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106th Congress, 2d Session – – – – – – – – – – – – House Document 106–213

# PROPOSED AGREEMENT TO EXTEND NUCLEAR AGREEMENT WITH THE PEOPLE'S REPUBLIC OF BANGLADESH

## MESSAGE

FROM

# THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TEXT OF A PROPOSED AGREEMENT TO EXTEND THE AGREEMENT FOR COOPERATION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE REPUBLIC OF BANGLADESH CONCERNING PEACEFUL USES OF NUCLEAR ENERGY, PURSUANT TO 42 U.S.C. 2153(b)

MARCH 21, 2000.—Message and accompanying papers referred to the Committee on International Relations and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
79–011 WASHINGTON : 2000

*To the Congress of the United States:*

I am pleased to transmit to the Congress, pursuant to sections 123 b. and 123 d. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153 (b), (d)) (the Act), the text of a proposed Agreement Between the United States of America and the People's Republic of Bangladesh to extend the Agreement for Cooperation Between the United States of America and the People's Republic of Bangladesh Concerning Peaceful Uses of Nuclear Energy signed at Dhaka, September 17, 1981 (the Agreement for Cooperation).

The proposed Agreement to extend the Agreement for Cooperation (the "Extension Agreement") was originally approved and its execution authorized by President Bush based on his written determination that the performance of the Agreement for Cooperation for an additional period of 20 years would promote, and would not constitute an unreasonable risk to, the common defense and security. A copy of President Bush's written approval, authorization, and determination is enclosed. Also enclosed is a copy of the unclassified Nuclear Proliferation Assessment Statement (NPAS) prepared at that time by the Director, United States Arms Control and Disarmament Agency.

The proposed Extension Agreement was effected by an exchange of diplomatic notes at Dhaka on January 5, 1993, and February 6, 1993. The terms of the Extension Agreement condition its entry into force on each State notifying the other of the completion of its respective legal requirements for entry into force. However, before the proposed Extension Agreement could be submitted to the Congress in 1993 for review pursuant to section 123 of the Act, the Government of Bangladesh asked to consult with the United States regarding a possible modification of the term of extension. These discussions proved to be very protracted, but both Governments have now agreed that their original intention to extend the Agreement for Cooperation for an additional period of 20 years from the date of the original Agreement's expiration (i.e., to extend it until June 24, 2012) should stand, and that the Extension Agreement should be brought into force as soon as each Party has notified the other in writing that it has completed its legal requirements for doing so.

Section 123 of the Act, as amended by Title XII of the Foreign Affairs Reform and Restructuring Act of 1998 (Public Law 105–277) now also provides that each Nuclear Proliferation Assessment Statement prepared pursuant to the Act shall be accompanied by a classified annex prepared by the Secretary of State in consultation with the Director of Central Intelligence, summarizing relevant classified information. The Secretary of State is submitting to the Congress under separate cover such a classified annex. It contains, *inter alia*, the Secretary of State's reaffirmation of the conclusions reached in the original unclassified Nuclear Prolifera-

tion Assessment Statement (a) that continued implementation of the Agreement for Cooperation is consistent with all requirements of the Act, and (b) that the safeguards and other control mechanisms and the peaceful-use assurances contained in the Agreement for Cooperation are adequate to ensure that any assistance furnished under it will not be used to further any military or nuclear explosive purpose.

I am pleased to reconfirm President Bush's approval of the Extension Agreement and authorization of its execution and implementation. Bangladesh is a party to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and is fully in compliance with its nuclear nonproliferation commitments under that Treaty. In my judgment, continued performance of the Agreement for Cooperation between the United States of America and the People's Republic of Bangladesh Concerning Peaceful Uses of Nuclear Energy will promote, and not constitute an unreasonable risk to, the common defense and security. Apart from the proposed extension, the Agreement for Cooperation will remain in all other respects the same as that which was favorably reviewed by the Congress in 1982. The Department of State, the Department of Energy, and the Nuclear Regulatory Commission have reconfirmed their favorable views regarding the original NPAS as well as the conclusions contained herein.

This transmission shall constitute a submittal for purposes of both sections 123 b. and 123 d. of the Act. My Administration is prepared to begin immediately the consultations with the Senate Foreign Relations Committee and the House International Relations Committee as provided in section 123 b. Upon completion of the period of 30 days of continuous session provided for in section 123 b., the period of 60 days of continuous session provided for in section 123 d. shall commence.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 20, 2000.*

No. 01 Dhaka, January 5, 1993

Excellency:

I have the honor to refer to the Agreement For Cooperation between the United States of America and the People's Republic of Banglesh concerning peaceful uses of nuclear energy, signed at Dhaka September 17, 1981.

I have the further honor to propose that the agreement, in accordance with Article 13 thereof, be extended for an additional period of twenty years, until June 24, 2012.

If the foregoing is acceptable to your government, I have the honor to propose that this note, together with your favorable reply, shall constitute an agreement between the two governments, which shall enter into force upon written notification by both governments of the completion of their respective legal requirements for its entry into force.

Accept, Excellency, the renewed assurances of my highest consideration.

His Excellency

A. S. M. Mustafizur Rahman,

Minister of Foreign Affairs,

Government of the People's Republic

of Bangladesh.

পররাষ্ট্র দফতর
গণপ্রজাতন্ত্রী বাংলাদেশ
সরকার
ঢাকা

MINISTRY OF FOREIGN AFFAIRS
GOVERNMENT OF THE
PEOPLE'S REPUBLIC OF BANGLADESH
DHAKA

No.US-6(Agree)/4/91-92.

The Ministry of Foreign Affairs, Government of the People's Republic of Bangladesh, presents its compliments to the Embassy of the United States of America in Dhaka and has the honour to refer the Embassy's letter No.01 dated 5th January, 1993 regarding the mutual agreement on co-operation between the two countries concerning peaceful use of nuclear energy which was signed at Dhaka on 17th September, 1981 and expired on 24th June, 1992.

2. The Ministry of Foreign Affairs has the privilege of informing the esteemed Embassy that the Government of Bangladesh has agreed to extend the said agreement for an additional period of 20 (twenty) years until 24th June, 2012 without affecting any change in its existing scope and terms.

