

# Institutionalising India-U.S. Defence Ties in American Legislative Precedents

**KASHISH PARPIANI**

**ABSTRACT** This brief probes the role of the current 116<sup>th</sup> US Congress in strengthening India-US relations in the realm of defence trade and technology transfers. The analysis is done in the context of the Trump administration's relaxation of arms export policies, as well as a rise in conservative nationalism which abhors arming partner nations that prolong US conflicts overseas. Furthermore, as the Democrat-majority House of Representatives appropriates a stronger role in foreign policymaking, there will likely be stricter oversight on the US' global arms trade and a tightening of technology transfer processes. The brief offers recommendations for India's diplomatic engagement with the US in this climate.

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## INTRODUCTION

Two years into the Trump presidency, the United States has engaged in a punitive trade war with the world's second largest economy, undercut allied nations from Western Europe to Northeast Asia over trade deficits, and broken away from policy precedents on US security commitments. For nearly three-quarters of a century since the end of the Second World War, the United States underwrote the global commons: leading the creation of the world's financial institutions, and building an intricate web of alliances and partnerships aimed at tempering historical rivalries. Indeed, traditional analysts credit Washington for furthering the most prolonged period of prosperity in human history. The US, in the process, consolidated its primacy across economic, military, and soft power metrics. Trump's unconventional conduct of American foreign policy, however, has informed concerns over the US' abdication of its long-standing global leadership. The same is apparent amongst US policymakers at the Capitol Hill.

Today, the United States is witnessing a power tussle between the executive and legislature over foreign-policymaking. The framers of the US Constitution indeed meant for the two co-equal branches to check and balance one another on foreign policy matters. For instance, Article II of the US Constitution grants a host of "implied"<sup>1</sup> powers to the president on heading the US armed forces and recognising foreign governments, whilst Congress has jurisdiction over funding of the armed forces, and ratification of multilateral treaties. The current wrangling between the executive and legislature stands unprecedented—ever since Congress in 1973 curbed

President Richard Nixon's powers with the War Powers Resolution.<sup>2</sup>

In stemming the tide against Trump's erratic conduct of foreign policy, the US Congress has either passed or tabled various bipartisan legislations, resolutions, and "sense of chambers" all aimed at restricting Trump's unilateral moves at foreign policymaking. These include adding stop-gap provisions on the withdrawal of US troops from South Korea;<sup>3</sup> instituting cessation of funds to halt a possible American withdrawal from NATO (the North Atlantic Treaty Organization);<sup>4</sup> revoking authority to lift sanctions from adversarial nations such as Russia;<sup>5</sup> restraining the president from granting foreign powers access to interrogate former US diplomats;<sup>6</sup> and instituting exemption provisions for partner nations against punitive secondary sanctions.<sup>7</sup>

Therefore, the rising prominence of the US Congress—as the locus of foreign-policymaking shifts away from the Oval Office—is a theme worth examining. Moreover, the recently inducted 116<sup>th</sup> class of US Congress is the most diverse cohort in terms of race, gender, ethnicity, religion, and veteran status.<sup>8</sup> The chambers are also divided—the Democrats are in control of the House of Representatives, while the Republicans are the majority in the Senate.

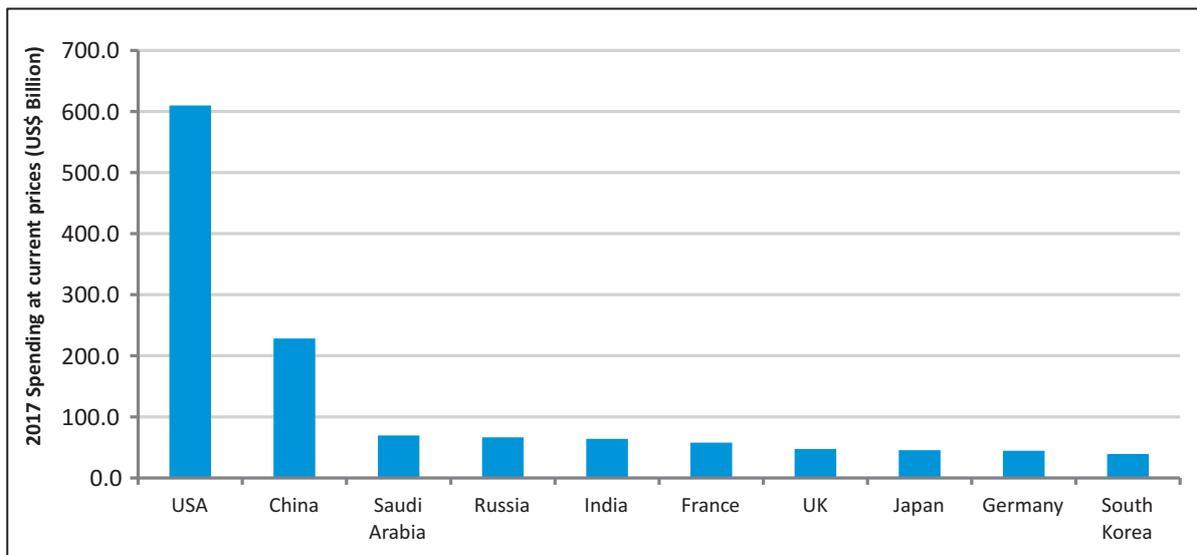
## INDO-U.S. DEFENCE TRADE AND TECHNOLOGY TRANSFERS

