earlier and recover the ground lost with the passage of the Hyde Act?

The PM had earlier said that through this deal, we would secure full co-operation on civilian nuclear technology including the complete fuel cycle. It has now been conceded that fuel cycle technologies will remain under sanctions, as will other so-called "dual-use" technologies, meaning that India can be denied any advanced technology under the pretext that it can have military application as well. Therefore, a major portion of the technology sanctions regime in place for several decades now would remain even after this Deal. Incidentally, the Fast Breeder Reactors will also be regarded as engaging in reprocessing operations and therefore come under sanctions, even if we put them under safeguards.

According to the PM, India has secured a lifetime fuel security guarantee in the Agreement and claims that the relevant clause ensures that the US will intercede with other countries to help India get over any disruption in supplies. Several experts have pointed out that this clause is applicable only when disruption of supplies has been caused for other reasons than termination of the agreement by the US. Clearly, in case of termination, the Hyde Act provision that the US will work with others to deny India fuel supplies would become applicable.

The other serious problem in the agreement is the termination clause itself. The provision for consultation in case of termination is only cosmetic and has no force. The clause is wide-ranging and the US can terminate the contract

under any number of pretexts such as an adverse report in the President's annual certification on India's foreign policy. Upon termination, the agreement calls for return of all materials and equipment supplied earlier. Some compensation payments are called for but India will face huge dislocation in power generation. The omnibus nature of the termination clause allows the US to use the Congress or the Presidential annual certification to threaten India's nuclear energy programme, the very *raison d'être* for the Agreement! The more the investment in nuclear energy based on imported fuel and reactors, the bigger the threat.

The Government is now saying that that the Nuclear Suppliers Group (NSG) would give India better terms and therefore we have no cause for worry either for technology or for future fuel requirements. If this indeed happens, US suppliers of reactors and equipment would find themselves at a disadvantage in the Indian market. It defies belief that the US would steer India's case at the NSG, which works by consensus, against its own commercial interests!

Question: Why have the Left parties asked the UPA Government not to go forward on further negotiations on the India-US nuclear deal?

A number of experts and commentators had pointed out the problems with the Hyde Act. The CPI(M) had asked the Government not to go ahead with 123 negotiations without first resolving these issues. Even though the Government does not have a majority in the Parliament on this issue, it decided to go ahead with its own agenda on the nuclear deal.

The negotiations for the 123 Agreement were held in great secrecy and the text released only a week after it had been finalised. In spite of a number of questions that have been raised on the relationship between the Hyde Act and the 123 Agreement, the Government wants to go ahead with the deal. The Left Parties cannot accept that a minority government goes ahead with such a divisive agreement without resolving all contentious issues and taking Parliament into confidence.

The requisite next steps are discussions with the International Atomic Energy Agency (IAEA) for working out India-specific safeguards for civilian reactors and facilities, discussions with the NSG and finally the passing of the 123 Agreement by the US Congress only after which it would become "operational". However, if we need to review and take stock of the 123 Agreement, we need to do it now. Once we go into negotiations with multilateral bodies, it would be impossible for India to change those agreements. Therefore, any re-consideration of the 123 Agreement and the impact of the Hyde Act must be done here and now, before proceeding any further. This is why the Left has asked the Government not to go ahead with any further negotiations till all these issues are addressed.