3. The Ministry of Foreign Affairs avails itself of this opportunity to renew to the Embassy of the United States of America in Dhaka the assurances of its highest consideration.

Dated, Dhaka the 16th February, 1993.

MINISTRY OF FOREIGN AFFAIRS Dhaka

The Embassy of the United
States of America,
Dhaka.

TREATIES AND OTHER INTERNATIONAL ACTS SERIES 10331

# ATOMIC ENERGY

## Peaceful Uses of Nuclear Energy

Agreement Between the
UNITED STATES OF AMERICA
and BANGLADESH

Signed at Dacca September 17, 1981

*with*

**Agreed Minute**

# BANGLADESH

## Atomic Energy: Peaceful Uses of Nuclear Energy

*Agreement signed at Dacca September 17, 1981;*
*Entered into force June 24, 1982.*
*With agreed minute.*

AGREEMENT FOR COOPERATION BETWEEN
THE UNITED STATES OF AMERICA
AND THE PEOPLE'S REPUBLIC OF BANGLADESH
CONCERNING PEACEFUL USES OF NUCLEAR ENERGY

The Government of the United States of America and the Government of the People's Republic of Bangladesh,

Mindful of their respective obligations under the Treaty on the Non-Proliferation of Nuclear Weapons[1] ("NPT"), to which both the United States and Bangladesh are parties;

Reaffirming their commitment to ensuring that the international development and use of nuclear energy for peaceful purposes are carried out under arrangements which will to the maximum possible extent further the objectives of the NPT;

Affirming their support of the objectives of the International Atomic Energy Agency ("IAEA") and their desire to promote universal adherence to the NPT;

Desiring to cooperate in the development, use and control of peaceful uses of nuclear energy; and

Mindful that peaceful nuclear activities must be undertaken with a view to protecting the international environment from radioactive, chemical and thermal contamination;

Have agreed as follows:

[1] Done July 1, 1968. TIAS 6839; 21 UST 483. [Footnote added by the Department of State.]

## Article 1

## Definitions

For the purposes of this agreement:

(a) "byproduct material" means any r
(except special material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material;

(b) "component" means a component part of equipment or other item, so designated by agreement of the parties;

(c) "equipment" means any reactor, other than one designed or used primarily for the formation of plutonium or uranium 233, or any other item so designated by agreement of the parties;

(d) "high enriched uranium" means uranium enriched to twenty percent or greater in the isotope 235;

(e) "low enriched uranium" means uranium enriched to less than twenty percent in the isotope 235;

(f) "major critical component" means any part or group of parts essential to the operation of a sensitive nuclear facility;

(g) "material" means source material, special nuclear material or byproduct material, radioisotopes other than byproduct material, moderator material, or any other such substance so designated by agreement of the parties;

(h) "moderator material" means heavy water, or graphite or beryllium of a purity suitable for use in a reactor to slow down high velocity neutrons and increase the likelihood of further fission, or any other such material so designated by agreement of the parties;

(i) "parties" means the Government of the United States of America and the Government of the People's Republic of Bangladesh;

(j) "peaceful purposes" include the use of information, material, equipment and components in such fields as research, power generation, medicine, agriculture and industry but do not include use in, research on or development of any nuclear explosive device, or any military purpose;

(k) "person" means any individual or any entity subject to the jurisdiction of either party but does not include the parties to this agreement;

(l) "reactor" means any apparatus, other than a nuclear weapon or other nuclear explosive device, in which a self-sustaining fission chain reaction is maintained by utilizing uranium, plutonium or thorium or any combination thereof;

(m) "restricted data" means all data concerning (1) design, manufacture or utilization of nuclear weapons, (2) the production of special nuclear material, or (3) the use of special nuclear material in the production of energy, but shall not include data of a party which it has declassified or removed from the category of restricted data;

(n) "sensitive nuclear facility" means any facility designed or used primarily for uranium enrichment, reprocessing of nuclear fuel, heavy water production, or fabrication of nuclear fuel containing plutonium;

(o) "sensitive nuclear technology" means any information (including information incorporated in equipment or an important component) which is not in the public domain and which is important to the design, construction, fabrication, operation or maintenance of any sensitive nuclear facility, or other such information which may be so designated by agreement of the parties;

(p) "source material" means (1) uranium, thorium, or any other material so designated by agreement of the parties, or (2) ores containing one or more of the foregoing materials in such concentration as the parties may agree from time to time;

(q) "special nuclear material" means (1) plutonium, uranium 233, or uranium enriched in the isotope 235, or (2) any other material so designated by agreement of the parties.

## Article 2

## Scope of Cooperation

1. The United States and Bangladesh shall cooperate in the use of nuclear energy for peaceful purposes in accordance with the provisions of this agreement and their applicable treaties, national laws, regulations and license requirements.

2. Transfers of information, material, equipment and components under this agreement may be undertaken directly between the parties or through authorized persons. Such transfers shall be subject to this agreement and to such additional terms and conditions as may be agreed by the parties.

## Article 3

## Transfer of Information

1. Information concerning the use of nuclear energy for peaceful purposes may be transferred. Transfers of information may be accomplished through various means, including reports, conferences, experts meetings, visits of personnel, and assignments of staff to facilities. Fields which may be covered include, but shall not be limited to the following:

(a) development, design, construction, operation, maintenance and use of reactors and reactor experiments;

(b) the produtction and use of radioisotopes and other material in physical and biological research, medicine, agriculture and industry;

(c) fuel cycle studies of ways to meet future world-wide civil nuclear needs, including multilateral approaches to guaranteeing nuclear fuel supply and appropriate techniques for management of nuclear wastes;

(d) safeguards and physical security of materials and equipment;

(e) health, safety and environmental considerations related to the foregoing;

(f) assessing the role nuclear power may play in national energy plans and cooperation in the generation of nuclear power; and

(g) exploration for and development of uranium and other mineral resources used in nuclear activities.

2. This agreement does not require the transfer of any information which the parties are not permitted to transfer.

3. Restricted data shall not be transferred under this agreement.

4. Sensitive nuclear technology shall not be transferred under this agreement unless provided by an amendment to this agreement.