In the post-Cold War world, starting with the "natural allies" characterisation of Indo-U.S. ties, there has been an interesting development in the relationship between the

two democracies. In recent years, bilateral trade of goods and services has crossed the Obama-era goal of US\$ 100 billion<sup>9</sup> and Foreign Direct Investment (FDI) saw a double-digit growth from both ends. From 2016, US FDI in India has seen a 15.1-percent increase, while India’s FDI in the US has witnessed a surge of 11.5 percent.<sup>10</sup>

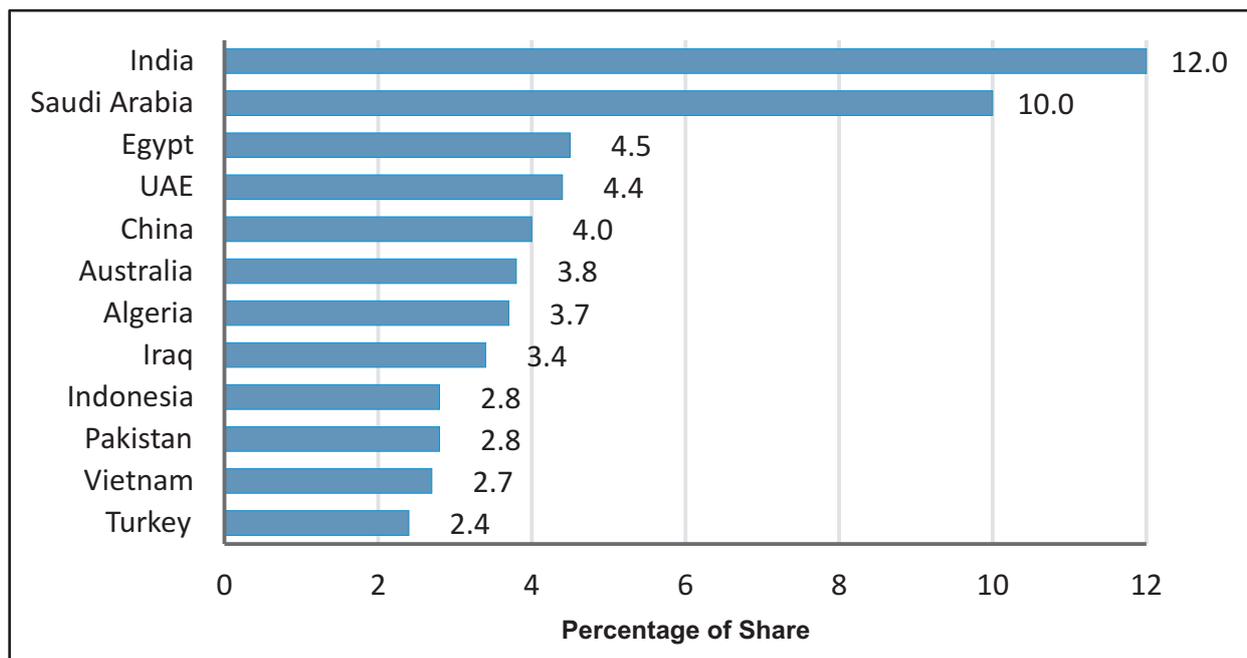
The most significant development has perhaps been in the realm of defence trade and technology transfers. As the Indian GDP breached the US\$ 2.5 trillion mark in 2017,<sup>11</sup> its need for security maximisation also grew. In 2017, India’s defence budget rose by over 5.5 percent from US\$ 59.7 billion<sup>12</sup> to US\$ 63.9 billion in 2017 to surpass France as