## Article 4

## Transfer of Material, Equipment and Components

1. Material, equipment and components may be transferred for applications consistent with this agreement. Any special nuclear material transferred to Bangladesh under this agreement shall be low enriched uranium, except as provided in paragraph 4. Sensitive

nuclear facilities and major critical components shall not be transferred under this agreement unless provided by an amendment to this agreement.

2. Low enriched uranium may be transferred for use as fuel in reactor experiments and in reactors or for such other purposes as may be agreed by the parties.

3. The quantity of special nuclear material transferred under this agreement shall not at any time be in excess of that quantity the parties agree is necessary for any of the following purposes: use in reactor experiments or the loading of reactors, the efficient and continuous conduct of such reactor experiments or operation of such reactors, and the accomplishment of other purposes as may be agreed by the parties.

4. Small quantities of special nuclear material may be transferred for use as samples, standards, detectors, targets and for such other purposes as the parties may agree. Transfers pursuant to this paragraph shall not be subject to the quantity limitations in paragraph 3.

5. The United States shall take such actions as necessary and feasible to ensure a reliable supply of nuclear fuel to Bangladesh, including the export of nuclear material on a timely basis and the availability of the capacity to carry out this undertaking during the period of this agreement.

## Article 5

## Storage and Retransfers

1. Material transferred pursuant to this agreement and material used in or produced through the use of any material or equipment transferred pursuant to this agreement may be stored,

except that each party guarantees that no such plutonium or uranium 233 (except as contained in irradiated fuel elements) or high enriched uranium, over which it has jurisdiction, shall be stored in any facility that has not been agreed to in advance by the parties.

2. Material, equipment or components transferred pursuant to this agreement and any special nuclear material produced through the use of any such material or equipment may be transferred, except that each party guarantees that any such material, equipment, components or special nuclear material, over which it has jurisdiction, shall not be transferred to unauthorized persons or, unless the parties agree, beyond its territorial jurisdiction.

## Article 6

## Reprocessing and Enrichment

1. Each party guarantees that source and special nuclear material transferred to and under its jurisdiction pursuant to this agreement and source and special nuclear material used in or produced through the use of any material or equipment so transferred and under its jurisdiction shall not be reprocessed unless the parties agree.

2. Each party guarantees that any plutonium, uranium 233, high enriched uranium or irradiated source or special nuclear material transferred to and under its jurisdiction pursuant to this agreement or used in or produced through the use of any material or equipment so transferred and under its jurisdiction shall not be altered in form or content, except by irradiation or further irradiation, unless the parties agree.

3. Each party guarantees that uranium transferred to and under its jurisdiction pursuant to this agreement and uranium used in any equipment so transferred and under its jurisdiction shall not be enriched after transfer unless the parties agree.

## Article 7

## Physical Security

1. Each party guarantees that adequate physical security shall be maintained with respect to any material and equipment transferred to and under its jurisdiction pursuant to this agreement and with respect to any special nuclear material used in or produced through the use of any material or equipment so transferred and under its jurisdiction.

2. The parties agree to the levels for the application of physical security set forth in the Annex, which levels may be modified by mutual consent of the parties. The parties shall maintain adequate physical security measures in accordance with such levels. These measures shall as a minimum provide protection comparable to the recommendations set forth in IAEA document INFCIRC/225/Revision 1 concerning the physical protection of nuclear material, or in any revision of that document agreed to by the parties.

3. The adequacy of physical security measures maintained pursuant to this article shall be subject to review and consultation by the parties periodically and whenever either party is of the view that revised measures may be required to maintain adequate physical security.

4. Each party shall identify those agencies or authorities having responsibility for ensuring that levels of physical security are adequately met and having responsibility for coordinating response and recovery operations in the event of unauthorized use or handling of material subject to this article. Each party shall also designate points of contact within its national authorities to cooperate on matters of out-of-country transportation and other matters of mutual concern.

5. The provisions of this article shall be implemented in such a manner as to avoid hampering, delay or undue interference in the parties' nuclear activities and so as to be consistent with prudent management practices required for the economic and safe conduct of their nuclear programs.

Article 8

No Explosive or Military Application

Each party guarantees that no material, equipment or components transferred to and under its jurisdiction pursuant to this agreement and no material used in or produced through the use of any material, equipment or components so transferred and under its jurisdiction shall be used for any nuclear explosive device, for research on or development of any nuclear explosive device, or for any military purpose.

Article 9

Safeguards

1. Cooperation under this agreement shall require the application of IAEA safeguards with respect to all nuclear activities within the territory of Bangladesh, under its jurisdiction or carried out under its control anywhere. Implementation of a safeguards agreement pursuant to article III(4) of the NPT shall be considered to fulfill the requirement stated in the foregoing sentence.

2. Material transferred to Bangladesh pursuant to this agreement and any source or special nuclear material used in or produced through the use of any material, equipment or components so transferred shall be subject to safeguards in accordance with the agreement between Bangladesh and the IAEA for the application of safeguards in connection with the NPT.

3. If Bangladesh or the United States becomes aware of circumstances which demonstrate that the IAEA for any reason is not or will not be applying safeguards in accordance with the agreement as provided for in paragraph 2, to ensure effective continuity of safeguards the parties shall immediately enter into arrangements which conform with IAEA safeguards principles and procedures and with the coverage required by that paragraph and which provide assurance equivalent to that intended to be secured by the system they replace.

4. Each party guarantees that it shall take such measures as are necessary to maintain and facilitate the application of safeguards provided for under this article.

5. Each party shall establish and maintain a system of accounting for and control of all material transferred pursuant to this agreement and any material used in or produced through the use of any material, equipment or components so transferred, the procedures of which shall be comparable to those set forth in IAEA document INFCIRC/153 (corrected), or in any revision of that document agreed to by the parties.

6. Upon the request of either party, the other party shall report or permit the IAEA to report to the requesting party on the status of all inventories of any materials subject to this agreement.

7. The provisions of this article shall be implemented in such a manner as to avoid hampering, delay or undue interference in the parties' nuclear activities and so as to be consistent with prudent management practices required for the economic and safe conduct of their nuclear programs.