Figure 1: Global Defence Spending



Source: <https://www.bloomberg.com/news/articles/2018-05-01/china-tensions-push-india-into-world-s-top-five-defense-spenders>

Figure 2: Top Arms Importers



Source: <https://www.sipri.org/commentary/blog/2017/state-major-arms-transfers-8-graphics>

the fifth-largest defence spender in the world.<sup>13</sup>

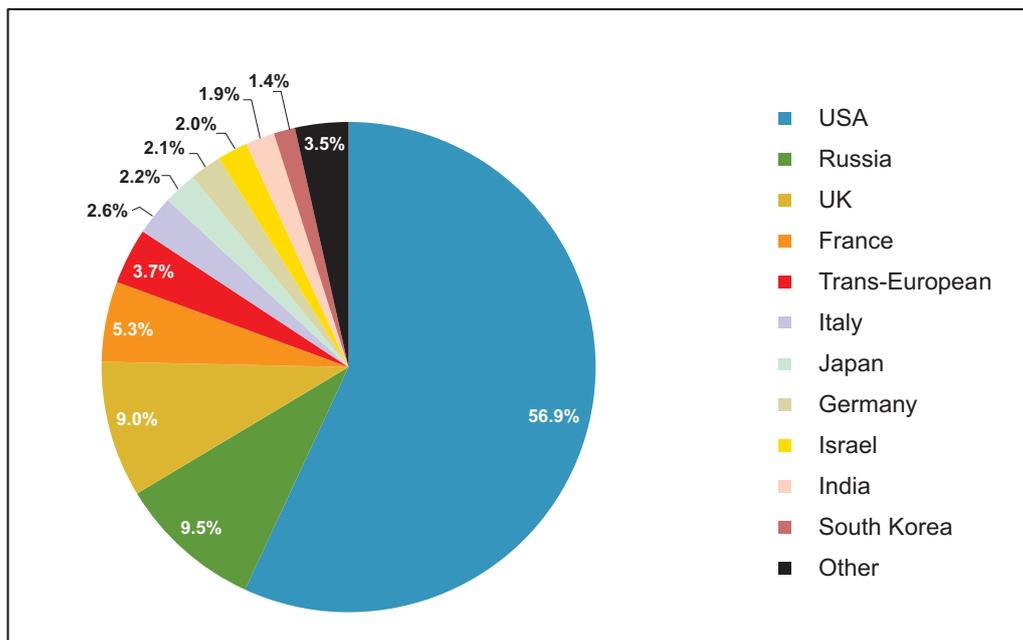
Although the lion’s share of that figure goes towards personnel costs, India has emerged as the largest arms importer. In addition to the various geopolitical tensions developing at its Western and Northern borders, India’s need to heavily import arms also stems from excessive red-tape stifling defence R&D and overt reliance on state-owned defence companies.<sup>14</sup> Its planned US\$ 250-billion defence modernisation initiative has caused the country’s defence imports to increase by 24 percent, to account for nearly 12 percent of total arms transfers in the world during 2013-17.<sup>15</sup>

Given this burgeoning Indian market and India’s increasing prominence in Washington’s security calculus in the Indo-Pacific, there have also been substantial gains for the US, which is the largest arms producer and exporter in the world. Of the 100 biggest

arms producing companies and military services companies in the world, 42 are American.<sup>16</sup> Of the five largest arms producing companies, four are American — Lockheed Martin (US), Boeing (US), Raytheon (US), BAE Systems (UK), and Northrop Grumman (US).<sup>17</sup> In terms of sales, the US takes the lead, accounting for 57 percent of total global arms sales, with Russia and the UK at a meagre 9.5 percent and 9.0 percent, respectively.<sup>18</sup>

During the period 2013-17, although Russia remained India’s largest supplier of arms by accounting for nearly 62 percent of India’s arms imports,<sup>19</sup> US arms exports to India increased by over 550 percent.<sup>20</sup> Since 2008, Indo-US defence trade has steadily increased from under US\$ 1 billion to now over US\$ 18 billion,<sup>21</sup> to have the United States assume the spot of India’s second largest arms supplier.<sup>22</sup> Crucial intended or completed procurements include 13 C-130 Hercules aircraft, 10 C-17 Globemaster aircraft, 12 P-8 Poseidon aircraft, 22 AH-64 Apache

**Figure 3: Share of Global Arms Exports**



Source: <https://edition.cnn.com/2018/12/10/europe/russia-arms-production-scli-intl/index.html>

helicopters, 15 CH-47 Chinook helicopters, and 145 M777 Howitzer guns.<sup>23</sup>