Article 10

Multiple Supplier Controls

If an agreement between either party and another nation or group of nations provides such other nation or group of nations rights equivalent to any or all of those set forth under articles 5, 6, or 7 with respect to material, equipment or components subject to this agreement, the parties may, upon request of either of them, agree that the implementation of any such rights will be accomplished by such other nation or group of nations.

Article 11

Cessation of Cooperation

1. If either party at any time following entry into force of this agreement:

(a) does not comply with the provisions of article 5, 6, 7, 8, or 9, or

(b) terminates, abrogates or materially violates a safeguards agreement with the IAEA, the other party shall have the rights to cease further cooperation under this agreement and to require the return of any material, equipment or components transferred under this agreement and any special nuclear material produced through their use.

2. If Bangladesh at any time following entry into force of this agreement detonates a nuclear explosive device, the United States shall have the same rights as specified in paragraph 1.

3. If either party exercises its rights under this article to require the return of any material, equipment or components, it shall, after removal from the territory of the other party, reimburse the other party for the fair market value of such material, equipment or components. In the event this right is exercised, the parties shall make such other appropriate arrangements as may be required which shall not be subject to any further agreement between the parties as otherwise contemplated under articles 5 and 6.

Article 12

Consultations And Environmental Protection

1. The parties undertake to consult at the request of either party regarding the implementation of this agreement and the development of further cooperation in the field of peaceful uses of nuclear energy.

2. The parties shall consult, with regard to activities under this agreement, to identify the international environmental implications arising from such activities and shall cooperate in protecting the international environment from radioactive, chemical and thermal contamination arising from peaceful nuclear activities under this agreement and in related matters of health and safety.

Article 13

Entry Into Force and Duration

1. This agreement shall enter into force on the date on which the parties exchange diplomatic notes informing each other that they have complied with all applicable requirements for its entry into force,[1] and shall remain in force for a period of ten years. This term may be extended for such additional periods as may be agreed between the parties in accordance with their applicable requirements.

2. Notwithstanding the suspension, termination or expiration of this agreement or any cooperation hereunder for any reason, articles 5, 6, 7, 8, 9 and 11 shall continue in effect so long as any material, equipment or components subject to these articles remains

[1] June 24, 1982. [Footnote added by the Department of State.]

in the territory of the party concerned or under its jurisdiction or control anywhere, or until such time as the parties agree that such material, equipment or components are no longer useable for any nuclear activity relevant from the point of view of safeguards.

IN WITNESS WHEREOF, the undersigned being duly authorized have signed this agreement.

DONE AT Dacca, this 17 day of Sept., 1981

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

(Jane A. Coon)
Ambassador of the
United States of America
to Bangladesh

FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH:

(Dr. Anwar Hossain)
Secretary(Natural Science Wing)
Science and Technology Division

ANNEX

Pursuant to paragraph 2 of article 7, the agreed levels of physical security to be ensured by the competent national authorities in the use, storage and transportation of the materials listed in the attached table shall as a minimum include protection characteristics as below.

Category III

Use and storage within an area to which access is controlled.

Transportation under special precautions including prior arrangements among sender, recipient and carrier, and prior agreement between entities subject to the jurisdiction and regulation of supplier and recipient states, respectively, in case of international transport specifying time, place and procedures for transferring transport responsibility.

Category II

Use and storage within a protected area to which access is controlled, i.e., an area under constant surveillance by guards or electronic devices, surrounded by a physical barrier with a limited number of points of entry under appropriate control, or any area with an equivalent level of physical protection.

Transportation under special precautions including prior arrangements among sender, recipient and carrier, and prior agreement between entities subject to the jurisdiction and regulation of supplier and recipient states, respectively, in case of international transport, specifying time, place and procedures for transferring transport responsibilities.

Category I

Material in this category shall be protected with highly reliable systems against unauthorized use as follows:

Use and storage within a highly protected area, i.e., a protected area as defined for Category II above, to which, in addition, access is restricted to persons whose trust-worthiness has been determined, and which is under surveillance by guards who are in close communication with appropriate response forces. Specific measures taken in this context should have as their objective the detection and prevention of any assault, unauthorized access or unauthorized removal of material.

Transportation under special precautions as identified above for transportation of Categories II and III materials and, in addition, under constant surveillance by escorts and under conditions which assure close communication with appropriate response forces.

TABLE: CATEGORIZATION OF NUCLEAR MATERIAL[d]

| Material | Form | Category I | Category II | Category III |
|---|---|---|---|---|
| 1. Plutonium[a,f] | Unirradiated[b] | 2 kg or more | Less than 2 kg but more than 500 g | 500 g or less[c] |
| 2. Uranium-235[d] | Unirradiated[b] | | | |
| | – uranium enriched to 20% $^{235}U$ or more | 5 kg or more | Less than 5 kg but more than 1 kg | 1 kg or less[c] |
| | – uranium enriched to 10% $^{235}U$ but less than 20% | – | 10 kg or more | Less than 10 kg[c] |
| | – uranium enriched above natural, but less than 10% $^{235}U$ | – | – | 10 kg or more |
| 3. Uranium-233 | Unirradiated[b] | 2 kg or more | Less than 2 kg but more than 500 g | 500 g or less[c] |

a All plutonium except that with isotopic concentration exceeding 80% in plutonium-238.

b Material not irradiated in a reactor or material irradiated in a reactor but with a radiation level equal to or less than 100 rad/hour at one meter unshielded.

c Less than a radiologically significant quantity should be exempted.

d Natural uranium, depleted uranium and thorium and quantities of uranium enriched to less than 10% not falling in Category III should be protected in accordance with prudent management practice.

e Irradiated fuel should be protected as Category I, II or III nuclear material depending on the category of the fresh fuel. However, fuel which by virtue of its original fissile material content is included in Category I or II before irradiation should only be reduced one Category level, while the radiation level from the fuel exceeds 100 rad/h at one meter unshielded.

f The State's competent authority should determine if there is a credible threat to disperse plutonium radiologically. The State should then apply physical protection requirements for category I, II or III of nuclear material, as it deems appropriate and without regard to the plutonium quantity specified under each category herein, to the plutonium isotopes in those quantities and forms determined by the State to fall within the scope of the credible dispersal threat.