Some of these procurements have already gained prominence in India’s military activities. For instance, India now operates the second largest C-17 Globemaster and P-8 Poseidon fleets in the world.<sup>24</sup> In addition, these procurements have proved crucial for the country’s Humanitarian Assistance and Disaster Relief (HADR) operations. For instance, C-17s have been extensively used to deliver assistance to Nepal after earthquakes, and to evacuate civilians from civil war-torn Yemen.<sup>25</sup>

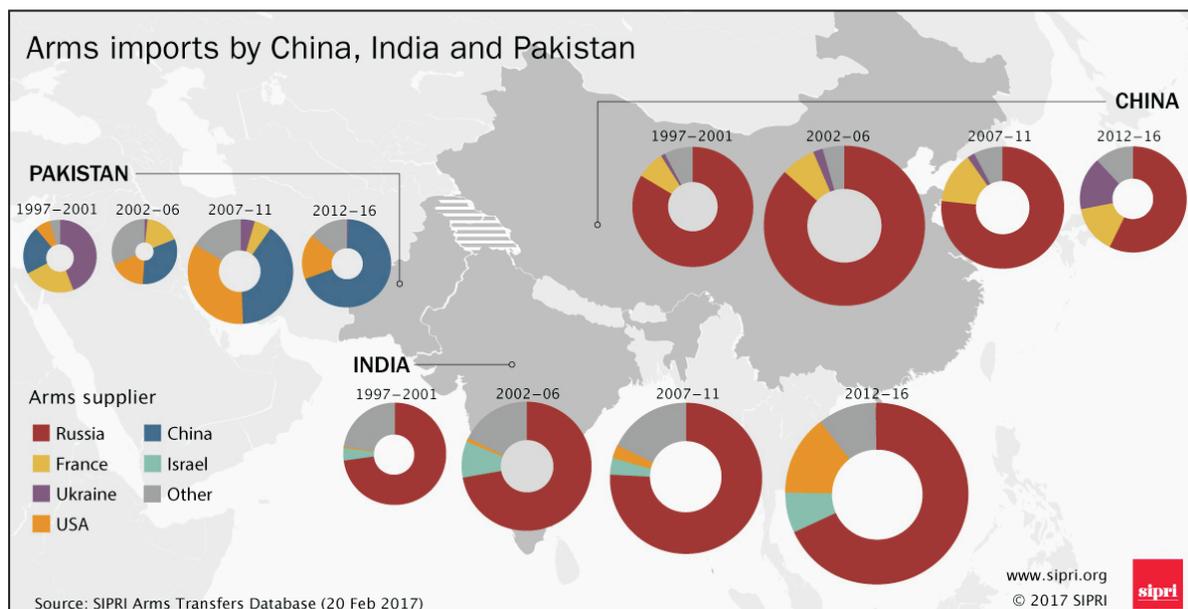
Furthermore, in 2012, the United States and India launched the Defence Technology and Trade Initiative (DTTI) for co-production and co-development of military equipment — in order to move away from the traditional “buyer-seller” dynamic.<sup>26</sup> Under the same initiative, the US and India have launched seven joint working groups to explore collaborative projects and programmes:

aircraft carriers; jet engines; intelligence, surveillance and reconnaissance; chemical-biological protection; naval systems; and air systems. In addition, it encompasses two Science and Technology government-to-government project agreements — the Next Generation Protective Ensembles and Mobile Hybrid Power Sources. Under DTTI, apart from the transfer of radar, gas turbine engine, and night-vision technology, cooperation on aircraft carrier design is also on the cards.

### GREATER CONGRESSIONAL OVERSIGHT ON U.S. ARMS EXPORTS

Although the US midterm elections in November 2018 led to gains for the Republicans in the US Senate, the Democrats scored a majority in the House of Representatives. The House, which has considerable oversight responsibilities, is expected to take on a larger role in foreign policy decision-making. Moreover, as discussed earlier, many of the initiatives enacted or proposed on the Hill have been

Figure 4: Major arms imports by China, India and Pakistan over the past 20 years.



Source: <https://www.sipri.org/commentary/blog/2017/state-major-arms-transfers-8-graphics>

bipartisan efforts. Even under the current environment of rigid polarisation, legislators from both sides of the aisle have managed to forge a consensus on certain issues.