AGREED MINUTE

During the negotiation of the Agreement for Cooperation Between the United States of America and the People's Republic of Bangladesh Concerning Peaceful Uses of Nuclear Energy ("agreement") signed today, the following understandings, which shall be an integral part of the agreement, were reached.

Coverage of Agreement

Material, equipment and components transferred from the territory of one party to the territory of the other party for peaceful purposes, whether directly or through a third country, will be regarded as having been transferred pursuant to the agreement only upon confirmation by the appropriate government authority of the recipient party to the appropriate government authority of the supplier party, that such material, equipment or components will be subject to the agreement.

For the purposes of implementing the rights specified in articles 5, 6, and 7 with respect to special nuclear material produced through the use of material transferred pursuant to the agreement and not used in or produced through the use of equipment transferred pursuant to the agreement, such rights shall in practice be applied to that proportion of special nuclear material produced which represents the ratio of transferred material used in the production of the special nuclear material to the total amount of material so used, and similarly for subsequent generations.

The United States recognizes the intention of Bangladesh to acquire a nuclear research reactor and to establish a nuclear

research program for peaceful purposes in the near future. The United States notes its firm intention to cooperate fully with Bangladesh in supplying equipment and material needed for nuclear research programs for peaceful purposes in Bangladesh. In addition, Bangladesh notes that it has undertaken a number of studies related to energy development, in the context of its national development plan, and is considering the use of nuclear energy for the generation of electrical power.

Safeguards

If either party becomes aware of circumstances referred to in paragraph 3 of article 9, the United States shall have the rights listed below, which rights shall be suspended if the United States agrees that the need to exercise such rights is being satisfied by the application of IAEA safeguards under arrangements pursuant to paragraph 3 of article 9:

(1) to review in a timely fashion the design of any equipment or of any facility which is to use, fabricate, process, or store any material transferred pursuant to the agreement or any special nuclear material used in or produced through the use of material or equipment transferred pursuant to the agreement;

(2) to require the maintenance and production of records and of relevant reports for the purpose of assisting in ensuring accountability for material transferred pursuant to the agreement and any source material or special nuclear material used in or produced through the use of any material, equipment or components transferred pursuant to the agreement; and

(3) to designate personnel acceptable to Bangladesh who shall have access to all places and data necessary to account for the material in paragraph 2, to inspect any equipment or facility referred to in paragraph 1, and to install any devices and make such independent measurements as may be deemed necessary to account for such material. Bangladesh shall not unreasonably withhold its acceptance of personnel designated by the United States under this paragraph. Such personnel shall, if either party so requests, be accompanied by personnel designated by Bangladesh.

With reference to article 9, it is confirmed that design information relevant to safeguards for new equipment or facilities where safeguards will be required under the agreement shall be provided to the IAEA in in a timely fashion upon its request.

Transitional Arrangements

With reference to paragraph 1 and 2 of article 7, while most facilities in the United States provide physical protection comparable to that specified for materials classified as Category II and III in the table attached to the Annex, the regulations of the United States with respect to physical protection for these materials do not require implementation until July 1980. If any proposed recipient of Category II or III material transferred pursuant to the agreement does not provide physical protection as a minimum comparable to that set forth in INFCIRC/225/Revision 1, the United States shall so inform Bangladesh prior to shipment of such material and seek interim arrangements satisfactory to both parties.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

( Jane A. Coon )
Ambassador of the
United States of America
to Bangladesh

FOR THE GOVERNMENT OF THE
PEOPLE'S REPUBLIC OF BANGLADES

(Dr. Anwar Hossain)
Secretary(Natural Science Win
Science and Technology Divisi



U.S. GOVERNMENT PRINTING OFFICE : 1984 O—33-682

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DEC 16 1992
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THE WHITE HOUSE

WASHINGTON

December 15, 1992

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Presidential Determination
No. 93-5

MEMORANDUM FOR THE SECRETARY OF STATE
THE SECRETARY OF ENERGY

SUBJECT: Presidential Determination on Extending the Agreement for Cooperation Between the United States of America and the People's Republic of Bangladesh Concerning Peaceful Uses of Nuclear Energy

I have considered the proposed agreement to extend for a period of 20 years the Agreement for Cooperation Between the United States of America and the People's Republic of Bangladesh Concerning Peaceful Uses of Nuclear Energy signed at Dhaka September 17, 1981, along with the views, recommendations, and statements of the interested agencies.

I have determined that the performance of the agreement for an additional period of 20 years will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)), I hereby approve the proposed agreement on extension and authorize you to arrange for its execution.

RECD S/S-PPR/IRD
1992 DEC 16 A 11:52

UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY
Washington, D.C. 20451

THE DIRECTOR

July 31, 1992

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Nuclear Proliferation Assessment Statement for the Proposed Renewal of Agreement for Cooperation Between the United States of America and the People's Republic of Bangladesh Concerning Peaceful Uses of Nuclear Energy

Pursuant to Section 123 a. of the Atomic Energy Act of 1954, as amended, I am submitting to you an unclassified Nuclear Proliferation Assessment Statement with respect to the proposed renewal of the Agreement for Cooperation Between the United States of America and the People's Republic of Bangladesh. The original Agreement was initialled in October 1980, entered into force in June 1982, and expires on June 24, 1992.

After setting forth background on Bangladesh's nuclear program and policies (Part I), this statement concludes that each of the applicable legal requirements is met (Part II). Part III of the statement discusses nonproliferation policy issues, and Part IV presents my conclusions.

I have concluded that the proposed renewal of the Agreement for Cooperation meets the applicable statutory requirements. Further, I have reached a favorable assessment of the adequacy of the safeguards and other control mechanisms and the peaceful use assurances contained in the proposed renewed Agreement to ensure that any assistance furnished thereunder will not be used to further any military or nuclear explosive purpose.