A point of consensus relates to the rejection of arms sales to allies and partner nations that tend to prolong US “adventurism”<sup>27</sup> abroad. The rise of Donald Trump is seen as a symptom, rather than cause, of the increasing relevance of so-called “conservative nationalism”. Eclipsing the historical, overt influence of liberal internationalism, conservative nationalism has forged an unlikely point of consensus by pushing the left and the right farther in their respective ends. The contemporary Republican Party is no longer the standard bearer of *Reaganesque* “shining city upon a hill”<sup>28</sup> American stewardship of the Western world. Rather, they increasingly detest US involvement in conflicts on behalf of allies and partner nations that shortchange Washington on issues like trade. The Democratic party too, has been captured by its share of populists that would rather prioritise a comprehensive social security net—in terms of healthcare, education and minimum wage—over expensive and protracted US activism abroad.

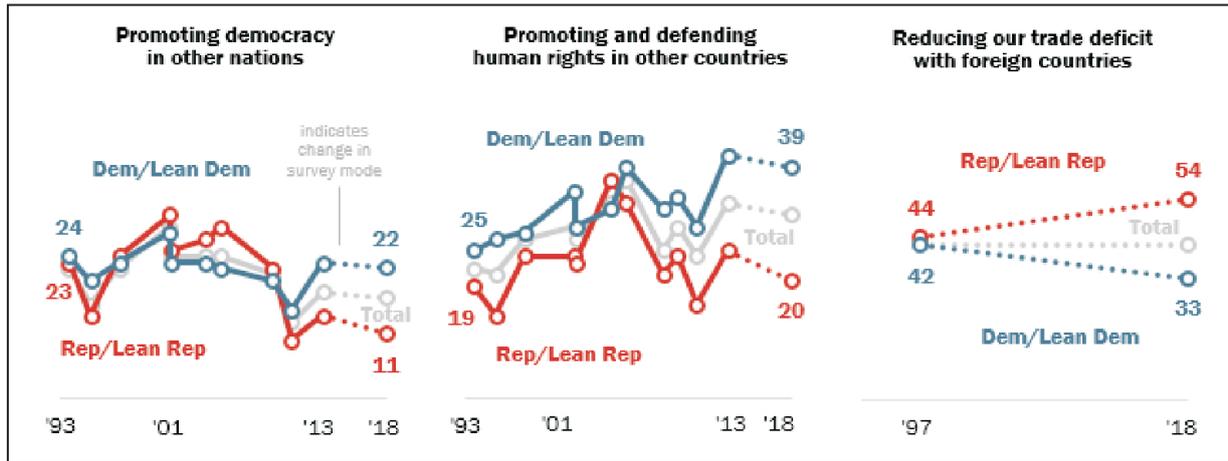
As a result, voices that abhor US activism abroad are gaining prominence. For instance, once derided as a libertarian non-interventionist, Senator Rand Paul (R-KY) does not only have Trump’s ear on issues like State Department nominations, but also stands at the fore in the US Congress on disengaging the country from its entanglements abroad. An increasingly prominent approach to that end is to curb arms sales to allied and partner nations that prolong conflicts abroad—which by extension renders prospective US

retrenchment unlikely. A recent, though unsuccessful, instance being Sen. Paul’s resolution to disapprove the US\$ 300 million sale of rocket launchers to Bahrain as a “proxy vote” against US involvement in Yemen.<sup>29</sup> The effort, however, stood defeated to avoid backlash against the 7,800 American personnel stationed in Bahrain as part of US Naval Forces Central Command and the US Fifth Fleet.

Such efforts also stand in tandem with the legislature’s attempts at reversing some of Trump’s lax arms export policies that have reduced transparency and scrutiny. Under the Trump administration, arms sales have been a matter of priority. Last year, Trump approved the US State Department’s “Buy American” plan to boost the country’s arms exports.<sup>30</sup> Termed as the Conventional Arms Transfer policy, it encompasses changes to its International Traffic in Arms Regulations to support defence firms to “directly sell some types of weapons and unmanned drones to allies without the firms having to go through the U.S. government.”<sup>31</sup> Such encouragement of Direct Commercial Sales (DCS) has raised questions about the possible erosion of transparency of the deals vis-à-vis regular Foreign Military Sales (FMS), which are government-to-government sales open to public scrutiny.<sup>32</sup>

In addition, Trump has also employed a degree of expediency to the matter. In essentially handing Saudi Crown Prince Mohammed Bin Salman a pass over the killing of Saudi dissident and *Washington Post* columnist, Jamal Ahmad Khashoggi, President Trump cited Riyadh’s intended purchase of US arms totaling a staggering US\$ 110 billion.<sup>33</sup> Moreover, in addressing his interest in acquiring fair and reciprocal trade