Ronald F. Lehman II

Ronald F. Lehman II

Attachment:
As stated

# NUCLEAR PROLIFERATION ASSESSMENT STATEMENT

Pursuant to Section 123 a. of the
Atomic Energy Act of 1954, as Amended,
With Respect to the Proposed
Renewal of Agreement for the Cooperation Between
the United States and the People's Republic of Bangladesh
Concerning Peaceful Uses of Nuclear Energy

This Nuclear Proliferation Assessment Statement relates to the proposed renewal of the Agreement for Cooperation between the United States and the People's Republic of Bangladesh concerning Peaceful Uses of Nuclear Energy. This renewal of the agreement for cooperation (which is hereinafter called the "proposed Agreement") is concurrently being submitted to the President for his authorization for execution.

Section 123 a. of the Atomic Energy Act of 1954, as amended ("Atomic Energy Act"), provides that a Nuclear Proliferation Assessment Statement shall "analyze the consistency of the text of the proposed agreement for cooperation with all the requirements of this Act, with specific attention to whether the proposed Agreement is consistent with each of the criteria set forth in this subsection" and address the "adequacy of the safeguards and other control mechanisms and the peaceful use assurances contained in the agreement for cooperation to ensure that any assistance furnished thereunder will not be used to further any military or nuclear explosive purpose." With this statutory mandate in mind, this assessment statement begins with background on the nuclear program and policies of Bangladesh (Part I); concludes that the applicable requirements of the Nuclear Non-Proliferation Act (NNPA) and the Atomic Energy Act are met by the proposed Agreement (Part II); discusses other nonproliferation policy issues pertinent to this case (Part III); and then sets forth the assessment, conclusions, views, and recommendations of the United States Arms Control and Disarmament Agency (ACDA), as contemplated by Section 123 a. of the Atomic Energy Act (Part IV).

# I. BACKGROUND

## A. Bangladesh Nuclear Program

The Bangladesh Atomic Energy Commission (BAEC) conducts basic research and operates a small atomic center, three medical centers, the Institute of Nuclear Agriculture, and the Irradiation and Pest Control Institute.

In the early 1980s, a large research complex was established north of Dhaka at Savar. A U.S.-supplied, 3 MW research reactor was installed at this location in 1982. The research reactor has a fuel load of 55 kilograms of low enriched uranium (LEU). The reactor went "critical" in September 1986 and is used for manpower training, isotope production, and research purposes. In addition, the Bangladesh Government (BDG) has utilized these facilities to conduct research in — among other areas — the use of nuclear radiation to improve local materials, to improve the shelf life of agricultural products, and to fight insect populations.

Bangladesh is an energy-poor country, and for more than twenty years (dating back to when Bangladesh was the eastern portion of Pakistan) there have been plans to build a nuclear power plant at Rooppur — about 100 miles west of Dhaka. Financing appears to be one stumbling block which has precluded Bangladesh acquisition of a power reactor from potential suppliers, such as the United States, France, Japan, Belgium, Canada, or Germany.

Supplier states have also questioned the economic rationale for acquiring a power reactor, given the country's relatively low electricity requirements. In 1988, the BDG announced its intention to proceed with indigenous construction of a 300 MW facility in the energy-deficient western zone of the country, citing Bangladesh's future energy needs as justification. Although construction was to start in late 1988 construction apparently has not yet begun.

Bangladesh presently has nuclear energy cooperation agreements with three nations: the United States, France, and Germany. Bangladesh explored a similar arrangement with India in the early 1970s, and there were reports that India planned to assist Bangladesh in designing a research reactor for Bangladesh. There is, however, no evidence that such cooperation ever took place.

## B. Nuclear Cooperation with the United States

In the early 1980s, a U.S. firm, General Atomic Company (GA) contracted with the BAEC for the sale of a small research

reactor to be installed at the Savar research complex. This reactor, which went critical in September 1986, is rated at 3 MW with a fuel load of 55 kilograms of LEU.

Before the United States could proceed with this export, the United States and Bangladesh had to conclude an agreement for cooperation pursuant to Section 123 of the Atomic Energy Act. There had been indications in 1976 that Bangladesh was about to join the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), and, at that time, the United States informed Bangladesh officials that NPT adherence is an important criterion for the United States in considering agreements for nuclear cooperation. In late 1976, movement by Bangladesh toward NPT adherence slowed noticeably. Concomitantly, a major review of U.S. nuclear export policy by the Executive and Legislative Branches was undertaken which — in light of Bangladesh's retreat on the NPT issue — made it difficult for the United States to conclude an agreement for cooperation at that time.

In 1977, a further review of nuclear export policy was undertaken and in 1978, the NNPA was enacted. The NNPA, inter alia, established conditions to be included in all new U.S. agreements for cooperation, including the adoption of full-scope safeguards by recipient countries. Shortly thereafter, a draft agreement for U.S.-Bangladesh cooperation was provided to the United States Embassy in Dhaka. Bangladesh was once again seriously considering NPT adherence, and the United States made it clear that while NPT adherence was not a sine qua non for concluding new agreements, it was our strong preference to conclude new agreements with NPT parties and priority was granted to such countries in the United States Government's negotiating program. Bangladesh adhered to the NPT in September 1979, and an agreement for nuclear cooperation between the United States and Bangladesh was initialled on October 8, 1980. The agreement was signed on September 17, 1981, and entered into force on June 24, 1982.

In July 1989, the BDG requested U.S. support for a so-called "Footnote A" technical cooperation project with the International Atomic Energy Agency (IAEA) for repair and maintenance of nuclear instrumentation. Each year, the United States provides financial assistance to IAEA technical activities. In providing such assistance, the United States reviews all "Footnote A" projects proposed. The United States bases its support on a number of criteria, including a country's membership in the NPT (or the Treaty of Tlatelolco), the existence of appropriate safeguards agreements, bilateral relations, and demonstrated support for IAEA programs.

The United States did provide the requested financial support for the Bangladesh project proposal of 1989 and

provided additional support for this same project in 1990. In addition, the United States has supported various scholarship programs involving nuclear-related research applied to food, medicine, instrumentation, and radiation protection for Bangladesh. Such efforts, in conjunction with U.S. support for the Bangladesh "Footnote A" program requests, illustrate the confidence the United States has in the nonproliferation policies of Bangladesh.