Figure 5: Conflicting Partisan Priorities for U.S. Foreign Policy



Source: <http://www.people-press.org/2018/11/29/conflicting-partisan-priorities-for-u-s-foreign-policy/>

balances, Trump has pushed allied countries like Japan to purchase more US stealth fighter jets to offset trade deficits.<sup>34</sup> As a result of these factors, the Trump era has seen a rise in US arms sales by 33 percent to reach a peak of US\$ 55.66 billion in 2018 from about US\$ 42 billion in 2017.<sup>35</sup>

Certainly, US Congressmen, too, have a stake in greater volumes of arms sales for two reasons: One, US defence manufacturers employ nearly 2.5 million people across Congressional constituencies;<sup>36</sup> and two, defence contractors most often outshine other industries in corporate Political Action Committee (PAC) donations to Congressional candidates.<sup>37</sup> However, recently, the increased public and media attention to instances like America’s involvement in the Saudi-led bombing campaign in Yemen have led to serious deliberations over US arms export policies.<sup>38</sup> Similarly, deliberations have been underway to curb arms sales to Turkey -- which may employ those very weapons to target the Kurds following a prospective US withdrawal from Syria.<sup>39</sup> Thus, the previous 115<sup>th</sup> Congress oversaw the tabling of several

measures and discussions to curb arms exports to Saudi Arabia,<sup>40</sup> Bahrain,<sup>41</sup> and Turkey,<sup>42</sup> but to little avail. However, now with the Democrats retaking control of the House, some efforts may seriously alter how much leeway the executive exercises over arms sales.

One such effort is the H.R. 7080 Arms Sale Oversight Act,<sup>43</sup> which was introduced late under the 115<sup>th</sup> Congress by Rep. Ted Lieu (D-CA) and Rep. Jim McGovern (D-MA). This act aims to extend to members of the House the ability to “bring up for debate the merits of problematic arms sales.”<sup>44</sup> Currently, under the Arms Export Control Act, only members of the Senate have the ability to evaluate and question arms sales. Another effort may be the increased employment of Section 201 of Public Law 113-276 passed by the 113<sup>th</sup> Congress in 2014. The section rests authority with the Chairman and the Ranking Members of the House Foreign Affairs Committee (HFAC) and the Senate Foreign Relations Committee (SFRC) to seek notification of shipment of arms at least 30 days prior to shipping.<sup>45</sup>

The inclination to increase oversight into — if not totally curb, arms sales to tighten processes is only likely to be accentuated under the 116<sup>th</sup> Congress.

## GROUNDING THE INDO-U.S. DYNAMIC IN US LEGISLATIVE PRECEDENTS

In the impending scenario of greater Congressional oversight and scrutiny into US arms exports, India is unlikely to be in the cross-hairs of Capitol Hill for three reasons: One, support for India on the Hill is largely bipartisan. In the US House of Representatives, the India caucus is the *largest* country-specific caucus. In the Senate, the India caucus is the *only* country-specific caucus. Further, the rise of Indian-American legislators — who also have a strong inclination on greater American engagement with India, to prominent positions is certain to influence consolidation of that bipartisan consensus on India. Some notable examples are Rep. Ro Khanna (D-CA) joining the House Armed Services subcommittees on Intelligence and Emerging Threats, and Strategic Forces, as well as the Oversight subcommittees of Government Operations and Economic Policy;<sup>46</sup> and Rep. Pramila Jayapal (D-WA) as the co-chair of the Congressional Progressive Caucus.<sup>47</sup>

Two, India continues to be the US' coveted arms market. According to a report by the US Department of Defense, India is “modernizing its military and the United States would like to compete for those sales”.<sup>48</sup> Quoting Army Lt. Gen. Charles Hooper (Director, Defence Security Cooperation Agency), the report continues, “We’re very confident that, when given all of the information that they need, they’ll (India will) choose American systems

and American services.”<sup>49</sup> In addition to this envisioned rising tempo of Indo-US defence trade in the context of New Delhi’s planned US\$ 250-billion defence modernisation initiative, India is a robust civil aviation market as well. The world’s largest aerospace company, Boeing, recently deemed India to “become the third-largest commercial aviation market by the early 2020s”.<sup>50</sup> According to estimates, India is set to order “a record of up to 2,300 new planes worth \$320 billion from global planemakers over the next 20 years.”<sup>51</sup>

Three, India, due to its historic insistence on maintaining a certain degree of autonomy has largely avoided the stigma associated with allied and partner nations of the US in these times of rising conservative nationalism. The current political climate, which centres on the United States settling scores over its 70-odd year-period of largesse, has led to derision of allied countries— from Canada to Japan—for their dependence on Washington. India, however, due to its lack of overt dependence on Washington — absent a formal alliance— mostly escapes the ire of conservative nationalists.