C. Bangladesh Nonproliferation Policy

Actions by the Bangladesh Government over the past fifteen years provide solid evidence of its commitment to nonproliferation. This commitment has been particularly important given Bangladesh's geographic proximity to Pakistan and India.

NPT Adherence

Bangladesh adhered to the NPT in September 1979. Following its NPT adherence, the BDG moved quickly to conclude its NPT safeguards agreement with the IAEA. Since the United States-Bangladesh nuclear cooperation agreement was signed, Bangladesh has continued to exhibit strong support for nonproliferation in general and the NPT in particular.

In statements and actions at the United Nations, Bangladesh officials have given strong support to nonproliferation efforts and have supported the creation of nuclear-weapon-free zones (NWFZs), including in South Asia. As have most developing countries, however, Bangladesh has been critical of certain aspects of U.S. nonproliferation policy, such as the alleged lack of progress by the nuclear weapon states to reduce levels of nuclear weapons.

At the NPT Review Conferences of 1980, 1985, and 1990, Bangladesh joined a number of nonnuclear weapon states in calling for sincere disarmament efforts by the nuclear weapon states as required under Article VI of the NPT. However, Bangladesh's general position vis-a-vis the NPT has been largely supportive of U.S. views.

Bangladesh officials have made numerous public statements in favor of the NPT and nonproliferation. In a 1988 statement commemorating the 20th anniversary of the opening of the NPT for signature, then-Bangladeshi President Ershad stated that:

> Bangladesh acceded to the NPT in pursuit of its constitutional commitment to promote general and complete disarmament and the renunciation of the use of force in international relations... Today it cannot but be

recognized that the NPT is the cornerstone of international efforts to erect and sustain viable barriers against the spread of nuclear weapons.

Subsequent statements made by Bangladesh officials have remarked on Bangladesh's continued commitment to disarmament and the NPT framework; support for the IAEA; and support for the position favoring access to nuclear technologies by NPT parties over non-NPT parties. Bangladesh has long supported IAEA activities and was a member of the IAEA Board of Governors in 1975-77, 1981-83, and actively sought a seat for the 1990-92 term.

Regional Nonproliferation Efforts

In its dealings with both India and Pakistan, Bangladesh has repeatedly stressed the importance of resolving the nuclear issue on a regional level and has often acted as a conduit between India and Pakistan on security issues. For example, at the 1987 South Asian Association for Regional Cooperation (SAARC) meeting, Bangladesh President Hussain Mohammad Ershad spoke with Indian Prime Minister Ghandi and Pakistani Prime Minister Junejo about nonproliferation in South Asia, urging them to consider measures to denuclearize the region.

Among such measures have been the proposals offered by Pakistan every year since the 1970s to establish a NWFZ in South Asia. Bangladesh cosponsored the Pakistani proposals in 1988, 1989, 1990, and 1991. Bangladesh continues to support the idea of a NWFZ for South Asia, and to press India and Pakistan to work toward a resolution of the nonproliferation issue. The level of the BDG support for the most recent proposal to convene a conference on regional nonproliferation will no doubt be influenced by whether or not Bangladesh is among the nations invited to participate.

## II. COMPLIANCE WITH STATUTORY REQUIREMENTS

Inasmuch as the wording of the 1982 Agreement remains unchanged, as have the requirements of U.S. law since then, the legal analysis contained in ACDA's 1982 NPAS remains valid. As shown there, the proposed Agreement meets all applicable requirements of the NNPA and the Atomic Energy Act.

# III. OTHER NONPROLIFERATION ISSUES

Any decision by the United States to engage in nuclear cooperation with a given nation involves a number of nonproliferation policy considerations in addition to the legal rights, guarantees, and safeguards contained in the applicable agreement for cooperation. These considerations could relate in a given case to such matters as the scope of the cooperation envisaged under such an agreement, the precedential implications of particular provisions of such an agreement, the degree to which extending nuclear cooperation may foster other nonproliferation interests, the general role of the state concerned in nonproliferation efforts, and a number of other issues. These issues will vary from case to case. This part of the assessment statement addresses policy issues of this kind that relate to the proposed Agreement.

## A. NPT Considerations

Universal adherence to the NPT is a major U.S. foreign policy goal and a cornerstone of its nonproliferation policy. U.S. ability to persuade countries to become parties to the NPT — and to convince NPT parties that the United States is abiding by Article IV of the Treaty (dealing with nuclear cooperation) — will be affected by the performance record of the United States in giving special weight to NPT adherence in entering into or expanding nuclear cooperation. As mentioned in Part I, Bangladesh adhered to the NPT in 1979. This action supported U.S. efforts to promote universal NPT adherence and was particularly significant in view of the proliferation problems in South Asia.

The case of Bangladesh is an example of the importance of continuing to accord special emphasis to the NPT in the context of negotiating new or amended agreements for cooperation. When non-parties decide to adhere to the NPT with the expectation that such adherence will facilitate future peaceful nuclear cooperation, the United States has a particularly strong obligation to expedite the negotiation of an appropriate agreement. This has been the experience with Bangladesh, and the Arms Control and Disarmament Agency (ACDA) has been supportive of the attention given to the extension of this agreement.

## B. Scope of Cooperation/Weapons-Usable Material

While the scope of cooperation permitted by the proposed Agreement extends to the transfer of power reactors and fuel to Bangladesh, such transfers have not been forthcoming in the ten years since the original Agreement was concluded.

The only transfer of material and equipment has been the export of a small LEU-fueled research reactor and the requisite fuel. LEU is not directly usable for nuclear explosives and the reactor acquired by Bangladesh can produce only trivial quantities of plutonium (no more than 250 grams per year). For the foreseeable future, neither Bangladesh's indigenous capabilities nor its actual requirements for a peaceful nuclear energy program are likely to result in the acquisition of facilities capable of producing weapons-usable material or in the direct supply of such material. As a result, Bangladesh's existing plans and capabilities for its nuclear energy program — including the proposed development of the 300 MW power plant — present no significant proliferation risk.