The Congressional relevance of India can be seen in instances such as amendments in both chambers to the Arms Export Control Act. Chiefly, the H.R. 4825 - U.S.-India Defense Technology and Partnership Act which designated India as a “U.S. major partner” in matters pertaining to arms sales.<sup>52</sup>

India must concentrate its diplomatic efforts to guard against transactionalism with greater institutionalisation of the Indo-US dynamic in American legislative precedents. Chiefly, India’s efforts must encompass ironing

out recent issues such as the downsizing of the India Rapid Reaction Cell at the Pentagon, and seeking the further strengthening of the Indo-US Defence Technology and Trade Initiative (DTTI).

Recently, there were reports that the India Rapid Reaction Cell (IRRC) was downsized and shifted out of the Pentagon to an administrative building six miles away.<sup>53</sup> The only country-specific cell at the Pentagon, the IRRC aims to increase the “operational tempo”<sup>54</sup> of Indo-US co-production and co-development of military equipment. This moving out of the IRRC raised alarms over the future of Indo-US defence ties.

One analysis pointed to current Under Secretary of Defence for Acquisition, Technology and Logistics (AT&L) Ellen Lord.<sup>55</sup> Until recently, Lord served as the CEO of Textron Systems. The American defence company wound up its operations last year as a result of New Delhi levying a hefty fine of US\$ 300,000 for failing to meet certain offset commitments to supply precision-guided cluster bombs. The analysis thus inferred that, now as the head of AT&L – which has purview over the IRRC – Lord’s past may have informed the sudden “bureaucratic disinterest” on ramping defence ties with India.<sup>56</sup> Alternatively, one may argue that the IRRC’s shift may be a consequence of Trumpian transactionalism. On trade, although Indo-US trade deficit stands at around US\$ 30 billion and India ranks tenth in the list of countries that the US registers a deficit with, Trump has not shied from raising the spectre of levying tariffs. Thus, in line with the president’s inclination to link defence matters to imbalances on the trade front, shunting of the IRRC may be due to the prolonged ongoing

negotiations on resolving the trade imbalance between India and the US.

Regardless of which may be the more plausible case, India must seek the grounding of the Indo-US dynamic on defence ties and technology transfers in legislative precedents. The rationale is that seeking legislative underpinnings to the dynamic would make relations less susceptible to the idiosyncrasies of the incumbent executive. It would set the relationship on a long-term and stable footing.

Moreover, on the IRRC, there has been precedent of legislative action. The National Defence Authorization Act (NDAA) for FY 2017, deemed the leadership of the IRRC — and DTTI by extension, to consist of “an individual with experience in defence acquisition and technology to reinforce and ensure the success of the U.S.-India Defence Relationship.”<sup>57</sup> In this vein, the NDAA directed the Department of Defense to reorganise the Office of AT&L into two new Under Secretary positions — one for Research and Engineering and another for Acquisition and Sustainment. The act directed this change to take effect no later than February 2018, and correspondingly put the organisational responsibility for DTTI to be determined as part of the envisioned reorganisation.<sup>58</sup> Subsequently, the department was reorganised, with purview over the IRRC resting with the International Cooperation Office of the Acquisition and Sustainment wing. This helped institute a hands-on approach — circumventing impediments on bureaucratic levels, to fast-track defence ties.

Going forward, India in its overtures to the 116<sup>th</sup> Congress must seek greater legislative

intervention with regards to the IRRC – so that it does not become susceptible to the foibles of the executive. One possible avenue is through increased committee hearings on the matter. Another is instituting the workings of the IRRC being subject to notifications requested by the chairs and ranking members of the House Foreign Affairs Committee and the Senate Foreign Relations Committee. Further, recently the US Congress passed an amendment to section 1292 of the NDAA for FY 2017 in the H.R.5515 - John S. McCain National Defense Authorization Act for Fiscal Year 2019.<sup>59</sup> The same mandated the executive to submit annual reports on Indo-US defense interoperability. Similarly, amendments may be introduced to mandate annual reports from the executive on Indo-US defence trade and technology transfers under the DTTI mandate.

In addition, in early 2018, it was announced that the Pentagon had agreed to host an Indian military representative at the Defence Innovation Unit Experimental (DIUx). Reportedly, the purpose behind posting an Indian representative at DIUx is to “gain first-hand experience on how the Pentagon and the private sector work together for national security. This unit identifies and invests in companies, including start-ups that fulfil US Department of Defense hardware or software requirements. The Indian representative will be able to identify solutions for the Indian military and explore which ones could work under the “Make in India” rubric.”<sup>60</sup> Given the relevance of this posting to the broader Indo-US initiative of DTTI, the representative must also have purview over the workings of the IRRC so as to alleviate concerns over the absence of an Indian point person at the Pentagon for such purposes.

Lastly, in the inaugural 2+2 meeting between foreign and defence cabinet ministers of India and the United States, the two countries agreed on developing the Industrial Security Annex (ISA). The Annex would support “closer defence industry cooperation and collaboration”<sup>61</sup> via facilitating contacts between like-minded private entities with complementing expertise. In addition, a Memorandum of Intent was signed between the US Defense Innovation Unit (DIU) and the Indian Defence Innovation Organisation — Innovation for Defence Excellence (DIO-iDEX),<sup>62</sup> to explore more projects under DTTI. India must seek the development of these avenues at the earliest so as to initiate more points of contact — beyond simply the IRRC, across bureaucratic, institutional, and private sector entities on both sides.

## CONCLUSION

The Defence Technology and Trade Initiative (DTTI)—launched in 2012 by India and the US for the co-production and co-development of military equipment—holds the key to both nations’ efforts at prioritising ingenuity and domestic production. With planned or currently underway co-production of arms, the US expands its supply lines, reduces production costs, and gains an upper-hand to tap the burgeoning Indian arms market. For instance, under DTTI initiatives, Boeing has strengthened its supply chain with over 160 domestic partners to support equipment for aircraft like the 777, 787, P-8, F/A-18 Super Hornet, F-15 and H-47 Chinook.<sup>63</sup> Most importantly, domestically, US defence firms engage in “political engineering” defined as “the art of spreading a military project to as many congressional districts as possible, and

thus maximizing the number of members of Congress who feel that if they cut off funding, they'd be hurting themselves."<sup>64</sup> Similarly, on the international level, to capture arms markets and/or reduce production costs, the US spreads production lines of crucial armaments. A case in point is the monopolisation of the huge Israeli fighter jet market – largely a result of Israel being the largest recipient of US defence aid, by outsourcing the production of crucially F-16 wings. Now, reportedly, in contemplating a shift of large sections of its F-16 production lines to India, Lockheed Martin is eyeing a prospective US\$ 20-billion market in India for the fighter jets. In addition, the shift would enable Lockheed to free its Fort Worth plant in Texas to cater to the production of the fifth-generation F-35 Joint Strike Fighter that the US Department of Defense plans to transition to.<sup>65</sup>

For India, not only does the DTTI initiate transfer of cutting-edge technology, but also integrates the country into global production supply chains. Tata Advanced Systems Limited (TASL) employs over 300 people at its facility

in Hyderabad for co-producing fuselages of the AH-64 Apache helicopters. Indirectly, Boeing India employs over 1,200 people, and another 7,000 attached to its domestic supply chain partners.<sup>66</sup> Furthermore, TASL with Lockheed Martin employs over 80 skilled personnel at India's first-of-its-kind metal-to-metal bonding facility at Adibatla, Hyderabad.<sup>67</sup> The DTTI therefore also promises gains for the Modi government's 'Skill India'<sup>68</sup> initiative to reduce unemployability and harness the potential of its thriving demographic dividend. Expansion of DTTI in the long term may also help temper concerns that Trump's 'America First' focus on US technological ingenuity is essentially incompatible with the Modi government's push, under its 'Make in India'<sup>69</sup> vision, for India to lead the world in production.

In a climate of greater Congressional focus on US arms exports, India must iron out impediments like the downsizing of the India Rapid Reaction Cell, and seek further strengthening of the Indo-US Defence Technology and Trade Initiative in legislative precedents. 

#### ABOUT THE AUTHOR

**Kashish Parpiani** is a Research Fellow at ORF in Mumbai.

## ENDNOTES

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69. Launched by Prime Minister Narendra Modi in 2014, the Make in India initiative was devised to transform India into a global design and manufacturing hub. The same envisions raising the contribution of the manufacturing sector to 25 percent of India’s GDP by 2020.



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20, Rouse Avenue Institutional Area, New Delhi - 110 002, INDIA

Ph. : +91-11-35332000 Fax : +91-11-35332005

E-mail: [contactus@orfonline.org](mailto:contactus@orfonline.org)

Website: [www.orfonline.org](http://www.orfonline.org)