Such a practical consideration is reflected in the proposed Agreement, not only by the normal practice of excluding transfers of sensitive nuclear technology or facilities, but also by limiting transfers of weapons-grade material (i.e., uranium 233, plutonium, highly enriched uranium) to small quantities — typically about 1 gram, not to exceed 3 grams. At the request of the Bangladesh Government, which determined that only small quantities of weapons-grade material would be necessary for its program, transfers of larger quantities of weapons-grade materials have been restricted. ACDA welcomed the decision of Bangladesh officials to limit the scope of the Agreement in this manner, and considers it desirable that such agreements for cooperation prohibit the transfer of significant quantities of weapons-grade material wherever practicable.

The Agreement provides for U.S. consent rights to retransfers, storage, and enrichment as required by U.S. law. Transfers of any sensitive nuclear technology, restricted data, or sensitive nuclear facilities or major critical components thereof are not permitted under the scope of the Agreement. Finally, the Agreement provides that the United States shall ensure a reliable supply of nuclear fuel to Bangladesh, including the export of nuclear material in a timely fashion.

C. Safeguards Considerations

All peaceful nuclear activities in Bangladesh are subject to IAEA safeguards pursuant to its obligations under the NPT and its NPT safeguards agreement with the IAEA. On the basis of ACDA's close familiarity with the IAEA safeguards system and the implementation of this system, ACDA is confident that the IAEA safeguards applied to the nuclear material subject to the Agreement can provide reasonable assurance regarding its continued peaceful use. Bangladesh has consistently been a supporter of the IAEA safeguards system. Based on all information of which ACDA is aware, it has no reason to question the Bangladesh attitude toward safeguards, its cooperation with the

IAEA in applying safeguards, or its compliance with all of its safeguards obligations.

D. Other Considerations

When assessing nonproliferation factors in connection with a civil nuclear cooperation program, it is appropriate to go beyond the specific terms of such an agreement to consider also a country's general nonproliferation credentials. Foremost among these is whether a state has undertaken a binding obligation not to acquire nuclear weapons. As an NPT party, Bangladesh has forsworn the manufacture or acquisition of nuclear explosives, and elsewhere in this statement the significance of this action has been noted. Bangladesh has an unblemished history of peaceful nuclear cooperation with the United States. Bangladesh is a member of the IAEA and recognizes the importance of assuring that the continued peaceful use of the atom will be carried out in a manner that reduces the risk of misuse.

Bangladesh faces no direct external threat to its security at present. India is the dominant power in South Asia, and while the Indo-Bangladesh relationship has been tense at times, current relations are good and there is no overt hostility between the two states. Bangladesh's relations with the other nations in the region have been similarly civil. Bangladesh's willingness to join the NPT in the face of the potential for nuclear proliferation by its neighbors (India and Pakistan) is a measure of the strength of its commitment to nonproliferation, a commitment that has held steady since 1979. Since adhering to the NPT, Bangladesh has played a significant and supportive role in emphasizing the importance of the NPT and of developing a regional solution to the South Asian nonproliferation problem. ACDA is aware of no reason to question the durability of the NPT commitment made by the Bangladesh Government.

In assessing this factor, it should be noted that Bangladesh's existing nuclear program consists of one relatively small research reactor and related facilities. Bangladesh presently has no reprocessing or enrichment facilities or programs. The proposed construction of a 300 MW power reactor would not significantly alter this balance. Bangladesh has signed an agreement with the IAEA under which all its nuclear facilities will be safeguarded. With respect to cooperation with the United States, the Agreement does not permit the transfer of significant amounts of weapons-grade nuclear material or of sensitive technology or facilities for the production of highly enriched uranium or separation of plutonium.

Domestic unrest flares occasionally in the South Asian region. Since its emergence as an independent state in 1971, Bangladesh's internal political situation has been marred by military uprisings resulting in a period of military rule lasting from 1982-1986. However, these uprisings did not affect the modest Bangladesh nuclear program nor the commitment of Bangladesh to the NPT and other nonproliferation efforts.

Bangladesh is a respected member of the nonaligned movement and a participant in the regional organizations that seek to enhance stability in the South Asian region. In the various international fora which deal with nonproliferation and disarmament issues, Bangladesh tends to present a more moderate position than some of the nonaligned nations.

Finally, ACDA believes it is important to note that there is considerable symbolic significance to this agreement for cooperation. Recent history has seen substantial controversy in international relations along North-South lines, and international nonproliferation efforts have unfortunately been affected. The controversy has centered on access to technology for peaceful purposes (a matter covered by Article IV of the NPT), and on progress toward nuclear disarmament (Article VI). A renewed U.S.-Bangladesh Agreement for Cooperation will help demonstrate the rewards available to developing countries with strong nonproliferation credentials.

Historically, third world nations and developed countries tended to have different perceptions about the value of the NPT and related issues, such as export controls and the reduction of nuclear weapons forces. With the emerging consensus that transfers of technology may need to be more closely restricted and the recent decisions among the nuclear weapon states regarding limits on their respective nuclear programs, the polarization between North and South on nonproliferation is diminishing.

As a member of the nonaligned movement, a party to the NPT, and a stable nonproliferation presence in the South Asian region, Bangladesh can continue to play a significant role in influencing nonproliferation policy and in strengthening the NPT regime. The proposed Agreement with Bangladesh provides an important opportunity for the United States to demonstrate in tangible form its policy of engaging in nuclear cooperation with states that have forsworn nuclear explosives, have opened all their nuclear facilities to international inspection by the IAEA, and otherwise have provided strong support for nuclear nonproliferation initiatives and objectives.

## IV. CONCLUSION

On the basis of the analysis in this assessment statement and all pertinent information of which he is aware, the Director of the United States Arms Control and Disarmament Agency has arrived at the following assessment, conclusions, views, and recommendations:

1. He has reached a favorable assessment of the adequacy of safeguards and other control mechanisms and the peaceful use assurances contained in the Agreement to ensure that any assistance furnished thereunder will not be used to further any military or nuclear explosive purpose.

2. The Agreement meets all the substantive requirements of the Atomic Energy Act and the NNPA.

3. Execution of the proposed Agreement would be compatible with the nonproliferation program, policy, and objectives of the United States.

4. He recommends that the President determine that the performance of the proposed Agreement will promote, and will not constitute an unreasonable risk to, the common defense and security; and that the President approve and authorize the execution of the Agreement.